



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
REGENERATION AND SUSTAINABLE DEVELOPMENT
CABINET BOARD

11 March 2022

**Urgent Report of the Head of Education Development –
C. Millis**

Matter for Decision

Wards Affected:

All Wards

**Delegated Authority to appoint Figure 8 Consultants on
behalf of the Western Bay Area Planning Board**

Purpose of the Report:

To seek delegated authority to extend the current arrangements with Figure 8 Consultants on behalf of the Western Bay Area Planning Board by entering into a contract for service on behalf of the Western Bay Area Planning Board (APB).

To seek authority to exclude rule 11.4 of the Council's CPRs in accordance with rule 5 of the CPRs, in order to directly award a contract to Figure 8 Consultants without going out to the market and partaking in a competitive tender exercise.

For information that the proposed contract is funded via Substance Misuse Action Fund at the request of the APB.

Executive Summary:

The Western Bay Area Planning Board (APB) and its Commissioning, Finance and Performance subgroup made a decision to commission Figure 8 Consultants to support the APB to begin its service change project, subject to appropriate authority from members in accordance with the Council's Contract Procedure Rules (CPRs).

The APB cannot commission or enter into contracts in its own right, and NPT Council as the banker, is being asked to do so on their behalf.

Background:

The aim of the Western Bay Area Planning Board is to bring together representatives of the Responsible Authorities, to improve and strengthen the arrangements for the planning, commissioning and performance management of substance misuse services across Neath Port Talbot and Swansea.

The Area Planning Board (APB) was set up in 2010, but is not a legal entity in its own right, so is not able to enter into contractual arrangements with Service Providers or award grant funding in its own right.

NPTCBC is the 'banker' for the APB and therefore any commissioning decisions implemented on behalf of the APB must comply with NPT's Contract Procedure Rules.

However in the absence of an appropriate financial risk sharing agreement between members of the APB, NPTCBC is exposed to all the responsibilities and liabilities, if it enters into new or amends any contracts in respect of substance misuse services.

A risk sharing agreement has been developed by NPTCBC legal services and this will enable risk to be shared amongst partners, and once this is in place NPTCBC can take the lead on any new contracts or changes to existing contracts without bearing all of the legal risk.

NPTCBC has recently endorsed this risk sharing agreement. However it cannot be relied upon until all responsible authorities and partners to the agreement (those members of the APB) have secured appropriate approval through their own governance arrangements. I understand this is underway but is not yet complete.

The APB has acknowledged that the services in respect of substance misuse needs to improve and it is on a journey to develop an integrated public health model for substance misuse services The APB has agreed a direction of travel; to develop a model collaboratively involving those with lived experience, and clinicians and people who work within the sector.

The APB agreed to allocate some of its funding towards employing an expert consultant to lead on the first phase of the project, and approached Figure 8 Consultants.

As the value of the contract in June 2021 was below £25,000, the Head of Education Development was able to directly award the contract to Figure 8 under delegated authority with a written record of that approval held on file. This note also contains an explanation of why seeking 3 quotations was inappropriate and how the arrangements represented best value for the Council. This contract runs from August 2021 to March 2022.

Western Bay Area Planning Board wish to retain Figure 8 Consultants until September/October 2023, depending on the progress, pace and scale of the work being required.

Unfortunately because of these unknowns it is not possible to quantify the costs from April 2023 – October 2023, and an extension of the contract will likely be required until October 2023.

Therefore this report seeks delegated authority to the Head of Education Development to enter into a contract directly with for a Figure 8 Consultants for a period of up to October 2023 to commence on 1st April 2022. This will be funded from Substance Misuse Action Fund (SMAF) from the financial year 2022/23

Officers have taken advice from legal services colleagues who confirm that authority is required in order for NPT as banker to enter into the proposed arrangement and bear the risk on behalf of the Area Planning Board. In addition the requirement for competition under rule 11 of the Contract Procedure Rules will need to be excluded in accordance with rule 5 in order to directly award the contract to Figure 8.

Elsewhere on the agenda, authority is sought to enter into grant agreements, because having considered the options and risks, such agreements were more appropriate in those circumstances (i.e. level of risk is higher). However, for the continued appointment of Figure 8 Consultancy, a contract is more appropriate to the nature of the arrangement, it is lower value, and in order to balance the risk of it being a contract there will be sufficient governance and monitoring by the APB.

The proposed contract for 2022/23 to the value of £25,000 and the current contract aggregate to £49,985, the further extension anticipated in 2023/24 is unlikely to take the total aggregated cost of £75,000 however where the term of the contract is uncertain we must apply CPR rule 4.6 on the basis of a four year aggregate spend in line with CPR 4.6, which would be £100,000.00.

The rationale for the direct appointment remains that Figure 8 Consultancy have the required expertise, to undertake the work as detailed below and there will be continuity of service from the same consultant on the project.

The APB would wish NPTC to continue to commission Figure 8 to lead this work (supported by his team as necessary) because of its recognized and specific expertise in relation to the transformation journey it is about to embark on, in particular the Dundee commission approach. The arguments in favour of efficient management are all related to this expert and detailed knowledge, experience, independence and insight.

Figure 8 has a recognised expertise and led the work in Dundee on which the APB's transformation project is mirrored, and this is the crux of why a direct appointment is considered the most efficient course of action. The Dundee commission came about because of concerns around inter alia the rate of drug related deaths (DRD), and it was the concern around the rate of DRD in Swansea and NP which led to the Public Service Boards of Swansea and NPT, establishing a critical incident group, which is the precursor of the integrated public health approach being adopted.

Whilst there are other consultants who have substance misuse expertise, it is appropriate to consider that this in-depth knowledge, insight and direct expertise gives Figure 8 Consultancy significant credibility amongst the APB and its partners and an understanding of some of the issues, etc. that need to be overcome. Figure 8 Consultancy have clear and relevant experience in respect of the work of the Dundee commission which is transferrable to what the APB wishes to do, including the experience and understanding of working in a partnership arena, and the political context within which such a multi-agency transformative project, sits. This insight and understanding will be invaluable, particularly as the current landscape is very complex. The journey, the APB is embarking on, is not an easy one

Figure 8 is well regarded in the substance misuse field. Whilst other consultants have an understanding of the concept of a whole systems approach (which is what the APB is embarking on), Figure 8 has direct and live experience in respect of a whole systems public health approach through the work undertaken in Dundee, and the APB want

to capitalise on this.

Figure 8 Consultancy bid for work to undertake our previous review and the costs submitted were extremely competitive with only the smallest margins between Figure 8's tender and that of the successful company. It is noteworthy that Figure 8 has secured a number of commissions for example the Welsh Government's review of its strategy, and work around minimum unit pricing of alcohol.

We do not think competitively procuring this contract would add value, as the people we would invite would not have the direct expertise and insight, etc. as highlighted above, there would not be continuity of service provision AND costs are clearly comparable. Cost would not be the deciding factor in determining the successful tender.

Financial Impacts:

The SMAF monies (the Fund) are subject to Welsh Government grant conditions, which the Council is obliged to comply with. Failure to comply with the grant conditions would put the Council at risk of claw back of the Fund by Welsh Government. The contract will be funded from Substance Misuse Action Fund, and is included in the Western Bay Area Planning Board's financial expenditure plan.

Integrated Impact Assessment:

A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

The first stage assessment, attached at Appendix 1, has indicated that a more in-depth assessment is not required. A summary is included below.

If the proposal is agreed, it will contribute to an improvement in substance use services. This proposal will therefore not have any negative impacts. The impacts will have a positive effect both for the individuals who receive the service and for the wider community. The proposal will have a positive impact on reducing engagement in criminal activity and increasing engagement in education, training and employment, as well as health outcomes.

Valleys Communities Impacts:

Improved services and access to those services, will be of benefit to all our communities

Workforce Impacts:

No impacts

Legal Impacts:

The SMAF monies (the Fund) are subject to Welsh Government grant conditions, which the Council is obliged to comply with. Failure to comply with the grant conditions would put the Council at risk of claw back of the Fund by Welsh Government. It is intended that the process of appointment of Figure 8 by the Council will be in line with these Welsh Government grant conditions.

A contract for service would be more appropriate, legally, to the nature of the arrangement in comparison with a grant award. A contract for service would offer control over the performance that could not be achieved by a grant agreement and the terms of the contract of service could be enforced as against Figure 8.

There is greater legal risk in the Council entering into a contract for service with Figure 8 on behalf of the APB on the basis that the Council would be absorbing all the obligations under the proposed appointment and would have to separately attempt to enforce as

against the other APB members where there is a dispute or claim under the contract by Figure 8.

The risk above is small however in light of the fact that the APB have agreed terms of a risk sharing agreement and it is awaiting signature. Further, the perception of risk of any dispute under the proposed contract being low bearing in mind previous experience with Figure 8 and the value of the contract.

As the term of the proposed contract is unknown, the Council should arrive at an estimated figure on the basis of a four year aggregate spend in line with CPR 4.6 which would be £100,000.00. This is below the threshold under the Public Contracts Regulations (2015) whereby the Council as a contracting authority would be obliged to carry out a full tender exercise in accordance with the Regulations.

However, the Council's CPRs will still need to be followed. On the basis that the value of the proposed contract is £100,000.00 for the purpose of estimation, in line with the CPRs, this exceeds the threshold for competition under rule 11 of the CPRs (a contract of a value over £25,000 must be advertised for tender). In addition, the Council is subject to general obligations of transparency, equal treatment, non-discrimination and proportionality. What these principles imply in practice is that the contract should be transparently awarded in a non-discriminatory way. The simplest way to demonstrate compliance would be by going through a procurement exercise that is compliant with the principles outlined above. This report sets out in detail why this would not be preferred.

Permission is therefore sought to exclude the competition requirements of the CPRs in accordance with rule 5 therein.

Risk Management Impacts:

The Council could potentially be exposed to challenge from aggrieved providers who have not had an opportunity to bid for the proposed arrangements. They may wish to challenge the decision to directly enter into the proposed contract .

It would be contended that the risk of this is considered to be very low. In any case any risk is deemed to be outweighed by the need to continue to undertake work to improve the quality and access to services and to reduce the level of drug related deaths, given the identified need for a major change programme. The risk of not continuing with the contract would put the project in jeopardy as work has already commenced. This risk outweighs any other consideration given the need to reduce drug related deaths and improve service provision.

Crime and Disorder Impacts:

Section 17 of the Crime and Disorder Act 1998 places a duty on the Council in the exercise of its functions to have “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:

- a) Crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and
- b) The misuse of drugs, alcohol and other substances in its area; and
- c) Re-offending the area”

The report will have some positive impact.

Consultation:

There is no requirement for external consultation on this item.

Recommendations:

It is recommended that Rule 11 of the Contract Procedure Rules be excluded and that delegated authority be granted to the Head of Education Development to directly enter into a contact with Figure 8 Consultancy on behalf of the Area Planning Board.

Reasons for Proposed Decision:

To enact a decision of the Area Planning Board and enable the APB to continue on its journey to improve services and deliver an integrated public health model for substance use in the region

Implementation of Decision:

The decision is proposed for implementation after the three day call in period

Appendices:

Integrated Impact Assessment

List of Background Papers:

None

Officer Contact:

Mr Christopher Millis

Head of Education Development

Tel: 01639 763226

Email: c.d.millis@npt.gov.uk

Mrs Claire Jones

Strategic Manager Partnerships & Community Cohesion

Tel: 01639 763193

Email: s.c.jones@npt.gov.uk