

## REQUEST FOR DEPUTY MAYOR FOR FIRE AND RESILIENCE DECISION – DMFD221

### Title: Occupational Health Services Provision

#### Executive summary:

This report requests the approval of the Deputy Mayor for Fire and Resilience (the Deputy Mayor) to authorise the London Fire Commissioner (LFC) to commit revenue expenditure, of an amount set out in Part 2 of this decision, for the purposes of directly awarding a one-year contract to Health Management Limited/Medigold to provide occupational health services to London Fire Brigade. This is while a new open tender exercise is restarted for a longer-term contract.

The LFC'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 170. That 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 had to be abandoned. The tender exercise will be restarted, with an expectation that the successful bidder will begin providing services by March 2025.

The London Fire Commissioner Governance Direction 2018 sets out a requirement for the LFC to seek the prior approval of the Deputy Mayor before "[a] commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices".

#### Decision:

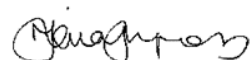
That the Deputy Mayor for Fire and Resilience authorises the London Fire Commissioner to commit revenue expenditure, as set out in Part 2, for the purpose of entering into a one-year contract with Health Management Limited/Medigold to ensure continuity in occupational health service provision.

#### Deputy Mayor for Fire and Resilience

I confirm that I do not have any disclosable pecuniary interests in the proposed decision.

The above request has my approval.

#### Signature:



#### Date:

06/12/2023

## **PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE DEPUTY MAYOR**

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1. Report LFC-23-092 to the London Fire Commissioner (LFC) explains that the LFC's current contract for occupational health (OH) services with Health Management Ltd (HML)/Medigold is due to cease on 4 March 2024. This follows a one-year agreed extension, as set out in LFC-0706y and approved in Deputy Mayor for Fire and Resilience Decision (DMFD) 170. There are no further extension options available under this contract.
- 1.2. Within DMFD170, the Deputy Mayor for Fire and Resilience (Deputy Mayor) authorised the LFC to commit revenue expenditure set out in DMFD170 Part 2 for the purposes of extending the current OH services contract by up to 12 months, to 4 March 2024 under the terms of that contract. The Deputy Mayor also authorised commitment of revenue expenditure, as set out in Part 2, for the purposes of tendering for a new OH contract for seven years. This comprises 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. In advance of that decision, London Fire Brigade (LFB) had completed a feasibility study in 2021 which confirmed that a shared OH service arrangement with Transport for London (TfL) was not feasible within the next three years.
- 1.4. LFB subsequently commenced a new open-tender exercise for the seven-year contract. However, it was discontinued following consideration of legally privileged and confidential advice.

#### *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/Medigold for a short period (one 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 notice of the award.
- 1.6. A short-term direct award to HML/Medigold will run parallel with the launch of a full reprocurement for a longer-term provision. This ensures that other potential bidders in the market have the opportunity to compete for a longer-term contract.
- 1.7. Details of the direct award costings are included in Part 2 of this report.
- 1.8. 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 and practical appraisal of each one – are included in the Part 2 report. The proposed procurement route is considered the only viable option in the circumstances that ensures continuity of service in the timescales available.

#### **2. Objectives and expected outcomes**

- 2.1. The primary objective of the proposal is to ensure the LFC will continue to have an OH 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, among others, 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 wellbeing 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 OH 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 has identified two elements to OH for employers to concentrate on. The first, and most important, 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. The OH service includes the provision of regular medicals and health surveillance. This is so that the LFC complies with its legislative responsibilities under, among others, the Management of Health and Safety at Work Regulations 1999 and the Control of Asbestos Regulations 2015. It also ensures that the LFC provides advice regarding employee fitness for safety-critical activities, and identifying the cause of poor health within the workplace. This service is integral to the 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.
- 2.5. The LFC does not possess any in-house clinical expertise to help it achieve the above. It therefore seeks agreement on the approach forward to secure an OH service. Without the OH service, the LFC would not have a means of routinely obtaining advice regarding employee fitness for role; as such, it would not be able to continue to recruit and on-board new staff, including firefighters. It is a critically important service for staff.
- 2.6. The LFC requires medical advice for other activities, including the proper administration of the Firefighters Pension Schemes and the Local Government Pension Scheme. Particularly significant are the assessment of individuals' eligibility for ill health retirement; and when required, a review of the status and appropriateness of pension payments being made to existing pensioners, as required by legislation.
- 2.7. 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 arising from the current People Services review. It also 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 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 OH 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 minimise staff's time away from duty when attending OH, the service's location is being explored. It is currently provided from a central location in Southwark.
- 4.2. The award shall therefore stipulate that at least one location is provided centrally. The provider recognises there may be an appetite to change this to a multi-location model in the future.
- 4.3. Whilst the OH 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 the Positive Improvement team while exploring the longer-term provision.

- 4.4. The LFC will continue to explore the opportunity to collaborate with other GLA partners including TfL, particularly as this provides the opportunity to deliver a service that is felt to be more 'in-house' than outsourced.

*Sustainability comments*

- 4.5. 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 OH provider. As a result, the LFC has requested a continuation of hybrid services, which reduces the staff requirement to travel to their appointments. This in turn reduces the LFC's travel expense costs associated with staff attendance to OH appointments.

*Conflicts of interest*

- 4.6. There are no conflicts of interest to declare from those involved in the drafting or clearance of this decision.

## **5. Financial comments**

- 5.1. This decision seeks approval for the LFC to undertake a direct award for one year, from 5 March 2024 to 4 March 2025, for OH service 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 with Part 2 of the decision.
- 5.2. There are no direct financial implications for the GLA.

## **6. Legal comments**

- 6.1. Under Section 9 of the Policing and Crime Act 2017, the LFC is established as a corporation sole with the Mayor appointing the occupant of that office.
- 6.2. Section 327D of the Greater London Authority Act 1999, as amended, the Mayor may issue to the LFC specific or general directions as to the manner in which the holder of that office is to exercise his or her functions.
- 6.3. By direction dated 1 April 2018, the Mayor set out those matters for which the LFC may require the prior approval of either the Mayor or the Deputy Mayor. In particular, paragraph (b) of Part 2 of said direction requires the LFC 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.
- 6.4. General Counsel for the LFC has advised that the proposed contract must be procured in accordance with the Public Contract Regulations 2015; and the LFC may, in the present circumstances, rely upon 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).

## **Appendices and supporting papers:**

Appendix 1 - LFC-23-092 – Occupational Health Services Provision Part 1

## Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will be published either within one working day after approval or on the defer date.

### Part 1 – Deferral:

#### Is the publication of Part 1 of this approval to be deferred? YES

If YES, for what reason:

In the event the information contained in this Part 1 is the subject of a request for information under section 1 of the FOI Act, it is considered that access can be denied on the basis that such information constitutes exempt information under section 43(2) of the FOI Act on the basis that part of the information includes contract costs to be negotiated with the current service provider, and the disclosure of such information would have, or would be likely to have, an adverse impact on the LFC's position and related commercial interest in awarding the current OH service contract.

#### Public interest assessment

At present, on balance, it is considered that the public interest is best served if the information is not disclosed at this point. Disclosure by the LFC or the GLA would be likely to have a detrimental effect on the LFC's position in ongoing contract negotiations. Therefore, absent of any countervailing factors, the public interest weighs in favour of maintaining the privilege. The eligibility of these exemptions should be reassessed in the event of an FOI request for this information, as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

**Until what date:** 1 February 2024

**Part 2 – Confidentiality:** Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

**Is there a part 2 form? YES**

### ORIGINATING OFFICER DECLARATION:

Drafting officer to  
confirm the following  
(✓)

#### Drafting officer

Richard Berry has drafted this report with input from the LFC and in accordance with GLA procedures and confirms the following:

✓

#### Assistant Director/Head of Service

Niran Mothada has reviewed the documentation and is satisfied for it to be referred to the Deputy Mayor for Fire and Resilience for approval.

✓

#### Advice

The Finance and Legal teams have commented on this proposal.

✓

#### Corporate Investment Board

A summary of this decision was reviewed by the Corporate Investment Board on 4 December 2023.

✓

### INTERIM CHIEF FINANCE OFFICER:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

**Signature:**



**Date:**

04/12/2023