



Cabinet

7 FEBRUARY 2011

**CABINET MEMBER
FOR COMMUNITY
CARE**

*Councillor Joe
Carlebach*

**FRAMEWORK CONTRACT AWARD –
INDEPENDENT ADVOCACY SERVICE
MENTAL CAPACITY ACT 2005 AND PAID
RELEVANT PERSON’S REPRESENTATIVE
SERVICE 2011 – 2016**

**Wards:
All**

The City of Westminster is procuring a framework agreement on behalf of eight London Boroughs for a new contract for the provision of an Independent Advocacy Service Mental Capacity Act 2005 and Paid Relevant Person’s Representative Service

The contract will be for 3 years with the option of one two year extension and will seek to meet the statutory requirement that the Borough has to provide independent safeguards for people who lack capacity to make certain important decisions.

CONTRIBUTORS

DCS
DFCS
ADLDS

Recommendation:

That authority be delegated to the Cabinet Member for Community Care to approve the Council joining and calling off under the framework agreement procured by Westminster City Council for the provisions of an Advocacy and Personal Representative Service for the Borough.

**HAS A EIA BEEN
COMPLETED?
YES**

1. BACKGROUND TO THE SERVICE

- 1.1 The role and function of the Independent Mental Capacity Advocate (“IMCAs”) are described in the DoLS Code of Practice and the Mental Capacity Act 2005 Code of Practice (the “MCA Code of Practice”).
- 1.2 The IMCA has a legislative role to help represent any person aged 18 and above who has been deprived of their liberty under the terms of the DoLS Code of Practice and as described in the Mental Capacity Act 2005 (as amended by the Mental Health Act 2007) (“the Act”) and who has no friend or family member who is willing or eligible to represent them and who is ordinarily resident in the London Borough of Hammersmith and Fulham, and who is accommodated within a hospital or care home which is located in Greater London (“the Relevant Person”). If necessary, the IMCA shall also support the Relevant Person and their unpaid representative with an application to the Court of Protection and/or provide support to trigger a review.
- 1.3 The service will also provide for a Paid Relevant Person’s Representatives (“PRPRs”) (as described in the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person’s Representative) Regulations 2008) and the Act).

2. PROCUREMENT

- 2.3. The procurement process is being run by Westminster City Council under their Contract Standing Orders on behalf of:
 - The Royal Borough of Kensington & Chelsea
 - The London Borough of Hillingdon
 - The London Borough of Hounslow
 - The London Borough of Harrow
 - The London Borough of Brent
 - The London Borough of Hammersmith and Fulham
 - The London Borough of Ealing
 - The London Borough of Lambeth

The process is being run as a restricted procedure led by Westminster with the support of a Tender Appraisal Panel made up of representatives from all the participating Boroughs.

- 2.2 The tender process commenced in November 2010 when an advertisement was placed on the CompeteFor website (www.competefor.com). Like most e-procurement systems, interested parties have to register to access the tender documents. Westminster initially identified 9 organisations in the London area that have an IMCA service but only one was registered with CompeteFor system. This meant that Westminster had to contact the other 8 agencies and advised them to register if they were interested in bidding for the contract. As a matter of policy Westminster do not advertise their tenders on their corporate website, unlike other boroughs.

2.3 Timetable for procurement is below:

Invitation to tender	3 rd December 2010
Deadline for receipt of bids	11 th January 2011
Tender clarification interviews	17 th January 2011
Award of contract	Early Feb
Contract Start date	1 st April 2011

2.4 This is a “Part B Service” as defined in the Public Contract Regulations 2006 and its full provisions do not apply to the retendering of this contract. However, a Contract Award Notice must be sent for information to the European Commission within 48 days of the contract being awarded with an indication whether the Contracting Authority agrees or does not agree to its publication in the Official Journal of the European Union (OJEU).

3. COSTS OF THE SERVICE

3.1 The new contract is for a period of three years with the option of a further extension of two years depending on funding being available and satisfactory performance of the service provider.

3.2 The annual cost of the existing services is c. £45K p/a. This is for 350 hrs of Personal Representative and 625 hrs for an IMCA. This is being reduced for the new contract to 50 hrs Personal Representative and 550 hrs IMCA. The new reduced figures are based on the estimated amount of hours that we expect to use per year. A large number of hours on the previous contract went unused and as this is a block contract that meant we were still paying for those unused hours. The reduction will ensure that we do not lose money for unused hours. There will also be a provision in the contract to purchase additional hours at a set rate should we need to.

3.3 The cost of the new service is expected to be substantially less due to changes in the market and the reduction in commissioned hours. When the service was first let there were start-up costs built into the hourly rate as this was a new service and we needed to develop the market. This is no longer the case as the market has matured sufficiently to allow other providers to develop a similar service and therefore bring down the overall cost.

3.4 If delegated authority is granted, a separate report to the Cabinet Member for Community Care will be issued with the financial details from the winning bid.

4. REASON FOR REQUESTING DELEGATED AUTHORITY

4.1 The current Independent Advocacy Service contract expires on 31 March 2011 and the current timetable provided by Westminster anticipates the award of contract to be made in early February. The tender is being run under the

Westminster City Council governance procedures which requires for a much shorter lead time for contract award. However, by the time the award decision is known there is not sufficient time to prepare a Contract Award Report for this Council's Cabinet (the earliest meeting at which a report could be tabled is April's cabinet meeting which would leave us with almost two months without a service).

- 4.2 The delegation of award of contract to the Cabinet Member for Community Care, will ensure there is no disruption in the IMCA service.

5. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 5.1 The 2010/11 spend for the IMCA contract is £47,100 for the current agreed hours of 975. The 2011/12 budget available is £48,000, however the Mental Health Capacity Act service has had to make an ABG saving of £36,000 and with this savings and as yet no reprofiling downwards of the commitments this will severely affect the ability of this service to out turn as balanced for 2011/12. The decision as to how the commitments are reprofiled should be addressed by the service manager and Assistant Director of ASC.
- 5.2 As noted in paragraph 3.4, financial comments will be provided once the details of the successful bid is known.

6. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

- 6.1 The services described in this report are classified as Part B services under the Public Contracts Regulations 2006 and are therefore not subject to the full regime set out under the Regulations. However, in the procurement of the services the Council must still comply with the general EU treaty principles of non-discrimination, transparency and proportionality. Rather than carry out a separate competitive procurement in respect of these services it is permissible for the Council to join a framework agreement procured by another Council provided the Council was identified as being entitled to access the framework agreement.
- 6.2 It is recommended that legal services review the terms and conditions of the call-off agreement which the Council will need to enter into to access the framework agreement.

7. COMMENTS OF THE ASSISTANT DIRECTOR (PROCUREMENT & IT STRATEGY)

- 7.1 The procurement of the framework agreement is being carried out by the City of Westminster. It is only once the framework agreement has been awarded will the Council be able to call off from it. Accordingly, the timescale do not

permit the Cabinet to consider the contract award without there being a discontinuation of service provision. Given the nature of the service to be provided the AD agrees with the recommendation to authorise delegated authority in the award of the contract.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Brief Description of Background Papers	Name/Ext. of holder of file/copy	Department/Location
1.	Service Specification	Paulo Borges ext 5748	Procurement Team, Community Services
2.	Tender Documentation	Paulo Borges ext 5748	Procurement Team Community Services