

HEALTH & WELLBEING BOARD REPORT

9 SEPTEMBER 2014

Title: Appointment of Approved List of Care Providers for Home Care and Crisis Intervention for Older People and Physical Disabilities	
Report of Corporate Director Adult and Community Services	
Open	For Decision
Wards Affected: All Wards	Key Decision: No
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Sponsor: Anne Bristow, Corporate Director Adult and Community Services	
Summary: <p>The Council provides or arranges care and support in the home through two main routes. Principally, and increasingly, this is through the provision of a personal budget with associated support for the service user to arrange themselves a personal assistant to provide them with flexible, responsive support. In some cases, the Council operates a 'managed personal budget' whereby the Council arranges and pays for the care, delivered through more traditional 'homecare' agencies.</p> <p>In addition, when people are discharged from hospital, a short-term non-chargeable package of social care support is provided whilst they are settled back into their home and their longer-term needs are assessed. This is crisis intervention (often called in other boroughs 'reablement') and is delivered by homecare agencies contracted by the Council.</p> <p>The Council wishes to invite homecare agencies to tender for delivery of these services. There will be two specifications to tender against, for homecare and for crisis intervention, and it is expected that an 'approved list' of between 10 and 15 providers will be established, from which individual care packages will be arranged. This report seeks permission to issue that invitation to tender, and delegated authority to conclude the award of contracts.</p> <p>In the interim, the current provision of services is outside of the Council's contract rules, where the volume of activity with some providers takes them over the thresholds requiring formal tendering. This report also therefore seeks Health & Wellbeing Board permission to waive contract rules in order to continue to provide these essential services whilst the tendering process is run. In all cases, since it is personal care that is being arranged there is justification for the waiving of contract rules in these circumstances.</p>	
Recommendation(s)	
The Health & Well Being Board is recommended to:	

- (i) Approve the procurement of Home Care and Crisis Intervention Services, on the terms detailed in the report;
- (ii) Delegate authority to the Corporate Director of Adult and Community Services, in consultation with the Chief Finance Officer and Head of Legal & Democratic Services, to award contracts to the successful bidders upon conclusion of the procurement process; and
- (iii) Waive the application of the Contract Rules until 31 May 2015, as detailed in the report, on the grounds that these are essential services and of a specialist nature, and to cease them would give rise to an emergency situation.

Reason(s)

The services form part of the Council's statutory obligation to provide social care support under various pieces of legislation, including the National Assistance Act 1948, the Chronically Sick & Disabled Persons Act 1970 and the NHS & Community Care Act 1990. The statutory duties owed by LBBD to provide social care support under the statutes referred to above will remain extant until the Care Act 2014 comes into force in April 2015. The Care Act will extend the duties of a local authority considerably in relation to social care in that it will not only be responsible for those who cannot fund their care but also for those who can. Therefore it is expected that the population to whom duties are owed will increase especially as there is a duty to prevent, reduce and delay the need for services.

Whilst personalisation is a strong element of the services the Council arranges to meet these duties, it will never be the entirety of its service provision, and some provision of crisis intervention and homecare will always be required. The tendering will not commit the Council to purchasing specific volumes from the successful bidders, so will remain flexible to respond to changing demand, either from increased preventive activity, changes in demography, or implications of the Care Act 2014.

The requested waiver is required to ensure that provision can continue whilst a compliant procurement exercise is undertaken to properly scope out the requirement, and establish a suitable long term provision.

1. Introduction and Background

1.1. There are two types of service provided, being:

- **Homecare (or 'domiciliary care')** is a service provided to people in their homes to help them live their daily lives where they have need for care and support. Activities can include getting the service user up or helping them to bed, washing, dressing, meal preparation or prompting medication.
- **Crisis intervention** is the short-term service, for which the Council cannot charge, that follows a service user's discharge from hospital. It is intended to stabilise their situation so that a social care assessment can form a reasonable view of their future care needs. Crisis intervention is intended to last for no more than 6 weeks, but can take any period up to then dependent on the service user's recovery. It is typically provided by homecare agencies, and the result of the assessment process would generally be to

see the service user move into a longer-term care arrangement with a personal budget and support from a personal assistant or other services.

- 1.2. Personalisation means that there is a decreasing quantity of homecare purchased as part of longer-term care planning by the Council, as people are encouraged to take up a direct payment through which they can arrange and contract their own care directly. However, there are always likely to be some service users for whom the Council must arrange care, albeit that numbers will be more volatile and their needs more specific and diverse.

Current Position

- 1.3. The Council has recently published its Market Position Statement which sets out the vision for homecare services. The intention is to move towards the use of personal assistants thereby giving more choice and control to clients. The Council does recognise the value of home care agencies at the point of crisis and will still be using the homecare service for this. Home care services will also be used in the transition period to enable client to make an informed choice regarding their personal budgets and the use of personal assistants.
- 1.4. There are currently 11 suppliers for provision of these services within the borough that are commissioned to provide care in response to individual needs as demand arises. These spot purchasing arrangements are a response to the need to tailor care to service users' particular requirements and caused by unpredictable demand and in crisis intervention circumstances. As a result there is a general consistency of cost, terms and conditions of delivery, and other contractual arrangements; however this is not uniform across all providers.
- 1.5. 40 purchase orders have been raised totalling £1.33m in value for the provision of these services between 1 April 2014 and 30 August 2014. These purchase orders are for 'blanket' provision of services to multiple service users, often covering multiple cases of individual care for personal requirements to a single supplier. In effect, a large number of contracts for individual care are covered by these orders. Spend is approximately £3.19m per annum.

2. Proposal and Issues

- 2.1. This report proposes two decisions to be taken, one to establish contracts for the provision of these services from 1 April 2015, the other to waive contract standing orders for the intervening period to ensure that essential services can continue.

Establishing contracts for homecare services for older people

- 2.2. The proposal is for the Health & Wellbeing Board to delegate authority to the Corporate Director of Adult And Community Services, in consultation with the Chief Finance Officer and Head of Legal & Democratic Services, to procure the services described and award contracts for provision in line with regulations, legislation, Council Rules, and best practice.
- 2.3. The services to be procured are of two types:
 - a) Crisis Intervention services; and
 - b) General care and support in the home as and when required.

- 2.4. The proposal is to prepare and execute a procurement process to a separate specification for each of the two categories of service identified above, which can be bid for separately or together, resulting in a three year contract (with two 12 month extension options) with a total value of up to circa £15.95m over the full contract period.
- 2.5. The approximate values are as follows:
- **General Care:** £2.5m per annum; however demand is expected to continue to reduce due to increasing numbers of personal budgets;
 - **Crisis Intervention:** £1.1m per annum for approx 240,000 hrs care pa.
- 2.6. The envisaged outcome is for a number of suppliers (approx 10-15), who will hold a contract with no minimum volume or commitment which will allow for change in demand over time. The continued movement of care to personal budgets is expected to reduce demand for the services described is required, as will prevention activity around hospital admissions which should see fewer crisis intervention placements required over time.
- 2.7. This report proposes an OJEU compliant procurement designed to adhere to the principles of best value, and satisfactory service, additionally with a set of standard terms & conditions that protect the interests of the borough in its relationship with a suitable number of suppliers. The exact number is not known, however it is anticipated that the number of awards will be led by service need in the Borough. In order to ensure the most attractive commercial outcome for LBB, it is proposed to ask capable suppliers to submit proposals for delivery of the requirement based on quality and cost, with the following steps :
- Pre-Tender preparation and review of the specification and service.
 - Advertisement of the requirement on LBB website for interest, in conjunction with additional activity to ensure that all potential suppliers are aware of the reprocurement (such as trade adverts and direct communication with existing contractors). There is not likely to be much cross border interest, given the nature of the services and the concentrated geographical area of provision required so an OJEU notice may not be placed.
 - Issue of Tenders to all interested parties including all existing suppliers.
 - Receipt and evaluation of tenders, which would be evaluated on the basis of price, quality, suitability to supply, and other factors.
- 2.8. The Invitation to Tender will be designed so suppliers will be required to meet minimum quality thresholds that meet the legal and performance requirements of the Council.
- 2.9. The proposal is to establish a set of legally compliant contracts with performance controls and outcome measurement with a set of suppliers that are able to deliver the requirement efficiently and to a standard of safety and competency. The process will also ensure adherence to a standard set of the Council's approved terms and conditions.
- 2.10. The outcome is therefore expected to be :
- The establishment of approx 10-15 contracts with suitable providers within the Borough that meet clear requirements;
 - Fixed costs set for contract periods as much as reasonably possible;

- Delivery managed through use of supplier performance monitoring;
- Standardisation of contracts and outputs;
- Clear set of suppliers that meet LBBD standards that can be appointed promptly;
- Benchmark and create transparent, market-competitive pricing that is fixed for contract duration;
- Removal of risk of RPI/CPI-linked uplift in costs which is currently minimum 2.7% per annum: decisions on uplift have to date been made on a case-by-case basis, and this would reduce these risk in any future arrangements.

2.11. In terms of the relationship with the Council's requirement for cost reductions, it is difficult to quantify savings. The benefits of good, established relationships with suppliers are already felt as a small number do benefit from a substantial proportion of the work. More clearly specifying the requirements of crisis intervention, as distinct from general homecare, will help to ensure that quality (and therefore duration, and hence cost) are better monitored and controlled by Commissioning. Savings and cost reduction / controls will be achieved in the following areas :

- Maintaining price of service delivery for contract period (avoiding potential price uplifts)
- Potential cost per hour reduction by establishing long term agreement with providers and potential larger volume of work for some providers
- Standardisation of service outputs and stronger contractual position

2.12. The contract will be awarded on the basis of Most Economically Advantageous Tender. Award Criteria are proposed to be as follows :

- Quality – 60%
- Price – 40%

Both areas will have a minimum acceptable threshold, meaning an acceptable price and minimum quality standard will ensure a balance is achieved. This price weighting indicates the importance of cost to the Council and the contract will be modelled to keenly minimise the cost of delivery whilst maintaining service and flexibility. However, in terms of crisis intervention poor quality provision has the potential to increase costs as the length of the package increases. In the case of both types of provision, poor quality has the potential to lead to costs elsewhere in the social care system, for reassessment or for the provision of additional support services to stabilise failing care arrangements.

2.13. The Qualitative Element will include Method Statements, Interviews, and, if appropriate, Site Visits. Evaluation will be weighted towards successful, timely, local delivery of the programme, quality of performance, flexibility of provision, acceptable working practices, and proximity to the area of delivery. All qualitative responses would be required to meet a minimum quality threshold specified by the client and thus, not be able to underprice and risk quality of delivery.

2.14. The proposed timescale for the procurement is as follows:

- | | |
|-----------------------------|-------------------|
| • Health & Well Being Board | 9 September 2014 |
| • Tender Preparation to | 30 September 2014 |

- | | |
|---|-----------------|
| • Place Advert | 1 October 2014 |
| • Tender Returns | 1 November 2014 |
| • Evaluation (Method Statements, Interviews, etc.) to | Nov- Feb 2015 |
| • Award and Mobilise | February 2015 |
| • Go Live | 1 March 2015 |

3. Waiver of Contract Rules for the remainder of the year

3.1. This report requests Health & Wellbeing Board's approval to waive contract rules and continue provision with the below listed providers for homecare services and crisis intervention care services for an interim period of no more than 9 months (to end of May 2015) to allow this procurement process to conclude. The providers are:

- Genesis Recruitment Agency
- Starcare
- Westminster Homecare
- DABD(uk)
- Ark Home Healthcare
- Outlook Care
- Plan Care
- Rosemont Care
- Sincere Care
- StaffLine Employment Agency

Further providers may be required where demand exceeds the capacity of this group of agencies to meet the need or specialist requirements arise.

3.2. The value of the waiver would be approximately £2.6m, split between two financial years.

3.3. Given the implementation of the new contract rules, this document requests a waiver for a limited period to enable the authority to establish suitable contracts that will establish standard terms for the service provision, control cost, and rationalise the supply base as set out above.

3.4. The work is specialist as it is a complex and demanding provision with rigorous quality standards. Poor quality care is both high risk and very visible, which has recently had a high profile in the media. To perform a satisfactory procurement would take time and require stringent quality checks as the work is not uniform but often tailored for individuals and their needs which are not set and vary over time, and there are risks with a 'one size fits all' approach. It is not possible, and would be a breach of the Council's statutory duties to provide care to meet individuals' needs, were we to cease provision pending the procurement.

4. Options Appraisal

4.1. Continue Existing Arrangement: *This is Not Recommended*. The existing arrangements are not compliant with current Contract Rules in the council, and to extend or continue them would not represent best value or practice. However they should be allowed to continue for enough time to permit a reprocurement of the services.

- 4.2. Utilise Existing Framework: *This is Not Recommended*. Given the size of spend, there are a number of options, however, none of the existing Frameworks offer any contracts that are able to provide the degree of flexibility that LBBDD desires in order to meet the particular needs of individual service users, or do so through local suppliers.
- 4.3. Create Framework : *Not Recommended*. A framework would require the submission of bids from the contractors on the framework for each package of care, which would not be appropriate given the complexity, and high degree of customisation, required by each recipient of the services, which would have to be tailored on a personal basis for each individual. These requirements also change over time (for example, moving from short notice, intensive Crisis Intervention to longer term treatment and assistance of lower-intensity chronic conditions), and a framework would be too rigid for flexibility required.
- 4.4. Dynamic Purchasing Systems *Not Recommended*. Given the nature of Dynamic Purchasing Systems, and the varying nature of care and requirements for each individual served by the current arrangements, there is no parity or consistency between any two cases. A Dynamic Purchasing System would struggle to provide the flexibility at short notice required.
- 4.5. New Procurement Exercise *Recommended*. This will require a full tender process that is compliant with the requirements of the OJEU process at the time of commencement. This is the most practical route to take. There are a number of potential options and the recommended route is to run a Council compliant process that broadly follows the principles of the Open Process without necessarily placing an OJEU advertisement: the ITT will be designed so suppliers will be required to meet minimum qualitative thresholds that meet the legal obligations, statutory requirements, and the Council's aims. Using the principles of the Open process will reduce the minimum timescales to complete the requirement and allow the Borough to deliver on time the requirement.
- 4.6. These services are Part B Services. As a result they are subject to the applicable procurement processes and regime which will be planned in accordingly. The regulations will change in January 2015, however it is not possible to defer commencement of the Procurement until January 2015, as the new contracts are required to be in place by April 2015. Additionally, the procurement will be executed in compliance with the applicable legislation at the time of commencement. As a result of these being Part B Services, there is not currently a requirement for a full OJEU process, as long as the principles of the process are followed.

5. Financial Implications

Implications completed by: Roger Hampson, Group Manager, Finance (Adults & Community Services)

- 5.1. The Health and Wellbeing Board at its September meeting is to be asked to approve the procurement strategy set out in this report for the appointment of care providers for home care and crisis intervention. Contracts are proposed to be for three years from 1 March 2015 (with two 12 month extensions), with the likelihood that many individual service users will request access to selected providers through the use of personalised budgets. There will be no minimum volume or commitment to any provider, however the total potential value of these contracts including

personalised budgets is likely to exceed £15m over the five years, based on current activity levels.

- 5.2. The financial context the Council is facing means that substantial further savings will need to be considered across all service areas including adult social care.
- 5.3. Home care is a service currently provided following an assessment of need using locally agreed eligibility criteria. However, the introduction of the 2014 Care Act introduces a national minimum threshold for eligibility from April 2015. The Government is currently consulting on the detailed provisions as set out in draft regulations and associated guidance and inviting comments by 15 August 2014.
- 5.4. Chapter 4 of the Draft Guidance provides guidance on section 5 of the Care Act in relation to market shaping and commissioning of adult care and support. The tender preparation will need to take account of this draft guidance, and to make any further changes when the regulation and guidance are published in their final form later in the year. The guidance stresses that local authorities should commission services having regard to the cost-effectiveness and value for money that the services offer for public funds. Local authorities must also consider how to help foster and enhance the skills of people working in the care sector to underpin effective, high quality services, and have regard to funding available through grants to support the training of care workers in the independent sector.
- 5.5. When commissioning services, the draft guidance states that local authorities should also assure themselves and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration should be at least sufficient to comply with the minimum wage legislation, and will include appropriate remuneration for any time spent travelling between appointments.

6. Legal Implications

Implications completed by: Daniel Toohey, Principal Solicitor, Corporate and Commercial Law

- 6.1. This report initially seeks approval to waive the requirement to conduct a tender exercise on the grounds that the services to be procured are of a specialist nature. This report proposes that the granting of a waiver would allow for the provision of the Home Care and Crisis Intervention Services by specified providers while a robust procurement exercise is being undertaken.
- 6.2. Clause 6.3 of the Contract Rules states that approval to waive a Contract Rule must be obtained from Health & Wellbeing Board where the contract value is above £500,000.
- 6.3. This report is seeking a waiver on the ground that the services to be procured are of a specialist nature. Contract Rule 6.6.2 allows for a waiver to be granted should there be evidence that the service to be procured is of a specialist nature.
- 6.4. Approval is also sought in this report, for the procurement of the Home Care and Crisis Intervention Services. The Public Contracts Regulations allows local authorities to enter into a contract with a service provider, following a competitive tendering process.

- 6.5. The services to be procured are Part B services which do not fall within the strict rules of the EU public procurement regulations. Given the high value of the contracts however, consideration must be given to the possibility of there being a cross border interest in the contracts. This possibility has been address in this report.
- 6.6. The Council, in conducting the procurement, still has a legal obligation to comply with the relevant provisions of the Council's Contract Rules and with the EU Treaty principles of equal treatment of bidders, non-discrimination and transparency in procuring the contracts.
- 6.7. The report sets out in the proposed tender timetable for the procurement of the services in paragraph 2.13. The report also states in paragraph 2.7(a) that trade adverts will be placed as well as advertisement of the tender on the Council's website. In keeping with the EU Treaty principles noted above it is appropriate that the Council publicises the contract in a manner that would allow any providers likely to be interested in bidding for the contracts identify the opportunity and bid for the contracts should they wish to do so.
- 6.8. The report also states that tenders will be evaluated on a 60:40 quality:price ratio, and the contracts will be awarded to the most economically advantageous tenders.
- 6.9. In deciding whether or not to approve the proposed procurement of the contract, Health & Wellbeing Board must satisfy itself that the procurement will represent value for money for the Council.
- 6.10. The Health & Wellbeing Board is able to delegate authority to the commissioning Corporate Director, in consultation with the Chief Finance Officer, to approve the award of contracts upon conclusion of a duly conducted procurement exercise.

7. Other Implications

7.1. Joint Strategic Needs Assessment

Information contained in the refresh of the Joint Strategic Needs Assessment (JSNA) will assist in understanding the current and future needs and demands of older people and people with physical disabilities. As they are two key vulnerable groups, ensuring adequate and appropriate provision will help address health inequalities in the borough.

7.2. Health and Wellbeing Strategy

The refresh of the Health and Wellbeing Strategy will need to acknowledge the flexible nature of provision demanded by residents.

7.3. Integration

Although there are no direct implications for integration in this report, by having clearer specifications and testing service quality through the tendering process, the Council will be better able to support the Joint Assessment & Discharge arrangements that have been implemented, providing smoother transition for the service user from hospital to homecare.

7.4. Risk Management

If the extension of the current contract is not approved it will be necessary to undertake the full Tender process in a much more condensed manner which may reduce the rigour of the process and affect the service provision. However, it is likely there will be a short period which may result in the Council being unable to provide services under contract. The risks of cessation the service would place the Council in breach of obligations and remit – therefore the risks of not approving the waiver outweigh the risks of approval. Risks of approval are that the council would be acting non-compliantly in conjunction with recently introduced internal Contract rules, however there is a strategy to bring current provision into a compliant, best practice environment in a managed process within a set timescale.

7.5. Contractual Issues

There are no cohesive or standardised contractual models and the number of suppliers and spend are uncontrolled, such that there are differing levels of service, specifications, standards of delivery, pricing models, and terms and conditions (if any exist). Continued exposure to such risks is not best practice. A reprocurement which would standardise specification, service, outcomes, and place this inside a contract with the optimum number of suppliers would reduce these risks considerably

7.6. Staffing Issues

Recipients of these services are often vulnerable and have received individual and tailored care from known persons for extended periods of time. A continuity of staffing would be preferred. It is not anticipated that there are any staffing implications for Council Employees.

7.7. Customer Impact

The provision of this service has a direct impact upon the health and wellbeing of residents of the borough through providing assistance and care to residents in need.

7.8. Safeguarding Children & Vulnerable Adults

Better quality management of home care services through a more formalised contracting process will ensure that quality concerns are more likely to be acted upon before they escalate to safeguarding concerns.

7.9. Health Issues

The provision of the service will improve the economic, social and environmental well being of the Council's area and the lives of the residents, by maintaining and improving the quality of the living environment for Council residents receiving the services, controlling costs and standardizing service which may be received to differing standards and quality.

7.10. Crime and Disorder Issues

No foreseen impacts

7.11. **Property / Asset Issues**

Delivery of these services will allow recipients to occupy their own homes for a longer period of time until such time as they may require care in a different environment such as a nursing home.

7.12. **Waiver**

A waiver of the Contract Rules is required for a limited period to enable the authority to establish compliant best practice contracts. In the current circumstances, the nature of the services required are of a specialist and proprietary nature with a limited supply market fulfilling the requirements of rule 6.6.2, and in some circumstances, there is only one supplier capable of fulfilling the requirement known to the Authority, fulfilling requirement 6.6.3.

7.13. Failure to provide this service would also place the Authority in an Emergency Situation as there would be a breach of statutory obligations of the Authority and a failure of the duty of care to safeguard the residents of the borough.

7.14. **Consultation**

The consultation process has included the following:

Consultee	Name/Title	Date consulted
Portfolio Holder	Mark Tyson (Group Manager, Integration & Commissioning)	May-July 2014
Ward Councillor(s)		
Other Council Bodies		
Corporate Directors		
Other required Officer(s)	Tudur Williams (Group Manager, Assessment and Care Planning) Susanne Knoerr (Project Manager, Personalisation)	May-July 2014 May-July 2014
Statutory/Proper Officer		
Others (Specify)	Martin Storrs (Head Of Procurement) Mark Reed (Category Manager, Procurement)	May-July 2014

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