

London Borough of Brent

Briefing note on negotiations with land owners for the acquisition of a site for the new Civic Centre

Background

Following legal advice on the application of EU Procurement Regulations and recent case law the Council has decided to approach land owners in the area with a view to acquiring a site for the new Civic Centre. Provided that the Agreement entered into with a land owner is for the acquisition of land only, the Council is not required to follow the OJEU procedure in relation to the negotiation of that land transfer agreement. The relevant regulation with regard to this "land acquisition exemption" is Regulation 6(2)(e) of the Public Contracts Regulations 2006. Once a suitable site has been acquired the Council will then follow the OJEU procedure either to select a developer to deliver the Civic Centre project or alternatively run a number of OJEU procedures to appoint the various contractors and consultants necessary to deliver the project.

Guidance on negotiations with land owners to acquire site

It is vital that any Agreement negotiated with a land owner for the acquisition of a site for the Civic Centre is in fact an Agreement for land acquisition only. If the Agreement involves the specification of any works or services or the land owner carrying out any works or services for the Council the Agreement will fall within the EU Procurement Regulations and the fact that an OJEU procedure was not followed would put the Council in breach of those regulations.

The sole purpose of the Agreement must therefore be the transfer of a land interest from the owner to the Council only. It may involve the transfer of a freehold or long leasehold interest of the site and the Agreement may contain various restrictions and conditions which may generally be expected in a commercial land transaction. However the Agreement must not contain any provisions relating to the specification or carrying out of any preparatory or demolition or any other works to the site by the land owner. Any Agreement between the Council and the land owner that the land owner will carry out works or provide services, however incidental such works or services may be to the land transfer, would put the Council in breach of the procurement regulations.

If those negotiating on behalf of the Council are unsure as to whether a provision raised in negotiations would turn the Agreement for the transfer of a land interest into a contract for works and/or services they should seek clarification from the Project Team and the legal advisers.

As a general rule the negotiation discussions should not be concerned with any obligations on the land owner other than to transfer the land interest to the Council.

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14 December 2007