

CABINET

4 OCTOBER 2011

GATEWAY 1 PROCUREMENT COMMENCEMENT: FAMILY GROUP CONFERENCE SERVICE

Portfolio Holder: Councillor David Wildey, Children's Social Care
Councillor David Brake, Adult Services

Report from: Rose Collinson, Director of Children and Adults

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Summary

This report seeks permission to start the procurement of a Family Group Conference (FGC) service to meet the needs of children on the edge of care and vulnerable adults in need of safeguarding.

Within a clear structure laid down by safeguarding professionals, Family Group Conferences enable a child or vulnerable adult's family and support network to establish a plan to keep the child or adult safe and deal with a range of issues that may be affecting them adversely.

FGCs are Part B EU procurement; the term of the contract will be three years with provision to extend for a further 2 years.

The current contract is due for renewal or decommissioning by 30 June 2012.

This Gateway 1 report has been approved for submission to the Cabinet after review and discussion at Children and Adult's Directorate Management Team meeting on 18 August 2011 and Strategic Procurement Board on 7 September 2011.

The Children and Adults Directorate Management Team had recommended that this procurement project be approved as a Category B Medium Risk procurement project at Procurement Gateway 1 by the Strategic Procurement Board. Subsequently, the Strategic Procurement Board reclassified this procurement project as a services Category B high risk procurement with a total contract value above £250,000.00 and there are political implications and/or service sensitivities that Cabinet should be aware of.

These political implications and/or service sensitivities are that there is significant investment over the life of the contract to ensure those children and young people on the cusp of care have the best chance of remaining in the care of their family.

1. Budget and Policy Framework

1.1 Service Background Information

1.1.1 Children's Social Care currently commission FGCs from Medway Mediation, a local voluntary sector organisation. The model is now well established and recognised within child protection and children in need services as highly effective in building upon the strengths and knowledge of the wider family to provide an informed and appropriate package of support and monitoring.

1.1.2 A recent Safeguarding Vulnerable Adult Case File Audit highlighted the need for improved evidence that protection plans involved the participation of the vulnerable adult. FGCs would address this identified need.

1.2 Council's Strategic Priorities And Core Values

The procurement of this requirement directly links into the following Council Strategic Priorities and Core Values

Core Values

- *Putting our customers at the centre of everything we do.*

This procurement requirement will deliver against the Core Value of 'Putting our customers at the centre of everything we do' through an early intervention mechanism to limit risk to vulnerable children on the cusp of care and by enabling vulnerable adults and their families to be included in safeguarding processes.

- *Giving value for money*

This procurement requirement will deliver against this Core Value through effective and appropriate commissioning of FGC services and through supporting care of children on the edge of care and vulnerable adults to take place within the family.

Strategic Priorities

- *Children and young people having the best start in life.*

Within a clear structure laid down by safeguarding professionals, Family Group Conferences enable a child's family and support network to establish a plan to keep a child safe or deal with a range of issues that may be affecting the child adversely. The model is now well established and recognised within child protection and children in need services as highly effective in building upon the strengths and knowledge of the wider family to provide an informed and appropriate package of support and monitoring.

Evidence shows that Family Group Conference plans are more likely to work and last than anything imposed on the small family group by professionals.

Family Group Conferences are recognised in court proceedings as providing solutions to a range of issues including finding alternative carers for children. There is an expectation from the courts that work with the extended family via a family group conference should be undertaken prior to legal proceedings. Within the current Family Justice review a submission from Directors of Children's Services strongly advocates the use of Family Group Conferences within proceedings or during the history of interventions in a case history.

The earlier in the progress of emerging difficulties for a child that the conference is used the better it is for improving outcomes for children and the ultimate aim of reducing need and costs. Family Group Conferences do not always provide immediate or long-term cheap solutions in all cases. Indeed, they may confirm that there is no option to accommodating a child away from their family. However in some cases they can produce alternatives that in the short and/or long run can significantly reduce costs. The Family Group Conference is not effective in cases where the extended family are not prepared to act as carers or there are no safe alternative carers to the parents.

- *Adults maintain their independence and live healthy lives*

This procurement requirement will deliver against the Strategic Priority of 'Adults maintain their independence and live healthy lives' through the Family Group Conference's aim of enabling the individual to keep the control of the solution in their own hands.

1.3 Strategic Council Obligations

The procurement of this requirement directly links into the following Strategic Council Obligations:

Medway Council Plan

This procurement supports the following elements of the Council Plan: 'Giving value for money' and 'Putting our customers at the centre of everything we do'.

Other Strategic Council Obligations

This procurement will support the strategic priorities set out in the revised Children and Young People's Plan due to be published in the autumn.

This is the strategic partnership plan for the area seeking to ensure that all children and young people in Medway are:

- safe and cared for
- succeed in learning
- thrive

In particular, this procurement supports the following enablers:

- Make sure children and young people and their parents/carers have a chance to give their views and ensure that professionals listen and respond to what they say

- Implement effective processes, systems, workforce changes and development to support the implementation of the plan.

This procurement will also support the policy, protocols and guidance of the joint Kent and Medway Adults' Safeguarding Board.

1.4 Departmental and Directorate Service Plans

This procurement requirement links into the key Service Plans of Children and Adult Services: Commissioning and Strategy, Children's Social Care and Safeguarding Adults.

2. Background

2.1 Project Details

2.1.1 This procurement is a Services procurement requirement

2.1.2 This report seeks permission to start the retendering of a current procurement contract with a proposed contract duration of 3 years with provisions to extend for a further 2 years.

The contract is proposed to start on **1 July 2012** and finish on **30 June 2015**.

The total value of this procurement contract:
Please see exempt appendix.

2.1.3 This procurement requirement is a standalone project with no linkage to any other procurement projects or procurement programmes.

2.2 Business Case

2.2.1 Procurement Project Outputs / Outcomes

As part of the successful delivery of this procurement requirement, the following project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
1. Where safe to do so, to reduce the number of children coming into the care of Medway Council.	Reduction of the number of children coming into the care of Medway Council	Children's Social Care	The measurement will be an ongoing process.

2. Where safe to do so, children remain within the family	The outcome of the conference will be a child remaining with the family.	Children's Social Care	At the outcome of the FGC and then ongoing.
3. Comply with the courts request to hold a FGC prior to court proceedings	Reduction in the time taken in court proceedings	Children's Social Care	On going
The Vulnerable adult protected as part of a FGC feels safer	Provider reports, client surveys and feedback	Adult Social Care	At the outcome of the FGC and then ongoing.

2.2.2 Procurement Project Management

This procurement project will be resourced through the Commissioning and Strategy Division.

2.2.3 Post Procurement Contract Management

The contract management of this procurement project post award will be resourced and managed via the Children's Social Care Team for the children's element, and the Safeguarding Adults service for the adults element.

2.2.4 Other Issues

The following issues have been identified that could potentially impact both the procurement process and overall strategic aims as identified within Section 1 Budgetary and Policy Framework:

Limited market for provision of services could delay the procurement, which is financially linked to outcomes.

2.2.5 TUPE Issues

Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it has been identified that TUPE does apply to this procurement process.

It has been identified that potentially 3 employees could be affected by TUPE resultant in the event that the incumbent provider is not successful as part of the procurement tender process. If the identified employees do fall with the TUPE Regulations they would transfer in accordance with the Regulations to the successful contractor. Whether TUPE does apply to the employees will depend upon whether the employees are "assigned" to the undertaking to be transferred (i.e. the

contract with the Council). This is a question of fact based on all the circumstances of the case including the percentage of time an employee spends on the Council's work, the nature of an employee's employment and whether the assignment is permanent or temporary

3. Options

In arriving at the preferred option as identified within Section 4.1 'Preferred Option', the following options have been considered with their respective advantages and disadvantages.

3.1 Do nothing

The option of doing nothing has been considered and below are the advantages and disadvantages of this option:

- Advantages – cost saving on the procurement process.
- Disadvantages –The contract term ends June 2012. The service requirements have changed and the expectation is that a competitive process will deliver better value. The council would not be adhering to best practice and may miss the potential for medium and long term savings.

3.2 In-house service provision

The option of providing this requirement through in-house service provision has been considered and below are the advantages and disadvantages of this option:

- *Advantages:*

Family Group Conferences in Medway have been facilitated through Medway Mediation for the past three years. The contract has allowed for 50 conferences to be undertaken each year, by allocation of four each month, with an option to purchase more by negotiation. This has served the needs of the service but has required clear and structured management to balance the fluctuation of demand. One of the benefits of an "In House" option would be to enable more flexibility in the allocation of Family Group Conferences per month.

- *Disadvantages:*

An in house option would need to be delivered from a department outside of the Children's Social Care Division to ensure sufficient independence and distance from the commissioning service. The Children's Independent Safeguarding & Review Service (CISR) was approached to advise on their capacity and capability to deliver a Family Group Conference service to Medway Children's Social Care Division. The outcome of research into the delivery of a service from within Medway shows that although the service could be delivered to meet the current specification, it would be more expensive than the current contract with Medway Mediation.

Although the appointment of staff would be subject to TUPE regulations, the employment of staff as Medway employees would incur on-costs and create liabilities. The cost of delivering a service from the CISR, based on 50 Family Group Conferences per year, is 25% higher than the existing contract. The reasons for the higher costs are staff salaries, training and other costs.

An in house option would have advantages regarding flexibility and accountability, however the overall cost would make a proposal unrealistic as a viable proposition.

3.3 Using another local authority to deliver procurement requirements

The options of using another local authority to deliver procurement requirements has been considered and below are the advantages and disadvantages of this option:

Kent County Council currently run an in-house service, which could potentially deliver the Family Group Conferencing service for Medway.

- *Advantages*

Saving on the resources required for a tender process
The use of an established credible organisation

- *Disadvantages*

Provisional enquires suggest the cost to be 14% higher than currently paid for the same service.

3.4 Procurement via an EU compliant framework

No EU compliant frameworks have been identified from which Medway Council's procurement requirements can be satisfactorily delivered.

3.5 Formal tender process in line with EU Procurement Regulations.

The option of formally tendering this procurement requirement in line with EU Procurement Regulations has been considered because the value of this procurement requirement is above the EU Procurement Threshold for Services of £156,442.00 and below are the advantages and disadvantages of this option:

Advantages - Due to the nature of the service provision there are a limited number of providers that can provide the Family Group Conferencing service. However, this is a developing market and a competitive process will ensure that best value is achieved.

Disadvantages – The formal tender process will take several months in line with Part B Services tender practice.

3.6 Internal Medway Council Collaboration between departments

The option of procuring requirements through internal collaboration between Medway Council departments in order to exploit economies of scale and synergies has been considered and below are the advantages and disadvantages of this option:

- *Advantages:*

The collaboration with Adult Services will result in an increased number of conferences being requested; economies of scale should ensure competitive rates per conference.

- *Disadvantages:*

No disadvantages have been identified.

3.7 External public sector collaboration (e.g. other Councils, Fire Service, PCT, Police)

The option of procuring requirements through external collaboration between Medway Council and other external public sector organisations in order to exploit economies of scale and synergies has been considered and below are the advantages and disadvantages of this option:

A collaboration with Kent has been considered, however Kent's Family Group Conferences are provided in-house therefore any approach would be subject to the normal tendering processes.

3.8 Private sector collaboration e.g. Private Public Partnering/Private Finance Initiatives

The option of procuring requirements through private sector collaboration between Medway Council and other external private sector organisations has been considered but no such opportunities exist.

3.9 Procurement via a below EU Threshold Select List

No below EU Threshold compliant Select Lists have been identified from which Medway Council's procurement requirements can be satisfactorily delivered.

3.10 Other alternative options

No alternative options have been identified.

4. Advice and analysis

4.1 Preferred option

Further to an extensive review of procurement options as highlighted within Section 3 'Options' above, the following preferred combined options are recommended to the Strategic Procurement Board:

Option 3.5 (Formal tender process in line with EU Procurement Regulations) together with Option 3.6 (Internal Medway Council Collaboration between departments)

Using the combined options 3.5 and 3.6 will give us the benefit of a sound process and allow the widest capture of applicants in a growing market whilst developing integrated commissioning between adult and children's services.

4.2 Equalities Act 2010

The procurement process could have an impact in respect of equalities as culturally aware delivery is crucial to achieving a positive outcome. Pro-active contract management will ensure compliance to Council principles and standards.

4.3 Corporate Sustainability Plan

There are no implications in relation to sustainability.

5. Risk Management

5.1 Risk Categorisation

Procurement process	<input type="checkbox"/>	Equalities	<input checked="" type="checkbox"/>
Contractual delivery	<input type="checkbox"/>	Sustainability / Environmental	<input type="checkbox"/>
Service delivery	<input checked="" type="checkbox"/>	Legal	<input checked="" type="checkbox"/>
Reputation / political	<input type="checkbox"/>	Financial	<input checked="" type="checkbox"/>
Health & Safety	<input type="checkbox"/>	Other	<input type="checkbox"/>

For each of the risks identified above in OPTION B, further information has been provided below

Risk Categories	Outline Description	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Plans To Mitigate Risk
a) Service delivery	Delays in access to confidential data could cause service delivery problems.	II	C	Data sharing protocols need to be put in place to alleviate the positional risk.
b) Finance	The need for additional FGCs will cause a pressure on the budget.	II	C	Cases will be prioritised in order to remain within budget.
c) Finance	Internal funding pressures lead to the need to reduce or terminate the funding	II	C	The contract documents will state that the contract is subject to funding availability
d) Finance	Funding for the adult element of the contract is reduced or unavailable	III	C	As (c) Delivery of the children's element of the contract would not be affected by withdrawal of adult funding
e) Finance	Increased numbers of children coming into care	II	D	FGCs used in early intervention have been successful in preventing children being placed in the care of the authority, saving costs

f) Legal	Delay in being granted court orders increased legal costs, and care costs of the child along with the risk of the authority being challenged by the courts.	II	D	To follow the PLO (Public Law Outline), there is a requirement to carry out 'kinship assessment' prior to a court order being granted. Taking account of this requirement should pre-empt this risk.
g) Equalities	FGC delivery is not culturally sensitive	II	D	Robust contractual requirements and monitoring.

6. Consultation

6.1 Internal (Medway) Stakeholder Consultation

6.1.1 As part of this procurement project, the following mandatory internal stakeholder consultation is required *before* the commencement of the procurement project in order to direct the specification:

- Consultation with Adult Social Care
- Children's Social Care Operational Team
- Children's and Adults DMT

6.1.2 As part of this procurement project, the following mandatory internal stakeholder consultation is required *during* the procurement process in order to aid the evaluation process:

- Consultation with Adult Social Care
- Children's Social Care Operational Team

6.1.3 As part of this procurement project, the following mandatory internal stakeholder consultation is required *post* procurement/tender award in order to aid the contract management process:

- Consultation with Adult Social Care
- Children's Social Care operational team

6.2 External Stakeholder Consultation

6.2.1 Before commencement of the procurement process in order to direct the specification.

As part of this procurement project no external stakeholder consultation is required before the commencement of the procurement project in order to direct the specification.

6.2.2 During the procurement process in order to aid the evaluation process

As part of this procurement project no external stakeholder consultation is required during the procurement process in order to aid the evaluation process

6.2.3 Post procurement/tender award in order to aid the contract management process

As part of this procurement project no external stakeholder consultation is required post procurement/tender award in order to aid the contract management.

7. Strategic Procurement Board

7.1 The Strategic Procurement Board considered this report on 7 September 2011 and exercised its duty under Contract Procedure Rule 2.3.7 to upgrade this medium risk project to a high risk project for appraisal by the Cabinet.

8. Financial and legal implications

8.1 Financial Implications

8.1.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has financial implications, which have been detailed within Section 2.1 Finance and Whole-Life Costing of the Exempt Appendix.

8.2 Legal Implications

8.2.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following legal implications which the Cabinet must consider:

8.2.2 Although the estimated value of the proposed contract is in excess of the EU threshold for service contracts, these services are Part B services under the Public Contracts Regulations 2006 (as amended) which means that only some of the EU procurement rules apply – namely, obligations relating to technical specifications (i.e. non-discriminatory specification requirements) and post-award information (i.e. a requirement to send a Contract Award Notice to the Office of Publication of the OJEU).

8.2.3 It is NOT RECOMMENDED that the Council formally tender this procurement in line with procedures under EU procurement Regulations. A decision to formally tender this procurement in line with the EU Procurement Regulations will mean that the procurement will be subject to the full procurement regime including the mandated contract award procedures and minimum timescales between the various procurement stages set out in the Regulations. Instead and subject to

what is said below, the Council can have the flexibility to follow an award procedure of its own design.

- 8.2.4 It is established case law that the award procedures for contracts must also comply with the general principles derived from the Treaty on the functioning of the European Union, in particular the principle of equal treatment and the consequent obligation of transparency. This means that the contract should still be given a sufficient degree of advertising necessary in order to alert likely potential suppliers of the opportunity to bid. Competition remains the main mechanism by which the Council can ensure both improvements in quality and innovation of service provision, and value for money.
- 8.2.5 The invitations to tender will still need to be accompanied by agreed evaluation criteria that are designed to determine the bid that represents the best solution to deliver the specified requirements. The best value for money bid will be that which is judged to offer the optimum combination of service capability and quality (including safeguarding standards, safety, deliverability and other specified areas).
- 8.2.6 Recent case law in relation to Part B services suggests that one should not automatically assume that there is no need to allow a standstill period when awarding such a contract. The case law suggests a need to consider for every contract whether there are any “exceptional circumstances” which would require there to be a standstill period, applying the principles of Community law.

8.3 Procurement Implications

- 8.3.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 ‘Preferred Option’ and the recommendations at Section 9, has the following procurement implications which the Cabinet must consider:
- 8.3.2 The value of the proposed procurement contract is above the EU threshold for Services, currently set at £156,442.00.
- 8.3.3 Thus, as a ‘Part B’ service, health and social services procurements are not subject to the full rigour of procurement law. However, the fundamental principles of the EC Treaty apply to all public procurement contracts. It specifically refers to contracts for Part B services and below threshold contracts.
- 8.3.4 These principles include the free movement of goods, the right of establishment, the freedom to provide services, non-discrimination and equal treatment, transparency, proportionality and mutual recognition. It places particular importance on the principle, derived from ECJ case-law, that the obligation of transparency means that a contracting authority must ensure a degree of advertising – based on the individual circumstances of the case - sufficient to allow the services market to be opened up to competition and the impartiality of procedures to be reviewed.

9. Recommendation

- 9.1 The Cabinet is asked to approve the commencement of the procurement project to provide a Family Group Conference Service as per the preferred option highlighted at Section 4.1 'Preferred Option' - Option 3.5 (Formal tender process in line with EU Procurement Regulations) together with Option 3.6 (Internal Medway Council Collaboration between departments).

10. Suggested reasons for decision(s)

- 10.1 The recommendation is provided on the basis that this method of procurement will provide the opportunity to deliver much improved services.
- 10.2 These services will be supported by a robust objective to improve service excellence that ensures that children and young people remain safe and vulnerable adults are protected.
- 10.3 The Family Group Conference model is an internationally recognised method of meeting the required outcomes for children on the cusp of care. Family Group Conferences are also recognised in court proceedings as providing solutions to a range of issues, including finding alternative carers for children.

Lead officer contact

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Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Children's Care Business Case for FGC	Star Chamber	December 2010