
Internal Audit management letter – FTP legal procurement

Executive Summary

As part of the 2019-20 Internal Audit Plan as approved by the Committee, BDO LLP have undertaken an advisory review of the case preparation and presentation legal contract tender currently ongoing. This was not a full audit and BDO LLP will return to review the complete process later in Q3.

Previous consideration	None.
Decision	The Committee is invited to discuss the report.
Next steps	BDO LLP will revisit this area once the process has concluded, currently scheduled for December 2019.
Strategic priority	Strategic priority 1: Continuously improve our performance across all our regulatory functions
Risk	1 - Failure to deliver effective regulatory functions 3 - Failure to be a trusted regulator and meet stakeholder expectations 4 - Failure to be an efficient regulator
Financial and resource implications	The cost of the review is included in the Internal Audit annual fee.
Author	BDO LLP



FTP Legal Procurement Tender Process Management Letter Health and Care Professions Council

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1. Introduction

- 1.1 HCPC are in the process of procuring the provisions of legal services for their Fitness to Practise (FtP) regulatory function. The current provider of this service is Kingsley Napley (KN) and was selected via the official journal of the European Union (OJEU) procurement framework.
- 1.2 The current contract commenced on 1st April 2014 via the OJEU tendering process during the 2013/14 financial year. For the 2019/20 financial year the contract with KN was extended for an additional year at an additional cost of approximately £4.8million. The contract was not subject to tender for the 2019/20 financial year mainly due to the uncertainty around the transfer of social workers to the new regulator - Social Workers England (SWE). It is anticipated that the move of social workers to SWE will take place in December 2019, and will therefore reduce the number of cases that are processed by the Investigating Committee in making a 'case to answer' decision and thus move to the final hearing stage.
- 1.3 The service being procured is with respect to instructing external legal services. The successful supplier will be expected to act on behalf of HCPC when a FtP case has been reviewed by the Investigating Committee panel and they have reached a 'case to answer' decision. The supplier will be required to prepare the case for final hearing. This will include taking witness statements, attendance at preliminary or case management meetings and undertaking advocacy before a final hearing panel.
- 1.4 HCPC are looking to procure a supplier for a period of one year with the option to extend for a further year should contract performance and the working relationship work well.

2. Approach

- 2.1 In carrying out the review, our approach included reviewing and understanding the FtP legal tender procurement process, interviewing key members of staff, a review of the timetable and reviewing the following key tender documentation. The key stages reviewed included decision to use the Crown Commercial Service (CCS) framework and the development and approval of key tender documents.

3. Overall Conclusion

- 3.1 Our assessment confirmed that the process for procuring the new provider of FtP legal services is generally sound with a few minor improvements required.

4. Key Observations

Timetable

- 4.1 The proposed timetable for the procurement of the FtP legal services provider has been documented with an activity, activity owner and a timescale as well as a column to include commentary. Initially, the timetable as at 5 May 2019 had a sign off date and final invitation to tender (ITT) documentation date as the 3 June and the ITT go live date as at 1 July 2019. As at the time of the review fieldwork, the draft ITT document was approved by the Head of FtP and the Council but had not yet gone live. Through further discussions with the procurement team we established that the delay was due to a decision to seek Council approval for the use of the Framework. Council gave this approval on 4th July 2019.
- 4.2 Going forward for future procurements, adherence to a timetable will help ensure that a supplier is selected in a timely manner and there will be sufficient time for a handover from the current supplier to the new supplier and mobilisation of the new supplier.
- 4.3 In addition, on the timetable it states that the draft panel guidance for scoring was due to be completed on 3 June 2019, but, this was yet to be finished at the time of the fieldwork. Although the panel will not be scoring

until the suppliers have sent through their bids, we are of the view that as the framework for scoring has been published as part of the ITT, the guidance can now be developed.

Decision to use the CCS Framework Agreement

- 4.4 The procurement officer and the Head of FtP, with input from the Department lead for Case Preparation and Conclusion, considered the different options available to HCPC with regards to procuring the FtP legal services contract. The options available were to either undertake another full OJEU tender or use an approved framework from which suppliers could be sourced. The selected framework being *'the Lot 1 of Wider Public Services Legal Services Panel Agreement Framework RM3788/Crown Commercial Services'* (CCS).
- 4.5 The decision was to use the CCS framework as it is thought to be more efficient. On review of the framework it was explained that the framework includes providers that are known to HCPC as being providers of this service to similar regulatory bodies.
- 4.6 Additional due diligence is not required on any of the providers on the framework as this would have taken place prior to the inclusion of any potential suppliers on the CCS framework. This will have reduced HCPC resource demands and time required to undertake this tender exercise.

Duration of contract to be awarded

- 4.7 Our review of the ITT found that although it stipulates the monthly performance reports required to be submitted by the selected provider as part of the overall contract, it does not stipulate reporting arrangements in terms of submission dates, information requirements and non-submission clauses. This allows potential suppliers to be aware of the demands that will be placed upon them with regards to reporting arrangements and allows them to understand the feasibility of the timeframe with regards to the information required. Suppliers will be able to assess if this is therefore practical and feasible for them.

Approval

- 4.8 At the approval stage of the tender process for supplier selection, there are two key approval points. The first is the approval for the use of an existing procurement framework instead of the OJEU tendering process and the second is the approval of the ITT.
- 4.9 The use of the proposed framework for the procuring of the FtP legal services was prepared in a paper by the Head of FtP and presented to the SMT by both the Head of FtP and the Executive Director of Regulation. SMT approved the use of the framework at its March meeting. Subsequently, the use of the framework was reviewed and approved by Council on 4 July 2019.
- 4.10 The ITT was approved by the Head of FtP and the Executive Director of IT and Resources as members of SMT and the Panel. The Executive Director of regulation, directly overseeing FtP has also approved the ITT. Although the first draft of the ITT had been reviewed by SMT with recommendations made, these updates had not been fully incorporated into the ITT and submitted for final review by SMT.

The Invitation to Tender

- 4.11 We reviewed the pre-issued ITT which was volume 11 as at 17 July 2019 and the following section details our observations:

Background Information

- 4.12 We found the background information to be sufficiently detailed with regards to what service HCPC are looking to procure and how this fits into HCPCs business structure.

Tender questions for completion by Tenderers

- 4.13 Overall, this section was sufficient with a few minor inconsistencies. One minor issue to note was the procurement timetable states a deadline of 9 August 2019 for submission of clarification questions but the body of the ITT states 26 July 2019.

Assessment questions for completion by Tenderers

- 4.14 A set of assessment questions with marks to be awarded are provided for tenderers to answer. This section we consider adequately meets the needs as set out in the ITT.

Appendices

- 4.15 The appendices set out the finer detail of the contract that will need to be considered in addition to service standards. The service standards do not state within the ITT itself the service credits penalties but it was stated by the department lead - case preparation and conclusion that this will be discussed with the successful supplier prior to commencement of the contract. A draft service credits schedule was provided to internal audit.

5. Suggested areas for improvement

- 5.1. To address the observations raised in this report we are suggesting the following Management interventions be considered as the tender process progresses and for future tenders:
- a. It is recommended that timescales within the procurement timetable are complied with to ensure that the key stages of the tender process are met and subsequently there is a sufficient handover stage from the current supplier to the new supplier. This should allow the new supplier to be embedded as far as possible for an efficient start on 1 April 2020.
 - b. The final version of the ITT should be formally approved and finalised prior to the ITT going live.
 - c. The ITT should be checked for inaccuracies before the go live date to ensure that any updates are adequately amended.
- 5.2. We would like to thank the FtP function and those involved from procurement for the assistance provided during the completion of this special review.

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