



# Recent housing developments

To: All housing email contacts

## **Key issues**

OFT fines for firms guilty of collusion  
Councils given funds to build homes  
Second round bids for grants announced  
APSE HRA review consultation

## **1. Introduction**

This briefing will highlight a number of recent issues impacting on housing professionals – the outcome of the OFT investigation into collusion; new council house building grants; and APSE response to Review of Council Housing Finance consultation.

## **2. Office of Fair Trading - fines for companies engaged in collusion**

The OFT has imposed fines of £129.5 million on 103 construction firms in England which it has found had colluded with competitors on building contracts. The OFT concluded that the firms engaged in illegal anti-competitive bid-rigging activities on 199 tenders from 2000 to 2006, mostly in the form of 'cover pricing'. The OFT described 'cover pricing' as a situation where one or more bidders in a tender process obtains an artificially high price from a competitor. Such cover bids are submitted as if they were genuine bids but are in fact priced so as not to win the contract giving a misleading impression to clients of the level of competition. As a result the tender process is distorted and it is less likely that other potentially cheaper firms are invited to tender.

The OFT found that in 11 tendering rounds, the lowest bidder faced no genuine competition

because all other bids were cover bids, leading to an even greater risk that the client may have unknowingly paid a higher price. The OFT also found six instances where successful bidders had paid an agreed sum of money to the unsuccessful bidder (known as a 'compensation payment'). These payments of between £2,500 and £60,000 were facilitated by the raising of false invoices.

The infringements affected building projects across England worth in excess of £200 million including schools, universities hospitals, and numerous private projects from the construction of apartment blocks to housing refurbishments.

Eighty-six out of the 103 firms received reductions in their penalties because they admitted their involvement in cover pricing prior to today's decision. The OFT has also informed nine companies originally listed in its Statement of Objections that it will not pursue allegations of bid-rigging against them as it considers it has insufficient evidence to proceed to an infringement finding.

Related guidance issued today by the OFT in conjunction with the Office of Government Commerce cautions procurers against excluding the infringing firms from future tenders, as the practice of cover pricing was widespread in the construction industry and those that have already faced investigation can now be expected to be particularly aware of the competition rules.

## **Comment**

APSE noted in a previous briefing that it felt there was a duty upon the OFT to put all relevant information into the public domain regarding this inquiry. The fact that all companies were named and the scale of fines and the type of contracts identified is welcomed by APSE. Public sector clients have a duty to ensure they are spending council tax payer's money wisely and with reputable firms and ensuring relevant data is available enables them to do this.

An information note to local authorities and other procuring entities regarding OFT Statement of Objections notes that 'the OFT must emphasise that it is a matter for individual procurers to consider what action, if any, they should take' with regard to those found guilty of collusion.

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APSE would reiterate the point that such decisions are for councils alone to make and that they will naturally bear in mind recent developments when taking such decisions. APSE feels it wholly appropriate that firms who have broken competition rules are fined and it hopes they will learn the relevant lessons as a result. However it also wishes to see major contractors and councils working in harmony and so we do not wish to see a knee-jerk reaction whereby councils break all links with firms who have been fined.

There is a responsibility upon councils to be aware of tendering procedures and safeguards; upon contractors to act within the competition rules; and upon the OFT to ensure good practice is followed and punished where appropriate. APSE wishes to see a line drawn under the affair in

the knowledge that companies have paid their 'dues' and the hope that future misdemeanours will be treated severely by OFT.

### **3. New council house building grants**

#### **First wave**

Grants totaling £127 million were made to 47 councils for the completion of more than 2,000 council houses. This has been publicised as the biggest council housing programme for almost two decades. The grants will match funding and so bring total investment to over £250 million and are part of a £1.5 billion Housing Pledge announced by the Prime Minister in June.

80% of the new homes will be built to standards well above that required by building regulations helping to cut CO2 emissions and reduce energy bills for those living in them. Commencement of all homes must start before March 2010 and only schemes for homes for rent were considered eligible.

A list of successful schemes can be found on the Homes and Communities Agency (HCA) website at [http://www.homesandcommunities.co.uk/bidding\\_for\\_new\\_build.htm](http://www.homesandcommunities.co.uk/bidding_for_new_build.htm)

#### **Second wave**

The second wave of funding is now underway and councils can bid for a further £250m which is expected to deliver an extra 3,400 new affordable homes. When announcing the scheme, the Housing Minister, John Healey, also stated that councils must include details of how they will create new apprenticeship schemes if they expect to get a slice of Government cash.

Bids will be judged by the same criteria which are that they are homes for rent, meet local need, will be built to high design and energy efficiency standards and work must be completed by March 2012. Bids are to be put forward by the end of October, 2009 with successful bids announced in December 2009.

The £180 million available for this second phase of the programme comes on top of money already allocated as part of the Prime Minister's £1.5bn Housing Pledge - announced as part of Building Britain's Future. This commitment will help build the homes the country needs and help people into jobs.

#### **Comment**

APSE welcomes the additional funds made available to encourage local authorities to build council houses again. APSE appreciates that the numbers of properties to be funded through the scheme are not significant bearing in mind the level of demand for social housing but still see it as a positive step, making it easier and more effective for councils to make a contribution to the national housing crisis. We also welcome the requirement for councils to show how they will support apprenticeship schemes as part of bids. Many councils already have successful apprenticeship schemes in place but the national shortage of skilled craft workers and the

reluctance of some private sector firms to support apprentices justifies the Government's approach.

The bidding guidance notes that HCA expects proposals on local authority owned land "for example on infill sites which it would be inefficient and potentially unattractive to other providers to own and manage". Much progress has been made from the position just a short time ago when councils were effectively dismissed as providers of houses. It would be a shame if they are seen now to have a role only where other providers are unable to deliver homes. Difficult sites are difficult for all organisations. Local authorities must not be restricted to building homes only where others are not able or interested. Enabling local authorities to operate on a level playing field has long been a call which is finally gaining airtime. It would be a shame to see this call fail. Where they have access to resources, local authorities must be seen as equal partners to RSLs as providers of homes.

APSE has continually called for councils to make the most of recent opportunities to build new council housing and show that they have the enthusiasm, plans and initiative to deliver homes for local communities. We would encourage councils to work together to make the most of current and future opportunities. We expect this to be part of a series of schemes to boost the number of council houses being built, as opposed to the introduction of a large scale national building programme and hope councils take a positive approach to these schemes as they emerge.

There are examples of local authorities in Scotland who have been building new council houses over recent years (such as Midlothian and West Lothian) and there is a council house building programme in Scotland of 1,300 home starts this year. In Wales the picture is less definite - there will be an impact from the outcomes of the Review of the HRA in England upon Welsh councils. There are a range of different circumstances, levels of demand, stock condition and capacity to supply across the regions within England, Scotland and Wales which is one of the reasons that local accountability and flexibility within the system are important.

#### **4. Response to Review of Council Housing Finance consultation**

APSE has made a response to the Review of Council Housing Finance consultation on behalf of members. It reflects views of members gathered since the launch of the review and in particular during HRA consultation events in November 2008, September and October 2009 to examine the effect of self-financing proposals on members.

APSE welcomes the general approach of the consultation document which is a move towards more local control of resources, enhanced accountability and clarity within the financial system. This is a topic APSE has been vocal on over many years and we have consistently called for changes to the system which will make it simpler for tenants, council officers and members and enable councils to break away from strict borrowing limitations which mean they are unable to invest in or expand the stock. APSE remains a strong supporter of those tenants who have decided to vote for the council as their landlord and the officers and councillors who deliver vital housing services.

In particular it feels that the combined level of debt within councils after self financing is in place should not be greater than the current level of national which is calculated at approximately £21 million; that councils must be provided with information about the proposed level of debt they will have to deal with in order for them to fully engage with the consultation process; that councils must do their utmost to take advantage of what will probably be a 'one-off' opportunity to reform the current system and that the government must act quickly to ensure the reform process does not get caught up in the machination of a general election next year.

The APSE response can be found in the list of briefings on the APSE website at <http://www.apse.org.uk/membership/briefings.html>.

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