

LONDON BOROUGH OF BRENT

**Meeting of the Executive
8 March 2004**

Report from the Director of Social Services

For action

**Wards affected
All**

REPORT TITLE: AUTHORITY TO INVITE TENDERS FOR THE CONTRACTS FOR THE PROVISION OF DOMICILIARY CARE FOR OLDER PEOPLE AND ADULTS WITH DISABILITIES

Forward Plan ref. [SS/03/04/17]

1.0 Summary

- 1.1 This report concerns the re-tendering of the provision of domiciliary care services for older people and adults with disabilities. This report requests approval to invite tenders in respect of domiciliary care services for older people and adults with disabilities as required by Contract Standing Orders 89 and 90.

2.0 Recommendations

- 2.1 The Executive to give approval to the packaging of the contracts as set out in paragraph 3.7 of the report.
- 2.2 The Executive to give approval to outline evaluation criteria to be used to evaluate tenders as set out in paragraph 3.10 of the report.
- 2.3 The Executive to give approval to officers to invite expressions of interest and shortlist in accordance with minimum standards on financial standing and technical ability to be developed by officers and to invite tenders and evaluate them in accordance with evaluation criteria based on the outline criteria set out at paragraph 3.10 below.

3.0 Detail

3.1 Current Contracts

In October 1999 Members agreed to award a contract for the provision of domiciliary care services to Brent Care at Home (BNA, part of the Nestor Group) which resulted in the in-house service transferring to an independent sector provider together with the transfer of the staff under TUPE. One year later three contracts based on geographical areas were awarded to Community Careline Services, Jay's Homecare and Plan Personnel for the provision of domiciliary care to supplement the provision of the main contract. All four of the contracts had an end date of 3 April 2005 and therefore it is necessary to begin a re-tendering process for the provision of services after this date.

3.2 Approximately 13,000 hours per week of domiciliary care are currently purchased by Social Services for all adult client groups as follows:

- The main contract with Brent Care at Home (BNA) has a minimum purchase commitment of 5,700 hours per week. This is mainly provided to older people.
- The three geographically based contracts do not have any purchase commitment but an undertaking that where care is to be purchased it is offered on a first refusal basis to the contractor allocated to the zone in which the service user resides.
- In addition there are a small number of other providers which have been accredited as able to provide services to the specified standard and who are approached if the contracted providers are not able to meet the individual requirements of a particular case. Care is purchased from these providers on a spot purchase basis.

3.3 Access to Services

Under the NHS and Community Care Act 1990 the Council is required to assess the needs of adults and older people against criteria set out by the Government in the Fair Access to Care Services Guidance and to provide services to meet those needs, wherever possible helping them to live in the community with support for as long as is possible. The main service through which this is achieved is domiciliary care and around 1400 people are supported each week.

3.4 Quality Standards

In April 2003 the regulation of domiciliary care providers came into force. Before this date the industry had not been subject to official regulatory requirements although Brent Social Services Department applied the standards set by the London Domiciliary Care Forum to the providers it selected. The National Minimum Standards for Domiciliary Care incorporates most of the former London Standards but has also introduced new specific requirements for particular NVQ training and induction for all care staff and managers. In addition all staff have to

have an enhanced check carried out by the Criminal Records Bureau (CRB) prior to commencing work. All domiciliary care providers are now required to be registered under the Care Standards Act 2000 and to be inspected by the National Care Standards Commission to ensure they are meeting the minimum standards. As a result there is now a nationally applied standard for domiciliary care. However the raising of standards in respect of training and CRB checks does mean increased costs for providers and where our current contracts have afforded some cushioning of this impact through prescribed Retail Price Index annual price uplifts it is expected that the re-tendering process will allow providers to review their charges and we envisage that there may be some increases in the rates tendered. It is difficult to estimate what these increases may be but the current assessment is for a possible increase in the range of 7 to 20%.

3.5 Consultation

In November and December 2003 and January 2004 extensive consultations have been carried out with a wide range of interested parties and as part of the pre-planning of the re-tendering process. Focus panels comprising like groups of representatives were established. These comprised service users and their relatives, care managers, team managers, senior social services managers, health commissioners, health providers, all current domiciliary care providers, supported housing, voluntary organisations and unions. At each panel similar questions were asked to establish the views of particular groups on aspects of the service provision. The aim was to establish any improvements or changes required to the current service and any developments that were envisaged as being necessary during the next contract period. The key points that emerged from the consultations were:

- Continuity of care by the same care worker was the most important fact for service users and their families;
- The use of electronic time monitoring whereby the care worker logs in and out of service users' homes using a freephone number on their telephone was generally not welcomed by almost all groups consulted
- Services should be integrated not separate. By each provider delivery the full range of care some career development structure could be offered helping to attract, recruit and retain care workers. People consulted also felt that there should not be separate providers for different cultures but that workforces should be representative of the communities in Brent and to ensure services are maintained and developed to meet specific needs partnerships with community groups should be encouraged.

3.6 Contract Issues

Meetings have also been held with legal services and corporate finance regarding the best options for packaging the new contracts taking into consideration the Transfer of Undertakings (Protection of

Employment) Regulations 1981 (TUPE), the application of the new two tier workforce guidance and maintaining pension arrangements for staff previously transferred from the Council. The conclusion reached by the Department from the advice received is that the most cost effective packaging for the Council would be to maintain a similar arrangement to the one that is currently in place.

- 3.7 The Executive is therefore asked to approve the packaging of the contracts as follows:
- a. one contractor to provide domiciliary care in all parts of the borough to include a minimum guaranteed purchase level of hours of 4,500 hours per week to ensure contract viability to which all the former in-house staff would transfer.
 - b. three additional contractors who will be the main provider in a specified geographical area with no minimum guaranteed level of purchasing. At the start of the contract, existing care packages which are not part of the main contract as described in (a) will be transferred to these contractor in (b).
 - c. three secondary contractors who will also be geographically based where there is no minimum guaranteed purchase level or transfer of care at the start of the contract.

Care packages would be purchased from the provider in (a) up to the minimum commitment level. When the minimum commitment level has been reached then care could be purchased from either (a) or (b). If neither of these was able to provide the care then it would be offered to (c).

Flexibility will be a key requirement and care packages may be offered and accepted by providers out of zone once both prime and secondary contractors have declined.

All contracts will require providers to deliver services which are culturally sensitive and meet any appropriate gender requests of service users and to ensure that they maintain appropriate staff to fulfil this. Partnering arrangements with local community groups and specialist providers will be encouraged.

- 3.8 One of the consistent factors of high importance to all stakeholders which has been identified throughout the monitoring of the current contracts and in the recent consultations is that of continuity of care worker, whereby the same care worker(s) regularly attend the same service user. Obviously therefore the potential changeover between contractors is an anxious time for service users and their relatives because the continuity of care workers cannot be guaranteed in all cases despite the application of TUPE. To reduce future disruptions officers are recommending that the contract period for these contracts

is 5 years with a possible 2 year extension where performance is satisfactory rather than 3 plus 2 years as is the current one

3.9 **Monitoring**

Currently there are two part time contract monitoring officers (1.5 full time equivalents) who carry out monitoring of the service delivery against the specification and investigate service failures and complaints. In the absence of formal regulation of domiciliary care much of the monitoring activity has involved checking providers against the voluntary standards which are encompassed in the specification. Following the introduction of regulation and the National Minimum Standards much of this will now be inspected by the National Care Standards Commission. It is therefore envisaged that monitoring of the new contracts will be more service user centred, involving greater user involvement and feedback and can be more focussed on service delivery quality within the resource available. Annual service user satisfaction surveys will continue to be carried out.

3.10 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations have been set out below for the approval of the Executive.

Ref.	Requirement	Response
(i)	The nature of the service.	Provision of domiciliary care services for older people and adults with disabilities
(ii)	The estimated total value of all contracts.	The budget for these contracts is £9.8m per annum (£68.6m over the seven year period)
(iii)	The contract term.	Five years with the possibility of a two year extension subject to acceptable performance
(iv)	The tender procedure to be adopted.	A two stage process in accordance with the Council's Standing Orders. As Social Services transactions are 'Part B Services' for the purposes of the EU regulations, the Regulations are of residual application only (forwarding of a contract award notice etc.) and do not dictate the procurement process to be followed.

(v)	The procurement timetable.	Indicative dates are: <ul style="list-style-type: none"> • Adverts placed • Expressions of interest returned • Shortlist drawn up in accordance with pre-determined minimum standards as to financial standing and technical competence • Invite to tender • Deadline for tender submissions • Panel evaluation and shortlist for site visit • Site Visits • Interviews/ Presentations • Allocation of (a), (b) and (c) Contractors • Post-tender clarification /negotiation • Report recommending Contract award circulated internally for comment • Executive approval • Contract start date 	<p>25 March 2004</p> <p>10 May 2004</p> <p>June2004</p> <p>18 June 2004</p> <p>30 July 2004</p> <p>10 August 2004</p> <p>1-30 September 2004</p> <p>6 October 2004</p> <p>7 October 2004</p> <p>8-30 October 2004</p> <p>November 2004</p> <p>December 2004</p> <p>4 April 2005</p>
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(vi)	The evaluation criteria and process.	<p>Shortlists are to be drawn up in accordance with the Council's Contract Management Guidelines namely the pre qualification questionnaire (PQQ) and thereby meeting the Council's financial standing requirements, technical capacity and technical expertise. The PQQ will also contain social care scenarios which require detailed responses from applicants to demonstrate technical expertise, good practice and experience. The panel will evaluate the tenders against the following criteria:</p> <ul style="list-style-type: none"> ▪ Registration with National Care Standards Commission and satisfactorily meeting National Minimum Standards ▪ Staff recruitment, induction, training, supervision and equalities issues ▪ Application of Health and Safety ▪ Administration practices and record keeping ▪ Adherence to procedures ▪ Service user satisfaction ▪ Quality system in operation ▪ Business continuity arrangements ▪ Complaints handling ▪ Best value considerations ▪ Price ▪ Implementation plan ▪ Application of TUPE and pension arrangements (where applicable) ▪ Care programming process ▪ Human Resources including the ability to facilitate continuity of care, availability and extent of staff skill, particularly for specialist care ▪ Diversity of staff ▪ Proposals for innovation in service delivery (working with local community groups/specialist services etc) ▪ Cultural sensitivity and equalities in service delivery
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with agreeing the recommendations in this report. There are potential financial implications which may occur later in the process and these will be addressed in subsequent reports.

(viii)	The Council's Best Value duties.	This procurement process and on-going contractual requirement will ensure that the Council's Best Value obligations are met.
(ix)	Any staffing implications, including TUPE and pensions.	See sections 4, 5 and 6 below
(x)	The relevant financial, legal and other considerations.	See sections 4, 5 and 6 below

3.11 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 89.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 90.

4.2 The estimated total value of these services contracts is £9.8m per annum equivalent to £68.6m over the seven year contract period. The annual breakdown is £7.9m for older people, £1.6m for adults with physical disabilities, £170,000 for adults with learning disabilities and £130,000 for high level care service commissioned on behalf of the health service and recharged to them.

4.3 There will be costs incurred in the contract process for professional advice, particularly legal and actuarial.

4.4 It is anticipated that the cost of these contracts, including those for professional advice, will be funded from existing resources.

4.5 Pension Provision

The current main provider of domiciliary care services, BNA, currently accesses the Local Government Pension Scheme (LGPS) via an admission agreement to maintain pension provision for staff transferred from the Council in 1999. The staff involved in delivering domiciliary care under all other arrangements have never been local government employees and there are no direct pensions implications in relation to this group of employees.

4.6 For those staff who transferred to Brent Care At Home from the Council

on 4th October 1999 and for those staff who will be employed to provide services under the contract set out at 3.7(a) subsequent to this re-tender, there must be due regard to the government's Two Tier Workforce code. The code requires the following for all re-tendered contracts advertised on or after 13th March 2003:

- Former local government staff transferred to the contract must continue to have access to the LGPS or be offered an alternative good quality pension scheme which save in exceptional circumstances must be broadly comparable to the LGPS
- Where an alternative pension scheme is offered the Council must, save in exceptional circumstances, seek a bulk transfer agreement between the outgoing and incoming contractors in relation to transferring local government staff wishing to transfer their accrued pension benefits from the old contractor's to the new contractor's pension scheme

4.7 Where the staff in question have joined the contract subsequent to the transfer and this re-tender to work alongside former local government staff the code requires the Council to secure:

- Membership of the LGPS i.e. where the employer has admitted body status
- Membership of a good quality employer pension scheme, either being a contracted out, final salary based defined benefit scheme or a defined contribution scheme (benefits are based upon the investment returns made by the employee and employer). The employer must match employee contributions up to 6% in a defined contribution scheme.
- A Stakeholder Pension Scheme under which the employer must match employee contributions up to 6 % (basically a defined contribution scheme with special rules e.g. 25% of the annuity can be used to purchase a tax free lump sum)

4.8 The provision of pension benefits is likely to have financial implications for the Council. Whether the contractor elects to provide the LGPS or a broadly comparable scheme the contractor will incur set up costs and, usually an employer contribution rate. In assessing this the contractor may decide to include a proportionate increase in the contract price.

4.9 **LGPS**

The provision of the LGPS will require the contractor's entrance into an admission agreement with the Council, as previously stated. The admission agreement will remain in place for the term of the contract or as long as the contractor and the Council meet its terms. Once the admission agreement is terminated the contractor will be required to compensate the fund for any investment loss incurred for the duration

of the admission agreement. The contractor may request that the Council indemnify it for any investment loss – another potential cost to the Council or increase in contract price. The Council may decide to cover the contractor's investment loss by:

- a. Aligning investment with bonds/gilts. In so doing the contractor would be less likely to suffer as a consequence of abrupt fluctuations in equity markets.
- b. The Council agreeing to compensate the contractor for investment loss experienced at the end of the admission agreement.
- c. Increase the contract hourly rate to compensate the contractor for its employer contributions to the fund

These options would be subject to actuarial advice

4.10 Currently options (b) and (c) above protect the incumbent provider, Brent Care At Home, under a side agreement to the main admission agreement. Experience has shown that it is more desirable to offer protection at the end of the contract as shown in (b) above when assets and liabilities may accurately be assessed in a terminal valuation.

4.11 **Broadly Comparable Pension Scheme**

Should the contractor provide a broadly comparable pension scheme then as previously stated the government's code requires that bulk transfer arrangements for the staff should be sought by the Council. Bulk transfers are intended to ensure that the staff receive day for day service should they request their accrued rights be transferred from the LGPS to the new contractor's scheme. Bulk arrangements are an alternative to individual cash equivalent transfers which may not offer day for day service.

4.12 It is recommended that the successful tenderer for the contract set out at 3.7(a) be contractually required to use its best endeavours to secure day for day service in the successor employer's pension scheme for former Council staff.

4.13 The provision of a broadly comparable scheme will on the balance of probabilities have the following outcomes:

- The scheme may not offer comparable benefits in all circumstances – this may have PR implications
- The legislation regarding bulk transfer arrangements is ambiguous – there is no ultimate obligation to secure this. Actuarial work and expense will be incurred with no certain outcome. This would not contribute to a smooth procurement process.
- If the contractor incurs any loss to secure the bulk transfer this may

also increase the contract cost

- If the contractor is required to secure a secondary bulk transfer which is likely to be a direct cost to them, this may also mean an increase to the contract price or other indemnity from the Council

4.14 In the interests of staff/contractor relations, a smooth procurement process, like for like scheme benefits and greater predictability of pension costs it is pragmatic therefore that the contractor offer the LGPS via an admission agreement for those staff who transferred and were granted LGPS membership from 4th October 1999 and continue to be employed in services under that contract.

4.15 The Council must have due respect for the government's Two Tier workforce code and its financial implications. This should be balanced with the Council's statutory obligations under Best Value.

5.0 Staffing Implications

5.1 This service is currently provided by external contractors and there are no implications for Council staff arising from retendering the contract

6.0 Legal Implications

6.1 The Council has the necessary powers to enter into the proposed contracts under (amongst other provisions) s29 of the National Assistance Act 1948, s45 of the Health Services and Public Health Act 1968, s2 of the Chronically Sick and Disabled Persons Act 1970 and s2 of the Local Government Act 2000, all in conjunction with s111 of the Local Government Act 1972.

6.2 As the award of the Domiciliary Care contracts will be for social services provision, they fall within Schedule 1 Part B of the Public Services Contracts Regulations 1993. Those Regulations are accordingly of residual application only (the need to issue a contract award notice etc.) and do not determine the procurement process to be followed. However, the overriding principles of EU law (equality of treatment, fairness and transparency in the award process) continue to apply and should be upheld at all times in relation to the award of these contracts.

6.3 Under the Council's Contract Standing Orders, this package is for the award of a Major Contract (or Contracts) requiring the approval of the Executive for the seeking of expressions of interest. Such approval (as well as approval for the seeking of tenders) is sought by this report. In addition, the approval of the Executive is required for the making of the ultimate award (awards) and the Borough Solicitor is advised that

officers will return to the Executive with a further report with recommendations for the awards in due course.

- 6.4 The Borough Solicitor will support the Department in this procurement through assisting with the preparation of the tender documentation (with particular reference to the terms and conditions of contract), having due regard at all times to the Care Standards Act 2000, the Domiciliary Care Agencies Regulations 2002, the National Minimum Standards on Domiciliary Care, the Human Rights Act (with particular reference to Article 8 and the Right to Respect For Private and Family Life) and all other relevant statutes and Regulations. The Borough Solicitor will also support the Department in the shortlisting, evaluation and clarification/negotiation stages.
- 6.5 The Borough Solicitor considers that provided that the overriding principles of EU public procurement are complied with (equality of treatment, fairness and transparency in the award process) and that Contract Standing Orders are followed, there should be no risk of legal challenge to the award.
- 6.6 It is likely that TUPE will apply to the proposed contracts detailed in paragraph 3.7(a) and 3.7(b) in respect of the staff currently assigned to the existing equivalent contracts . For example, if BNA is not awarded the proposed main contract it is likely that there will be a TUPE transfer of staff currently employed by BNA to the contractor that is awarded that contract. Pending further information being available concerning the geographical location of the service users allocated to staff by the accredited providers who do not have a formal contract with the Council and who provide a service Borough wide, it is unclear whether TUPE would apply to transfer their contracts to the contractors who are awarded the contracts detailed in paragraph 3.7(c).
- 6.7 In exercising its contracting functions the Council must have regard to guidance issued by the Government under the Local Government 1999. It has a statutory duty as a best value authority to achieve continuous improvement in the way in which those functions are exercised as required by section 3 of that Act. The Council is entitled not to follow the guidance if it has proper and rational grounds for so doing, for example if it considers that not following the guidance in some respect is necessary for it to fulfil its statutory duty under section 3.
- 6.8 The Code of Practice on Workforce Matters in Local Authority Service Contracts, which forms part of guidance issued under the Local Government Act 1999, contains requirements relating to pensions referred to in section 4 of this report. The Code also requires the new contractor in a re-tendering exercise who recruits new staff to work on a local authority contract alongside former local government staff , to offer those new staff non – pension fair and reasonable terms and conditions which are, overall, no less favourable than those of the

former local government staff. The Code further requires the Council to make these requirements legally binding on the contractor through contractual terms. Should the Executive give approval to the invitation of tenders then it will be necessary for the Council to decide whether it would wish to make some or all of these requirements legally binding on the successful tenderer. In coming to that decision it will be necessary for the Council to consider in respect of each of the requirements in the Code the respective costs and benefits of making that requirement legally binding on the successful tenderer.

7.0 Diversity Implications

7.1 Domiciliary care services are provided for all adult residents of Brent who meet the Council's eligibility criteria. Contracts currently require providers to deliver services which are

- culturally sensitive by providing cultural awareness training for all care workers, matching specific language requirements where possible and recruiting a local workforce which reflects the communities of Brent;
- able to offer service users a male or female care worker if specifically requested
- able to care for service users with a range of disabilities through all care workers receiving disability awareness training and specialist training in specific areas such as sensory impairment.

7.2 The new contracts will continue to require providers to deliver services in this way. In addition partnering arrangements with local community groups and specialist providers will be encouraged. Providers will be monitored to ensure they are complying with these requirements through checking of their records and feedback will be sought from service users through home visits and annual surveys as to their satisfaction with the service provision.

8.0 Background Information

8.1 Domiciliary Care Services Procurement File

Contact Officer(s)

- Ros Howard, Service Unit Manager, Older People Services

Jenny Goodall
Director of Social Services

DRAFT Tender Evaluation Grid

PROCUREMENT OF DOMICILIARY CARE SERVICES - SEPTEMBER 2004- TENDER EVALUATION MATRIX

Criterion	Tenderer 1			Tenderer 2			Tenderer 3			Tenderer 4			Tenderer 5			Tenderer 6			Tenderer 7			Benchmark Min Acceptable Scores		
	Weight	Score	Total	Weight	Score	Total	Weight	Score	Total	Weight	Score	Total	Weight	Score	Total	Weight	Score	Total	Weight	Score	Total	Weight	Score	Total
Compliance with NCSC	30			30			30			30			30			30			30			30	6	180
Staffing Matters Recruitment	25			25			25			25			25			25			25			25	6	150
Induction	20			20			20			20			20			20			20			20	6	120
Training	20			20			20			20			20			20			20			20	6	120
Supervision	20			20			20			20			20			20			20			20	6	120
Application of Health & Safety	20			20			20			20			20			20			20			20	6	120
Admin & Record Keeping	15			15			15			15			15			15			15			15	6	90
Adherence to Procedures	10			10			10			10			10			10			10			10	6	60
Service User Satisfaction	30			30			30			30			30			30			30			30	6	180
Quality System in Operation	15			15			15			15			15			15			15			15	6	90
Business Continuity	10			10			10			10			10			10			10			10	6	60
Complaints Handling	15			15			15			15			15			15			15			15	6	90
Implementation Plan	20			20			20			20			20			20			20			20	6	120
Application of TUPE	15			15			15			15			15			15			15			15	6	90
Pension Arrangements	15			15			15			15			15			15			15			15	6	90
Care Programming	15			15			15			15			15			15			15			15	6	90
Cultural Sensitivity & Equalities	15			15			15			15			15			15			15			15	6	90
Human Resources Availability	15			15			15			15			15			15			15			15	6	90
Continuity of Care	30			30			30			30			30			30			30			30	6	180
Staff Skills	20			20			20			20			20			20			20			20	6	120
Staff Diversity	15			15			15			15			15			15			15			15	6	90
Price	20			20			20			20			20			20			20			20	6	120
Best Value Considerations	5			5			5			5			5			5			5			5	6	30
Innovation Proposals	10			10			10			10			10			10			10			10	6	60
TOTAL																								2550

Signed by the Evaluation Panel Members

Weight =weighting, the relative significance of the element
 Score =score on a 0-10 scale as indicated
 Total =weighting multiplied by score

Key to Scores
 0-4 Unacceptable
 5-7 Acceptable
 8-10 Excellent