

	<p style="text-align: center;"><b>Executive</b> 12<sup>th</sup> February 2007</p> <p style="text-align: center;"><b>Report from the Director of Housing and Community Care</b></p>
For Action	Wards Affected: ALL
<p style="text-align: center;"><b>Authority to enter into a Partnership Arrangement under Section 31 Health Act 1999 in respect of Brent's Integrated Community Equipment Service (ICES) and to award a contract for the provision of ICES</b></p>	

## Not for publication

Appendices 2 and 3 of this Report are not for publication as they contain the following categories of exempt information as specified in the Local Government Act 1972, namely: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).

Forward Plan Ref: H&CC-0607-28

### 1.0 Summary

1.1 This report requests approval to develop and implement an agreement under Section 31 of the Health Act 1999 and a pooled budget between Brent Teaching Primary Care Trust (tPCT) and the Council in respect of Brent's Integrated Community Equipment Service (ICES). This report further requests Authority to award a contract as required by Contract Standing Order No 89. This report summarises the process undertaken in tendering the contract for the provision of ICES and, following the completion of the evaluation of the tenders, recommends to whom the contract should be awarded.

### 2.0 Recommendations

That the Executive:

2.1 give approval to re-enter into a partnership arrangement of up to 5 years duration for provision of Brent's Integrated Community Equipment Service with the Brent tPCT under Section 31 of the Health Act 1999 as set out in this report. Under this arrangement Brent

Council will be lead agency on behalf of the partners [Brent Council and Brent tPCT] with each partner being financially accountable, through the Memorandum of Agreement, for the actions and expenditure of each partner's practitioners as set out in paragraph 3.11. |

- 2.2 give approval to the setting up of a pooled budget with Brent tPCT under the partnership agreement and to the transfer of the Council's pro rata contribution of £806,860 for the financial year 2007/08 (at 2007/08 prices) to that budget.
- 2.3 agree that the Council will be the budget holder for the pooled budget as set out in paragraph 3.15.
- 2.4 note that a written agreement is required to be entered into between the Council and the tPCT in respect of the proposed partnership and to authorise the Director of Housing and Community Care, in consultation with the Borough Solicitor, to agree the exact form of that agreement.
- 2.5 award the contract for the provision of Brent's Integrated Community Equipment Service to Millbrook Healthcare Limited subject to approval of Brent tPCT board to the award and subject Brent tPCT executing the partnership arrangement under Section 31 of the Health Act 1999.
- 2.6 If agreement cannot be reached with the tPCT regarding the partnership arrangement under Section 31 of the Health Act 1999 on the basis outlined in this report, officers will report back to the Executive with alternative proposals for the provision of the Community Equipment Service.

### **3.0 Detail**

#### ***Background***

- 3.1 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 each organisation's star rating.

#### ***Current National Perspective***

- 3.2 Over recent months the DoH have been undertaking a review of iCES and wheelchair services provision across England – this review is considering the long term configuration of the “whole system” as opposed to simply looking at just the technical service provision as this report/proposal covers.
- 3.3 It is not anticipated that any clear strategy and/or instructions from the research will be forthcoming for some time; however, early indications are that some of the recommendations could be quite radical – thus in part they may have an impact on this service element. This said, it is

not envisaged at this stage that any proposals will affect this service in the short to medium term – this view is supported by information from the Association of Directors of Social Services advising organisations not to let their iCES contracts for any longer than 3 years. It is recommended that the new Brent contract will be for a period of 3 years with an option to extend for a further two years and therefore is in line with current guidance.

### ***The Current Brent Position***

- 3.4 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. To date the ICES has been operated from a Council equipment store by staff employed by the Council and some agency staff. Given the limitations of the current equipment store, the Executive on 14 August 2006 gave authority to tender a contract for the provision of ICES. 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 entered 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. The benefits of such an arrangement for the Council, tPCT and users are set out in paragraph 3.9.

### ***Consequences of Discontinuing the Partnership with the tPCT***

- 3.5 Council officers have considered the risks and associated consequences for the Council and tPCT and their staff and their clients should the partnership arrangement between organisations be fragmented – these are summarised below.
- 3.6 Whilst recognising ever increasing cost pressures on all agencies/partners – the BiCES partnership arrangement does indeed bring benefits (both operational and financial) to partners, staff and clients alike. Should this arrangement fragment, partners would need to organise a separate service provision in their own right – possibly each through the tendered preferred provider however, there is no guarantee that the preferred provider would accept a reduced volume contract with each commissioner in isolation. A low volume contract is likely to mean higher overheads per item supplied and lower profits for the contractor. The consequences of fragmenting the service are set out below:
- If the preferred provider did not agree to enter into a smaller contract with the Council than that which was tendered for then the Council would need to either continue to provide the service from the current site/operation (accepting the associated capacity and H&S issues and not realising any monies linked to the disposal of the site) OR re-tender the contract. It is possible that Council may

not be able to secure a provider willing to invest into establishing this service because of the lower level of return likely to result from a reduced size contract

- The Council's performance indicators [D54/BVPI 56] - provision of equipment within 7 days – could be negatively and probably seriously affected – thus possibly affecting the Council's star rating
- Both partners would no longer be meeting a national objective associated with iCES - in that the Council would no longer be part of an integrated service

3.7 Fragmenting the partnership would have the following impacts on service users:

- It is probable that there would be an increase in clinical duplication and overlap
- There would no longer be a single point of contact for clients and practitioners
- It is likely that clients would no longer receive a single and seamless iCES service provision – with goods and other associated activities no longer being co-ordinated – again increasing costs to the organisations
- It is unlikely that the service would be as effective or efficient as with a partnership approach
- Preventative care may be hampered – thus increasing the demand on domiciliary/secondary care
- Potential client confusion regarding communications concerning equipment will be seriously increased
- There is a risk that the tPCT could seek to transfer costs to the Council by only supplying equipment that discharges its minimum statutory requirements.

3.8 Further to the above, the tPCT would experience the following additional negative consequences brought about by any fragmentation of the partnership arrangement:

- The tPCT would not be in a position to provide the service from within internal resource in the short term – thus a market test would be the only option available
- The tPCT would no longer benefit from the economies of scale associated with the partnership arrangement
- The tPCT's performance indicator [CHAI] covering equipment provided within 7 days would be negatively affected – thus affecting the organisation's star rating

***Benefits of Continuing to Work in Partnership with the tPCT***

3.9 Should the service continue to be provided through a partnership (via a new partnership agreement), the following are seen as benefits afforded to the partners:

- The Council would receive as a minimum £182k saving on current contribution to BiCES based on officer discussions concerning the new partnership agreement–

*any delay in ratifying this proposal is likely to reduce this savings pro rata*

- The tPCT would maintain the competitive product and service pricing associated with the partnership
- With the partnership economies of scale, it is anticipated that additional savings on current expenditure through this service will be achieved – a 5% target has been estimated (to be apportioned pro rata linked to investment levels between partners)
- It has been further anticipated that in subsequent years even greater financial savings will be derived from the tendered iCES service for partners. The allocation of further savings between the partners is discussed below.
- The proposed iCES contract has specific and set increasing performance and quality targets – these building on the good work that the internal iCES service has delivered. Thus both partners and their clients will see even greater performance and service levels over the coming months/years
- The partners would not need to disaggregate the existing arrangement or either internally provide or re-tender their service elements
- There would be no disruption in service
- Current performance would be maintained if not improved  
The expectation is that, a 5 star grading could be achieved within 12 months – this estimate is based on evidence from other neighbouring authorities who are providing similar in configuration/arrangement iCES services
- Secondary and primary care would not be negatively affected

3.10 It is evident to those undertaking this risk assessment that the benefits (both operational and financial) of maintaining the Partnership arrangement far outweigh any short term “perceived” savings for the Council – in fact it is unlikely that any organisation would save any money in real terms by fragmenting this partnership. Indeed maintenance of this arrangement is likely to generate increased savings and improved performance across all partner agencies within a reasonably short period of time.

### ***Proposed Partnership Arrangements***

3.11 The current Memorandum of Agreement is being reviewed and amended by officers in the Housing and Community Care Directorate of the Council and officers in the tPCT reflecting agreement as to how the ICES and pooled funds will be managed. The Memorandum of Agreement is being updated to ensure that any financial risk and responsibility is appropriately attributable to the each partner in line with prescriber demand and usage, subject to the contribution issue discussed at 3.12 -3.14 below. This will be incorporated as a schedule into the Section 31 framework agreement for joint working with the tPCT which was approved by the Executive on 13 March 2006 and will be on the terms in the framework agreement except as indicated in this

report. The partnership agreement will last for a period of up to 5 years, to correspond with the duration of the ICES contract (including possible extension).

- 3.12 As part of the Section 31 agreement, it proposed to set up and operate a pooled budget. The proportionate share of the pooled budget under the existing s31 agreement originally was based on historical spend the total budget of £1,286,921 split 76% to the Council and 24% to the tPCT. However demand for equipment, reflecting DoH requirements, has gone up 50%, and discussions have been held with the tPCT that the pooled budget should have equal contributions. The independent consultant taking forward the ICES developments has recommended this and this reflects other local authority/tPCT partnership agreements.
- 3.13 The tPCT, whilst wishing to meet an equitable investment into the pooled fund has stated it is unable to contribute 50% from April 2007 due to its present financial position and current turnaround plan but has agreed to work with the Council and its officers to try and reach equity on contributions into the pooled fund as soon as it can. Whilst this still means in the short term that the Council will be contributing disproportionately more than the tPCT into the pooled fund it will benefit significantly more than the tPCT on the savings made from the new contract – thus the previously mentioned financial savings associated to this new contract (see also paragraph 4.6) should be seen as a minimum expectation as opposed to the full potential. If the tPCT increases its contribution in the future it is on the understanding that Brent Council will reduce its contribution and maintain the overall cost of the service at the planned level. However, it is important to understand that there is no commitment from the tPCT to equity of funding for the service. The tPCT is aiming to save £31m in 2007/08 with a view to having a balanced budget in 2008/09. Already it is reporting a failure to achieve its targets for savings. In this context the tPCT would have to consider a growth bid in 2008/09 (with a further growth bid in 2009/10) to move towards equity of funding and it is not possible to predict whether such a bid will be successful. All this being said, the pooled budget total is to be kept under review and even with rising demand it is expected this should be contained with a more efficient service. The partnership provides major benefits for users, single point of assessment and access, it is a DoH requirement, improves PI's on equipment delivery and is an excellent example of Housing and Community Care and the tPCT working together to achieve a high and efficient and effective quality service. Having a joint service minimises disputes over whether a client's equipment requirements arise from their health or social care needs. To not continue the partnership would fragment the service for users and lose financial benefits based on economics of scale. The risks of this are set out at paragraphs 3.5 to 3.8.
- 3.14 The levels of expenditure for the pooled budget from both the Council and the tPCT have been identified for the financial year 2007/08 as £1,126,600 (2006/07 estimated cost increased by 2% for inflation: see paragraph 4.6. below). Under the Section 31 framework agreement there is a mechanism for calculating the Partners' contributions to the pooled budget in subsequent years which accounts for levels of demand/prescription made on the pooled fund by each partner's

prescribers (this as opposed to historic levels of commitment). Whilst this aspect will not be implemented immediately, the preferred approach is to move progressively towards the two organisations contributing 50% of the costs of the service.

- 3.15 The functions to be exercised through the partnership agreement will be identified and necessary delegation of powers put in place. The governance arrangements and pooled budget arrangements will be overseen by the iCES Partnership Board (this made up of senior officers and managers from the Council and tPCT) The proposal is that the pooled budget will be hosted by the Council and will be monitored by the pooled budget manager who will be the Pooled Fund Manager. The Pooled Fund Manager will monitor the day-to-day management and performance of the pooled budget and will report to the iCES Partnership Board and Partners on a regular basis.
- 3.16 There are a number of risks associated with the above proposal. These relate to unforeseen demand or increased activity which could lead to overspends. In order to minimise risks, the partnership agreement will be in line with the Section 31 framework agreement's approach to controlling budgets and dealing with over and underspending. It is intended to adopt measures which were used in 2006/07 quite successfully, whereby partners, through regular contract information and reporting, will control service and prescriber use and service provision, and undertake cost reduction initiatives, to ensure that the service is delivered within the available budget – in fact the objective will be to make further financial savings where possible. The Pooled Fund Manager will be responsible for ensuring immediate action is taken to ensure the budget is controlled. However, there remains a risk that after management action to control overspending that demand from clients who meet eligibility criteria will cause the service to overspend. The Council's Financial Regulations require that compensatory savings are found within the department's budget to fully contain such pressures. Also, the pooled fund will be reviewed after 12 months in operation to ascertain:
- Appropriateness of contributions and of the arrangement
  - Projections for 2008/09
  - Spend patterns
  - Service usage
  - Demand on service
  - Patterns and trends

The Partners will agree appropriate and fair development plans which will take account of this information.

- 3.17 Authority to enter into an agreement under Section 31 of the Health Act 1999 requires the approval not only of the Executive but also the Board of the tPCT. It is understood the tPCT Board is to consider the proposals made within this report at the Board meeting planned for late February 2007. tPCT officers have stated that they will recommend to their Board that the tPCT enters into the agreement proposed and maintains its contribution level for 2007/08 at the 2006/07 level. Given that the overall cost of the service will be less under the new contract, this represents a small increase in the percentage contribution of the

tPCT compared with 2006/7. No recommendation will be made to the Board in February on funding for 2008/09 or 2009/10.

- 3.18 Prior to and during the tender process all stakeholders, including user / carers were consulted as to their views of service provision and future requirements – this consultation was achieved through questionnaire research, workshops and regular stakeholder meetings

### ***The tender process***

- 3.19 The new contract will be let for a period of 3 years (with the ability to extend said contract for a maximum of 2 more years). Please also refer to paragraphs 3.2 and 3.3 in relation to national discussions in relation to the longer term configuration of iCES services.
- 3.20 Advertisements were placed in the Official Journal of the European Community (OJEU) and the trade press on 25<sup>th</sup> August 2006 to seek initial expressions of interest from, which elicited nine initial enquires. Short listing questionnaires, and an information pack containing the outline service and tender approach were sent out and six contractors returned the questionnaires.
- 3.21 Short listing was carried out on the basis of the contractors' financial viability, probity, and technical ability which included a consideration of health and safety, quality assurance, equal opportunities and disabilities awareness and sensitivities and on 13<sup>th</sup> October 2006 four contractors were assessed as achieving relevant standards and were invited to tender.
- 3.22 The tendering instructions stated that the contract would be awarded on the basis of the most economically advantageous offer to the Council and that in evaluating tenders, the Council would have regard to the following:
- Financial competitiveness and affordability [40%]
  - Ability to meet the requirements of the service specification [15%]
  - Quality control and assurance [5%]
  - Technical competencies associated with equipment provision [15%]
  - Customer Care [10%]
  - Ability to ensure smooth and seamless implementation [10%]
  - References [5%]
- 3.23 Tenderers were required to submit additional information providing details of their proposed arrangements for performing the services including (but not limited to) the following:
- Site proposals
  - Staffing structure
  - TUPE and Pension information
  - IT and system provision
  - Cost effective technical equivalent equipment proposals
- 3.24 All Tenderers were provided with a listing of Method Statement questions covering the practical and technical aspects of service provision. Tenderers were requested to respond to said questions and



include all the relevant reference material to support any responses made.

### ***Evaluation process***

- 3.25 The tender evaluation was carried out by a panel of officers from both Brent Council and the tPCT. Also in attendance were User/Carer leads and an independent advisor who facilitated the various tender evaluation processes.
- 3.26 All tenders had to be submitted no later than 1200hrs on 22<sup>nd</sup> November 2006. Tenders were opened on 22<sup>nd</sup> November 2006 and three valid tenders were received. These were photocopied as applicable and made ready for the evaluation panel meeting the following day.
- 3.27 The panel met on 23<sup>rd</sup> November 2006 and each submission was marked by the panel against the award criteria.
- 3.28 References were sought and were returned by 1<sup>st</sup> December 2006 – the scoring from references has been included within Tender Evaluation Grids at Appendix 1. Financial competitiveness and affordability was also assessed (see Schedule 2) and a score included in the Tender Evaluation Grids at Appendix 1.
- 3.29 Each tenderer was visited on either 5<sup>th</sup> December 2006 or 7<sup>th</sup> December 2006 by members of the evaluation panel to obtain further details about the tender. Members of the evaluation panel then scored this aspect of the evaluation against the criteria detailed in paragraph 3.22, such scoring subsequently being confirmed by the whole evaluation panel.
- 3.30 On Wednesday 13<sup>th</sup> December 2006 the tender evaluation panel met with tenderers. Tenderers provided a brief presentation in a standard and agreed format and this was followed by a series of questions from panel members regarding the tenders. This element of the evaluation was then scored against the evaluation criteria.
- 3.31 References were obtained and the evaluation panel then met on 19 December and all references were given a score. The evaluation panel also reviewed all the elements of the tender evaluation. The final scores received by the tenderers are included in the Tender Evaluation Grid – Total Score at Appendix 1.
- 3.32 It will be noted from the Tender Evaluation Grids at Appendix 1 that the most economically advantageous offer to the Council was received from Millbrook Healthcare Limited and the Executive are therefore recommended to award the contract to Millbrook Healthcare Limited subject to approval also of the tPCT to the award and also subject to the tPCT executing the partnership arrangement under Section 31 of the Health Act 1999. It is proposed that the contract will commence on 1<sup>st</sup> June 2007.

### ***Disposal of current ICES store***

- 3.33 As the preferred provider proposes to operate the ICES from its store in Ealing, this would ensure that the current store, which has severe limitations as identified in previous reports to the Executive, could be disposed of. 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 of the site and payment of professional fees) and it is estimated that this would produce a saving in interest to the Council of £15,750.

### **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 of the award of the contract.
- 4.2 The estimated value of this contract is £1.1m per annum. The most cost effective tender came in at an indicative cost of £892,435. This indicative cost does not include non stock/bespoke equipment purchasing and whilst this is anticipated as likely to be less than in previous years for iCES (as the service stock range has been enhanced as part of the tender process – thus reducing non stock demand), it is still expected that a level of circa £150k - £170k should be applied for these items when budget setting this service.
- 4.3 It is anticipated that the cost of this contract will be funded from the Brent iCES pooled fund with contributions from the two organisations. In the first year of operation Brent tPCT officers have indicated that they will recommend to their Board that the 2006/07 contribution level of £311,500 be maintained. Allowing for the estimated supply of non-stock items and the cost of employing a manager, Brent Council's contribution in 2007/08 is estimated at £809,000 (£793,000 at 2006/07 prices). This would produce a saving of £182,000 in comparison with Brent's 2006/07 contribution of £975,421. It is anticipated that the tPCT will follow its normal practice and increase its contribution in line with inflation. The tPCT uses a system for dealing with inflation that mirrors the system used by the council.
- 4.4 Additionally, tenderers were requested to submit equipment which they believed was of technical equivalence to those stock equipment listed in the tender but that which was more cost effective. A clinical group is being formed to review the preferred provider's more affordable technical equivalent items to establish whether to accept such equipment instead of the items listed in the tender and establish potential savings on the prices tendered. Should this be the case it will be possible to realise further savings. These are likely to be small and have not yet been quantified.
- 4.5 Should the property currently used for the stores be disposed of, Corporate Property have estimated the value of the site at £350,000 (with the building having no value, allowing for clearing of the site and

payment of professional fees). This will contribute to achieving the Council's target for capital receipts.

#### 4.6 Current budget contributions by partners

The revenue budget implications of letting this contract are set out in the table below.

Item	2006/07 £	Share
Brent Council's revenue budget for stores	975,421	76%
Brent PCT's contribution to the stores	311,500	24%
Total	1,286,921	
Indicative annual cost of model stock from tender evaluation	892,435	
Plus estimate of non-stock items	170,000	
Plus cost of Pooled Fund Manager	42,064	
Total costs under the proposed contract	1,104,499	
Estimated saving to Brent Council from letting the contract (with PCT contributing at its current level)	182,422	

On the basis of the existing agreement, Brent Council will achieve revenue budget savings of £182,000 pa.

In the first year of the contract the costs would be distributed between the partners as follows:

Year 1 (at 2006/07 prices)	Contribution £	Contribution %
Brent Council	792,999	72%
Brent tPCT	311,500	28%
Total	1,104,499	

It is recognised that Brent tPCT is currently contributing less to the joint stores than the full benefit gained by health from participating in the stores. The tPCT officers have agreed to recommend to their Board at some future time that the tPCT work toward reaching a 50% contribution to the cost of pooled service – thus when the tPCT reaches parity with the Council then Brent Council's additional saving from the letting of the contract and this new contribution rate would be £423,000. However, if the tPCT Board do not agree to increase their contribution then the additional savings described below will not be achieved.

The budgets based on this approach (stated at 2006/07 prices for comparison purposes) are set out in the table below:

2006/07 Prices	Year 2 Phased move to parity of contribution £	Percentage contribution	Year 3 parity of contributions £	Percentage contribution
Brent Council contribution	694,702	63%	552,250	50%
Brent tPCT contribution	409,797	37%	552,250	50%
Total	1,104,499		1,104,499	
Saving for Brent Council compared with 2006/07	-280,719		-423,172	

## Pension Provision

- 4.7 Sections 257 and 258 of the Pensions Act 2004 (as amended) 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 and as amended under TUPE 2006 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 have been an active member or eligible to be an active member, after being employed for a longer period.
- 4.8 The protection applies so that the new employer must offer either membership of an occupational pension scheme or a stakeholder arrangement.
- 4.9 In addition to obligations under the Pensions Act 2004, the General Purposes Committee decided on 27<sup>th</sup> April 2004 that Council staff transferring to a private or voluntary sector employer as a result of an outsourcing must continue to have access to the LGPS or be offered an alternative good quality occupational pension scheme. Such an alternative scheme must, save where the Director of Finance and Corporate Resources is satisfied there are exceptional circumstances, be actuarially certified as broadly comparable to the LGPS.
- 4.10 In its meeting of 27<sup>th</sup> April 2004 the General Purposes Committee also dealt with the situation where there is an outsourcing to a private or voluntary sector employer and the contractor offers a pension scheme other than the LGPS to transferring former Council staff. It decided that, save where the Director of Finance and Corporate Resources is satisfied there are exceptional circumstances, the Council will make it a condition of the contract with the contractor that there will be a bulk transfer agreement under which the new contractor's pension scheme will provide day for day past service credits ( or an equivalent recommended by the Government Actuary's Department as a suitable reflection of differences in benefit structures between the schemes) to former Council staff who wish to transfer their accrued credits from the LGPS to the new contractor's pension scheme.
- 4.11 Furthermore the Council must have due regard to, but may if it has proper and rational grounds for so doing depart from, the Code of Practice on Workforce Matters in Local Authority Service Contracts. This is part of Best Value guidance issued by the Government under the Local Government Act 1999. The Code requires the following for all outsourced 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, save in exceptional circumstances, make it a condition of the contract with the contractor that there will be a bulk transfer agreement under which the new contractor's pension scheme will provide day for day past service credits ( or an equivalent recommended by the Government Actuary's Department as a suitable reflection of differences in benefit structures between the schemes) to former Council staff who wish to transfer their accrued credits 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 During the evaluation of tenders, all tenderers indicated that they would be able to provide a broadly comparable pension scheme for existing Council staff and have provided proof of comparability through the provision of a Government Actuaries Department's certificate. The preferred provider has also indicated that it would enter into negotiations to secure a bulk transfer agreement in relation to transferring local government staff wishing to transfer their accrued pension benefits from the LGPS to their pension scheme. The preferred provider has also indicated its willingness to comply with the Code of Practice on Workforce Matters in Local Authority Service Contracts in relation to pension provision for staff that join the contract subsequent to the transfer to work alongside former local government staff. Whilst this has an impact on the contract price, officers consider that the provision of a good quality pension scheme is important to ensure the retention of key personnel who would be responsible for the delivery of services to some of Brent's more vulnerable citizens.

## **5.0 Legal Implications**

5.1 Sections 26-31 of the Health Act 1999 require Local Authorities and NHS Trust bodies to work together to improve health and health care

and provides for flexible funding and working arrangements to be established by agreement to facilitate this. This would include, but is not limited to, a pooled budget arrangement.

- 5.2 As detailed in paragraph 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. Further, Local Authority Circular (2003)14 stressed the need for the development of pooled budgets for integrated equipment services. The Council is required to follow guidance contained in such Circulars unless there is good reason not to follow such guidance. 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.
- 5.3 Guidance has been issued in respect of Section 31 Partnerships and provides that Partners should be satisfied that partnership arrangements will improve the service for service users, that there should have been joint consultation with stakeholders and the arrangements should fulfill objectives identified in the Local Delivery Plans. The Council and tPCT have undertaken consultation with stakeholders as detailed in paragraph 3.18 and it is considered that arrangements will improve the ICES for service users.
- 5.4 Regulations have been made in relation to the establishment of pooled budgets and other uses of Health Act flexibilities in partnership arrangements. The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000( as amended) (the Regulations) specify which Local Authority and NHS functions can be subject to such an arrangement and specify requirements that must be complied with in respect of such arrangements. These are as follows:
- The consent of each Health Authority which has an NHS contract for the provision of services for persons in respect of whom the functions subject to the arrangement may be exercised;
  - There must be an agreement in writing between the partners covering prescribed matters including the aims of the arrangements, the contributions/payments of the partners including accommodation, staff and goods, the functions, services and potential service recipients covered the duration and operation of the agreement and how the pooled budget is to be monitored and managed.
  - One partner must be designated the host partner responsible for accounts and audit of any Pooled Arrangements and this must be reflected in the written agreement.

- 5.5 As detailed at paragraph 3.11, a Memorandum of Agreement is being agreed by officers in the Housing and Community Care Directorate of the Council and officers in the tPCT and it is proposed that this will be incorporated into the Section 31 framework agreement for joint working with the tPCT as approved by the Executive on 13 March 2006 which deals with the various matters required by the Regulations. It is proposed that the Council will act as the host partner for the pooled budget.
- 5.6 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.
- 5.7 The estimated value of the ICES contract exceeds the Public Contracts Regulations 2006 ("the EU Regulations") threshold. As approximately 65% of the value of the proposed contract relates to the supply of equipment with only approximately 35% relating to the service element of the contract, the contract is classified as a supply contract. As such, it is subject to the full application of the EU Regulations.
- 5.8 As the contract is subject to the full application of the EU Regulations, the restricted procurement procedure was used for the tender. This is akin to the two stage tender process under the Council's Standing Orders. Full application of the EU Regulations required the advertising of the contract in OJEU.
- 5.9 A further consequence of full application of the EU Regulations is that the Council must observe its provisions relating to the observation of a mandatory minimum 10 calendar day standstill period before the contract can be awarded.

Therefore once the Executive has determined which tenderer should be awarded the contract, all tenderers will be issued with written notification of the award decision. A minimum 10 calendar day standstill period will then be observed before the contract is concluded – this period will begin the day after all Tenderers are sent notification of the award decision.

As soon as possible after the standstill period ends (or once the partnership agreement has been completed is that is later) the successful tenderers will be issued with a letter of acceptance.

- 5.10 The estimated value of the ICES contract over its lifetime (including any extension) is in excess of £500,000 and the award of the contract is consequently subject to the Council's Contracts Standing Orders in respect of High Value contracts and Financial Regulations. As a result Executive approval is required for the award of the contracts.

- 5.11 The contract does not commit the council to purchase any particular quantity or any minimum amount of equipment but as it was tendered on the basis that it would be used for the purchase of council and tPCT prescribed equipment there is a risk of a challenge by the tenderer to any attempt to hold them to their tender if a decision was taken to discontinue the partnership and for the council to cease purchasing for the tPCT.
- 5.12 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would appear to apply to the letting of the contract. As a result those Council employees who are assigned to the ICES 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.
- 5.13 Some of the existing staff working in the service are agency workers. As a result of recent case law there is a risk that these workers are in law Council employees. As a result of this risk, the Council has provided tenderers with information not only about Council employees but also agency staff during the tender process in order to comply with TUPE.
- 5.14 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.
- 5.15 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 4.11 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. During the evaluation process, officers have considered the guidance and decided to apply the Code by making all of these requirements legally binding on the successful tenderer.

## **6.0 Staffing Implications**

- 6.1 This 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 all 5 of the permanently employed staff will transfer to the external contractor under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).



- 6.2 During the evaluation, the panel had regard to tenderers experience and sensitivity in dealing and managing a TUPE affected transfer of service with the Council's Human Resources and Pensions advisors specifically reviewing tenderer's proposals to support any transferring staff.
- 6.3 All permanently employed staff will be accommodated within the new external contractor's service infrastructure.
- 6.4 Staff and trade unions have been consulted and updated throughout the tender process.

## **7.0 Diversity Implications**

- 7.1 The proposals in this report have been subject to screening and officers believe that there are no negative diversity implications. This said, clearly as this particular service directly improves the quality of conditions and life for those users that it serves [namely in the main the elderly and less able] any service performance and quality improvements will be directly beneficial to these users that receive the service.
- 7.2 It is evident that an improved and better performing iCES service will have other benefits within the Health and Social Care economy in that Primary and Secondary Care services will encounter reduced pressure from the community and population base served this brought about by increasing the number of people supported in their own homes with greater independence

## **8.0 Background Information**

- 8.1 The following documentation has been produced which either directly or indirectly relates to this service:
- Brent Joint Commissioning Strategy for Older People 2005-2009
  - ICES Partnership Agreement 31 March 2005
  - Report on Brent iCES to Executive 14<sup>th</sup> Nov 2005
  - Report on Brent iCES to Executive 23<sup>rd</sup> August 2006
  - Report on Brent ICES to Executive March 2004

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**APPENDIX 1 – TENDER EVALUATION SCORING GRIDS**

**BRENT ICES CONTRACT**

**TENDER EVALUATION GRID**

Tenderer: **ONE**

	<b>Ability to meet the Service Specification [max 15%]</b>	<b>Quality and Control [max 5%]</b>	<b>Technical Competencies [max 15%]</b>	<b>Customer Care [max 10%]</b>	<b>Implementation [max 10%]</b>	<b>Refs [max 5%]</b>	<b>Cost/VFM [max 40%]</b>
<b>Method statements</b>	11	0	7	2	2		
<b>Financial Model</b>							37.15%
<b>Site Visit</b>	64	33	6	17	NA		
<b>Presentation</b>	31.43	10.29	31.43	20.57	20.57		
<b>References</b>						77 / 1.7	
<b>Score</b>	106.43 / 8.63%	43.29 / 2.49%	46.43 / 9.29%	39.57 / 6.28%	22.57 / 6.45%	77 / 4.01%	37.15%

**BRENT ICES CONTRACT**

**TENDER EVALUATION GRID**

Tenderer: TWO

	<b>Ability to meet the Service Specification [max 15%]</b>	<b>Quality and Control [max 5%]</b>	<b>Technical Competencies [max 15%]</b>	<b>Customer Care [max 10%]</b>	<b>Implementation [max 10%]</b>	<b>Refs [max 5%]</b>	<b>Cost/VFM [max 40%]</b>
<b>Method statements</b>	11	2	8	1	3		
<b>Financial Model</b>							40%
<b>Site Visit</b>	74	30	6	19	NA		
<b>Presentation</b>	32.53	10.65	32.53	21.29	21.29		
<b>References</b>						80 / 1.7	
<b>Score</b>	117.53 / 9.53%	42.65 / 2.45%	48.53 / 9.71%	41.29 / 6.55%	24.29 / 6.94%	80 / 4.10%	40%

**BRENT ICES CONTRACT**  
**TENDER EVALUATION GRID**

Tenderer: **THREE**

	<b>Ability to meet the Service Specification [max 15%]</b>	<b>Quality and Control [max 5%]</b>	<b>Technical Competencies [max 15%]</b>	<b>Customer Care [max 10%]</b>	<b>Implementation [max 10%]</b>	<b>Refs [max 5%]</b>	<b>Cost/VFM [max 40%]</b>
<b>Method statements</b>	14	19	6	5	5		
<b>Financial Model</b>							39.3%
<b>Site Visit</b>	76	43	6	13.5	NA		
<b>Presentation</b>	32.89	10.76	32.89	21.53	21.53		
<b>References</b>						42.67 / .5	
<b>Score</b>	122.89 / 9.96%	72.76 / 4.18%	48.89 / 9.78%	40.03 / 6.35%	26.53 / 7.58%	42.67 / 1.78%	39.3%

**Brent iCES CONTRACT****TENDER EVALUATION GRID – TOTAL SCORES**

<b>Tenderer Number</b>	<b>Ability to meet the Specification</b>	<b>Quality</b>	<b>Technical Competence</b>	<b>Customer Care</b>	<b>Implementation</b>	<b>Refs</b>	<b>Cost / VFM</b>	<b>SCORE</b>
<b>ONE</b>	8.63%	2.49%	9.29%	6.28%	6.45%	4.01%	37.15%	74.31%
<b>TWO</b>	9.53%	2.45%	9.71%	6.55%	6.94%	4.10%	40%	79.28%
<b>THREE</b>	9.96%	4.18%	9.78%	6.35%	7.58%	1.78%	39.3%	78.94%

