



**Executive**  
14 March 2011

**Report from the Director of the  
Children and Families**

Wards  
Affected:  
ALL

**Authority to invite tenders for short break services for  
disabled children and young people**

**1.0 Summary**

- 1.1 A report was approved by the Executive on 18<sup>th</sup> January 2010 to invite tenders for framework contracts for the provision of Short Break Services provided for disabled children and young people in their own home, as required by Contract Standing Orders 88 and 89. Due to need to achieve ever greater efficiencies and in view of the additional suppliers in this market, an alternate process of tendering the service is now envisioned with the establishment of multiple provider frameworks rather than single provider frameworks.

**2.0 Recommendations**

- 2.1 The Executive to give approval to the pre-tender considerations and the criteria to be used to evaluate tenders as set out in paragraph 4.1 of the report.
- 2.2 The Executive to give approval to officers to invite tenders for three multiple provider frameworks and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.

**3.0 Detail**

Statutory Background

- 3.1 The statutory duties held by the council to provide domiciliary care to disabled children were set out in the previous report to the Executive dated 18 January 2010. In addition, a new statutory duty under Section 25, Children and Young Person Act 2008 will come into force in April 2011 under which the council has to 'provide breaks from caring to assist parents and other who provide care for disabled children to continue to do so, or to do so more effectively'. The council will be required to provide a range of short breaks under this duty, including support within the family home and to enable the disabled child or young person to access social and

community activities, which framework agreements with domiciliary care agencies will support.

### Description of Service

3.2 Short Break Services can be provided to meet two main needs:

- (a) Short break support provided by a personal care worker to assist the parent/carer in meeting the specific care tasks arising from the child or young person's disability where it has been assessed that the parent / carer cannot meet these tasks without support.
- (b) a short break if it is assessed that it is not in the child or young person's best interests to receive a short break away from the family home due to age or disability or lack of suitable placements

3.3 The care worker can be asked to engage with the child or young person to provide support in a number of different ways. This can be

- Personal care to meet assistance with bodily functions such as feeding, bathing and toileting and non-physical care, such as advice, encouragement and supervision relating to the above tasks.
- Developing independent life skills, including money management through shopping; travel awareness, food and hygiene by helping to prepare meals.
- Emotional and psychological support, including the promotion of social engagement and behaviour management.
- Care management of behaviour challenges, to include a more intensive care service to enable social integration for the child
- Intellectual support, including assisting the child to do their homework, following any learning plan devised by the school.
- Social support to assist the child to develop friendships by access to local youth clubs, social or local community events i.e. cinema, places of worship, and other places of interest to the child.
- A more intensive personal care service for children with higher technology dependency and health care.

### Current Provision

3.4 The Integrated Services for Disabled Children and Young Person's team has been responsible for commissioning 'short break' services for disabled children in Brent since the coming into force of the Children Act 1989. In December 2006 a contract commenced with Personnel and Care Bank Agency for a three year period with the option to extend the contract for a further two years. The contract with Personnel and Care Bank Agency was extended by agreement beyond the initial 3 year period to 30 September 2010 but due to certain issues with the contract, Officers did not wish to

extend it for the full 2 years. Since September 2010 the Council has spot purchased Short Break Services from care agencies.

- 3.5 Once a Short Break package has been agreed, the needs of the child or young person and their parent /carers is regularly reviewed to ensure that the package continues to meet their needs in the future.
- 3.6 Where the identified social care tasks for a disabled child are combined with meeting health care needs, Short Break Services are provided after an additional assessment of the child's continuing care needs under the Primary Care Trust 'Continuing Care' criteria. The PCT use these criteria to determine the level of responsibility it has to jointly meet these needs. The Council then commissions social care services under its existing contractual arrangements and the PCT commissions health services under its health care arrangements (the PCT generally spot purchases health care needs). In very limited circumstances, the Council may be asked to use its contractual arrangements to purchase both social care and health care, with the PCT then reimbursing the Council for the health care costs.
- 3.7 Approximately 60 disabled children and young people up to the age of 19 now receive a total of 615 hours care at home each week. This is a decrease on the number who received care at home in January 2008 by 127 hours per week. This does not show a decrease in need for such services but reflects the fact that some of the families who originally received Short Break Service now arrange their own care at home services through Direct Payments provided by the authority, with families preferring to use personal assistants they have recruited directly rather than rely on agency care workers. As of December 2010, 102 families with a disabled child were in receipt of a Direct Payment. Further, despite the growth in direct payments, there is also likely to be a continuing growth in short breaks to be arranged by the Council.

#### Future Provision – Procurement Issues

- 3.8 The future provision of Short Break Services after December 2009 has been under consideration within Disabled Children Services for some time. A number of options have been evaluated. The Aiming High for Disabled Children transformation programme has given added impetus to design and offer more flexible Short Break Services which includes care at home to families of disabled children. Statutory guidance exists on how to safeguard and promote the welfare of disabled children through the provision of short break services; with the intent to improve outcomes for disabled children. The pattern of short breaks has changed substantially since the publication of the original Volume 2 of the Children Act 1989 Guidance. There has been a shift away from longer periods in residential or foster care to shorter periods often in the child's own home or community. Many of these services are now provided through direct payments or short break domiciliary care. Aiming High for Disabled Children contributed to this change by requiring a rapid rise in the amount of short breaks available to disabled children and their families.
- 3.9 As indicated in the report to the Executive dated 18 January 2010, the main options were for the service to return to a spot commissioning basis. This would allow flexibility for the service to be commissioned from one of the several agencies available to most suit the child or young person's needs but would reintroduce previous difficulties in the monitoring of quality standards. Another option was to tender for a block contract to commission a set number of short break service hours annually. Whilst it was indicated that this may be more administratively efficient, it

would not provide value for money as the block care hours would still need to be funded even if they have not been provided. The preferred option identified was the establishment of framework arrangements leading to the appointment of single suppliers to each framework lot.

3.10 Following approval by the Executive to pursue a procurement process for single supplier frameworks, Officers commenced drafting the necessary tender documentation. Prior to issue of tenders however, Officers became aware of an increasing number of providers coming into the market. In consequence, whilst framework arrangements are still considered to be the most appropriate way forward, rather than appointing one contractor to each framework lot, it is now proposed to appoint 3-5 providers to each framework arrangement. Award of call-off contracts as between the 3 – 5 providers under the various framework arrangements would then be by way of a mini-competition process. Officers consider that a mini competition process would lead to increased competition between providers and lower prices for the Council, particularly important at a time when there is a need to achieve ever greater efficiencies. The frameworks will be awarded for a 3 year term, with the option of extending it for a further two years. It is considered that this option offers value for money, whilst offering an ability to monitor quality standards, provide continuity of services to clients and provide more flexible Short Break Services including care at home for families with disabled children.

3.11 The Integrated Service for Disabled Children and Young Person's team wishes to procure a Short Break Service for families of disabled children and young people which may occur in the child or young person's family home or in the community; and could be provided either during the day or at night. Officers consider that there are 3 distinct elements of a Short Break Service which are as follows:

Lot 1: Personal care and short break support for disabled children and young people in their family home and or in the community.

Lot 2: Short Break support in the family home and or in the community for children and young people with behaviour challenges and/or autistic spectrum disorders.

Lot 3: Short Break support in the family home and or in the community for children and young people with complex health needs, including technology dependent children and young people.

3.12 Officers consider that all three lots identified in paragraph 3.11 should be procured separately as individual framework agreements in order to attract as many tenders as possible. Officers are conscious that some providers will bid for two or all three 3 lots and may therefore be appointed to more than one framework agreement.

#### Future Procurement – Consultation Issues

3.13 Continuing consultations have taken place with existing parents/carers. This has informed the exact specification for the new service. Consultations have taken place in the form of a questionnaire which has been sent out to all parents/carers, as well as consultations undertaken through the Aiming High for Disabled Children initiative.

- 3.14 In addition, consultation has taken place with children and young people who have identified the packages of short breaks they would like to engage in which include activities away from their home.
- 3.15 Parents/carers will be invited to a future consultation meeting where they will be informed of the tendering process and where they will be asked for their views on the service currently being provided and what/how improvements can be made.
- 3.16 During the tender process it is intended to involve one of the service user's relatives in the process of evaluating tenders. Whilst their role will not involve the scoring of tenders, they will consider the tenders and provide observations from a carer's perspective of the relative merits of the tenders.

#### Future Procurement - Contract Issues

- 3.17 The framework contracts will require the provider(s) to deliver the service which is culturally sensitive and meet any appropriate gender requests of parents/carers and to ensure that they maintain appropriate staff to fulfil this.
- 3.18 One of the consistent factors of high performance that has been identified throughout the monitoring of the current service provider is that of the continuity of care worker, whereby the same care worker(s) regularly attend the same child/young person. Obviously the potential changeover between service providers is an anxious time for parents/carers and the children and young people because the continuity of care worker is not guaranteed. To address this Officers are recommending that the contract period is 3 years with an option to extend the framework contracts for a further 2 years subject to satisfactory performance.

#### Future Procurement - Monitoring

- 3.19 The framework contracts will be monitored by a nominated Officer of the Integrated Services for Disabled Children. Monitoring of the service delivery is undertaken against a service specification and any service failures and complaints are investigated.
- 3.20 Officers have regular contact with the current service providers and hold regular monthly contract meetings. Officers will also undertake an annual site visit where service provider's records, premises, etc are checked thoroughly.
- 3.21 The Care Quality Commission will also be inspecting the service provider(s). It is envisaged that the framework contracts will be more service user centred, involving greater user involvement and feedback and can be more focussed on service quality within the resources available. Annual service user satisfaction surveys will continue to be carried out.

#### Future Procurement – PCT involvement

- 3.22 As detailed at paragraph 3.6, where a child has both social care needs and health care needs, generally the council will purchase social care under its own contractual arrangements and the PCT commissions health services under its health care arrangements. In very limited circumstances, the Council may be asked to use its contractual arrangements to purchase both social care and health care, with the PCT then reimbursing the Council for the health care costs. It is proposed that this

arrangement will continue in future with the framework contracts for Lots 1-3 used only on limited occasions to purchase both social care and health care, with the PCT then reimbursing the Council for the health care costs. As this is only likely to happen on very limited occasions, it will have minimal impact on the contract value.

#### 4.0 Pre-Tender Considerations

4.1 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 Short Break Services for disabled children and young people.
(ii)	The future estimated value of the framework contracts	Lot 1 - £800k over 5 years (£440k over 3 years)_ Lot 2 - £200k over 5 years (£160k over 3 years)_ Lot 3 - £500k over 5 years (£300k over 3 years)_
(iii)	The contract term.	3 years with an option to extend for a further 2 years
(iv)	The tender procedure to be adopted.	A two stage process in accordance with the Council's Standing Orders.  As Social Care transactions are 'Part B Services' for the purposes of the EU Regulations, the Regulations are of residual application only (forwarding of contract award notice, etc.) and do not dictate the procurement process to be followed.
(v)	The procurement timetable	<p><b>Indicative dates are:</b></p> <ul style="list-style-type: none"> <li>• Adverts placed 21.03.11</li> <li>• Expressions of interest (Pre-Qualification Questionnaire) returned 11.05.11</li> <li>• Shortlist drawn up in accordance with pre-determined minimum standards as to financial standing and technical competence 20.05.11</li> <li>• Invite to tender 23.05.11</li> <li>• Deadline for tender submissions 11.07.11</li> </ul> <p>14 – 15.07.11</p>

		<ul style="list-style-type: none"> <li>• Initial panel evaluation</li> <li>• Site visits</li> <li>• Interviews / Presentations</li> <li>• Panel evaluation</li> <li>• Report recommending Contract award circulated internally for comment</li> <li>• Executive approval</li> <li>• Contract start date</li> </ul>	<p>18 – 20.07.11</p> <p>27 – 28.07.11</p> <p>03 – 05.08.11</p> <p>08.08.11</p> <p>12.09.11</p> <p>03.10.11</p>
(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> <p>Price</p> <p>Quality –to include the following:</p> <ul style="list-style-type: none"> <li>• Business Continuity Planning and Disaster Recovery Planning</li> <li>• Best value considerations - Quality, Personnel &amp; Service Provision Methodology to include Contract Management Records.</li> <li>• Implementation Plan – detailing how the services will be performed and carried out.</li> <li>• Proven record of working with Children and Young People up to 19 years old and approach to maintaining successful working relationships under call-off contracts.</li> <li>• Plan to maintain diversity of staff during the contract term</li> <li>• Plan to maintain cultural sensitivity and equalities in service delivery during the contract term.</li> </ul>	

(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.
(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	See sections 6 below
(x)	The relevant financial, legal and other considerations	See sections 5, 7 and 8 below

4.2 The Executive is asked to approve these proposals as set out in the recommendations and in accordance with Standing Order 89.

## **5.0 Financial Implications**

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

5.2 The estimated contract value for the new Short Break Services framework contracts over the 5 year term (3 contract years plus the optional extension of up to two years) will be £1,500,000. This will be met from existing budgets.

5.3 The value of the individual framework contracts will be:

Lot 1 - £800,000  
Lot 2 - £200,000  
Lot 3 - £500,000

5.4 There will be costs incurred in the contract process for professional advice, in particular legal. These will be funded from existing resources.

## **6.0 Staffing Implications**

6.1 This service is currently provided by one main external provider and there are no implications for Council Officer staff arising from this tendering exercise.

6.2 The Transfer of Employment (Protection of Employment) Regulations 2006, ("TUPE") operate so as to protect the continuity of service and the terms and conditions of employees where there is a "service provision change" as defined by TUPE i.e.



- (a) activities cease to be carried out by a contractor on a client's behalf and are carried out instead by another contractor on the client's behalf or by the client on its own behalf ; and
- (b) immediately before the change in the person carrying out the activities there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client and where the employees are assigned to the organised grouping of employees.

6.3 TUPE will also operate to protect the continuity of service and the terms and conditions of employees where there is a transfer from one person to another of an economic entity which retains its identity and where the employees are assigned to the economic identity which has been transferred.

6.4 Subject to the right of the employee to object to transferring, in the case of a service provision change the employee's contract of employment will transfer to the person who has taken over the carrying out of the activities while in the case of the transfer of an economic entity the employee's contract of employment will transfer to the person to whom the economic entity was transferred.

6.5 The communication of relevant staffing information by the transferor to the transferee and the provision of information about the implications of the transfer by the transferor and transferee to representatives of their staff affected by the transfer is a required part of the transfer process

6.6 In the present case, if the framework contracts are awarded to one or more new contractors TUPE may apply so as to transfer from the current contractors to the new contractor(s) those employees of the current contractors who spend all or most of their working time on the activities taken over by the new contractor(s).

## **7.0 Legal Implications**

7.1 The Council has the necessary powers to enter into the proposed contracts under (amongst other provisions) s26 and 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, the Children Act 1999 and s2 of the Local Government Act 2000, all in conjunction with s111 of the Local Government Act 1972.

7.2 The estimated value of Lots 1 and 3 over their lifetime is in excess of £500,000 and therefore the procurement and award of these contacts are subject to the Council's Contract Standing Orders and Financial Regulations in respect of High Value contracts . The estimated value of Lot 2 over its lifetime is in excess of the current EU procurement threshold and therefore the procurement of the contract is subject to the Council's Contract Standing Orders and Financial Regulations in respect of Medium Value contracts. As all contracts are to be procured together however, approval is sought to tender all three framework contracts

7.3 The framework contracts are for Part B Services under Public Contracts Regulations 2006 ("EU Procurement Regulations") and are therefore not subject to the full application of the EU Procurement Regulations. They are however, subject to the overriding EU principles of equality of treatment, fairness and transparency in the award of the process.

- 7.4 As the framework contracts are for Part B Services, they are not subject to the provisions under EU Procurement Regulations regarding the establishment and operation of frameworks. The framework contracts will however operate in a similar manner to multiple provider frameworks established under the EU Procurement Regulations, with there being call-offs by way of a mini-competition from the framework contract for individual short break packages of care.
- 7.5 Once the tendering process is undertaken Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contracts and recommending award.

## **8.0 Diversity Implications**

- 8.1 Equalities issues are a core requirement for this contract. An equalities impact assessment has been completed. Diversity and equality perspectives will form part of the evaluation of the tendering organisations' capacity to deliver the services.
- 8.2 Contracts currently require providers of health, social care and housing support services to deliver services which are
- culturally sensitive by providing cultural awareness training for all care workers, matching language requirements if specifically required where possible and recruiting a local workforce which reflects the communities of Brent;
  - able to offer parents/carers a male or female support worker if specifically requested;
  - able to care for disabled children and young people through all staff receiving specialist training in specific areas such as management of challenging behaviour, .
- 8.3 The contract will continue to require the provider to deliver the service in this way. The provider will be monitored to ensure they are complying with these requirements through checking of their records, regular review of services provided to individual service users where feedback will be sought from parents/carers, monthly monitoring meetings and provision of quarterly Performance Indicators.

## **9.0 Background Information**

Short Break Procurement Documents

### **Contact Officer(s)**

Rik Boxer  
Assistant Director – Achievement and Inclusion,  
Children and Families Department  
Tel 020 8937 3201  
Email Rik.Boxer@brent.gov.uk

**Krutika Pau**  
**Director of Children and Families**