

THE ROYAL BOROUGH OF KENSINGTON AND  
CHELSEA

AND

THE LONDON BOROUGH OF HAMMERSMITH AND  
FULHAM

SUPPORTING PEOPLE PROCUREMENT  
PROGRAMME

DRAFT



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

#### Document History

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## **1.0 INTRODUCTION**

- 1.1 The Royal Borough of Kensington and Chelsea (RBKC) and the London Borough of Hammersmith and Fulham (LBHF) – the principal contracting authorities - have developed a joint framework agreement as the basis of procuring the majority of their Supporting People services. The London Boroughs' of Ealing and Harrow have indicated they wish to selectively use this framework via an access agreement as secondary contracting authorities.
- 1.2 The use of the framework agreement for procuring Supporting People services is intended to achieve a number of strategic objectives (listed at section 3 – Principle of Selection). In particular, the procurement process required providers to tender for services based on a common core specification and to deliver value for money.
- 1.3 A framework agreement enables an authority to comply with the EU's requirement for equal treatment and non discrimination and allows the creation of a list of 'preferred providers', where the contract terms in relation to price and quality can be firmly established.
- 1.4 The list of preferred providers has been ranked on the basis of the assessment of their submitted price at up to 200 hours and quality. This ranking has been derived from the assessment at stage 1. Call off will require the application of an assessment based on the specification for a specific service. This is ranking at stage 2.

## **2.0 THE PROTOCOL**

- 2.1 This protocol provides guidance to the principal and secondary authorities and information to preferred providers regarding the call off and mini-tender process from the Framework Agreement.
- 2.2 If the secondary contracting authorities choose to select a preferred SP provider from the framework agreement this protocol should be used as a guide. The principal contracting authorities will accept no liability for the misapplication of this protocol or the Framework Agreement or Access Agreement.
- 2.3 Principal authorities should notify the other principal authority of its intention to call-off or mini-tender<sup>1</sup> from the framework agreement. Secondary authorities should notify the principal authorities of their intention to call off or mini-tender. The 4 Local Authorities will endeavour to keep the procurement timetable up to date and be mindful of capacity issues for providers when calling off services.

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<sup>1</sup> Mini tender also referred to as mini competition.

### **3.0 THE PRINCIPLE OF SELECTION**

3.1 The following are the key principles for calling off from the joint framework agreement to achieve the contracting authorities strategic procurement objectives :

- To ensure that providers are treated fairly and that nothing is done which is discriminatory, improper or which distorts competition,
- To select providers on the basis of the most economically advantageous submission (taking account of quality and price), except when:;
  - There is a need to ensure that there is a diversity of providers that are called off from the framework agreement, through management of market share subject to an agreed business case not to select the most economically advantageous,
- To ensure that the call off process is efficient and does not duplicate the tender process that set the framework agreement up initially.
- To ensure that where additional requirements need to be included in a specification for a procured service these are applied fairly and consistently.

### **4.0 QUALIFICATIONS ON THE USE OF THE FRAMEWORK AGREEMENT**

4.1 Where services are called off from the framework agreement, either as being the most economically advantageous or by mini – tender; the individual authorities will contract directly with selected providers using their own Supporting People contracts as amended to compliment clauses within the framework agreement.

4.2 A minimum level of 35 hours of support per week will be commissioned using the call off process (a lower volume could be procured subject to negotiation between the authority and the most economically advantageous provider) –see Pricing Schedules in Method Statements Parts C and D included in the tender documentation.

4.3 The principal contracting authorities reserve the right to contract any accommodation based or floating support services outside of the framework agreement. However, the intention is to use the framework agreement for the vast majority of services that fall into the service categories and only go outside of the framework agreement on a business case basis. This business case is to be agreed through the principal contracting authorities' governance process.

- 4.4 The framework agreement places an obligation on providers to supply services to the principal contracting authorities when they are called off as the most economically advantageous provider although the authorities will take into account any circumstances where it would be unreasonable to call off services from a provider.
- 4.5 The secondary contracting authorities have the option of using the framework as required and as such there will be no obligation on providers to supply services to the secondary contracting authorities.
- 4.6 There is no obligation on providers to submit a mini-tender at stage two of the process to either principal or secondary authorities.
- 4.7 In calling off services the authorities may call off on the basis of most economically advantageous proposal (based on combined quality and price). This means that there will be no need to mini-tender the service and the provider can be selected from the list as set out in section 7.
- 4.8 Authorities can also call off on the basis of a 'mini' tender. The process for this is set out in section 10. Mini tender will be used when:
- additional requirements need to be specified to deliver a specific service.
  - An authority wishes to encourage innovative approaches to service delivery
  - An authority wishes to encourage joint working or partnerships
  - Other service specific and justifiable reasons
- 4.9 Partnerships and consortia
- 4.9.1 Authorities can specify that they are seeking proposals from providers to work in partnership with small or specialist agencies, for instance for reasons of diversity or equalities, or to meet specialist service requirements. Partner and consortia arrangements are only applicable where procurement is by mini tender
- 4.9.2 These arrangements will be set out in an addendum to the Framework Agreement service specification for a mini tender. Where such arrangements are contracted the 'lead' provider will need to enter into a sub contract with such agencies, or develop partnership or consortia arrangements.
- 4.9.3 Those agencies that are sub-contacted will not necessarily be preferred providers under the framework agreement, but they will be expected to be accredited for Supporting People in West London or to seek to become accredited. The authority would contract the lead contractor on the terms specified in the framework and expect the service to be provided to the level of quality specified.

## **4.10 Principle on the use of, and pricing Locum Cover**

### **4.10.1 When to apply locom cover**

### **4.10.2 Pricing Locum Cover**

#### **5.0 The Data Base**

- 5.1 A database has been developed which can rank each provider according to the most economically advantageous submission. For stage two call offs the database will provide rankings based on the specifics of the service being commissioned, for example number of day hours, under or over 200 hours, concierge or sleep-in requirements.
- 5.2 The database can also be used for mini competitions. (see section 10). With a mini competition new requirements can be requested within the existing criteria and the relative weighting can be altered to take account of the new requirements. The database enables the weighting to be changed and new scores to be added. The list is then ranked according to these criteria and weightings and the most economically advantageous provider given.
- 5.3 Where TUPE applies the database allows for TUPE prices to be entered and the ranking of the most economically advantageous provider given.
- 5.4 After each adjustment to the database (as set out in 5.1-5.3 above), the master data base MUST be reset to its original settings with a copy of re-ranked providers generated when used for 5.1-5.3 above, being kept for audit purposes.

#### **6.0 ACCREDITATION OF PREFERRED PROVIDERS**

- 6.1 All providers on the framework agreement are required to either be accredited in West London, or be accredited by ROCC. The advert for the framework agreement stated that to be eligible to provide a

specific service under the Framework a providers accreditation status will need to be subsequently updated.

- 6.2 Currently the West London accreditation sub-group is looking at how accreditation status should be updated on a regular basis. One of the issues that needs consideration is the level of quality assessed under the QAF for current services. Currently the West London accreditation process requires that the *'Organisation has operational policies covering as a minimum the policies required by the Quality Assessment Framework.*
- 6.3 Providers will be required to verify that they still comply with accreditation and PQQ requirements prior to being awarded a contract.
- 6.5 Authorities will be required to take up references prior to awarding a contract under the framework agreement.

## **7.0 MARKET SHARE**

- 7.1 Market share or dominance is a key consideration of the principal and secondary authorities. There is a commitment to maintain diversity of provision and providers within Supporting People.
- 7.2 The Supporting People provider market is largely local and if one or two providers dominate it could result in increases to prices in the future and a potential impact on quality may be seen.
- 7.3 The principal authorities' will carry out analysis over the first 6-12 months of the Framework Agreement to assess the impact of the Framework on market share and potential dominance. Consideration will be given to potential methods for capping market share in future.
- 7.4 Options for capping market share.

An authority may only want one provider to supply generic floating support services. However for the most part authorities will want to maintain a diverse market of providers and therefore the contracting authorities are looking at:

Capping the market share of providers across all the categories by:

- Total number of units / support hours in a borough
- Total number of units in a borough by service category

Capping the market share of providers across all the categories by:

- Percentage value of total SP grant in a borough
- Percentage value by service category in a borough

Capping the market share of providers in all four boroughs by:

- Total number of units / support hours in the four boroughs
- Total number of units in the four boroughs by service category
- Percentage value of total SP grant in all four boroughs
- Percentage value by service category in all four boroughs

## **8.0 CALL OFF WITHOUT COMPETITION**

- 8.1 The authorities can award a contract without going out to competition. The framework agreement places an obligation on providers to supply services to RBKC and LBHF when they are called off, although the authorities will take into account any circumstances where it would be unreasonable to call off services from a provider.
- 8.2 Call off without competition will be appropriate where the service to be delivered is within the specification set out as Part B of the tender documents, and where the provider's method statement meets all the requirements for the delivery of the service being procured.
- 8.3 The process would involve the authority awarding the contract to the most economically advantageous provider. The database for the framework will rank providers on the basis of the most economically advantageous at stage 2 once the actual number of hours required, for the specific service (such as over 200 hours and concierge or sleep-in requirements) are input into the database. This may result in a re-ranking of those providers that have been selected as preferred providers on that list.. The top provider must be awarded the contract (this may in future be subject to not exceeding the agreed market segment 7 above).
- 8.4 Where a selected provider is not able for justifiable reasons to deliver the service as requested the authority will select the next preferred provider ranked at stage 2 (and so on).

## **9.0 CALL OFF WITHOUT COMPETITION WHERE TUPE APPLIES**

- 9.1 The rates submitted by providers for entry onto the Framework assume that TUPE do not apply. Where an existing service is being re-commissioned, all providers who offer the particular service should be provided with the TUPE information. The borough will allow 2 weeks for an existing provider to provide TUPE information. Subject to providers signing a TUPE confidential agreement. Providers will be given four weeks to provide a TUPE price for the service for the service and afforded the opportunity to adjust their rates. Any revised rates will need to be entered on the provider's data sheet.



- 9.2 The existing service provider should be requested to provide information relating to staff likely to transfer through the Transfer of Undertakings (Protection of Employment Regulations 2006 (“TUPE”))
- 9.3 This information, detailed below, is permitted to be supplied under The Data Protection Act. The principal and secondary contracting authorities will ensure that all information supplied is kept as strictly confidential and will not disclose the same or any part thereof to any of the preferred providers unless they have completed in writing a TUPE information confidentiality agreement. (attached at appendix 2).

This list is not exhaustive:

- Job Title
- Date of birth
- Start date
- Rate of pay
- Hours worked per week
- Days of work
- Overtime hours/rate of overtime
- Holiday entitlement
- Holiday taken
- Sick leave in the last twelve months
- Pension details
- Outstanding injury/claim
- Any agreement with Trade Unions
- Notice period
- Location of the office to which the employee reports
- Any other fringe benefits

- 9.4 The TUPE prices returned by the preferred providers are entered onto the database (to substitute for the existing prices) and the provider re-ranked according to the existing weighting.
- 9.5 This process of entering TUPE prices could also form part of a mini competition (see section 10) and this would allow the weightings to be varied – although any change to the weightings must be stated in the letter inviting provider to submit a TUPE price)..

## 10.0 CALL OFF WITH A MINI COMPETITION

- 10.1 The authorities can hold a mini competition between those providers that have been accepted onto the framework. The authorities are only obliged to approach those providers in the relevant service category and would not be required to open up a mini competition to all the providers on the framework.
- 10.2 A mini competition will be required where the specification needs to be supplemented, or there are particular aspects of the service that need to be defined. It does not involve repeating the same assessment that led to the providers being selected initially, although the weightings for the award criteria can be varied to take account of the supplementary needs.
- 10.3 All providers need to be informed of any supplements to the specification and the resulting changes to weightings. Any changes must be reasonable in the circumstances. If any area is to be rescored (because the weighting has changed), all providers should be asked to provide updated information for that area.
- 10.4 It will be up to each authority to determine how a mini competition would work. However, new criteria should not be added. Any new requirements should be included under the existing criteria. Weightings can be varied to reflect the particular requirements. The following example illustrates how this would work.

	<b>Existing Weighting</b>	<b>Score</b>	<b>New Weighting</b>	<b>New Score</b>
Strategic Rel	10%	8%	10%	8%
Quality	15%	12%	15%	12%
Partnership	10%	7%	10%	7%
Capability & Ex	20%	15%	10%	7.5%
Added Value	5%	3%	5%	3%
Price	40%	40%	20%	20%
Capability & Ex (New requirements)			30%	15%
<b>Total</b>	<b>100%</b>	<b>85%</b>	<b>100%</b>	<b>72.5%</b>

- 10.5 In this example information on the new requirements (re delivery) has been requested under Capability and Experience (New requirements). In this example the weighting for price now forms 20% of the total and capability and experience (existing weighting plus new weighting) forms 40% of the weighting, all other weightings remain the same.

- 10.6 The authority should award the call off to the provider that has submitted the most economically advantageous bid on the basis of the award criteria and the new weightings. Using the above example the new weighting means that the provider's score has changed from 85% to 72.5% and this may affect their ranking and therefore whether they are likely to be awarded the service that has been specified for min competition.

## **11.0 TRANSITION ARRANGEMENTS**

### **Delivering appropriate exit strategies for services where a new provider is selected (attach Liz's stuff on decommissioning ,commissioning services as appendices**

- 11.1 Each procurement will require an exit strategy and commissioning managers will be responsible for co-ordinating the handover of services from one provider to another in line with the stated exit strategy. In addition to the requirements contained in the respective borough's steady state contracts relating to service termination, this will include:

- A list of key service information to be handed over (over and above that legally required through TUPE);
- up to date needs assessments and support plans of service users;
- key building related information (for accommodation based services);
- key external contacts and contracts for the service;
- establishment of appropriate management arrangements with owning RSLs (for accommodation based services);
- regular project handover meetings co-ordinated by commissioning managers.

## **12.0 MANAGEMENT OF THE PREFERRED PROVIDER LIST**

- 12.1 The management of the preferred provider list will be the responsibility of Kensington and Chelsea as lead principal contracting authority. The four authorities will meet quarterly to review the operation of the preferred provider list and the master data base.

- 12.2 Using the data base for stage 2 selection of providers.

- 12.2.1 Notes on using the database for call off at Stage 2 are attached at appendix 1. Authorities should also refer to the technical annex of this protocol for full instructions on using the data base, (Appendix 2).

- 12.3 For audit purposes a copy of the stage 2 workbook for each and every call off, whether by economically advantageous, by TUPE or by mini competition must be saved, ie the amended data base used for the specific call of should be saved under the procurement project's name.
- 12.4 After each use, and once the amended database has been saved, the database must be returned to its master settings so that it can be re-used for a new project. NB if this is not done previous settings will be included in the new project and this will lead to bogus results

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USE OF THE DATA BASE WORKBOOKS AT STAGE 2

JJ to complete

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## Schedule H - TUPE Information - Confidentiality Agreement

In consideration of the Royal Borough of Kensington and Chelsea ("the Council") endeavouring to provide, without warranty as to the accuracy or completeness of all or any such information, the information relating to staff likely to transfer were the Transfer of Undertakings (Protection of Employment) Regulations 1981 ("TUPE") to apply from the incumbent Contractor, and which is reasonably required by us in order to submit a tender, we hereby agreed that we will keep strictly confidential all information supplied to us and will not disclose the same or any part thereof to any other person, organisation or company and shall not make any use of such information or any part thereof for any purpose other than specifically authorised by the Council in writing.

We further agree that access to all such confidential information will be restricted only to those reasonably required to know it and that, in any event, our employees, agents, consultants and sub-contractors (if any) (without prejudice to any permission required from the Council thereto) are bound to us to hold such information in confidence and to use such information only for the purposes of submitting our tender and (if successful) performance of a resultant contract.

We hereby agree to indemnify the Council in respect of all costs, claims, demands, actions or losses (including legal costs) arising from any breach by us of this agreement or breach of confidentiality of such information by any said employees, agents, consultants or sub-contractors.

Signed by ..... [Name]\*

for and on behalf of ..... [Tenderer] duly authorised

Dated .....

\*The undertaking must be signed by the person who will sign the tender submission and who is authorised to bind the Company