


<p style="text-align: center;"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p style="text-align: center;"><b>CABINET</b></p> <p style="text-align: center;"><b>4 JULY 2016</b></p>	
<p><b>COMMUNITY EQUIPMENT - PROCUREMENT OF A NEW FRAMEWORK AGREEMENT AND EXTENSION OF THE EXISTING SERVICE</b></p>	
<p><b>Report of the Cabinet Member for Health and Adult Social Care : Councillor Vivienne Lukey</b></p>	
<p><b>Open Report</b></p> <p>A separate report on the exempt part of the Cabinet agenda provides exempt financial information.</p>	
<p><b>Classification: For Decision</b> <b>Key Decision: Yes</b></p>	
<p><b>Wards Affected: All</b></p>	
<p><b>Accountable Officer:</b> Liz Bruce - Executive Director of Adult Social Care &amp; Health</p>	
<p><b>Report Author:</b> Martin Nutley Senior Procurement Manager</p>	<p><b>Contact Details:</b> Tel: 07739 316661 Email: <a href="mailto:martin.nutley@rbkc.gov.uk">martin.nutley@rbkc.gov.uk</a></p>

## 1. EXECUTIVE SUMMARY

- 1.1. This report seeks approval from the London Borough of Hammersmith and Fulham (H&F) Cabinet for the following:
- 1.1.1. An extension of the community equipment call-off agreement for H&F of up to six months to 30<sup>th</sup> September 2017.
  - 1.1.2. Approval of the procurement strategy for H&F to procure a new framework for the supply of community equipment.
  - 1.1.3. A waiver from the H&F standing orders £5M delegation limit (CSO 17.3.1-17.3.3), to allow the Cabinet Member for ASC and Public Health to a) award a new community equipment framework agreement and b) authorise H&F to call off a call-off contract from its own framework agreement with a total estimated contract value of up to £8M. This is an estimated spend and the framework agreement has zero commitment that this or any expenditure will be made.

- 1.2. The Royal Borough of Kensington and Chelsea (RBKC) is the Lead Contracting Authority for the existing community equipment framework, which is currently used by 20 London Boroughs via an Access Agreement and separate call-off contracts.
- 1.3. The existing framework was awarded on 1<sup>st</sup> April 2010 for five years to 31<sup>st</sup> March 2015, with an extension provision for a further two years to 31<sup>st</sup> March 2017, which has now been utilised.
- 1.4. The strategy for the procurement of a Community Equipment Framework, which will replace existing arrangements, is set out in the Appendix to this report (in the exempt report on the exempt Cabinet agenda). The new Framework will not have been awarded and mobilised by 1<sup>st</sup> April 2017 and therefore an extension of existing arrangements is required.
- 1.5. This report also provides information related to the statutory duty on Local Authorities to provide Community Equipment to meet eligible needs. It should be noted that community equipment is increasingly important in terms of facilitating a range of local and health authority objectives and strategies, as well as in making whole systems savings. For example, community equipment is important to keep service users independent and safe in the community, thus reducing demand for hospital-based services (through avoiding admissions or more timely discharge), helping avoid expensive residential care and avoiding or reducing the cost of residential care packages.
- 1.6. This report sets out the framework and consortium arrangements, where RBKC is the lead authority. Additional staff resources, that support consortium members, are funded by member subscriptions.
- 1.7. The historical spend on community equipment has risen over the course of the contract and it is predicted to continue to do so for the reasons identified in 1.5 above. Other factors include predicted demographic changes and the development of the Community Independence Service (CIS). All these factors will increase the demand for community equipment. However, the increasing expenditure is expected to be off-set in other areas: by fewer residents requiring entry to residential care and hospital and through facilitation of early hospital discharge.
- 1.8. Community equipment is collaboratively commissioned by H&F together with the Hammersmith and Fulham Clinical Commissioning Group (CCG). The service is managed by H&F and both H&F and the CCG currently contribute to a pooled budget under the Section 75 Partnership Agreement.
- 1.9. The framework agreement will operate on a loan-based model, rather than a retail one.

## **2. RECOMMENDATIONS**

- 2.1. That authority be delegated to the Cabinet Member for Adult Social Care and Public Health to approve the extension of the contract with Medequip from 1st April 2017 to 30<sup>th</sup> September 2017 for the provision of Community Equipment at an estimated value of £881,000.
- 2.2. That the Procurement Strategy set out in the Appendix to this report (as set out in the exempt report on the exempt Cabinet agenda), including that the London Borough of Hammersmith and Fulham acts as the Lead Contracting Authority for the procurement of a Framework for Community Equipment which can be accessed by all public authorities in London.

- 2.3. That authority be delegated to the Cabinet Member for Adult Social Care and Public Health to award a Framework Agreement with the successful provider for four years from 1<sup>st</sup> October 2017, with an estimated total value of up to £170 million over the four year term (including spend from 20 London Boroughs which are likely to access this agreement).
- 2.4. That a waiver from H&F standing orders be granted and authority delegated to the Cabinet Member for Adult Social Care and Public Health, the Cabinet Member for Finance, and the Cabinet Member for Resident Satisfaction and Commercial Revenue to award a call-off contract from the Framework Agreement to the successful provider at an estimated annual cost of £2 million, or £8 million over the initial four year term; and that award of the contract be contingent upon the submission of an agreed Social Value and Local Economic Benefits Plan from the successful contractor.
- 2.5. To agree that the Framework will have a duration of 4 years and call-off contracts under the Framework will have an initial duration of 4 years, with extensions to each call-off of up to a further 2 years being available as an optional modification permitted by Reg. 72 (1)(a) of the Public Contracts Regulations (PCR) 2015.

### **3. REASONS FOR DECISION**

#### **3.1. The above recommendations allow H&F to:**

- Extend the existing call-off contract and comply with statutory requirements to provide home based support services, including community equipment and provide business continuity;
- Provide an OJEU compliant procurement route to market for the supply of community equipment;
- Increasing the delegated authority limit will reduce the project timescales and ensure a new contract can be in place as soon as possible, thereby maintaining competition and reducing the possibility of legal challenge;
- Awarding a new framework will provide ongoing support to the other 19 consortium members and provide them with continuity for supply of community equipment.

The existing call-off contract will be extended under Regulation 72(1) (c) of the Public Contracts Regulations 2015 (Further detail on this can be found in the Legal comments in section 9.4 of this report). In the event that this is required and provided an acceptable arrangement can be negotiated with Medequip – the exact position will be clarified and updated by the time this is presented to Cabinet.

#### **3.2. The financial benefits of procuring a framework, rather than H&F operating independently to procure its own single-borough contract, include:**

- The commissioning and procurement project costs will be split across all boroughs which use the framework, leading to a saving of approximately £90,000 for H&F.
- Providers will also make savings by only needing to tender for one framework, rather than tendering for many individual contracts and it is expected that the providers will pass much of these savings on to H&F, as well as to other boroughs, due to the competitive tendering process

- By multiple boroughs using common equipment, business processes and an IT system, as well as through economies of scale, it is expected that H&F will benefit from savings in equipment prices, lower activity prices, and savings in IT procurement and development.
- Facilitating different boroughs to share refurbished specialist items (“specials”), reducing the need for H&F to buy new specials to meet service user’s needs (1,109 items, with a value of approximately £410,000, were transferred between the 20 boroughs using the existing framework in the last 2015-16 financial year).
- By working together and pooling time and resources, multiple boroughs can drive ongoing value for money improvements with a provider much more easily than a single borough could. For example, savings for H&F of approximately £400,000 were achieved for the period 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2017 through a joint negotiation approach with other boroughs using the existing framework agreement.

#### **4. PROPOSALS AND ISSUES**

- 4.1. The expiry of the existing framework will leave H&F and many of the other consortium members without access to community equipment, after 31 March 2017 (although some members’ call-off agreements run beyond that date).
- 4.2. In order to address these issues, it is proposed that Cabinet should give permission to extend the existing call-off agreement and conduct a procurement process to award and then call off a new framework agreement for the provision of community equipment.

#### **5. OPTIONS AND ANALYSIS OF OPTIONS**

- 5.1. An options appraisal is included within the appendix to this report (as set out in the exempt report on the exempt Cabinet agenda).

#### **6. CONSULTATION**

- 6.1 A commissioning review was run in autumn 2015. The stakeholder consultations carried out as part of this review included:
  - An online service user survey, and service user telephone interviews
  - A contract/service manager workshop
  - A clinician/prescriber workshop
- 6.2 The aim of the commissioning review was to understand the service requirements from 2017, and to identify potential service improvements. The findings of the commissioning review will be incorporated into the service contract and specification and other tender documents where appropriate.
- 6.3 Consultation on this report is taking place with senior officers in the service areas (such as occupational therapy). The report’s content will be updated, where appropriate, to reflect any feedback received.

#### **7. EQUALITY IMPLICATIONS**

- 7.1. Providers will need to supply a satisfactory equal opportunities policy as part of the tender process. The provision of community equipment supports equality and diversity

by assisting people with disabilities and/or illnesses to remain independent and to make the most of life opportunities.

## 8. FINANCIAL AND RESOURCES IMPLICATIONS

8.1. The financial implications of this contract extension, for a maximum period of up to 6 months, covering 1<sup>st</sup> April to 30<sup>th</sup> September 2017, are shown in the table below.

	2017/18 1 <sup>st</sup> April to 30 <sup>th</sup> September 2017	
<i>Revenue Implications</i>	Confirmed budget £	Costs of proposal £
<b>Current Budgets</b>		
Council Revenue budget	286,000	
External funding sources (Clinical Commissioning Group)	595,258	
<b>SUB TOTAL REVENUE BUDGET</b>	<b>881,258</b>	
<b>Start-up Costs</b>		
<b>Lifetime Costs</b>		881,258
<b>Close-down Costs</b>		
<b>TOTAL REVENUE COST</b>	<b>881,258</b>	<b>881,258</b>
<b>SAVINGS</b>		0

8.2. The financial implications of the new community equipment framework agreement will be fully documented in the contract award report, which has an estimated start date of between 1<sup>st</sup> April and 30<sup>th</sup> September 2017.

Implications verified/completed by: Andrew Lord, Head of Strategic Planning and Monitoring - 020 8753 2531

## 9. LEGAL IMPLICATIONS

- 9.1 This report seeks approval to further extend the call-off contract under the Framework agreement for the provision of community equipment. It also seeks Cabinet approval of the proposed procurement strategy to enable H&F set up its own Framework agreement for use by H&F, the Royal Borough of Kensington and Chelsea (RBKC), Westminster City Council (WCC) and other London Boroughs who will be specified further along in the procurement process.
- 9.2 The proposed extension will bring this contract within the operation of the Public Contracts Regulations, 2015 (the Regulations), specifically, Regulation 72 (which deals with modification of contracts during their term) and Regulation 33 (which deals with framework agreements).
- 9.3 With regard to the proposed extension, to the extent that there will be no changes to the terms of the existing call-off contract apart from the extension of its duration, the

extension could be exempt from the need to publish and re-procure the equipment under the provisions of Regulation 72(1)(c) of PCR 2015.

9.4 To qualify under Regulation 72(1)(c), the following criteria must be satisfied:

- the need for the extension has been brought about by circumstances which LBHF as a diligent contracting authority, could not have foreseen (refer to paragraph 4.3 above);
- the proposed extension does not modify the overall nature of the contract;
- the value of the proposed 6-month extension would not amount to more than 50% of the original call-off contract.

9.5 Even if the extension does not qualify under Regulation 72(1)(a), the fact that a re-procurement process would have commenced before the extension of the contract would serve to greatly minimise the risk of challenge as interested Providers would have been given an opportunity to participate in that procurement process.

9.6 The European Commission in the Recitals to the Public Contracts Directive 2014 (from which PCR 2015 derives), has expressed its willingness to look favourably on call-off contracts which exceed the duration of a framework agreement in certain circumstances. This has however not been tested in practice and therefore, the proposed 4+2 year duration of the Call-off contract affords the Authorities and prospective bidders the guarantee of a minimum 4 year term and the flexibility to either extend the call-off contract beyond the life of the framework agreement or not.

Implications verified/completed by: Tolu Akinosun, Senior Solicitor (Contracts). 02087532136

## **10. IMPLICATIONS FOR BUSINESS**

10.1. The project team will investigate, together with H&F's Planning & Growth team, ways help local businesses and workers to benefit from this procurement. The investigations may include:

- Setting targets for local apprenticeships and/or local employment for both the prime contractor and any sub-contractors
- Advertising the opportunity (and/or any sub-contracting or supply opportunities) to local suppliers and/or encouraging them to bid

Implications provided by: Antonia Hollingsworth, Principal Business Investment Officer 020 8753 1698

## **11. PROCUREMENT IMPLICATIONS**

11.1. The H&F Contract Standing Orders state that for contracts over the OJEU threshold the following procurement routes are available; the use of an existing framework agreement; or Contract Notice to appear in the Official Journal of the European Union and Contracts Finder. The tender process must be run through the Council's e-tendering system. This Procurement Strategy meets the requirements set out in the

CSOs. A Prior Information Notice will be issued and the Procurement will be run through capitalEsourcing. The Contract Notice will be published at award stage.

- 11.2. Section 3 of the CSOs sets out the competitive requirements for contracts above £164,176. A waiver from the CSOs is required to allow the Council to make a direct contract award to Medequip, the existing provider, without competition. *[Please note this report now asks for the option to extend H&F's existing call-off contract with Medequip under Reg.72(1)(c), rather than making a direct award to Medequip.]*
- 11.3. The Waivers and Exemption Section of the CSO's state that a prior written waiver to the CSOs may be agreed by *Appropriate Persons* if they are satisfied that a waiver is justified because:
- the nature of the market for the works to be carried out, or the goods to be purchased, or the services to be provided has been investigated and is demonstrated to be such that a departure from these CSOs is justifiable; or
  - the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
  - the circumstances of the proposed contract are covered by legislative exemptions; or
  - it is in the Council's overall interest; or
  - there are other circumstances which are genuinely exceptional.
- 11.4. Officers are recommending a waiver of the CSOs as it may be in the Councils overall interest to continue with existing arrangements until the new framework agreement is in place. As the estimated value of the contract is £8M, approval for the waiver will be sought from the Cabinet Member for Adult Social Care and Public Health and the Leader of the Council.

Implications verified/completed by: Sherifah Scott, Procurement & Contracts.

## **12. RISK MANAGEMENT**

- 12.1. Delivery of Statutory duties are a key strategic risk as noted in the Councils Shared Services Risk Register, risk number 8. Additionally market testing is also noted to ensure that the best possible services are delivered at least possible cost to the taxpayer, risk number 4. Needs and expectations delivery risks have been identified and referred to in section 4.2 of the report. Continuity issues are being addressed as part of the proposals such that the risk of expiry of the contract is mitigated to as low as reasonably practicable.
- 12.2. As stated in section 12 of the appendix (project management - as set out in the exempt report on the exempt Cabinet agenda), monthly highlight reports will be produced and distributed to all participating authorities and to the steering group members. These reports will include a section on the key risks and how these are being managed.
- 12.3. Risks assessments have been carried periodically since the project started, and the latest risk log can be found in Addendum 1 in the Appendix (as set out in the exempt report on the exempt Cabinet agenda).

- 12.4. A privacy impact assessment has been submitted for approval, some of the mitigations to the risk of privacy (e.g. an operational information sharing agreement), will need to be shared with all potential suppliers so they are prepared for it.

Implications verified by Michael Sloniowski, Shared Services Risk Manager, telephone 020 8753 2587.

**13. LOCAL GOVERNMENT ACT 2000;  
LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

None.

**14. LIST OF APPENDICES:**

- 14.1. Appendix 1: Business case and procurement strategy report (CE Service Extension and Procurement Appendix) - *Contained in the exempt report on the exempt Cabinet agenda*