

Executive Member for Inclusive Economy and Jobs

Meeting of:	Date:	Ward(s):
Executive	25 April 2019	All

Delete as appropriate:		Non-exempt
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Appendix 1 to this report is exempt and not for publication

**SUBJECT: Procurement Strategy and Grant of Under-Lease
Agreements for Affordable Workspace Operators
2019 - 2023****1. Synopsis**

- 1.1 This report seeks pre-tender approval of a new procurement strategy for affordable workspace operators for the period from 1 April 2019 to 31 March 2023. This report has been prepared in accordance with rule 2.7 of the Council's Procurement Rules. The new procurement strategy will replace the existing Dynamic Purchasing System (DPS) framework for procuring affordable workspace operators, which expires on 31 March 2019. Approval of the procurement strategy will support the Council in delivering its Affordable Workspace Strategy as agreed by the Executive in September 2018.
- 1.2 This report also seeks agreement from the Executive to delegate authority to the Corporate Director of Resources to grant under-leases to affordable workspace operators.
- 1.3 Guided by the recommendations of the Fairness Commission, the Council has committed to build an inclusive economy in Islington - creating local wealth and tackling inequality by building on the strengths of the people, communities and assets that already exist in

the borough. The delivery of the affordable workspace programme is central to the Council's Corporate Plan objectives of delivering a Fairer Islington by 'securing new affordable workspaces for local people' and 'creating an inclusive economy and supporting local business'.

To date the Council has secured nine affordable workspaces from Section 106 Agreements, and it is currently considering a number of planning applications that may deliver additional affordable workspaces between 2019 and 2023. In addition, the Council plans to deliver affordable workspaces in its own buildings and through securing leases with private landlords.

1.4 The Council has developed a social value procurement framework to procure operators for its affordable workspaces. In exchange for the right to lease the affordable workspaces at a peppercorn rent, the operators will be required to provide a range of social value benefits. For example, they will be required to:

- Develop and deliver pathways into vocational training leading to accredited qualifications.
- Support local residents into work particularly by providing jobs and apprenticeships and opportunities for self - employment.
- Inspire the next generation of young people through support for Islington's 100 hours World of Work programme.
- Deliver high-quality business support to their tenants and businesses within the wider local area enabling micro and small businesses to start up and grow.
- To support and develop local supply chains.

2. Recommendations

2.1 To approve the procurement strategy for Affordable Workspace Providers 2019-2023 as outlined in this report, and which will be used to conduct individual procurements for each affordable workspace in line with the specific information set out in the table at paragraph 3.8.

2.2 To delegate authority to the Corporate Director of Resources in consultation with the Executive Member for Inclusive Economy and Jobs, to grant under-leases to the organisations (providers) that are awarded concession contracts for affordable workspaces.

3. Background

3.1.1 Through an ambitious and ground-breaking affordable workspace policy, the Council is ensuring that new workspaces are secured through planning obligations to support existing small and micro businesses, and to facilitate new business activity and employment opportunities for disadvantaged local people. In addition, the Council

successfully bid for match-funding from the Mayor of London to create at least four new affordable workspaces in Finsbury Park. This funding will enable the conversion of under-utilised Council assets on the Andover Estate, as well as the purchase of leases in a privately owned building.

3.1.2 When new affordable spaces are secured, the Council enters into a lease with the developer or landlord. The Council will then procure an organisation to operate the affordable workspaces and grant them an under-lease at a peppercorn rent. The selected organisations will be fully responsible for the management of the spaces and liable for any costs such as utilities charges and service charges during the lease term. These provider organisations will license desk or office space to individuals and businesses and charge a genuinely affordable rent to users. Under the terms of the s106 agreements, rent levels are capped at 80% of market rents.

3.1.3 Uniquely, the provider organisations will commit to deliver significant social value in return for the lease. This will include benefits for local people and businesses across a number of areas including (but not limited to):

- Development and delivery of pathways into vocational training leading to accredited qualifications.
- Supporting local residents into work particularly by providing jobs and apprenticeships and opportunities for self - employment.
- Inspiring the next generation of young people through support for Islington's 100 hours World of Work programme.
- Delivering high-quality business support to their tenants and businesses within the wider local area enabling micro and small businesses to start up and grow.
- Supporting and developing local supply chains.

The contract and coterminous lease agreement will secure the key performance indicators agreed on contract award, based on a combination of workspace management, affordable rental charges and importantly, the social value measures. Further details are set out in paragraph 3.6 below.

3.2 Estimated Aggregated Value of the Concession

3.2.1 The overall value of procurements between 2019 and 2023 is calculated on the aggregated concession value to the affordable workspace providers, currently estimated to be at least £20 million. This is equivalent to the capitalised value of 80% market rent of the spaces identified in Appendix One during their lifetime, which ranges from 10 to 20 years. In addition, the Council is negotiating with a number of developers to secure additional affordable workspaces. It is intended that should these spaces come on stream before 2023, the operators will be procured using this strategy and the total value of the concession contracts will increase accordingly. Finally, as a contingency, it is intended that the spaces at Finsbury Park are also included in these arrangements if

they are not procured under the existing Dynamic Purchasing System framework before its expiry on 31 March 2019.

3.2.2 Through this arrangement, it is anticipated that the Council will secure social value that is equivalent to an approximate minimum value of £30 million, corresponding to a minimum of 150% of the capitalised market value for the affordable workspaces considered in this report. This multiplier has been advised by a social value expert consultancy, based on their industry experience elsewhere. It will be continuously monitored and reviewed.

3.2.3 A bespoke financial proxy for the social value activities to be derived through the operation of the affordable workspaces has been developed. This 'monetises' the value of any benefit that is secured e.g. the delivery of one apprenticeship has a value of £168.04 per week and a resident moving from unemployed status into full time employment has a one off value of £36,302. These proxy values will enable the Council to measure and demonstrate the benefit of social value-driven contracts, and compare impacts across a number of workspaces. Again, the efficacy of the framework will be benchmarked and reviewed periodically.

3.3 Timetable

3.3.1 The current arrangements that the Council uses to procure affordable workspace providers expire on 31 March 2019. Five affordable workspaces are ready to transfer to the Council, with a further three in the immediate pipeline. When the existing Dynamic Purchasing System (DPS) framework expires, and without an operator in place, the Council may be liable for council tax and service charges (see below 3.7.1). Approval of this strategy will mean the Council can begin commissioning operators using the new process from 1 May 2019.

3.4 Options appraisal

3.4.1 Currently, affordable workspace providers are commissioned via a dynamic purchasing system (DPS) framework. This approach allows some prior vetting and pre-procurement engagement or 'market warming' for all providers who enter onto the framework. This framework is time limited and expires on 31 March 2019. Three separate options for replacing this system have been considered.

3.4.2 Option 1 would be to renew the DPS framework. The staff resource required to continue to operate a DPS framework under new regulations introduced for 2019 would be greater than it is at present due to the extra administration required. Under the new regulations, a DPS requires a value to be announced for the assets to be procured. However, the affordable workspaces are mainly secured via the planning process and it is difficult to calculate the exact number, size and value of affordable workspaces to be delivered within a four-year period. In addition, the DPS is limited to providers on the

approved framework and this limits the competition and potential social value innovation as a result. The provision of affordable workspaces is a rapidly changing sector and the Council needs a procurement approach that can respond quickly and effectively to find the right providers.

- 3.4.3 In Option 2, the Council could enter into partnership arrangement with neighbouring boroughs on a shared Affordable Workspace Providers List. This would enable the Council to have access to an approved list that we could use to procure operators. This approach would have the benefit of sharing resources across local authorities. However, other councils often let the developer choose the provider from the approved list whereas, the Council is seeking to have more control on the selection of the provider to ensure optimal social value benefits for residents.
- 3.4.4 Option 3 is to treat each individual affordable workspace as a stand-alone procurement process within an agreed framework. It also allows for affordable workspaces that are similar in nature to be procured at the same time to accelerate and optimise social outcomes.
- 3.4.5 Option 3 provides more flexibility for ensuring that the award criteria for each concession contract is tailored to each space and the needs of local people, and meets market-specific requirements at the time of delivery. It provides the opportunity to reach the widest diversity of operator organisations, thus increasing the Council's opportunity to access innovative practitioners across a range of sectors, and maximise the social value return.
- 3.4.6 Therefore, Option 3 is recommended as it will enable the Council to:
1. retain a greater degree of flexibility around the process of going out to the market;
 2. operate strategically to support clusters of activity and employment;
 3. attract the greatest diversity of operators to compete; and
 4. secure the significant social value outcomes and innovation that will determine the quality of the affordable workspaces.

3.5 Key Considerations

- 3.5.1 The Council has committed to derive a social value return, rather than a financial income from the affordable workspaces. This is reflected in the design of the award criteria, with a strongly weighted emphasis on the delivery of social value outcomes. This approach was approved by the Commissioning and Procurement Board at its meeting in January 2019.
- 3.5.2 This is an innovative commissioning arrangement by which social value return may be optimised. Uniquely, it will weight social value at 70-85% of the decision-making

process and criteria. A methodology has been designed to allow the monetisation of social value outcomes, and demonstrate best value. This provides a benchmark against which value can be measured and ensure the effective delivery of the aims and objectives of the Affordable Workspace Strategy (2018).

- 3.5.3 The Council is unable to rent out the s106 affordable workspaces at a commercial rate because that runs contrary to our current Development Management Policies (DM5.4)

"D. Where affordable workspace is to be provided, evidence should be submitted demonstrating agreement to lease the workspace at a peppercorn rate for at least 10 years to a council-approved Workspace Provider." (p. 90)

- 3.5.4 The contracts under this procurement strategy will be inclusive of the London Living Wage (LLW) where legally permissible.

- 3.5.5 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to complete an anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.

- 3.5.6 The Affordable Workspace Procurement Strategy proposes a new service that will be managed by externally contracted organisations almost in its entirety. Therefore, there are no current or anticipated TUPE implications that are applicable to this service. If in the future the Council decides to bring any of the affordable workspace operators in-house, there may be a TUPE implication for the Council but that would need to be assessed at that point in time.

3.6 Evaluation of Tenders

- 3.6.1 Individual tenders will be determined on the value of the concession arrangement for each affordable workspace, calculated on the length of lease and estimated market value. Those that are above the concessions value of £4,551,413 will be advertised on OJEU. All contracts will be advertised on the London Tenders Portal and Contracts Finder using either the open or restricted procedure, dependent on the threshold that is reached by the individual or grouped workspaces for any particular procurement.

- 3.6.2 The proposed procurement strategy is designed to generate competition and secure ambitious and innovative social value outcomes for each workspace. Individual procurement processes will also offer additional flexibility that will benefit the Council

when managing timing and location dependencies occurring as affordable workspaces in the pipeline of spaces become ready for occupation.

- 3.6.3 The organisations bidding for new affordable workspace premises will be required to demonstrate their planned rental charges, management plans and the social value outcomes that they will deliver, and will be assessed against each of the following criteria:
- **Social Value – 70%-85% range**, covering topics including but not limited to the:
 - a. Development of support programmes and other initiatives for micro and small businesses
 - b. Delivery of employment outcomes for local residents, particularly for those at disadvantage
 - c. Development of education and skills initiatives to engage local young residents.
 - d. Promoting the development of local business clusters
 - e. Community engagement, environmental measures and other social innovation initiatives that could be considered for the benefit of the local community
 - **Price – 10%-25% range:**
 - f. Rent affordability and affordable workspace management plans
 - **Quality – 5%**
 - g. Property management arrangements.
- 3.6.4 The above approach will be adapted within the lower/upper limits identified and sub-criteria specified, in consultation with the Executive Member for Inclusive Economy and Jobs, to reflect the specific needs of the locality/business cluster/local community in which the affordable space is located, encourage innovation and maximise social value.
- 3.6.5 The organisation which provides the most economically advantageous proposal against these criteria will be awarded a concession contract and a coterminous lease agreement.
- 3.6.6 This concession contract will set out the social outcomes that the affordable workspace provider has agreed to provide. The contract will be the basis for monitoring the affordable workspace provider at quarterly monitoring performance reviews, alongside an annual report. The concession contract established with each workspace provider will contain provisions enabling the Council to terminate the contract in the event of underperformance by the operator.

3.7 Risks

3.7.1 The current DPS framework is time-limited and will cease to function on 31 March 2019. Therefore, a risk to the Council is that it will have no means by which to commission operators at that point and a reputational risk for the Council with major developers in the borough, who will be expecting the workspaces to be operational as soon as possible after construction completes. This proposal is timed to ensure that there is as smooth a transition as possible from use of the DPS framework to an open procurement process.

There are financial liabilities that will arise if the occupation of the affordable workspace by a provider is delayed and the lease with the developer is completed before this. In these instances, the Council may be liable for both business rates and service charges. Currently, the Council is successfully mitigating liabilities on service charges by making legal arrangements with developers to delay service charges until organisations to manage the workspaces can be appointed. This is negotiated on a case-by-case basis. Officers are currently working on solutions for business rates liabilities associated with taking on leases from developers before commissioning processes for providers start.

3.7.2 The possibility of low levels of interest from providers is also a risk to the commissioning of affordable workspaces. To mitigate this, 'market warming' events and viewings will be organised in advance of advertising the new opportunities, to increase awareness and raise interest in the relevant sectors.

3.7.3 One of the key risks that the Council could face is not securing or sustaining enough social value outcomes through the affordable workspace. In response, the Council has drafted a contract with robust mechanisms to enable improvement actions where required, and manage any underperformance issues. Ultimately, this includes the option to terminate the contract for persistent under-performance.

3.7.4 There are contract management responsibilities that the Council will need to carry out in order to successfully monitor social value outcomes. Failure to fulfil these requirements would mean that the agreed social value outcomes may not be delivered. The Council is putting in place sufficient staff resource to ensure a minimum of quarterly monitoring meetings with appointed providers.

3.7.5 The Council also considers the length of the contract and the terms of the leases of the affordable workspaces to be a risk, as they are from 10 to 20 years' duration. To mitigate this risk, termination clauses have been included in the contract and lease, linked to the performance measures within the contract.

3.8 Information to be specifically approved by the Executive

The following information is required to be specifically approved by the Executive in accordance with rule 2.8 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	<p>The Council secures affordable workspaces and procures organisations to manage the spaces (offered at peppercorn rent) in return for social value benefits.</p> <p>See Sections 1 and 3.1</p>
2 Estimated value	<p>The estimated total value of all the contracts associated with affordable workspaces delivered in the next 4 years, is approximately £20 million.</p> <p>See Section 3.2</p>
3 Timetable	<p>The procurement strategy is proposed to run for a period of 1 May 2019 to 31 March 2023.</p> <p>See Section 3.3</p>
4 Options appraisal for tender procedure including consideration of collaboration opportunities	<p>The Council has considered three different options and ways to manage the commissioning process of organisations to manage affordable workspace. In consultation with Strategic Procurement, it is determined that Option 3 is the most suitable approach, that is, to treat each individual workspace as a stand-alone procurement process with considerations for commissioning multiple spaces together.</p> <p>See Section 3.4</p>
5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	<p>The award criteria for these type of contracts is heavily weighted towards the social value outcomes that each organisation will deliver during the management of the space (relative to the capitalised value of the space).</p> <p>London Living Wage requirements have been embedded in the process. In addition, the procurement strategy proposed in this report proposes a new and externally contracted service, therefore there are no current TUPE, pensions or staffing implications for the Council.</p> <p>See Section 3.5</p>
6 Award criteria	Social Value: 70%-85% range

	<p>Price: 10%-25% range Quality: 5%</p> <p>See paragraph 3.6.3</p>
7 Any business risks associated with entering the contract	<p>The Inclusive Economy Team has proactively sought to control and mitigate potential risks associated with this procurement, by introducing:</p> <ul style="list-style-type: none"> • market warming exercises to increase interest and generate competition; • contract termination clauses linked to under performance; and, • the establishment of lease agreements with providers to transfer liabilities during the management of the affordable workspaces. <p>There are potential liabilities that could arise if the occupation of the affordable workspace by a provider is delayed and the lease agreement with the developer is signed off before this. In these instances, the Council is liable for both business rates and service charges.</p> <p>See Section 3.7</p>
8 Any other relevant financial, legal or other considerations.	<p>Legal implications See Section 4.2</p> <p>Financial implications See Section 4.1</p> <p>Environmental implications See Section 4.3</p>

3.10 Granting leases to organisations managing the affordable workspaces

The Council will be taking a head lease on each secured and completed affordable workspace from the developer for a term of 10 to 20 years at a peppercorn rent (depending on the provisions in the s106 legal agreement). This lease may make the Council liable to pay council tax and any service charges and other charges such as utility bills until it grants an under-lease to the provider organisations appointed to manage the affordable workspaces in tandem with a contract. The under-lease will enable the Council to pass on the service charges and other utility-related charges to the appointed organisations.

The grant of leases for a period of more than six months at less than best consideration to affordable workspace providers is an Executive function reserved for the decision of

the Executive. In order that the concession contract and under-leases are coterminous, and to avoid paying service charges and other costs, the Council needs to grant the under-leases to the providers and enter into the concession contracts at the same time. For reasons of timeliness, it is therefore recommended that authority to grant the under-leases to providers is delegated to the Corporate Director of Resources in consultation with the Executive Member for Inclusive Economy and Jobs.

4. Implications

4.1 Financial implications:

There may be financial liabilities relating to business rates and service charges arising from delayed occupation by service providers. These are difficult to quantify and will need to be covered from the overall budget within the Economic Development team. If Council buildings are made available as sites for affordable workspaces there may be financial implications for the market rate rent foregone and this would need to be assessed on a case by case basis.

4.2 Legal Implications:

The Council has power to provide workspaces under section 1 of the Localism Act 2011 which provision confers a general power of competence on the Council to do anything for the benefit of its area or persons resident or present in its area. Accordingly, the Council may enter into a concession contract for providing and managing affordable workspaces for local people under section 1 of the Local Government (Contracts) Act 1997.

The affordable workspace services being procured are services concession contracts for the purposes of the Concession Contracts Regulations 2016. Where the value of the proposed services concession contract exceeds the financial threshold of £4,551,413 it must be advertised in the Official Journal of the European Union (OJEU) using the open or restricted procedure. Services concession contracts below this financial threshold must be subject to competitive tender under the Council's Procurement Rules.

The Council may grant under-leases of the affordable workspaces to the affordable workspace providers (section 123(1) of the Local Government Act 1972). However, as the leases are for more than 7 years at less than market rent, the consent of the Secretary of State's consent will be required. In 2003, the Secretary of State issued a general consent specifying the circumstances in which the Council may dispose of land at less than the best consideration that can reasonably be obtained.

The general consent permits a local authority to dispose of land freehold or by way of a lease exceeding 7 years at less than best consideration if the authority considers the disposal will help it secure the promotion or improvement of the economic, social or

environmental wellbeing of its area provided that any undervalue does not exceed £2,000,000.

Although the Council may have the necessary power (Section 123 or a general or specific ministerial consent) to lease the affordable workspaces at less than market rent consideration, any decision to do so must be taken:

- (1) reasonably
- (2) in the light of the market rent and the amount of the proposed undervalue
- (3) with due regard to the Council's fiduciary duty.

Under the Council's Constitution, the grant of a lease for more than 6 months at less than market rent, is a matter reserved for the decision of the Executive. However, the Executive may delegate authority to the Director of Corporate Resources to grant under-leases of affordable workspaces at less than market rent to affordable workspace providers.

4.3 Environmental Implications

The major environmental impact of granting leases for the affordable workspace will be the business activities that subsequently take place in the workspaces. This is likely to involve energy and water use, waste generation, and people travelling to and from the workspaces.

Operators will be required to provide environmental measures, such as the use of sustainable transportation methods and savings in CO2 emissions (not from transport). In addition, the focus on providing jobs for local people, may reduce commuting distances. The majority of the workspaces are in new-build developments, and are therefore expected to be relatively energy efficient compared to older commercial properties, in line with the energy and environmental standards set out in Development Management Policies.

4.4 Resident Impact Assessment (RIA):

- 4.4.1 The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

- 4.4.2 The Council will ensure that the necessary legislative obligations in this regard are integrated into the contractual agreements with affordable workspace providers, and will be monitored as part of the contract management framework.
- 4.4.3 A Resident Impact Assessment was completed on 23 February 2018 and updated on 12 December 2018. A summary is given below with the full Resident Impact Assessment at Appendix 2.
- 4.4.4. **RIA summary**
- The procurement of affordable workspace providers through a concession process will enable the Council to secure, deliver and monitor significant social value outcomes from the long-term activity of the affordable workspaces. The alignment of this procurement strategy with the establishment of under-lease agreements will ensure that the organisations appointed deliver the concession service according to the Council's standards, avoiding further issues or liabilities derived from the delivery of this service.
- 4.4.5 The Council has based the awarding criteria for procuring affordable workspace providers on a number of strategic objectives related to the main themes included in the upcoming Inclusive Economy Strategy which are core Council aims. These are support for small business, employment, training and skills as well as the development of local clusters.
- 4.4.6 The impacts identified in section 3 of the RIA will have overall positive impacts on residents, and will play a key role in improving the socio-economic outcomes of small organisations managing the workspaces. It will bring further opportunities to entrepreneurs and micro businesses using the spaces; and will offer a broad range of training and employment-readiness opportunities for residents interested in entrepreneurship, and will seek to open up new career pathways for young people. At its core, the affordable workspace initiative seeks to implement inclusive growth and to unlock economic opportunities for residents within the borough.
- 4.4.7 The creation of Council-led affordable workspace is one of the Council's pioneering initiatives to help build an economy that is fair and inclusive of the local community. The Inclusive Economy team will proactively engage workspace management and business support experts through a range of market warming exercises and marketing promotion activities. These will help raising local awareness on upcoming opportunities and maximising interest from the market on upcoming opportunities to manage workspace. These measures will also mitigate potential competition issues with established local workspace providers and business support organisations.

5. Reason for recommendations

- 5.1 The delivery of the Council's affordable workspace strategy is integral to the achievement of the Council's vision of an inclusive economy, by protecting the ability of local micro and small businesses to locate and grow in the borough. At the same time, the innovative social value model will derive a series of inclusive economy outputs. The proposed procurement route optimises flexibility for the Council in achieving social value to deliver this vision, while at the same time, managing the identified risks.
- 5.2 The delegation of the decisions on the granting of leases for affordable workspaces to the Corporate Director of Resources will allow the Council to create new affordable workspace flexibly and quickly, thereby avoiding undue liability on the Council to pay service charges and other charges, and optimising the delivery of social value outcomes.

Appendices

- Appendix 1 (Exempt) – details of currently identified Affordable Workspaces
- Appendix 2 - RIA

Background papers: none

Final report clearance:



9 April 2019

Signed by: Councillor Asima Shaikh
Executive Member for Inclusive Economy and Jobs

Date

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