

**Report to Children and Families Deputy Director– Learning**

**Report of Contracts Manager**

**Date: 06.03.2019**



**Subject: Waiver of Contracts Procedure Rule (CPR) 9.1 and 9.2 to award a contract to Phonak UK Ltd for the supply of assistive listening devices.**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. This Waiver Report requests approval to waive contract procedure rules and to award a 36 month contract to Phonak UK Ltd for the supply of assistive listening devices
2. This contract is required to ensure continuity of provision and best value
3. CPR 9.1 requires competition for procurements over £100K and CPR 9.2 requires at least four written tenders. Approval is needed to waive CPRs 9.1 and 9.2 which would allow the continued use of Phonak UK Ltd and allow the time necessary for an assessment of options and the completion of a tender exercise
4. The contract will be for 3 years; from 1 April 2019 to 31 March 2022 for a value of £180,000.00.

**Recommendations**

5. The Children and Families Deputy Director - Learning is recommended to approve the waiver of CPR No 9.1 and 9.2 – High value Procurements, and to award a contract to Phonak UK Ltd in the sum of £180,000 for a period of 36 months commencing 1 April 2019 to 31 March 2022.

## **1 Purpose of this report**

- 1.1 To seek the waiver of CPRs 9.1 and 9.2 for the establishment of a contract with Phonak UK Ltd for a period of 36 months to a maximum value of £180,000

## **2 Background information**

- 2.1 Phonak UK Ltd is the principal supplier of assistive listening devices in the UK. There is an ongoing requirement for the supply of new equipment and the continuing supply of spare parts.
- 2.2 Children and Families have used this supplier for a number of years and continue to identify the products as being of a suitable standard for the young people who require the use of the transmitters.
- 2.3 The service is delivered on a medical needs basis. The Service purchases the equipment initially and schools then buy the equipment under the public services Equality Act 'reasonable adjustments'. Schools pay the first £1,000 towards the cost of the equipment and the Children and Families service area funds the balance (£500 approximately).
- 2.4 As the provider, Phonak UK Ltd is responsible for providing the warranties on the equipment installed and the supply of spare parts for the equipment when required
- 2.5 The commissioning team have engaged with the supplier and have agreed a discounted rate in lieu of the signing of a 36 month contract.
- 2.6 Phonak UK Ltd radio aids are fully compatible with the hearing aids issued by the NHS. This compatibility is vital for them to function.
- 2.7 Phonak UK Ltd radio aids are fully compatible with the software available to DAHIT and required for set up and tracking.

## **3 Main issues**

### **Reason for Contracts Procedure Rules Waiver**

- 3.1 There is still an ongoing requirement for the purchase of both new and parts for existing equipment that are compatible with NHS issued equipment. Phonak UK Ltd are able to continue to meet this requirement
- 3.2 The existing service outlined above expires shortly and no extensions periods are available, therefore a further contractual arrangement is required in order to continue to provide this service to children and young people
- 3.3 The value of the contract is £180,000 and as such would normally be the subject of a competitive tendering process. However, due to the limited timescales to re-procure this specialised equipment service and ensure its compatibility with the current NHS issued equipment, the best course of action available is to continue with the current arrangement.
- 3.4 During this time a soft market test will be undertaken to establish whether there are other providers that can deliver this service, and if so, a competitive tender will be completed

### **Consequences if the proposed action is not approved**

- 3.5 If the current contractual arrangement with Phonak UK Ltd expires without a new arrangement in place, purchases after 31 Mar 2019 would be non-compliant
- 3.6 An off-contract arrangement would not attract the reduced rates, therefore the cost of providing this service would increase

### **Advertising**

- 3.7 The opportunity has not been the subject of any advertising

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The Heads of Service have been consulted within the establishment regarding the detail as to the background for this waiver

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 There are no equality and diversity issues as the waiver will not change the supply process, it will only subject this to a formal contractual relationship.

### **4.3 Council Policies and Best Council Plan**

- 4.3.1 The outcomes this service is commissioned against are those within the Leeds Children and Young People's Plan 2018 – 2023. This contract will contribute to a number of the priorities within the plan, including
- Ensure that the most vulnerable are protected
  - Support families to give children the best start in life
  - Improve achievement and attainment for all
  - Improve at a faster rate educational progress for children and young people vulnerable to poor learning outcomes
  - Improve social, emotional, and mental health and wellbeing

### **4.4 Resources and Value for Money**

- 4.4.1 There is an ongoing requirement for these goods and the agreed discount will provide greater value for money
- 4.4.2 There are other suppliers of assisted listening devices, however, initial research indicates that the costs are higher than that of Phonak UK Ltd and further investigation is required as to whether the technology is compatible with NHS issue hearing aids. This will be undertaken during the term of this contract and no further awards will be made to Phonak UK Ltd without a clear understanding of the full market offer.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The value of the contract detailed within this report is below the level for key decisions as prescribed within the council's constitution and therefore this decision will need to be published but is not subject to call-in.
- 4.5.2 Although there is no overriding legal obstacle preventing the waiver of CPRs 8.1 and 8.2 using the authority set out in CPR 1.3, to award a direct contract to Phonak UK Ltd without seeking competition, the contents of this report should be noted. In making the final decision,

the Children and Families Deputy Director - Learning should be satisfied that the course of action recommended represents best value for the Council.

#### **4.6 Risk Management**

- 4.6.1 Giving the work to this provider without competition could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that Contracts Procedure Rules suggests that contracts of this value should be subject to a degree of advertising. It is up to the Council to decide what degree of advertising is appropriate.
- 4.6.2 A soft market test and/or a competitive tender exercise will be undertaken during the term of this contract and no further awards will be made to Phonak UK Ltd without a clear understanding of the full market offer.

#### **5 Conclusions**

- 5.1 Entering into a contract with Phonak UK Ltd represents best value to the council and ensures continuity of service whilst a soft market test and/or competitive tender exercise is carried out to establish whether there are other providers that can offer the service at competitive rates

#### **6 Recommendations**

- 6.1 The Children and Families Deputy Director - Learning is recommended to approve the waiver of CPR No 9.1 and 9.2 – High value Procurements, and to award a contract to Phonak UK Ltd in the sum of £180,000 for a period of 36 months commencing 1 April 2019 to 31 March 2022.

#### **7 Background documents<sup>1</sup>**

- 7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.