



Executive
16 November 2009

**Report from the Director of
Housing and Community Care**

Wards Affected:
ALL

**Authority to award the residential and respite care contract
for people with learning disabilities**

Forward Plan Ref: H&CC-09/10-18

Appendices 3, 4 and 5 of this Report are Not for Publication

1.0 Summary

- 1.1 This report requests authority to award a contract as required by Contract Standing Order No. 88. This report summarises the process undertaken in tendering the contract for the provision of residential and respite care services for people with learning disabilities and, following the completion of the evaluation of the tenders, recommends to whom the contract should be awarded to.

2.0 Recommendations

- 2.1 That the Executive approve the award of the contract for the provision of residential and respite care services for people with learning disabilities for a period of 3 years commencing on 1 February 2010 with an option to extend the contract for a further two-year period to The Camden Society subject to resolution of pensions arrangements and to subsequent endorsement of arrangements by the General Purposes Committee.
- 2.2 That the Executive authorise the Director of Housing and Community Care in consultation with the Director of Finance and Corporate Resources and the Borough Solicitor to resolve pensions arrangements.
- 2.3 That the Executive approve the grant of short term rent free leases in respect of Melrose House, the three properties at Tudor Gardens and the property at Willesden Lane to The Camden Society in accordance upon the terms of the Contract for the reason set out in paragraph 7.10.

3.0 Detail

3.1 Background

- 3.1 The current residential and respite care service for people with learning disabilities is provided at Melrose House in Willesden, NW2. This is a Council run service which is registered with the Care Quality Commission (CQC). The service currently provides 24 hour long term residential care to 14 residents. On the same site, respite care service is provided to 5 Service Users of which 3 beds are in an external bungalow.
- 3.2 The service is inspected by the CQC and since 2002 has not met the new registered care home standards. Furthermore the service provided is no longer considered to be 'fit for purpose' as it provides an institutionalised model of care in one large home. The CQC does not consider it appropriate for a respite care service to be provided on the same site as a residential care service as this can be disruptive to long term residents to have a continuous stream of temporary Service Users coming to live in their home.
- 3.3 On 12 November 2001 a joint meeting between Housing and Social Services departments chaired by the Director of Housing considered and accepted a proposal report for redevelopment of Melrose House and Homlea residential homes through the PFI programme. The report was put forward following an invitation from the Director of Housing to the Director of Social Services to jointly explore whether in addition to the 'core' social housing PFI bid which they were lodging, it would be possible to apply PFI principles to Social Services properties. The proposal was accepted and viewed very favourably by the meeting and later by the DTLR as one that brought in synergy between Housing and Social Services functions thereby enhancing 'joint working' that is advantageous to both clients in service delivery terms and the local authority in financial terms.
- 3.4 The redevelopment of these residential and respite care services into the new model of care subsequently formed part of the Housing and Social Care Non Housing Revenue Account PFI Project. The Executive on 9th October 2006 agreed to appoint Brent Co-efficient (BCE), a consortium consisting of Hyde Housing Group, Bouygues UK (builder) and the Bank of Scotland, as preferred bidder for the PFI scheme. Officers reached financial close for the PFI scheme on 19 December 2008.
- 3.5 The Executive of 8 October 2007 gave approval for the new model of care to be provided on the sites at Tudor Gardens and 167 Willesden Lane, such model of care to be consistent with the national and local policy context outlined at paragraphs 3.9 – 3.11.
- 3.6 The Executive of 14 January 2008 gave approval to tender for residential and respite care services for people with learning disabilities currently provided at Melrose House.
- 3.7 The re-provision of the residential care will be in 3 houses each containing 5 one bed units on the Tudor Gardens site, i.e. provision of a total of 15 beds. The respite/short break services will be provided in 5 one bed units at 167 Willesden Lane NW 6.

Both developments will meet CQC standards. The new residential provision on the Tudor Gardens site will be completed by January 2010 and the relocation of the residential care service from Melrose House will take place by 31 March 2010.

- 3.8 The respite care service will cease to be provided at Melrose House once the residents have relocated to Tudor Gardens. This service will have to be purchased from within the private sector until 1 September 2010 when the new respite care service commences at 167 Willesden Lane.

National Policy Context

- 3.9 National policy emphasises the need for more personalised individual services which promote independence. This may be seen through such policy documents as “Our Health, Our Care, Our Say” and the support for individual budgets and self-directed support. Such a direction emphasises the move away from traditional services such as residential services and towards more ordinary forms of living, with additional support where required. Research findings from the first pilot projects of “In Control” show that most people wanted to move out of residential care into more ordinary forms of living where they chose who they lived with and have their needs appropriately met. They also showed an increase in service user satisfaction as a result of such move.
- 3.10 “Valuing People”, the white paper which provides a good practice framework for the direction of learning disability services, also emphasises the need for people with learning disabilities to have more choice over where they live and who they live with. It promotes the inclusion of people with learning disabilities in ordinary opportunities, such as community activities and employment. “Valuing People Now (2009)”, published on 19 January 2009, is a three year strategy which focuses on promoting inclusive, better lives for people with learning disabilities, access to housing and personalised services as three of the five key areas for improvement.

Local Policy Context

- 3.11 The local policy context is in keeping with the direction of national policies. Local policies, such as the Adult Social Care Transformation initiative and the Housing Strategy also emphasise the need to move away from residential care to more independent forms of living. One of the reasons that many people were placed in residential care rather than independent living was due to a lack of available housing and competent support providers – however this has changed and it is now rare for someone to be placed in residential accommodation. In addition, young people entering the adult services for the first time and their families have very different expectations and do not wish to use existing residential services choosing more ordinary options such as supported living.

Consultation

Service Users

- 3.12 Consultation with service users has been ongoing since 2002 when the proposal to develop the PFI service was initiated. The option of tendering the service has been

discussed since the start of this consultation. An external facilitator has been engaged to work with the users to ensure understanding of the issues is developed over time. The current residents of Melrose House as well as respite care service users were given the opportunity to contribute to the tender evaluation process by asking questions of tenderers. The residents' feedback was taken into account by the tender evaluation panel during its clarification and evaluation of tenders. 3 residents and one respite care service user took part in tender clarification interviews. This process was facilitated by the independent facilitator.

Relatives

- 3.13 Consultation with relatives has also been ongoing and representatives of relatives have been involved in the tender process by contributing to the development of the service specification, visiting tenderers care homes and interviewing tenderers. Officers met with relatives in April 2009 for a briefing session on the tender process and how they can be involved in the evaluation of tenders.
- 3.14 Officers wrote to all relatives of Melrose House residents and respite care Service Users on 12 August 2009 informing them of how they can be involved in the evaluation of tenders and asking them to sign a confidentiality undertaking if they wished to take part given they would be given access to confidential tender information. Three relatives of current residents of Melrose House and one relative of a respite care service User returned the signed Confidentiality Undertaking.
- 3.15 Relatives involvement in the evaluation of the tenders was overseen by an Officer from the Procurement and Risk Management Team. Relatives mentioned in 3.14 above took part in the site visits and the interview of tenderers. The resulting feedback from relatives was taken into account by the tender evaluation panel during its clarification of tenders and selection of a preferred care provider.

Staff

- 3.16 Staff have been involved in regular consultation since 2003. This has largely covered the new service model, service redesign and proposed tender. Overall staff have remained concerned about being transferred to a new service provider and further formal HR consultations have taken place, with the last meeting taking place in May 2009. Regular meetings are still held to update staff about the procurement process and provide them with development on new ways of working.

Unions

- 3.17 Unison and GMB have also been involved from 2003 in consultation on the service redesign and proposal to tender the service. Both unions oppose externalisation of the service and have continued to raise the issue of transparency of costs.
- 3.18 On the 18th February 2008 and 8th May 2008 the Trade Unions were part of the Housing and Community Care Departmental Consultative Committee where Melrose House was discussed. The Trade Unions have also been given the opportunity to ask the tenderers any questions they have via Human Resources.
- 3.19 Final consultation meeting with the Unions has been planned prior to the Executive.

Relocation process

- 3.20 It is proposed that the new contract will commence on 1 February 2010 – two months before the residents actually move to the Tudor Gardens site so that there is a managed change process. It is anticipated that the new buildings at Tudor Gardens will be handed over to the Council in January 2010. The Council is committed to moving into the new buildings by 31 March 2010 so as to free up the existing Melrose site for social housing. Any delay in doing so will incur financial penalties.
- 3.21 The closure of a long established home such as Melrose House which has served residents for over thirty years is a stressful time for staff, residents and family members. When a facility announces that it is closing or relocating a number of residents, it is imperative that all parties involved work together to develop a resident centred relocation plan. Melrose House management and it's staff, the residents, family members and guardians, advocates, other teams (day centres, assessment teams etc.) all become key players in effecting a smooth relocation process.
- 3.22 In recognition of the above and in line with good practice, a Relocation Group has now been established comprising officers from within the Council (i.e. Head of Service, Health & Safety Adviser, Assessment Manager, Melrose Manager, Day & Residential Manager, Housing Manager) ; NHS Brent (Psychologist, Loss & Bereavement Counsellor); CNWL Mental Health Services (Community Psychiatrist), an Advocate and a Melrose House Relative. The role of this group is to plan and implement the Relocation Action Plan which has a total of 14 areas each with multitude tasks to complete. Some of the areas in the action plan such as assessments, resident choices, liaison with CQC, transfer of clinical care etc., are statutory requirements in relocation of care homes. The Group is chaired by the Head of Service for Learning Disabilities and meets on a monthly basis.
- 3.23 The Relocation Group has also been overseeing other key areas in the process including arrangements for furnishings, contributing to the communications process with relatives and residents initially through the newsletters etc. There is a reassessment of each user's needs and a transition plan developed with them, their

family/carer or advocate, and the staff by a dedicated social worker, which is due to be completed by the end of November 2009.

4. Tender process

- 4.1 The Executive of 14 January 2008 approved Officers recommendation to tender for the provision of residential and respite care services for people with learning disabilities.
- 4.2 The contract will be let for a period of 3 years with the option to extend for a further 2 years.
- 4.3 Officers followed a two stage tender process in accordance with the Council's Contract Standing Orders and Contract Management Guidelines. The two stage process allowed Officers to eliminate unsuitable organisations at the pre-qualifying stage.

Stage One – Shortlisting of Interested Contractors

- 4.4 Advertisements were placed in the trade press, national and local newspapers as well as on the Council's external website on 9 February 2009 to seek initial expressions of interest. The Council's standard pre-qualification questionnaire (PQQ), an information pack containing the outline service and tender approach were posted on the Council's Procurement website for interested organisations to download. A total of 24 organisations returned PQQs.
- 4.5 Shortlisting was undertaken on the basis of the contractors' financial and economic standing, business probity, professional and technical capability. This evaluation included consideration of health and safety, quality assurance, equal opportunities and disabilities awareness, and CQC registration requirements. 10 organisations were assessed as achieving relevant standards and were invited to tender.

Stage Two – Invitation to Tender and Evaluation of Tenders

- 4.6 The 10 shortlisted organisations were invited to tender on 2 June 2009. The tendering instructions stated that the contract would be awarded on the basis of the most economically advantageous offer to the Council and that in evaluating tenders, the Council would have regard to the following criteria (as approved by the Executive on 14 January 2008) together with appropriate weightings:

Evaluation Criteria	Weighting
Financial competitiveness and affordability	40%
Ability to meet the requirements of the service specification: <ul style="list-style-type: none"> • Independent Living • Human Resources and Service Performance • Support Planning • Diversity and Equalities 	24% (6%) (6%) (6%) (6%)
Ability to meet the needs of current residents and future service users, including the use of direct payments	24%
<ul style="list-style-type: none"> • Personalisation • Active Support • Person Centred Planning 	(8%) (8%) (8%)
Quality control and assurance <ul style="list-style-type: none"> • Service Improvement 	5%
Ability to ensure smooth and seamless transition of service causing minimum disruption to existing residents <ul style="list-style-type: none"> • Transition Planning 	5%
References (demonstrating the ability of the contractor to apply its experience or expertise to the delivery of services required in this contract)	2%

4.7 All tenderers were provided with a number of documents amongst which included:

- a list of questions (Method Statements) covering the practical and technical aspects of service provision. Tenderers were requested to provide Method Statements detailing how they would deliver each element of the service and to include all relevant reference material as evidence to support their responses
- a pricing schedule which required tenderers to offer prices for Residential, Respite Care and Supported living services in relation the minimum weekly care costs established under the Care Funding Calculator (CFC). The CFC was developed by the Southeast Improvement and Efficiency Partnership with the aim of supporting local authorities to manage the costs of residential care and supported living for adult with learning disabilities. It is a Microsoft Excel based tool that will provide prevailing minimum and maximum care costs for any locality

upon input of an individual service user's profile of needs. Tenderers were required to state what percentage above or below the minimum CFC cost for each service user they would apply when pricing residential, respite care and supported living placements.

- anonymised profiles of the 14 current residents of Melrose House, 5 sample profiles of service users using respite care and 4 sample profiles of service users using supported living services to help inform tenderers' completion of the pricing schedule. These profiles were sent to tenderers to ensure that they had some general information about residents and likely service users but more importantly to ensure that price information provided by tenderers could be evaluated in a consistent way. The profiles had been used by the Council to establish the minimum weekly care costs featured in the pricing schedule.

- 4.8 On 12 June 2009 all shortlisted tenderers were informed in writing that the Council was recalling all the profiles as a result of concerns raised by one of the relatives. The relative was concerned that the information relating to his relation currently living at Melrose House was inaccurate and that this would mislead the tenderers. As detailed above, whilst the profiles were included to provide general information about the existing and possible future residents, their primary purpose was to ensure that the Council was able to compare tenderers' pricing on a consistent basis. Despite this, the Council did agree to reissue revised profiles.
- 4.9 A second revised set of profiles were sent to tenderers on 25 June 2009. . Tenderers were also reminded at the clarificatory interviews that the support needs information stated in the profiles will change as the Council is currently undertaking comprehensive functional assessments of all 14 residents. Relatives, guardians and the Independent Mental Capacity Advocates will also be part of these assessments. All information gathered as a result of these assessments will be shared with the preferred provider prior to the commencement of the contract.
- 4.10 Tenders were received from The Camden Society, Care Management Group and Support for Living. Six organisations withdrew from the tender process for various reasons.

Evaluation of tenders

- 4.11 The tender evaluation was undertaken by a panel of Officers from the Council's Housing and Community Care Department. The Council's Pensions Manager assisted in the process for the evaluation of the pension schemes proposed. As described under 'Consultation' above, users and relatives contributed to the tender evaluation process. Whilst the users and relatives were able to provide feedback they had no role in scoring tender submissions
- 4.12 Three tenders were received on 29 July 2009.

4.13 Site visits and interviews took place as follows:

i) Relatives

A panel of relatives contributed to the evaluation process representing residential and respite care service users. They were assisted by an Officer from the Council's Procurement and Risk Management team to ensure that their views were taken into account by Officers during clarification of tenders and selection of a preferred care provider. Relatives assisted with the evaluation by:

- a) Visiting homes where tenderers are providing services to people with learning disabilities. Relatives had the opportunity to speak to staff and service users about the service provided. Site visits took place on 24 and 25 August 2009.
- b) Attending a presentation by each of the tenderers on the service they are offering to provide and asking a series of pre-determined questions of each organisation. Interviews took place on 17 September 2009.

ii) Residents/Service Users

A panel of residents and service user of residential and respite care service took part in the evaluation process by asking a series of questions of the tenderers. They were assisted by an independent person to ensure their feedback was not influenced by Officers of the Council.

These residents and service user were given a briefing session by the independent person to explain the process and why they were assisting Officers in the evaluation of tenderers prior to the interviews. During the briefing session they were asked to think of questions they wished to ask tenderers and the group agreed to ask a total of 3 questions.

The interviews took place on 17 September 2009. Tenderers were asked to give a picture poster presentation on the topic: 'How will you help me settle into my new home'.

The group fed back to the evaluation panel on the responses given to their three questions as well as on the tenderers presentation and on how well the tenderers communicated to them. Feedback from this group was then used to assist the tender evaluation panel as part of its own clarifications and evaluation.

iii) Council Officers

Four Officers visited homes of tenderers where they were providing services that were similar to those that the Council was tendering to check elements of their tender. The visits took place on 24 and 25 August 2009.

On 17 September 2009 Officers met with tenderers. Tenderers provided a brief introduction to their tender and this was followed by a series of questions from the evaluation panel members regarding their tenders.

- 4.14 Following the site visits and interviews, individual panel members evaluated and scored each of the tender submissions in accordance with the evaluation criteria listed in paragraph 4.6. Panel members subsequently reviewed and adjusted their scores as necessary to reflect the clarification gained during visits and interviews.
- 4.15 The panel met on 29 September 2009 to discuss individual scores and to reach a consensus on final scores.
- 4.16 As part of the evaluation of tenders, Officers have also received further clarification from tenderers regarding their proposed pension arrangements for staff. Further details regarding these clarifications are set out in Appendix 5.

Tender Evaluation Conclusions

- 4.17 A copy of the evaluation grid used by the panel is attached as Appendix 1 which shows the final scores awarded to each tenderer. The summary of the evaluation of pricing schedules submitted by each tenderer are attached as Appendix 2. The names of tenderers are contained in Appendix 3. For the purposes of this report, the tenderers are referred to as Tenderers A, B and C.
- 4.18 As can be noted from the tender evaluation grids at Appendix 1, Tenderer C is the highest scoring tenderer and offered the most economically advantageous offer. Officers therefore recommend that Tenderer C, namely The Camden Society is awarded the contract.

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 £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 89.
- 5.2 In awarding the contract, Members need to consider:
- a) which is the most economically advantageous tender; and
 - b) whether the tender is affordable within existing resources.

In determining which is the most economically advantageous tender, tenders have been evaluated against the evaluation criteria approved by the Executive on 14 January 2008 which includes both financial competitiveness and affordability and quality of service. In view of the importance of the quality of service in evaluating the most economically advantageous tender, there is no presumption that the tender will be awarded on the basis of lowest cost.

5.3 Tenderers submitted Pricing Schedules based on staffing costs and overheads only (the Council is expected to fund the costs of building and contents insurance, Council tax and utilities) using the Care Funding Calculator (CFC) for the following services:

a) residential care

Tenderers were given anonymised profiles containing support needs of the 14 current residents of Melrose House. Tenderers were also given the minimum rate for each resident established by the Council's own assessment of needs using the CFC.

Tenders submitted a percentage rate (either above or below) the rate established by the Council's CFC assessment. This rate is fixed for the duration of the contract and is to be applied to all residential care placements and the cost of each placement shall be dependent on the needs of each resident. These costs shall change as and when residents' needs change.

In evaluating the cost of residential care over the life of the contract, Officers calculated the cost of this service to be provided at Melrose House from 1 February 2010 until 30 March 2010 as well the cost of service to be provided at Tudor Gardens from 31 March 2010 until 31 January 2015. Officers also assumed that the current 14 residents will continue to reside at Tudor Gardens over the life of the contract.

b) respite care

tenderers were given a sample of five anonymised profiles of current service users of respite care whose needs ranged from high level support to low level support. Tenderers submitted a percentage rate, either above or below the minimum CFC rate, based on their assessed outcome of these profiles. This rate is fixed for the duration of the contract and is to be applied to all respite care placements and the cost of each placement shall be dependent on the needs of each resident. These costs shall change as and when residents' needs change.

In evaluating the cost of respite care over the life of the contract, Officers took the percentage rate stated by tenderers and applied it to the minimum rate established by the Council's CFC assessment. Officers then took an average cost of the five profiles to ascertain the cost of this service as of 1 September 2010 (when the new Units at Willesden will be available for occupancy) until 31 January 2015, assuming 100% occupancy rate.

Officers have also assumed that one of the vacant beds at Tudor Gardens will be used for respite care. Therefore the cost of the contract assumes the cost of this additional respite care placement for the first two years of the contract (for the remaining 3 years of the contract term Officers assumed that the vacant bed will be used for supported living).

c) supported living

tenderers were given a sample of four anonymised profiles of current service users of supported living whose needs ranged from high level support to low level support. Tenderers submitted a percentage rate, either above or below minimum CFC rate, based on the outcome of their assessment of the profiles. This rate is fixed for the duration of the contract and is to be applied to all supported living placements and the cost of each placement shall be dependent on the needs of each resident. These costs shall change as and when service users' needs change.

In the evaluating the cost of the supported living service, Officers took the percentage rate stated by tenderers and applied it to the minimum rate established by the Council's CFC assessment. Officers then took an average cost of the four profiles to ascertain the cost of this service as of 1 February 2012 until 31 January 2015, assuming 100% occupancy rate as well as assuming that 4 of the current residents allocated to one of the houses at Tudor Gardens are able to move onto supported living from the third year of the contract. Members are asked to bear in mind that this is only an assumption for the purposes of ascertaining the cost of the contract.

- 5.4 Officers had to seek clarification from all three tenderers as each tenderer had made different statements regarding TUPE and proposed various provisions regarding pensions.
- 5.5 Appendix 4 sets out the cost of continuing to deliver the service in-house. It contains an analysis of funding models for the 5 years corresponding to the proposed contract term and providing a basis for comparison with the bids of the three tenderers. The figures have been calculated based on 0% inflation year on year. The table also shows the funding gaps based on the in-house model over the next five years. In-house staffing and running costs for respite care in years 2-5 have been grossed up on a pro-rata basis relative to the year 1 costs in the period 1 September 2010 to 31 January 2011.
- 5.6 The current 2009/10 forecast staffing expenditure for the service is £872,200. The average annual tender cost from the preferred tenderer over the 5 year contract term is £1,192,000 resulting in a shortfall of approximately £320,000 which will be met from within the overall adult social care budget and this is included in the budget plans for 2010/11 and future years.
- 5.7 If Members chose not to award the contract to any of the tenderers, the service would remain in-house. This would result in an annual increase in expenditure on the current in-house staffing cost of £415,200 per annum, which is because of a new, more individualised model of service. It should be noted that the cost of the in-

house service (based on the new service model) would exceed the tender bid submitted by The Camden Society by £95,000 per annum - please see Appendix 4.

- 5.8 The new model of service provision, as outlined in paragraphs 3.7 – 3.11 above, will result in increased costs whether the service remains in-house or whether the contract is awarded to an external provider. As the previous Executive Report of 14 January 2008 indicated, the smaller more personalised models of care would result in increased overall costs.
- 5.9 In addition to the shortfall mentioned above in paragraph 5.6 the Council will incur financial penalties of approximately £50k per month if the Council is not able to move the current residents from Melrose House to the new buildings at Tudor Gardens by 31 March 2010. As stated in paragraph 3.20 above, it is essential that the new contract commences on 1 February 2010 in order to relocate through a managed change process in partnership with the new contractor.

6.0 Staffing Accommodation Implications

- 6.1 It is likely that the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to the 24 permanent staff with tendering out the service. Whether or not a tender for an external service is successful, staff will need to change the way in which they currently work. The residential service will be moving from one to 3 units whilst the respite service will be provided at a completely separate unit. Consultation with staff and unions is ongoing.
- 6.2 In relation to the recommended tenderer, at this stage there are no issues highlighted that are of concern relating to the transfer of staff, existing staff will be part of a TUPE transfer to the recommended tenderer and therefore there are no cost implications to the Council regarding redundancies prior to the TUPE transfer
- 6.3 If any of the other two tenderers are considered, then there would be HR concerns identified with their tender. Both of the tenderers are proposing changes to the staffing structure and this would result in redundancies, therefore liability and cost implications would need to be considered by the Council and discussed with the preferred bidder chosen by the Council. These should not adversely impact on the overall savings over the life of the contract. It is not possible at this stage to give accurate redundancy costs though.
- 6.4 The contractor will be required to sign up to rent free short term leases of Melrose House, the three properties at Tudor Gardens and 167 Willesden Lane, the leases to be subject to determination and variation in accordance with the conditions of the Contract.
- 6.5 At the point at which the residential care phase at one or more of the Tudor Gardens properties is superseded by the supported living phase (this is subject to Service User's being assessed as no longer requiring residential care) the Contract provides for a variation in the terms upon which the contractor will continue to occupy Tudor Gardens.

7.0 Legal Implications

- 7.1 The estimated value of the contract for the provision of residential and respite care services for people with learning disabilities exceeds the Public Contracts Regulations 2006 (the “EU Regulations”) threshold for Services. The provision of residential and respite care services are Part B Services for the purposes of the EU Regulations and as such are subject to partial application only of the EU Regulations; such as the requirement for non-discrimination in the technical specification and notification of the contract award to the EU Publications Office. The EU Regulations do not therefore determine the procurement process to be followed although the overriding principles of EU law (equality of treatment, fairness and transparency in the award process) continue to apply in relation to the award of the contract.
- 7.2 The estimated value of this contract is above the Council’s Standing Orders threshold for High Value Service Contracts (of £500,000), and the award of the contract is consequently subject to the Council’s own Standing Orders and Financial Regulations in respect of High Value contracts. As a result, Executive approval is required for the award of the contract.
- 7.3 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply where there is a “relevant transfer”. Such a transfer occurs where there is a “service provision change”. A service provision change takes place where an activity is outsourced and immediately before the outsourcing there is an organised grouping of employees situated in Great Britain which has its principal purpose the carrying out of the activities concerned on behalf of the client. These requirements appear to be met by this outsourcing and accordingly TUPE will apply to it. As a result, those Council employees who are assigned to the service immediately prior to the contract start date and who do not object to transferring will transfer to the employment of the successful tenderer awarded the contract on their existing terms and conditions.
- 7.4 In exercising its contracting functions, the Council must have regard to guidance issued by the Government under the Local Government Act 1999 (LGA 1999). The Council 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 the LGA 1999. The Council in considering bids 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 duties under section 3.
- 7.5 The Code of Practice on Workforce Matters in Local Authority Service Contracts (“the Code”), which forms part of the guidance issued under the LGA 1999, contains requirements relating to protection of accrued and future pension rights for Council employees transferring to a new contractor under TUPE. The Code also requires the new contractor in a tendering exercise who recruits new staff to work on a local authority contract alongside former local government staff, to offer those new staff fair and reasonable terms and conditions (excluding pensions) which are, overall, no less favourable than those of the former local government staff. In respect of pensions for new staff working on a local authority contract alongside former local government staff, the Code requires these staff to be offered either membership of the Local Government Pension Scheme or membership of a good quality employer

pension scheme. The Secretary of State has also issued a direction, the Best Value Authorities Staff Transfers (Pension) Direction 2007 which requires the Council to ensure protection of future pension rights for Council employees transferring to a new contractor under TUPE. As the letting of the new contract will involve the transfer of Council staff to the successful tenderer under TUPE, Officers conducting the tender process have had regard to the Code and have decided which parts of the Code are likely to achieve Best Value and therefore these are incorporated into the contract between the Council and the new contractor. Existing Council policy concerning the protection of accrued and future pension rights of Council employees transferring to a private employer, as agreed by the General Purposes Committee on 27th April 2004 and on 27th September 2007, will apply. Appendix 5 sets out full details with regard to pensions.

- 7.6 The Contract contains clear provisions with regard to the interface between the residential and respite service provider and the PFI contractor providing the buildings.
- 7.7 The Contract also requires the new contractor to enter into a lease in respect of Melrose House where services will be provided prior to the completion of new buildings at Tudor Gardens and Willesden Lane.
- 7.8 Upon transfer of the service to Tudor Gardens and Willesden Lane, the lease of Melrose House will cease and the new contractor will be required to enter into short term leases in respect of these new buildings.
- 7.9 As the leases will be ancillary to the Contract they will be contracted out of Part II of the Landlord and Tenant Act 1954
- 7.10 Given the leases of Melrose House, the three properties at Tudor Gardens and Willesden Lane are designed merely to protect the Council's position with regard to Council property, a peppercorn rent will be charged

8.0 Diversity Implications

- 8.1 The intention of the re-provision and redevelopment is to provide accessible accommodation for people with disabilities in line with the priorities of Valuing People Now initiative. It will also provide a range of support for vulnerable people meeting FACS from BME communities. The ethos is also to promote community integration for people with learning disabilities.
- 8.2 Monitoring arrangements which address equality issues is an integral part of the service specification and is viewed as an essential part of a good quality service.
- 8.3 The whole service will be registered and inspected by CQC, as well as formal contract monitoring by Housing and Community Care. This will ensure equalities issues and high standards are adhered to.

Background Papers

Executive Report of 14 January 2008

Contact Officers

Keith Skerman. Interim Assistant Director Community Care, Mahatma Gandhi House, 34 Wembley Hill Road, Wembley HA9 8AD tel: 020 8937 4230 email: keith.skerman@brent.gov.uk

Kofi Nyero, Head of Service Learning Disability, Stonebridge Centre, Tywbridge Way, Stonebridge, London NW10 7SS tel: 020 8961 4489 email: kofi.nyero@brent.gov.uk

Francis Pitcher, interim Joint Commissioning Manager, Learning Disability, Wembley Centre for Health & Care, 116 Chaplin Road, Wembley HA0 4UZ tel: 020 8937 4037/020 8795 6217 email: francis.pticher@brent.gov.uk/francis.pitcher@brentpct.nhs.uk

Martin Cheeseman,
Director Housing & Community Care