

**Decision Maker:** Executive

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

**Date:** 17 November 2015

**Decision Type:** Non-Urgent Executive Key

**Title:** LD SUPPORTED LIVING GATEWAY REVIEW

**Contact Officer:** Colin Lusted, Business & Planning Manager, Education, Care & Health Services  
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**Chief Officer:** Lorna Blackwood, Assistant Director: Commissioning

**Ward:** (All Wards);

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1. Reason for report

1.1 There are 2 Learning Disability (LD) supported living schemes with contracts that will co-terminate on 27 November 2016. The schemes collectively accommodate 11 people with significant learning and physical disabilities combined with complex health needs, and incur combined expenditure of £1,165,742pa.

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
- Specialist expertise shared across schemes

The schemes are also located in close proximity to each other and it makes sense operationally for the schemes to be tendered as a single lot.

1.3 With a proposed 5 year term, the value of the contract is expected to be approximately £5M - £6M and therefore requires Executive approval to enable the procurement process to commence in accordance with the Council's financial and contractual requirements.

## **2. RECOMMENDATIONS**

**2.1 Care Services PDS Committee is asked to note and comment on the contents of this report prior to presentation to the Executive for approval.**

**2.2 The Executive is 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 Cost:
  2. Ongoing costs: Recurring Cost: The existing cost of the 2 schemes is £1,165,742 per annum. The future recurring cost will be subject to tender that will be undertaken to enable award on 28 November 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: N/A

### 3. COMMENTARY

#### Estimated Contract Value – Other Costs

Existing information:

Scheme Name	Provider	Expiry	£'000pa	Tenants No.
Coppice/Spinney	mcch	27/11/2015	736	7
The Glade	mcch	27/11/2015	430	4
<b>Total</b>			<b>1,166</b>	

Estimated contract value post tender £5,000,000 - £6,000,000

#### Proposed Contract Period (including extension options)

5 Years

- 3.1 Both 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 the most profound learning and physical disabilities combined with complex health needs. These properties are 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 nursing care. Projection of future supply and demand indicates 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.
- 3.2 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
  - Specialist expertise shared across schemes
- 3.3 It is proposed that the two schemes 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.
- 3.4 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 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.
- 3.5 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 our most vulnerable clients.

- 3.6 Tenders will be evaluated for quality using questions that have been developed from previous tenders and from contract monitoring. Supporting evidence is requested and tenderers are required to attend a panel consisting of experienced Officers and service user representation.
- 3.7 Contracts will be monitored following award by Officers using Key Performance Indicators, periodic meetings and from scheduled and unannounced visits to the services.
- 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**

- 4.1 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 £1,165,742 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, this is particularly relevant for these schemes as they are co-located.
- 5.3 The care packages for some of the service users in these schemes attract Health funding due to the severity of their health needs.

#### **6. LEGAL IMPLICATIONS**

- 6.1 The Care Act 2014 is a reforming and consolidating piece of legislation. It has replaced many previous laws relating to care and support.
- National Assistance Act 1948
  - Chronically Sick and Disabled Persons Act 1970 (as far as it relates to adults)
  - NHS and Community Care Act 1990
  - Carers (Recognition and Services) Act 1995
- 6.2 The service users supported in the schemes proposed for re-tendering meet eligibility requirements for services under the Care Act and the Council has a statutory duty to meet their needs.
- 6.3 Any tendering process must comply with the Public Contract Regulations 2015 and the underpinning EU Directive, Government Guidance and the Council's own contract rules and financial regulatory provisions.

## 7. PROCUREMENT IMPLICATIONS

7.1 Previously the contacts 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.

7.2 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.

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

## 8. CUSTOMER PROFILE

8.1 Adults with significant learning disabilities who may also have physical disabilities, mental health problems and complex health needs.

## 9. STAKEHOLDER CONSULTATION

9.1 A full communications plan will be 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.

9.2 Tenderers are required to attend a panel consisting of experienced Officers and service user representation.

## **10. SERVICE PROFILE / DATA ANALYSIS**

10.1 A detailed service specification will specify the requirements to the provider and the outcomes for the people they support. The specification will be based upon best practice, experience gained through years of contract monitoring and the guidance in the Care Act 2014. A copy of the contract, that has been developed over a number of years and which incorporates the Council's legal and financial requirements, is included as part of the tender information so that prospective bidders are fully aware of their responsibilities.

10.2 Tenders will be awarded on the basis of price (40%) and how bidders have answered and evidenced their responses against award criteria (60%). The award criteria will include:

- The tenderer's financial resources and fiscal structure to implement and deliver the contract over the full term
- Their strategy to implement the contract
- Their training processes and how they monitor and ensure staff compliance
- Quality assurance of outcomes including measurement and monitoring processes
- How the provider meets complex needs whilst supporting independence
- How the provider promotes community and family engagement in support
- Innovation that the provider will bring to delivering the services

10.3 Following award of the tender, the provider will be monitored against Key Performance Indicators that will include:

- Staff turnover
- Agency / bank staff usage
- Training compliance
- Accidents & Incidents
- Compliments and complaints
- Details of safeguarding incidents

There are periodic meetings with the provider and a mixture of announced and unannounced visits by the Council's contract monitoring staff; the resulting reports are discussed at the periodic meetings.

## **11. MARKET CONSIDERATIONS**

11.1 The tender is advertised to ensure it attracts bids from experienced specialist providers. Notification is undertaken in consideration of all procurement legislation.

11.2 Commissioners have built up a thorough understanding of the market relating to the provision of specialist LD care. This knowledge is incorporated into questions that form part of the tender process and these are used to ensure that only providers capable of delivering the contract are shortlisted for detailed analysis using award criteria relevant to the tenants living in the schemes. There is further analysis at interview.

## **12. OUTLINE CONTRACTING PROPOSALS & PROCUREMENT STRATEGY**

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

- 12.2 The tender process will be run on-line using the Pro-Contract tendering portal. There is a 2 stage process where initial tenders are evaluated to determine the 'Top 8' and these undergo further evaluation using a quality / price matrix that has been developed over several years.
- 12.3 Quality is scored using award criteria based on how tenderers have answered questions and evidenced their answers, the questions are specific to the needs of the people in the schemes. There is further challenge, to ensure the provider is robust, through the use of interview panels which comprise experienced commissioners and service user representation; this may be a service user living in the scheme or a service user from elsewhere representing the tenant's views should this be more appropriate.
- 12.4 The outcome from the quality award criteria scoring is weighted and amalgamated with the financial scoring to determine the tenderer providing the best price / quality compromise for the Council. This culminates in a recommendation to award that is presented to Members.

**13. SUSTAINABILITY / IMPACT ASSESSMENTS**

- 13.1 This decision has been judged to have no or a very small impact on local people and communities.

<b>Non-Applicable Sections:</b>	Personnel Implications
Background Documents: (Access via Contact Officer)	