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|  | Individual Cabinet Member Decision |
| | Report of Strategic Director Customer & Digital Services |
| AUTHORITY TO AWARD A CONTRACT FOR THE SET UP AND MANAGEMENT OF COVID-19 LATERAL FLOW TESTING ON BEHALF OF THE DHSC THROUGH A DIRECT AWARD | |

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| Wards Affected: | All |
| Key or Non-Key Decision: | Key |
| Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small> | Open |
| No. of Appendices: | None |
| Background Papers: | None |
| Contact Officer(s): <small>(Name, Title, Contact Details)</small> | Thomas Cattermole, Director of Customer Access Tel: 07918 360 030 Email: Thomas.cattermole@brent.gov.uk |

1.0 Purpose of the Report

- 1.1 This report seeks approval to award a contract for the management of Covid-19 Lateral Flow Testing on behalf of the DHSC as required by Contract Standing Order 88.

2.0 Recommendation(s)

That the Deputy Leader exercising her delegated decision making powers pursuant to paragraph 13 of Part 3 of the Constitution:

- 2.1 Approves the direct award of the contract for the set up and management of Covid-19 Lateral Flow Testing on behalf of the DHSC for the period 1 July 2021 to 31 December 2021 to Number 8 Events Ltd.

3.0 Background

- 3.1 The DHSC has requested that Brent to continues the Community Lateral Flow Testing programme and to continue the successful rollout of the Community Collect scheme, across the borough.
- 3.2 Due to the lockdown restrictions easing and with the phased return to the workplace for many people, as well as social activities, testing efforts will now be refocussed on keyworkers, retail workers, construction workers, hospitality workers and students.
- 3.3 Brent is also involved in assisting the Department for Digital, Culture, Media and Sport as well as the FA and SSE for the return of fans to venues. It is therefore recommended that the Council keep in place a contract with Number 8 Events Ltd to commence on 1 July 2021 for a period of 26 weeks. Funding from the DHSC has been secured for a 13-week period commencing the 1 July 2021. However, we are requesting a 26 weeks extension, so that we can carry out a proper procurement process should testing be extended.

4.0 Detail

- 4.1 Brent originally set up Covid-19 Lateral Flow testing in nine locations across the Borough in December 2020. The Lateral Flow Tests provide a rapid result within 30 - 45 minutes and are less intrusive than the swabs for the current PCR (Polymerase Chain Reaction) tests.
- 4.2 Covid-19 Testing identifies those suffering from Covid-19 including those who are asymptomatic, and in doing so is able to identify those that need to self-isolate, thereby helping to reduce the spread of the disease.
- 4.3 The efficacy of testing in helping to limit the spread of Covid-19 is seen as essential by the Department of Health and Social Care (DHSC) and Public Health England.

As lockdown restrictions continue to ease, the need for an efficient testing regime is essential to ensure that the rates of Covid-19 infection can be closely monitored.

- 4.4 The DHSC has announced that it wants testing across the country to continue beyond its current funding end date of 30 June 2021 and has announced funding will now continue until 31 September 2021. The success of the Covid-19 Lateral Flow testing to date means that there is genuine urgency in the need to continue widespread testing across the borough.
- 4.5 Given the requirement on local authorities to continue a Lateral Flow Testing service to limit the spread of Covid, it is not considered that the Council has time to undertake a tender process to select an alternative

provider. It is impossible to comply with the usual timescales in the Public Contracts Regulations 2015. There is no time to run an accelerated procurement under the open or restricted procedures or competitive procedures with negotiation; there is no time to place a call off contract under an existing commercial agreement such as a framework or dynamic purchasing system. Officers therefore seek approval to direct award of a contract for a Lateral Flow Testing service on the basis of extreme urgency. The intention is to award a contract for the period 1 July 2021 to 31 December 2021 to address the immediate danger to the public. Further the fact that the current contractor has set up the current test sites means that it would not be possible to use another contractor to deliver Lateral Testing services from the same sites without substantial upheaval, causing significant inconvenience and disruption to testing within the borough. It is recommended therefore to award a further contract to Number 8 Events Ltd.

5.0 Financial Implications

- 5.1 The value of the contract will depend on the number of individuals tested. The estimated value of this contract extension is approximately £1.2 million.
- 5.2 It is anticipated that the cost of this contract will be funded from monies made available by the DHSC specifically for lateral testing.

6.0 Legal Implications

- 6.1 Officers are proposing the direct award of a contract. Direct award of a contract is permitted under Contract Standing Order 86 f (ii), “in cases of extreme urgency where there is an immediate danger to life or limb or property and only to the extent necessary to procure services, supplies or works necessary to deal with the immediate urgent situation provided that advice is sought from the Director of Legal, HR, Audit & Investigations for reasons of extreme urgency”. Officers have set out in paragraphs 4.3 – 4.5 the reasons why it is considered that there are grounds for extreme urgency and the Director of Legal, HR, Audit and Investigations has confirmed that CSO 86f(ii) may be relied on.
- 6.2 The value of the proposed contract is such that its award is subject to full application of the Public Contract Regulation 2015 (PCR 2015). Direct award of contracts is permitted under Regulation 32(2)(c) of the PCR 2015 which is designed to deal with urgent requirements such as the urgent public health risks requirements arising from current COVID 19 pandemic. Regulation 32(2) of the PCR 2015 sets out the following:

The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: ...

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

... the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

6.3 Therefore, in responding to the COVID-19 pandemic, Brent Council may enter into a contract without competing or advertising the requirement so long as it is able to demonstrate the following tests have all been met:

- 1) There are genuine reasons for extreme urgency.
- 2) The events that have led to the need for extreme urgency were unforeseeable.
- 3) It is impossible to comply with the usual timescales in the PCRs.
- 4) The situation is not attributable to the contracting authority.

The Deputy Leader is referred to paragraphs 4.3 to 4.5 in particular with regard to satisfying the above tests.

6.4 The decisions, which are the subject of this report, are consistent with the Council's duties as a Category 1 responder under the Civil Contingencies Act 2004.

7.0 Equality Implications

7.1 The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have "due regard" to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a "protected characteristic" and those who do not share that protected characteristic. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

7.2 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.

7.3 There is a requirement to consider how the proposed direct award of the contract for the set up and management of Covid-19 Lateral Flow Testing on behalf of the DHSC impacts those with characteristics protected under the Equality Act 2010. There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.

7.4 Due to the urgency of the situation, formal assessments have not been undertaken in respect of the decisions which are the subject of this report. Such formal assessments are not a requirement of the duty. An underlying purpose of the recommended decisions is to have regard to the protection of those with protected characteristics. In the circumstances, Officers do not consider that there are any adverse equalities impacts.

8.0 Consultation with Ward Members and Stakeholders

8.1 It is not considered in the circumstances that non-statutory public consultation is a viable or reasonable option for the Council in taking the decision that is the subject of this report, even if at other times it would have considered consultation with the public and / or stakeholders affected by the decision.

9.0 Human Resources/Property Implications (if appropriate)

9.1 It is not considered at this time that there are any Human Resources/Property/Environmental Sustainability Implications arising from the decision which is the subject of this report.

Report sign off:

PETER GADSDON

Strategic Director of Customer &
Digital Services