

	London Borough of Hammersmith & Fulham CABINET 5 JANUARY 2015
AWARD OF THE FRAMEWORK AGREEMENTS AND CALL OFF AGREEMENTS FOR ADVOCACY SERVICES	
Report of the Leader of the Council : Councillor Stephen Cowan	
Open Report	
Classification: For Decision Key Decision: Yes	
Wards Affected: All	
Accountable Executive Director: Liz Bruce, Executive Director of Adult Social Care and Health	
Report Author: Callum Wilson, ASC Procurement Officer	Contact Details: Tel: 020 7 641 7125 E-mail: cwilson2@westminster.gov.uk

1. EXECUTIVE SUMMARY

- 1.1. The London Borough of Hammersmith & Fulham (H&F), along with the Royal Borough of Kensington and Chelsea, the City of Westminster and the three local Clinical Commissioning Groups, has approved the procurement of a suite of four professional one to one Advocacy Services.
- 1.2. The new services will help H&F to meet the requirements of the Care Act and will also lead to financial savings. Three of the services will be accessed by Adult Social Care. The other service will be accessed by Children's Services.
- 1.3. To enable H&F to benefit from the new services as soon as possible, and to ensure the new services can begin on 1st July, this report requests that the three Adult Social Care Framework Agreements and three H&F Call Off Agreements be awarded by the Leader of the Council, in conjunction with the Executive Director for Adult Social Care and Health.

2. RECOMMENDATIONS

- 2.1. That the Leader of the Council, in conjunction with the Executive Director for Adult Social Care and Health, awards:
 - 2.1.1. The three Framework Agreements that will be accessed by Adult Social Care, which H&F and the successful Providers will be party to, and from which the three boroughs can call off; and
 - 2.1.2. The three H&F Call Off Agreements that will be accessed by Adult Social Care and which will allow H&F to access the services and for which the contract period for is from 1st July 2015 to 30th June 2019.

3. REASONS FOR DECISION

This arrangement allows for earlier contract start date

- 3.1. The award of the three Framework Agreements and three Call Off contracts that will be accessed by Adult Social Care as set out in the above recommendations will allow, the contract start dates to be bought forward by at least three months, to July 1st 2015.
- 3.2. This would be advantageous as the new contracts will assist H&F to meet their statutory obligations under the Care Act and will lead to annual savings of at least £35,000. Thus, this arrangement will allow H&F to realise these benefits sooner.
- 3.3. This arrangement will also ensure the new contracts can begin on 1st July 2015. This will ensure there are no gaps in service provision as the 11 existing contractual arrangements across the three boroughs and three CCGs that the new services will replace are due to expire on 30th June 2015.

H&F Contract Standing Orders

- 3.4. The total spend for H&F over the four years is expected to be in the region of £325,000.
- 3.5. H&F Contract Standing Orders require that contracts with a maximum total estimated value of £100,000 are awarded by Cabinet. Provision exists for contract award to be delegated to the Leader of the Council.
- 3.6. In accordance with H&F Contract Standing Orders, the Framework Agreement for Children's Services will be awarded by the Cabinet Member for Children's Services and Education; and the Call Off Agreement for Children's Services will be awarded through the Children's Services Commissioning and Contracts Board.

4. BACKGROUND

- 4.1. The Adult Social Care Commissioning and Contracts Board approved the procurement of the four new Advocacy Services in April 2013. The three CCGs also signed off the procurement. The PQQ was completed in December 2013. The procurement was subsequently paused in order to provide time to review the new requirements of the Care Act 2014 in conjunction with CCG commissioners. This resulted in the modification of the specification to ensure compliance. Advocacy will become a statutory service under the Act from April 2015.
- 4.2. This has now been completed and the Invitation To Tender (ITT) will be published in early December 2014. H&F will be the lead procurement and contracting authority. The Tender Evaluation Model will use a Quality: Price ratio of 50:50.
- 4.3. One provider will be selected for each service and will be a party to Framework Agreement with H&F. Each borough will access the services via individual Call Off Agreements. The four Framework Agreements and 12 Call Off Agreements will all last for four years and begin on 1st July 2015.
- 4.4. The new services will replace 11 existing contracts currently operating across the three Boroughs which are funded by ASC and Health. All of the existing services are due to expire on 30th June 2015.
- 4.5. The four new Advocacy Services are defined by the Service User group they serve. These are: Vulnerable Adults; Learning Disability; Dementia and Older People with Mental Health; and Young People.
- 4.6. Young People constitutes a completely new service. It will be accessed exclusively by Children's Services and will be funded by Children's Services. The other three contracts will be accessed and funded by Adult Social Care and the Clinical Commissioning Groups.
- 4.7. The four new Advocacy Services will assist the Council to meet its statutory obligation to provide advocacy as outlined in the Care Act 2014. This act states that an independent advocate must be provided to support those people who, as judged by the local authority, have substantial difficulty in being fully involved in the care and support planning process. The aim of this Act is to ensure vulnerable people's rights are upheld. A separate advocacy service which is not included in this procurement, Independent Mental Capacity Advocacy, will also help the Boroughs meet their statutory obligation. The services will also enable the Council to meet its statutory obligations under the Mental Health Act 2007.

5. PROPOSAL

- 5.1. It would be advantageous for the Leader to award the contracts as it would allow the contract start dates to be bought forward by three months which would be beneficial for H&F. The reasons for this are outlined below:

- 5.1.1 The four new service specifications are Care Act compliant and will therefore assist H&F to meet their statutory obligations under the Care Act which comes into force in April 2015. Current advocacy services are not designed to meet the needs of the Care Act. Therefore, the timely introduction of the new services will benefit and support the vulnerable residents of H&F who require advocacy services.
- 5.1.2 If the Leader takes these decisions, the contracts will be awarded in early April 2015 rather than July 2015. This would allow for a contract implementation period of three months which would be highly beneficial as it would provide ample time to ensure the services and suppliers can meet the requirements of the Care Act.
- 5.1.3 The introduction of the new services will lead to financial savings for H&F ASC as outlined in paragraph 6.
- 5.1.4 The 11 existing contracts are due to expire on 30th June 2015. Delegation of authority will allow H&F Cabinet to ensure there is continuity of service provision. As advocacy safeguards vulnerable members of society, it is important there are no gaps in service provision.

6 FINANCE

- 6.1 H&F Adult Social Care currently spend £123,000 a year through the existing contracts the new services will replace. The annual budget for the new services is £88,000 which represents a saving of £35,000 a year.
- 6.2 H&F Children's Services will have an annual budget of £5,000. This will be used for Lot 4 as this service will be accessed exclusively by Children's Services.
- 6.3 Savings will also be generated through the 60% block payment and 40% spot payment model as payment will only be made for services that are provided. Lot 4 will be let on a 100% spot purchase.
- 6.4 If Cabinet delegate authority this would facilitate an earlier contract start date which would enable H&F to realise these savings sooner.

7. OPTIONS AND ANALYSIS OF OPTION

- 7.1 The alternative option is for H&F Cabinet to award the contract.
- 7.2 If this option is followed, owing to the lead in period required for the meeting, the contract could not be awarded until June 2015 at the earliest. This would mean the new services could not begin until late September 2015 which would delay the realisation of the benefits (see paragraph 5) the four new services afford.

8 EQUALITY IMPLICATIONS

- 8.1 If the Leader awards the contracts, the eligible service users in H&F, who are vulnerable members of society, will benefit from the improved services three months earlier.

9 LEGAL IMPLICATIONS

- 9.1 The statutory obligation to provide advocacy arises under the Mental Capacity Act 2005 sections 35 to 41 and under the Care Act 2014 sections 67 and 68 and the Care Support (Independent Advocacy) Regulations 2014. The Care Act obligations are due to come into force on 1st April 2015. The main body of the report provides detail of the proposed advocacy services that enable the three boroughs to fulfil their statutory obligations. (Care Act related legal implications (10.1) completed by: Kevin Beale, Head of Social Care and Litigation, Bi-borough Legal Services, 020 8753 2740.)
- 9.2 Health Services are Part B services for the purposes of the Public Contracts Regulations 2006 (Regulations). Currently Part B services are subject only to a few provisions of the Regulations – namely, obligations relating to technical specifications and post contract award information. Due to the value of the contracts, the Boroughs will need to ensure that they comply with the requirements for Part B services as set out in the Regulations, in the event that the recommendations are agreed.
- 9.3 It is noted that some time has lapsed between the PQQ stage and the ITT stage of the tender process. The Boroughs have a duty to comply with the general EU principles such as non-discrimination, transparency, proportionality and mutual recognition, and as such should ensure that it has not denied a Tenderer the opportunity to tender for the Services due to the delay in proceeding to the ITT stage of the tender process. It is understood that following market research undertaken by the client department there are no new entrants to the market for the Services and therefore the risk of a challenge is considered to be low. However a challenge cannot be ruled out completely as a potential provider for a number of reasons may not have been in a position to tender for the services at the time of the publication of the advert, but who is able to do so now if the procurement exercise was re-started; thus being denied the opportunity to tender for the Services.
- 9.4 Legal Services will be available to provide ongoing advice and assistance in relation to the procurement exercise to ensure compliance with the Regulations and the Contract Standing Orders.
- 9.5 Implications completed by: Kar-Yee Chan, Solicitor (Contracts), Bi-borough Legal Services, 020 8753 2772.

10 FINANCIAL AND RESOURCES IMPLICATIONS

Hammersmith & Fulham

- 10.1 The recommendation to tender 4 framework agreements for advocacy services, 3 of which Lots 1, 2 & 3 will provide services to Adult Social Care service users will cost £88k full year and is intended to replace the existing advocacy services currently funded with general fund budgets of £123k. The resulting saving full year of this proposal will be £35k. The existing health funding of £104k per annum is expected to continue at that level with no savings anticipated.
- 10.2 Implications completed by: Cheryl Anglin-Thompson, Principal Accountant x4022

Royal Borough of Kensington & Chelsea

- 10.3 All RBKC Budget figures are confirmed to be correct by the ASC Finance service. Existing health funding is expected to continue at that level with no savings anticipated.
- 10.4 Implications for RBKC have been verified/completed by: Gavin Thelwell, Finance Officer RBKC, 020 7361 3790

City of Westminster

- 10.5 The figures are as per WCC and correctly reflect the current budgets as shown in the report. There are no savings attached to these budgets as per the MTFs, so no financial implications moving forward.
- 10.6 Implications for WCC have been completed by: Rachel Boston, Business Partner WCC, 020 7641 7085.

11 RISK MANAGEMENT

- 11.1 The Adult Social Care and Children's Services departments are responsible for the management of contract and procurement risk and compliance with Contract Standing orders. Continuity of the provision of the advocacy service is paramount and continuity of service is noted as a key strategic risk on the council's risk register, risk number 4. The service contributes also to the management of risk 6, standards and delivery of care. As the current provision has time expired in relation to operation of previous contracts a direct award has been necessary prior to the new provider arrangements coming into effect.
- 11.2 Implications completed by: Michael Sloniowski Bi-borough Risk Manager ext 2587

12 PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 12.1 In accordance with Contract Standing Orders (CSO's) a Cabinet Key decision is required for the approval of all contracts that have a total value of £100,000 or greater. However, the Leader may take decision to award these contracts. The Director agrees with the recommendations.
- 12.2 This is a Part B Service and is therefore exempt from the full rigours of European procurement rules. However there is still a requirement that this tender adheres to the principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality.
- 12.3 The tender evaluation model will use a Price: Quality ratio of 50:50. Contracts will be let using fixed budgets. Proposed budgets for the new contracts have been shared with appropriate staff from across the 6 funding agencies. A block and spot payment model at a ratio of 60:40 will also be used. This approach will ensure payment is only made for services that are provided.
- 12.4 capitalEsourcing will be used as the e-tendering portal. Prior to the most recent delay to this procurement exercise, the procurement was started on the London Tenders Portal. The Pre-Qualification Questionnaire was completed on this system, and the shortlisted providers were informed. The transition to capitalEsourcing has been completed smoothly, with all tenderers having registered on the system.
- 12.5 Legal advice was sought to ensure the PQQ which was undertaken in December 2013 was still valid. Advice stated that the risk of a challenge to the use of the existent PQQ was low if, after market research has been carried out, there were found to be no new entrants to the market who could provide these services and pass the financial standing test. Following market research consisting of an online study and communications with providers and other Councils, commissioners were satisfied that there were no new entrants. Consequently, the initial PQQ will be used for the remainder of this tendering exercise. See paragraph 10.3 for further information on this.
- 12.6 Implications completed by Callum Wilson, ASC Procurement Officer, 0207 641 7125. Verified by Joanna Angelides, Procurement Consultant, 0208 753 2586

LOCAL GOVERNMENT ACT 2000

LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Agreement to Procure	Callum Wilson – 0207 641 7125	ASC Procurement