



Cabinet
27 June 2016

**Report from the Strategic Director of
Community and Wellbeing**

Wards Affected:
ALL

Accommodation services for people with learning disabilities

1.0 Summary

- 1.1 The Council currently has three properties that support 10 people with learning disabilities in the community. In 2014, it was agreed by Cabinet that a competitive tender process would be undertaken to establish new lease arrangements and on-site care and support service contracts.
- 1.2 The report provides an update on the current arrangements and requests authority for an exemption to award 3 twenty month contracts for ongoing care and support when the existing arrangements end as required by Contract Standing Order No 84(a).
- 1.3 This report explains the reasons for the exemption request and details the service benefits to the recommendation, prior to undertaking a new tender process as required by Contract Standing Orders 88 and 89.

2.0 Recommendations

- 2.1 Cabinet to note the extension to the existing contracts using delegated powers, with the incumbent provider at the property, 7 Kinch Grove to 3 September 2016, and the extension to the existing contracts to 22 August 2016 with the incumbent provider at the properties, 63 Manor Drive and 54 Beechcroft Gardens.

- 2.2 Cabinet to approve an exemption pursuant to Contact Standing Order 84(a) for the requirement to tender for three on-site care and support contracts for 20 months on the basis of the disproportionate negative impact on service users for the protected characteristic of disability.
- 2.3 Cabinet to note that a tender process will be undertaken to replace the temporary twenty month contracts and approve the inviting of those tenders on the basis of the pre-tender considerations set out in paragraph 6.0 of the report.
- 2.4 The Cabinet to give approval to officers to evaluate the tenders referred to in 2.3 above on the basis of the evaluation criteria set out in paragraph 6.0 of the report.

3.0 Tenancy management arrangements with associated property leases

- 3.1 The tenancy and housing management services are being delivered by two providers across the three properties. Through a low value quote process the service requirements will now be delivered by a single provider.

4.0 Care & Support arrangements – 7 Kinch Grove

- 4.1 Following Cabinet approval to commence the process of procuring new on-site care and support service contracts, service users and their families were consulted. The initial plan was to concurrently change the registration status of the care home from 'residential care home' to 'supported living', and procure the new care and support contract. During the consultation process families raised concerns that the two activities represented too many changes too quickly for the service users given the complexity/severity of their learning disability and concomitant needs.
- 4.2 The Equality Impact Assessment (EIA) was refreshed to take account of the issues identified during the consultation. The updated EIA identified that the best way to mitigate the negative impacts on the protected characteristic of disability was to create a clear break between the process of amending registration status with Care Quality Commission, from the procurement of a new care and support contract.
- 4.3 The incumbent provider is currently changing their status with the Care Quality Commission to become a supported living environment. Families are aware and are supportive of the process. To help achieve this, the existing contract with Voyage Care was extended using delegated powers to now expire on 3 September 2016.

- 4.4 Once the status has changed and tenants have had time to adjust to the changes, a tender process will be initiated to establish the long-term care and support contract. Until the new contract is awarded, Cabinet are asked to agree an exemption pursuant to Contract Standing Order 84(a) from the requirement to tender the care and support contract for a period of twenty months, ending 31 March 2018.
- 4.5 During the 20 month contract a competitive tender exercise for the care and support contract will be undertaken following the procedure described in section 6.0.

5.0 Care & Support arrangements – 63 Manor Drive and 54 Beechcroft Gardens

- 5.1 Following Cabinet approval to commence the process of procuring new on-site care and support service contracts, service users and their families were informed. The consultation process was completed and families were in agreement with the proposals.
- 5.2 A two stage tender process was undertaken. Two bids were received for the final stage. The evaluation process identified that the pricing element of both bids would require a 30% increase in the existing budget. The Strategic Director Community Wellbeing and Chief Financial officer were briefed and a decision was taken not to proceed to award stage on the basis of affordability. As an interim measure the existing contracts with Dimensions Limited were therefore extended from 23 February 2016 to 22 August 2016 using delegated powers.
- 5.3 To ensure that the future procurement delivers the efficiencies the Council requires, it is proposed that a new procurement commences to be concurrent with the Kinch Grove tender, described in 4.5. This will create a larger market opportunity likely to attract a wider pool of bidders, and therefore, provide the greatest opportunity to achieve best contract value for the Council. Until the new contracts are awarded Cabinet are asked to agree to an exemption pursuant to Contract Standing Order 84(a) from the requirement to re-tender the care and support contracts and instead remain with the incumbent provider until 31 March 2018.
- 5.4 During the term of the proposed contracts, officers will develop new ways to engage with the local care market to better understand the financial practicalities of delivering these services, and devise ways to identify potential providers able to submit bids that are affordable to the Council.

6.0 Procurement Plan for care and support arrangements at 63 Manor Drive, 54 Beechcroft Gardens, and 7 Kinch Grove

- 6.1 During the proposed 20 month contracts, officers would seek to

procure new care and support service contracts. In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Cabinet.

Ref.	Requirement	Response	
(i)	The nature of the service.	Care and Support services	
(ii)	The estimated value.	Contract 1(Manor Drive) = £520,000 Contract 2 (Beechcroft Gardens) = £550,000 Contract 3 (Kinch Grove) = £1,460,00	
(iii)	The contract term.	Each contract will be awarded with a 3 + 1 + 1 year term.	
(iv)	The tender procedure to be adopted.	Tender using the Accommodation Plus Dynamic Purchasing System (Lot 4B).	
v)	The procurement timetable.	Indicative dates are:	
		Invite to tender	May 2017
		Deadline for tender submissions	June 2017
		Panel evaluation and shortlist for interview	July 2017
		Interviews and contract decision	August 2017
		Report recommending Contract award circulated internally for comment	September 2017
		Cabinet approval	November 2017
		[Cabinet call in period of 5 days (mandatory unless excluded by the Exec) OR minimum 10 calendar day standstill period – notification issued to all tenderers and additional debriefing of unsuccessful tenderers (contracts covered by the full EU Regulations only)]	November 2017

Ref.	Requirement	Response
		Contract Mobilisation January 2018
		Contract start date 1 st April 2018
(vi)	The evaluation criteria and process.	<p>1. At tender evaluation stage, the panel will evaluate the tenders against the following criteria (in accordance with the criteria set when the Accommodation Plus Dynamic Purchasing System was established):</p> <ul style="list-style-type: none"> ▪ How the Service will be operated to achieve delivery of outcomes. ▪ How policies and procedures regarding equality and human rights will be applied. ▪ How the Service will be operated to lead to improved personal independence. ▪ Proposals with regard to Staffing (skills, qualifications and experience and structure) in order to meet the needs of the service users. ▪ How Social Value will be delivered. ▪ How experience in delivering similar services will be applied to the Service. ▪ How out of hours services will be delivered. ▪ How the Safeguarding policy will be implemented. ▪ How Social Value will be delivered. <p>The weightings for quality will consist of 60% and price 40%. Social Value will hold at least 10% of the total score.</p>
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the proposed contract. Financial Services and Legal Services have been consulted concerning the proposed contracts.
(viii)	The Council's Best Value duties.	The evaluation criteria is based on a model where cost and quality are distributed to ensure that provider(s) are selected on best value. The tendering documentation will also specify how the

Ref.	Requirement	Response
		agreements will be managed to ensure on-going delivery of the outcomes.
(ix)	Consideration of Public Services (Social Value) Act 2012	<p>The following Social Value assessments will be incorporated into the tender evaluation processes:</p> <ul style="list-style-type: none"> ▪ Confirmation that London Living Wage (and National Minimum Wage) will be paid. NB: bidders will be asked to submit rates for paying staff at both LLW and NLW rates; members will be given the opportunity to assess both rates. ▪ Number of additional jobs that will be created as part of the contract. ▪ Percentage of vacancies that will be targeted at unemployed in-borough people. ▪ Total anticipated spend with SME's (in and out of Brent). ▪ Percentage of vehicles that have Reduced Pollution Certificate and/or meet or exceed the requirements of the London Low Emissions Zone. ▪ Targets for reducing carbon and pollution waste.
(x)	Any staffing implications, including TUPE and pensions.	None for Council staff however there are TUPE implications related to the external providers' employees.
(xi)	The relevant financial, legal and other considerations.	See sections 7.0 and 8.0 below.

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

7.0 Financial Implications

7.1 The 2016/17 Learning Disabilities Supported Living budget is £4.7m. These contracts are fully funded via this budget.

7.2 The annual value of the contracts is £506k and over a 20 month period would equate to £843k.

7.3 In order to facilitate the assessment of the LLW cost implications both inclusive and non-inclusive rates will be requested and evaluated with

both options presented to the Cabinet when the request for approval to award is made.

8.0 Legal Implications

- 8.1 Members will note from Recommendation 2.1 that existing contractual arrangements have been extended up to and including 3 September 2016 for Kinch Grove and 22 August 2016 in respect of Manor Drive and Beechcroft Gardens. This has been done pursuant to powers delegated to the Strategic Director of Community and Wellbeing pursuant to Part 4 of the Constitution.
- 8.2 The tenancy management contracts are classed as Low Value Contracts under the Council's Contract Standing Orders and Financial Regulations and therefore contracts have been awarded pursuant to powers delegated to the Strategic Director of Community and Wellbeing pursuant to Part 4 of the Constitution.
- 8.3 As part of the procurement of tenancy management arrangements with the associated leases, the associated leases will be contracted out of the Landlord and Tenant Act 1954 so that the contractor will not have the benefit of the right to a new lease when the lease comes to an end.
- 8.4 The values of the 3 potential 20 month contracts for the Properties as detailed at Recommendation 2.2 are as detailed in paragraph 7.2. As on-site care and support services fall within the social and other specific services listed in Schedule 3 ("Schedule 3 Services") of the Public Contracts Regulations 2015 ("EU Regulations"), the individual contracts are below the threshold for full application of the EU Regulations.
- 8.5 The 20 month contracts are classed as Medium Value Contracts under the Council's Contract Standing Orders and Financial Regulations and should thus be procured through a tender process, involving advertising on Contracts Finder and the London Tenders Portal. As detailed in paragraphs 4.4 and 5.3, officers have indicated that they consider that there are good operational and financial reasons not to tender these contracts but instead wish to directly award contracts to the incumbent providers. In the circumstances, an exemption from the requirements to tender in accordance with Contracts Standing Orders and Financial Regulations is sought. Cabinet is able to grant such exemption pursuant to CSO 84(a) if it considers there are good operational and/or financial reasons.
- 8.6 With regard to the procurement of on-site care and support contracts at the Properties from 1 April 2018 as set out in Recommendation 2.3, such services fall within the social and other specific services listed in Schedule 3 of the EU Regulations. The procurement will be broken

down into 3 contracts, 2 of which are below the threshold applicable to Schedule 3 Services (currently set at £589,148) and one of which is above the EU threshold. Regulation 6 (11) of the EU Regulations requires that as the aggregate value of all lots together is in excess of the relevant threshold, the EU Regulations apply to the award of contracts for each lot.

- 8.7 The estimated value of the proposed procurement of each on-site care and support services contract is in excess of £500,000 making all contracts High Value Contracts under the Council's Contract Standing Orders. As such the contracts are subject to the Council's own Standing Orders and Financial Regulations in respect of High Value Contracts and therefore the Cabinet must approve the pre-tender considerations set out in Section 6.0 of this report (Standing Order 89) and the inviting of tenders (Standing Order 88).
- 8.8 Once the tendering process is undertaken officers will report back to the Cabinet in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contracts and recommending award.
- 8.9 In the present case, a number of contractors are currently providing elements of the service being procured. As a result, the Transfer of Employment (Protection of Employment) Regulations 2006 ("TUPE") may apply if contracts are awarded to new contractors where immediately before the change of contractor, 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 Council and where the employees are assigned to that organised grouping. Subject to the right of the employee to object to transferring, the employee's contract of employment will transfer to new contractor.

9.0 Diversity Implications

- 9.1 Members are referred to the Equalities Impact Assessment at Appendix 1, and will note the negative impacts identified that resulted in the recommendations put forward in this report.
- 9.2 The key negative impact relates to the protected characteristic of disability. The tenants residing at the three Properties have complex/severe learning disabilities with concomitant needs. They have all lived in care environments for the majority of their adult lives, and their families worry for their future as they approach older age.
- 9.3 The Equalities Impact Assessments have been refreshed throughout the past two years as officers have worked to meet the legal requirements for contracting of services and the Council's equality duties. Feedback from family members and Council social care staff

have highlighted the importance of continuity of care and support for the service users from people who understand their needs and individual communication skills, especially during time of significant change, such as, changing how the style of care is delivered (from 'residential care' to 'supported living'), and tendering of contracts where a new provider could be appointed. The findings have been used to develop the recommendations contained in this report.

10.0 Staffing/Accommodation Implications (if appropriate)

10.1 These services are currently provided by external contractors and there are no implications for Council staff arising from awarding these contracts.

11.0 Public Services (Social Value) Act 2012]

11.1 The Council is under a duty pursuant to the Public Services (Social Value) Act 2012 (the "Social Value Act") to consider how relevant services being procured might be structured to improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation.

11.2 This duty applies to the procurement of the proposed contracts as Schedule 3 Services over the threshold for application of the EU Regulations are subject to the requirements of the Social Value Act.

11.3 The market for care services whilst being nationally large is highly specialised to client needs and geographical locations which narrows the opportunities available to the Authority in terms of the requirements of the Social Value Act. However, officers will throughout the new procurement exercise take account of Social Value Act provisions and detailed at paragraph 6.1 are specific provisions regarding Social Value that will be incorporated into the tender evaluation process.

12.0 Background Papers

12.1 Equality Impact Assessment 2016.

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APPENDIX 1

EQUALITIES IMPACT ASSESSMENT