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| Cabinet 9 July 2014 |  TOWER HAMLETS |
| Report of: Robert McCulloch-Graham, Corporate Director for Education, Social Care and Wellbeing | Classification: Unrestricted |
| Contract Award – AHWB4378: Extra Care Sheltered Housing. | |

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| Lead Member | Cllr Abdul Asad, Cabinet Member for Adult Services |
| 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 support vulnerable adults in four Extra Care Sheltered Housing (ECSH) schemes: Coopers Court, Donnybrook Court, Duncan Court and Sonali Gardens. The focus of this service is on maximising independence for those adults meeting Fair Access to Care (FAC) eligibility criteria. 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.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the award of contract for the care provision in the four ECSH schemes to **the successful bidder**, 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 this service
3. Authorise the Service Head - Legal Services to execute all necessary contract documents to implement this decision.
4. Authorise a four month extension (see 1.2 below) of the current contract in order for mobilisation of the new contract (including TUPE issues where applicable) to be executed.

1. REASONS FOR THE DECISIONS

- 1.1 To enable the award and mobilisation of a contract for the provision of care in four ECSH schemes to ensure continuity of care to the vulnerable adults in each of the schemes named above.
- 1.2 The request for the outcome of the procurement process was due before Cabinet on 5th February 2014. Had this been agreed the new contract could have been in place when the current contract expires in June 2014. The recommendation from officers did not go before Cabinet as planned and so the extension is required in order to mobilise the contract with the successful bidder.

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 care and housing related support at the four ECSH schemes and it is proposed therefore that a contract be awarded to this provider.
- 3.2 ECSH seeks to maintain older people in their community, who may otherwise be at risk of entering institutional care. It combines dignity, privacy and independence with having your own tenancy and own front door, but with the security and level of care provided by an on-site personal care and support team 24 hours a day.
- 3.3 This service is for 161 units of ECSH across the four schemes.
- 3.4 The contract value will be for a minimum of four core hours per tenant with some flexibility around staff handover time. Individuals will then have the

option of using a personal budget to commission assessed additional hours from the on-site provider or a different service provider of their choice.

- 3.5 Prior to the tender being advertised the contracting strategy and tender process were approved by the Competition Board through the Tollgate process and by Cabinet through inclusion on the relevant Quarterly Contracts Forward Plan.
- 3.6 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 PQQ, 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.
- 3.7 A market warming event, attended by 21 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.
- 3.8 The tender opportunities were advertised on the Council's tender portal and East End Life. Local providers were notified via email and by the Tower Hamlets Council for Voluntary Services (CVS).
- 3.9 23 providers returned Pre-Qualification Questionnaires where provider organisations were asked to respond to a series of searching questions related to their experience, understanding and skills in the provision of care to vulnerable adults.
- 3.10 11 organisations were invited to tender, and seven providers tendered, responding to a series of probing questions and submitting a price. Reflecting the high calibre of responses, five organisations were asked to proceed to the final stage presentation.
- 3.11 The annual contact value was advertised as between £480,000 - £520,000. The recommended provider came within this range at £499,784 pa.
- 3.12 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.
- 3.13 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 managers consisting of an operational services Team Manager, Service Manager- Strategic Commissioning and Service Manager - Supporting People and the Strategic Commissioning Manager -

Accommodation Solutions.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The proposed contract does not affect the current unit price of service provision (currently £14.19 pw and will remain the same under this contract). As such it does not offer any financial saving on the current extra care sheltered housing budget if the demand were to stay the same. This indicates that the focus of the tender has been on securing quality of service within the current unit price we are paying.
- 4.2 The potential savings due to this contract will be visible if there is a shift of client packages from other expensive service types such as residential and nursing into the community living offered by extra care sheltered housing. Such savings could be cashable ones if the existing clients are being transferred or will qualify as cost avoidance if new client packages are placed within the extra care sheltered housing from the start.
- 4.3 This contract is not expected to reduce the demand for extra care sheltered housing. On the contrary, its aim is to encourage the use of the service as an alternative to other expensive service types.
- 4.4 The following table shows the 13/14 outturn position for Extra Care Sheltered Housing (including all six providers).

| 13/14 Budget £'000 | 13/14 Outturn £'000 | 13/14 Overspend £'000 |
|-------------------------------|--------------------------------|----------------------------------|
| 1,359 | 1,722 | 363 |

- 4.5 The contract value stipulates a minimum demand of four hours per service user (core hours) in order to qualify for the service, which would suggest a contract value in the region of £0.5m. The actual demand, however, will be much higher which is the case for the 13/14 outturn position (please see table).

5. LEGAL COMMENTS

- 5.1 Under section 29 of the National Assistance Act 1948 and section 2 of the Chronically Sick and Disabled Persons Act 1970 the Council has a duty to provide adults in its area in need of care and support with support services to meet their assessed needs. The Council has a duty under section 47 of the NHS & Community Care Act 1990 to assess people with chronic ill health or disabilities who appear to need community care services, and to decide on the basis of that assessment whether it is necessary for the Council to arrange or provide services to meet any identified need. The decision about whether someone is eligible for help from the Council is to be based on an evaluation of the risk to a person's independence posed by their needs and circumstances, following a community care assessment.
- 5.2 The current legislation will be replaced when the relevant sections of the Care Act 2014 come into effect (in accordance with the timetable set out in Regulations to be released shortly). Section 1 of the Care Act places a general duty on the Council when exercising its functions, to promote an

individual's well-being relating to their physical and mental health, emotional well-being and personal dignity. The Care Act 2014 replaces the existing duties in respect of assessing and meeting an individual's eligible care needs. Section 8 provides that those eligible needs may be met in a number of ways, including care and support at home or in the community, and by providing the service itself, arranging another provider to provide the service, or direct payments.

- 5.3 The procurement route that has been followed and an award of a contract to each of the winning bidders would satisfy the Council's procurement duties both under European and domestic law, particularly the requirements of the Public Contracts Regulations 2006, and also under the Council's internal procedures.
- 5.4 The Mayor and Cabinet are requested to allow a four month extension of the existing contracts in order that the new service providers may mobilise the new contracts prior to commencement. This carries a risk of offending the Public Contracts Regulations 2006 and European procurement law. However, the extension is considered to be appropriate, as it is purely for practical reasons and is not intended to avoid competition. The new contracts are intended to commence within the specified timeframe and following a compliant procurement.
- 5.5 When deciding whether to award the contracts, 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 (the public sector equality duty). Prior to making changes in service delivery, the Council must ensure that proper consultation occurs in accordance with its public sector equality duty and its best value duty under the Local Government Act 1999. There is information contained in the report relevant to these considerations.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The tenants of the four schemes have been consulted about the new the model of care, whereby tenants will be able to take up cash personal budgets to meet their needs. This has been through visits to all the schemes and all tenants have been individually written to and kept informed of the process of the re-procurement.
- 6.2 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.
- 6.3 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.
- 6.4 The Procurement questions were further designed to ensure commitment from bidders (including the successful bidder) to engaging local people in opportunities for

apprenticeships and volunteering, thus providing continuity for local employment. This will be monitored through Key Performance Indicators.

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.

10. EFFICIENCY STATEMENT

- 10.1 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

- Contract award – Adult Social Care Services (Exempt report)

Appendices

- NONE

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

- NONE