



Executive
18 January 2010

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

Wards affected:
ALL

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

Forward Plan Ref: C&F-09/10-016

1.0 Summary

1.1 This report seeks the authority 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.

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 and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.

3.0 Detail

Statutory Background

3.1 Various statutory provisions enable Short Break Services to be provided to disabled children and young people in their own home. The local authority, for example, has a duty under Section 17, Children Act 1989 to assess the needs of disabled children as 'children in need' and to provide a range of services which promote the upbringing of the child within their family, minimise the effect on disabled children of their disabilities and give disabled children the opportunity to lead lives which are as normal as possible. Short Break Services is one of a range of services which can therefore be provided to disabled children and their families under these duties. Additionally, Schedule 2 paragraph 8 of the Children Act 1989 enables the local authority to make 'home help' services available to families of children in need. The

provide 'practical assistance' within the home where it is satisfied that it is necessary to do so to meet the needs of a disabled person.

3.2 In addition to its ability to provide Short Break Services to disabled children and young people, there is also a statutory ability to provide services for carers. The local authority has a duty to assess the ability of carers to continue to provide care to family members. Under Section 6 Carers and Disabled Children Act 2000 and Carers (Recognition and Services) Act 1995, if a person with parental responsibility for a disabled child provides a substantial amount of care on a regular basis for a child and asks a local authority to carry out an assessment of his/her ability to provide care for the child, the local authority must carry out such an assessment under section 17 of the Children Act 1989. Also, the Children and Young Persons Act 2008 amends the 1989 Children Act to make it a duty for Local Authorities to provide assistance for carers to have short breaks from caring for their disabled child.

3.3 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. The National Minimum Standards for Domiciliary Care has introduced new specific requirements, in particular for NVQ training and induction for all new staff and managers. In addition all staff must 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 Care Quality Commission to ensure they are meeting the minimum standards for domiciliary care.

Description of Service

3.4 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

3.5 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

- 3.6 The Social Care 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 Council also spot purchases on an ad hoc basis certain Short Break Services from other care agencies. The contract with Personal and Care Bank Agency has been extended by agreement beyond the initial 3 year period to 30 September 2010 to allow for continuity of services and a handover period should there be a change in service providers. However, due to some issues with the contract, officers do not wish to extend it for the full 2 years.
- 3.7 Once a Short Break package has been agreed, the needs of the child or young person and their parent /carers is be regularly reviewed to ensure that the package continues to meet their needs in the future.
- 3.8 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. At present no agreement under section 75 of the National Health Service Act 2006 exists with regard to such arrangements with the PCT but Officers are considering whether a section 75 agreement needs to be put in place for any future joint commissioning of Short Break Services and will report back to the Executive if it is considered appropriate.
- 3.9 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 155 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.

Future Provision – Procurement Issues

- 3.10 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. The main options are 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 would be tender for a block contract to commission a set number of short break service hours annually. This may be more administratively efficient but 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 option which has been identified as the most suitable is for a framework contract to 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 Social Care Services 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 in order to attract as many tenders as possible. Officers are conscious however that some providers will bid for two or all three 3 lots and may be able to reduce costs as a result. Providers will be asked to indicate as part of the tender process whether prices will be reduced if awarded more than one framework contract. Officers therefore wish to procure all lots at the same time with the possibility of awarding more than one lot to one provider if this proves to be economically advantageous.

Future Procurement – Consultation Issues

- 3.13 Continuing consultations have taken place with existing parents/carers. This will inform the exact specification for the new service. Consultation has 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 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 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 an 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 contract 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 3.8, 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. As there is however a possibility that PCT funded health care services may be purchased under the framework contracts, it is intended to include a PCT representative on the tender evaluation panel.

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>Indicative dates are:</p> <ul style="list-style-type: none"> • Adverts placed 20.01.10 – 10.02.10 • : Expressions of interest (Pre-Qualification Questionnaire) returned 19.03.10 • Shortlist drawn up in accordance with pre-determined minimum standards as to financial 05.04.10 & 06.04.10

		<p>competence</p> <ul style="list-style-type: none"> • Invite to tender • Deadline for tender submissions • Initial panel evaluation • Site visits • Interviews / Presentations • Panel evaluation • Report recommending Contract award circulated internally for comment • Executive approval • Contract start date 	<p>07.04.10</p> <p>18.05.10</p> <p>01 – 03.06.10</p> <p>03 – 09.06.10</p> <p>10.06.10</p> <p>14.06.10 – 15.06.10</p> <p>22.06.10</p> <p>12.07.10</p> <p>01.10.10</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 – consisting of the following:</p> <ul style="list-style-type: none"> • Business Continuity Planning and Disaster Recovery Planning • Best value considerations- Quality, Personnel & Service Provision Methodology to include Contract Management Records. • Implementation Plan – detailing how the services will be performed and carried out. • Proven record of working with Children and Young People up to 19 years old. • Plan to maintain diversity of staff during the contract term • Plan to maintain cultural sensitivity and equalities in service delivery during the contract term. 	
(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 play 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 contracts 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 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 single provider frameworks established under the EU Procurement Regulations, with there being call-offs 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.

7.6 As detailed in paragraph 3.8, no agreement under section 75 of the National Health Service Act 2006 exists with regard to current joint commissioning arrangements with the PCT but Officers are considering whether such agreement needs to be put in place if there is to be joint commissioning under the proposed framework contracts and will report back to the Executive if a section 75 agreement is considered appropriate.

8. 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 File

Contact Officer(s)

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