

Decision Maker: Executive

For Pre-Decision Scrutiny by Care Services PDS Committee on:

Date: 23rd June 2015

Decision Type: Non-Urgent Executive Key

Title: **GATEWAY REPORT FOR LEARNING DISABILITY SUPPORTED LIVING SCHEMES**

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Chief Officer: Assistant Director Commissioning, Education, Care & Health Services

Ward: (All Wards);

1. Reason for report

1.1 There are 3 Learning Disability (LD) supported living schemes with contracts that will co-terminate on 24 April 2016. The schemes collectively accommodate 11 people with significant disabilities and incur combined expenditure of £908,308pa.

1.2 The co-termination of the schemes provides an opportunity for them to be grouped together for tendering which is an approach from which the Council has achieved the following benefits:

- Lower bids resulting from economies of scale
- More efficient use of resources
- Tenders that are more attractive for providers

1.3 With a proposed 5 year term, the value of the contract is expected to be approximately £4M - £5M and therefore requires Executive approval to enable the procurement process to commence in accordance with the Council's financial and contractual requirements.

2. **RECOMMENDATION(S)**

2.1 **Care Services PDS are asked to note and comment on the contents of this report prior to the Executive being asked to:**

- i) agree to grouping the schemes for tendering in order to drive the best possible quality / pricing; and**
- ii) approve the commencement of the procurement procedure to enable award in accordance with the Council's financial and contractual requirements.**

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Supporting Independence:
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Financial

1. Cost of proposal: No additional cost in undertaking proposal
 2. Ongoing costs: The existing cost of the 3 schemes is £908,308 per annum. The future recurring cost will be subject to tender that will be undertaken to enable award on 25 April 2016.
 3. Budget head/performance centre: 819 *** 3618 (LD Supported Living)
 4. Total current budget for this head: £11,404,850
 5. Source of funding: Contained within existing budget, no additional funding required
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Staff

1. Number of staff (current and additional): LBB staff are engaged in contract monitoring and quality assurance
 2. If from existing staff resources, number of staff hours: 0.1 full time equivalent.
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 11
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

3.1 The contracts relating to the following learning disability (LD) supported living schemes will be expiring on 24 April 2016:

Scheme Name	Provider	Expiry	£'000pa	Tenants No.
Crofton 1	Certitude	24/4/2016	308	4
Crofton 2	Certitude	24/4/2016	306	3
Mottingham	Certitude	24/4/2016	294	4

3.2 All of the schemes were purchased with capital from the Strategic Health Authority as part of the NHS Campus Re provision Programme. The properties were developed to meet the specific needs of adults with learning and physical disabilities and are viewed as a key resource in meeting the existing and future needs of Bromley's adult LD population and in particular in avoiding the need for people to move into residential care. Projection of future supply and demand suggests that these schemes will be required for the foreseeable future. Should there be an imbalance between supply and demand at any point in the future these schemes would be a priority for retention due to the purpose built nature and age of the properties.

3.3 Education, Care & Health Services Commissioners are seeking opportunities to co-terminate existing contracts in order to group similar services together for the purposes of tendering; this approach has the following advantages for the Council:

- The volume of services in a single tender make them more attractive for providers
- Increased volumes lead to keener bids as the provider is able to reflect increased economies of scale in their pricing
- More efficient use of Council resources for tendering

3.4 It is proposed that the three schemes set out in 3.1 would be progressed as a single tender for a 5 year period. The contract would be awarded for a three year term with an option to extend up to a maximum of two years.

3.5 The schemes were all subject to formal tendering when they were originally commissioned and they have been subject to subsequent negotiated cost reduction. Assessment of the market, including detailed analysis of cost composition obtained through recent tender exercises, show that the prices obtained by the Council are extremely competitive and that the Council is unlikely to obtain the magnitude of cost reduction seen in previous tender exercises without significantly compromising the quality and sustainability of services.

3.6 In light of this and due to concerns regarding the future stability of the market it is proposed that the evaluation criteria for the tenders be split 60% quality and 40% price. Whilst still ensuring that value for money is secured through the tendering process, the emphasis on quality will safeguard service standards in schemes that are supporting some of our most vulnerable clients.

3.7 A full communications plan has been developed to ensure that tenants and families affected by this tender will be advised and supported appropriately. The plan will be implemented following Executive approval.

3.8 Care Services PDS are asked to note and comment on the contents of this report prior to the Executive being asked to:

- i) agree to grouping the schemes for tendering in order to drive the best possible quality / pricing; and
- ii) approve the commencement of the procurement procedure to enable award in accordance with the Council's financial and contractual requirements

4. POLICY IMPLICATIONS

In accordance with the Council's commitment to Building a Better Bromley in supporting people to live as independently in the community as possible within the community, the proposals reflect the Council's strategic objectives for people with disabilities.

5. FINANCIAL IMPLICATIONS

5.1 The contracts detailed in the report are currently funded from existing budgets. The annual expenditure of these three schemes is £908,308 per annum.

5.2 Education, Care & Health Services are committed to reducing expenditure through effective and efficient commissioning. The grouping of schemes for tendering is viewed as a key enabler in making tenders attractive to bidders and generating efficiencies via improved economies of scale that will be reflected in pricing.

6. LEGAL IMPLICATIONS

6.1 Previously the contracts would have been classed as "Part B" services under the Public Contract Regulations 2006 which meant they were not fully subject to the provisions of the regulations and the EU procurement regime. The concept of Part B services was removed by the Public Contracts Regulations 2015 and the threshold for application of the regulations was set at £625,000.

6.2 However, [Regulation 7](#) of the 2015 regulations introduces a light touch regime for services that are considered "social and other specific services" and above the set threshold of £625 000. We are required to publicise in advance our intention to award contracts of this value and announce the contract award decision after the procedure. The procedural rules are detailed in [paragraph 76](#) of the 2015 Regulations and details the following:

- Free choice of procedure which must "be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators".
- Including during the publication of intention to award a contract the following information:
 - Conditions for participation.
 - Time limits for contacting the contracting authority (these must be "reasonable and proportionate").
 - The award procedure to be applied.

Despite the above requirements, [paragraph 76\(4\)](#) of the Regulation states that "The contracting authority may, however, conduct the procurement, and award any resulting contract, in a way which is not in conformity with that information" in the following circumstances:

- “The failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators”.
 - If, prior to commencement of the procurement procedure, the contracting authority has:
 - “given due consideration to the matter”.
 - Concluded that there is no breach of the principles of transparency and equal treatment of economic operators.
 - Documented this conclusion and the reasons for it.
 - Notified all suppliers who have indicated an interest (and who have not yet been excluded) their intentions to proceed in a way which differs from the initial specified intention.

6.2 The proposed tender will be undertaken in accordance with the Council’s Financial Regulations & Contract Procedure Rules and procurement policies

Non-Applicable Sections:	Personnel Implications
Background Documents: (Access via Contact Officer)	