

OVERVIEW & SCRUTINY COMMITTEE

Tuesday, 2 September 2014 at 7.15 p.m., Room C1, 1st Floor, Town
Hall, Mulberry Place, 5 Clove Crescent, London, E14 2BG

SUPPLEMENTAL AGENDA

This meeting is open to the public to attend.

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5 .2 Call-in of Mayoral Executive Decision 063: Contract Award - Direct Payment Support Service (To Follow) (Pages 1 - 44)

Agenda Item 5.2

Committee: Overview & Scrutiny	Date: 8 th September 2014	Classification: Unrestricted	Report No.	Agenda Item No.
Report of: Service Head, Democratic Services Originating Officer(s): Angus Taylor, Principal Committee Officer, Democratic Services		Title: Mayoral Executive Decision Call In: Decision Log No: 063 Contract Award – Direct Payment Support Service Wards: All		

1. SUMMARY

- 1.1 The attached report entitled “Contract Award – Direct Payment Support Service” was considered by the Mayor on Monday 11 August 2014 (Mayoral Executive Decision published on Thursday 14 August 2014) and has been “Called In” by Councillors Rachael Saunders, Amy Whitelock Gibbs, Danny Hassell, Helal Uddin and Clare Harrison. This is in accordance with the provisions of Part Four Sections 16 and 17 of the Council’s Constitution.

2. RECOMMENDATION

- 2.1 That the OSC consider the contents of the attached report, review the Mayor’s decisions (provisional, subject to Call In) arising; and
- 2.2 Decide whether to accept them or refer the matter back to the Mayor with proposals, together with reasons.

3. BACKGROUND

- 3.1 The request (dated 21 August 2014) to “call-in” the Mayor’s decision published on Thursday 14 August 2014 was submitted under Overview and Scrutiny (OSC) Procedure Rules Sections 16 and 17. It was considered by the nominee of the Interim Monitoring Officer who has responsibility, under the constitution, for calling in Mayoral decisions in accordance with agreed criteria.
- 3.2 The “Call In” request fulfilled the required criteria and the Mayor’s decision (provisional, subject to Call In) is referred to OSC in order to consider whether or not to refer the matter back to the Mayor for further consideration.
- 3.3 Implementation of the Mayoral decision is suspended whilst the “Call In” is considered.

4. THE MAYOR’S PROVISIONAL DECISION

- 4.1 The Mayor after considering the report attached, at Appendix 2, provisionally decided:-

DECISION

I agree the decision proposed in paragraph above (see 1-3 below) for the reasons set out in paragraph 1.1 in the attached report.

1. Approve the award of contract for the Direct Payment Support Service to PohWER, whose bid represented the most economically advantageous tender based on price and quality.
2. Authorise the Corporate Director of Education, Social Care and Wellbeing, after consultation with the Service Head - Legal Services, to finalise the terms and conditions of the contract for each service;
3. Authorise the Service Head - Legal Services to execute all necessary contract documents to implement this decision.

4.2 Reasons for Decisions

The Mayor stated that his decision was based on the following reasons set out in paragraph 1.1 of the report attached to the Mayoral Decision pro forma (see bullet below):-

- To enable the award and mobilisation of a contract for the provision of a Direct Payment Support Service in order to ensure continuity of service provision to vulnerable residents eligible to receive community care services and disabled children and their families.

4.3 Alternative Options Considered

The report entitled “Contract Award – Direct Payment Support Service” sets out Alternative Options at paragraph 2.1 (see bullets below).

- The Mayor in Cabinet could instruct officers to set aside the proposed contract award decision, and to re-run the competitive tender process. While such a course of action is allowed by the Council's Procurement Rules it is not recommended for the following reasons:
 - The tender exercise has been undertaken in a manner that is fully compliant with the Council's Procurement Procedures and Procurement Policy Imperatives, and has generated sufficient levels of competition to give confidence that quality and value for money considerations have been fully addressed;
 - While the Council reserves the right not to award a contract to any bidder following a competitive tender exercise, without a compelling reason to follow this course of action the risk of legal challenge from bidders is considered to be high;
 - Any delay in awarding the contract while a new competitive tender exercise was undertaken would inevitably be significant and would necessitate interim contractual arrangements that would create uncertainty for both service users and interim service providers. This would also result in a risk of a legal challenge on the basis that the interim arrangements would not have been lawfully procured.

5. REASONS AND ALTERNATIVE COURSE OF ACTION PROPOSED FOR THE 'CALL IN'

- 5.1 The Call-in requisition signed by the five Councillors listed gives the following reason for the Call-in:

There are a number of important questions which are not addressed by the report accompanying the decision which we believe warrant further scrutiny (set out in the attached Call In Requisition Statement attached at Appendix 1. In particular, we believe that important pieces of information were omitted from the paper that, had the Mayor have been aware of them, would have influenced his decision-making processes. This call in document makes reference to information provided by Real (the user led organisation of disabled people in Tower Hamlets), which includes information provided to Real by officers following a Freedom of Information Act request submitted by Real.

5.2 Alternative action proposed:

- 1) That the Mayor does not accept the recommendation of officers to award the contract to POhWER at this stage.
- 2) That instead the commissioning and procurement process is rerun, including:
 - a) appropriate open consultation with service users on the design of the service going forward and what is important to them, and that this feeds into the service design;
 - b) that officers conduct a mapping of all relevant national and local policy statements, and how they have been considered and utilised in the procurement exercise;

- c) that there is a more specific explanation in the invitation to tender of how the Council will maximise value to the local community through the Social Value Act;
 - d) that a full Equalities Impact Assessment is performed on the design of the service and the outcomes expected of providers, prior to re-commissioning, to ensure that the Council fully meet all our obligations in terms of supporting our whole community, and that this feeds into the service design;
 - e) in particular, that the access needs of all of our community, in terms of disability-related access needs, language, and the ability to access online communication channels, are properly assessed before re-commissioning and then reflected in the service delivery models that will be accepted;
 - f) that the procurement process ensures that local user led organisations are not unfairly disadvantaged, and in particular:
 - i) that the balance between quality and price in the scoring system be modified to reduce the reliance on price;
 - ii) that the additional steps taken to ascertain whether quality can be delivered on low bids are strengthened; and
 - iii) it be made clear what would be considered to be an abnormally low tender.
- 3) That the existing interim contract extension arrangements continue to provide continuity of service for local residents in the meantime.

6. CONSIDERATION OF THE “CALL IN”

- 6.1 Having met the “Call In” request criteria, the matter is referred to the OSC in order to determine the “Call In” and decide whether or not to refer the matter back to the Mayor for further consideration.
- 6.2 The following procedure is to be followed for consideration of the “Call In”:
- (a) Presentation of the “Call In” by one of the “Call In” Members followed by questions from members of OSC.
 - (b) Response from the Lead Members/ Officers followed by questions from members of OSC.
 - (c) General debate followed by OSC decision.

N.B. In accordance with the OSC Protocols and Guidance adopted by the Committee at its meeting on 8th July 2014, any Member(s) who presents the “Call In” is not eligible to participate in the general debate.

- 6.3 It is open to the OSC to either resolve to take no action (which would have the effect of endorsing the original Mayoral decision/s), or to refer the matter back to the Mayor for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

Set out in paragraphs 4.1 and 4.2 of the report attached to the Mayoral Decision pro forma (see bullets below).

- This report seeks formal cabinet approval for the award of a contract to provide a Direct Payment Support Service with an annual value of £0.2m.
- The £0.2m cost of the Direct Payment Support Service is currently funded from general fund budgets (£0.164m) and non-recurrent section 256 funding (£0.36m). The annual allocation of section 256 funding over the next 3 years is expected to be in the region of £5m-£6m but has not yet been finalised. Once approved this service would be a priority for continued use of section 256 funding for the duration of the new contract.

8. LEGAL COMMENTS

- 8.1 The Mayor's decision has been called-in in accordance with the Overview and Scrutiny Procedure Rules set out in the Council's Constitution. Under those rules the Committee must consider the decision and either concur with the decision or refer it back to the Mayor for reconsideration setting out in writing its concerns and any alternative action proposed.
- 8.2 Legal comments relevant to the Mayor's decision are set out in the report on which the decision was based.
- 8.3 In considering what action to take, the Committee must 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 do not.

9. APPENDICES

- Appendix 1 - "Call In" Requisition Supporting Statement and Call In Requisition emails
- Appendix 2 – Mayoral Decision Log No: 063 "Contract Award – Direct Payment Support Service"

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report	
Brief description of "background paper"	Name and telephone number of holder and address where open to inspection
None	Angus Taylor 0207 364 4333

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Appendix 1a

We wish to call in the decision made by the Mayor on 14/08/2014 - Mayor's Executive Decision Making (Item 1.).

There are a number of important questions which are not addressed by the report accompanying the decision which we believe warrant further scrutiny. In particular, we believe that important pieces of information were omitted from the paper that, had the Mayor have been aware of them, would have influenced his decision-making processes. This call in document makes reference to information provided by Real (the user led organisation of disabled people in Tower Hamlets), which includes information provided to Real by officers following a Freedom of Information Act request submitted by Real.

Information missing from the paper

- The paper omits to declare that the existing contract holder, Real (a leading local third sector organisation run and controlled by, and supporting, disabled people), was a bidder and will be losing out. This is relevant because of the national policy guidance relating to Local Authorities supporting user led organisations, detailed later.
- It is common practice in Tower Hamlets Council for such papers presented to the Mayor to contain a Part 2 paper providing the information on the other bidders and their scoring. This paper states, after paragraph 11.1, that there were no linked reports, appendices or background documents and so critical information was missing pertinent to the Mayor's decision-making.
- In paragraph 3.9 it says that the annual value of the contract to be let is £199,206. It does not say that the expected contract value, set out in the invitation to tender documentation, was £354,000. The paper therefore omits to declare that the proposed selected bidder bid at £154,794 below this figure (only 56% of the estimated contract value).

Potentially misleading information from the paper

- In paragraph 2.1 the paper says "quality and value for money considerations have been fully addressed". Yet it doesn't say that the winning tender submitted a bid at only 56% of the contract value, and that it was investigated as a potentially abnormally low tender. This should have been highlighted, as there should have been question marks over quality given this investigation.
- Also in paragraph 2.1, the third bullet says "any delay in awarding the contract while a new competitive tender exercise was undertaken would inevitably be significant and would necessitate interim contract arrangements that would create uncertainty for both service users and interim service providers. In fact:
 - the existing contract has been rolled over several times over the last eight years
 - in March 2013 the contract was extended on an interim basis up until November 2013 and has subsequently been extended, on 3 month extensions, a further 3 times. A fourth extension commencing 1 September 2014 is about to be issued.

- the existing provider is not reported as having any difficulty in continuing to provide a good service during the current extension periods.
- Paragraph 3.3 says that “services for adults and disabled children were previously contracted for separately, and are now combined into a single contract”. In fact, as early as March 2013 the historical services had been aligned into a single contract with the existing provider, which was successfully implemented by them during 2013/14.
- Also in paragraph 3.3, it says “the service specification has also been extensively updated and is now more focused on achieving desired outcomes for individuals as opposed to stipulating activities to be undertaken”. Whilst this is technically true, it implies that this was not the case in the previously commissioned services. Commissioning and monitoring officers have confirmed to Real that they have had no concerns about previous delivery. In addition, the latest client feedback obtained by Real gives high levels of satisfaction with outcomes.
- Paragraph 3.5 sets out a three stage process for shortlisted bidders, including a final presentation. It doesn’t state that only 2 of the 8 organisations responding to the ITT were invited in for the presentation.
- Paragraph 3.11 states that there was “service user involvement in the design of the specification against which the quality frameworks were framed”. However, the letter sent to Real in response to a Freedom of Information Act states there was only internal consultation (see “Other issues arising from the commissioning process” below). These statements appear to be inconsistent.

Local policy not adequately taken into account in the commissioning process

There now follows some key extracts from LBTH policy documents which may not have been fully adopted in the recent commissioning and procurement process.

Tower Hamlets Compact 2011

- “to be clear and consistent, and give fair access to funding opportunities”
- “to make sure that the cost of providing a service, under a contract or service agreement, reflect an understanding of the full cost of delivery, including any relevant part of the overhead costs”
- “to keep to the standards in the code of practice for consultation and involvement, including making clear the purpose of each consultation, giving reasonable timescales for responses and providing feedback on the outcomes”

Policy Procurement Imperatives (2012-2015)

- “it is vital that we seize on this opportunity to establish this Council as a leader in the field of ethical, sustainable and fair procurement, whilst securing value for money, and using our processes to stimulate the local economy and workforce”
- “to support local businesses, especially SME and alternative providers including the third sector: making our processes more transparent and accessible”

- “to support third sector organisations”
- “to create local employment and training opportunities: incorporating provisions in our contracts for local workforce”
- “to promote diversity and equality of opportunity, including provisions around our ‘Workforce to reflect the Community’ policy in contracts”
- “where legally appropriate, we will include Community Benefit clauses to encourage a more innovative approach to procurement across the organisation”
- “we will increase local spend by specifying the inclusion of local business content in our direct contracts and as part of the supply chain of major contractors”
- “transparency - contract procedures must be transparent...”

Market Position Statement - Adults Health and Well-Being (2013)

- “the Council aims to continue to encourage local people to help influence local commissioning decisions and will always consult with its residents to shape the services they want and to do what is right for Tower Hamlets”
- “we will seek to work with our providers to achieve a balance of value for money and risk that is sustainable for the provider as well as the Council”
- “we intend to increase the range of services available, encouraging local, smaller providers”

National policy not adequately taken into account in the commissioning process

There now follows some key extracts from national policy documents which may not have been fully adopted in the recent commissioning and procurement process.

Commissioning to develop and sustain user-led organisations (ULOs) - Social Care Institute for Excellence (2010)

- “Commissioners can create and sustain ULOs by making their contracting processes more accessible and easier to understand; by developing the tender specification with local service user involvement, and by considering limiting tenders to supported businesses¹”
- “ULOs are uniquely placed to help Commissioners fulfil policy requirements, including personalisation and the transformation of adult social care. Their knowledge and skills can also help to make commissioning more effective. This is because ULOs are founded on shared core values which have arisen from the lived experience of service users.”
- “The Department of Health has produced 21 design criteria to describe what ULO looks like and the sort of services it provides. The criteria are detailed because of the need to be clear about what a ULO is and what it is not.
- “Commissioning policies can be developed that:
 - work in partnership with ULOs to develop and deliver services

¹a “supported business” is where over 50% of the workforce are disabled people. Further information is given in this publication on how to achieve this in procurement.

- foster a level playing field for ULOs to compete in the tendering process, including giving adequate time and making the process accessible
- consider how the contract specification could be drawn up to encourage ULOs
- recognise the added value that ULOs bring, including credibility with service users and working to independent living outcomes
- take account of article 19 of the EU Procurement Directive 2004/18/EC to reserve contracts for ULOs”

Joint Protocol between National Centre for Independent Living, Association of Directors of Adult Social Services and the Local Government Association for the provision of User Led Organisations (including Centres for Independent Living) and User Led Support Services (March 2009)

- “there is a clear correlation between Direct Payment Support Services controlled and run by disabled people and successful implementation of Direct Payments”
- “ADASS, LGA and NCIL continue to recommend to local authorities that they support the development and expansion of local, user-led support services. We strongly recommend the local authorities develop policies that foster a level playing field for disabled people’s and carer’s organisations to compete in any tendering process”
- “local authorities should seek to ensure and demonstrate that their contracting procedures do not discriminate against small user and carer-led organisations”
- “this protocol recognises that... Support should be commissioned locally toward enabling independent living and should embody the ethos of choice, control and to being able to participate as equal citizens in society”
- “In principle NCIL, ADASS, and LGA believe that support services are often best provided by local user and carer led organisations”
- “when setting up CILs and support services, we urge local authorities to ensure that value for money considerations take account of the added value often contributed by local organisations representing potentially eligible users ... [and] consider using a restricted/selective tender list to target organisations controlled by users”

Independent Living Strategy - Support Planning and Brokerage: Final report from the support planning and brokerage demonstration project (Office for Disability Issues, May 2011)

- “ULO’s can deliver positive advantages in reaching local people and supporting them to negotiate LA systems. ULOs need investment in capacity building and involvement in strategic partnerships with LAs to achieve this. “
- “Existing procurement systems present a significant barrier to the involvement of ULOs. LAs need to explore strategies to address this in order to optimise the contribution of ULOs. “
- “The involvement of ULOs in delivering services and support to disabled people can bring a number of benefits, at a time when LAs are considering how best to externalise certain functions. “

Putting People First: Working together with user-led organisations (Department of Health, 2009)

- “Delivering the personalisation agenda - ULOs provide person-centred services, such as information, advice and advocacy support. Research shows that the take-up of direct payments is higher in areas with ULOs”
- “Tackling worklessness - ULOs help tackle employment issues by providing employment training and support to move socially excluded people into more meaningful activity. By working with ULOs local authorities are also assisting the local economy.”
- “Reducing health inequalities - ULOs help local authorities tackle health inequalities and inaccessibility, and help local people navigate health and social care systems better.”
- “Recognition - ULOs can help local authorities and their partners to improve delivery of results for local people, e.g. by improving people’s sense of involvement in the community, and this will be reflected in the relevant national indicators”

The proposed contractor is not a User Led Organisation (ULO)

- POHWER is not a User Led Organisation in accordance with Department of Health policy set out in September 2007 which states (amongst other criteria) a ULO should have the following organisational characteristics:
 - has a minimum of 75% of the voting members on the management board drawn from the organisation’s constituency
 - identifies the diverse needs of the local population and contributes to meeting those needs
 - is accountable to the organisation’s constituents and represents their views at a local level.
- That same guidance goes on to say:
 - “the added-value provided by ULOs is seen to derive from their local knowledge and networks and their ability to present the authentic voice of service users who know what works for them”; and
 - “in the mapping exercise, the researchers did not regard networks set up by major national charitable organisations, and a Centre for Independent Living established by a local authority, as constituting a user-led organisation”
- From information available on POHWER’s own website:
 - their mission and values state they say they are “user-focused” - this is not the same as user-led
 - their latest published annual report states that “our articles say that the majority of POHWER’s board must have a disability or experienced exclusion and that Trustees must be drawn from our membership”. However, a majority does not fulfil the DoH requirements for a ULO (should be 75%), and it’s not clear what “experienced exclusion” means, which appears to be much wider than the constituency supported by this service.

Other issues arising from the commissioning process

- Paragraph 5.3 of the Executive Decision paper reinforces the requirement to act in a transparent way. The commissioning process made it clear that 45% of the marks would be allocated to quality, 10% to the presentation, and 45% to the price. However, the published tender material gave no indication to tenderers on how the price would be assessed, and the formula for doing this was only released in the subsequent FOI request. This was not transparent.
- In the above-mentioned FOI request, in response to the question “Please explain why the methodology for assessing price was not made available during the procurement process” officers said “The Council has followed a widely accepted and standard method of evaluating the submitted prices ... and is under no obligation during the procurement process to provide additional detail as to the methodology to be used.” It’s not clear, especially if this was a “standard method” why this information was not made available to bidders, as it may have affected what price they bid at, and it would certainly have been more transparent to do so.
- Paragraph 3.3 states that “the service specification has been extensively updated...”. Paragraph 5.5 states “if services have been significantly redesigned then consultation prior to implementation must occur with the service users, their families and any other relevant stakeholders”.
- However, no such consultation occurred, and instead the FOI response to Real stated “The development of the Service Specification against which tenders were evaluated took account of a range of relevant material, including the evaluation of the Independent Living Support Service carried out by Real and the Council in 2013. The draft Specification was consulted on with a range of internal stakeholders.” It should be noted that the above-mentioned review of the Independent Living Support Service focused primarily on the review of the pilot of independent support planning, which did not form part of this tender exercise.
- It’s not clear why officers chose to set weighting for price in this procurement exercise as high as 45% of the overall weighting, especially when this would disadvantage smaller, local organisations. By way of comparison here are some alternative weightings for other services recently procured that benefit disabled people and are similar:

Description	Contracting authority	Quality	Price	Presentation
Direct Payments Support Service (this contract)	LBTH	45	45	10
Information, advice and advocacy	LBTH	50	40	10
Hearing the voice of disabled people (Local Voices)	LBTH	80	20	
Direct Payments Support Service	Corporation of London	70	30	

Issues arising from the potential abnormally low tender submitted by the recommended provider

- The ITT letter stated “Tenderers should be aware that the Council has a duty to investigate submitted tenders where the price appears to be abnormally low. If the Tenderer cannot provide substantial reasons for the low prices then the Council may disqualify the tender”.
- There is compelling evidence that indicates that the bid from POhWER (at £199,206, compared with the estimated contract value of £354,000) should have been deemed to be an abnormally low tender, and consequently removed from the bidding process. In summary:
 - The bid provided by POhWER was:
 - i. only 56% of the contract value
 - ii. nearly £81,000 less than the next lowest bid, which itself was only 79% of the contract value.
 - The top five bids are all over £322,000, and all over 90% of the contract value.
 - POhWER bid £139,832 (£339,038 - £199,206) less than they needed to in order to be ranked first amongst the other bidders.
 - the average bid of all other final stage contractors was £326,500, so POhWER’s bid was only 61% of the average of all the other bids.
- There are no binding rules on how to interpret abnormally low tenders in the UK in the context of Part B contracts under The Public Contracts Regulations 2006, but research shows they would normally be considered to be so if they were 30% or more lower than the authority’s original estimate of costs, or 10-15% lower than the average of other bids.
- By way of comparison, the following table might be useful:

Estimated contract value	354,000
POhWER's bid	199,206
% lower than estimated contract value	43.73%
Average price of all other original tenders	305,391
% lower than average price	34.77%

- If the bid had been ruled out as an abnormally low tender the outcome of the whole process would have been very different, with many more organisations being invited to the final presentation stage.
- POhWER has a turnover of £10 million a year and reserves of £850,000 (March 2013). These are unrestricted reserves and so it would be easy for this organisation to use them to cross-subsidy any low bid.
- In pure procurement terms the Council could decide it is only interested in ensuring that the recommended bidder has the capacity to deliver the proposed specification for that price. However this does not take into consideration the requirements in national guidance to ensure that local ULOs are able to compete on a level playing field, which is clearly not the case in this situation - Real’s bid is based on full cost recovery, in accordance with the Tower Hamlets Compact, and they have significantly smaller reserves at only £174,000 (March 2014).

Issues relating to the potential provider's ability to meet the needs of the local community in their service delivery model

- POhWER is a national organisation, delivering services to 60 local authorities around the country. Its primary focus is delivering advocacy services (predominantly for learning disabled and people with mental health conditions) and it has recently been breaking into the market in the area of direct payments.
- It is known from POhWER's service delivery model in different areas around the country that the majority of service delivery model is online (through webpages, email and online Skype conferencing), supported by telephone calls and, at times, a visit from a roaming employee.
- Real estimates that between 80 and 90% of the current client base do not have access to the Internet - disabled people are significantly less likely to be connected online compared with the rest of the population, and this is exacerbated for people from minority ethnic groups and those living in poverty; all common factors in Tower Hamlets.
- From the latest available figures 8.45% of the clients require a Somali-speaking worker and 23.7% require a Bengali/Sylhetti-speaking worker. Real currently employs four different staff with these language skills.
- It is not known whether POhWER employs people with these language skills.
- The elements of the service specification relating to have a local base in Tower Hamlets have been set out in an appendix. POhWER's service delivery model has not promised a local base. In other areas of the country POhWER's staff are asked to work from home or remotely, without a local drop-in service (as Real currently provides at Jack Dash House).
- This may directly limit the disability-types that are able to work for POhWER, due to the requirement to travel around the Borough significantly and/or only see people in their own homes rather than in a local office space. Real is able to provide a wide variety of reasonable adjustments for such staff, enabling them to retain their employment and still deliver a high quality service.
- Although they work in 60 local authorities nationwide, POhWER only deliver direct payments support in 3 councils (Buckinghamshire, Sandwell and Shropshire), with one set up in 2012, one set up 9 months ago and one only just set up in February this year. This relative lack of experience could raise questions about their ability to deliver the contract.

Damage to a leading local third sector organisation, including loss of jobs for local people

Real is a user-led organisation of disabled people based in Tower Hamlets, in Jack Dash House. They've been around in one form or another for 20 years, and deliver a range of services that support local disabled people, including in a range of community languages. They are the only organisation in the Borough that supports disabled people of all impairments, ages, ethnicities (and other protected characteristics). In the past year they have worked with around 1,000 disabled and older people in the Borough.

They have delivered the Direct Payment Support Service in one form or another for the last eight or so years, with the contract being extended often.

Real is also the lead organisation for the Information, Advice and Advocacy consortium, referred to as Local Link, leading eight other local organisations to deliver high quality support that helps local disabled and older people get the support they need to lead equal lives. The Council recently won the GO Excellence in Public Procurement Awards in the category “GO Procurement Innovation or Initiative of the Year Award – Health and Health Related Organisations” for the work they had done with Real on this initiative.

Real also delivers Local Voices, the Council’s programme for engagement with disabled people, which they run on behalf of the One Tower Hamlets team.

Real is already delivering high quality services to local residents, often in their own community language (they have several bilingual staff), and are firmly connected in a range of other local community networks. The London Joint Improvement Partnership upheld Real and LBTH as an example of good practice in their report “Best practice in Direct Payments Support - a guide for commissioners”.

Real have reported that this contract taken away from them significantly impacts on the future viability of Real, and subject to further analysis being concluded, risks their ability to deliver on their other contracts and services to the local community. Their board have already acknowledged that a significant downsizing would be required, which would mean that they are no longer able to contribute to:

- Health and Well-being forums and local safeguarding boards
- LBTH’s Third Sector Advisory Board
- Tower Hamlets Community Advice Network
- Advice Providers Forum
- Pan Providers Forum
- the development of the new THCVS Commissioning Consortium
- their CEO’s ongoing work with the Fairness Commission
- the other projects that Real have bid for in parallel with this to bring new money into the Borough to deliver complimentary services that support local residents.

Separate correspondence has been received from Disability Rights UK expressing concern over this decision, and pointing out the number of ULOs that have closed in other parts of the country where they have lost similar services from the local Council.

We anticipate we will receive other correspondence from leading organisations in the sector expressing concerns, which we will table at the committee.

Real has also expressed concern over POhWER’s behaviour when taking over similar contracts from user led organisations of disabled people in the past. In October 2013 they successfully took over the contract in Sandwell (near

Birmingham) from a local ULO, in part driven by their low price. In the subsequent TUPE negotiations they agreed to take all 9 directly employed staff across. However they immediately commenced a redundancy negotiation which resulted in only 3 of those 9 staff keeping their jobs, and the rest being made redundant. This does not bode well for the current locally employed people delivering this service.

Furthermore, given that the geographical base will not be within Tower Hamlets, this presents barriers for existing staff in taking up employment within POhWER if they are to be based elsewhere in the country, or having appropriate local support if they are left working from home.

The key point is that, once this local knowledge and expertise has been lost because the local ULO did not win the contract, it is effectively lost for good. All of the collateral benefit that the Council currently gets from this ULO will be lost. And if the proposed provider fails to deliver on its promises then the only option available to the Council will be to performance manage them on that contract. By this time it will be too late for the locally developed knowledge and skills which will have been lost.

Summary of the main issues

- We believe the Mayor would have come to a different decision had full information being provided to him.
- Paragraph 5.2 reminds us of the council's obligations under the Local Government Act 1999 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". Given the uncertainties raised above in relation to the ability of the proposed provider to deliver the services well to our local community, at the price quoted, there are reservations that should be investigated.
- It is understandable, in times of budgetary constraints, that officers would be tempted to select such a low bid. We consider however there is enough evidence to show that this bid should have been deemed to be an abnormally low tender and discounted accordingly, given both procurement guidance and national guidance around ensuring ULOs are able to compete on a level playing field.
- There are enough concerns over the pre-procurement stages and commissioning stages of this process to question whether the Council has followed all appropriate national and local policies appropriately, including in relation to:
 - being fair to user led organisations in terms of providing a level playing field

- using all available channels to support local businesses and organisations, and incorporating provisions for the local workforce
- adequate transparency over how price would be assessed
- recognising the particular value that is added by user led organisations, run and delivered by local people

Alternative action proposed

- 1) That the Mayor does not accept the recommendation of officers to award the contract to POhWER at this stage.
- 2) That instead the commissioning and procurement process is rerun, including:
 - a) appropriate open consultation with service users on the design of the service going forward and what is important to them, and that this feeds into the service design;
 - b) that officers conduct a mapping of all relevant national and local policy statements, and how they have been considered and utilised in the procurement exercise;
 - c) that there is a more specific explanation in the invitation to tender of how the Council will maximise value to the local community through the Social Value Act;
 - d) that a full Equalities Impact Assessment is performed on the design of the service and the outcomes expected of providers, prior to re-commissioning, to ensure that the Council fully meet all our obligations in terms of supporting our whole community, and that this feeds into the service design;
 - e) in particular, that the access needs of all of our community, in terms of disability-related access needs, language, and the ability to access online communication channels, are properly assessed before re-commissioning and then reflected in the service delivery models that will be accepted;
 - f) that the procurement process ensures that local user led organisations are not unfairly disadvantaged, and in particular:
 - i) that the balance between quality and price in the scoring system be modified to reduce the reliance on price;
 - ii) that the additional steps taken to ascertain whether quality can be delivered on low bids are strengthened; and
 - iii) it be made clear what would be considered to be an abnormally low tender.

- 3) That the existing interim contract extension arrangements continue to provide continuity of service for local residents in the meantime.

Appendix - Extracts from service specification on having a local base and being embedded in the local community

Service spec page 9

D. Choice

..... Where the service is being provided on a face to face basis it will be easy to access in terms of location, opening times, and accessibility and will allow choice in how it is accessed.....

Service spec 3.9 page 15

..... It is also expected that the service will be delivered from venues that are accessible to, and convenient for, service users, including their own homes.....

Service spec page 21

5.1 Where the service provider proposes to deliver some face to face elements of the service from the office accommodation in which the staff providing the service are based then that office accommodation will be located in the London Borough of Tower Hamlets unless the service provider can provide compelling evidence that accessibility by residents of Tower Hamlets will not be adversely impacted by operating from a location outside of the Borough.

5.2 Where the model of service proposed involves all elements of face to face service being provided remotely from the office base, and only telephone / video conferencing, web based services and other non-face to face services being delivered from the office base then it will be acceptable for this office base to be located outside of the Borough, provided that the following holds true:

- All aspects of the service can be delivered in a timely, responsive and efficient manner at all times, and that the service provider can demonstrate how the timescales set out in section 4 above, and other requirements relating to service quality can be complied with;
- The service provider is able to demonstrate that locating the office base outside of the borough does not detract from their ability to add value to the borough and its residents as required by the Council in the context of the Social Value Act and the Council's strategic priorities including supporting local employment and training, and utilising local suppliers in supply chains whenever possible.
- The service provider is able to demonstrate that locating the office base outside of the borough does not prevent the delivery of a flexible service whereby staff are able to meet with service users in community buildings or the service user's home within the borough as requested by the service user.

Service Spec page 8

B. Community presence and participation

Service users live within and are part of the community and all services should maintain and promote a continuing integration. The service itself should be integrated into communities and neighbourhoods to foster a sense of belonging by

means of access and use of a range of community facilities, for example to meet with service users or provide drop-in advice sessions or similar. The service will build in service user involvement in design, development and delivery of services as well as in the monitoring and evaluation of those services.

Service spec page 27

8.2 The Council is committed to employing a workforce that reflects the community of the Borough with regard to ethnicity, languages and culture, and expects contracted providers to demonstrate the same commitment. This is particularly important in delivering a sensitive and appropriate service in 'customer-facing' services such as the service to which this specification relates. The service provider is therefore required to ensure that it takes all necessary steps to achieve a workforce that reflects the community as closely as possible, while complying with its wider legal obligations with regards to equality.

Appendix X - Prices and scoring of bidders

The following bid prices were submitted by the different tenderers:

Bidder	Bid price	Notes
Bidder A	£178,734	Bid withdrawn following clarification
PohWER	£199,206	
Bidder C	£280,000	
Bidder D	£322,000	
Bidder E	£330,000	
Bidder F	£335,000	
Bidder G	£339,000	
Real DPO	£353,000	

The following table shows the scores provided by officers for the different bids.

Bidder	Quality / 45	Price / 45	Presentation / 10	Total / 100	Total before presentation	Difference
PohWER	31.38	45.00	8.00	84.38	76.38	
Real DPO	35.18	25.39	6.33	66.90	60.57	15.81
Bidder D	30.73	27.84	0.00	58.56	58.56	2.01
Bidder C	24.43	32.02	0.00	56.44	56.44	2.12
Bidder F	24.80	26.76	0.00	51.56	51.56	4.88
Bidder G	24.60	26.44	0.00	51.04	51.04	0.52
Bidder E	12.15	27.16	0.00	39.31	39.31	11.73

It may be noted that Real scored the highest points in terms of quality. POHWER became the recommended bidder because their price was so low.

Officers have confirmed that two bids (POHWER and Bidder A) were considered to be potentially abnormally low tenders. Officers have advised Real that:

“a series of clarification questions were asked of those bidders. These clarification questions sought to substantiate the following matters:

- Whether and how the projected increases in demand over the life of the contract had been accounted for in the tendered price;
- That the payment of London Living Wage as a minimum to all employees wholly or substantially employed in delivering the service had been accounted for in the tendered price; and
- That any obligations arising from the applicability of the TUPE Regulations had been accounted for in the tendered price.

In response to these questions of clarification one bidder withdrew their tendered price, and as a result their tender was deemed by the Council to be incomplete and disqualified accordingly. The second bidder provided responses that were deemed to provide sufficient clarification of their ability to deliver the service at the tendered price.”

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APPENDIX 1b

Call In Requisition emails

From: Rachael Saunders
Sent: 21 August 2014 10:54
To: JohnS Williams
Cc: Lynne Spillett; Amy Whitelock Gibbs; Helal Uddin; Shiria Khatun;
Danny
Hassell; Clare Harrisson
Subject: Fwd: social care advocacy call in
Attachments: social care commissioning call in.docx

Dear John,

Please find attached a call in signed by myself and Cllrs Whitelock-Gibbs,
Hassell, Khatun,
Uddin and Harrisson, as ccd above.

Please let me know if you need them to email themselves.

Best wishes

Rachael

Rachael Saunders
Councillor for Mile End
Leader of Tower Hamlets Labour Group
@rachaelsaunders

---Original message---

From: "xx"
Sent: 21 Aug 2014 10:48
To: "Rachael Saunders" <Rachael.Saunders@towerhamlets.gov.uk>
Subject: social care advocacy call in

Sent from Windows Mail

From: Clare Harrison
Sent: 22 August 2014 14:21
To: Danny Hassell; JohnS Williams
Cc: Rachael Saunders; Lynne Spillett; Amy Whitelock Gibbs; Helal Uddin;
Shiria Khatun
Subject: RE: social care advocacy call in

Me too. Please take this email as confirmation.

Thanks

Cllr Clare Harrison
St Peter's
Mobile No xx

From: Danny Hassell
Sent: 22 August 2014 09:56
To: JohnS Williams
Cc: Rachael Saunders; Lynne Spillett; Amy Whitelock Gibbs; Helal Uddin;
Shiria Khatun; Clare Harrison
Subject: RE: social care advocacy call in

Morning John

Happy to confirm my support for this call in.

Kind regards

Danny

Cllr Danny Hassell
Bromley South - Labour

---Original message---

From: "JohnS Williams" <JohnS.Williams@towerhamlets.gov.uk>
Sent: 22 Aug 2014 09:51
To: "Rachael Saunders" <Rachael.Saunders@towerhamlets.gov.uk>
Cc: "Lynne Spillett" <Lynne.Spillett@towerhamlets.gov.uk>, "Amy Whitelock
Gibbs"
<Amy.whitelockgibbs@towerhamlets.gov.uk>, "Helal Uddin"
<Helal.Uddin@towerhamlets.gov.uk>, "Shiria Khatun"
<Shiria.Khatun@towerhamlets.gov.uk>,
"Danny Hassell" <Danny.Hassell@towerhamlets.gov.uk>, "Clare Harrison"
<Clare.Harrison@towerhamlets.gov.uk>
Subject: RE: social care advocacy call in

Dear Rachael,

Thank you for this and I confirm receipt of your call-in requisition.

I will go ahead and process this. However as mentioned in your e-mail -please could the other signatory councillors each send me a brief e-mail by return, confirming their support for the call-in for the record in lieu of a hard copy signature.

Many thanks,

John

John S. Williams

Returning Officer and Service Head, Democratic Services

London Borough Of Tower Hamlets

Town Hall, Mulberry Place

5 Clove Crescent

London, E14 2BG

Tel: 020 7364 4204

Fax: 020 7364 3232

e-mail: johnS.williams@towerhamlets.gov.uk
<<mailto:johnS.williams@towerhamlets.gov.uk>>

www.towerhamlets.gov.uk <<http://www.towerhamlets.gov.uk/>>;

PA: Lynne Spillett

Tel: 020 7364 4205

From: Helal Uddin
Sent: 22 August 2014 16:35
To: JohnS Williams
Cc: Rachael Saunders; Lynne Spillett; Amy Whitelock Gibbs; Shiria Khatun;
Danny Hassell; Clare Harrisson
Subject: RE: social care advocacy call in

Thanks John ,
Just confirming my support of the above call in.

Regards
Helal

Delivered to you with DME: Working securely - anywhere.

--Original message--

Sender: "JohnS Williams" <JohnS.Williams@towerhamlets.gov.uk>
Sent time: 22 Aug 2014 09:51
To: "Rachael Saunders" <Rachael.Saunders@towerhamlets.gov.uk>
Cc: "Lynne Spillett" <Lynne.Spillett@towerhamlets.gov.uk>, "Amy Whitelock Gibbs" <Amy.whitelockgibbs@towerhamlets.gov.uk>, "Helal Uddin" <Helal.Uddin@towerhamlets.gov.uk>, "Shiria Khatun" <Shiria.Khatun@towerhamlets.gov.uk>, "Danny Hassell" <Danny.Hassell@towerhamlets.gov.uk>, "Clare Harrisson" <Clare.Harrisson@towerhamlets.gov.uk>
Subject: RE: social care advocacy call in

Dear Rachael,

Thank you for this and I confirm receipt of your call-in requisition.

I will go ahead and process this. However as mentioned in your e-mail -please could the other signatory councillors each send me a brief e-mail by return, confirming their support for the call-in for the record in lieu of a hard copy signature.

Many thanks,

John

John S. Williams

Returning Officer and Service Head, Democratic Services

London Borough Of Tower Hamlets

Town Hall, Mulberry Place

5 Clove Crescent

London, E14 2BG

Tel: 020 7364 4204

Fax: 020 7364 3232

e-mail: johnS.williams@towerhamlets.gov.uk
<<mailto:johnS.williams@towerhamlets.gov.uk>>

www.towerhamlets.gov.uk <<http://www.towerhamlets.gov.uk/>>;

PA: Lynne Spillett

Tel: 020 7364 4205

From: Amy Whitelock Gibbs
Sent: 22 August 2014 20:00
To: Helal Uddin
Cc: JohnS Williams; Rachael Saunders; Lynne Spillett; Shiria Khatun;
Danny
Hassell; Clare Harrisson
Subject: RE: social care advocacy call in

Hi John

Also confirming my support for this call in.

Thanks
Amy

Delivered to you with DME: Working securely - anywhere.

---Original message---

From: "Helal Uddin" <Helal.Uddin@towerhamlets.gov.uk>
Sent: 22 Aug 2014 16:34
To: "JohnS Williams" <JohnS.Williams@towerhamlets.gov.uk>
Cc: "Rachael Saunders" <Rachael.Saunders@towerhamlets.gov.uk>, "Lynne
Spillett"
<Lynne.Spillett@towerhamlets.gov.uk>, "Amy Whitelock Gibbs"
<Amy.whitelockgibbs@towerhamlets.gov.uk>, "Shiria Khatun"
<Shiria.Khatun@towerhamlets.gov.uk>, "Danny Hassell"
<Danny.Hassell@towerhamlets.gov.uk>, "Clare Harrisson"
<Clare.Harrisson@towerhamlets.gov.uk>
Subject: RE: social care advocacy call in

Thanks John ,
Just confirming my support of the above call in.

Regards
Helal

Delivered to you with DME: Working securely - anywhere.

--Original message---

Sender: "JohnS Williams" <JohnS.Williams@towerhamlets.gov.uk>
Sent time: 22 Aug 2014 09:51
To: "Rachael Saunders" <Rachael.Saunders@towerhamlets.gov.uk>
Cc: "Lynne Spillett" <Lynne.Spillett@towerhamlets.gov.uk>, "Amy Whitelock
Gibbs" <Amy.whitelockgibbs@towerhamlets.gov.uk>, "Helal Uddin"
<Helal.Uddin@towerhamlets.gov.uk>, "Shiria Khatun"
<Shiria.Khatun@towerhamlets.gov.uk>, "Danny Hassell"
<Danny.Hassell@towerhamlets.gov.uk>, "Clare Harrisson"
<Clare.Harrisson@towerhamlets.gov.uk>
Subject: RE: social care advocacy call in

Dear Rachael,

Thank you for this and I confirm receipt of your call-in requisition.

I will go ahead and process this. However as mentioned in your e-mail -please could the other signatory councillors each send me a brief e-mail by return, confirming their support for the call-in for the record in lieu of a hard copy signature.

Many thanks,

John

John S. Williams

Returning Officer and Service Head, Democratic Services

London Borough Of Tower Hamlets

Town Hall, Mulberry Place

5 Clove Crescent

London, E14 2BG

Tel: 020 7364 4204

Fax: 020 7364 3232

e-mail: johnS.williams@towerhamlets.gov.uk
<<mailto:johnS.williams@towerhamlets.gov.uk>>

www.towerhamlets.gov.uk < <http://www.towerhamlets.gov.uk/>>;
<<http://www.towerhamlets.gov.uk/>>>; ;

PA: Lynne Spillet

Tel: 020 7364 4205

From: Danny Hassell
Sent: 22 August 2014 09:56
To: JohnS Williams
Cc: Rachael Saunders; Lynne Spillett; Amy Whitelock Gibbs; Helal Uddin;
Shiria Khatun; Clare Harrisson
Subject: RE: social care advocacy call in

Morning John

Happy to confirm my support for this call in.

Kind regards

Danny

Cllr Danny Hassell
Bromley South - Labour

---Original message---

From: "JohnS Williams" <JohnS.Williams@towerhamlets.gov.uk>
Sent: 22 Aug 2014 09:51
To: "Rachael Saunders" <Rachael.Saunders@towerhamlets.gov.uk>
Cc: "Lynne Spillett" <Lynne.Spillett@towerhamlets.gov.uk>, "Amy Whitelock
Gibbs"
<Amy.whitelockgibbs@towerhamlets.gov.uk>, "Helal Uddin"
<Helal.Uddin@towerhamlets.gov.uk>, "Shiria Khatun"
<Shiria.Khatun@towerhamlets.gov.uk>,
"Danny Hassell" <Danny.Hassell@towerhamlets.gov.uk>, "Clare Harrisson"
<Clare.Harrisson@towerhamlets.gov.uk>
Subject: RE: social care advocacy call in

Dear Rachael,

Thank you for this and I confirm receipt of your call-in requisition.

I will go ahead and process this. However as mentioned in your e-mail
-please could the other signatory councillors each send me a brief e-mail
by return, confirming their support for the call-in for the record in lieu
of a hard copy signature.

Many thanks,

John

John S. Williams

Returning Officer and Service Head, Democratic Services

London Borough Of Tower Hamlets

Town Hall, Mulberry Place

5 Clove Crescent

London, E14 2BG

Tel: 020 7364 4204

Fax: 020 7364 3232

e-mail: johnS.williams@towerhamlets.gov.uk
<<mailto:johnS.williams@towerhamlets.gov.uk>>

www.towerhamlets.gov.uk <<http://www.towerhamlets.gov.uk/>>;

PA: Lynne Spillett

Tel: 020 7364 4205

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Appendix 1c

From: JohnS Williams
Sent: 22 August 2014 10:04
To: Stephen Halsey; Meic Sullivan-Gould; David Galpin; Chris Holme;
Robert
McCulloch-Graham
Cc: Lutfur Rahman; Abdul Asad; Joshua Peck; Takki Sulaiman; John
McDermott;
Murziline Parchment; Matthew Mannion; Angus Taylor; Louise Russell; Mark
Cairns; David Courcoux; Gulshan Begum
Subject: URGENT - Call-in of Mayoral Decision 14th August 2014: Direct
Payment
Support Service Contract Award
Attachments: social care commissioning call in.docx

Importance: High

Dear Colleagues,

Please note that the following Individual Mayoral Decision, published on 14th August 2014, has been 'called-in' in accordance with the Overview and Scrutiny Procedure Rules:-

* Contract Award – Direct Payment Support Service (Mayoral Decision Log No. 63)

The signatory members to the call in are Councillors Rachael Saunders, Amy Whitelock Gibbs, Danny Hassell, Shiria Khatun, Helal Uddin and Clare Harrison. Full details of the reasons given for the call-in and the alternative action proposed as required by the O&S Procedure Rules are set out in the attached document.

The above decision will now be referred to the Overview and Scrutiny Committee meeting on Tuesday 2nd September 2014 which will consider whether or not to refer the matter back to the Mayor for further consideration.


In the meantime implementation of the above decision should be suspended and I should be grateful if officers could prepare further information as necessary in response to the call-in referral attached.

Many thanks,

John S. Williams
Returning Officer and Service Head, Democratic Services

London Borough Of Tower Hamlets
Town Hall, Mulberry Place
5 Clove Crescent
London, E14 2BG
Tel: 020 7364 4204
Fax: 020 7364 3232
e-mail: johnS.williams@towerhamlets.gov.uk
www.towerhamlets.gov.uk

PA: Lynne Spillett
Tel: 020 7364 4205

Individual Mayoral Decision Proforma Decision Log No: <u>63</u>	 TOWER HAMLETS
Report of: Robert McCulloch-Graham, Corporate Director for Education, Social Care and Wellbeing	Classification: Unrestricted
Contract Award – Direct Payment Support Service	

Is this a Key Decision?	Yes
Decision Notice Publication Date:	21 February 2014
General Exception or Urgency Notice published?	Not required
Restrictions:	Unrestricted

EXECUTIVE SUMMARY

- 1.1 The Council has, during 2013/14, undertaken a competitive procurement exercise to identify a suitable provider to deliver a Direct Payment Support Service. When the intention to undertake this procurement process was reported to the Mayor in Cabinet it was resolved that the contract award proposal be reported back to the Mayor in Cabinet for decision.
- 1.2 Following the completion of the procurement process approval is sought to proceed to award of contract. It is recommended that the contract be awarded to the bidder that submitted the most economically advantageous tender. The tender exercise has been undertaken in a manner that is fully consistent with the Council's Financial Regulations and Procurement Rules, and with the Council's Procurement Policy Imperatives as reported to Cabinet in January 2013.

Full details of the decision sought, including setting out the reasons for the recommendations and/or all the options put forward; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Head of Legal Services; implications for One Tower Hamlets; Risk Assessment; Background Documents; and other relevant matters are set out in the attached report.

DECISION

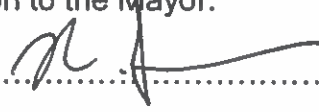
The Mayor is recommended to:

1. Approve the award of contract for the Direct Payment Support Service to PohWER, whose bid represented the most economically advantageous tender based on price and quality.
2. Authorise the Corporate Director of Education, Social Care and Wellbeing, after consultation with the Service Head - Legal Services, to finalise the terms and conditions of the contract for the service;
3. Authorise the Service Head - Legal Services to execute all necessary contract documents to implement this decision.

APPROVALS

1. (If applicable) Corporate Director proposing the decision or his/her deputy

I approve the attached report and proposed decision above for submission to the Mayor.

Signed  Date 18/6/14

2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 24/6/14

3. Monitoring Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

(For Key Decision only – delete as applicable)

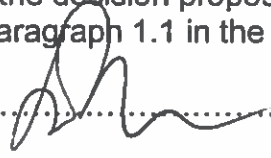
I confirm that this decision:-


- (a) has been published in advance on the Council's Forward Plan OR
- (b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed  Date 25/06/14

4. Mayor

I agree the decision proposed in paragraph above for the reasons set out in paragraph 1.1 in the attached report.

Signed  Date 11/8/14

Individual Mayoral Decision 18 June 2014	 TOWER HAMLETS
Report of: Robert McCulloch-Graham, Corporate Director for Education, Social Care and Wellbeing	Classification: Unrestricted
Contract Award – Direct Payment Support Service	

Lead Member	CIlr Abdul Asad, Cabinet Member for Adult Social Care
Wards affected	All Wards
Community Plan Theme	A Healthy and Supportive Community
Key Decision?	Yes

Executive Summary

1.1 The Council has, during 2013/14, undertaken a competitive procurement exercise to identify a suitable provider to deliver a Direct Payment Support Service. When the intention to undertake this procurement process was reported to the Mayor in Cabinet it was resolved that the contract award proposal be reported back to the Mayor for decision.

1.2 Following the completion of the procurement process approval is sought to proceed to award of contract. It is recommended that the contract be awarded to the bidder that submitted the most economically advantageous tender. The tender exercise has been undertaken in a manner that is fully consistent with the Council's Financial Regulations and Procurement Rules, and with the Council's Procurement Policy Imperatives as reported to Cabinet in January 2013.

Recommendations:

The Mayor is recommended to:

1. Approve the award of contract for the Direct Payment Support Service to PohWER, whose bid represented the most economically advantageous tender based on price and quality.
2. Authorise the Corporate Director of Education, Social Care and Wellbeing, after consultation with the Service Head - Legal Services, to finalise the terms and conditions of the contract for each service;
3. Authorise the Service Head - Legal Services to execute all necessary contract documents to implement this decision.

1. REASONS FOR THE DECISIONS

- 1.1 To enable the award and mobilisation of a contract for the provision of a Direct Payment Support Service in order to ensure continuity of service provision to vulnerable residents eligible to receive community care services and disabled children and their families.

2. ALTERNATIVE OPTIONS

- 2.1 The Mayor in Cabinet could instruct officers to set aside the proposed contract award decision, and to re-run the competitive tender process. While such a course of action is allowed by the Council's Procurement Rules it is not recommended for the following reasons:
- The tender exercise has been undertaken in a manner that is fully compliant with the Council's Procurement Procedures and Procurement Policy Imperatives, and has generated sufficient levels of competition to give confidence that quality and value for money considerations have been fully addressed;
 - While the Council reserves the right not to award a contract to any bidder following a competitive tender exercise, without a compelling reason to follow this course of action the risk of legal challenge from bidders is considered to be high;
 - Any delay in awarding the contract while a new competitive tender exercise was undertaken would inevitably be significant and would necessitate interim contractual arrangements that would create uncertainty for both service users and interim service providers. This would also result in a risk of a legal challenge on the basis that the interim arrangements would not have been lawfully procured.

3. DETAILS OF REPORT

- 3.1 Following the completion of a competitive process undertaken in line with the Council's Financial Regulations and Procurement Rules, a service provider has been identified as having submitted the most economically advantageous tender for the provision of a Direct Payment Support Service and it is proposed therefore that a contract be awarded to this provider.
- 3.2 The Direct Payment Support Service advises and support individuals (adults and disabled children / their families) who have taken their Personal Budget as a cash Personal Budget or Direct Payment, to set up and manage their own care and support arrangements. This includes the specialist advice and support related to employing Personal Assistants.
- 3.3 The services for adults and disabled children were previously contracted for separately, and are now combined into a single contract. The service specification has also been extensively updated and is now more focused on achieving desired outcomes for individuals as opposed to stipulating activities to be undertaken.

- 3.4 Prior to the tender being advertised the contracting strategy and tender process were approved by the Strategic Competition Board through the Tollgate process and by Cabinet through inclusion on the relevant Quarterly Contracts Forward Plan.
- 3.5 The tender process involved the following stages prior to the recommended bidder being established: Pre-Qualification Questionnaire; Tender submission; Final Presentation by shortlisted bidders. The Pre-Qualification Questionnaire was designed to ensure that bidders were subject to due diligence and that only those with the requisite qualifications, experience and financial standing were invited to tender. The questions asked at the Tender submission and presentation stages were designed to test the ability of bidders to deliver services to a high quality and in the specific context of the borough and its communities. They also ensured that tenderers were prepared to pay the London Living Wage. The ability of providers to deliver wider community benefits was also thoroughly tested through these stages.
- 3.6 A market warming event, attended by 25 organisations was held prior to submission of Pre-Qualification Questionnaires. The purpose of this event was to brief providers on service expectations and Council priorities including those identified in the Procurement Policy Imperatives.
- 3.7 The tender opportunities were advertised on the Council's tender portal and local providers were notified via email and by the Tower Hamlets Council for Voluntary Services (CVS).
- 3.8 Twenty Pre-Qualification Questionnaires were submitted and following evaluation of those returns eleven organisations were invited to tender and sufficient bids were received to provide assurance that the outcome of the tender provides the Council with Best Value in respect of the service to be provided under contract, in accordance with Section 3 of the Local Government Act 1999.
- 3.9 The annual value of the contract to be let is £199,206, and the duration for which it will be let is two years with the option to extend for a further one year.
- 3.10 The recommended provider has evidenced, through their tender submission that they will be able to deliver a high quality service to residents of the borough while also adding value in line with the Council's Procurement Policy Imperatives and the Social Value Act 2012.
- 3.11 The tender which is the subject of this report has been evaluated on a Most Economically Advantageous basis, with quality (including as evidenced at presentation stage) given a weighting of 55% in the evaluation and price 45%. Evaluation of the quality submissions was undertaken by a panel of experienced officers with a mix of procurement and operational expertise, and this was supplemented by service user involvement in the design of the specification against which the quality requirements were framed.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1. This report seeks formal cabinet approval for the award of a contract to provide a Direct Payment Support Service with an annual value of £0.2m.
- 4.2. The £0.2m cost of the Direct Payment Support Service is currently funded from general fund budgets (£0.164m) and non-recurrent section 256 funding (£0.036m). The annual allocation of section 256 funding over the next 3 years is expected to be in the region of £5m-£6m but has not yet been finalised. Once approved this service would be a priority for continued use of section 256 funding for the duration of the new contract.

5. LEGAL COMMENTS

- 5.1 The proposed contract relates to delivery by the Council of its community care functions, which include the following:
- In accordance with section 47 NHS and Community Care Act 1990, the Council is required to assess vulnerable adults aged 18 or over where it appears they have a need for community care services. The Council must determine whether that need is eligible, under the Prioritising Need Guidance 2010 (also known as the Fair Access to Care Services criteria), to receive services. Where there is an eligible need the Council has a duty to make arrangements to meet that need. This duty arises under a number of statutes, including Part III of the National Assistance Act 1948, section 45 of the Health Services and Public Health Act 1968, and section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of residential and non-residential welfare services).
 - The Council has a general duty to promote and support user involvement in the assessment process and service delivery. The Council is, in some circumstances, under a statutory obligation to provide information, advice and advocacy services. For example, the Disabled Persons (Services, Consultation and Representation) Act 1986 makes provision for the appointment of authorised representatives for disabled people. The Mental Capacity Act 2005 imposes a duty on Councils to make arrangements for independent mental capacity advocates to represent and support persons who lack capacity to make decisions concerning significant welfare issues such as changes in their accommodation, in circumstances where they have no family or friends whom it would be appropriate to consult about those decisions.
 - The Council is required to carry out carer's assessments in circumstances specified under the Carers (Recognition and Services) Act 1995 and, separately, under the Carers and Disabled Children Act 2000 ("the Carers Acts"). The services the Council may provide to a carer depend on the avenue by which the carer's assessment is carried out. Under section 2 of the Carers and Disabled Children Act, the Council may provide any services which it sees fit to provide that will

help the carer to care for the person cared for. Such services may take the form of physical or other forms of support.

- The Care Act 2014 received Royal Assent on 14 May 2014. The provisions of that Act are not yet in force but are expected to come into effect from April 2015. This is likely to occur during the term of this agreement. The Care Act 2014 shall repeal and replace much of the existing legislation in relation to the Council's community care obligations. In many areas, particularly those relating to carers and direct payments, the extent of the duty on the Council will be increased. The detail of the extent of the increased duties will be set out in Regulations issued under the Care Act 2014.

5.2 The Council has an obligation as a best value authority under section 3 of the Local Government Act 1999 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". This obligation extends to the purchase of all goods works and services. The Council meets this obligation by subjecting the purchase to the appropriate level of competition.

5.3 The community care services to be purchased are Part B services within the meaning of the Public Contracts Regulations 2006. This means that some of the requirements of the Regulations do not apply to procurement of the services, such as advertising in the Official Journal of the European Union. However, the Council is still required to comply with other requirements of the Regulations, such as the requirements to:

- treat contractors, suppliers and services providers equally and in a non-discriminatory way; and
- act in a transparent way.

5.4 The competitive exercise described in the report is designed to comply with the Council's best value duty (as described above). It follows that the winner of the tender is the bidder that has produced the most economically advantageous tender based on a mix of quality and price.

5.5 Before awarding the contract, the Council must 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. There is information in the report relevant to these considerations. If services have been significantly redesigned then consultation prior to implementation must occur with the service users, their families and any other relevant stakeholders.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. The above tender was advertised on the basis that the London Living Wage be paid as a minimum to all employees delivering the service under contract in furtherance of the Council's anti-poverty strategy.
- 6.2. The contract monitoring undertaken in respect of the contract will include monitoring of how the service is meeting needs in respect of the nine protected characteristics covered by the Public Sector Equality Duty. The specification for the service to be contracted for stipulates a requirement to provide the service in a way that takes proper account of the nine protected characteristics and the evaluation process for the tender tested specific aspects of this requirement.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1. The contractual terms and conditions and service specification for the service to be contracted require the service provider to comply fully with all relevant environmental obligations.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1. The contractual terms and conditions and service specifications for the service to be contracted include a range of measures to reduce risk to the council including those relating to financial loss; fraud; service failure; and the handling of personal data.
- 8.2. The Council has in place a set of Procurement Procedures that are designed to ensure that procurement exercises are undertaken in a way that is compliant with relevant EU and UK legislation. The tender exercise within the scope of this report has complied fully with the requirements set out in these procedures.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 The service to be contracted is designed to meet the community care needs of specific groups of residents. It does not, therefore, contribute to the reduction of crime and disorder other than that by making these services available the Council is contributing to ensuring that individuals who may otherwise be more vulnerable to being victims of crime are supported to live safer and more independent lives in the community.

11. EFFICIENCY STATEMENT

- 11.1 The tender exercises to which this report relates were each designed to identify the most economically advantageous tender for each contract. The award criteria in each case were designed to secure the optimum balance between service quality and price.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE

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