

Committee/Meeting: Cabinet	Date: 3 rd October 2012	Classification: Unrestricted	Report No: (CAB 042/123)
Report of: Corporate Director of Adults Health and Wellbeing Originating officer(s) Deborah Cohen; Service Head Commissioning and Strategy		Title: Modernising Learning Disability Day Opportunities: Contract Award Wards Affected: All	

Lead Member	Adults Health and Wellbeing
Community Plan Theme	A Healthy and Supportive Community
Strategic Priority	Strategic Partnerships and Better Procurement Enabling People to Live Independently

1. **SUMMARY**

1.1 This report is to confirm the progress on the delivery of the modernisation programme for Learning Disability Day Opportunities agreed by Cabinet on 8th February 2012 and to ask that Cabinet approve the award of the contracts as set out below.

1.2 The Council has undertaken three competitive tender exercises to select suppliers for the delivery of Learning Disability Day Opportunities in Tower Hamlets.

§ **Complex and High Needs Service** for service users with profound, multiple learning disabilities. This is a block contract arrangement to support 15 individuals with complex multiple needs.

§ **Supported Employment, Training and Social Enterprise Service** supporting the training and employment pathway for individuals with learning disabilities, linking with transition, volunteering opportunities and the continued development and support of the social enterprise project. This will be a block contract arrangement.

§ **Community Hub Preferred Provider List** from which individual packages of day opportunity support packages will be commissioned on a spot-purchased basis. All providers who score above 60 percent in the scoring exercise will be put onto the list. The preferred provider list will be in place for three years, although it is proposed to open the list at the end of year 1 and to allow other providers who meet the bar to go onto the list.

1.3 This report sets out the process followed for each of the three competitive tender exercises, including the evaluation criteria used. The report recommends awarding three year block contracts to two providers and the inclusion of four providers onto the Community Hub Preferred Provider List on spot arrangement.

2. **DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:-

- 2.1 Approve the award of block contracts, for a three-year period from the date of contract award, for the provision of the Complex and High Needs Service and for the Supported Employment, Training and Social Enterprise Service.
- 2.2 Approve the award of contracts, for a three-year period for the Community Hub Preferred Provider list from the date of contract award subject to an annual review as part of the evaluation exercise.

1. Contract 4220 Complex and High Needs Service (Block)
Supplier
1.
2. Contract 4221: Supported Employment, Training and Social Enterprise (Block)
Supplier
1.
3. Contract 4179: Community Hubs – Preferred Provider List (Spot)
Suppliers (in order of score rating)
1.
2.
3.
4.

2.3 Whilst this is a part B service for the purposes of the relevant European Union and UK Legislation on competition, good practice dictates that contract award cannot be confirmed until conclusion of a standstill period, which is 10 days from the date that the intention to award contracts is

- communicated to bidders to allow for settling challenges from unsuccessful bidders.
- 2.4 Authorise the Assistant Chief Executive (Legal Services) to execute all necessary documents to implement the decisions at paragraphs 2.1 and 2.2 above

3. REASONS FOR THE DECISIONS

- 3.1 The modernisation programme supports the Council's lean, flexible and citizen-centered agenda. The proposed changes support:
- § Offering everyone in receipt of a service a personal budget to maximise their choice over what day opportunities they purchase; and
 - § Moving from expensive services in large outdated premises to new community hubs whilst delivering on agreed efficiency targets.
- 3.2 The aim of the programme is to improve the quality of experience for people with a learning disability in a way that maximises the opportunities and potential of everyone living in the Borough, whilst also ensuring services are offering real value for money. Currently, many of our services are delivered within a 'one size fits all', building-based model with limited flexibility to meet the goals and aspirations of individuals.
- 3.3 Modernisation will move services away from building based 'traditional day centres' to the provision of a wide range of services that people with a learning disability can access using their personal budgets. This will include specialist services where appropriate but also mainstream services within the wider community. The outcome will be putting in place a 'Community Hub' model to maximise the effectiveness and efficiency of services - *making use of all available local resources to benefit local people*.
- 3.4 The modernisation project supports (i) Transformation of Adult Social Care ('*Putting People First*' and '*Valuing People Now*'); (ii) the rebalancing of services toward prevention and early intervention; (iii) supporting individuals to live as independently as possible; and (iv) driving up efficiency and effectiveness in the use of resources.
- 3.5 Cabinet is asked to approve the recommended award of contracts in order that the Council can progress with mobilising the new contracts and supporting one (x x) transfer of responsibility from current suppliers to the proposed new suppliers where TUPE applies.

4. ALTERNATIVE OPTIONS

- 4.1 Most current contracts were let in 2004 for an initial three year period and extended on an annual basis since the expiry of this initial term. Continuing to contract with existing suppliers without undertaking any form of competitive tendering would therefore place the Council at increasing risk of challenge in relation both to EU and UK competition law and to the duty to

ensure Best Value. This option was therefore deemed unsustainable prior to the commencement of the current competitive processes.

- 4.2 Cabinet could instruct officers to terminate one or both tender processes prior to contract award, and to retender on the basis of a different service specification and bid evaluation methodology. This would be likely to lead to disputation with bidders and is not recommended. It should also be noted that particular care has been taken to ensure that the service specification and evaluation criteria for both tenders balance the delivery of high quality care, the achievement of best value and the delivery of benefit to local communities. For these reasons it is recommended that this option be accepted as being unsustainable.

5. BACKGROUND

- 5.1 The Council's Adult Social Care functions operate within a complex legislative legal framework that places on the Council a range of duties and powers. Central to these duties and powers is the statutory requirement to provide community care services to meet eligible assessed need following an assessment of need undertaken within the terms of the national Fair Access to Care policy framework.
- 5.2 The provision of day opportunities is central to meeting this statutory duty to meet eligible assessed need.
- 5.3 Most of the current contracts for Learning Disability Day Opportunities were let in 2004 following a previous competitive process. Although these services are 'Part B' services for the purposes of the UK's Public Contracts Regulations 2006, and not therefore subject to the full force of these regulations, there remains a requirement under the law that such services be subject to regular competitive testing to ensure continuing Best Value.
- 5.4 Additionally, the Learning Disability Modernisation Programmes contributes to the Council's Vision and that of Tower Hamlets Partnership to increase the quality of life for everyone living and working in Tower Hamlets. It delivers specifically against the key priority of the Single Equality Framework (2011-13): *Access to Services for People with Learning Disabilities*.

6. BODY OF REPORT

- 6.1 The procurement route plan, as agreed by Cabinet on 8th February 2012, was to establish a 'preferred provider list' to deliver community hubs in light of all service users being offered a personal budget. High and complex needs, autism, and employment services would be re-tendered as block contracts. Efficiencies were to be achieved through re-tendering, reduction in current spot purchase rates and service users becoming more independent and less reliant on care packages. The model of service for the Autism Service will be determined at a later date through the work being undertaken through the Autism Strategy.

- 6.2 The community hub model is often described as a day service without walls. The hubs will use a network of local resources including mainstream services and centres to support community based activities rather than providing a limited range of services in a specialist day centre. This will mean offering a more fluid model where people have access to leisure facilities, sporting, educational and work opportunities and the chance to mix within the local community.
- 6.3 Buildings used for community hubs will have space for modern changing/toilet facilities, meetings/lounge areas, small private office space, front desk for community information/activity referral/booking and social enterprise such as a community cafe or art gallery on site. The hubs will be used as the information launch pad into other mainstream community activities already established across Idea Stores, Leisure Centres and local clubs.
- 6.4 Current contracts were extended for 12 months to 31st March 2013 to allow time for procurement to take place following Cabinet consideration and the tendering process. Notices to existing providers on existing terms and conditions have been served as part of the procurement process. A number of explicit and detailed presentations and briefings have taken place from March 2012 to date to outline to existing and interested providers the tendering process, expectations and timelines.
- 6.5 The two tenders for block contracts are being undertaken using a standard restricted tender process. Bidders were invited to express an interest in the tender and, as a first stage, required to complete and return a pre-qualification questionnaire (PQQ), which was then evaluated against published criteria by a panel of three people with expertise in commissioning including a commissioning lead from NHS for the complex and high needs service. The PQQ templates are included with this report as Appendix 1 (*Learning Disability Day Opportunities – Complex and High Needs*) and Appendix 2 (*Learning Disability Day Opportunities – Supported Employment, Training and Social Enterprise Service*)
- 6.6 For the block tenders, 26 PQQs were received for *the Complex and High Needs Service* and 24 for the *Supported Employment, Training and Social Enterprise Service*. For both, all providers scoring over 70% were invited to tender (ITT). This equated to seven for the *Complex and High Needs Service* and eight for the *Supported Employment, Training and Social Enterprise Service*.
- 6.7 The same evaluation panel has evaluated the PQQ's and ITTs. There were six returns from *the Complex and High Needs Service*, of which the ITT had noted the four highest scoring bidders who were called for presentation. The presentations took place on 4th September 2012. The overall evaluation score at ITT was determined on the basis of a weighting of 55% for quality and innovation and 45% on price (as outlined in the method statement - Appendix 3). Bidders were requested to submit a pricing schedule/service budget for services.

- 6.8 There were four returns from the *Supported Employment, Training and Social Enterprise Service*. The Method Statement is attached at Appendix 4. The ITT stated the highest scoring four would be called for presentation and a presentation took place on the 5th September 2012.
- 6.9 The tender evaluation scores for the bidders were re-calculated to represent 90% of the final evaluation score, with the score from the final presentation stage making up the remaining 10%, giving a final evaluation score.
- 6.10 The third competitive tender allows for the setting up of a *Preferred Provider List for Community Hubs* from which individual packages of Day Opportunities will be commissioned on a spot-purchased basis. Again the evaluation panel consisted of three people with expertise in commissioning in adults health and social care.
- 6.11 The tender for the *Community Hub Preferred Provider List* was undertaken using an open tender process, which means that no Pre-qualification stage was undertaken. Bidders were invited to tender immediately on expressing an interest in the tender opportunity. A range of questions that would normally be included in a pre-qualification questionnaire, relating to financial sustainability, mandatory and discretionary grounds for rejection, health and safety and other governance related issues, were included as an annex to the tender method statement.
- 6.12 Ten tender submissions were submitted and evaluated against the method statement (Appendix 5) equating 55% for Quality and Innovation and 45% for pricing as reviewed from pricing schedules submitted. Following this evaluation, the submitted bids were ranked and the most competitive bids identified based on a "pass/fail" of having to achieve a scoring of above 60 percent to be put onto the list. All contracts include the requirement to pay the London Living Wage and this requirement was clearly part of all the adverts that went out with the tenders and is included as a requirement in the pricing schedule for each service. Specific question in the PQQ and ITT for all tenders was asked: "what part will the employment of local people play in your approach to ensuring the delivery of sensitive and appropriate services to the diverse communities in the Borough?"
- 6.12 Where there are existing providers who do not score highly enough to be included on the preferred provider list, current service users, if they wish to remain with this provider, can access the service by taking a direct payment (as long as there are no risk issues) but we will not pay above the rate we have set out in the service specification.
- 6.13 An opportunity to apply again or new providers bidding to get onto the preferred provider list for community hubs will be made available in a year's time when it is put out to market.
- 6.14 There has been and are further scheduled contract mobilisation and communication meetings in place with CLDS and ART/Brokerage leads which will focus on ensuring any decision agreed is communicated and supported to service providers and service users. This will include holding meetings with service providers, service users and carers to ensure any changes are

communicated along with choices and impact. It is also to support and ensure a smooth transition for providers and users as required.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 Following approval of the modernisation programme for Learning Disability Day Opportunities by Cabinet on 8th February 2012 the Council has undertaken three competitive tender exercises (see section 1.2) to select new suppliers for the delivery of Learning Disability Day Opportunities in Tower Hamlets.
- 7.2 As per section two of the report, Cabinet is recommended to approve three year block contracts for the provision of the Complex and High Needs Service and for the Supported Employment, Training and Social Enterprise Service.
- 7.3 Cabinet is also recommended to approve a preferred provider list for Community Hubs which will run for three years from the date of contract award. This will allow individual packages of Day Opportunities to be commissioned on a spot-purchased basis and support personal budgets.
- 7.4 The financial commitments arising from these new contractual arrangements will be funded through existing general fund resources.
- 7.5 Further, as part of the 2011/12 budget setting process, Council agreed to efficiencies of £1.4m to be delivered through the modernisation programme for Learning Disability Day Opportunities. The profiled savings agreed were £200k in 2011/12, £600k in 2012/13 and £600k in 2013/14.
- 7.6 Approval of the three contractual arrangements detailed in this paper is required to support the achievement of these efficiency targets and will ensure best value for money for the authority.

8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 8.1 The National Assistance Act, 1948 (S29) gives local authorities the power to make arrangements to promote the welfare of permanently handicapped people.
- 8.2 Section 29, has been amended and there is now an obligation upon the local authority to ascertain how many people in its area fall within its remit, the care they require and to provide that care.
- 8.3 These duties were then expanded by the Health Services and Public Health Act 1968 that obliged local authorities to make arrangements to promote the welfare of old people and permitted the use of the voluntary and commercial sector in doing so.

- 8.4 Section 117 of the Mental Health Act 1983, requires local authorities and health authorities to provide after care support and services to persons who had been detained under the provisions of the Act, or who would have been detained, but were considered able to function in the community.
- 8.5 In discharging the functions described in this report Section 3 of the Local Government Act 1999 requires best value authorities, including the Council, to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.
- 8.6 Most health and social care services covered in the Market position Statement are for Part B services which are the non-priority services of limited cross border interest set out in Schedule 3 of the Public Contract Regulations 2006 and therefore the provisions of those regulations do not apply.
- 8.7 However the Council does need to take into account the EU principles of proportionality, mutual recognition, transparency, non-discrimination and equal treatment by virtue of the Treaty on the Functioning of the European Union. In 1998 this was been interpreted by the European Court of Justice as requiring a “degree of advertising sufficient to enable the market to be opened up to competition”.
- 8.8 Also in undertaking any procurement the Council should have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't.

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 The Service Specifications for the commissioned Learning Disability Day Opportunities have been developed to ensure that they comply fully with the *Equality Act 2010*. A wide range of recent consultations with various groups who share a protected characteristic have been undertaken by the Council. The relevant results from these consultations have helped to inform the content of the specifications.
- 9.2 The Service Specifications includes a range of measures to ensure that providers delivering services at all times have due regard to the need to deliver those services in ways which avoid inequality of opportunity. In particular, issues of language and communication, cultural and religious sensitivity, age and disability are explicitly addressed throughout the specification.
- 9.3 The evaluation criteria for each of the tender processes have significant emphasis on the following:

- § Providing a sensitive and appropriate services to diverse communities across the borough
- § Adding value by making a contribution to local communities
- § Working in partnership at local levels to deliver better overall outcomes for the communities served; and
- § Supporting local employment and skills development.

9.4 The Equalities Impact Assessment (EqIA) was completed at the start of the project and updates provided thereafter. The EqIA recognised that the modernising of services will affect some of the most vulnerable people living in LBTH. It was completed with input from the Adults, Health and Wellbeing Departmental Equalities Focus Group and Head of Scrutiny and Equalities. The EqIA had an action plan in place to ensure the modernisation programme does not adversely impact upon anyone with a learning disability regardless of their race, disability, age, gender, socio-economic status, sexual orientation, religion or belief. The EqIA also has a number of actions in place to ensure the views of parents and carers of people with a learning disability are taken into account and they are not adversely impacted upon as part of the modernisation process.

9.5 Specifically, during 2011/12 the Project Team for the modernisation programme linked up with colleagues in the One Tower Hamlets Team to facilitate working across the Council and local NHS as well as with community and faith organisations. This included a range of service user and carers feedback and consultations events, followed up in 2012 with a range of presentations including at the Pan Provider event (March 2012), focused workshops through London Muslim Centre for service users and carers, provider briefing event and briefing documents. The procurement process was extended to enable questions and answers through the procurement portal. The Service Specification was developed with input from health and operation colleagues. Briefings were provided to support discussions with service users and carers. Updates have also been provided at the Learning Disabilities Partnership Board and the Big Health Check-up Day (June 2012) attended primarily by service users.

9.10 A communication and mobilisation programme is in progress linking the Community Learning Disabilities Service, Brokerage, Strategic Commissioning and Health to make sure the appropriate information, clarity and support is provided to all stakeholders enabling the successful transition and delivery of this programme.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

10.1 Paralleling this workstream, officers are working with travel trainers to ensure that service users who have capacity for travel training are supported in accessing their providers. Not only does this have the advantage of enabling our service users to maximise their independence but the use of

public transport together with TfLs commitment to cleaner fuel, contributes to a greener environment

11. RISK MANAGEMENT IMPLICATIONS

- 11.1 The Service Specification against which both tenders were evaluated, and which forms part of the terms and conditions of contract, has a range of measures contained within it to manage risk, including requirements relating to workforce competence and safeguarding.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 12.1 There are no specific crime and disorder implications arising from the award of the contracts set out in this report.

13. EFFICIENCY STATEMENT

- 13.1 This model for the modernisation of Day Opportunities for people with Learning Disabilities will significantly increase the range and quality of services, whilst having the added benefit of reducing current high cost services.

14. APPENDICES

Appendix 1 - Pre-qualification Questionnaire – Learning Disability Day Opportunities : Complex and High Needs

Appendix 2 – Pre-qualification Questionnaire – Learning Disability Day Opportunities: Supported Employment and Social Enterprise

Appendix 3 - Method Statement – Learning Disability Day Opportunities: Complex and High Needs

Appendix 4 – Method Statement – Learning Disability Day Opportunities: Supported Employment and Social Enterprise

Appendix 5 - Method Statement – Learning Disability Community Hub Preferred Provider List

Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
None	N/A