

**Greater Glasgow NHS Board**

**Board Meeting**

Tuesday, 18<sup>th</sup> March, 2003

Board Paper No. 03/17

Chief Executive, GGNHS

## **IMPLEMENTING THE ACUTE SERVICES STRATEGY – PROCUREMENT PROCESS FOR THE AMBULATORY CARE HOSPITALS AT STOBHILL AND THE VICTORIA**

**Recommendation: The NHS Board is asked to approve:**

- i) that, in terms of the Public Procurement Regulations, the procurement of the Ambulatory Care Hospitals at Stobhill and the Victoria Infirmary should proceed as a services contract and that the services regulations should apply to the procurement of the project;
- ii) that, in terms of the Services Regulations, the negotiated procedure should be the choice of tendering procedure adopted.

### **1. BACKGROUND**

- 1.1 The quarterly report to the NHS Board in February, 2003 on the progress in implementing the Acute Services Strategy indicated that a single business case had been developed in respect of the two Ambulatory Care Hospitals at the Victoria Infirmary and Stobhill sites. Following submission to the Capital Investment Group of the Scottish Executive Health Department, the combined case was approved by the Health Department at the end of January, 2003. To assist with the procurement process, Legal Advisers (Bevan\Ashford and Shepherd\Wedderburn) were appointed and Ernst-Young have now been appointed (also following a competitive tendering process) as Financial Advisers.
- 1.2 At the February, 2003 NHS Board meeting the governance aspects of the implementation of the Acute Service Strategy were discussed and agreed.

That paper signalled that the NHS Board would be asked to approve the approach to the procurement of this first phase of the Strategy as the first of a number of key decisions affecting the overall plan. This paper brings forward the advice of the Board's Legal Advisers as the basis of the approach which should be adopted to this phase of procurement.

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### **2. APPLICATION OF THE PUBLIC PROCUREMENT REGULATIONS TO THE PROJECT**

2.1 In preparation for the submission of this paper to the NHS Board, the Board's Legal Advisers produced a detailed, technical paper entitled "Procurement Issues Relating to the Choice of Regime and Procedure for the Board's PFI/PPP Project". In that paper (which is available in full to members of the Board who might wish to read it) the Legal Advisers drew out the following key points:

- The Board must review the PFI/PPP project to establish which procurement regime applies: works or services.
- The Board should then go on to consider whether the Project is of such a type that it is appropriate to run an open or restricted procedure.
- If the Board is of the view that an open or restricted procedure is not appropriate, then the Board should carefully consider whether the specific grounds permitting use of the competitive negotiated procedure (services or works regime as appropriate) are met.
- The Board must fully document the reasons why the particular regime and procedure has been chosen.
- The OJEC Notice must reflect the Board's decisions.

2.2 This detailed, technical paper was discussed at length with several of the Board's Executive Directors at a working seminar with the Legal Advisers held over two half days last month. The recommendations flowing from those discussions are set out in the ensuing sections of this summary paper.

### **3. CHOICE OF PUBLIC PROCUREMENT REGULATIONS**

3.1 In considering which set of Public Procurement Regulations should apply to the Project, it is recognised that the Project will constitute a "mixed" contract involving a combination of both works and services. In determining whether to apply the Public Works Contracts Regulations 1991 (as amended) or the Public Services Contracts Regulations 1993 (as amended) (the "Services Regulations"), the Board has to apply the "main object/primary purpose" test and the "relative value" test to determine the correct Regulations for the Project.

3.2 In applying the main object/primary purpose test, the Board acknowledges that it will identify the scope of the Project in terms of the service outputs required rather than focusing on the form of delivery of the Project. Given that the Board is looking for the delivery of "serviced" accommodation over a 30 year contract period, the Board has concluded that the main object of the Project is the delivery of a service rather than the provision of works.

3.3 The test of "relative value" involves a comparison of the works\construction costs of the project with the cost of the services elements. As part of the preparation of the Outline Business Case for the project, these costs were assessed over a contract term of thirty years. This assessment shows that the services element outweighs the works element over the thirty year life assumed for the project.

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3.4 On the basis of the outcome of the "main object/primary purpose" test and the "relative value" test, the Board has concluded that the Project is a services contract and that the Services Regulations should apply to the procurement of the Project.

4. CHOICE OF TENDERING PROCEDURE

4.1 The Board's Executive Directors involved in taking this project forward have concluded that it would not be appropriate to select the open or restricted tendering procedure for use on this Project. It is proposed that the Board should choose to use the negotiated procedure in terms of the Services Regulations on the basis of the grounds set out in Regulations 10(2)(b) and 10(2)(c), which are as follows:

- The nature of the services or the associated risks do not permit prior overall pricing; and
- The nature of the services is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open and restricted procedure.

The decision to follow the negotiated procedure under the Services Regulations follows the advice of the Board's legal advisers and is in line with Treasury guidance.

5. OJEC NOTICE

The Board's Legal Advisers have prepared the OJEC Notice for this Project on the basis that the Service Regulations apply and on the basis that the negotiated procedure will be utilised. The Board's formal agreement to the recommendations set out in this paper will see the procurement advert appear shortly, ahead of the Open Day on 1<sup>st</sup> April, 2003 which has been arranged for developers potentially interested in the project.

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