

LONDON BOROUGH OF TOWER HAMLETS

PROFORMA:

MAYORAL DECISION SUBJECT TO CALL-IN AND REFERENCE BACK

Mayoral Decision Log No: 063

Title: Contract Award – Direct Payment Support Service

Is this a Key Decision:

Yes

UNRESTRICTED / RESTRICTED:

Unrestricted

DATE OF OVERVIEW AND SCRUTINY COMMITTEE:

02 September 2014

DECISION OF THE OVERVIEW AND SCRUTINY COMMITTEE:

1. To refer the decision of the Mayor outside Cabinet back to the Mayor for further consideration for the reasons detailed below; and
2. It is recommended that the commissioning/ procurement process is re-run with better consideration being given to the funding of service quality and the impact of the process outcome on service users.

REASONS FOR THE REFERENCE BACK

The Call-in requisition in relation to the above decision set out the following reasons 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 (a 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.

The Chair summarised reasons for OSC referral of the Mayor's provisional decision back to the Mayor for further consideration, set out by Members in concluding their deliberations, as below (see final paragraph of Section "Consideration of Call In").

ALTERNATIVE ACTION RECOMMENDED BY THE OVERVIEW AND SCRUTINY COMMITTEE (IF ANY)

The Call-in requisition proposed the following alternative action in relation to the Mayor's decision:-

- 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. The alternative course of action recommended by the OSC is set out in its decision above.

CONSIDERATION OF THE "CALL IN"

The OSC had before them the Mayoral Decision Pro-forma considered and signed by the Mayor (published 14 August 2014) and the "Call In" Requisition signed by five Councillors (declared valid 22 August 2014).

The Overview and Scrutiny Committee considered the call-in request which was presented by Councillor Rachael Saunders.

Councillors Saunders and Harrison presented the "Call-in": summarising the reasons for "calling in" the Mayoral Decision, outlining the key concerns of the "Call-in" Members, and setting out the action sought from the OSC to address these as follows: -

- Concern expressed that the Mayor proposed to award the contract for the Direct Payment Support Service (DPSS) to an organisation whose bid was approximately half of the expected annual contract value estimated by Officers; and therefore whether a service of an appropriate quality would be provided to users and the sustainability of this. With a big private company bidding so low questions arose as to how such a saving could be made and how it would impact on the service. Often the result was online service delivery or devolving delivery to call centres, with staff on poor conditions.
- Referencing a number of points set out in the Call In requisition including:
 - That the current contract holder the local user-led organisation of disabled people, Real, employed disabled local residents whereas POhWer the proposed contract holder was not user led.
 - Real had scored more highly on quality than other bidders during the assessment of tenders, but was not to be awarded the contract.
- Noted that respected advocacy organisations for the disabled community such as Disability Rights UK and Inclusion London had expressed concern over the proposal, and advised that commissioning should be done in a way that took account of broader social value not just price. Real provided a voice for local disabled people, and was operated by them and the Council made great use of it. The case could be made that the Mayor had not fully considered social value and equalities in making his decision.

- Concern expressed at the lack of transparency in respect of the Mayor's decision making on this matter: Rather than adhering to proper process and proposing this Budget saving in public at a full Council meeting, where it was likely to face great opposition, the de facto decision to reduce funding for this service had been made outside Cabinet, under Executive Powers. The decision making process was only now being highlighted as a result of the protest and the Call In.
- The Mayor should therefore be requested to reconsider his decision.

Councillor Saunders subsequently responded to questions from the OSC summarised as follows:

- The current contract holder Real, was both user led and locally based and had a track record of delivering a quality service in Tower Hamlets. Whereas the proposed contract holder, POhWer, based in Hertfordshire and as a result staff working for them in Tower Hamlets may have to operate remotely, requiring them to work from cafes. Was there a danger that the extensive skill and knowledge base of Real, developed over time in this particularly diverse community, would be lost for ever? *It would be a shame to risk losing such a valuable user led organisation to make such a contract saving.*
- Although the Call In requisition proposed that the commissioning and procurement process be rerun; would a reassessment of current bids with revised weightings attached to assessment criteria, likely to result in a different outcome as to a preferred bidder, be an acceptable alternative? *Abnormally low bids, such as the preferred one, should have been ruled out.*
- Requested to comment on the value of face to face service provision in this area versus online or telephone provision. *She understood from Real protesters and constituency casework that it made a huge difference to service users that a person was physically available to help them. They could be assisted with filling in and scanning forms, that they couldn't do themselves, communication was in their own language, relationships had been built on trust and personal circumstances didn't need constantly explained.*
- Had there been adequate consultation regarding the commissioning with service users? *Mike Smith CE Real responded that there had been no consultation with service users prior to commissioning. The last consultation had been a year ago on independent support planning which was not related to this issue.*

Councillors Alibor Choudhury (Cabinet Member for Resources) and Abdul Asad (Cabinet Member for Health & Adult Services), Ms Deborah Cohen (Service Head Commissioning & Health, ESCW) and Keith Burns (Programme Director Special Projects – Commissioning & Strategy, ESCW) responded to the concerns raised by the "Call-in" Members and the petition received earlier, and subsequently responded to questions from the OSC summarised as follows:

- Response to Call In requisition:-

- Commented that the Mayor/ Administration held the same principles since first elected: valuing locally embedded organisations and projects, organisations from the community which listened to it and delivered services which met the needs of local people. He did not dispute what had been stated by Real regarding its ideal service provision and the Mayor/ Administration believed in user led initiatives.
- Outlined elements of the procurement process timeline, emphasising:
 - The specification had been carefully designed to encompass the aspirations of the Mayor/ Administration but this also included many of the suggestions from Real.
 - Tenders had been the subject of a rigorous and robust assessment process to ensure quality and best value.
 - The Lead Member Councillor Asad had been regularly briefed on progress.
 - Full information had been presented to the Mayor to enable a fully informed decision.
- The commissioning process had been undertaken in full accordance with the Authority's Procurement Policy Imperatives and Procurement Procedures/ timetable. The Authority was legally prevented from specifying that only local organisations could bid for the contract, however for a number of years it had encouraged tendering opportunities for local organisations within the legal constraints, and in this case the turnover requirements at pre-qualification questionnaire stage reflected this approach.
- Emphasised that there were significant legal risks for the Authority in revisiting the commissioning process to revise criteria/ outcomes, when there were not good grounds to do so. Officers further clarified that it was not possible to revisit weightings attached to assessment criteria, as once advertised they must stand.
- Commented that the process had been impartial being managed by Officers with little involvement from the Mayor/ Cabinet members, and he was certain this position could be appreciated given adverse media criticism of undue influence of other matters by the Mayor/ Administration.
- Emphasised that there would be stringent contract management arrangements to ensure adherence to the specification and the service delivery of the preferred bidder should not be pre-empted.
- Commented that it was important to differentiate between the organisations bidding and the commissioning process.
- The opportunity to re-commission the service with a view to stretching resources to allow for inclusion of an online/ telephone dimension had been welcomed, however the service specification remained a mix of face to face and online delivery. The spec also included a requirement for an outreach element with delivery in locations convenient and accessible for service users, such as community halls, places of worship, Idea Stores. However the part of the service to support those choosing a personal cash budget had been decommissioned some months previously.
- Commented that the commissioning process had commenced in July 2013 and there had been few representations to clarify viewpoints on it.

However it was regrettable to now hear of the destabilising impact on Real due to the outcome of this process.

- POhWER was a charity and membership based organisation, started and developed by service users, with the objective of supporting and providing opportunities for the disabled and vulnerable. It had started in Hertfordshire and grown to become a large but not yet national organisation.
- **Response to OSC Questions:-**
 - What were the outstanding qualities that POhWER would bring to this aspect of service provision in Tower Hamlets and what understanding had it demonstrated of cultural diversity and language needs of local residents? *The POhWER bid had been the most economically advantageous with the best balance of quality and price. It had scored highly on quality compared with the other bids and was a close second to REAL. It had demonstrated a good understanding of cultural diversity issues in Tower Hamlets and significant strengths in delivering locally to which references from other local authorities attested. The contract specification was clear that service provision in users first language of choice was a requirement and the methodology statement had been drawn up carefully to encompass these requirements. Contract management arrangements would ensure delivery of the required service.*
 - Whilst acknowledging the challenging savings requirements placed on the Authority in the coming two years, there was also a consensus that an organisation such as Real should be protected from their impact. What action was the Authority taking to ensure Real's continued existence and effective functioning? *It had never been the intention that the outcome of this procurement process should have a destabilising impact on Real, and the Authority/ Officers would work with Real on its finances to ensure that it continued to discharge services for other significant adult social care contracts it held with the Authority, and to continue to function as a viable organisation.*
 - How did the contract for DPSS meet the needs of local people? *A contract specification had been drawn up which clearly set out the requirements of service provision which included:*
 - *Communicating with service users in the first language of their choice;*
 - *Having a workforce that reflects the community;*
 - *Promoting local employment;*
 - *Having a detailed knowledge of local services that may be of benefit to service users;*
 - *Delivering the service at times and in locations that are convenient and accessible for service users.**The Administration was therefore hopeful that the selected bidder would deliver services holistically to meet the needs of local people.*
 - If Real lost the contract for DPSS would local jobs be lost? *It was a requirement that staff working on the existing contract should be transferred to the new organisation/ contract under TUPE regulations.*

- It was proposed to commission a new contract for DPSS with a cost saving of approximately 50 per cent going forward. How was this possible and would it result in a good service becoming a no frills service? A combination of factors allowed this including:
 - *Officers considered there was significant scope for efficiency in the existing service provision.*
 - *POhWER had a larger infrastructure that allowed it to spread its overheads and achieve greater economies of scale.*
 - *Much greater use of ICT and in particular automation of back office functions.*

Officers had spent considerable time during the commissioning process to verify that POhWER's bid was credible, and additional references were taken up with other authorities with whom it had existing contracts.

- *Had the requirements of the Social Value Act 2012 been incorporated into the commissioning process? Yes, the methodology statement and in particular questions focused on delivery at a local level had addressed it.*
- *The importance of recognising the value of local organisations delivering local services had been emphasised and petitioners had been clear in presenting the petition that the current service provider was fully aware of the needs of the local community. How had the preferred bidder convinced Officers it could do so? POhWER was a close second to Real when assessed on quality criteria and had demonstrated significant strengths in delivering in a Tower Hamlets context. It had been awarded contracts in Tower Hamlets which commenced recently and initial feedback from commissioners was good.*
- *Further to clarification of the number of bidding organisations and their local status (8 bidders 1 being defined as local) clarification sought and given as to how the preferred bid, which was 44 percent lower than the estimated contract value, could be sustainable when the bid was also significantly lower than 6 peer organisations delivering similar services countrywide. Also efficiencies from spreading overheads and greater use of ICT applied to all the other national organisations bidding so where was the efficiency to be delivered in one of the most competitive markets known? Officers had tested the sustainability of the submitted price through a clarification process, and from this it was clear that the bidder understood the contract specification including paying its employees London Living Wage and the implications of TUPE. There were no legal grounds to reject the bid as unsustainable. The achievement of efficiency depended on service delivery models, economies of scale and commercial decisions as to the contract value. However it was important to note that the the selection was based on a combination of price and quality.*
- *Did the preferred bidder POhWER have experience of service delivery in DPSS in other London boroughs? No experience of such service delivery in other London boroughs, but it had experience of providing advice and advocacy services in London boroughs from which it was aware of staff costs in and out of London.*

- How would the Authority ensure that the funding spent on this contract was used for Tower Hamlets residents and not spent in other parts of the UK? *The contract terms and conditions allow the council to require the provision of contract monitoring information, including expenditure that will be used to ensure that the service is properly funded locally.*
- Further to clarification as to the level of briefing of the Mayor on issues pertinent to this commissioning process, the questions asked by the Mayor at the point of his decision making, and which Cabinet members and Chief Officers were present to advise him at this point, the Chair commented that it was disappointing and unacceptable that the Mayor had taken the decision outside Cabinet and sent other Cabinet members not present to account for it. This did not provide the OSC with an opportunity to fully scrutinise the decision making, an important element of consideration as to whether the matter should be referred back to the Mayor for further consideration. The Chair **proposed** and it was **agreed** that in future, if a decision was made by the Mayor outside Cabinet and Called In to OSC for further consideration, either the Mayor or those Cabinet Members and Chief Officers present when the decision was made should attend the OSC to respond to the Call In, and if necessary formally summoned to attend through the appropriate constitutional provisions.

At this juncture the Chair sought and was given advice by David Galpin, Service Head Legal Services, as to options available to the OSC when concluding its deliberations on this matter, summarised below.

The OSC could:

- Endorse the Mayor's decision and enable implementation to go ahead.
- Refer the matter back to the Mayor outside Cabinet for further consideration, with reasons for its referral (setting out the nature of OSC concerns) and possibly recommending an alternative course of action.

Mr Galpin also advised that in referring the decision back to the Mayor for further consideration there would be significant legal risks with any recommendation to the Mayor that he should not award the contract including:

- If the Mayor decided not to award, that may be challengeable on grounds of administrative law if there are not good reasons for taking a different view than was previously taken.
- A decision not to award would require a further procurement exercise and this would require a further unlawful direct contract award as an interim measure.
- It may lead to challenge from the previously successful bidder (whether or not well-founded).
- The OSC had already been advised that it was not possible to revisit weightings attached to assessment criteria, as once advertised they must stand. Under public contract regulations the Authority was obliged to operate a fair and transparent commissioning process.

The Chair summarised that the OSC considered that the decision of the Mayor outside Cabinet should be referred back to the Mayor for further consideration for the reasons detailed by OSC members in concluding their deliberations, and outlined below:

- Concern that the proposed contract award would result in the loss to the borough of a very significant amount of intellectual property held by the current contract holder, Real, a user led organisation based in the borough; this would be very damaging. It appeared that the preferred bidder POhWER were undercutting the current service provider, and a first rate assessment evaluation of the service given to date had not taken place.
- The Mayor was permitted by law to take the decision but the OSC was permitted to request that he give it further consideration, and the latter was unlikely to precipitate a legal challenge.
- Concern that there were serious risks associated with the bid to operate the DPSS with a cost saving of approximately 50 per cent going forward. How was it possible to achieve this whilst ensuring a good quality service for users? Also serious concerns for local disabled employees following the TUPE process.
- Concern that although the preferred bidder operated in other parts of the country, it had no experience of service delivery in DPSS in other London boroughs, only of advice and advocacy provision which was a different field.
- Concern that the case for value for money remained unproven.
- Concern that an opportunity to ensure employment for the local community and strength of the local economy was being lost.
- Consideration that the most important factor was not local employment and local centres for service delivery, but provision of a service appropriate for local service users. All were concerned whether the extremely low bid preferred was sustainable in a market where comparative organisations providing the same services could not come close to making such a bid. There was a risk of a poor service for users or a failure in provision.
- Concern also that the proposed award of contract would have a damaging impact on the ability of Real to function effectively within Tower Hamlets.

Following discussion, the Overview and Scrutiny Committee made the decision set out on the front page of this reference.

ORIGINAL DECISION

The original mayoral decision number 63 is appendix 1 to this report.

LEGAL COMMENTS

Additional legal comments are set out in appendix 2 to this report, which are not for publication.

DECISION OF THE MAYOR

I have reconsidered my decision Log No. 063 "Contract Award – Direct Payment Support Service" in the light of the information provided by the Overview and Scrutiny Committee at its meeting on 2nd September 2014 as set out above.


Having taken into account all of the relevant information I have decided to:-

(a) Confirm my decision, of 11 August 2014, published on 14 August 2014, on the matter*; or

(b) Amend my decision, of 11 August 2014, published on 14 August 2014, on the matter as follows*:-

..... TO PROVIDE THE
..... SERVICE THROUGH A NEW
..... TENDER.

(* Delete as applicable)

Signed 	Date <u>23/3/15</u>
Mayor Lutfur Rahman	



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

Tel: 0207 364 4204, e-mail: johns.williams@towerhamlets.gov.uk

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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:-

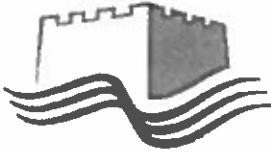
- (a) has been published in advance on the Council's Forward Plan OR
- (b) Is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

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	Cllr 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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