

The CE RAA – lessons learnt from the journey – a paper from Coram-i

Introduction:

This paper aims to capture the learning from the Central East Regional Adoption Agency (CE RAA) project between June 2015 and July 2017. It is written from the perspective of Coram-i, although it was shared with the CE RAA executive group (i.e. the CE RAA DCSs/representatives) in June 2017 and any comments made by them have been incorporated. It aims to aid learning and to highlight enablers and disablers for the process of 'Regionalising Adoption' and achieving innovation in cross-sector working.

The paper concludes that innovation, via Alternative Delivery Models, Social Investment or Impact Bonds and other 'new' initiatives that incorporate service design and delivery, requires active thinking in advance of project inception to consider the clash between innovation and procurement in situations where different sectors bring complementary expertise and responsibilities to the discharge of statutory and related duties.

Background:

In 2015, the DfE announced its intention to enable the regionalisation of adoption through both grant funding and legislating for every local authority (LA) to be in a Regional Adoption Agency (RAA) by 2020.

Behind the concept of regionalisation was the hypothesis that scale would promote cost efficiency, quality and innovation resulting in more children, including those deemed hard to place, finding families to live with for a lifetime.

In October 2015, Coram won one of the first grants with six LA partners: *Northamptonshire; Buckinghamshire, Cambridgeshire, Norfolk, Bedford City and Bedford Central. Milton Keynes* joined the project later, in June 2016. Two other VAAs besides Coram (through Coram Cambridgeshire Adoption) were also partners in the bid. This reflected the fact that although LAs drive the market for adopters i.e. through corporate parent duties and therefore hold the budget, the Voluntary and Community Sector (VCS) organisations, in this case Voluntary Adoption Agencies (VAAs) should be integral to design. This is because VCS organisations today provide adopters for children often deemed most hard to place. In doing this, innovative strategies for recruitment and support post-placement have had to be constantly developed by VAAs. Adoption cannot be profit making but VCS organisations have access to alternative sources of income to those available in the public sector. This access is one of the factors that enable VAAs to support the development of Alternative Delivery Models (ADMs). ADMs have been a policy focus for successive governments including the government of today.

Additionally, the DfE were aware that the formation of RAAs could pose a risk to the financial viability of VAAs as there would be less need for individual LAs to go to the wider market. As a result, the grant process for the formation of RAA projects encouraged VCS participation/leadership with the presence and status of VAAs being amongst criteria applied when approving proposals for RAAs. However there was no guidance on key 'must dos' in relation to VAAs.

Formation of the Central East RAA project: Bid writing stage June to September 2015

Coram has a wide portfolio including a strong track record in adoption and 'permanence', for example in delivering adoption on behalf of LAs; in establishing Coram Cambridgeshire Adoption (CCA, a fully owned subsidiary of Coram contracted to deliver Cambridgeshire's adoption service but able to deliver for other LAs too) and in consultancy aimed at improving services for vulnerable children. The

organisation therefore initiated the formation of the CE RAA project group and sought both the LA and the VAA partners: Adoptionplus and Saint Francis Children's Society, as well as CCA.

The following aspects of the project were considered:

1. Who within Coram should lead the project?

Coram's SMT wanted the project to remain objective and act in the interests of all partners. It also realised that the complexity of achieving the vision would require multi-disciplinary skills to actively manage the project. The project was allocated to Coram-i, a consultancy within Coram, with its Managing Director leading a team of data analysts, social workers, consultants and other disciplines. Coram-i is in turn within Coram's Director of Operations and Deputy CEO's portfolio. The MD of Coram-i is a data analyst and management consultant with proven skills in managing change and the Director of Operations is an educational psychologist and Tavistock-trained process consultant.

2. Which LAs should join the partnership?

Most RAA project groups were formed around existing consortia or shared services. The CE RAA partnership was unusual in spanning across three consortia. Coram-i was already working with Buckinghamshire and Northamptonshire. CCA was working with Cambridgeshire and in a consortium with Norfolk and calls were made to Bedford Borough, Central Bedfordshire and Milton Keynes because of their vicinity. This is a partnership with a wide geography and varying LA size and Ofsted assessment. The total number of children placed annually by partner LAs is around 300 (ranging from 15 to 90 per agency). Politically (at inception of the project) most councils were Conservative-controlled, although Milton Keynes has no political party with overall control.

3. Which VAAs should join the partnership?

There are three VAAs with headquarters in the geography: Adoptionplus; St Francis Children's Society and CCA. Because of this they were all invited to join the RAA partnership, an invitation they accepted.

4. Defining Responsibilities

Coram approached each member to join the partnership and was named as lead in the bid. An operations group was swiftly formed to aid bid development but where consensus was not possible, Coram's Director of Operations, as the chair, made the final decision. It was acknowledged that decision making would need to sit with the LAs in relation to strategy and services for the children to whom they were accountable. The vision from inception was for Coram to seriously consider with the LAs a joint venture (JV) or commissioned approach to service delivery. This was because CCA was already delivering adoption for Cambridgeshire under contract (as well as wider work) and its trustees were explicit about their strategy to grow to encompass other local authority services too. Therefore, their proposal would need to be at least considered in designing a future RAA/s.

The bid detailed a governance structure: a Coram-i led project team reporting to an Operations Board, made up of senior manager representatives from all partner organisations and chaired by the MD, Coram-i, which in turn reported to an Executive Board (Directors of Children's Services; CEOs of VCS organisations; and trustees and councillors where relevant) chaired by Coram's Director of Operations.

It was accepted that LAs would need to make decisions separately at some junctures, at which point a special purpose group would be set up to report directly to the Executive group without Coram and the other VCS organisations present. The role of the DfE and the DfE-appointed coaches were also thought

crucial to the process, especially at points where Coram's project leadership would have to be removed for special purposes.

Phase 1 – set up and agreeing work plans. November 2015-March 2016

Initial work plans consisted of: Partner diagnostics; RAA scoping; financial modelling; performance benchmarking; procurement; a 'Matching Project' and structural options appraisal.

Coram-i was determined to ensure a positive impact for children by testing the hypothesis that scale would increase the numbers of children matched with adopters and do this more swiftly. A cross-agency matching project was set up with VAA adopters being considered alongside LA adopters (because the interagency fund from the DfE available at that point made it possible). One benefit was that St. Francis has, for example, reported that they have been able to shape their adopter recruitment to meet the emerging needs of the Central East agencies. The results are captured in other documents but success has led to replication in other sites

In April 2016, the CE RAA project was designated a demonstration site together with four other RAA projects. The DfE wanted the CE RAA to share learning with the other sites particularly in relation to issues of procurement and how VAAs could be integral to RAAs.

Phase 2 - Demonstration Site status

The CE RAA project was designated as a demonstration site because of the progress it had made in Phase 1, particularly in being one of the first projects to establish cross-regional operational practice via the Matching Project and its proposal of creating an Operational Hub to develop the RAA's processes and practices. The exploratory work in relation to *procurement* was also seen as a positive development, given the possibility of a VCS organisation being involved not only in the delivery but also integral to shaping the strategic direction of the RAA, and the DfE were keen that other projects benefitted from the project's learning in this area.

Procurement:

This was addressed at inception stage in the confirmed (and later re-confirmed) knowledge that no LA wanted to *host* a RAA on behalf of the others and all favoured active consideration of an integrated VCS/LA partnership delivery approach (a LA/VCS JV or a VCS commissioned service e.g. CCA) alongside consideration of a LA trading company approach. The partnership was also very clear that they wanted to design together.

At inception, Bates Wells Braithwaite (BWB) was approached to give legal advice. Jim Clifford (Director of Advisory Impact) and Julian Blake (Partner, Joint Head of Charity & Social Enterprise Department) were commissioned to give technical/legal advice to the project, bringing to bear their national perspective. Buckinghamshire were originally assigned the lead role in relation to procurement but subsequently thought that they could not fulfil this role, so Northamptonshire took over. The intention of the project team was that separate governance procedures would be put in place with Coram-i only receiving project escalations e.g. timescale or budget issues for resolution.

Preliminary agreement was reached to pursue an **Innovation Partnership (IP)** procurement procedure, a commissioning approach available to commissioners since 2015, through joint procurement and a MOU was signed (belatedly) by all seven LA DCSs by December 2016.

BWB ran a workshop for LA legal and procurement experts in April 2016 and attended Executive Group meetings in May and in July 2016 with LGSS Law.

LGSS Law were commissioned (in June 2016) to give the LAs executive legal advice through Quentin Baker (Director of Law and Governance) and inform the procurement process directly through Virginia Moggridge (Head of Contract and Procurement Law). At that point LGSS Law had the added benefit of already providing legal services to Cambridgeshire and Northamptonshire.

LGSS procurement itemised the work and a budget was set with them to include resources to gain advice from LGSS law. Key information pertaining to the project was shared between the partnership and at DfE coaching sessions.

As of August 2017, procurement has not begun and the project is now being led by one of the LAs, Central Bedfordshire (with iMPOWER as consultants), as the LAs concluded that it would be a conflict of interest for Coram to remain the project lead based on the advice they received from their procurement teams. Involvement of the VCS partners is to be agreed, but is likely to be in the form of a reference group of VCS organisations contributing to the RAA's design, with procurement happening after the design is formulated by the LAs. The CE RAA will return to the same process as that which is informing the other RAAs.

There are at least three reasons why it is important for all sectors to learn from the experience of the CE RAA to date:

1. The Government is encouraging ADMs and the CE RAA was aiming at one of these. If two sectors are to be involved and especially where profit cannot be made, then service design and risk mitigation must be jointly agreed in the context of ongoing problem solving – especially in an arena with many mediating factors contributing to success in a highly-regulated sector.
2. The Government is also promoting the trial of alternative funding mechanisms e.g. the recent Life Chances bid process requires Social Investment or Impact Bond (SIB) development where, inevitably, the commissioner, social investor, provider and often intermediaries must work out a model that risk shares and rewards in a manner that maintains positive impact on children throughout. Inevitably intellectual property and capital is shared in development stage and the risk of loss cannot be taken by any party. Later challenge may also arise in relation to competitor advantage because of involvement in design. This is especially true if the assignment of service delivery to a particular organisation is deemed to require a competitive procurement process.
3. There are examples of success through increased scale and of cross sector partnerships. In Kent, the size of the population of children in care/available for adoption has allowed for efficiencies and innovation e.g. specialist family finding teams; adopter mentoring projects; education champions; a thriving virtual school/training for teachers; post adoption support (with work with foster and SG carers; etc.). Kent's partnership with Coram has also been successful (for example significant costs avoided – paper agreed with Kent and available on request). However, what the partnership has also shown is the importance of risk sharing and joint problem solving when it comes to working with children in care because of the statutory responsibilities and the complexity caused by non-delegable functions. In effect, what this means is that a purely commissioned out service, without opportunity built in for problem solving and change, does not benefit children and procurement and commissioning process must recognise this.

What are the lessons?

1. The choice of procurement method.

The choice of **IP procurement** for CE RAA caused confusion because it had *never* been used before in children's social care. IP allows the public sector to commission a 'design and delivery' partner. There is a two-stage process: appointing a design partner that, once design is complete, can go on to deliver unless there is good reason not to (for either party) without the need for an additional procurement exercise.

The *specification* seeks to appoint an organisation with the capacity, capability and viability to design *and* deliver the outcomes and outputs required. It does not serve to define the service that will deliver these outcomes and outputs in the way that a traditional service specification does.

IP procurement does *not have to commission several organisations* to design and through process reject each design in turn till the final design is chosen, though some view that approach as its intent. It is possible to identify one design and delivery partner chosen for the duration with the commissioner able to dismiss the IP partner through its contractual terms. In this respect, it is no different to the traditional service contract.

Questions were asked as to whether:

- If the CE RAA partnership delivered services through a joint vehicle then **was procurement required?** The legal advice was yes – not for the vehicle but for the services that the LAs then commissioned it to deliver.
- Were the CE RAA's aims **innovative enough for IP procurement?** See Appendix 1 on legal advice from Virginia Moggridge LGSS Law pertaining to this.
- **Were other procurement processes a better fit?** e.g. a Voluntary Ex Ante Notice (VEAT). This is underpinned by the belief that there is no other potential bidder – LAs state their intent publicly and, after a standstill period without challenge, issues the contract. In this instance, the CE RAA partnership was of the view that there would be potential bidders at least for the first stage of the process. This was the only RAA project where there was a declared interest in a VCS partner being integral to the delivery vehicle and providing the service (rather than being commissioned for aspects of the service) AND challenge had already been received from Barnardo's, who questioned through a letter to all DCSs and Coram why they had not been invited to join the CE RAA partnership at DfE tender stage.
- **Could Coram or Coram-i remain involved while commissioning was in train?** Initially the view was taken that the partnership could continue working together BUT that governance of the commissioning process would have to be 'hands clean' of Coram as a whole and the other VAAs involved. This is similar to commissioning processes where there is a service incumbent in post. The commission was intended to start in April 2016 and the specification was to state the presence of the VCS partners in the publicly advertised and tendered for RAA project. In fact, as a demonstration site, information generated through the project was placed on the DfE's RAA learning hub and shared in DfE coaching meetings. Every RAA has VCS partners and in fact the uniqueness of Coram's lead role in the CE RAA project was publicly known and advertised – including the presence of CCA's potential for growth i.e. encompassing other LA service commissions as a wholly-owned charity or by changing legal form. The CE RAA's stated

intention to consider a VCS/LA JV or commissioning a VCS organisation to deliver adoption on its behalf (as Cambridgeshire had) made the CE RAA unique but all RAA projects had VCS partners with a stated interest in running a part of the service they were actively designing together so the principles behind the commissioning process remained the same i.e. if a totally hands clean approach was required between LAs and VCSs then logically no VCS in a RAA project would be able to run a service within that RAA once design completed. However the difference here was that potentially the CE RAA, or a significant part of it, could be 'owned by' a non-statutory sector organisation with delegated functions from the statutory sector and as time went on without completion of procurement process the potential for challenge to LAs from potential bidders increased.

2. Drivers of complexity

This was a project in a new arena of development which is centrally driven with ambivalence from both the VCS and statutory sectors about its potential success. In such situations relationships become important and the CE RAA LAs had little prior experience of working together at senior level because the group were united by this project rather than previous relationships based on working together. Regular visits were made to DCSs by Coram-i but leadership through one DCS was not easy to achieve. This was partly due to a high level of turnover (see 2b) and conflicting priorities, including the context of Ofsted monitored improvement in the three largest LAs. In addition the LAs had different operational and political structures/influences that made united decision making at the time a challenge – including the Cambridgeshire-commissioned delegated adoption service to CCA. An assigned DCS working with Coram-i and available to the DfE for reference would have better enabled progress.

2b Too many decision makers

Five of the seven DCSs in the CE RAA project have either moved on or announced their departure from the local authorities concerned in the period from July 2016 to April 2017. There has been more stability at the operational level but the discussions on procurement generated through the April 2016 workshop did not prove to be successful in keeping partnership procurement together. Individual LA legal and procurement departments took their own advice – in one case requesting legal advice from lawyers who had not been involved in any of the discussions. This meant that the intention to hold and share risk together did not become possible. Since project management was with Coram-i, which had to remain separate from the governance structure in place for procurement, extra/senior coaching was sought from the DfE through Deloitte (coaches to the RAA projects). Deloitte assigned their procurement specialist who was introduced to BWB to understand the rationale for IP as the selected methodology for this project; however, Deloitte did not favour this method.

Deloitte held a separate discussion with the LAs on the *principles* of procurement without the VCS organisations being present. This meant that inadvertently, all communication between Coram and the LAs ceased whilst the LAs made the decision on how to proceed with procurement. This was a disadvantage to the CE RAA partnership as they were left without capacity for project management.

Clarity of the split of responsibilities between project management, advisory roles (BWB, LGSS, Deloitte), procurement/decision makers had been lost and there was no single combined senior

view. Each member of the group in different roles *had valid points to make* and the conclusion of this report is that the procurement issues should be pro-actively addressed before grants are allocated and projects begun – and technical advice agreed with the coaches, who in this case joined the project at senior level only at the end of 2016. The CE RAA addressed procurement at first stage but it did not prove possible for leadership by a VCS organisation that had been integral in winning the tender from the DfE to take the procurement process through to completion through a ring-fenced governance structure as had been envisioned. It is hoped that this report delivers at least in part the learning from the procurement and related processes to date. This was one of the deliverables specified in the grant at Demonstration Stage. Two years have passed since the original bid to create an alternative model of adoption delivery was written for the CE RAA. It is to their credit that the seven LAs in that partnership continue to work together.

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Director of Operations & Deputy CEO

Coram.

Information as at March 2017

(Updated July 2017)

Appendix 1

Briefing Note for Local Authority Partners: Innovation Partnership & Social Care

Author: LGSS Law Limited (Virginia Moggridge)

Date: 17th August 2016

Background:

This Note follows on from a previous Briefing Note, dated 15th July 2016 which dealt in detail with the Innovation Partnership as a proposed option for procurement of a partner to work with the 7 Local Authorities to establish one or multiple RAAs. The concept of an RAA suggests the LAs will require a contract for the design, delivery, transition, development, consolidation and effective operation of the RAA Service with sufficient flexibility, long-term duration and potential operational scale to transform service organisation and provision and to justify supplier investment in the service

Coram-i requested a further short note be prepared which focused particularly on the Social Care sphere and practical implementation of the Innovation Partnership route; this Note therefore builds upon the Note of 15th July. It should be noted that this also incorporates and updates advice given [to Coram-i] by Bates, Wells, Braithwaite (“BWB”), who are advising Coram-i on the Project.

By virtue of the level of detail included in the previous Note, which was prepared to provide information on the applicability and suitability of the procurement model, much of what follows therefore reiterates those points.

Procurement Requirements - Summary

Adoption services are “Social Services” within the applicable definition in Schedule 3 of the Public Contract Regulations 2015 (“the Regulations”), providing “light touch regime” flexibility on required public procurement procedure. The general European Treaty principles of equal treatment/non-discrimination and transparency, underpinned by general public law principles of objectivity and proportionality, apply here, with a non-prescriptive competitive process required for a contract with a total value above the Social Services de minimis threshold of £590,000.

The total contract value of a full RAA Service Contract for an appropriate duration (for example 8 years) will exceed £590,000.

The light touch regime is advantageous as it enables wider possibilities for the procurement process to be shaped and modelled beyond that of the standard EU processes including bespoke procurement processes. The attraction of utilising the light touch regime in Innovation Partnership is that we can circumvent the risks and demands of the Innovation Partnership such as setting of targets and providing payment for this type of service by providing a bespoke procurement under the light touch regime that contains all the attractions of innovation partnership and none of the restraints.

Bidders and Bidding Market

Bidders in this Procurement process will be sensitive to being engaged to contribute time and intellectual property resources to design services without contractual assurance of being able to deliver services in accordance with their own design, or with the risk of other non-designer suppliers delivering in accordance with the designer-supplier's design.

Innovation Partnership: overview

The aim of the innovation partnership is to develop 'an innovative product, service or works' and to subsequently purchase 'the resulting supplies, services or works' where there is a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market. Whilst the existing adoption processes and structures are well established, the RAA is an entirely new development, imposed by central government and which involves an entirely new organisational approach to the adoption landscape.

The Innovation Partnership is a new procurement methodology established by the Regulations and which is well suited to a procurement of this nature; it is designed to enable the procurement of a single or multiple suppliers to provide design consultancy to first develop the model and then to deliver the service through the new mode. The rationale is to enable the sharing of Intellectual Property and the co-development of a mutually satisfactory solution, which is arguably of particular significance in the social care sphere.

Innovation Partnership:

The preamble to the Public Procurement Directive, on which the Regulations are founded, says that the Innovation Partnership procedure is intended for a situation where:

"a need for the development of an innovative ... service ... and the subsequent purchase of the service cannot be met by solutions already available on the market". Regulation 31 (2)

It is intended to establish a long-term innovative partnership for the development and subsequent purchase of a new innovative service, without the need for a separate procurement procedure for the first purchase.

The relevant Regulation 31 in the Regulations 2015 says

"The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authority and the participants"

It should be noted that one participant is expressly permissible.

Regarding the nature and extent of 'innovation', helpfully, the relevant statutory definition is:

"innovation means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations, including with the purpose of helping to solve societal challenges or to support the Europe 2012 strategy for smart, sustainable and inclusive growth".

Social Care

The European style of legislation is principle-based and permissive, leaving the statutory provision to be interpreted reasonably within the prescriptive conditions. A helpful focus here is that the statutory definition is expressly in line with the permissive principles and includes

"significant improvement" to a service and new "organisational method" and "helping to solve societal challenges". These are wholly concordant with the rationale underpinning the RAA project overall. Given the express reference to 'societal challenges' it can be argued that this approach is clearly in line with the rationale and purpose underpinning the Regulations.

Procurement Risks and Considerations

On working with all parties and stakeholders, BWB and LGSS Law have formed the view that contracting authorities would be more comfortable with the Innovation Partnership, which is a prescribed procedure for creating a "partnership" of the joint-venture type facilitating co-design and co-development. Furthermore, the procedure was created by the European Commission in acknowledgement of the doubts and concerns of contracting authorities relating to a choice between the prospect of challenge to pursuing a joint venture co-production without any procurement, and service contract procurement which would necessarily separate design services from delivery services.

It is clear that the whole RAA redesign process is in respect of services (or services of the required organisational method, character and quality) which cannot be met by solutions already available on the market. If such services did not need re-design then straightforward service contract procurements would be appropriate.

If all seven LAs are in fact willing to proceed without a procedure, the risk appetite across them all must be expressly in line with that approach.

The Innovation Partnership has been proposed as one possible procedure assuming that one or more of the seven would be inclined to insist on the security of following a procedure.

This procedure is still relatively new, and whilst not yet widely used it is important to note that the relevant statutory definition as stated above includes *'a new organisational method in business practices, workplace organisation or external relations, including with the purpose of helping to solve societal challenges or to support the Europe 2012 strategy for smart, sustainable and inclusive growth'*.

There will be considerable interest from both the buyer side and bidder side of the EU marketplace, hence it is considered appropriate to engage with the market in a positive way, to better exploit the

expertise available to the LAs in delivering this outcome. Preparation and scoping of the project will therefore be critical in terms of running a successful and focused negotiation procedure so the cost of procurement including time and resource will be higher than normal once the stages have been agreed by all authorities involved.

Timetables need to be realistic and allow sufficient time for bidders to prepare responses; there should also be sufficient time for decision-making processes and evaluation and for documents to be revised after dialogue meetings have been held.

Innovation Partnership Process

The innovation partnership is typically structured in successive phases (in order to reduce the amount of tenders) following the sequence of steps in the research and innovation process.

It is worth noting that the process is progressive; the tender may be constructed to reflect the possibility that one or more of the LAs may decide, after the initial phase of modelling is complete, that the likely final structure is not precisely in line with their requirements, given the differing natures of the individual authorities. To provide for the possibility that one of the LAs form the view that they would prefer to leave the process at that stage, this can be built in to the tender documents. This may have some financial implications which would again be built in to the tender documents and agreed by all prior to the tender commencing. A caveat is that of course if several LAs are not able to continue the procurement would be at risk, but again this can be outlined in the tender documentation.

The competitive phase will take place at the very beginning of the procedure, when the most suitable partner(s) are selected on the basis of their skills, abilities and price; the partner(s) will develop the new solution, as required, in collaboration with the contracting authorities.

This research and development phase can be divided into several stages, during which the number of partners may be gradually reduced, depending on whether they meet certain predetermined criteria; the partner will then provide the final solution (commercial phase).

Once partners are involved, the participating authorities would be expected to work with them through the research and development stage, with financial milestones embedded in that process. The final stage is when the product, i.e. structure, is developed and we eliminate those proposed structures or models which are not suitable. The process will identify how they are paid and how the development of the service model will be paid, and 'sell' the contracting authorities the IPR for this model.

The feasibility of this choice of process will depend on the project group determining the number of stages for this project; a procurement procedure following the Innovation Partnership model will allow for the selection of a Supplier (or suppliers) which may deliver a service design not currently available on the market and then (subject to procedural acceptance of that design) deliver the designed service for a reasonable further contract period. Whilst more than one expression of interest may be received, it should be clear that a single supplier is sought. The design and delivery phases and the relationship between them, including alternative termination (or non-continuation) arrangements, must be clear.

As BWB have made clear, information particular to the Coram proposal should not be included in the ITT for the procurement. Not only would this be a trespass on its Intellectual Property, but also it would create a skewed landscape for procurement since it would mean that one potential bidder's position and proposal is disclosed to the others, but not vice versa. This is both inappropriate and potentially unlawful.

Specification

This model will be driven by the development of the specification. BWB have pointed out that the specification will need sufficient information about the desired outcomes from the procurement and any necessary boundaries on how it is delivered so that a meaningful response can be made by those wishing to submit bids. The specification needs to be based upon the LAs' consultation with each other and third parties, and needs to explain the characteristics of a successful proposal from the LAs' point of view. Prescribed timescales in Regulation 31 may be noted, but, because the procurement will be in respect of Social Services, may be reasonably adapted, with the overall objectives being expediency and utility.

If one expression of interest was received from a Supplier with which the LAs had engaged prior to the procurement, the contracting process may be undertaken (on an objective and transparent basis).

The LAs must be prepared for more than one expression of interest and to apply the established competitive process in accordance with the principles of equal treatment and transparency, noting particularly the obligation to ensure equal information provision between any prospective supplier engaged in pre-procurement consultation and any prospective supplier not so engaged.

Summary

As set out above, the establishment of a an RAA does in the view of those advising both the LAs and CORAM, involve the requirement for a procurement procedure, for the contracting of a partner to collaborate in the design of, and to deliver, an innovative service. It is proposed that for the reasons stated, the Innovation Partnership is considered the appropriate route for this exercise. It is noted that the VCSs are actively involved in the establishment of the RAA, and given the extensive funding being put forward by DeF, their interest in this procurement process is and will continue to be considerable.

Appendix 2

Outline Regional Adoption Agency (“RAA”) Co-Production/Innovation Partner (“Design/Delivery Partner”) Invitation to Tender (“ITT”) Specification

Author: Bates Wells Braithwaite (Julian Blake)

Date: 26th May 2017

1. Explanation of Public Policy context

1.1 The regional consortium of [x named] Local Authorities (“*Project LAs*”) collaborating to establish and provide for the operation of the RAA in the Region of the Project LAs (“*RAA Project*”), in accordance with the Government RAA policy (“*RAA Policy*”).

1.2 The high level purpose of the RAA Policy – collaboration and partnership between the Project LAs, local Voluntary Adoption Agencies (“*Project VAAs*”) and other stakeholders – leading to quality, cost efficiency, innovation and continuing improvement in RAA services.

2. Stage reached in the RAA Project prior to the procuring of the Co-Production/Innovation Partner

2.1 Grant received by Consortium led by [lead VAA] (“*Lead VAA*”), including Project LAs and Project VAAs, to undertake preliminary RAA Project development work, in consultation with stakeholders (“*Preliminary Work*”).

2.2 Report on principles of optimising the partnership between Project LAs, as placing and funding authorities and Project VAAs as service providers, incorporating the engagement of other stakeholders in relation to placement, funding, service provision and requisite care and quality (“*Development Report*”).

2.3 Development Report conclusions on the corporate and financial structure of the RAA.

2.4 Development Report conclusions on the requirement, in line with RAA Policy, for a new/innovative design of the RAA (“*Design*”) and delivery within that Design (“*Delivery*”).

2.5 Development Report conclusions on requisites for the Design and Delivery of the RAA.

2.6 Development Report conclusions on institutional roles and responsibilities within the RAA.

2.7 Development Report conclusions on the specific requirement for a Design/Delivery Partner of the Project LAs, to lead the management of the Design and (assuming acceptance of the Design) to undertake the first Delivery of the management of the operation of the new RAA, for a term of at least [x] years, to optimise consolidated implementation (“*Design and Delivery Contract*”).

2.8 Report conclusions on the indicative budget for the Design and Delivery Contract.

3. **Material Information Disclosure and Management**

- 3.1 Transparent note recognising the factual reality that the Lead VAA is a prime prospective Co-Production/Innovation Partner and a statement of the practical and reasonable measures taken by the Project LAs to ensure that any information received by the Lead VAA in fulfilling that role, which may be material to a bid to act as Design/Delivery Partner, is available on an equal treatment basis to other prospective Design/Delivery Partners.
- 3.2 Transparent note recognising the factual reality that the Lead VAA, in commercial terms, provided/ may have provided proprietary intellectual property to the Project LAs in relation to the Preliminary Work, which is not disclosable within the Invitation to Tender (“ITT”).

4. **Specification of the Design/Delivery Partner Role**

- 4.1 Statement that one Design/Delivery Partner is sought (“*The contracting authority may decide to set up the innovation partnership with one partner, or with several partners...*” – Regulation 31(4) The Public Contracts Regulations 2015).
- 4.2 Minimum requirements of an institution to act as Design/Delivery Partner.
- (a) Relevant track record as VAA, or equivalent.
 - (b) Relevant track record of project, including financial management.
 - (c) Relevant track record of innovative design.
 - (d) Relevant track record of service delivery.
 - (e) Funding and other resources to contribute/apply.
 - (f) Personnel to be engaged.
 - (g) Quality standards and monitoring and reporting requirements.
- 4.3 Assurances to the Design/Delivery Partner on funding, resources, co-ordinated support, and co-operation to be provided by Project LAs and procured by Project LAs of Government, Project VAAs and other stakeholders.
- 4.4 Outline requirements for structural and operating relationships between the Design/Delivery Partner, the Project LAs, the Project VAAs and other stakeholders, including provision for the corporate and financial structure of the RAA and corporate, financial and project management mechanisms.
- 4.5 Outline requirements for Design, applying the Development Report Conclusions.
- 4.6 Outline requirements for Delivery, applying the Development Report Conclusions.

- 4.7 Outline of stages within Design, leading to Delivery, with intermediate targets and KPIs.
- 4.8 Outline of process for approving the Design and moving to Delivery.
- 4.9 Outline of stages of Delivery, with intermediate targets and KPIs.
- 4.10 Contract pricing provisions for Design and Delivery.
- 4.11 Contract Terms and Conditions, including in relation to Design intellectual property appropriately balancing public benefit and institutional concerns.
- 4.12 Contract Formation process.
- 4.13 Contract management process.
- 4.14 Contract review process.
- 4.15 Contract issue/dispute resolution process.
- 4.16 Contract expiry/termination process.
- 5. **Invitation to prospective Design/Delivery Partner to specify its specific offer by reference to Specification of the Design/Delivery Partner Role**