

MAYOR'S EXECUTIVE DECISION MAKING

Thursday, 14 August 2014

Mayor's Decision Log No. 63


1. DIRECT PAYMENT SUPPORT SERVICE (Pages 1 - 10)

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: John S. Williams, Service Head, Democratic Services

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Agenda Item 1

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

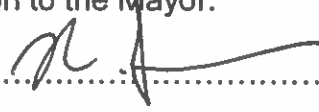
The Mayor is recommended to:

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)

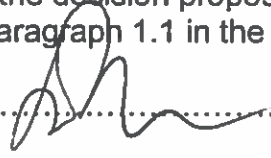
I confirm that this decision:-


- (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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