

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DMFD170

Title: Occupational Health – Tender for Services

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

This information is not for publication until the stated date, because:

The report contains information that is commercially sensitive.

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed: 1 December 2023

Legal adviser recommendation on the grounds for not publishing information at this time:

In the event the information contained in this Part 2 and/or its appendix is the subject of a request for information under section 1 of the Freedom of Information Act 2000 (the Act), it is considered that access can be denied on the basis that such information constitutes exempt information under section 43(2) of the Act, on the basis that part of the information includes contract extensions 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 London Fire Commissioner's (LFC's) position and related commercial interest in extending the current occupational health 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 would be likely to have a detrimental effect on the LFC's position in ongoing contract negotiations.

The eligibility of these exemptions should be reassessed in the event of a Freedom of Information 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.

The recommended period for non-publication of Part 2 is until such time a contract extension notice is published in accordance with regulation 51 of the Public Contracts Regulations 2015.

Legal Adviser – I make the above recommendations that this information should be considered confidential at this time.

Name:

Date:

Once this form is fully authorised, it should be circulated with Part 1.

Confidential decision and/or advice:

This report requests that the Deputy Mayor for Fire and Resilience authorises the London Fire Commissioner (LFC) to commit revenue expenditure of up to £2,037,533, for the purposes of extending the current occupational health (OH) services contract, by up to 12 months.

This report also requests that the Deputy Mayor for Fire and Resilience authorises the LFC to commit revenue expenditure of up to £14,262,730, for the purposes of tendering for a new OH contract for an initial term of three years, with the possibility to extend by a further four years in two yearly increments.

Background information:

See 'Procurement comments', at section 4.6 onwards, in part 1 of the report. As a result of delays in procurement the LFC now seeks approval to extend the current contract for OH services by up to 12 months to allow for contract mobilisation.

Due to the complexity of the LFC's OH service, and the IT in place to support related processes, it was originally predicted that a two-year mobilisation period would be required.

Owing to challenges in the procurement processes mentioned above, it is likely the LFC will have approximately six months to mobilise any new OH contract.

The specification stipulates that the successful supplier must provide a timeline for mobilisation, including an experienced project manager to oversee the implementation. The invitation-to-tender pack makes clear the contract start date and the deadline for mobilisation.

Due to mobilisation timeframes being reduced to six months, to mitigate the risk to the efficient running of the LFC's service, the LFC seeks approval for a further extension to its current OH contract by up to 12 months.

The LFC will not commit to extending the current OH contract until a new contract has been awarded and an assessment made as to the additional time required to mobilise.

The current OH service accommodation is leased for the purpose of the LFC's contract. The current OH supplier, Health Management Ltd (HML), had to provide six months' notice, by the end of July 2022, of their intentions for the following contract period.

Owing to the procurement timelines, HML's deadline to negotiate terms with their landlord will be prior to the award of the new contract.

Therefore, additional costs may be incurred for the relocation of services plus costs of a new tenancy.

A delay to the start date of a new OH contract, by up to 12 months, is likely to have a corresponding delay on discussions regarding collaboration with TfL. It is possible that, when conversations regarding collaboration with TfL are revisited, the LFC will be in either a mobilisation period for a new contract or the early stages of its implementation.

Until the conclusion of the procurement and governance processes, it is difficult to quantify the extent to which the delayed procurement has impacted the LFC's ability to mobilise an OH contract with an effective date of 5 March 2023.

The cost for the current OH service for 2022-23 has been confirmed at £1,625,475. This figure has been used to estimate future contract costs, as set out below.

- Scenario 1: The LFC can mobilise a new OH contract by 5 March 2023.
 - The estimated cost of the contract, effective 5 March 2023, is £1,934,316 per annum. This includes an additional contingency on top of 2022-23 approved budget.
 - In this scenario, the total amount for which approval is being sought is £13,540,212 plus annual inflation increases, based on average weekly earnings (AWE), the index used under the current contract, for up to a seven-year contract term.
 - The recommendation in this report, to extend the current contract up to 12 months, would not be utilised in this scenario.
- Scenario 2 (recommended): The LFC requires an extension of up to 12 months to the current OH contract, followed by a new contract from 5 March 2023 for a duration of up to seven years.
 - The estimated cost of the 12-month contract extension, effective 5 March 2023, is £2,037,533. This includes additional growth of £412,058, proposed to meet expected mobilisation costs.
 - This growth will be included in LFC's 2023-24 budget submission to the Mayor. Growth is subject to the receipt of approval via the annual budgeting process. It is anticipated that this contingency uplift will be sufficient to cover any additional costs associated with the loss of the current premises during the 12-month extension period.
 - If this growth is not approved, the LFC will be unable to meet its statutory obligations, as set by the Health and Safety at Work Act 1974 and the Control of Asbestos Regulations 2012.
 - A cost-savings exercise in 2018 saw the scope of the OH contract reduced significantly; as a result there is limited scope for further savings against the contract. The Wellbeing Screening product could be withdrawn at a saving of £10,156 (based on 2022-23 prices); however, this would contradict the intentions of the recently approved Wellbeing Strategy (report LFC-0737) which sets out a greater focus on promotion and prevention wellbeing services in addition to the continued focus on treatment services such as OH, and counselling and trauma services.
 - The estimated cost of the new OH service contract, effective 5 March 2024, is £2,037,533.
 - In this scenario, the total amount for which approval is being sought is £16,300,263, over an eight-year period, plus future AWE increases.

Financial comments

This report sets out two recommendations for the provision of LFC's current contract for OH services, which is due to cease on 4 March 2023.

The first option contained in the Part 1 report proposes that LFC mobilises a new OH contract with an estimated cost of £1,934,316 per annum, effective from 5 March 2023. This is made up of a base budget of £1,625,475, plus a budget increase of £308,840 made up of a contingency uplift. This option is for a total expenditure of £13,540,212 for a seven-year contract period plus future inflation costs. The contingency cannot be met from within the existing base budget, but would be funded from the growth bid included in the budget process for 2023-24.

The second option contained in this report proposes an extension of up to 12 months to the current OH contract, with an estimated cost of £2,037,533 for 12 months, followed by a new contract for up to seven years from March 2024.

This second option sets out the preferred option with a whole life cost of £16,300,263 as shown below. This is the preferred option as, due to delayed procurement timelines, without an extension the LFC will have less than four months to mobilise a new OH contract. Timelines estimated to mobilise were previously discussed as being up to 24 months; however, this has been reduced to up to 12 months with process improvements and efficiencies.

Recommended option 2

£	One-year current contract extension	Proposed seven-year contract	Whole-life cost
Budget	1,625,475	14,262,730	15,888,205
Growth bid (2023-24)	412,058	0	412,058
Total Cost	2,037,533	14,262,730	16,300,263

There is an annual budget of £1,625,475 for the OH contract included in the budget for 2022-23. If scenario 2 is approved, annual growth of £412,058 will be required for 2023-24 plus annual inflation uplift for future contract costs from 2024-25 onwards. This growth cannot be guaranteed at this stage, but will be included in the LFC budget submission to the Mayor. The final budget 2023-24 will be approved in March 2023, and this will confirm final approval of the proposed growth.

The savings achieved will vary based on product volumes used and the supplier's remuneration package. However, as an estimation, based on 1.5 OH nurse FTE being required to deliver new starter medicals and routine periodic medicals, when the LFC moves to a technician model it would expect to save in the range of £18,000 per annum.

Savings may not be realised in the initial contract term due to redundancy and Transfer of Undertakings (Protection of Employment) (TUPE) costs, if required. Any potential savings will be considered and reported on as part of the budget process for future years.

It is expected that annual inflationary increases will be based around the AWE. All LFC contractual inflationary increases are reviewed on an annual basis. The LFC budgets for inflation on an item-by-item basis, and the LFC will review those assumptions as part of its budget process for 2024-25 and future years. If inflation rates are above current assumptions, a resulting budget increase will need to be submitted as part of LFC's annual submission to the Mayor's GLA Group budget process; and/or the contract will need to be reviewed to assess whether it is possible to reduce the annual cost via a reduction in service. If inflationary increases result in in-year financial pressures, this will be reported on as part of regular financial reporting and met through the use of the Budget Flexibility Reserve. The Budget Flexibility Reserve has a forecast balance of £27,273,000 as at the end of the 2022-23 financial year, as reported in the Q1 financial position report, the latest published information. The Q2 report, which is currently being finalised, is expected to include a forecast year-end balance of £22,014,000.

LFC standard terms and conditions include clauses on indexation and termination that can be utilised in the event that inflationary pressures affect the performance of the contract. If a contract is no longer viable, the LFC will seek to terminate it on this basis, or work with suppliers to pause delivery and/or renegotiate what is being delivered. This is preferable to inserting a break clause for inflation as such pressures apply across the market, so it is unlikely that benefits will be gained from terminating a contract in order to go back out for competition.

The proposed remodelling of the OH contract, as set out in part 1 of the report, is anticipated to result in cost savings in any future contract term and support reduced TUPE costs ahead of further exploration of collaboration with TfL in 2026.

Legal comments

The LFC General Counsel notes that the extension of the current OH services contract for up to 12 months at a cost of up to £2,037,533 will be in accordance with reg 72b(ii) of the Public Contract Regulations 2015. The market and current supplier are unaware that this could happen. Until the new OH services contract has been procured, the LFC will not know the length of time the current OH services contract will need to be extended for, if at all.

Should the current OH services contract be extended, then a contract extension notice shall be published in accordance with regulation 51 of the Public Contracts Regulations 2015.

Confidential appendices and supporting papers:

Part 2 of report LFC-0706y – Occupational Health – Tender for Services