

MAYOR'S EXECUTIVE DECISION MAKING

Wednesday, 9 September 2015

Mayor's Decision Log No. 109


- 1. SHIPTON HOUSE AND SUE STARKEY HOUSE EXTRA CARE SERVICE
CONTRACT AWARD (Pages 1 - 8)**

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Agenda Item 1

Individual Mayoral Decision Decision Log No: 109	 TOWER HAMLETS
Report of: Luke Adams, Corporate Director, Adults Services	Classification: Unrestricted
Shipton House and Sue Starkey House – ESCW(A) 4885	

Is this a Key Decision?	Yes
Decision Notice Publication Date:	4 September 2015
General Exception or Urgency Notice published?	Yes, special urgency notice published
Restrictions:	None

EXECUTIVE SUMMARY

The Council has undertaken a competitive procurement exercise to identify a suitable provider to deliver the care and support to tenants of the extra care sheltered housing at Shipton House and Sue Starkey House.

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.

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

1. Approve the award of contract for Shipton House and Sue Starkey House to Creative Support, whose bid represented the most economically advantageous tender based on price and quality.
2. Authorise the Corporate Director of Adults Health, after consultation with the Service Head - Legal Services, to agree 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 4/9/15

2. Chief Finance Officer or his/her deputy

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

Signed B. Stodd Date 4/9/15

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 7/9/15

4. Mayor

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

Signed  Date 7/9/15

I do not understand paragraph 2.1 as I cannot see why the recommended smallhold be set aside. I am however content with the recommendations and the reasons for urgency. (38)

I understand the Mayor has now been informed that the explanation in paragraph 2.1 gives reasons why the Authority would not choose to believe the right of the Council to award the contract to Creative Support Ltd. 9/9/15

1. REASONS FOR THE DECISIONS

- 1.1 To enable the award and mobilisation of a contract for the provision of care and support at Shipton House and Sue Starkey House in order to ensure continuity of service provision to vulnerable residents eligible to receive community care services.

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, Creative Support have been identified as having submitted the most economically advantageous tender for the provision of extra care at Shipton House and Sue Starkey House and it is proposed therefore that a contract be awarded to this provider.
- 3.2 Extra Care Sheltered Housing aims to meet the housing, care and support needs of individuals whilst supporting their independence in their own self-contained accommodation. This includes specialist provision to meet the needs of 13 older people with dementia at Shipton House and a mixed community of 40 people at Sue Starkey House which assists younger adults with a range of needs including learning and physical disabilities, and mental health conditions.
- 3.3 The contract was originally let to Notting Hill Housing to provide the care service for a 5 year period from June 2012 until 31 May 2017. They gave notice of their intention to withdraw from the contract and further to

negotiations this will end on 19 October 2015. In January 2015 a detailed review of the service was undertaken and the service specification has been extensively updated and is now more focused on achieving desired outcomes for service users.

- 3.4 Prior to the tender being advertised the contracting strategy and tender process were approved by Legal Services and Procurement the approach having been confirmed at DMT in April 2015 who acknowledged the need to increase the contract value to achieve requirements.
- 3.5 Given the limited timeframe available it was agreed that the procurement be undertaken by way of open tender, this being the only viable option available to meet the contract start date of 19 October 2015. The open tender process is a one stage process wherein bidders make one tender submission which includes due diligence and tender response at the same time, rather than in a two stage process which is the more usual process and includes a separate Pre-Qualification stage.
- 3.6 The due diligence questions ensure that the bidders have the requisite qualifications, experience and financial standing and 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. The successful bidder has confirmed that they will offer training and work experience for both school leavers and unemployed adults in order that they can be equipped to work successfully in the industry workplace. Their bid confirms that they will deliver targeted recruitment strategies in the local community which will include local recruitment open days in service, job fairs at local colleges/universities or community organisation, and placing adverts in the local Job Centre and in local newspapers.
- 3.6 The tender opportunities were advertised on the Council's tender portal.
- 3.7 Two bids were submitted which is reflective of the specialist nature of the service; the successful bidder having to enter into a housing management agreement for Shipton House with Peabody (the registered landlord) and lease agreement to undertake all housing function at Sue Starkey House with Gateway Housing (the registered landlord) with the respective landlords of each of the schemes.
- 3.8 Given the specialist nature of the service this number of bids is considered sufficient 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 block element of the contract to be let is £552,854 per annum inclusive of a quality premium up to a maximum of £29,995 which is payable on achievement of robust targets for the delivery of activities across both services. This quality incentive payment is a relatively innovative inclusion in the contract that is designed to incentivise the provider to maximise the quality of service delivery.

- 3.10 Additional hours of support will be purchased on a spot purchased basis; this is currently in the region of 250 hours per week which will cost £193,382. This figure is variable and is dependent upon service user need. In total therefore, the total value of awarding this contract will be in the region of £746,236 per annum.
- 3.11 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 Public Services (Social Value) Act 2012. For example, they have confirmed that in some circumstances they will undertake targeted mail drops and job fairs in areas that are known to be areas of higher unemployment offering a flexibility of contract to work around childcare/carers responsibilities and understanding access to welfare benefits legislation and qualification so encouraging people back into the workplace wherever possible.
- 3.12 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 60% in the evaluation and price 40%. 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 and feedback at interview against which the quality requirements were framed.
- 3.13 This contract is for two years which will align the end date with the existing contract for the other four ECSH schemes (Coopers Court, Sonali Gardens, Duncan Court and Donnybrook Court). In doing this, the council will have the opportunity over the next two years to comprehensively review all six ECSH schemes together, and be in a good position to procure a service for all six schemes.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The new contract value will increase by £40,000 compared against the previous contract. The increase is due to higher provider costs to serve the various complex needs of the mixed client groups.
- 4.2 The extension of the extra care scheme contracts will still produce reduced costs overall for the authority, as clients on these schemes would have had to occupy more expensive care home placements if the contract wasn't in place.

5. LEGAL COMMENTS

- 5.1 This report concerns a proposal to enter into a contract with Creative Support Ltd (Creative) further to a competitive procurement exercise in relation to the provision of care and support to service user tenants of the extra care sheltered housing schemes at Shipton House and Sue Starkey House (the Contract).
- 5.2 Under section 9 of the Care Act 2014 (the Care Act), the Council has a duty to assess an adult's need for care and support where there is an appearance

of need. Following this assessment, if eligible under section 13 of the Care Act, the Council has a duty by virtue of section 18 to ensure that need is met. Where there is no duty to meet the need the Council retains a power to do so under section 19 and this power must be exercised reasonably, rationally and in accordance with the law. Section 8 of the Care Act provides for examples of how the Council may meet assessed needs of any individual and this includes care and support in the home or in the community.

- 5.3 The decision regarding whether a person is eligible for assistance from the Council is based on a professional social work assessment and analysis of the risk to a person's independence posed by their needs and circumstances, following a care and support assessment. Section 1 of the Care Act places a general duty on the Council when exercising its functions above, to promote an individual's well-being which includes relating to their physical and mental health, emotional well-being and personal dignity.
- 5.4 Entering into the Contract will likely assist the Council in discharging its statutory duties. It is important to note, however, that section 79(6) of the Care Act requires the Council to remain ultimately legally responsible for any function which is authorised to be delegated but not for the purposes of the terms of any contract between the authorised person and the Council.
- 5.5 The Council has power to enter into a contract for a third party to deliver any necessary services required to meet needs assessed under the Care Act. This arises by virtue of section 111 of the Local Government Act 1972, pursuant to which the Council has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- 5.6 The subject matter of the proposed contract falls within the remit of "social and other specific services" in accordance with regulations 74 and Schedule 3 of the Public Contracts Regulations 2015 and the estimated value of the contract (£1,492,472) exceeds the relevant threshold contained in the Public Contracts Regulations. As a consequence, the Council was required to fully comply with the Regulations in the conduct of the procurement. As required, the Council subjected the contract to open competition and placed an advert in the Official Journal of the European Union (OJEU). The Council's Procurement Procedures and Procurement Policy Imperatives would appear to have been complied with through the procurement exercise. If the Council is satisfied that the Contract should be awarded to Creative, a contract award notice in OJEU must be published.
- 5.7 The Council has reserved the right not to award the Contract in the procurement documents. However, if a decision were taken not to award the contract to Creative, the bidders would have to be informed of the Council's decision. This may expose the Council to challenge for breach of the Public Contracts Regulations or on rationality grounds. The Council may be required in such circumstances to make a direct contract award, which would itself be open to challenge.
- 5.8 The Council is required by the Public Services (Social Value) Act 2012 to consider how its procurement activities might secure the improvement of the economic, social and environmental well-being of Tower Hamlets. The report provides examples of benefits the Contract is intended to achieve. In light of this the Council may be satisfied that due regard has been given to these

duties in the procurement exercise and the award of the Contract to Creative will likely achieve sufficient well-being benefits to Tower Hamlets.

- 5.9 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.” Compliance by the Council with its own Procurement Procedures in tendering for the services and complying with the requirements of the Regulations should assist to satisfy these requirements. However, the Council would also need to be satisfied that entering into the Contract and the engagement of Creative will also provide best value.
- 5.10 When considering its approach to contracting, 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 do not (the public sector equality duty). Officers are expected to continuously consider, at every stage, the way in which procurements conducted and contracts awarded satisfy the requirements of the public sector equality duty. This includes, where appropriate, completing an equality impact assessment which should be proportionate to the function in question and its potential impacts.

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. BEST VALUE (BV) IMPLICATIONS

- 7.1 The new contractual arrangements maximise economy, efficiency, and service benefits within the context of robust targets and better outcomes for service users. The tender also offers a quality premium for the delivery of activity targets across both Shipton House and Sue Starkey House to ensure that the service reduces loneliness and isolation, promoting service users health and wellbeing.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 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.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 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.
- 9.2 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.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

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. SAFEGUARDING IMPLICATIONS

- 11.1 The service award of this contract promotes the continued safety and wellbeing of the 53 vulnerable people who access this service. The service specification includes significant content directly addressing the safeguarding requirements placed upon the provider.