

NHS Greater Glasgow and Clyde – Award of Contract

Recommendation

The NHS Board is asked to confirm the formal award of a contract for taxi services within the Greater Glasgow area to Spring Radio Cars Ltd (trading as Network Private Hire Ltd), following the conditional approval made at the August 2009 Board meeting.

1 BACKGROUND AND PURPOSE

1.1 A report (Board Paper No 09/44) was presented to a meeting of the NHS Board on 18 August 2009. This recommended the award of a contract for taxi services within the Greater Glasgow area of NHS Greater Glasgow and Clyde to Spring Radio Cars Ltd (trading as Network Private Hire Ltd) (NPH) on completion of a competitive tendering process. Following discussion, the NHS Board decided to approve the award of a contract for the provision taxi services for the Greater Glasgow area to Network Private Hire Ltd. Approval was given on a conditional basis in the light of issues raised within information which had been provided to Board officers by Strathclyde Police immediately prior to the commencement of the Board meeting.

1.2.1 In agreeing to conditional approval the Board charged officers with establishing whether the additional information provided was materially significant. Section Two below provides information on that further consideration.

1.2.2 The purpose of this paper is to report to the Board the outcome of that further process that, following detailed consideration of the information provided by Strathclyde Police and after extensive consultation with Counsel, there is no viable basis for the Board to set aside its responsibilities to procure within the established legal framework. Not to award a contract would expose the Board to an unacceptable level of risk of legal action and substantial damages. For this reason the Chief Executive as the Board's Accountable Officer has a particular responsibility to recommend the formal award of the contract as the only way forward.

2 FURTHER CONSIDERATION SINCE AUGUST 2009

2.1 The information provided by Strathclyde Police on the day of the August Board meeting, and further information provided on 28 October 2009, was reviewed by the Central Legal Office and by Senior and Junior Counsel, to assess its materiality in terms of reaching a decision on whether to make a final award of contract for the provision of taxi services to NPH.

2.2 The matters raised by the Police led to the Board writing to NPH to seek additional responses which might be relevant in reaching a decision to proceed to contract award. NPH have subsequently responded, providing answers to each of the additional information requests made by the NHS Board. This information, together with NPH's response, was again forwarded to Counsel for legal opinion.

EMBARGOED UNTIL MEETING

- 2.3 Having conducted a thorough assessment of the additional information provided by Strathclyde Police, Counsel have concluded that the information provided by Strathclyde Police, and the responses provided by NPH to the information requests submitted by the NHS Board, did not provide the NHS Board with any grounds under the Public Contracts (Scotland) Regulations 2006, not to award a contract to NPH. Counsel also concluded that NPH had answered all of the questions which had been raised by the NHS Board.
- 2.4 In the light of this further legal advice Board Officers concluded that:-
- the further information provided by Strathclyde Police was not materially significant when considered in the light of the established legal framework which governs the procurement of goods and services, on which the Board's final decision requires to be founded;
 - there was no legal basis not to award the contract and not to do so would put the Board at a very high risk of legal action with a clear risk of substantial damages being awarded against the Board;
 - the circumstances which led the Board to offer this contract to the market have not changed and therefore do not provide a basis not to conclude the contracting process;
 - the responsibilities of the NHS Board are related to its position as a public body engaged in the procurement of services, and so of necessity focus on ensuring the propriety and regularity of the process followed, in compliance with extant procurement legislation. In conducting this tender process, the Board has fully complied with the relevant legislation which governs the procurement of services.
 - clearly the Board should be and is concerned about the issue of organised crime which blights many communities. If the information provided to the Board by Strathclyde Police had provided a legal basis, not to proceed from conditional to formal approval, in line with the Board's responsibilities to follow due legal process and have regard to the potential costs then Officers would not recommend approval of this contract.
- 2.4 As the August Board made a conditional decision, Board officers concluded that the updated position should be referred to a meeting of the Performance Review Group (PRG) to consider how to proceed. A report was presented to the PRG on 3 November 2009 (Paper No 09/46) requesting it to consider the further information which had been received and Counsel's advice.
- 2.5 There was a full discussion of the additional information provided by Strathclyde Police and NPH, and Counsel Opinion. In the course of the meeting, deep reservations were expressed at the award of a contract to NPH in the light of the information which had been provided by Strathclyde Police. Board members expressed their support for the aims of Strathclyde Police in seeking to tackle the issue of serious and organised crime. However, there was also concern that based on the legal framework within which the Board is required to operate in procuring of services; the very clear legal advice and the potential high risk of legal action and substantial damages the Board had a clear responsibility to award the contract. PRG decided that a further paper should be provided to the full NHS Board, setting out these issues.
- 2.6 As a final point of context there is clear recognition across the government and the public sector that there are major legal obstacles to considering intelligence on organised crime in procurement processes. The Scottish Crime and Drug Enforcement Agency has established a Serious Organised Crime Procurement Group to consider ways of countering attempts by serious and organised crime groups to infiltrate legitimate business areas. The NHS Board is represented on this National Group.

3 MONITORING OF CONTRACT

- 3.1 This section describes the arrangements to monitor the performance of the contractor if the Board approve the recommendation to award the contract to NPH. A number of measures will be used and these are (1) response to complaints within seven days deadline, (2) late arrivals, (3) vehicles not meeting requirements (this would include any issues in relation to facilities cabs) (4) incidence of verbal abuse.
- 3.2 In addition, if the mechanism for addressing poor or non-performance on behalf of the contractor did not result in the required improvement, the NHS Board would be entitled to terminate the contract.
- 3.3 Should information come to light which provided evidence that the contractor was guilty of grave misconduct or of material misrepresentation (as defined by the relevant regulations), again, the NHS Board would be entitled to terminate the contract.
- 3.4 The contract contains a 30-day unilateral no fault termination clause which allows the NHS Board to terminate the contract at any point on giving 30 days notice – the NHS Board would be required by law to act reasonably in this eventuality recognising that compensation could be due as a result of applying this condition.
- 3.5 It should be noted that NPH currently provide taxi services to NHSGG&C, under an existing contract arrangement, and have done so for a number of years. These services are provided predominantly with the Stobhill area.

4 CONCLUSION/RECOMMENDATION

The Board is grateful to Strathclyde Police for bringing additional information to its attention, to assist it in reaching a decision regarding the award of a contract for taxi services, and in particular for the information provided in relation to Police concerns about alleged links between NPH and persons allegedly involved in serious organised crime. This has received in depth consideration by Board members.

However, the Board has undertaken a detailed review, with full legal advice, on the additional information which led to the August Board conclusion to make a conditional approval to award the contract. The outcome of the further review is that there is no legal basis not to conclude this procurement process and award a contract. Failure to award a contract will leave the Board open to legal action and the likelihood of substantial damages and would be in conflict with the responsibilities of Board members and most particularly with the responsibilities of the Board's Chief Executive in his role as Accountable Officer. The recommendation is that the NHS Board confirm the formal award of a contract for taxi services within the Greater Glasgow area to Spring Radio Cars Ltd (trading as Network Private Hire Ltd), following the conditional approval made at the August 2009 meeting.

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