

	<p style="text-align: center;">Executive 10th April 2006</p> <p style="text-align: center;">Report from the Director of Finance and Corporate Resources</p>
<p>For Action Wards Affected: ALL</p>	
<p style="text-align: center;">Joint Procurement of Internal Audit Services</p>	

FP REF: F&CR-05/06-39

Not for publication

Appendix 1 of this Report is not for publication as it contains the following categories of exempt information as specified in the Local Government Act 1972, namely:

- Information relating to the financial or business affairs of any particular person (including the authority holding the information).

1. Summary

- 1.1. The purpose of this report is to seek approval from the Executive to invite expressions of interest for the provision of Internal Audit Services to the Council and for those services to be procured as required by Contract Standing Orders 88 and 89 and via a joint arrangement with the London Boroughs of Ealing, Hammersmith and Fulham and Harrow.

2. Recommendations

- 2.1. The Executive to give approval to officers to invite expressions of interest
- 2.2. The Executive to agree that there are good financial and/or operational reasons to consider outstanding items in Standing Order 89 in a separate report to be brought by officers before Invitations to Tender are issued.

3. Detail

- 3.1. The internal audit section is part of the Audit and Investigations Team within Finance and Corporate Resources. The internal audit team consists of eight full time equivalent posts, including an audit manager, principal auditor and six operational auditors. Three posts are currently filled by Council employees.
- 3.2. There have been significant problems in recruitment to posts within the internal audit section due to a lack of suitably qualified auditors across London. Although the team successfully recruited to five posts in 2004/5, four of these staff have since left the authority.
- 3.3. Recruitment problems are experienced by a number of London boroughs and they have a variety of methods of service delivery from full outsourcing to internal provision, with many providing a mix of internal and outsourced service provision. The use of agency staff is also prolific across London.
- 3.4. The recruitment problems have been highlighted in the planning and annual audit reports to the Performance and Finance Select Committee. Vacancies have generally been covered using either agency staff or by commissioning additional work from Deloitte and Touche, who currently provide specialist IT audit.
- 3.5. Deloitte and Touche have been the Council's IT audit supplier since 1996 and operate within the broad conditions of a contract for Computer Systems Audit. Details of the costs of this contract are set out in Appendix 1. Similarly, the costs of agency staff and the permanent team to cover other Audit works are in Appendix 1
- 3.6. Discussions have been taking place between a number of Heads of Audit concerning the recruitment problems, current outsourcing arrangements and the potential for joint procurement. This has resulted in a proposal for a joint contract to be let by a number of West London boroughs under the general West London Alliance banner. The boroughs currently considering joint procurement are Ealing, Hammersmith and Fulham, Harrow and Brent. The London Borough of Ealing are leading on the project and are not intending to charge for preparation of contract documentation or the cost of the initial advert.
- 3.7. The benefits of a joint procurement exercise are:
 - The potential to acquire better value services from a supplier bidding on a large contract. Not only in terms of price but also expertise and added value.
 - The potential for reduced legal and administrative fees resulting from a single tender process.
 - More robust contract management resulting from combined client monitoring.
 - Sharing of benchmarking data and audit techniques amongst boroughs.

3.8. However, there are a number of complexities and risks involved. These are:

- The contract price exceeds the current budgetary provision for internal audit.
- The size of the contract, possibly in the region of 3,500 audit days, means that only a few suppliers may be large enough to bid.
- The conflict which prevents an external auditor also doing internal audit. For example, PWC could not bid for work at Brent as they are our current external auditors.
- The above conflict means that the agreement will be let to more than one provider, requiring them to work closely together. This may, however, have the benefit of increasing the number of potential providers.
- Boroughs require varying levels of service, i.e. Hammersmith and Fulham require a fully outsourced service, whereas Ealing and Brent retain a number of in house staff. This may make contract management difficult.

3.9. The Council's current arrangements are unsustainable for a number of reasons:

- The Deloitte and Touche contract is no longer fit for purpose and requires re-tendering and therefore the Council would have to go through a contract procedure, regardless of the joint procurement exercise.
- Agency staff do not provide the level of in-depth and continuing knowledge required of audit staff.
- The lack of completion of the audit plan (see table 1 below), whilst common place across London, over a sustained period will lead to a qualified opinion from the Head of Audit and Investigations in the annual report Any such qualifications will be detrimental to the Council's CPA rating:

Year	2000/1	2001/2	2002/3	2003/4	2004/5	2005/6 Forecast
Percentage of Annual Audit Plan completed	80%	91%	80%	73%	71%	83%

Table 1 - % Audit Plan Completion

- 3.10. The audit team is already utilising an external provider for IT and other audit work and the joint procurement arrangements present the Council with an opportunity to test the market and, in doing so, share in the efficiencies of a joint exercise.
- 3.11. The tender will also require suppliers to propose a method of delivery to cover all audit work not undertaken by the in-house team together with call off rates for specific types of work.
- 3.12. In view of the above, officers consider that there are definite advantages for

the Council in being a party to an agreement to be let by a number of West London Boroughs. The London Borough of Ealing are leading on the joint procurement exercise and require an advertisement to be placed in the Official Journal of the European Union and other relevant journals in April 2006. The four heads of audit involved in the joint procurement have agreed that tenders should be evaluated on the basis of the most economically advantageous offer to the Council but the proposed evaluation criteria are yet to be finalised and it has been impossible, given the timescales to produce these for this report. The Executive may waive the Standing Order requirement to specify evaluation criteria when inviting expressions of interest if there are good financial reasons for doing so. There is financial benefit in joining with the joint procurement exercise, not least from shared legal and advertising costs. Therefore, officers recommend that the Executive gives approval to officers to invite expressions of interest with a requirement that officers take a further report to the Executive on the evaluation criteria before Invitations to Tender are issued. The Council may withdraw from the joint procurement exercise should agreement not be reached on the evaluation criteria.

- 3.13. In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Executive.

Ref.	Requirement	Response	
(i)	The nature of the service.	Internal Audit Services	
(ii)	The estimated value.	Up to £1m	
(iii)	The contract term.	4 years	
(iv)	The tender procedure to be adopted.	Restricted	
v)	The procurement timetable.	Indicative dates are:	
		Adverts placed	April 2006
		Expressions of interest returned	37 Days after publication of OJEU notice
		Shortlist drawn up in accordance with the Council's approved criteria	June 2006
		Invite to tender	July 2006
		Deadline for tender submissions	At least 40 days from Invite to tender
		Panel evaluation and shortlist for interview	August 2006

		<p>Interviews and contract decision</p> <p>Report recommending Contract award circulated internally for comment</p> <p>Executive approval</p> <p>Mandatory standstill period – notification issued to all tenderers and additional debriefing of unsuccessful tenderers</p> <p>Contract start date</p>	<p>September 2006</p> <p>October 2006</p> <p>November 2006</p> <p>Minimum 10 calendar days before contract entered into</p> <p>April 2007</p>
(vi)	The evaluation criteria and process.	<p>Negotiations will take place with other boroughs to agree a common pre-qualification questionnaire which will reflect the Council's standards in relation to financial standing, technical capacity and technical expertise. The tender will be awarded on the basis of the most economically advantageous offer to the Council. The proposed evaluation criteria will be subject to a separate report to the Executive</p>	
(vii)	Any business risks associated with entering the contract.	<p>The business risks are set out in paragraph 3.10 above. Financial Services and Legal Services have been consulted concerning this contract and have identified the risks associated with entering into this contract set out in sections 4 and 6 of the report.</p>	
(viii)	The Council's Best Value duties.	<p>The competitive tendering process will assist the Council in achieving Best Value, See also 3.19 to 3.25</p>	
(ix)	Any staffing implications, including TUPE and pensions.	<p>See section 5</p>	
(x)	The relevant financial, legal and other considerations.	<p>See sections 4 and 6 below</p>	

- 3.14. *It should be noted that the estimated value of the agreement may be subject to significant change as a result of a number of factors which could vary, such as the changing nature of audit requirements, different methods of proposed delivery by the successful contractor, changes to the services provided by the Council and external requirements such as the DFES Financial Management Standard in Schools.
- 3.15. Through the London Audit Group and West London Alliance a number of London boroughs were contacted to determine their interest in the procurement exercise. Seventeen responses were received and of these, four London boroughs expressed an interest.
- 3.16. Discussions are ongoing with relevant Heads of Audit to ensure that the tender specification is fit for purpose for all interested parties and ideally that the prices tendered, for appropriate items such as call off rates are made available through the London Contract and Supplies Group ("LCSG").
- 3.17. If within the contract timescales a collaborative procurement approach can be agreed, negotiations will need to take place to agree common Pre-Qualification Questionnaires ("PQQ") reflecting the Council's standards in relation to financial standing, technical capacity and technical expertise.
- 3.18. Day rates will be compared against the Office of Government Commerce ("OGC") Services Catalogue to give an indication of value for money.
- 3.19. Contract costs will continue to be reviewed on a monthly basis by the Head of Audit & Investigation as part of the monthly budget monitoring process.
- 3.20. Operational responsibility for the current contract is delegated to the Audit Manager who will continue to monitor the operation of the contract through set performance targets on a monthly basis. Furthermore, regular reports will be presented to the Performance and Finance Select Committee for information purposes.
- 3.21. The separate element for call-off consultancy services will ensure that the Council can utilise pre-determined fixed rates in the event that ad-hoc consultancy work is required, rather than being subject to prevailing market rates.

4. Financial Implications

- 4.1. The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 89.
- 4.2. The estimated value of this services contract is set out in Paragraph 3.13.

- 4.3. It is anticipated that the cost of this contract will be funded from existing resources.

5. Staffing Implications

- 5.1. This service is currently provided by a combination of an external supplier, agency staff and staff employed by the Council. The Council staff in post are to be retained and will continue to undertake internal audit work and contract management functions. There is a possibility that staff employed by the external supplier, Deloitte and Touche may transfer due to TUPE Regulations but only if it has an organised grouping of employees that it uses for the provision of audit services to the Council. Such a grouping can be limited to a single employee.
- 5.2. As a result of recent case law developments there is a high risk that agency workers used by the Council are in law employees of the Council. In that case such staff could also transfer due to the TUPE Regulations if the test in paragraph 5.1 above applies, but they would only be protected against unfair dismissal even if employed if they had worked for the Council for at least one year.

6. Legal Implications

- 6.1. The estimated value of the agreement over its lifetime is in excess of £144,371 and therefore its procurement and award is subject to EU Procurement Regulations. The provision of internal audit services falls within Part A Services under the EU Regulations and the agreement is therefore subject to the full application of the EU Procurement Regulations.
- 6.2. The estimated value of the agreement over its lifetime is in excess of £500,000 therefore its procurement and award is subject to the Council's Contract Standing Orders in respect of High Value contracts and Financial Regulations.
- 6.3. Standing Order 89 requires the Executive to approve the evaluation criteria to be used in the tender process. Standing Order 84 (a) does however provide that the Executive may decide that a contract need not be procured in accordance with the Council's Standing Orders if there are good financial and/or operational reasons for this. The Executive is therefore able to approve officers inviting expressions of interest without approving evaluation criteria if it considers there are good financial and/or operational reasons for this, with officers reporting back to the Executive in relation to the tender evaluation criteria following further discussions between the relevant Heads of Audit. Following this a report will be made concerning the process undertaken in tendering the contracts and recommending award.
- 6.4. As this procurement is subject to the full application of the EU Procurement Regulations, the Council must observe the requirements of any relevant provisions concerning framework agreements and the mandatory minimum 10

calendar day standstill period between the communication of the award decision to all tenderers and the agreement's conclusion.

- 6.5. The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 come into force on 6 April 2006 and replace previous TUPE Regulations. The 2006 Regulations introduce a new definition of "relevant transfer". They confirm existing case law that a TUPE transfer will take place where "there is a transfer of an economic entity which retains its identity". The Regulations also provide that there will be a "relevant transfer" where there is a "service provision change" e.g. where activities are outsourced, carried out by a new contractor in place of an old contractor or are taken back in house. In order for there to be a "service provision change" there must be, immediately before the service provision change, an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client. Such an organised grouping can consist of a single employee. If the current external supplier therefore has an organised grouping of employees which has as its principal purpose the provision of audit services to the Council, then these staff may transfer to any new supplier when the existing contract ends.

7 Diversity Implications

- 6.6. The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

Background Papers

Joint Procurement File

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