

MUNICIPAL YEAR 2016/2017 REPORT NO.

PART 1

REPORT OF:

Director of Finance, Resources and Customer Services

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Agenda – Part One

Item: KD 4358

Subject: Confirmation of the extension of Ernst & Young for the supply of services to support the delivery, transformation and leadership of a council wide procurement and commissioning hub

Cabinet Member consulted: Cllr. Lemonides

1. EXECUTIVE SUMMARY

- 1.1 On 1st February 2016, as part of the agreed Enfield 2017 Programme, staff from across the Council were consolidated into a procurement, commissioning and market management hub prior to the award of a long-term procurement and commissioning co-source contract which will occur in October 2016.
- 1.2 Prior to undertaking the full tender process for a long term co-management partner, Cabinet, on 18th November 2015 agreed a proposal to award an interim contract (“Interim Contract”) for the interim leadership of this Council-wide hub, until at least the 31st March 2016 (with the option of a three month extension) and delegated this award, to the Cabinet Member for Finance and Efficiency and the Director of Finance, Resources & Customer Services.
- 1.3 Following a procurement exercise under the Consultancy One Framework (“Framework”), Ernst & Young (“EY”) was confirmed as the successful tenderer and was awarded the Interim Contract for a period from 1st December 2015 – 31st March 2016 (inclusive).
- 1.4 The option to extend the Interim Contract from 1st April 2016 - 30th June 2016 (inclusive) was exercised by the parties in line with the tender and contractual documentation. The contractual arrangement was then extended and again from 1st July - 31st August 2016 (inclusive).
- 1.5 This report seeks authority to further extend the Interim Contract for an additional 2 months (1st September 2016 – 28th October 2016 inclusive) in order to maintain continuity of service to the Council, whilst the Council completes final negotiations with preferred bidders and completes the process to secure a procurement and commissioning hub co-manager.
- 1.6 The Council is currently undertaking a ‘competitive procedure with negotiation’ in order to secure a long-term co-manager. In accordance with the previous decision made on 29th June 2016 to extend the arrangement with EY, an option to exercise a “buffer period” was approved should the award of the long-term contract not be possible by 31st August 2016, as a definitive contract award date cannot be set. This is because the length of any negotiations is to a large extent dependent on the responses of, and positions taken, by bidders, and not entirely within the control of the Council. Tender responses were received from bidders on 15th August 2016 and a number have requested to negotiate the terms and conditions of the contract. This presents an opportunity to optimise on-going value for money for the Council. Approval is therefore hereby requested to extend the Interim Contract for a further 2 months, to allow negotiations to be completed and the long-term contract to be executed.

2. RECOMMENDATIONS

- 2.1 Note the Council's intention to exercise the "buffer period" option (as formerly approved under DAR dated 29th June 2016, recommendation 2.3) and further extend the existing Interim Contract with EY for a period of two months (from 1st September 2016 – 28th October 2016 inclusive) and approve the same.
- 2.2 Note that the value of the further extension of the Interim Contract and its construction is commercially sensitive until completion of the long term co-source arrangement, approved by Cabinet on 18th November 2015.
- 2.3 See Part 2 of this Report.

3. BACKGROUND

- 3.1 As part of the Enfield 2017 ("E2017") transformation programme, the Council decided to engage external expertise and capacity to work with us to develop and deliver the procurement and commissioning hub as an expansion of the successful use of a similar approach on a pilot basis within the HHASC Brokerage function.
- 3.2 EY currently leads the Council's "Procurement, Commissioning and Contract Management Hub" under a contract awarded in December 2015.
- 3.3 The E2017 Programme Team is supporting the creation of this hub in line with the E2017 principles. This hub comprises staff from across the Council and is responsible for all procurement and commissioning activity across the Council, including the delivery of a market management function that ensures that the Council's future needs across a range of services such as temporary accommodation and domiciliary care, can be delivered in a sustainable manner.
- 3.4 The Council has been working with EY to identify and target the delivery of in year savings across all areas of procurement and commissioning, building on their successful work delivered as part of the Adult Social Care Efficiency Programme. The existing Interim Contract expanded that activity across all areas of the Council, which will continue under this extension.
- 3.5 To select a preferred bidder, a mini-tender was undertaken using the Consultancy One Framework ("Framework"). The tender specifically identified the requirement to provide interim leadership of a single centralised procurement and commissioning team and the identification and delivery of in year savings across the Council.
- 3.6 The role identifying and delivering in year savings from across the Council's existing procurement and commissioning spend and other areas.
- 3.7 Following the mini-tendering exercise under the Framework, the winning tender was that submitted by EY. The Interim Contract awarded was for the period from 1st December 2015 – 31st March 2016 (inclusive), with the option to extend for a 3 month period. The Council subsequently enacted this three month extension having satisfied itself that EY had fully performed the role required of them in line with the initial contractual requirements.
- 3.8 A further two month extension was negotiated to run through the period 1st July 2016 – 31st August 2016, in order to maintain continuity of service and hub support while the full tender exercise takes place. A buffer period was also agreed to extend the interim contract again if negotiations with bidders required an extension of the procurement exercise beyond 31 August 2016. Having initially assessed the tender responses it is clear that further period of negotiations with preferred suppliers is necessary to optimise value for money ahead of contract award.

3.9 To enact a suitable buffer period this report seeks authority to further extend the Interim Contract for an additional 2 months (1st September 2016 – 28th October 2016 inclusive) in order to maintain continuity of service to the Council, whilst the Council undertakes final negotiations with preferred bidders and completes the process to secure a procurement and commissioning hub co-manager. The length of time required to carry out these negotiations is not currently known therefore agreement has been reached with EY that the extension of Interim Contract (from 1st September 2016 – 28th October 2016) may be terminated by the Council serving 1 weeks' notice to EY, if the final contract can be executed ahead of the 31 October 2016.

3.10 This scope of services included in the extension will be the same as that under the original extension.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 An option considered was to not further extend the current Interim Contract and support the hub entirely in-house. However, given that this would remove the external support and leadership of the procurement and commission function that Cabinet have agreed should be in place, this was not appropriate, neither would it offer continuity to staff in terms of line management and professional support.

4.2 The option to move to a full tender is being pursued and the Council has recently issued a full tender in pursuit of a long term co-management partner of the service. However due to negotiations, the full procurement process will not be complete before the current Interim Contract extension end-date of 31st August 2016, and so is not available to the Council at this time.

4.3 The other option considered was to make a direct award to another external provider. However, this would not be in line with the Council's standing orders or contract regulations and would not meet legal requirements and so has been discounted.

5. REASONS FOR RECOMMENDATIONS

5.1 Cabinet confirmed that that it would be beneficial for all procurement and commissioning staff from across the Council to have worked alongside a delivery partner and to have benefited from the associated skills transfer within such an arrangement, before any recruitment and selection process to posts within the new hub is undertaken. It is important from both a staff development perspective and the need for consistent high quality procurement advice to be available to support the Council, not least in the procurement of contracts that related to statutory safeguarding duties, that this arrangement is continued until a long term contractual award is made.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.2 Please refer to Part Two.

7. Legal Implications

7.1 Section 111 of the Local Government Act 1972 ("LGA") gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to the discharge of any of its functions and the Localism Act 2011 provides the Council power to do anything that

individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles.

- 7.2 The Council also has a general power of competence in section 1(1) of the Localism Act 2011. This states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation.
- 7.3 In addition, section 112 of the LGA permits the appointment of such officers that the Council deems necessary for the discharge of its functions. The proposals set out in this report are consistent with this power.
- 7.4 The Council procured the Interim Contract through a “further competition” process in accordance with the Framework terms, with assistance from the Council’s Corporate Procurement Team. The Framework required the resulting call-off contract to be based on the Framework terms and the Council, at the time of initial extension, was advised to ensure that the extension agreement was based on the same. The Council has been advised that: (i) the scope of the services to be provided under the further extension should be the same as those encompassed within the original scope of the call-off contract; and (ii) the validity of the initial extension will depend on the Interim Contract having been properly procured through and in accordance with the terms of the Framework.
- 7.5 As the current proposed further extension from 1st September – 28th October 2016 was not included in the original tender documentation or procurement, it is possible that it could be successfully challenged on the basis that the Public Contract Regulations 2015 (“PCRs”) have not been complied with. Should such a challenge be brought, the Council could raise a possible defence pursuant to Regulation 72(1)(e) of the PCRs. The Council has been advised on the risk of a challenge being successful and, in assessing such risk, the Council may also consider the likelihood of such a challenge being brought in the context of the full, open procurement of the services which is currently underway.
- 7.6 There is no defined “cut off” point at which this further extension begins to breach the public procurement regime. However, the shorter the period of the additional extension then, all other factors being equal, the lower the risk is likely to be. The Council was formerly advised to take this into account when seeking to deliver the new, open procurement of these services in a manner which is as expeditious as possible, consistent with the aims and objectives of the Council for that new procurement.
- 7.7 All legal agreements (and applicable ancillary documentation) must be in a form approved by the Assistant Director of Legal & Governance Services. It is not anticipated that the further extension will require materially revised contractual documentation, but merely an acknowledgement by the parties of the extension of the current arrangements on their existing terms.
- 7.8 The Council shall ensure that it’s Constitution and in particular, it’s Contract Procedure Rules are complied with.

8. Property Implications

Not applicable.

9. Procurement Implications

The risk of possible challenge has been minimised as:

- the Interim Contract was procured by undertaking a 'further competition' under the Crown Commercial Services Consultancy One Framework Agreement;
- the extension agreement will be based on the Framework Agreement terms and conditions;
- the scope of the service provided under the extension agreement will remain unchanged; and
- the Council has commenced the procurement for a long term co-managed partner.

10. KEY RISKS

- 10.1 The risk associated with non-award of this extension would be the failure to comply fully with safeguarding requirements relating to adult social care contracting.
- 10.2 The risk that the contract will not achieve savings greater than its cost is mitigated by the inclusion of a risk and reward element that directly reduces the cost that would have otherwise applied to the leadership of the procurement and commissioning hub.
- 10.3 Staff would not have consistent leadership and development in the period up to the future restructure of Procurement, Commissioning and market management hub and would therefore be potentially disadvantaged in any future recruitment process.
- 10.4 The risk of a procurement challenge to proposed extension.

11. IMPACT ON COUNCIL PRIORITIES

11.1 Fairness for All

The creation of a procurement and commissioning hub will support all services across the council, enabling them to deliver front line services to the community.

11.2 Growth and Sustainability

The creation of a procurement and commissioning hub will support transparent procurement and commissioning activity through the sustainable procurement policy promoting the use of lots and local suppliers and SME's.

11.3 Strong Communities

The creation of a procurement and commissioning hub will support all services across the council, enabling them to deliver front line services to the community.

12. EQUALITIES IMPACT IMPLICATIONS

- 12.1 Support for vulnerable groups is enhanced by this contract extension as it will maintain a breadth of experience that can be brought to bear on contract negotiations for service.
- 12.2 All staff impacted by these proposals will be treated equally and in line with the E2017 People Principles that have been agreed by Cabinet and the Trade Unions.

13. PERFORMANCE MANAGEMENT IMPLICATIONS

13.1 As with all aspects of E2017, progress and performance will be monitored by STB, whilst financial savings will be confirmed by the Assistant Director Finance and Business Support.

14. HEALTH AND SAFETY IMPLICATIONS

Not directly applicable.

15. HR IMPLICATIONS

All staff implications will be addressed via E2017 in the manner agreed by Cabinet and form part of the fortnightly discussions held with the Trade Unions.

16. PUBLIC HEALTH IMPLICATIONS

Improved contracting for Public Health outcomes will increase value for money across a wide range of service and embed public health as part of core business.