

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Sukvinder Kalsi, Executive Director, Finance and Corporate Services,
in consultation with the Cabinet Member for Public Realm

Date: 21/01/2025

Subject: Procurement of Toxicology Provision for West London Coroner's Court

Report author: Christina Houghton, Coroners Court and Mortuary Manager

SUMMARY

The West London Coroner's Court provides coronial services for six boroughs in West London, known collectively as 'The Consortium'. Hammersmith and Fulham host the West London Coroner's Court on behalf of Hammersmith and Fulham Council, Ealing Council, Hillingdon Council, Hounslow Council, the Royal Borough of Kingston and the Royal Borough of Richmond.

This report seeks approval to award the Contract to provide toxicology services for the West London Coroners Court to Sheffield Teaching Hospitals NHS Foundation Trust following the provisions under the Provider Selection Regime (PSR). Also to note the amendment to the previous strategy to incorporate the requirements of the PSR regulations.

RECOMMENDATIONS

1. That Appendices 1 and 2 are not for publication on the grounds that they contain information relating to the financial or business affairs of any particular person (including the authority holding the information) pursuant to Schedule 12A, paragraph 3 Local Government Act 1972.
 2. To note the amendment to the previously approved strategy to acknowledge the jurisdiction of the Provider Selection Regime over the Public Contracts Regulations 2015 ('Regulations') for healthcare and related goods and services, and that those Regulations be followed to determine the award of contract using Direct Award Process C.
 3. Subject to receiving no written representations from providers during a standstill period, to approve the award of the contract for toxicology services to Sheffield Teaching Hospitals NHS Foundation Trust for a 2-year contract, with the option to extend for up to 2 further years.
 4. In the event that written representations are made during the standstill period, to make a further decision in accordance with the Regulations whether to enter into the contract or go back to an earlier step and repeat that step and subsequent steps in accordance with the procedure set out at Direct Award Process C.
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Wards Affected: All Wards

Our Values	Summary of how this report aligns to the H&F Corporate Plan and the H&F Values
Building shared prosperity	The contractor is expected to offer value for money and avoid excessive costs by applying only necessary testing of samples, keeping total case costs to a minimum.
Creating a compassionate and inclusive council	Toxicology analysis can ascertain the medical cause of death which will help give residents answers regarding the loss of their loved ones. This demonstrates compassion to the bereaved and a caring approach from the council.
Doing things with local residents, not to them	Residents whose loved ones have been referred to the coroner and where a postmortem is planned will be kept informed of all their choices, rights and steps in the investigation process by their allocated Coroner's Officer (case worker). Their consent is sought whenever it is legally required.
Being ruthlessly financially efficient	The Council's priority of being ruthlessly financially efficient by saving approximately, £125,000 per year (across the consortium) compared to spot purchasing the service.
Taking pride in H&F	Toxicology testing can help ascertain the cause of death which is the primary aim of a Coroner's inquest. Finding the medical cause of death shows respect and dignity to all those who have died in the 6 boroughs covered by the West London Coroners jurisdiction.
Rising to the challenge of the climate and ecological emergency	The removal of toxicology has minimal environmental impact. Suppliers will be expected to provide an Environmental Impact Policy as part of their tender submission.

Financial Impact

The award of a 2-year (plus option to extend for a further 2 years) contract to Sheffield Teaching Hospitals NHS Foundation Trust for the provision of toxicology services to the Coroner's Court will cost approximately £240k over the first 2 years. Costs are funded by the Coroners Service budget and are split between the 6 consortium members. The annual cost to the consortium is estimated at £120k. LBHF share is 12.07%, approximately £15k which is budgeted.

Alex Pygram, Head of Finance, Finance and Corporate Services, 10th December 2024

Verified by James Newman, AD Finance 10th December

Legal Implications

This report recommends awarding a contract for toxicology services to Sheffield Teaching Hospitals NHS Foundation Trust, the incumbent provider which was appointed under a Framework. Since the services are 'health care' services, the procurement is regulated by The Health Care Services (Provider Selection Regime) Regulations 2023 ('the Regulations') and The Provider Selection Regime: Statutory Guidance (rather than the Public Contracts Regulations 2015). This represents a change from the information provided in the previously approved strategy.

The award is being recommended following the implementation of 'Direct Award Process C' (Regulation 9). The authority has a discretion whether to follow this process, the 'Most Suitable Provider Process' or a 'competitive process'. It is considered that, given the satisfactory performance of the existing provider, Direct Award Process C is the most appropriate. This process is available where -

- the authority is not required to follow Direct Award Process A (provider is the only provider capable of providing the service) or Direct Award Process B (the contract is a patient choice contract): confirmed, the provider is not the only provider capable of providing the service and this is not a patient choice contract.
- the existing contract is due to expire: confirmed, it is due to expire on 31st December 2024.
- the authority proposes a new contract to replace the existing contract at the end of the term: confirmed, the new contract will start on 1st January 2025
- the 'considerable change threshold' is not met: confirmed, the considerable change threshold is not met because the contract terms are staying substantially the same as the existing contract (save for the increased term in the existing call off from 3 to 4 years) and the increase in contract value from £427,793 to £480k over 4 years which is an increase of less than 500k and 25% of the lifetime value of the original contract.(the test set out in the Regulations.
- The authority is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard. confirmed: the evaluators have reached this view (see Confidential Appendix 2).
- The procurement is not to conclude a framework agreement (i.e. not being an agreement between one or more relevant authorities and one or more providers concluded and operated in accordance with Part 3 of the

Regulations): confirmed: The contract will be to provide the services to LBHF which then recharges the 5 other local authorities in the West London Coroner's Court via a separate SLA which itself covers a whole range of services, of which toxicology is one

Having established that Direct Award Process C is available, the Regulations set out the steps that must be followed to award the contract without a competition. Step 1 is that the authority decides, taking into account the key criteria and applying the basic selection criteria, whether it is content that Sheffield Teaching Hospitals Foundation Trust is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard. This report records in Appendix 1 that such a step was taken and that the evaluators were duly content subject to the terms remaining substantially the same as existing. Step 2 is to submit for publication on the UK e-notification service a notice of intention to make an award to Sheffield (in the form set out in Schedule 3 to the Regulations) which will include the standstill period (Step 3) during which time providers aggrieved by the decision made in Step 1 may make written representations to LBHF. If no written representations are made, the Council can enter into the contract after the standstill period has ended and submit a further notice for publication a notice of award of the contract. If written representations are made the authority must review the decision and make a further decision whether to enter into the contract, repeat steps or abandon the procurement.

The processes set out in this report are consistent with the Council's Contract Standing Orders (as amended).

The decision is a Key Decision (see Article 12 of the Constitution), and the report must be submitted to Committee Services for publication on the Council's website.

The appropriate decision maker is the SLT Member.

Angela Hogan, Chief Solicitor (Contracts and Procurement) 18th December 2024

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

Background

1. Results of toxicological testing can be vital for the pathologist to ascertain the medical cause of death. This contract has the sole aim of identifying which medical compounds were present at post-mortem. Without this type of testing, the pathologist may not be able to determine the medical cause of death to the coroner which may impede the coroner's ability to fulfil their duty to investigate the death properly.
2. The current contract for toxicology testing is due to expire on 31 December 2024. The current value of the contract is approx. £113,000 per annum. The

Council needs to procure a contract in compliance with its Contract Standing Orders and public procurement regulations.

3. A procurement strategy was presented in July 2024 which recommended commencing a tender exercise using the open procedure as per the requirements of the Public Contract Regulations 2015. Subsequent investigation of the type of service being procured identified that the common procurement vocabulary (CPV) classification of service provided by “medical laboratories” and “medical analysis services” fall within the new Health Care Services (Provider Selection Regime) Regulations 2023 which came into force on 1 January 2024. This means that the tender exercise had to be abandoned and the PSR assessment process undertaken instead.

Regulatory Framework

4. The Provider Selection Regime (the PSR), is set out in the Health Care Services (Provider Selection Regime) Regulations 2023 (the Regulations), replaces the previous procurement rules for NHS and local authority funded health care services (Relevant authorities). The PSR also replaced the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (the PPCCR) and, alongside its introduction, removed the procurement of health care services, when procured by relevant authorities under the PSR, from the scope of the Public Contracts Regulations 2015 (the PCR).
5. The PCR and the PPCCR had set the expectation that competitive tendering is used to award contracts for health care services. The PSR has been designed to give the relevant authorities to which it applies more flexibility in selecting providers for health care services. Under the regime, competitive tendering is one tool for organisations to use when it is of benefit, alongside other routes that may be more proportionate, and which better enable the development of stable partnerships and the delivery of integrated care. The regime still requires relevant authorities to consider value for money as an important criterion, and to be transparent, fair, and proportionate in their decision-making.
6. The PSR applies to the procurement of health care and public health services arranged by relevant authorities and irrespective of who the provider is (i.e., whether the service is provided by NHS providers, other public sector bodies, local authorities, or providers within the voluntary, community, social enterprise (VCSE) and independent sectors).
7. Relevant authorities must assess which of the three different provider selection processes, to award contracts for health care services under the PSR, is the most appropriate in the following order of precedence:
 - i. direct award processes (direct award process A, direct award process B and direct award process C). And only if these do not apply then;
 - ii. most suitable provider process, or,
 - iii. competitive process.

Assessment Process

8. Direct Award processes involve awarding contracts to providers when there is limited or no reason to seek to change from the existing provider; or to assess providers against one another, because:
 - the existing provider is the only provider that can deliver the health care services (direct award process A)
 - patients have a choice of providers, and the number of providers is not restricted by the relevant authority (direct award process B)
 - the existing provider is satisfying its existing contract, will likely satisfy the new contract to a sufficient standard, and the proposed contracting arrangements are not changing considerably (direct award process C).
9. Officers, supported by Legal Service and Procurement teams, have used guidance issued by NHS England, to assess the service against the processes and key criteria and determined that the service fully meets the requirements for Direct Award Process C. Copy of the assessment is appended below.
10. If authorised Officers will be required to publish a transparency notice to inform the market of our assessment and intention to award prior to contract finalisation.

Reasons for Decision

11. The current contract with Sheffield Teaching Hospitals for the provision of toxicology services is due to expire on 31/12/2024 and it cannot be extended. Analysis of toxicology is vital to help ascertain the cause of death for some deceased who have been referred to the coroner for investigation. The Award of contract will enable the Council to comply with Contract Standing Orders and PSR obligations.

Risk Management Implications

12. The report recommends awarding a contract for the provision of toxicology services for the West London Coroners Court (where the Council is the host borough for the six-borough consortium), following a competitive procurement process. This is in line with the objective of being ruthlessly financially efficient. Awarding this contract will enable the Council to meet its obligations under the healthcare regulations.

David Hughes, Director of Audit, Fraud, Risk and Insurance, 18 December 2024

Climate and Ecological Emergency Implications

13. This is the Climate comment from the original strategy report, drafted in June; 'There are few climate/ecology implications except that H&F should ensure, as with all suppliers, to enquire about sustainability policies and net zero targets of

the organisations it works with as part of the tender and award process, and that the winning contractor's practices do not impede our objectives as a council and as a borough.

Mark Thomlinson, Climate Engagement Lead, 24 June 2024

Procurement implications

14. Contract Standing orders (19.1) require all procurement for high Value Contracts to be competitively tendered. However, as stated in the body of the report, the subject of the contract falls within the scope of the Health Care Services (Provider Selection Regime) Regulations 2023 which supersedes the PCR's and are not yet reflected in our CSO's.
15. Officers will be required to publish a PSR direct award Notice via the Find A Tender (FTS) via the Council's capitalEsourcing eProcurement portal, modified as per the NHS England guidance and observe the stand still period before finalising contract.
16. Once awarded Contract standing orders also require that any contract in excess of £5,000 be recorded on the Council's Contract Register in order to comply with our Transparency Duties.
17. Officers, on completion of the necessary contract documentation must create a project using the using the Council's capitalEsourcing eProcurement portal and then create a contract entry (and upload a copy of the contract) they must also create and publish the Contracts Finder notice via CapE. A named contract manager must be allocated to the contract.

Joe Sardone Category Lead – People. Procurement and Commercial 15th November 2024

DIGITAL SERVICES IMPLICATIONS

18. There are no digital implications arising from this contract; however, an updated Data Privacy Impact Assessment (DPIA) should be carried out to ensure that all the potential data confidentiality risks are properly assessed with mitigating actions agreed and implemented.
19. Any new contracts arising from this report will need to include H&F's data protection and processing schedule and be compliant with UK Data Protection law.
20. Sheffield Teaching Hospitals NHS Foundation Trust will be expected to have Data Protection policies in place and all staff are expected to have received Data Protection training.

Cinar Altun, Digital Strategy Lead, 11 December 2024

Consultation

21. The 6 Local Authorities representing the consortium of boroughs who fund the West London Coroner's Service have been consulted on the contract and the options for future procurement of the service.

LIST OF APPENDICES:

Exempt Appendix 1 – PSR Direct Award C assessment

Exempt Appendix 2 – PSR Direct Award C assessment evaluation (to be read in conjunction with Quality Score Scale)

