

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

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| <b>Decision Maker:</b> | Executive Member for Adult Social Care                             |
| <b>Date:</b>           | 16 May 2011  |
| <b>Title:</b>          | Panel of Preferred Providers – Waiving of Contract Standing Orders |
| <b>Reference:</b>      | 2655   |
| <b>Report From:</b>    | Director of Adult Services   |

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#### 1. Executive Summary

- 1.1. This report describes the process for establishing and using a Panel of Preferred Providers (the 'Panel'), all of which will be registered with the Care Quality Commission, upon whom the County Council's Adult Services Department will call on to provide a range of quality domiciliary care and support services to service users at competitive prices/rates. This Panel will replace the existing Approved List which has been in place since 1993.
- 1.2. Contract Standing Order 5.6 which deals with Preferred Lists provides that the value of any contract entered into, calculated in accordance with Contract Standing Order 4, may not exceed the relevant European Union (EU) threshold, which is currently £156,442. Given that the nature of domiciliary care and support services is such that the principles of aggregation would apply, it is likely that significant number of contracts entered into under the Panel would exceed the relevant EU threshold.
- 1.3. This report therefore seeks the necessary Executive Member approval for a waiver of Contract Standing Order 5.6 pursuant to Contract Standing Order 13 in order to access the Panel in the manner described.

#### 2. Contextual information

- 2.1 The Corporate Services Review of Procurement recognised that the County Council's procurement performance is central to the successful delivery of individual services, corporate objectives and resource management. The County Council's ambition is to be recognised as a leading exponent of modern procurement practice and to create a framework that will foster and support ongoing improvements in performance across the County Council.
- 2.2 The outcome of the review was a set of recommendations that will deliver a strategic and systematic approach to procurement, corporate management

of performance and improvement priorities, cost reduction, enhance compliance with relevant policies and procedures and increase percentage of spend that is recorded against contracted and approved suppliers.

- 2.3 Within these recommendations specific savings targets, against a background of increased demographics and higher dependency, were agreed with individual services. For Adult Services Domiciliary Care this target was agreed at £2.5m recurring by the end of the financial year 2013/14, with a phased build up over the preceding financial years. However, the Comprehensive Spending Review and additional efficiency targets have now set revised targets for 2011/12 at £7.1m.
- 2.4 It is believed that setting up the Panel to replace the current Approved Provider List will give the opportunity to challenge historical assumptions that domiciliary care rates are currently set at competitive rates. For example, the county wide tender for the Welcome Home Scheme resulted in a reduction of 18% in the rates of one of the successful providers and more recently the Negotiating Teams have achieved substantial reductions with a number of key providers.
- 2.5 It is estimated that the efficiencies gained, by establishing and using the Panel will enable the department to achieve in the region of £2.8m, towards the overall Phase 2 Efficiency target of £7.1m.
- 2.6 The current list of Approved Providers has been in place since 1993 and Terms of Inclusion have not been fully reviewed since 1997. The Terms of Inclusion have been revised to reflect services that are outcomes focused and provide a flexible contractual arrangement that meets the aspirations and choice of service users.

### **3. Legal Implications and Potential Procurement Approach**

- 3.1 A framework agreement for Domiciliary Care and Support Services is restrictive e.g. Mini Competition would not enable services to be commissioned within the timescales required and there is no scope for adding additional providers during the term of the agreement. The question therefore raises the issue of the suitability of a framework agreement and questions whether a Panel of Preferred Providers would not be a more suitable option.
- 3.2 Domiciliary Care and Support Services are Part B services under EU Procurement Regulations and therefore the full regulations do not apply. The aim of the procurement strategy described in Appendix 1 to this report is to ensure that we achieve the best commercial outcome whilst upholding the fundamental treaty principles of transparency, equal treatment, non-discrimination, proportionality and mutual recognition.
- 3.3 Appendix 1 presents a 'hybrid' approach which adopts the key principles of framework contracts, yet maintains the flexibility of a Panel of Preferred Providers. Key features of the procurement model will include an advertised (but not in the Official Journal of the European Union (OJEU)) framework-type approach, which allows suppliers to join the Panel at specified periods

during its term and allows a swift call-off process. Such an approach would also meet the requirements in relation to Approved Lists under Contract Standing Orders and the legal requirements for Part B services in the EU Procurement Regulations.

- 3.4 Because of the nature of the service it is necessary to engage quickly with providers to meet service users needs. To ensure that providers are identified in a fair and transparent way, a toolkit has been developed that will select providers based on price and market share.
- 3.5 Contract Standing Order 5.6 which deals with Approved Lists provides that the value of any contract entered into, calculated in accordance with Contract Standing Order 4, may not exceed the relevant EU threshold, which is currently £156,442. Given that the nature of domiciliary care and support services is such that the principles of aggregation would apply. It is likely that a significant number of contracts entered into under the Panel would exceed the relevant EU threshold. It is therefore necessary to seek Executive Member approval for a waiver of Contract Standing Order 5.6 pursuant to Contract Standing Order 13 in order to access the Panel in the manner described. The likely level of aggregated spend on individual contracts will be in excess of £60m per annum.
- 3.6 The issue of a waiver will not prevent best value from being obtained as the Panel will be properly advertised, there will be an opportunity for new members to be admitted on an annual basis and a robust procedure for procuring services under the Panel will be strictly adhered to as set out at Appendix 1. The Panel will address the issue of price variation across the county and will result in a savings of approximately £2.8m.
- 3.7 Furthermore, any procurement risk will be mitigated given the fact that the services contemplated constitute Part B services under the Public Procurement Regulations and therefore not all of the regulations apply. The key treaty principles of transparency, equal treatment and non-discrimination will however all be met as a result of the robust procedure for setting up and accessing the Panel described in Appendix 1.

#### **4. Finance**

- 4.1 Establishing a Panel of Preferred Providers (PPP) will address the significant price variations that we have across the County and will provide a centralised approach that will ensure consistency of approach when working with providers of domiciliary care and support services.
- 4.2 The PPP is key to achieving efficiencies and will give an opportunity to challenge historical assumptions that current domiciliary care and support services rates are competitive. It is expected that the savings target of £2.8m will be achieved.

#### **5. Human Resources**

- 5.1 There are no HR implications arising from this report.

## **6 Equality Impact Assessment**

- 6.1 The Domiciliary Care budget for Adult Services Older Persons is approximately £60m for 2011/12 and apart from relatively small number of block contracts, the majority of the spend is through spot purchasing through the care management or care purchasing function. Spot purchasing is made from the current Approved Provider List, which has in excess of 170 approved providers. Providers are admitted onto the list if they have been registered with the Care Quality Commission (CQC).
- 6.2 Contract Standing Order 5.6 which deals with Preferred Lists provides that the value of any contract entered into, calculated in accordance with Contract Standing Order 4, may not exceed the relevant European Union (EU) threshold, which is currently £156,442. Given that the nature of domiciliary care and support services is such that the principles of aggregation would apply, it is likely that the majority of contracts entered into under the Panel would exceed the relevant EU threshold.
- 6.3 It is therefore necessary to seek the necessary Executive Member approval for a waiver of Contract Standing Order 5.6 pursuant to Contract Standing Order 13 in order to access the Panel in the manner described .
- 6.4 The financial modelling that has been undertaken to arrived at the capped rates, has risk assessed provider viability and geographic coverage within the scope of the PPP.

## **7. Risk Assessment**

- 7.1 **Risk:** Spot purchasing from the Preferred Provider list is not compliant with Contract Standing Orders, with a subsequent impact on the timely delivery of service and will also result in a shortfall in the efficiency target.
- 7.2 **Resolution:** Approval to waive Contract Standing Orders will ensure that all spot purchases are Contract Standing Order compliant.

## **8. Recommendation**

- 8.1 Approval be given for a waiver of Contract Standing Order 5.6 pursuant to Contract Standing Order 13 in order to access the Panel in the manner described.

## 1 SETTING UP THE PANEL

### 1.1 Introduction

The Panel will consist of a list of pre-selected suppliers whose competence and suitability to supply the County Council would have been tested in a 'competitive process'. The services contemplated are Part B (non-priority services). This means that they may be procured without following all of the EU Procurement Regulations.

The Treaty obligations to be applied when appointing providers onto the Panel are the fundamental principles of:

- transparency,
- equal treatment,
- non-discrimination on grounds of nationality,
- proportionality,
- mutual recognition.

In broad terms, these principles have been interpreted by both the ECJ and the European Commission as requiring prior advertisement (not necessarily in OJEU) of a proposed 'contract award' and in general, the subsequent holding of some form of open and non-discriminatory competition. This interpretation aligns with the procedure contemplated under Contract Standing Orders 5.3 – 5.9.

### 1.2 Procurement strategy

The Panel will be established for a period of three years. The Panel will be similar to a Framework Agreement in that it will provide a framework by which the County Council will order services from Panel providers as the need arises but will give the County Council the flexibility of changing the composition of the Panel annually by admitting new providers and removing from the Panel any providers in the event that their circumstances change to the extent that they no longer meet the criteria for inclusion on the Panel.

The services will be divided into lots by specialism and also geographical area. Service Providers will be admitted to deliver one or more lots. Dividing services into lots will ensure that Panel Providers are awarded contracts equitably taking into consideration their capacity and ability.

### 1.3 Procurement route

Although the contracts to be procured from the Panel are not subject to all of the EU Procurement Directives, the potential value of the services (£60 m) dictates that the County Council follows a robust form of competition (both in

procuring the Panel and in awarding services off the Panel) proportionate to the nature and value of the services.

It is proposed that a procedure which mimics the EU Restricted Procedure be followed in setting up the Panel. This will give the County Council the opportunity of vetting potential providers by employing a mixture of selection and award criteria whilst satisfying the Treaty Principles set out in paragraph 1.1 above thus reducing the risk of challenge.

#### 1.4 Procurement process

##### *Advertisement*

The opportunity will be advertised in a medium (or a combination of media) which will be accessible to potentially interested providers. Typically, adverts will be placed on the County Council's Website, the national press and also a trade journal if applicable.

An e-mail will also be sent to all providers on the County Council's register of providers to alert them to the opportunity. This will be done only after the adverts have been published in the chosen media.

The public notice will specify a period within which interested parties can express an interest in being included on the Panel and the method by which the interest is to be expressed.

##### *Documentation*

The documents to be issued to potential providers as part of the process are:

- An application form which combines selection and some award criteria. Although information for award will be collected when establishing the Panel, this will be used only when commissioning individual packages.
- A Service Specification
- Draft terms of Inclusion (which will form the framework of contracts entered into with providers for specific services).

##### *Evaluation*

Evaluation criteria will be designed and developed with operational, commissioning and contracting staff with service users involved in key areas of the evaluation.

The selection and evaluation criteria will be published in the application form. Evaluation of applications will be centred on:

- Technical ability and capacity;
- Skills and knowledge;
- Track record and experience;
- Financial standing;
- Health and safety;
- Quality assurance;
- Equalities policy and practice;
- Employment practice and structure;
- Minimum Insurance Requirements;
- Relevant Registrations and Accreditation.

All applications returned to the County Council within the prescribed period will be evaluated against the published criteria.

#### *Admission to the Panel*

Admission to the Panel will not be a guarantee to providers that the County Council will award any contract to them under the Panel. A contract will only be formed following the issue of an Individual Service Contract which will incorporate the Terms of Inclusion.

Prices will be fixed and will be included in the Terms of Inclusion.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

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| <b>Hampshire safer and more secure for all:</b>          | yes |
| Corporate Improvement plan link number (if appropriate): |     |
| <b>Maximising well-being:</b>                            | yes |
| Corporate Improvement plan link number (if appropriate): |     |
| <b>Enhancing our quality of place:</b>                   | yes |
| Corporate Improvement plan link number (if appropriate): |     |

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

DocumentLocation

None

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

A full Equalities Impact Assessment has been published and is available on the County Council website at <http://www3.hants.gov.uk/as-equality-ia-archive.htm>.

The summary of the Equalities Impact Assessment is below:

- 1.1 The Domiciliary Care budget for Adult Services Older Persons is approximately £60m for 2011/12 and apart from relatively small number of block contracts, the majority of the spend is through spot purchasing through the care management or care purchasing function. Spot purchasing is made from the current Approved Provider List, which has in excess of 170 approved providers. Providers are admitted onto the list if they have been registered with CQC.
- 1.2 Contract Standing Order 5.6 which deals with Preferred Lists provides that the value of any contract entered into, calculated in accordance with Contract Standing Order 4, may not exceed the relevant European Union (EU) threshold, which is currently £156,442. Given that the nature of domiciliary care and support services is such that the principles of aggregation would apply, it is likely that the majority of contracts entered into under the Panel would exceed the relevant EU threshold.
- 1.3 It is therefore necessary to seek the necessary Executive Member approval for a waiver of Contract Standing Order 5.6 pursuant to Contract Standing Order 13 in order to access the Panel in the manner described.
- 1.4 The financial modelling that has been undertaken to arrived at the capped rates, has risk assessed provider viability and geographic coverage within the scope of the PPP.

### **2. Impact on Crime and Disorder:**

- 2.1. No impact has been identified.

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

No impact has been identified.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No impact has been identified.