



**Executive
19 October 2009**

**Report from the Director of
Housing and Community Care**

Wards Affected:
ALL

Authority to participate in a West London collaborative procurement for the provision of home care, including housing related support and “integrated” home care for adults

Forward Plan Ref: H&CC-09/10-16

1.0 Summary

- 1.1 This report requests approval to participate in a collaborative procurement to set up a series of Framework Agreements for the provision of home care for adults as required by Contract Standing Order 85.
- 1.2 The Executive is being asked to give approval to the Council participating in a collaborative procurement exercise run through the West London Joint Procurement Unit, leading to the establishment of a series of framework agreements awarded by the London Borough of Hammersmith and Fulham acting on behalf of Brent for the supply of home care, including housing related support and “integrated” home care across older people, mental health, learning disabilities and physical disabilities sectors.

2.0 Recommendations

- 2.1 The Executive give approval to the Council participating in a collaborative procurement exercise run through the West London Joint Procurement Unit as part of the Shared Solutions Project (SSP), leading to the establishment of series of framework agreements by the London Borough of Hammersmith and Fulham for the supply of home care across older people, mental health, learning disabilities and physical disabilities.
- 2.2 The Executive give approval to the collaborative procurement exercise described in paragraph 2.1 being exempted from the normal requirements of Brent’s Contract Standing Orders in accordance with Contract Standing Orders 85(c) and 84(a) on the basis that there are good financial and operational reasons as set out in paragraphs 4.1 to 4.9 of the report.

3.0 Background

- 3.1 On the 23rd July 2008, the West London Alliance (WLA) Leaders and Chief Executives meeting agreed to set up a West London Joint Procurement Unit (JPU) as part of the Shared Solutions Project, (SSP) following a report from Deloitte. The aim was to realise the efficiencies that could be released by exerting the aggregate buying power of the boroughs and by more expert procurement approaches.
- 3.2 An Interim Procurement Director was appointed in January 2009 to take forward the project. There were concerns about the slow progress of the SSP but the WLA Leader and Chief Executives Group confirmed their commitment to the project and asked the Interim Procurement Director to explore the options and report back in three months with a business plan and potential savings from a collaborative approach.
- 3.3 On the 7th July 2009 the JPU Programme meeting heard a report on setting up the unit and identified three main programme strands, (1) procurement, (2) policy and intelligence and (3) market engagement. The strands were broadly agreed but more information was required and the overall approval from the WLA Leaders and Chief Executive's meeting withheld until the next meeting on the 15th September 2009.
- 3.4 Under the Procurement main programme strand, the WLA Directors meeting of the 31st July 2009 approved the final pattern of 8 workstreams. One of these workstreams was the collaborative procurement of home care, and pending the approval of 15th September, work was started to prepare the tender.

4.0 Procurement

- 4.1 It is considered that the proposed joint tender by the WLJPU is the best market option available to the council at this time. This is because the joint levels of spend across the different authorities is likely to be attractive to a high number of quality service providers who will be able to ensure more competitive rates due to economies of scale, more effective market management and more service flexibility. In contrast, a service procured directly by Brent will not benefit from the economies of scale.
- 4.2 The work carried out previously by Deloitte in 2008 indicated the scale of the expenditure on adult social care services in West London. In aggregate the West London boroughs' spend is larger than that of any other authority in the country. This strongly suggests that there is a significant opportunity to develop a new, more proactive and productive relationship with the provider market than would be possible for individual boroughs. The analysis carried out by Deloitte has been reinforced by the outputs from project 1 of the WLA efficiencies programme as set out in the table below.

£000

2008-09 (£k)	Brent	Harrow	H&F	Ealing	Hounslow	Hillingdon	TOTAL
Homecare In-House	0	0	2,481	2,651	3,216	3,619	11,967
Homecare P&V	11,886	7,180	9,843	11,256	6,695	6,549	53,409
Direct Payments	3,566	3,028	2,955	5,818	2,425	3,130	20,922
Total Homecare & DP spend	15,452	10,208	15,279	19,725	12,336	13,298	86,298

Source: PSSEX1 (2008/09 draft returns) *Note: This excludes expenditure on LD transfers from NHS in current*

We are anticipating a spend of £12,500,000 on all purchased homecare in Brent in the 09/10 financial year. A 1% saving on 50% of the overall spend would make a saving of £62,500 full year effect, but we cannot anticipate any savings until the expiry of our current contracts.

- 4.3 These figures do not include current expenditure on housing related support or home care support provided under contract to our extra care and assisted living schemes as these figures have not yet been benchmarked across West London. Work is ongoing to identify the relevant spend and benchmark costs across the participating boroughs.
- 4.4 The new frameworks will be let as a collaborative procurement led by Hammersmith and Fulham. It will therefore be tendered according to Hammersmith and Fulham's standing orders. Brent is fully represented on the tender groups. Within the Housing and Community Care Directorate, the Assistant Director of Transformation and the Head of Service Development and Commissioning have been part of the workshops and the Head of Service Development and Commissioning is a member of the Project Group. A procurement officer and a finance officer are both engaged in the development of the specifications and terms and conditions.
- 4.5 We are anticipating that we will have multiple suppliers on each framework to accommodate the demand, and to accommodate the varying needs of the different service user groups. It may be a requirement for Brent to carry out a mini-competition process before awarding any contracts. The following categories of care are included in the procurement exercise:

The provision of home care, including the provision of personal care
The provision of housing based support
The provision of home care, called an "integrated" option, that can be used as part of our extra care support provision. This will enable home care to be provided as part of our overall reablement strategy for people living in Brent's assisted living schemes and improve our ability to offer an a sustainable alternative to residential care. .

There will be two tender processes, firstly a part B restricted tender, involving a 2 stage process, with PQQ and tender, for the home care, including the provision of personal care. Secondly, there will be a two

stage negotiated process for the provision of housing related support and the integrated home care option, which allows us to take advantage of any reduced rates in our extra care and assisted living schemes when current contractual arrangements expire, and to develop a reablement focus in our home care provision.

- 4.6 It is anticipated that the new frameworks would be for a period of four years, with a possible two year extension. They are intended to be in place by June 2010. Brent's home care contracts for the five major providers do not expire until March 2012, with the exception of one provider's contract, that expires in March 2011. We would only call off from the West London Frameworks at the expiry of our current contracts. The current Brent contracts may be extended to March 2013 and we would choose the most advantageous way forward prior to the contracts expiring, deciding whether or not to extend our current contracts or to call off from the frameworks.
- 4.7. Should we decide to call off from the West London frameworks, it will not be in Brent's interests to commit to using the frameworks on an exclusive basis; commitment on a non-exclusive basis will ensure that individual needs are met, allow service users choice, and ensure that small providers are not excluded from all future business.
- 4.8 In view of Brent's own contracts mainly not expiring until 2012, it would be possible for Brent not to participate in the collaborative and simply wait and see the results of the tender process. However the advantage of Brent being part of the ITT process is that the Council can influence the specification for the service and therefore address some of the weaknesses in the current Brent arrangements. The more boroughs included at ITT stage, the more likely bidders will be able to tailor their product to meet the requirements of the tender. There are however some risks to participation and section 6 (below) addresses these.
- 4.9 The tendering process will have already been commenced by the placing of adverts by the time the Executive considers this report, however at this stage there is no commitment to potential tenderers that Brent will definitely participate. However while the final procurement timetable has not been agreed, it is likely that the Invitation to tender stage will start as soon as is possible, and as officers wish to have a full role in the shaping of the service specification it is necessary to obtain Executive approval now. The proposed outline timetable for the first restricted tender is as follows:

Advertisement	September 2009
Open days with providers	October 2009
Pre Qualification Questionnaire (PQQ)	October 2009
Shortlisting	November 2009
Invitation to tender (ITT)	November 2009
Tender process and negotiation	December 2009/January 2010
Evaluation and Award report (Hammersmith and Fulham)	February 2010
Go Live date	June 2010

- 4.10 The second tender process is the negotiated tender for the housing support and the integrated option. The timetable for this has not yet been set but will involve a PQQ, shortlist, negotiations, best and final offer and evaluation stages.
- 4.11 All home care providers who are successful in being one of the suppliers will need to agree to sell their services directly to people on Direct Payments at no more than the price available to the participating boroughs. This is a further reason for Brent to participate in the collaborative procurement, to ensure that the interests of service users on Direct Payments are sufficiently protected within the frameworks.
- 4.12 At present the evaluation criteria that will be used to evaluate tenders have not been finalised. Nor is it clear how the evaluation process will be run for this collaboration. However it is clearly in Brent's interests to be fully part of the development of the evaluation criteria and the evaluation process to ensure that the suppliers can meet the needs of the people of Brent. It should also be noted that as it will be Hammersmith and Fulham that runs the tender process, it will be responsible for ensuring that this is done in accordance with sound procurement principles.

5.0 Service Improvement

- 5.1 The service specifications will need to ensure that only home care providers that meet minimum standards in terms of the quality of their service can be included in the framework agreement. Brent's current policy on this is that we only place new business with those home care providers who have a two or three star rating awarded by the Care Quality Commission. Brent will seek to influence the expression of interest documentation to ensure that only providers meeting these requirements are invited to tender. We also wish to ensure that our increased purchasing power translates into improved ability to influence the type and nature of the service, including improved outcomes in the areas of health and wellbeing for users of the services.

6.0 Key Risks

- 6.1 Collaborative procurements work best if all the participants have common requirements. As indicated above, one risk for the project is that if the participating boroughs are not able to agree any part of the tender, then Hammersmith and Fulham as lead borough will have final say. While there is no indication at present that this is likely to occur, it would be expected that in such a situation Hammersmith and Fulham would make a decision based on the views of the majority, which may not be in accordance with Brent's requirements. If by the end of the procurement process it became apparent that the framework agreements that Hammersmith and Fulham were about to award did not reflect Brent needs, then it would be open to Brent not to use the frameworks and consider other options, such as running its own tender exercise for its own frameworks or joining with one

or more other boroughs. While such fall-back options would be costly in terms of officer resources, including those spent in the abortive collaborative procurement, the Council would at least be able to extend their contracts until 2013, possibly with the negotiating advantage of having an alternative source of supply.

- 6.2 The second risk is that no savings are realised, or that in equalising prices from each supplier across boroughs Brent may in fact need to increase payments to one or more supplier so that the overall savings are not made. In this scenario it is open to the Council not to call off from the framework and continue with the current arrangements.
- 6.3 There is no risk to current service users in this exercise, as our current arrangements can continue.

7.0 Financial Implications

- 7.1 The current annual spend on Home Care in Brent is £12.5m. Officers are hopeful that participating in this framework will lead to savings on this spend, however any savings cannot be quantified at this stage. In the event that the tendered prices on the framework exceed the prices currently being paid by Brent, then these increased costs will not be passed on to Brent, as Brent is not committed to using the framework.
- 7.2 It should be noted that Brent's existing home care contracts do not expire until March 2012, with the exception of one provider's contract, that expires in March 2011. As we would only consider calling off from the framework at the expiry of the current contracts, it follows that the earliest any saving could be achieved from the framework would be in 2011-12.
- 7.3 The estimated costs of the tender processes are £20,000. These will be met from within adult social care resources

8.0 Legal Implications

- 8.1 Local authorities have powers, and in some cases duties, to promote the welfare of or provide welfare services to different client groups (eg older people, disabled people) under legislation such as the Health Services and Public Health Act 1968 and the Chronically Sick and Disabled Persons Act 1970.

Procurement Implications

- 8.2 Under this collaborative procurement, Hammersmith and Fulham will be awarding a series of framework agreements which other boroughs, plus individuals on Direct Payments, will be able to call off. They will therefore need to be structured so that a call-off can be made for an individual service user, but also for large blocks of care to cover major requirements eg hundreds of hours of care a week for elderly service users.

- 8.3 Health and social services are Part B services under the European public procurement regime. This means that the procurement does not need to comply with these rules, both in relation to the tendering procedure and in relation to how framework agreements have to be structured. It is therefore open to Hammersmith and Fulham to structure the procurement as they see fit (subject to complying with their own standing orders) and so they do not need to ensure, for example, that the grounds for using the negotiated procedure in the European legislation are made out.
- 8.4 In relation to Brent's internal requirements, participation in a collaborative procurement involving delegation of powers which leads to an award of contract or framework agreement that exceeds £500,000 in value requires Executive approval (Standing Order 85(a)). Here it is not clear how the framework will be structured, such that it is not clear whether Brent will be a party to the frameworks or will simply gain entitlement to make a call-off. However consent to participate is sought to cover the former structure applying because in that scenario Hammersmith and Fulham will be awarding a contract on Brent's behalf. In addition, under Standing Order 85(c), the fact that the procurement does not follow Brent's own procedures also requires an exemption from the usual standing order tendering requirements under SO 84(a). The Executive has to be satisfied that there are good operational and / or financial reasons for granting the exemption.
- 8.5 Once the frameworks are in place, any call-offs from the framework that relate only to one service user will not require further Executive approval, because there is a specific exemption under SO 86(e)(iii) in relation to contracts for individual personal services. However any call-off that does not relate to a single service user (eg the purchase of a block of care specified as so many hours per week) will require Executive approval wherever that call-off exceeds £500,000 in value.
- 8.6 This procurement will also lead to complex TUPE implications for the staff of current Brent contractors. Where Brent makes a call-off in 2012 from the framework to replace one of the existing contracts, then TUPE would apply. However at the time of tendering for the framework, tenderers could not know of all the potential TUPE implications that could arise during the course of the framework as individual call-offs occur. The tendered prices will therefore not reflect the terms and conditions of employees affected by any particular TUPE transfer. As it is proposed to appoint a number of providers to every framework, it would be easier for Brent to manage TUPE if there was a requirement for every call-off to be preceded by a mini-competition among the providers using appropriate TUPE information that is accurate at that point in time.

9.0 Diversity Implications

- 9.1 Proposals in this report have been subject to screening and officers believe there are no diversity implications. Home care services will be available to meet all cultural requirements. If appropriate provision for a

particular service user is not available from the frameworks it will be purchased elsewhere.

Background Papers

West London Alliance file

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Appendix 1

Timetable with OJEU notice at end September

ACTIVITY	TIMELINE
Publication of notice in OJEU	25 th September 2009
Market “warming” day	TBA
Closing date for return of PQQs	20 th November 2009
Shortlisting (allowed 3 weeks)	w/beg 23 rd November 2009
Issue / dispatch of Invitations to Tender	w/ beg 14 th December 2009
Closing date for submission of tenderers’ queries	8 th January 2010
Deadline for response by WLA to tenderers’ queries	15 th January 2010
Closing date for receipt of tenders	29 th January 2010
Evaluation period (including dates for tenderers’ presentations and post tender clarifications)	February to mid – March 2010
Decision on contract award by WLA/ boroughs	w/ beg 12 th April
Notification to unsuccessful tenderers (and feed-back where requested)	w/beg 12 th April
ALCATEL/ Standstill period ends	30 th April (allowing for “slippage” on sign-off)
Formal sealing/ signing of contract	w/beg 4 th May 2010
Contract mobilisation/ clienting/ briefing successful tenderers	w/ beg 4 th May 2010 (allow 4 weeks)
Contract start date	early June 2010
Publication of contract award	early June 2010
1 st contract review	September 2010

This is a collaborative project, hence timescales are “reasonable” rather than “minimum”.

Easter 2010 falls w/beg 5th April.

Local elections are to be held on Thursday 6th May. The timetable above takes no account of “purdah”