

# Occupational Health Services Provision

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**Report to:**

Investment and Finance Board.....	26 October-2023
Commissioner's Board .....	7 November-2023
Deputy Mayor's Fire and Resilience Board.....	21 November 2023
London Fire Commissioner .....	

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**Report by:**

David Rowell – Assistant Director, Procurement and Commercial

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**Report classification:**

For decision

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**For publication**

For publication after 01 February 2024

I agree the recommended decision below.



Andy Roe

London Fire Commissioner

Date **This decision was remotely signed on 06 December 2023**

# PART ONE

## Non-confidential facts and advice to the decision-maker

### Executive Summary

The London Fire Commissioner's current contract for occupational health services is due to cease on 4 March 2024, following a one-year agreed extension as set out in LFC-0706y and approved in Deputy Mayor for Fire and Resilience Decision DMFD170. That same DMFD170 decision also approved going out to tender for a new contract with a term of seven years from March 2024. Due to unforeseen issues arising during the new procurement exercise, that tender exercise was required to be abandoned.

The LFC now has only one viable option available to it for the Occupational Health provision to continue without interruption of the service, and this report requests that approval be given to the proposed procurement strategy of directly awarding a short-term contract to HML, whilst a new open tender exercise is re-started for a longer-term contract.

#### For decision

##### For the London Fire Commissioner

The LFC agrees to a one-year contract to HML from March 2024 and commit expenditure set out in Part 2 to enable the continuation of the Occupational Health provision without disruption.

The LFC notes the new tender exercise for a longer-term contract will be undertaken immediately and in parallel as intended in DMFD170.

The LFC agrees to delegate the authority to award the contract for the Occupational Health provision and approve the expenditure to the Assistant Director, Procurement and Commercial.

## 1 Introduction and background

- 1.1. The LFC's current contract for occupational health services with Health Management Ltd (HML) is due to cease on 4 March 2024, following a one-year agreed extension as set out in LFC-0706y and approved in Deputy Mayor for Fire and Resilience Decision DMFD170. There are no further extension options available under this contract.
- 1.2. Within DMFD170, the Deputy Mayor for Fire and Resilience authorised the London Fire Commissioner (LFC) to commit revenue expenditure set out in Part 2 for the purposes of extending the current occupational health (OH) services contract, by up to twelve months up to 4 March 2024 under the terms of that contract. The Deputy Mayor also authorised commitment of revenue expenditure set out in Part 2 for the purposes of tendering for a new occupational health contract for seven years - an initial term of three years from 5 March 2024, with the possibility to extend by a

further four years in two yearly increments.

- 1.3. Prior to this, procurement completed a feasibility study in 2021, confirming that a shared occupational health service arrangement with Transport for London (TfL) was not feasible within the next three years.
- 1.4. LFC commenced a new open tender exercise for the seven-year contract but it was discontinued, following consideration of legally privileged and confidential advice, following an inadvertent disclosure on the procurement portal of both legal and commercially sensitive advice documents to the bidders.

### **Procurement Recommendation**

- 1.5 There is insufficient time to conduct a new competitive tender exercise and have a new supplier ready before March 2024. Therefore, to ensure continuity of the service, it is necessary for LFC to make a direct award to HML for a short period (1 year) to ensure service continuity. The direct award will be made pursuant to Public Contract Regulations 32(2)(c) (urgency) and (b(ii)) (technical reasons). LFB will publish a Voluntary Ex-Ante Transparency (VEAT) notice.
- 1.4 A short-term direct award to HML while LFB launches a full re-procurement for a longer-term provision will ensure that other potential bidders in the market have the opportunity to compete for a longer-term contract at the earliest possible date.
- 1.5 Details of the direct award costings are included in Part 2 of this report.
- 1.6 Several other options, from the use of frameworks to collaboration, have been explored and considered as part of the options appraisal. These options together with costs and legal appraisal of each are included in the Part 2 report. The proposed procurement route is considered to be the only viable option which is also a legally compliant route that ensures continuity of service in the timescales available.

## **2 Objectives and expected outcomes**

- 2.1 LFC will continue to have an occupational health service in place, ready to deliver a high-quality service in accordance with the agreed contract service level agreements.
- 2.2 The LFC has a legislative duty under, inter alia, the Health and Safety at Work Act (1974) and the Management of Health and Safety at Work Regulations (1992) for both the physical and psychological well-being of its employees. Serious management failures resulting in a breach of the duty of care can result in organisations and individuals within it being subject to prosecution. The availability of specialist occupational health advice to help inform safety critical decisions from a clinical perspective is therefore necessary from a corporate risk perspective.
- 2.3 The Health and Safety Executive (HSE) has identified two elements to occupational health for employers to concentrate on. The first and most important element is the effect of work on employees' health and the health of others. This includes:
  - identifying what can cause or contribute to ill health in the workplace;
  - determining the action required to prevent people being made ill by work, based on a well-informed assessment of the risks;
  - introducing suitable control measures to prevent ill health and injuries from being sustained in the workplace.

- 2.4 Occupational health service includes the provision of routine periodic medicals and health surveillance so that the LFC complies with its legislative responsibilities under, inter alia, the management of Health and Safety at Work Regulations 1999 and the Control of Asbestos Regulations 2015.
- 2.5 The occupational health service provides advice regarding employee fitness for safety critical activities and identifying the cause of poor health within the workplace. This service is integral to LFC's overall health and safety strategy and its Safety Management System to provide as safe a working environment as possible for all its employees and the public with whom it interacts.
- 2.6 The LFC does not possess any in-house clinical expertise to help it achieve the above and so it seeks agreement on the approach forward to secure an occupational health service. Without the occupational health service, the LFC would not have a means of routinely obtaining advice regarding employee fitness for role, and as such would not be able to continue to recruit and on-board new staff, including firefighters. It is a critically important service for staff.
- 2.7 The LFC requires medical advice for other activities including the proper administration of the Firefighters Pension Schemes and the Local Government Pension scheme, in particular the assessment of individuals' eligibility for ill health retirement and when required to review the status and appropriateness of pension payments being made to existing pensioners, as required by legislation.
- 2.8 The recommended procurement option of undertaking a one-year direct award and in parallel running an open tender procedure has the benefit of providing the LFC with an additional opportunity to further future proof the longer-term solution by incorporating any further changes to requirements that have arisen from the current People Services review and provides the opportunity to re-test the market via a competitive process in order to provide further assurance of value for money.

### **3. Equality comments**

- 3.1 The LFC and the Deputy Mayor for Fire and Resilience are required to have due regard to the Public Sector Equality Duty (section 149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on different people, taking this into account and then evidencing how decisions were reached.
- 3.2 It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
- 3.3 The protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), race (ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex, and sexual orientation.
- 3.4 The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:
- eliminate discrimination, harassment and victimisation and other prohibited conduct.
  - advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
  - foster good relations between people who share a relevant protected characteristic and persons who do not share it.
- 3.5 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due

regard, in particular, to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic.
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

**3.6** The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

**3.7** Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- tackle prejudice
- promote understanding.

**3.8** An equality impact assessment has been completed for the LFC's provision of Occupational Health Services as appended in LFC-0437y. A revised equality impact assessment will be drafted upon selection of the supplier and clarity regarding future service delivery. The revised equality impact assessment will provide details of locations, accessibility, and processes.

## **4 Other considerations**

### **Workforce comments:**

- 4.1 To protect the LFC's establishment numbers and minimising staff's time away from duty when attending Occupational Health, location of the service is being explored. The service is currently provided from a central location in Southwark. The award shall therefore stipulate that at least one location is provided centrally, and the provider recognises there may be an appetite to change this to a multi-location model in the future.
- 4.2 Whilst the Occupational Health provision is not changing it has been accepted that there is no present need to consult, however the project manager has committed to engage in consultation via Equality Support Groups and Positive Improvement Team while exploring the longer-term provision.
- 4.3 The LFC will continue to explore the opportunity to collaborate with other GLA partners including TfL, particularly as this provides the opportunity to deliver what felt to be more of an 'in-house' service rather than outsourced service.

### **Sustainability comments**

- 4.4 Throughout the pandemic, the LFC learned a great deal about how remote services, such as telephone or video case management appointments can be equally successful as face-to-face services. This has been evidenced in management information received by the LFC's current occupational health provider. As a result, the LFC has requested a continuation of hybrid services which reduces staff requirement to travel to their appointments which in turn also reduces the

LFC's travel expense costs associated with staff attendance to Occupational Health appointments.

## Procurement comments

- 4.5 This report has been prepared by the Procurement and Commercial team; therefore, all procurement issues are set out in more detail in the body of the report.

## Communications comments

- 4.6 Any change of provider will be communicated to representative bodies and LFC.

## 5 Financial comments

- 5.1 This report seeks approval for LFC to undertake a direct award for a period of 1 year from 5 March 2024 to 4 March 2025 for Occupational Health provision, allowing for a full tender procedure to take place in parallel for the future provision.

**The detailed financial information to support this request is contained within Part 2 of the report.**

## 6. Legal comments

- 6.1 The report recommends the LFC agree to commit expenditure and directly award a one-year contract to HML and re-start a new tender exercise immediately as intended in DMFD170 which ensures the continued provision of Occupational Health Services from March 2024 and beyond without a break in the service.
- 6.2 Under Section 9 of the Policing and Crime Act 2017, the London Fire Commissioner ('the Commissioner') is established as a corporation sole with the Mayor appointing the occupant of that office.
- 6.3 Section 327D of the Greater London Authority Act 1999, as amended, the Mayor may issue to the Commissioner specific or general directions as to the manner in which the holder of that office is to exercise his or her functions.
- 6.4 By direction dated 1 April 2018, the Mayor set out those matters for which the Commissioner may require the prior approval of either the Mayor or the Deputy Mayor for Fire and Resilience ('the Deputy Mayor'). In particular, paragraph (b) of Part 2 of the said direction requires the Commissioner to seek the prior approval of the Deputy Mayor before "[a] commitment to expenditure (capital or revenue) of £150,000 or above is identified in accordance with normal accounting practices...". The proposed expenditure, set out in Part 2, will exceed this financial threshold, accordingly, prior approval from the Deputy Mayor will be sought.
- 6.5 The proposed contract must be procured in accordance with the Public Contract Regulations 2015, The LFC, as the Contracting Authority, may, in the present circumstances, lawfully rely on regulation 32 of the Public Contract Regulations 2015 to make the award. The Part 2 (Confidential) report sets out detailed legal advice on compliance of the proposed procurement strategy together with the legal implications of the alternate options considered.

# List of appendices

Appendix	Title	Open or confidential*
	none	

## Part two confidentiality

Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part Two form, together with the legal rationale for non-publication.

**Is there a Part Two form:** YES