

Open Report on behalf of Andrew Crookham, Executive Director - Resources

Report to:	Councillor R D Butroid, Executive Councillor for People Management, Legal and Corporate Property
Date:	6 September – 10 September 2021
Subject:	Re-procurement of the Occupational Health Contract
Decision Reference:	I022292
Key decision?	Yes

Summary:

This paper sets out a proposal for the re-procurement of the Occupational Health Contract for four years from April 2022 to March 2026. The estimated value of the contract over this period is £1.1M.

Recommendation(s):

That the Executive Councillor

- (i) Approves the procurement of an Occupational Health Service to cover the period April 2022-March 2026.
- (ii) Delegates to the Executive Director Resources, in consultation with the Executive Councillor for People Management, Legal and Corporate Property, the authority to determine the final terms of the procurement and contract and approve the form and entering into of all contractual and other documentation necessary to give effect to the procurement.

Alternatives Considered:

- **Do nothing:** This is not a viable option as the current contractual arrangement will expire on 31 March 2022 and the council requires an Occupational Health service to meet its statutory duties.
- **Decommissioning:** This is not a viable option as decommissioning of the service will result in a gap in provision for LCC staff and will mean the Council is not meeting its expected responsibilities in relation to monitoring and managing the health of its employees.
- **Partnership:** This is an option that has been explored with the Local Acute Sector Trust, ULHT who have their own in-house provision. The Trust is not able to

prioritise any work on exploring this and their service capacity is fully utilised with the needs of their own staff. A Section 75 Agreement under the NHS Act 2006 is not a viable option as the provision of Occupational Health is a pure service and not a sharing of functions. Therefore this cannot be delegated through a Section 75 Agreement.

- **Insourcing:** This is not a viable option as the Council does not currently have the infrastructure or specialist skills in place in order to directly undertake Occupational Health services.

Reasons for Recommendation:

Re-procurement of the Occupational Health Service is the only viable option currently available to maintain delivery, utilising ESPO's Occupational Health Services Framework will help ensure contract that is good value.

It will ensure that the Council continue to fulfil its statutory duties in respect of the provision of Occupational Health services and supports good practice in the recruitment and management of staff.

As part of the Council's Health and Well-being strategy, there are a number of projects on-going that will impact on the management of Mental Health support. The new contract will have flexibility to enable a better integration of support from internal and external provision. We are currently exploring alongside this procurement, what support the specialist mental health NHS trust for Lincolnshire could provide in addition to the local integrated care system initiatives already in place, so as to complement any occupational health service.

1. Background

1.1 The service

The Council has a legal obligation to ensure the health and safety of its employees and Lincolnshire Fire and Rescue (LFR) has a statutory obligation to carry out regular fitness tests and health surveillance. The Council's Occupational Health Contract facilitates fulfilment of these obligations.

In addition to the statutory responsibilities described above the Council's Occupational Health Contract facilitates or fulfils a number of other objectives and important functions for the Council including:

- the key objective – as prioritised by CLT - to support employee health and wellbeing; this priority has gained impetus since the onset of Covid-19 and the resultant strain and difficulties experienced by employees dealing with the pandemic and working from home

- facilitating a quicker return to work for absent employees, helping to retain essential skills, improve service delivery and reducing the cost of sick pay and cover
- identifying reasonable adjustments to support employees with long-term health conditions and to enable them to work in a safe manner
- provision of access to Independent Qualified Medical Practitioners is a statutory requirement of the Council's and LFR's pension schemes when making assessments for ill-health retirements.

Other core services of the contract include:

- Pre-Employment Screening, Medicals & Enquiries
- Management Referrals for Occupational Health Assessments
- Pensions and Ill Health Retirements
- Night Worker Health Assessments
- Workstation/ Workplace Assessments (incl. Redeployment)
- On-site Clinics
- Maternity Assessments

In addition to the core services, there are optional services that are charged for as used e.g. specialist psychological support, dyslexia assessments and support, and physiotherapy.

1.2 Current contract arrangements

The Council has been in contract with its incumbent Occupational Health supplier, HML since 7th March 2017.

In March 2021 the Council extended the contract by a further 12 months due to prevailing difficulties brought about by the pandemic, including:

- the already limited Occupational Health market's resources were occupied elsewhere to deal with the Covid outbreak, meaning suppliers in this market were not in a position to have bid for our opportunity
- uncertainty as to how the contract would operate going forwards, during and after Covid restrictions. This meant that the Council was not in a position to accurately specify its requirements.
- uncertainty over if and how face-to-face appointments would work during and after Covid restrictions.

A number of issues have been experienced with the current contract resulting in late appointments; these issues will be addressed through the specification and performance management of the new contract to ensure that the new contract offers a better service:

- recruitment of doctors to deliver the Medical Assessments: there is a national shortage of doctors and this impacts the availability of doctors to fulfil Occupational Health requirements. To mitigate this issue, video appointments for medical appointments will be utilised extensively reducing the requirement for doctors to travel into Lincoln to carry out their work freeing up resources and extending the geographical range from which doctors can be drawn.
- supplier presence on site in Lincoln: Lincolnshire's rurality and the current requirement for on-site premises at different locations in Lincolnshire from which to deliver appointments has affected the supplier's ability to deliver appointments and to deliver them on time. Video appointments will mitigate this as we are moving away from face to face appointments for each medical appointment carried out however some appointments cannot be carried out via video appointments: hearing assessments require a soundproof room and LGV medicals for fire-fighters which are required to be carried out in face to face facilities.

1.3 Procurement

- Proposed route to Market: ESPO's Occupational Health Services Framework 985_19
- Contract Length: 4 years (2 years fixed +1 extension year +1 extension year) from April 2022- March 2026
- Estimated Contract Value based on the current working volumes at current rates (the councils pay unit rates for each appointment): As shown in the table below, the Council's including LFR's total contract value estimate is approximately £1.1 million for the 4 year period from April 2022 until March 2026

Council	Average Annual Spend	Total Contract Value (4 years)
Lincolnshire County Council	£181,000 Including approximately £50,000 per annum recharged to schools.	£724,000
Lincolnshire Fire & Rescue	£86,000	£344,000
North Kesteven District Council	£5,000	£20,000
TOTAL:	£272,000	£1,088,000

All of the Lincolnshire District Councils were invited to collaborate in this procurement and all but North Kesteven declined. Therefore 2 contracts will be let: 1 contract for LCC including LFR and 1 for NKDC.

An Open tender procedure was considered but at the procurement of the current Occupational Health contract only one tender was received demonstrating low market availability and interest in the previous opportunity and so an alternative procurement approach is preferred.

The ESPO Occupational Health Services Framework is populated with 11 established service providers. Pre-market engagement was carried out with these 11 providers and 4 suppliers responded confirming that they were able to meet our requirements fully. Utilising the ESPO framework significantly reduces the administration, resources and cost to the Council to conduct the procurement and reduces the risk and burden on Suppliers of understanding and responding to the Council's bespoke requirements and terms and conditions – a critical factor given the current market situation. The framework call-off contract is a known entity to suppliers and offers the Council and the supplier balanced commercial terms. Further to this an effective framework for performance management is built into ESPO's call-off contracts and this can be modified to suit the Council's own requirements for KPIs. As members of ESPO the Council will share in the "rebate" the supplier pays to ESPO for calling off the ESPO Framework.

1.4 Cost Implications

- The anticipated spend is in line with the provision provided for in the HR budget in recent years. Currently Services are recharged for additional services such as Dyslexia Assessments, Psychological treatments and Physiotherapy. Additional charges may be incurred if it is felt a changed provision could bring a return on investment, for example: investment in a different route for mental health referrals may bring about an earlier return to work.
- Responses from suppliers will be scored using an appropriate ratio of cost against quality. The previous tender used a price quality split of 40%/60% which is being considered for this procurement or alternatively a 30%/ 70% split. Inclusion on the ESPO framework entails suppliers meeting a set of selection criteria reducing the importance of evaluating quality elements and responses at the award stage. That said given the nature of the service and the importance of keeping people well and in work, quality remains a priority. From experience the likely variation of quality responses from suppliers on the framework (who are used to tendering for such work) a 40%/60% is still likely to result in price being the determining factor between good responses.
- Savings will be made by an efficient service which allows employees to return to work or stay in work thus retaining skills and reducing sick pay but these are difficult to quantify.
- Health surveillance and specialist assessments can identify issues and treatments at an early stage and prevent more serious illness for individuals and risks of personal injury claims
- The use of more video appointments and mobile units will also reduce travel time and costs for both the supplier and the employee.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that 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.

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.

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, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

The service will be available to all Employees of the County Council, including Lincolnshire Fire and Rescue. A range of access routes – telephone, video call and face to face assessments will ensure the service is accessible in all circumstances,

The service is intended to support employees to manage health needs that may impact on their ability to remain gainfully employed. Individual advice and appointments are offered to identify adjustments that can be made and any equipment to be provided, as required in line with duties under the Equality Act. Pre-employment checks also identify adjustments required during the recruitment process, to enable persons with disabilities to be supported into employment.

If a severe and long term illness results in a need for ill health retirements, the service will positively support this, and be relevant particularly for employees who may have a disability.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

The contract is an important element of the way in which the Council supports the health and wellbeing of its staff and in so doing contributes to the health and wellbeing of a proportion of the county's population.

It thereby contributes directly to the objectives of the JHWS.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The Occupational Health Service can support employees who may be misusing alcohol drugs or other substances to identify treatment and therapy. The assistance and treatment provided may also help to address issues which if left unaddressed may lead to crime or anti-social behaviour.

3. Conclusion

Re-procurement of the contract by utilisation of the ESPO's Occupational Health Services Framework 985_19 is the most efficient and fair process. This will provide a contract that is good value.

It will ensure that the Council continue to fulfil its statutory duties in respect of the provision of Occupational Health services and supports good practice in the recruitment and management of staff.

As part of the Council's Health and Well-being strategy, there are a number of projects on-going that will impact on the management of Mental Health support, such as the introduction of Mental Health First Aiders. There is also a review of the Employee Support and Counselling Service to offer a wider range of service and flexible access. The new contract will have flexibility to enable a better integration of support from internal and external provision.

4. Legal Comments:

The Council has the power to procure the contract proposed.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor

5. Resource Comments:

The expected cost of the proposed contract is budgeted for in the Council's approved Revenue Budget which is reviewed on an annual basis as part of the normal budget setting process.

6. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Overview and Scrutiny Management Board at its meeting on 26 August 2021. The comments of the Board will be reported to the Executive Councillor

d) Risks and Impact Analysis

- **Low market interest:** The previous procurement exercise had only 1 response (from the current supplier) as there is a shortage of skilled Occupational Health staff, particularly in this geographical area.

Allowing the supplier to offer the majority of the appointments on a virtual basis as well as allowing suppliers to carry out certain assessment from their own mobile units should provide a more attractive proposition. Market engagement, utilising a supplier questionnaire has indicated that there are 4 potential suppliers that are interested in the contract delivered on this basis.

- **Management of Supplier's Performance:** with only a very limited resource for contract management the Service Area requires a performance management framework including KPIs which are robust and easy to administer. We will ensure that the standard framework KPIs are modified in such a way as to make administration quick and easy. Further, ESPO's Framework Agreement has built-in termination clauses in relation (but not limited) to the supplier not meeting their obligations under the contract, or severely breaching the contract in some way.

Performance will be managed via in-house HR Services team, with input from the LFR Management team for the Fire provision. Procurement will assist HR Services by ensuring that formal management reviews are written into the contract and that Key Performance Indicators linked to financial penalties.

7. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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