

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

## 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 8<sup>th</sup> 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"

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

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