



**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 residential and nursing care for adults**

Forward Plan Ref: H&CC-09/10-15

1.0 Summary

- 1.1 This report requests approval to participate in a collaborative procurement to set up a series of Framework Agreements for residential and nursing care for adults as required by Contract Standing Order 85.
- 1.2 The Executive 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 Hillingdon acting on behalf of Brent for the supply of residential and nursing 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 a framework agreement by the London Borough of Hillingdon for the supply of residential and nursing 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 residential and nursing 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 new frameworks will be let as a collaborative procurement led by Hillingdon. It will therefore be tendered according to Hillingdon'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.
- 4.3 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 yet been confirmed, 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 proposal is to begin the formal procurement process by placing the initial OJEU advertisement on the 25th September 2009. The timetable for this is set out in Appendix A below.

- 4.4 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. The following categories of care are included in the tender :

Older People

Elderly frail residential care
Elderly frail residential dementia care
Elderly frail Nursing Care
Elderly frail nursing dementia care
Respite care (for each of the above types of care)
Immediate Care (rehabilitation)
Step down beds (Temporary beds)
Assessment beds

Specialist Adults

Learning Disabilities
People with physical and/or sensory disabilities
Mental Health Problems

- 4.5 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. The current spend on residential and nursing care across all of the client groups by Brent is £37,000,000 a year. Not all of this spend will be affected by the new frameworks as individual spot purchased placements will still be required to meet individual needs, and our small providers that choose to tender may not be able to give us savings based on economies of scale. It will therefore 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 placements. However in Brent we spend £4,300,000 with our two largest providers in older people's services and a saving of 1% on these placements would realise a saving of £43,000 per year if we can negotiate an immediate reduction on existing placements, though there would be no contractual requirement for providers to reduce their prices for placements not let under the framework. These savings could increase as we place more business with the successful providers.

4.6 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. This shows a annual spend within the private and voluntary sector across the Boroughs of approx £177m (approx ¼ million weeks),

£k	Brent	Harrow	H&F	Ealing	Hounslow	Hillingdon	Total
P&V Residential							
OPS	9,145	6,796	4,192	12,703	4,595	10,069	47,500
PPSD	2,031	435	1,012	1,603	466	1,363	6,910
LD	9,053	8,337	5,795	9,982	9,647	9,311	52,125
MH	4,012	TBC	1,976	3,773	1,188	1,231	12,180
P&V Res Total	24,241	15,567	12,975	28,062	15,896	21,974	118,715
P&V Nursing							
OPS	11,615	4,569	10,550	8,296	4,721	8,916	48,667
PPSD	2,083	435	1,012	1,603	466	1,363	6,962
LD	40	206	146	491	TBC	373	1,255
MH	TBC	TBC	490	704	145	83	1,422
P&V Nurs Total	13,738	5,210	12,198	11,094	5,332	10,734	58,307
P&V Total	37,979	20,777	25,173	39,156	21,228	32,708	177,022

Source: PSSEX1 (2008/09 draft returns)

4.7 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 Hillingdon that runs the tender process, it will be responsible for ensuring that this is done in accordance with sound procurement principles.

4.8 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 provision of residential and nursing care are both part B services under the European procurement regime. However, as this is potentially an “exemplar” project the Project Board of the WLJPU decided that the OJEU route should be used. This takes into account the overall value of the tender and the pathfinding nature of a collaborative tender of this size.

5.0 Service Improvement

5.1 The service specifications will need to ensure that only homes 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 make new placements in residential and nursing care homes with 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 homes 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 Hillingdon 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 Hillingdon 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 Hillingdon 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 continue its current spot-purchasing arrangements for new placements.

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 Existing placements could only be brought within the framework with the consent of the provider, who would have to consent to moving onto the framework terms including on price. Where this does not occur the existing placement would continue exactly as before. There is no risk to current residents in this exercise. Current residents would not be required to move.

7.0 Financial Implications

7.1 The current annual spend on residential and nursing care in Brent is around £37million. Not all of the spend will be effected by the contract as individual spot purchase placements from out of Borough will not be changed. Officers are hopeful that participating in the framework will lead to savings on this spend, however these 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 increase costs will not be passed on to Brent, as Brent is not committed to using the framework.

7.2 The estimated costs of the tender processes are £20,000. These will be met within adult social care resources.

8.0 Legal Implications

8.1 The Council has a statutory duty to provide residential accommodation under the National Assistance Act 1948 for the elderly, chronically ill and disabled service users. Local authorities are under a duty to carry out a community care assessment on those who may be in need of services under section 47 of the National Health Service and Community Care Act 1990, and consequently this assessment of need may result in a service user being assessed as needing either residential or nursing care. Once this community care assessment is carried out, and it has been assessed that accommodation is to be provided, then the Council is bound by the provisions of the National Assistance Act 1948 (Choice of Accommodation) Directions 1992 to give people choice about where they are accommodated.

8.2 For these reasons (ie the need for choice and the statutory duty to provide accommodation that meets a service user's needs as identified in the community care assessment) the Council cannot commit that it will always use the frameworks for every individual placement. If any guarantee of exclusivity were given the Council would be at risk of breaching its statutory duties to individual service users.

Procurement Implications

8.3 What is being proposed to be set up here is a series of framework agreements, and there will be an individual call-off from one of these framework agreements each time that a service user requires residential accommodation and this can be delivered by a provider on the framework. At present it is not known how the call-off procedure will work if there is more than one provider on the relevant framework capable of meeting the needs of the service user, but this will need to be addressed.

- 8.4 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.
- 8.5 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 Hillingdon 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.
- 8.6 Once the frameworks are in place, there is no requirement for further approval for the call-off contracts (placements) that will be made under the framework agreements, because there is a specific exemption under SO 86(e)(iii) in relation to contracts for individual personal services.

9.0 Diversity Implications

- 9.1 Proposals in this report have been subject to screening and officers believe there are no diversity implications. Residential and nursing 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

Contact Officers

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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 w/c 5th April.

Local elections are to be held on Thursday 6th May.