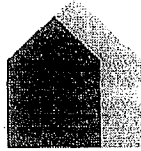


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Residential
Property
TRIBUNAL SERVICE

LON/OOBE/LDC/2010/0023

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985
(as amended) SECTION 20ZA**

**PROPERTY: THE APPLICANT'S PORTTFOLIO OF LEASEHOLD
PROPERTIES IN THE BOROUGH OF SOUTHWARK**

APPLICANT: LONDON BOROUGH OF SOUTHWARK

**RESPONDENTS: THE LEASEHOLDERS OF THE PROPERTIES
FORMING THE APPLICANT'S PORTFOLIO OF
PROPERTIES IN THE LONDON BOROUGH OF
SOUTHWARK**

Date of application: 17th February 2010

Date of paper determination: 7th July 2010

TRIBUNAL

Mrs T I Rabin JP Chairman
Mrs H Bowers MRICS

Date of Tribunal's decision: 7th July 2010

DECISION

The Application is granted. The requirements of Schedule 2, paragraph (4)-(8) of the Service Charge (Consultation Requirements) (England) Regulations 2003 are hereby dispensed with in relation to the consultation exercise in respect of entering into a framework agreement for consultancy services in respect of building and surveying work relating to the Properties, being a long term agreement for the supply of consultancy services.

BACKGROUND

1. This matter relates to an application by the Landlord, London Borough of Southwark ("the Applicant") for dispensation of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 ("the Act") in relation to entering into a framework agreement for consultancy services in respect of building and surveying work. The Respondents are tenants of the Applicants who have leases that provide for the Applicant to undertake repair and maintenance work on the Properties which the Respondents pay for by way of variable service charges. The Respondents live in properties owned and let by the Applicants.
2. The Applicant has a current agreement for the provision of building and consultancy work and this is coming to an end. The Applicant wishes to put consultancy agreements in place but, in view of the nature of the agreement, it will not be possible to undertake the full consultancy process as required by Section 20 of the Act. Accordingly, they are seeking dispensation from the consultation requirements.
3. The Tribunal made directions in order to ensure that all the Respondents were made aware of the application and its terms and be given an opportunity to comment.

THE LAW

4. Section 20 of the Act requires landlords to consult with tenants who may be required to pay more than £250 per annum in respect of any contract that exceeds twelve months in duration ("a qualifying long term agreement"). The Service Charge (Consultation Requirements) (England) 2003 ("the Regulations") require that there must be consultation with the tenants in three stages. In the first stage the landlord must serve notice in writing of his intention to enter into a qualifying long term agreement which will estimate the tenant's contribution and must give the tenants a period of time to make representations to which the landlord must have regard. The second stage requires a proposal to be prepared in respect of the agreement giving details of the proposals, summarising the observations received and giving a response to these observations. The final stage requires the landlord to give a notice of the proposal and estimate enclosing a copy or stating where it can be inspected. The landlord must have regard to observations received within 21 days. These provisions are set out in paragraphs (4)-(8) of Schedule 2 of the

Regulations. The provisions of Paragraphs (4), (5), (6) and (7) of the Schedule 2 of the Regulations provide:

- (4) Where as regards each tenant's unit of occupation it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution
- (5) Where:
 - (a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and
 - (b) it is reasonably practicable for the landlord to estimate as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreementthe proposal shall contain a statement of the amount of that estimated expenditure
- (6) Where:
 - (a) it is not reasonably practicable for the landlord to make the estimates mentioned in sub-paragraph (4) or (5)(b); and
 - (b) it is reasonably practicable for the landlord to ascertain the current unit cost or daily rate applicable to the relevant matters to which the proposed agreement relatesthe proposal shall contain a statement of that cost or rate
- (7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b) the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate.

EVIDENCE

5. The Applicant submitted a statement of case This stated that the agreement was in relation to the provision of consultancy services for building and surveying work to be carried out throughout the Applicant's portfolio of properties. The proposed consultancy agreement would be entered into with a number of firms of varying size and that building and surveying contracts would be awarded on a rotational basis but with consideration of the particular circumstances of any particular contract.
6. The consultants are to be appointed to supplement in-house resources and this will provide the Applicant with the flexibility to meet their programmes when in-house resources are over-stretched or specialist advice is needed. The consultancy agreement will allow the consultants to be used in the management of building contracts to be undertaken during the term of the agreement but these contracts will not be identified until after the agreement is entered into
7. The consultancy agreement is not attached to a specific programme of work but the consultants will be used when needed for the purpose of undertaking inspections and surveys and submitting reports as well as the design and supervision of building works and undertaking surveys of existing buildings and specifying any necessary repair work. There is no guarantee that the consultants will be given work under the terms of the agreement; only if needed.
8. The procedure to be adopted is that there will be tendering subject to public notice and firms will be invited to submit a proposed percentage rates to be applied to any building work contract that they support. This is the normal method of pricing.

reasonable or that the service provided is of a reasonable standard and that the occupants may, if they wish, make an application when they receive the demands for gas and electricity supplies for the Tribunal to determine their liability to pay.



Mrs T I Rabin
Chairman

Dated: 7th July 2010