

CABINET

18 July 2023

| | |
|--|--|
| Title: Contract for Supported Living Services | |
| Report of the Cabinet Member for Adult Social Care and Health Integration | |
| Open Report | For Decision |
| Wards Affected: All | Key Decision: No |
| Report Author: Elizabeth Kitto, Commissioning Manager, Adult Services | Contact Details: elizabeth.kitto@lbbd.gov.uk |
| Accountable Director: Chris Bush, Commissioning Director, Care and Support | |
| Accountable Executive Team Director: Elaine Allegretti, Strategic Director, Children and Adults | |
| Summary <p>Supported living services are essential for people known to both the Life Planning and Mental Health Teams. Supported living settings are commissioned when a person known to one of these teams cannot live independently due to their individual needs or vulnerabilities. A supported living setting enables the individual to live as independent life as possible in a safe environment where they are supported to achieve and maintain their independence.</p> <p>There have historically been two contracts in place, the first being a block contract which was for 12 services supporting a total of 45 people. There has also been a framework contract in place since April 2019 which has 23 providers, but this has not been extensively utilised. The current block contract has not been able to accommodate all individuals on account of inability to meet certain needs, resulting in rooms remaining void at the expense of the Council. Spot purchasing arrangements have also been used to find bespoke accommodation, which is not under pre-negotiated terms by LBBDD. It gives the opportunity for greater choice and control for the service user - for example if they wish to reside close to family members who live out of the borough. The disadvantages could be lack of quality assurance or commissioning oversight.</p> <p>The new contract will bring those two contracts together into one framework and reduce the need for spot purchasing through a wider range of providers to meet the changing needs and demands on this service. Operational colleagues will be provided with a service directory to ensure the framework is utilised. All providers must comply with London Living Wage.</p> | |
| Recommendation(s) <p>The Cabinet is recommended to:</p> | |

- (i) Agree that the Council proceeds with the procurement of a maximum four-year framework contract for Supported Living Services in accordance with the strategy set out in the report; and
- (ii) Delegate authority to the Strategic Director, Children and Adults, in consultation with the Cabinet Member for Adult Social Care and Health Integration and the Chief Legal Officer, to award and enter into the contract(s) for the framework agreement and all other necessary or ancillary agreements with the successful bidders to fully implement and effect the proposals.

Reason(s)

To assist the Council in meeting its priorities of “residents are safe, protected and supported at their most vulnerable” and “residents live healthier, happier, independent lives for longer”.

1. Introduction and Background

- 1.1 Supported Living arrangements aim to increase individual’s independence and skills by reducing dependency over a period of time. This should therefore increase the independence of the adult and reduce the amount of paid and unpaid support that they need. This enables people to try new things, allows the provision of care and support in their own homes and may support people to move-on to more independent forms of accommodation.
- 1.2 The Council has a statutory duty to ensure that vulnerable adults have access to supported accommodation, which supports functionality, wellbeing and enables the service user to live fully.
- 1.3 The current Supported Living model is no longer fit for purpose. Block contracts have been found to be financially inefficient and the model requires bulk commissioning and guarantees work for a singular company. Due to this, the Council pays for voids and providers can decline potential service users for various reasons, including lack of provision to meet needs. The redesigned service will focus on working with providers to ensure that we have sufficient provision for service users with specialist needs, e.g., autism, a gap identified by the Market Position Statement as well as creating greater financial efficiency.
- 1.4 There are currently three types of Supported Living contracts being delivered:
 - **The block contract** – The block contract is a bulk purchase of services. This contract guarantees work and pay for the provider. We currently use this system regarding 12 properties in which care is provided by a singular company. The advantage of this system is prepaid supported living spaces are available for use. The disadvantage of this system is not all rooms are filled and clients can be, and are, rejected based on a lack of ability to meet needs. This is not a cost-effective contract model.
 - **The framework contract** – Supported living accommodation can be ‘pulled’ from the framework in line with an individual’s bespoke care needs; with the goal of enable a service user to live as independently as possible. There are 23 providers on the framework of which the majority are not utilised for a variety of

reasons. The advantage of this system is that LBBD only pay for the placements made; there is greater opportunity to access a wide variety of services, skills and accommodation; if used appropriately spot purchasing becomes less necessary.

- **Spot purchase** – This allows social workers / commissioners to find bespoke accommodation, which is not under pre-negotiated terms by LBBD. It gives the opportunity for greater choice and control for the service user- for example if they wish to reside close to family members who live out of the borough. The disadvantages could be lack of quality assurance or commissioning oversight. There is a need to provide spot purchasing in certain circumstances alongside the rules of the Care Act. Each spot purchase is an individual contract and must remain an option to meet legislative requirements and provided where required in exceptional cases.

1.5 The Care Act has a number of aspects directly relevant to the delivery of Supported Living services. These will need to be taken into consideration as the model and the specification as the future service is developed. These include:

- **Wellbeing and prevention** - The promotion and maintaining of a person's wellbeing is now enshrined in law.
- **Person-centred, person-led processes** - Central to the wellbeing principle is the ethos that the individual is best placed to make decisions about their care and support, and that a person-centred system takes account of the individual's views, wishes and beliefs. As part of the tender the successful provider will be required to involve the service user in all aspects of their care.
- **Personalisation** - Independence, choice and control are key themes of the Care Act which aims to complete the mainstreaming of personalisation and stimulate the proliferation of choice of services to meet different needs (and/or meet those needs differently).
- **Outcomes Driven:** Commissioners are remodelling the service with a robust specification that is outcomes driven. Due to the complexity and chronicity of needs, we need providers that can meet the presentations of service users within the disability and mental health teams.

2. Proposed Procurement Strategy

2.1 Outline specification of the works, goods or services being procured

2.1.1 It is recommended that the current contract format is altered from a block and framework model to a framework model alone. Following this, a retender of the services which incorporates the block contract into the framework contract will be enacted. This will improve cost efficiency and create greater opportunity to harness specialist skills.

2.1.2 All the successful providers that meet the quality threshold during the tendering process will be included on a general framework. These providers will offer service users supported living services. An address book of providers on the framework will be issued to operational colleagues with highlighted areas of specialism.

2.1.3 We are looking to procure framework contracts for the supported living service and award a three-year contract with an option to extend for a further one-year. .

2.2 Estimated Contract Value, including the value of any uplift or extension period

2.2.1 The cost of Supported Living services for the period 2018/19 to Apr'22-Jan'23 is set out in the table below:

| | 2018/19 | 2019/20 | 2020/21 | 2021/22 | Apr'22 - Jan'23 |
|------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Disability service | £2,352,852 | £4,551,307 | £6,425,309 | £7,223,008 | £7,216,953 |
| Mental Health Services | £2,111,188 | £3,034,907 | £3,614,295 | £4,526,573 | £4,440,021 |
| Total | £4,464,040 | £7,586,214 | 10,039,604 | 11,749,581 | 11,656,974 |

2.2.2 Based on the above data and taking into account current inflationary factors and projected increase in demand, it is estimated that the yearly cost of this contract will be as follows:

| | 2024/25 | 2025/26 | 2026/27 | 2027/28 |
|------------------------|--------------------|--------------------|-------------------|--------------------|
| Disability Services | £9,000,000 | £9,500,000 | £10,000,000 | £10,500,000 |
| Mental Health Services | £5,000,000 | £5,250,000 | £5,500,000 | £5,750,000 |
| Total | £14,000,000 | £14,750,000 | £15,500,00 | £16,250,000 |

2.3 Duration of the contract, including any options for extension

2.3.1 The contract period for the framework agreement is three years with an option to extend for a further one year. This is scheduled to go live at the latest in April 2024.

2.4 **Is the contract subject to (a) the (UK) Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?**

2.4.1 The contract is subject to the (UK) Public Contracts Regulations 2015 and as a social care contract is subject to the Light Touch Regime. As the estimated value of the contract is higher than the set threshold (currently £663,540), it needs to be opened up to competition and be advertised in Find a Tender as required by the Regulations.

2.5 Recommended procurement procedure and reasons for the recommendation

2.5.1 The framework for the Supported Living services will be procured in line with the Public Contract Regulations 2015 through a 'light touch regime' taking into account the small number of specialist providers. The recommended procurement route is a competitive open tender procedure; the tender opportunity will be advertised in Find a Tender, Contracts Finder, and the Council's website and e-tendering portal (Bravo). The process will widen the competition and ensure the Council gets best value for money for this service.

2.5.2 The Council will issue the contract in line with the Public Contract Regulations for the provision of the service with a break and variation clauses. The contracts will be further tightened with service specification requirements and expected outcomes. Key performance indicators will be outlined in the service specification and agreed with the providers. Performance management will be carried out by the Council.

2.6 The contract delivery methodology and documentation to be adopted.

2.6.1 The tender process will be undertaken to establish a framework for supported living services. Successful providers will be given no guarantee of work throughout the term of the framework.

2.6.2 Supported living services are identified as part of an assessment process, all decisions relating to providing supported living settings are made at the service resource panel, where suitability of provision and cost are considered. A financial assessment is undertaken for all individuals and where the threshold is met the service user may be requested to contribute to their care. Council standard terms will be used in the contracts. A break clause will be included in the contract allowing notice to be given by the Council for no fault termination. This allows increased flexibility should a significant change in service provision be required.

2.7 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract

2.7.1 This tender process will not deliver financial savings for the local authority. It will however mean that it will be able to deliver high quality Supported Living services which enable the council to fulfil its duties which are detailed in the Care Act 2014.

2.8 Criteria against which the tenderers are to be selected and contract is to be awarded

2.8.1 The quality to social values ratio upon which the contracts will be awarded will be 60% Quality, 30% Cost and 10% Social Value. All providers who express an interest in the tender will be issued with a tender pack which will give clear details on the price/quality criteria and weightings. The tendering process will use lots. Lots will be based on both age and need to ensure coverage for both adults and children as well as a range of mental health and physical needs.

2.8.2 During the application process, to join the framework, quality and pricing must be considered. We will ask questions around quality of care in keeping with the specification and ask for a submission of an approximate pricing document that will be scored separately.

2.8.3 The responses will be assessed by representatives from commissioning, the disabilities service and quality assurance and scored against a set criteria. Those who meet the criteria are to be added to our framework with a cut-off point of 30 providers.

2.9 **How the procurement will address and implement the Council's Social Value policies**

- 2.9.1 The Council's social value responsibilities are taken through its vision: One borough; One community; London's growth opportunity.
- 2.9.2 Through the award of the contracts to the providers, the Council will ensure that services are provided to some of the boroughs most vulnerable adults.
- 2.9.3 Through the procurement process tenderers will be asked to evidence how they will provide additional social value across the council through the delivery of these services. The outputs will commence when the individual provider reaches payment of over £100,000 from LBBB.

2.10 **Contract Management methodology to be adopted.**

- 2.10.1 The contract will contain specific service requirements and expected outcomes. Key performance indicators will be outlined in the service specification and agreed with the providers. Reviews of the service will be undertaken via placement visits, outcomes and PQIT visits.
- 2.10.2 In addition to the monitoring, home care providers are reviewed by the council's Quality Assurance Team. If there are any concerns with the quality of the service provided the Commissioning Manager and the Quality Assurance Team will work closely with the provider to address the issue and follow a robust improvement plan which addresses the issues.

3. **Options Appraisal**

- 3.1 The following options were considered when deciding what should be commissioned:

Option 1: Do Nothing (Rejected) - Providing MH and LD supported living is a statutory duty. If the framework was not refreshed, we would have to spot purchase care which is costly and time consuming for brokerage.

Option 2: Utilising a Dynamic Purchasing System (DPS) (Rejected) - A DPS is unlikely to be suitable for this service. Every requirement would need to be advertised for at least 10 days and there is a continual administrative burden upon the service to manage new providers that wish to be part of the DPS. There would be the benefit of new providers being added over the life of the DPS but the administrative and procedural requirements of a DPS would not be suitable for the operational requirements of the service. The consistent addition of new providers would also create a potentially unwieldy system.

Option 3: Join an already existing framework with another local authority (Rejected) – The use of an existing combined framework is reliant on shared goals amongst authorities as well as mutual agreement on pricing structures and criteria through which to grade our prospective providers. This may lead to a continuous negotiation in service delivery between leading parties which can slow down progress as well as periodically work against the goals of LBBB to ensure that shared needs are met fairly.

Option 4: Recommission a Framework for Supported living services

(Recommended) -This will enable LBBB to select providers based on our standards of quality and specification and ensure we have achieved maximum value for money and efficiency in delivering services to LD and MH service users. It will ensure that we are not paying for void rooms and can accommodate a wide range of service users with varied needs. This will benefit the L.A from both a quality and service delivery perspective as well as financially.

4. Waiver

4.1 Not applicable.

5. Consultation

5.1 In the development of the commissioning model, a Quality Assurance Manager from Adults' Care and Support was consulted to gain a greater understanding of the outcomes within the current system. The proposed model addresses some of the issues which were highlighted as problematic with the current model, such as void rooms, varied standards of care, the framework settings being overlooked for the purposes of spot purchasing and individuals being housed out of borough.

5.2 The current care providers were also consulted on the options for the service moving forwards including care providers, landlords and care/ support staff within the supported living area. Their feedback meant that the proposed model of care must cater to not only the physical and mental needs of clients but also the social aspects indicating the importance of matching groups of service users appropriately. This further supports the use of a framework model allowing for access to a wide range of settings.

5.3 Internal consultation has taken place with legal, procurement and operational teams to review the efficiency of the current service model and plan for better delivery at a more cost-effective rate.

5.4 The proposals were also considered and endorsed by the Procurement Board on 17 April 2023.

6. Corporate Procurement

Implications completed by: Francis Parker Senior Procurement Manager

6.1 The proposals in this report are compliant with the Council's Contract Rules and the PCR 2015.

6.2 A Framework is likely the most suitable option for the delivery of this contract.

6.3 A lotted tender process is likely to yield a response which ensures a spread of skills and age range provisions.

7. Financial Implications

Implications completed by: Lawrence Quaye, Finance Business Partner

- 7.1 Supported Living across both Mental Health and Disability service has had significant historical budget pressures/overspend due to growing demand and rising unit costs. Current year forecast is £1.7million overspend (£850k in Mental Health and £850k in Disability service). However, the service has been given budgetary growth in the next financial year 2023/24 and part of it will be used to mitigate some of these pressures.
- 7.2 To alleviate future pressures, this tender must focus on achieving value for money and efficiencies.

8. Legal Implications

Implications completed by: Kayleigh Eaton, Principal Contracts and Procurement Solicitor, Law and Governance and Mehzbeen Patel, Employment Solicitor

- 8.1 This report is seeking approval to set up a four-year framework for Supported Living Services.
- 8.2 The services being procured are subject to the Light Touch Regime under the Public Contracts Regulations 2015 (the Regulations). The value of the proposed framework is above the threshold meaning that it will need to be advertised in Find a Tender. There are no prescribed procurement processes under the light touch regime, therefore the Council may use its discretion as to how it conducts the procurement process provided that it complies with principles of transparency and equal treatment of economic operators; conducts the procurement in conformance with the information that it provides in the Find a Tender advert; and ensures that the time limits that it imposes on suppliers, such as for responding to adverts is reasonable and proportionate. Following the procurement, a contract award notice is required to be published in Find a Tender.
- 8.3 This report states that the contract will be advertised in Find a Tender, on the Council's e-tendering portal (Bravo), Contracts Finder and the Council's website in compliance with the Regulations. This appears to be following a compliant tender process.
- 8.4 Contract Rule 28.8 of the Council's Contract Rules requires that all procurements of contracts above £500,000 in value must be submitted to Cabinet for approval.
- 8.5 In line with Contract Rule 50.15, Cabinet can indicate whether it is content for the Chief Officer to award the contracts following the procurement process with the approval of Corporate Finance.
- 8.6 The Transfer of Undertakings (Protection of Employment) Regulations 2006 applies on a "relevant transfer". The move away from block care contracts to framework agreements does not preclude the need to consider the application of TUPE, although it is often unclear at the outset if it applies, as the work may be split between multiple contractors. TUPE usually applies if there is a transfer of an economic entity that retains its identity following a transfer. In the event that it is not

possible to ascertain which provider will carry out the majority of the work that is transferring, TUPE is unlikely to apply as work will be divided in a way whereby it would be impossible to determine where employees should transfer. However, if it is possible to determine which employees were dedicated to a particular activity and which contractor will now provide that service, it is possible that TUPE will apply to this transfer. In that case, employment contracts for the group of employees that were dedicated to the delivery of the contract for the outgoing provider, will automatically transfer to the new provider on the date of transfer.

9. Other Implications

9.1 Risk and Risk Management

| Risk | Likelihood | Impact | Risk Category | Mitigation |
|--|------------|--------|---------------|--|
| Delay to/ failed procurement process | Low | Medium | Low | A realistic timetable has been set for this procurement process; failure is highly unlikely with the current interest level from providers. Spot purchasing ensures individual placement agreements will continue aside from this procurement process. |
| No tender received | Low | High | Medium | Barking and Dagenham have a very high number of supported living providers in the borough with 23 on the current framework alone. It is therefore very unlikely that no tenders will be received. All providers registered in the borough will be notified of the upcoming tender. |
| Successful provider is unable to deliver the service | Low | Low | Low | The fact that the procurement process will result in a number of providers being awarded contracts will mitigate the impact should a provider be unable to deliver a service or chose to withdraw from the contract. |
| Contract award decision challenged by unsuccessful provider(s) | Low | Low | Low | The procurement process will be carried out in line with Council's contract rules and UK Public Contracts Regulations. Legal and corporate procurement will be consulted, and documentation will be kept for the required amount of time. |

9.2 **Corporate Policy and Equality Impact** – The proposals detailed in this report align and support the Council's overall vision and priorities, as shown in the reasons section of this report. An Equality Impact Assessment has also been completed (Appendix 1) to ensure that the service is delivered to the best standards.

- 9.3 **Safeguarding Adults and Children** – Safeguarding is paramount to the delivery of quality services that can allow service users to reach their full potential. Full DBS checks must be present for all individuals working within supported living services as well as frequent training on safeguarding issues which is updated regularly for all staff. All providers working with young people aged 17 must inform CQC to ensure registration compliance. Additionally, sites must be arranged appropriately to ensure best fit matching for service users to spaces to ensure positive outcomes physically and mentally. This includes matching clients via gender, age and ability parameters to ensure a harmonious living environment conducive to positive outcomes.
- 9.4 **Health Issues** – Appropriate care must be provided for individuals in supported living services to ensure their health needs are met. Facilities must provide trained staff and secure areas for medication (as required).

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1** – Equality Impact Assessment Screening Tool