

THE CABINET

15 FEBRUARY 2011

REPORT OF THE CABINET MEMBER FOR CHILDREN AND EDUCATION

Title: Children's Personal Support Framework Agreement	For Decision
<p>Summary: Children's Services procures Personal Support services, also known as Domiciliary Care or Home Care from a number of local care agencies on a spot-purchase basis. This report seeks approval for the tendering of services in the form of a Framework Agreement, in an East London Solutions exercise to be led by the London Borough of Redbridge and also including Havering and Waltham Forest.</p> <p>The proposed arrangement is anticipated to secure more competitively priced services, as well as significantly better quality assurance through the improved monitoring of providers.</p> <p>Wards Affected: All</p>	
<p>Recommendation(s)</p> <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Agree to proceed with the proposed joint procurement (with LB Redbridge, LB Havering and LB Waltham Forest) of a Children's Personal Support Framework Agreement, on the terms detailed in the report; and(ii) To indicate whether it wishes to be further informed or consulted on the progress of the procurement and the award of the contract, or whether it is content for the commissioning Chief Officer to award the contract; (as provided for in the Constitution, Contract Rules 13.3).	
<p>Reason(s)</p> <p>This will support the Council Priority of "Inspired and Successful Young People" and particularly of "Focusing on looked after children and those with learning difficulties and disabilities". The outcome will be to secure better value personal support services and make better use of the budget supporting the disabled children's team. At the same time an effective quality assurance programme will be put in place to ensure that services are of good quality.</p>	
<p>Comments of the Chief Financial Officer</p> <p>There are no direct financial costs of being part of the framework and it is anticipated that the monitoring of the framework can be carried out with the existing resources. The Short Breaks grant has now been pooled into the Early Intervention Grant and cash protected by the Government. The direct benefit and savings from being part of the framework are difficult to quantify at present but will be monitored closely.</p>	

Comments of the Legal Partner

1. This report is seeking Cabinet's approval to enter into a joint arrangement with three other East London Boroughs for the procurement of personal support services for children, via a Framework Agreement to be established by the London Borough of Redbridge on behalf on behalf of four East London Boroughs - LB Barking and Dagenham, LB Redbridge, LB Havering and LB Waltham Forest.
2. The Government has for some time now been actively encouraging collaborative working between local authorities. As far back as 2006, the Local Government White Paper – "Strong and Prosperous Communities" – encouraged joint commissioning of services by local authorities and highlighted its potential benefits, including achieving economies of scale.
3. The Public Contracts Regulations, 2006 (the "EU Regulations") allows local authorities to enter into Framework Agreements with service providers, following a competitive EU tendering process, and to select service providers to provide particular services, as and when required, from the Framework Agreements thus established.
4. Although the services to be procured under the proposed Framework Agreement are Part B Services and the full rigour of provisions of the EU Regulations do not therefore apply to the procurement, because the estimated value of the services exceeds the EU threshold for services (currently £156,442), there is nevertheless a legal obligation to comply with the general EU Treaty principles of equal treatment of bidders, non-discrimination and transparency in procuring the services.
5. The report states that the Framework Agreement to which this report relates will be tendered in the EU using the restricted procedure – a two-stage tender procedure in which expressions of interest are invited from interested providers with shortlisted applicants being invited to tender. This satisfies the EU Treaty principles of equal treatment of bidders, non-discrimination and transparency.
6. In compliance with Regulation 19(10) of the EU Regulations, the report states that the proposed Framework Agreement will not exceed a four-year period.
7. This report anticipates that selection of service providers from the Framework Agreement, to provide the services to the Council as and when required, will be undertaken by way of mini-competition.
8. This complies with the provisions of the EU Regulations which allows selection of service providers from a duly established Framework Agreement either by way of "call-off" (i.e. without further competition), or by holding a further mini-competition with the service providers on the Framework Agreement.
9. In deciding whether or not to approve proposed joint procurement of the Framework Agreement, Cabinet must satisfy itself that the proposed joint procurement will represent value for money for the Council.
10. In accordance with Contract Rule 3.6.4, the report is additionally requesting that Cabinet confirm whether it wishes to be further informed or consulted on the progress of the procurement and/or the use of the Framework Agreement, or whether is content for the

Corporate Director for Children’s Services to monitor the progress of the Framework Agreement procurement and, upon conclusion of the procurement, to award personal services contracts for children, as and when required by the Council, using the Framework Agreement.

11. Cabinet has the discretion to decide to be directly involved in the progress of the Framework Agreement procurement and award of the contracts to be let under it, or, pursuant to Section 15 (6) of the Local Government Act 2000, to delegate this responsibility to officers.

12. The Legal Partner (Procurement, Property and Planning) confirms that there are no legal reasons preventing Cabinet from approving the recommendations of this report.

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1. Background

1.1 Children’s Services provides Personal Support Services principally for children with a disability as an element of their care package. At present these services are spot-purchased outside of any contractual arrangement.

2. Proposal

2.1 Children with disabilities and their families benefit from Personal Support (sometimes referred to as Domiciliary or Home Care) in a number of ways. It enables and supports children and young people with a disability to live ordinary family lives and participate in activities that anyone can enjoy; and provides their families with much needed short breaks from their caring role. Approximately 80 children and their families benefit from this type of service. Workers are employed via a care agency to provide one or more of the following tasks:

- personal care to a child including washing and feeding
- personal support as guided by the child/young person and their family, including supervising in the home whilst the parent has a break, supervising out of the home, playing and occupying the child, escorting and enabling access to mainstream services for all
- Support to families to prevent breakdown of the home situation and prevent children needing to come into the care of the Local Authority.

2.2 Well-organised services provided by carers and care agencies with sufficient skills and supervision perform a vital role in supporting children with disabilities and their families. The previous government recognised the value of “short breaks” to families

through a grant programme of investment in a range of services to all local authorities with lead responsibility for children, as well as PCT's as a key element of the Aiming High for Disabled Children programme from 2008-2011. The present government has announced that the Short Breaks programme will continue, with the grant subject to a "protected" status, meaning that it will not be ringfenced as previously, but its use will be subject to monitoring.

- 2.3 Within Barking & Dagenham the amount spent on home-based care for children with disabilities grew from £221K in 2008-09 to £577K in 2009-10, partly financed by the Short Breaks grant, although it is not anticipated that there will be a correspondingly similar increase in 2010-11. This increase shows the commitment to support families in their own homes rather than separate children where it can be avoided. Good Personal Care services should support a child in remaining within their home by alleviating the stresses on parents and helping the child to participate in community activities. However, this type of support can attract complaints and criticism if it is not well-organised or of sufficient quality, with parents typically complaining of:
- different carers being provided, causing confusion or distress to the child
 - carers not arriving promptly
 - carers not being sufficiently skilled to undertake particular tasks.
 - single staff arriving where two are required for more demanding tasks
- 2.4 There are many advantages of a contractual framework over spot-purchasing. Quality assurance monitoring can take place, both with regard to statistical returns, as well as regular meetings with providers. Good practice and training opportunities can be shared amongst providers and forums held with local parents. Good quality services based in the child's home should contribute to reducing demand for the most expensive forms of care such as residential homes and schools.
- 2.5 The particular contractual method recommended to Cabinet, that is a Framework Agreement, would have additional advantages. It would not oblige the local authority to purchase any particular volume from a provider, and it would not set any schedule of charges, meaning that competition between providers on the Framework could continue to take place, driving down costs. However, this does mean we will have a list of competitive, high quality providers for some of our most vulnerable children. The detail of the evaluation of the quality of providers is described in section 5.2.9.
- 2.6 As the tender would be issued on behalf of the participating East London Solutions authorities, the quality assurance requirements would be identical, leading to efficiencies on the local authorities' side in their respective commissioning and procurement services. The London local authorities involved in the tender other than Barking & Dagenham are Redbridge, Havering & Waltham Forest.
- 2.7 With the prospect of personalised services for children being a requirement in the future the Framework Agreement will play a key role as a prelude. Developing a collaborative approach to establishing the Personal Services/Domiciliary Care market, encouraging innovation, driving up service quality and realistic pricing will all support the transfer of decision-making and financial responsibility to parents and carers of children with disabilities.

- 2.8 Children's Services is at an early stage of developing its plans for personalised budgets for children. There be much learning to be gained form the experiences of Adult Services in its planning and implementation, but it is clear that this development is more likely to be successful with the active involvement of parents groups, voluntary sector organisations and particularly from the service providers themselves. There is a considerable culture shift to be undertaken in placing children and their families at the centre of this service, and for all agencies to understand that choice and control will rest substantially with the service user.
- 2.9 Personalised services for adults has encouraged the growth of the service providers own initiative in working with families to develop flexible services that move away from the more rigid approach of traditional care plans. It is intended that a key element of this proposed contract is to establish regular forums with providers that can be built on to develop good practice.
- 2.10 The Framework Agreement will apply to all Care Packages placed after the Contract start date. In order to maintain continuity of Service for children and their families all existing Care packages will remain with the existing providers so long as the Service is carried out to the satisfaction of the service user and of the local authority's Authorised Officer. The service will continue until such a time as the service naturally ends or a service review takes place.

3. Financial Issues

- 3.1 There are no specific financial implications associated with this proposal. Relative costs to the department should in the worst case remain the same or more likely decrease in proportion to the number of children involved, as Call-Offs will be awarded on the lowest price for each new Care Package, based on the rates submitted in the Schedule of Rates, with all technical ability requirements to undertake work having been satisfied in order for the organisation to be appointed to the Contract. That said, consideration will be given to the wishes of individual service users and their parents/carers when awarding Call-Offs. There will be some cost in officer time associated with monitoring arrangements.

4. Legal Issues

- 4.1 The European Public Sector Procurement Directive defines a framework agreement as *"an agreement with suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and quantity"*.
- 4.2 If several contractors are included in the framework, then there must be at least three of them, with the framework broadly setting-out the terms of a contract. Any of the contracting authorities can then invoke the framework agreement and establish a contract with any of the successful contractors. A safeguard is that a framework agreement can only last 4 years (except in 'exceptional circumstances').
- 4.3 If one authority wants to vary the contract, they must open it up to competition to all the contractors included in the framework. However, it cannot be substantially amended from the terms laid down in that framework agreement. It is essential therefore that the terms required by Barking & Dagenham are established from the outset.

5. Other Implications

5.1 Risk Management

There are no specific heightened risk management issues in relation to the tender.

As a Framework Agreement there is no specific guarantee to any provider of a level of service. A Framework on behalf of up to six boroughs is likely to attract a higher level of interest from potential providers than Barking & Dagenham alone, so encouraging more competitive pricing and minimising the risk from default by any individual provider.

The risk to service users will be minimised considerably through providers being held to certain quality standards within the terms of the Framework Agreement.

5.2 Contractual Issues

5.2.1 The proposed procurement procedure to be followed will be an EU tender process using the restricted procedure. Tenderers will particularly be required to have an office base in one of the local authorities participating in the Tender. The market for domiciliary care providers is a varied one, with providers varying from small local establishments to large national companies, although the latter have concentrated on large-volume Adult Care services and have shown no interest in the more individualised nature of services for children. The advantages of localised service providers will be more responsive services with a better knowledge of conditions in east London, the increased likelihood of driving up quality and development of the local workforce through partnership working.

5.2.2 It is envisaged that a call-off arrangement within a Framework Agreement will have several advantages for the local authority, as well as the proposal that a tender is sought for the boroughs participating in the East London Solutions grouping. Service Providers will be required to indicate their prices in a pricing schedule, recognising that payments will vary depending on the time of day, weekend and bank holiday delivery, or whether one or two workers are required at a time.

5.2.3 There will not be any objection to upgrading the service required so long as it remains within the scope of the specification. It will also be possible for agencies to alter their pricing within the Framework in order to attract more business.

5.2.4 Comparison of all of the Care Agencies being used by the East London Boroughs has shown that there are not less than twelve being used, compared to four that Barking & Dagenham has spot-purchased from in the year 2009-10. It is likely therefore that there will be sufficient candidates satisfying the selection criteria and will submit compliant bids meeting the award criteria.

5.2.5 The call-offs could (within the duration of the Framework) be for any length of time. The requirement for the service could be continuous, or for a specific period, for example to provide additional support in a school holiday.

5.2.6 The individual call-offs (that is, individual care plans) within the Framework will be a matter for each local authority, although service monitoring and quality assurance

measures will be shared as far as possible in order to make efficiencies and compare performance.

5.2.7 If selected for a Call-Off Contract, the Provider shall be required to complete and return an individual contract prior to commencing the Service.

5.2.8 The Contract Award Criteria are proposed to be 60% Technical Ability, 30% management and Operating Procedures and 10% Price. As stated in 3.1 above, thereafter Call-Offs under the Contract will be awarded on lowest price. This arrangement will ensure that providers are selected initially for the quality of their service and having secured a place on the framework, that pricing is the key determining factor. Tenders shall be evaluated and scored on a points system with one percent equating to 10 points. Therefore technical ability at 60% of the overall Award Criteria equates to a maximum points allocation of 600.

5.2.9 The evaluation criteria for have been developed by all of the participating Boroughs and are as follows:

Technical Ability (as established within a Method Statement)

- Personal Care and Support
- Care Workers
- Child Protection
- Ability to meet the Service Specification
- Equalities
- Quality Assurance

Management and Operating Procedures (as established within a Method Statement)

- Operational Policies and Procedures
- Recruitment and Selection Processes
- Performance Management

Price

- The most economically advantageous Tender

5.3 Staffing Issues

There are no direct staffing implications associated with this proposal as TUPE will not apply to the Contract. As the tendering exercise is being conducted by East London Solutions and led by the London Borough of Redbridge, the exercise will be less demanding of officer time both in the commissioning and monitoring phases, than an exercise solely of Barking & Dagenham.

5.4 Customer Impact

5.4.1 The service is provided for approximately 80 children with disabilities, including autistic-spectrum disorders, learning disabilities and profound and multiple disabilities. It is also occasionally used for children who are not disabled but whose parents require support because of illness or disability. The provision of Personal

Support is vital in enabling families to live ordinary lives and participate in everyday activities for all.

- 5.4.2 Whilst there is no existing contract on which to monitor service user satisfaction, it is anecdotally understood (as stated in section 2.3 above) that Domiciliary Care / Personal Services can attract complaints and criticism if it is not well-organised or of sufficient quality. The implementation of the proposed Framework Agreement will introduce a clear quality assurance process to better safeguard the interests of families and provide clear pathways for highlighting and resolving complaints.
- 5.4.3 In practice many care agencies try to match families with workers who are of the same or similar background, or have an understanding of a family's particular circumstances, although this is not always possible. The Framework Agreement will uphold the importance of matching carer and family and this be closely monitored. Personal Care work is not well paid and the workforce tends to be significantly drawn from the recent immigrant communities. Partly to address this the better agencies put emphasis on communication training for their staff, but it does mean that matching of carer to service user is weakest for the white British community. Steps to address recruitment will be monitored and addressed within the Contract and the opinions of service users and families be expected to inform choice of carer.
- 5.4.4 Management Information supporting the recording of Care Packages has significantly improved, and the Short Breaks programme has required a good level of intelligence regarding the needs of the local population and the development of services. Records of ethnicity of the children aged 0-18 receiving this form of support show that 44% are of white British origin and 34% are black African, being respectively an under and over-representation of both the total borough population and known disabled child population. That said, the records kept on children receiving all forms of short break (including voluntary sector youth clubs, after-school activities, summer schemes, etc) show that the ethnicity of service users is in proportion to the borough population. Many families also access this service through Direct Payments where again the ethnicity monitoring shows take-up is proportional to the borough population.
- 5.4.5 The proposed arrangements will have significantly better quality assurance arrangements than exist presently. Management information will be collected on a borough wide and east London Solutions-wide basis and hence complaints, comments and compliments can be routinely monitored and investigated at an individual as well as borough-wide and East London Solutions-wide level. The emphasis on regular meetings with providers will ensure that providers share best practice and are aware of changes in demand based on participating boroughs refinements in management information. Should any anomalies arise in service delivery; the anticipated participation of around fifteen Providers will give more options should it be necessary to change providers.
- 5.4.6 The anticipated introduction of personalised services and Individual Budgets for children will be supported by close working with providers. It is possible that some families may struggle in the transition to personalised services and to managing budgets and directly employing carers. Closer working between the local authorities, provider services, young people, parents and parents groups will better ensure a clearer process that supports all service users.

5.5 Safeguarding Children

The local authority would only make use of carers who have enhanced CRB checks, have insurances and all appropriate training to carry-out the functions for which they are engaged. Sec 11 compliance will also be a key requirement. Agencies are also registered with and inspected by the Care Quality Commission (CQC) to further assure standards of care. No provider would be used who received an unsatisfactory rating from the CQC.

The proposal will formalise all good practice and legal requirements in regard to expectations of the agency and to individual carers.

5.6 Health Issues

This proposal is intended to support the well-being of children with disabilities and their families through assisting in everyday activities, providing respite and enabling them to participate in activities that all families benefit from.

5.7 Crime and Disorder Issues

There are no specific crime and disorder considerations associated with this proposal.

5.8 Property / Asset Issues

There is no specific property/asset issues associated with this proposal.

6. Options appraisal

6.1 There is no options appraisal for this proposal.

7. Background Papers Used in the Preparation of the Report:

None.

8. List of appendices:

None.