

	<p style="text-align: center;">Executive 23rd August 2006</p> <p style="text-align: center;">Report from the Director of Housing and Community Care</p>
For Action	Wards Affected: ALL
<p style="text-align: center;">Authority to tender contract for the provision of Brent's Integrated Community Equipment Service</p>	

1.0 Summary

- 1.1 This report concerns the provision of Brent's community equipment services (ICES) for people with disabilities. This service is jointly commissioned with Brent Teaching Primary Care Trust (tPCT), providing equipment and minor adaptations for health and social care users who meet eligibility criteria. There is currently a joint equipment store managed by Housing and Community Care under a formal partnership agreement with Brent tPCT. The Executive on 14 November 2005 considered a report detailing options for procuring an improved service due to limitations of the current premises and gave approval to the drawing up of a tender specification with a view to tendering the ICES. This report requests approval to invite tenders in respect of Brent's ICES as required by Contract Standing Orders 88 and 89.

2.0 Recommendations

- 2.1 The Executive to give approval to the pre - tender considerations and the criteria to be used to evaluate tenders as set out in paragraph 3.6 of the report.
- 2.2 The Executive to give approval to officers to invite tenders and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.

3.0 Detail

- 3.1 Background.

On 14 November 2005 the Executive considered a report detailing options for procuring an improved community equipment service given the limitations of

the current equipment store due to insufficient storage capacity. Essentially the options presented were:

- (i) Do nothing.
- (ii) Invest in current service
- (iii) Secure another building and continue to provide service in-house
- (iv) Tender the community equipment service with new specification.

Officers considered doing nothing was not a viable option and options (ii) and (iii) required considerable additional investment. Officers therefore recommended option (iv) and the Executive gave approval to draw up the tender specification and asked that the Director of Housing and Community Care report back to it in due course to seek authority to invite expressions of interest and approval of pre-tender consideration in accordance with Standing Orders 88 and 89. This report seeks Executive approval to the pre-tender considerations and authority to invite expressions of interest.

3.2 Brent Equipment Provision

The Council has obligations in respect of the provision of community equipment under various legislation whilst the tPCT also has powers to provide community equipment.

Since 1998 Brent's health and social care community equipment has been provided from a joint store managed by Brent Council at 113 Bryan Avenue, Willesden NW10. The equipment ranges from small kitchen items to larger items such as hoists, electronic beds, pressure relieving mattresses and mechanical bath chairs. Brent ICES is required to order, store, deliver and install and then subsequently collect, clean and recycles the equipment. ICES also undertakes minor adaptations to service user's homes such as the installation of grab rails and banister rails.

3.3 Department of Health requirements

The provision of equipment is viewed as key to promoting independence. The Department of Health (DoH) has required all local health and social care communities to provide an integrated equipment service since April 2004. Additionally there has been a requirement to increase the number of people supported with equipment by 50%. A key performance indicator for both health and social care is the percentage of equipment delivered within 7 working days. This affects organisations star ratings.

3.4 Brent's ICES

In order to fulfil DoH requirements, the Executive on 4 March 2004 gave approval for the Council to enter into a formal partnership agreement with Brent tPCT to establish the current integrated equipment service and pooled budget for the service, under Section 31 of the Health Act 1999. The partnership formally commenced on 25 March 2004 and the agreement is effective until 31 March 2007, with option to extend for up to a further 2 years. Given that it is proposed that the contract for the provision of the ICES would last 3 years with an option to extend for a further 2 years, officers intend to enter into discussions with the tPCT with regard to a new partnership agreement and pooled budget under Section 31 of the Health Act 1999, to last for the entire duration of the ICES contract. A report will be brought back to

the Executive for approval in connection with entering into a revised Section 31 agreement prior to award of the ICES contract.

Brent tPCT are in agreement with the proposals in this report and as partners will be fully involved in the tender process and evaluation. As any award of a service contract would be a jointly commissioned service, it will require the approval of the tPCT Board as well as that of the Council's Executive.

3.5 Main constraints of current store.

The current store was subject to a best value review in 2001 and improvements were made in the light of the review. Increased investment in IT under the partnership agreement has helped improve service response. However, there are clear constraints on expanding the service to meet requirements due to limitations of the equipment store itself. The current building simply is not fit for purpose - storage capacity is insufficient and there is no on-site facility for cleaning/decontamination of collected equipment. Health and safety issues impact on the collection and recycling of equipment and this in turn impacts on the stores cost effectiveness and performance. There is also no scope to develop a demonstration facility to enable service users and carers to view and try out equipment, which all integrated equipment services are expected to provide. Should the property be disposed of, Corporate Property have estimated the value of the site at £350,000 (with the building having no value, allowing for clearing the site and payment of professional fees) and it is assumed that it would produce a saving in interest to the Council of £15,750

p.a. using an average interest rate of 4.5%.

3.6 Tender process

Subject to all necessary approvals being obtained, and in line with the Council's Standing orders, advertisements are to be placed to seek initial expressions of interest. Those organisations that respond to the advert will be sent the Council's Pre- Qualification Questionnaire which addresses issues of Business Probity, Economic and Financial Standing, Experience, Health & Safety and Equality. Organisations that meet the Council's required standards will be invited to tender for the contract. The tendering instructions will advise tenderers that their tenders will be evaluated to obtain the most economically advantageous tender in accordance with the following proposed evaluation criteria:

- Financial competitiveness and affordability
- Ability to meet the requirements of the service specification
- Quality control and assurance
- Technical competencies associated with equipment services provision
- Customer Care
- Ability to ensure smooth and seamless implementation
- References

Supporting this tender process will be two multi-agency officer groups:

- Tender Steering Group
- Operational Group

These two groups will ensure that service user needs and considerations are fully addressed. The Tender Steering Group will act as the evaluation panel and make a recommendation to the Executive as to whom to award the service contract.

3.8 Pre-tender considerations

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.	Supply and installation of Community Equipment	
(ii)	The estimated value.	£1.2m per annum. Total worth for 3 years: £3.6m Total worth for 5 years [3 years plus 2 x 12 month extensions): £6m	
(iii)	The contract term.	3 years with the possibility of two further 12 month extensions subject to satisfactory performance. A longer initial contract period (5 years) will be explored as part of the tender if this proves to offer better value for money to the Council/Brent tPCT	
(iv)	The tender procedure to be adopted.	A two stage process in accordance with the Council's Standing Orders. As Social Services transactions are 'Part B Services' for the purpose of the EU regulations, the regulations are of residual application only (forwarding of a contract award notice etc) and do not dictate the procurement process to be followed.	
v)	The procurement timetable.	Indicative dates are: Adverts placed Expressions of interest returned Shortlist drawn up in accordance with the Council's approved criteria Invite to tender	24 August 2006 29 September 2006 9 October 2006 13 October 2006

		<p>Deadline for tender submissions</p> <p>Panel evaluation and site visits.</p> <p>Site visits Interviews/ Presentations & contract recommendation decision</p> <p>Report recommending Contract award circulated internally for comment</p> <p>Executive approval</p> <p>Contract start date</p>	<p>22 November 2006</p> <p>23 November 2006</p> <p>27 November - 14 December 2006</p> <p>20 December 2006</p> <p>January 2007</p> <p>1 April 2007</p>
(vi)	The evaluation criteria and process.	<p>Shortlists are to be drawn up in accordance with the Council's Contract Procurement and Management Guidelines namely the pre qualification questionnaire and thereby meeting the Council's financial standing requirements, technical capacity and technical expertise. The panel will evaluate the tenders to obtain the most economically advantageous tender against the following criteria</p> <ul style="list-style-type: none"> • Financial competitiveness and affordability • Ability to meet the requirements of the service specification • Quality control and assurance • Technical competencies associated with equipment services provision • Customer Care • Ability to ensure smooth and seamless implementation • References 	
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the proposed contract. Financial Services and Legal Services have been consulted concerning this contract	
(viii)	The Council's Best Value duties.	The competitive tendering process will assist the Council in achieving best value.	

(ix)	Any staffing implications, including TUPE and pensions.	See section 4, 5 and 6 below
(x)	The relevant financial, legal and other considerations.	See sections 4 and 6 below

3.9 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 88.

4.0 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 2006/7 pooled budget for the ICES is £1,286,921. The Council's contribution to this is £975,421 and the tPCT's contribution is £311,500. The estimated value of this ICES services contract is £6m over 5 years.

4.3 It is anticipated that the cost of the ICES contract will be funded from the existing pooled budget resources. It is hoped that as well as securing improvement in performance on delivery times, it will also prove possible to manage increased demand through efficiencies made from improved collections and recycling and better value purchasing of equipment.

4.4 In the unlikely event that the tenders exceed existing resources a further report will be presented to Executive outlining the options available, one of which would clearly be not to proceed with awarding the contract.

4.5 The externalisation of the service will not change budget management issues. This is a demand-led service. Delaying the service to some clients poses a risk to their health and safety or may mean they require a more expensive service to keep them safe. Other clients can be risk assessed and lower risk clients will have less priority for services. This will impact on the Department's performance. The budget is managed by balancing risk against the budget and prioritising resources to address the highest risk clients or where not providing the service immediately will incur greater costs.

4.6 The expiry of the current Section 31 Agreement with the tPCT will give the Council an opportunity to review the balance of cost between the tPCT and the Council. Currently tPCT staff prescribe a larger proportion of equipment than the tPCT contributes to the total cost of the ICES. Some of this disproportionate prescribing is likely to be equipment that the Council would provide anyway and is therefore saving on the cost of the Council making its own assessment of need. Further work will be required prior to any new Section 31 agreement with the tPCT to ensure a balance between benefit and cost.

- 4.7 It is proposed that this ICES contract will be managed through a further Section 31 agreement with the tPCT. With the expiry of the current Section 31 agreement in March 2007, it is proposed that a further Section 31 agreement will be in line with the Section 31 framework agreement approved by the Executive on 13 March 2006. In particular, there would be an intention to ensure that it would be in line with the framework agreement's approach to controlling budgets and dealing with over and under spending.

Pension Provision

- 4.8 The successful bidder and the Council have responsibilities regarding staff pensions. The contractor has a statutory obligation under the Pensions Act 2004. It must also protect certain “not for old age rights” such as early retirement benefits on redundancy as set under the “Beckman” and “Turner” decisions.
- 4.9 Sections 257 and 258 of the Pensions Act 2004 together with the Transfer of Employment (Pension Protection) Regulations 2005 protect the pension position of employees who are involved in a business transfer when the TUPE regulations apply by placing a duty on transferee employers. Where TUPE applies the staff protected by the Pensions Act 2004 will be those who are:
- active members of the LGPS ;
 - not an active member but eligible to become one ;
and
 - neither an active member nor eligible but would be, after being employed for a longer period.
- 4.10 The protection applies so that the new employer must offer either membership of an occupational pension scheme or a stakeholder arrangement.
- 4.11 In addition to obligations under the Pensions Act 2004, the Council must have due regard to, but may in exceptional circumstances depart from, the Code of Practice on Workforce Matters in Local Authority Service Contracts. The Code requires the following for all re-tendered contracts advertised on or after 13th March 2003:
- Local government staff transferred to the new contractor must continue to have access to the LGPS or be offered an alternative good quality pension scheme which, save in exceptional circumstances, must be broadly comparable to the LGPS
 - Where an alternative pension scheme is offered the Council must, seek a bulk transfer agreement with the new contractor in relation to transferring local government staff wishing to transfer their accrued pension benefits from the LGPS to the new contractor's pension scheme

Where staff join the contract subsequent to the transfer to work alongside former local government staff, the Code requires the Council to secure:

- Membership of the LGPS i.e. where the employer has admitted body status;or
- Membership of a good quality employer pension scheme, either being a contracted out, final salary based defined benefit scheme or a defined contribution scheme (benefits are based upon the investment returns made by the employee and employer). The employer must match employee contributions up to 6% in a defined contribution scheme;or
- A Stakeholder Pension Scheme under which the employer must match employee contributions up to 6 % (basically a defined contribution scheme with special rules e.g. 25% of the annuity can be used to purchase a tax free lump sum)

4.12 The provision of pension benefits is likely to have financial implications for the Council. Whether the contractor elects to provide the LGPS or a broadly comparable scheme the contractor will incur set up costs and, usually an employer contribution rate. In assessing this, the contractor may decide to include a proportionate increase in the contract price. The provision of the LGPS will require the contractor's entrance into an admission agreement with the Council. The admission agreement will remain in place for the term of the contract or as long as the contractor and the Council meet its terms. Once the admission agreement is terminated the contractor will be required to compensate the fund for any investment loss incurred for the duration of the admission agreement. The contractor may request that the Council indemnify it for any investment loss – another potential cost to the Council or increase in contract price.

5.0 Staffing Implications

The ICES service is currently provided by 7 staff, 5 of whom are permanently employed by the Council with the remaining 2 staff being agency workers. It is anticipated that if the tender is awarded to an external contractor the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply and that some or all of the affected staff will transfer to the new provider. Staff and trade unions have been alerted to this possibility and regular meetings have been set up to consider this in more detail.

6.0 Legal Implications

6.1 The Council has the power to enter into a contract for the provision of community equipment pursuant to, amongst other provisions, Section 2 of the Chronically Sick and Disabled Person's Act 1970; Section 45 of the National Assistance Act 1948; Section 17 Children's Act 1989; Section 47 NHS and Community Care Act 1990; Section 2 Carers and Disabled Children Act 2000; and Section 57 of the Education Act 1996, all in conjunction with Section 11 of the Local Government Act 1972.

6.2 The estimated value of the Contract over its lifetime is in excess of £500,000 and therefore the procurement and award of the contract is subject to the Council's Contract Standing Orders and Financial Regulations in respect of High Value Contracts.

- 6.3 As the Contract is for social services provision, it falls within Part B of Schedule 3 of the Public Contracts Regulations 2006 and is not therefore subject to the full application of the EU Procurement Regulations. The Regulations are of residual application only (the need to issue a contract award notice, etc.) and do not determine the procurement process to be followed. However, the overriding principles of EU law (equality of treatment, fairness and transparency in the award process) continue to apply and should be upheld at all times in relation to the award of the Contract.
- 6.4 Under the Council's Standing Orders, as the ICES contract is a High Value Contract, approval of the Executive is required for authority to tender. Approval of the Executive is also required by Contracts Standing Orders for the award of such contract and once the tendering process is undertaken, Officers will report back to the Executive explaining the process undertaken in tendering the contract and recommending award.
- 6.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply where there is a "relevant transfer". Such a transfer occurs where there is a "service provision change". A service provision change takes place where an activity is outsourced and immediately before the outsourcing there is an organised grouping of employees situated in Great Britain which has its principal purpose the carrying out of the activities concerned on behalf of the client. These requirements seem met by the proposed outsourcing and accordingly TUPE will apply to it. As a result those Council employees who are assigned to the service immediately prior to the contract start date and who do not object to transferring will transfer to the employment of the contractor awarded the contract on their existing terms and conditions.
- 6.6 Some of the existing staff working in the service are agency workers. As a result of recent case law there is a high risk that these workers are in law Council employees. In that case such staff could also transfer to the external contractor under TUPE if the test in paragraph 6.5 applies. It will need to be established if these workers are Council employees by the time prospective tenderers request information from the Council regarding the terms and conditions of current employees engaged in the provision of the service. If these workers are Council employees the Council will also have an obligation under TUPE to notify to the successful contractor certain information about their employment at least 14 days before the contract start date.
- 6.7 In exercising its contracting functions, the Council must have regard to guidance issued by the Government under the Local Government Act 1999 (LGA 1999). The Council has a statutory duty as a best value authority to achieve continuous improvement in the way in which those functions are exercised as required by Section 3 of the LGA 1999. The Council is entitled not to follow the guidance if it has proper and rational grounds for so doing, for example, if it considers that not following the guidance in some respect is necessary for it to fulfil its statutory duties under section 3.
- 6.8 The Code of Practice on Workforce Matters in Local Authority Service Contracts, which forms part of the guidance issued under the LGA 1999, contains requirements relating to pensions referred to in Section 4 of this report. The Code also requires the new contractor in a tendering exercise who recruits new staff to work on a local authority contract alongside former

local government staff, to offer those new staff fair and reasonable terms and conditions (excluding pensions) which are, overall, no less favourable than those of the former local government staff. The Code further requires the Council to make these requirements legally binding on the contractor through contractual terms. Should the Executive give approval to the invitation of tenders then it will be necessary for the Council to consider the guidance and decide whether to apply the Code by making some or all of these requirements legally binding on the successful tenderer. In coming to that decision it will be necessary for the Council to consider in respect of each of the requirements in the Code the respective costs and benefits of making that requirement legally binding on the successful tenderer.

- 6.9 Sections 26-31 of the Health Act 1999 require local authorities and NHS bodies to work together to improve health and social care and provides for flexible funding and working arrangements to be established by agreement to facilitate this partnership working. Regulations have been made in relation to the use of these flexibilities and guidance has been issued.
- 6.10 Under these provisions it is possible for a pooled budget fund to be established, to be held by one of the partners, to pay for services for a particular client group(s) or used for the discharge of particular functions. As detailed in Section 3.4, there is currently an agreement under Section 31 of the Health Act 1999 and a pooled budget for the operation of the ICES. The Council and tPCT entered into the Section 31 Agreement following specific guidance issued in respect of integrating community equipment services in Local Authority Circular (2001)13. The Circular established March 2004 as the deadline by which local councils and the NHS equipment services were expected to be integrated. The Circular also detailed that an integrated equipment service should have a pooled fund using Health Act flexibilities.
- 6.11 In addition to the Circular detailed above, Local Authority Circular (2003)14 also stressed the need for the development of pooled budgets for integrated equipment services. As a result of these Circulars and given the contract term of the ICES contract, there is a proposal that the Council and the tPCT enter into a further Section 31 Agreement and pooled budget to last for the duration of the proposed contract. A further report to the Executive in connection with entering into a revised Section 31 Agreement will be necessary prior to the award of the ICES contract.

7.0 Diversity Implications

- 7.1 The overall purpose of the improvements is to improve services to all health and social care users who are older or with disabilities.
- 7.2 The proposals will have a positive impact on increasing the availability and responsiveness of the service to people with disabilities.

Background Information

Report to Executive 14 November 2005
ICES Partnership agreement 31 March 2004
Draft specification for Brent Integrated Community Equipment Store

Contact Officer(s)

- Christabel Shawcross, Assistant Director Community Care, Mahatma Gandhi House, Wembley Hill Road, Wembley, Middlesex HA9 8AD
Tel: 020 8937 4230.
email: christabel.shawcross@brent.gov.uk
- Lennie Sahota, Head of Physical Disability Services, 36 London Road, Wembley, Middlesex, HA9 7SS
Tel: 020 8937 4625.
email: lennie.sahota@brent.gov.uk

Martin Cheeseman
Director of Housing and Community Care