

Supplement to the Guidance on Arms Length Management

Section 1: Introduction

This is a supplement to the Guidance on the Arms Length Management Organisation (ALMO) option for local authorities that wish to improve their housing management services and seek additional resources to invest in bringing their housing stock up to the decent homes standard.

The Guidance was issued by the Office of the Deputy Prime Minister (ODPM) in October 2004 and continues to cover the key policy and operational features of ALMOs, setting out the criteria for bids for additional resources in Round 6 of the programme, which are for additional expenditure expected to start in 2007/08.

With effect of 5th May 2006 the responsibilities of the ODPM were passed to the Department for Communities and Local Government (DCLG).

Policy amendments & Procedural Modifications

Since October 2004, there have been policy amendments and procedural modifications that have impacted on the ALMO programme. This supplement sets out those changes by paragraph insert below:

Section 2: What is an ALMO?

Paragraph 2.12

- The Guidance on payment to Board members has now been issued. Copies are available from Beverley Duhaney, Decent Homes Division (see contacts at Annex A).

Contents:

Note: Section and paragraph numbers in this supplement indicate where the additional or amended guidance fits into the *Guidance on Arms Length Management of Local Authority Housing – 2004 Edition*, ODPM 2004 Product code 04HC02584.

Foreword

SECTION 1

Introduction

SECTION 2

Guidance on payment to Board members

SECTION 3

Housing benefit
Choice-Based Lettings

SECTION 4

Co-ordination between planning & housing departments
Health & Safety Issues
Efficiency
Procurement of works and services

SECTION 5

Contact details update
ALMO Support Framework Guidance

SECTION 8

Re-inspection Guidance
Quarterly returns

SECTION 9

Bidding for a place on the ALMO Programme

ANNEX A

Useful Contacts

ANNEX E

The Brixen Judgement:
Legal implications for ALMOs

Section 3: Separating strategy and management

Paragraph 3.13

Housing benefit

- DWP have confirmed that the principles contained within the Operation and Good Practice Manual can also be applied to ALMOs. Local authorities can, therefore, arrange for their ALMOs to set up verification schemes in line with the principles and procedures in that Manual. Accountability for verification procedures will remain with local authorities, who are expected to check and monitor the verification procedures that the ALMO undertakes on their behalf. To comply with data protection requirements, ALMOs will need to ask tenants to confirm that they are willing for the ALMO to see details of their claims. Further information is available in guidance on the RSL Verification Framework Scheme published by the Department for Work and Pensions (HB/CTB Circular A33/2002), available through the DWP website at www.dwp.gov.uk.

Paragraph 3.14

Choice-Based Lettings

- *Homes for All*, the Government's 5-year housing plan, sets out the Government's plans for taking forward its choice-based lettings policy (CBL). The aim is to have in place a nationwide system of choice by 2010, with CBL extending to all social housing and including the private rented sector wherever possible.
- CBL schemes allow people to apply for available LA/RSL accommodation which is openly advertised (e.g.; in local press or interactive website). Home seekers can see the full range of available properties and apply for any home to which they are matched. The successful bidder is the one with the highest priority under the scheme. Authorities provide feedback which helps applicants to assess their chances of success in future rounds. Returns for 2004/5 show 90 authorities (26%) have adopted CBL.

- Authorities should be working up their proposals for CBL based on a partnership approach which brings together all stakeholders, including the ALMO and RSLs in the scheme area to develop and deliver choice-based approaches. The Government is also keen that CBL systems should operate sub-regionally or regionally, recognising that housing markets do not follow local authority boundaries, and is therefore providing £4 million over three years to support the development of regional and sub-regional schemes, making money available by means of a bidding process. Any application for the ALMO programme should explain the proposed way forward locally in relation to CBL.

Section 4: Delivering Decent Homes

Paragraph 4.5.1

Co-ordination between planning & housing departments

- ALMOs should ensure that they liaise effectively with those involved in other initiatives to ensure that delivery is in line with current planning objectives. ALMOs should build and maintain contacts with Local Planning Authorities.
- ALMOs must consider how Decent Homes feeds into wider regeneration strategies such as Market Renewal Pathfinder schemes; it may not be necessary to make homes decent when demolition and new build may be more appropriate. At national level, planning policy guidance makes clear that when undertaking such schemes, a range of factors must be considered including Decent Homes.
- Good practice indicates that a clear logical process, which involves all the parties, is the best way of taking a development forward. Important factors in this are early involvement of other departments within the local authority e.g. planners, legal etc; adherence to planning procedures; partnership working with tenants and other stakeholders; and ensuring awareness of other issues that may impact on delivery e.g. conservation areas.

Paragraph 4.5.2

Health & Safety Issues

- The Housing Health and Safety Rating System (HHSRS): (Part 1 of the Housing Act 2004) took effect on 6 April 2006. Documents setting out the HHSRS legal framework and guidance will be published in November. HHSRS will replace the 1985 Act fitness standard. The Decent Home Standard will now require homes to be free of category 1 hazards. Landlords are not required to carry out full HHSRS surveys of their stock in order to demonstrate compliance. However HHSRS should be taken into consideration in Stock Condition Surveys.

Paragraph 4.11

Efficiency

- The Government's Efficiency Review set targets for efficiency gains across the public sector, including housing.
- Applications should set out how the proposed model will deliver a step-improvement in efficiency, including a clear strategy for driving efficiency through the life of the programme. It should also include proposals for comparing performance with other organisations which use similar and different approaches to service delivery. The Audit Commission's new Key Line of Enquiry on Value for Money (KLOE 32) sets out a framework which organisations should use to assess their arrangements.
- Further information on efficiency gains was published in February 2006. *Delivering Efficiency in Local Services* can be downloaded at <http://www.rce.gov.uk/rce/aio/16537>

Paragraph 4.12

Procurement of works and services

- Applications should also consider the opportunities for collective procurement arrangements to raise quality and reduce costs. These include the sub-regional consortia of social landlords for procuring capital works and repairs and maintenance, which the DCLG is supporting through its Efficiency Challenge Fund. They also include arrangements offered by consortia such as Procurement for Housing for the joint procurement of commodity goods and services.

Section 5: How is an ALMO financed?

DCLG is only able to formally allocate resources for the period covered by the most recent Spending Review – to the end of 2007/08. There will be a Comprehensive Spending Review in 2007. Conditional funding allocations for successful ALMOs under Round 6 will therefore be for one year, 2007/08, rather than the usual two.

Paragraph 5.17

- The contact details at paragraph 5.17 of the Guidance have changed. Copies of the Building Costs Model (BCM) and associated guidance are available from Roy Williams, Decent Homes Division (see contacts at Annex A).

Paragraph 5.19

- The guiding principles set out in paragraph 5.19 remain. However, given that Round 6 is likely to be the last ALMO bidding round, it is important that all proposals put forward are based on a realistic timescale. The proposed timetable should take into account current performance and the amount of work and time likely to be necessary for the ALMO to reach the required 2* standard. DCLG will consider agreeing to timetables which go beyond the two years between s27 consent and achieving a successful inspection rating specified in the Guidance if it is satisfied that an appropriate project plan and robust improvement strategy is in place. However, a provisional funding allocation cannot be put on hold indefinitely and DCLG still reserves the right to review the position if sufficient progress fails to be demonstrated.

Paragraph 5.20

- ALMO Support Framework Guidance has now been issued and is available from Beverley Duhaney, Decent Homes Division (see contact details at Annex A).

Section 8: How are ALMOs monitored?

Paragraph 8.6

A policy paper on The Arrangements for the Re-inspection of ALMOs has now been issued and is available from Beverley Duhaney, Decent Homes Division (see contact details at Annex A).

Section 9: Bidding for a place on the ALMO Programme

As set out under Section 5 above, conditional funding allocations for successful bidders under Round 6 will be for 2007/08 only.

Section 9 of the Guidance is set out in full below and is amended to reflect the latest policy amendments.

Before submitting a bid

- 9.1 A local authority interested in setting up arms length arrangements can only do so if its Options Appraisal concluded that this is the preferred option for some or all of its stock. As outlined in Section 1, bids for places on Round 6 of the ALMO programme must be accompanied by a signed-off Options Appraisal.
- 9.2 If an authority determines on the basis of its Options Appraisal that it should bid for a place on the ALMO programme, it should consider in detail the principles set out in this guidance and the Housing Inspectorate's framework for assessing excellence in housing management and subsequent Inspectorate guidance. This will help inform an authority's decision on when it is likely to be able to meet the qualifying criteria for additional ALMO resources.

The application process

- 9.3 The timetable for applications for places on Round 6 of the ALMO programme is as follows:

Deadline for submission of bids:

31 July 2006

Announcement of successful bids and conditional funding allocations:

October 2006

- 9.4 All applications and enquiries should be sent to Andrew Dack, Decent Homes Division (see contacts list at Annex A).
- 9.5 Two copies of a local authority's final bid for additional resources, one of which should be in electronic format, and one printed copy of all the supporting documentation should be submitted. Final bids should contain all the information listed in Section 9.
- 9.6 In addition, one copy of the bid and supporting material should be sent to the relevant Government Office. Where the Government Office already has copies of the supporting material there is no need to send them again.

Assessment criteria

- 9.7 In assessing bids for places on the ALMO programme, DCLG will have regard to the criteria listed in paragraph 9.9 below. Particular consideration will be given to readiness to proceed, bearing in mind the likelihood of the proposed ALMO securing the necessary Housing Inspectorate rating. If the programme is oversubscribed, DCLG may need to discuss with authorities the scope for there being some flexibility within the profile of each bid. As with earlier rounds, initial allocations may not be for the full amounts sought.
- 9.8 Any authorities whose bids were not accepted onto Round 5 of the programme will be eligible to apply again in Round 6. DCLG will give feedback on unsuccessful bids.
- 9.9 In assessing bids for places on the ALMO programme, DCLG will take particular account of:

- *Compliance with the principles set out in this Guidance*

DCLG will not make a conditional allocation to an authority which has failed to demonstrate that its proposals meet the principles set out in this Guidance. In particular, Ministers will expect to see a

commitment to the separation of management and strategic functions, leading to clear separation of roles and staffing between the council and the ALMO, with the terms and conditions of transferring staff fully protected, and genuine management freedom being given to the ALMO Board to improve services.

- *The contribution that the additional resources will make to meeting the Government's decent homes target*

Account will be taken of the amount of work required to bring the stock up to the decent homes standard, the existing resources likely to be available to the authority for this purpose, and the additional contribution that ALMO funding would deliver.

- *Need and sustainability*

Account will be taken of the local authority's particular circumstances, including evidence of longer-term demand for the stock to be improved, and the extent to which an authority's proposals for decent homes complement regeneration and other initiatives within an overall plan for sustainable communities.

- *Available resources*

Account will be taken of the level of additional resources required, the value for money offered by the proposals, and extent to which bids propose to reflect the need to make efficiency gains that will target resources on front-line housing services.

- *Readiness to spend resources*

Local authorities should be in a position to use any additional resources allocated to enable ALMOs to deliver improvements to the stock reasonably quickly. The results of completed Best Value Reviews and Inspections and the timing of future Reviews and Inspections, as discussed with the Housing Inspectorate, will be taken into account in assessing an authority's readiness to proceed and deliver.

Information required

9.10 The following information must be provided with an application for a place on the ALMO Programme:

- a. **Summary sheet** A completed ALMO summary sheet (Annex D).
- b. **Options Appraisal** Evidence that the formal Options Appraisal has been signed off by the relevant Government Office. Where the proposed ALMO would manage only part of the stock, an explanation of how that stock was selected should be provided, along with details of the local authority's plans for the remainder of the stock. Copies of formal resolutions supporting this decision should also be included, along with evidence of support from tenants. This might, for example, be letters from the Tenants Federation or individual associations, or a report from a conference or meetings of tenants.
- c. **Scheme outline** A brief description of the proposal including its nature (whole stock or partial, single ALMO, group structure etc), the number of tenanted and leasehold units included, the type of housing concerned and its general condition. Where the ALMO would manage only part of the stock, a map showing the boundaries of the area should be provided.
- d. **ALMO funding required** The amount of additional resources bid for, taking account of the principles set out in Section 4. Bids for funds should be set out in a profile of annual expenditure and also expressed as desired additional capital investment per dwelling. The proposed works programme may be of whatever length the local authority considers appropriate. The profile of the programme should take account of the capacity of the local building industry and of contractors to meet the requirements of all housing providers in the area and surrounding region, and should as far as possible avoid the risk of inflating contract prices by excess competition for scarce capacity.

- e. **Decent homes delivery** Applicants should set out a proposed timescale for delivery of the work programme. This should include a brief description of the condition of the stock, including any particular problems or unusual property types, the number of homes which currently do not meet the decent homes standard, the date of the most recent stock condition survey and its findings, the proposed works programme, including any demolition proposals, and the date by which the housing would be brought up to the decent home standard with the additional funding; an annual profile of forecast stock numbers and the number meeting the decent homes standard should also be included.
- f. **Sustainability** Evidence that there is long-term demand for the housing to be improved and, if not, how low demand problems will be addressed. If demolition is proposed, details of tenants' views on the proposals should be provided. Also what other activities, including regeneration, market renewal, community initiatives and environmental works, are being planned or undertaken to ensure the sustainability of the improvements to be carried out by the ALMO and how these are being funded. In line with Section 4, applications should also provide full details of any bids for funding to support sustainability works up to the value of 5% of their total bids.
- g. **Division of functions** The proposed division of functions between the ALMO and the local authority, with an explanation where this varies from the division suggested in Section 3 of this Guidance.
- h. **Service delivery** How the ALMO would deliver a higher quality housing service for tenants.
- i. **Best Value reviews** Details of the timing and results of previous Best Value reviews and inspections of the housing service. The bid should include any existing evidence such as Inspection reports, Best Value reviews, action plans following inspections/reviews etc.
- The timetable for planned reviews and inspections, including the first inspection of the ALMO, should be set out. This should demonstrate how it is proposed to work towards at least a two star rating in time to make significant use of an initial allocation of ALMO funding, which for applicants in Rounds 6 may commence in 2007/08.
- j. **Tenant involvement** Details of tenant engagement during the Options Appraisal process and during preparation of the bid, and evidence of tenants' support for the proposals. Details of any discussions with existing or proposed TMOs. The bid should aim to maximise the arrangements for tenant involvement after the establishment of the ALMO. It should explain in particular how hard to reach groups are being and will continue to be involved and how their needs will be met.
- k. **ALMO structure and board** Details of the proposed Board composition and structure of the ALMO (group structure, area boards etc), including how membership reflects the community it serves. The bid should include details of the range of skills and experience the Board will be expected to possess and should set out the proposed recruitment, selection, training and development process.
- l. **ALMO independence** How the independence of the ALMO and separation from the local authority will be assured. The bid should include details of any controls that the authority plans to retain over the ALMO in addition to those catered for by the model Management Agreement.
- m. **ALMO staffing arrangements** Staffing arrangements for the ALMO, including how staff and unions have been consulted about the proposals so far. Also, how the staff reflect the community served.
- n. **Strategic context** Details of how the proposal fits in with the authority's overall strategy. The bid should include copies of the authority's latest Housing

Strategy and HRA Business Plan. It should show how the local authority is utilising its existing resources to work towards the decent homes target and how the shortfall to be met by ALMO funding has been calculated.

- o. **Local authority's strategic function**
How the local authority proposes to discharge its strategic housing function. This should specify the financial and staffing resources to be devoted to this important area and explain where these would fit in the authority's corporate structure. Evidence of the corporate impact on the local authority of the ALMO should also be provided.
- p. **Monitoring** How the local authority will monitor the performance of the ALMO.
- q. **Timetable** The timetable setting out key stages in the process including establishing the ALMO, applying for section 27 approval and planned inspections. The application for section 27 approval may be submitted with the bid if the proposals are far enough advanced. A project management plan or process map may be included.
- r. **Building Cost Model** A completed BCM. The information within the BCM should both support and be supported by information given elsewhere in the application. It would be helpful if key information contained within the BCM (e.g. proposed ALMO funding profile, progression toward Decent Homes) is also included within the formal bid document.

Round 6

9.11 Authorities should note that DCLG does not envisage any further rounds beyond Round 6 of the ALMO programme that specifically support the Decent Homes objective.

ANNEX A

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ANNEX E

Brixen Judgment and the implications for ALMOS

1. The recent European Court of Justice Case C-458/03 *Parking Brixen GmbH v Gemeinde Brixen and Stadtwerke Brixen AG* (“Brixen”) has raised questions for some authorities and ALMO in respect of procurement of housing management services. In particular it was suggested that the Brixen judgment would mean that local authorities would need to routinely submit their requirement for housing services to a competitive tender process, rather than simply awarding a contract to an ALMO without any competition.
2. The Office believe this is not the case, although of course recognise this is a matter on which only the Courts can offer a definitive view. We recognise that unless an exception applies, a public body will need to follow a competitive procurement procedure wherever it seeks to fulfil its requirement for works, services or supplies externally. If so, it will need to follow the procedure set out in the Public Contracts Regulations 2006 (S.I. 2006 no 5). Regulation 2(1) defines a public services contract as “*a contract, in writing, for consideration (whatever the nature of the consideration) under which a contracting authority engages a person to provide services.....*”.
3. However we have to date has been of the view that an ALMO which is set up by a local authority as a separate legal entity to manage the local authority’s housing stock does not fall within the procurement regime because it is considered to be “in house“. This is based on our interpretation of the European Court of Justice Case C-107/98 *Teckal Srl v Comune di Viano, Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia*.

The *Teckal* judgment provides a two part test of what can be considered “in house” –

- the control element of the test (does the local authority exercise a control over the separate entity similar to that which it exercises over its own departments?); and
- the essential part element of the test (does the separate entity carry out the essential part of its activities with the local authority which controls it?).

It is our view that if set up within the boundaries set out in DCLG Guidance on ALMOs, ALMOs could be classified as “in house” provision. Although each ALMO is a separate legal entity, it is controlled by the local authority which set it up and provides its services only to that local authority (thereby passing the *Teckal* test).

4. The *Brixen* judgment concerned the award of a services concession contract by Gemeinde Brixen, an Italian local authority, to Stadtwerke Brixen AG (a company wholly owned by that authority) for the management of a public car park without a formal award procedure. It is our understanding that the Court concluded that whilst the procurement Directives do not apply to services concessions, it was still necessary to subject the award of such a concession to a degree of advertising appropriate to the contract. This was on the basis that general Treaty principles required a public authority to act on the basis of equal treatment, non-discrimination and transparency. For this purpose the obligation of transparency consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services concession to be opened up to competition and the impartiality of procurement procedures to be reviewed.
5. The Court confirmed that the “*Teckal* test” would apply to a services concession to determine whether or not that provision was “in house” in the same way that it applied to a public contract. In the *Brixen* judgment the Court stated that control meant that the controlling authority must have:

“a power of decisive influence over both strategic objectives and significant decisions”.

The Court believed that this was not the case in relation to Stadtwerke Brixen AG (the company set up by the Italian local authority) which it considered had become “market oriented”.

6. In contrast, the Office considers that an ALMO is a company limited by guarantee, has objectives focused on managing the local authority’s housing stock in a specific geographical area and is funded by the local authority. Although the ALMO is run separately from the local authority there is an agreement between the two parties setting out how the services will be delivered.
7. Therefore in the view of the Office, that for ALMOs in their current form, the *Brixen* judgment does not appear to have introduced any significant new law in relation to ALMOs. However, it has confirmed that whether an ALMO will be in receipt of a potential public services contract or a services concession, the local authority when setting it up will need to ensure that it stays within the boundaries of what may be considered to be “in house” provision using the *Teckal* test. If it cannot do so, then a competitive procurement may be necessary. Therefore given that the outcome may change depending upon how each ALMO is set up, each local authority may wish to consider taking legal advice on the individual circumstances of its proposed arrangements before setting up the ALMO.

Further information

Further copies of this booklet are available from:

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