

Decision Maker: EXECUTIVE

For Pre-Decision Scrutiny by the Care Services Policy Development and Scrutiny Committee on Tuesday 28 June 2016

Date: Wednesday 13 July 2016

Decision Type: Non-Urgent Executive Key

Title: GATEWAY REPORT FOR LEARNING DISABILITY SUPPORTED LIVING SCHEMES

Contact Officer: Colin Lusted, Business & Planning Manager, Education, Care & Health Services Tel: 020 8461 7650 E-mail: colin.lusted@bromley.gov.uk

Chief Officer: Lorna Blackwood, Assistant Director: Commissioning & Partnerships (ECHS)

Ward: Borough-wide

1. Reason for report

- 1.1 There are 4 Learning Disability (LD) supported living schemes with contracts that are terminating in the spring / summer of 2017. The schemes collectively accommodate 20 people with various learning and physical disabilities including some mental health issues. These schemes have a combined expenditure of £1.126m
- 1.2 The co-termination of 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
- 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 the Council's Executive being requested to:

- i) Agree to grouping the schemes for tendering in order to drive the best possible quality / pricing;**
- ii) Agree an exemption to enable the extension of the 109 Masons Hill scheme for 10 weeks (23/4/2017 - 30/6/2017, with a value of approximately £60,684) and co-termination with the 111 Masons Hill scheme situated next door; and,**
- iii) 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
-

Financial

1. Cost of proposal: No Cost
 2. Ongoing costs: Recurring Cost The existing cost of the 4 schemes is £1.126m per annum. The future recurring cost will be subject to tender that will be undertaken to enable award on 1 July 2017.
 3. Budget head/performance centre: 819 *** 3618 (LD Supported Living)
 4. Total current budget for this head: £10,383,000
 5. Source of funding: Contained within existing budget (subject to tender outcome)
-

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
-

Legal

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

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 20
-

Ward Councillor Views

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

3. COMMENTARY

Estimated Contract Value – Other Costs

Existing information:

Scheme Name	Provider	Expiry	£'000pa	Tenants No.
109 Masons Hill	mcch	22/04/2017	406	6
111 Masons Hill	CMG	30/06/2017	369	6
18/19 Century Way	Avenues	09/06/2017* ¹	211	4
Dunstonian	Sunnyside	30/06/2017	140	4
Total			1,126	20

*¹ The current contract has the option to extend for a further period of up to one year (via agreement with the Chief Officer) and it is proposed to extend this to co-terminate with the other schemes on 30/6/2017.

Estimated contract value post tender £5,000,000 - £6,000,000 over the lifetime of the contract.

Proposed Contract Period (including extension options)

5 Years (3 years with option to extend up to a maximum of further 2 years)

- 3.1 These schemes have been commissioned during the past 6 years and are located in modern buildings developed to meet the specific needs of adults with learning and physical disabilities. These properties are a key resource in meeting the existing and future needs of Bromley's adult LD population and, in particular, avoiding the need for people to move into registered care homes. 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 The schemes have a history of high occupancy with 111 Masons Hill, 18/19 Century Way and Dunstonian experiencing no voids since they were first commissioned. 109 Masons Hill has experienced some tenants passing away and a tenant has moved on due to a change in their needs. The resulting voids have been filled reasonably quickly as the property has adapted bathrooms in each of the 6 flats as well as lift access to all floors. There is currently a void following a service user passing away but the care provider is currently assessing referrals and the void is expected to be filled shortly.
- 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
 - Specialist expertise shared across schemes
- 3.4 It is proposed that the four 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.

- 3.5 The schemes were all subject to formal tendering when they were originally commissioned and they have been subject to subsequent negotiated cost reduction. This will be the third tender of services at 111 Masons Hill and 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.
- 3.6 Tenders will be evaluated for quality using questions that have been developed from previous tenders and from contract monitoring. Supporting evidence and references are requested and tenderers are required to attend a panel consisting of experienced Officers and service user representation. It is likely that incumbent providers will choose to tender for the schemes, their performance will have been robustly monitored throughout the duration of the contract.
- 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 The following procurement timetable will ensure contract award in accordance with the Council's financial and contractual requirements:

Task	Date
Gateway Report (Commissioning Board)	09/05/2016
Gateway Report (Care Services PDS)	28/06/2016
Gateway Report (Executive)	13/07/2016
Commencement of tender	01/08/2016
Completion of tender	14/12/2016
Recommendation to award (Commissioning Board)	16/01/2017
Recommendation to award (Care Services PDS)	28/02/2017
Recommendation to award (Executive)	22/03/2017
Notification of award to provider	18/04/2017
Commencement of Contract	01/07/2017

- 3.9 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
- 3.10 The Council has a statutory duty to meet the needs of the service users supported in the schemes proposed for re-tendering as set out in Part 1 of the Care Act 'General Responsibilities of Local Authorities'.
- 3.11 Care Services PDS Committee is 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;

- ii) agree an exemption to enable the extension of the 109 Masons Hill scheme for 10 weeks (23/4/2017 - 30/6/2017, with a value of approximately £60,684) and co-termination with the 111 Masons Hill scheme situated next door; and,
- iii) 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, the proposals reflect the Council's strategic objectives for people with disabilities.

5. FINANCIAL IMPLICATIONS

- 5.1 Current expenditure on Supported Living is budgeted to be £10.383m in 2016/17. The annual expenditure of these three schemes is £1.126m per annum. The contracts detailed in the report are currently funded from existing budgets.
- 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 two of these schemes as they are co-located.

6. LEGAL IMPLICATIONS

- 6.1 This report seeks the approval of the Executive to:

- i) extend the term of a contract for the provision of learning disability supported living schemes for a period from 22 April 2017 to 30 June 2017 and an approximate value of £60,684; and
- ii) approve the commencement of a procurement process with an approximate value in excess of £5 million.

- i) Extension of the term:

Rule 13 of the Contract Procedure Rules provides that where the value of the variation exceeds £50,000 Chief Officers may approve variations to contracts subject to obtaining the agreement of, inter alia, the Director of Resources, the Finance Director and the Portfolio Holder.

Pursuant to the Contract Procedure Rules no variation to a contract may be entered into if it is not compliant with the Public Contracts Regulations 2015.

The original contract was a Part B contract under the Public Contract Regulations 2006 and the original estimated contract value was £684,458. The value of the variation is therefore under 10% of the original estimated contract value.

Regulation 18 of the Public Contract Regulations 2015 applies and this requires the Council to treat economic operators equally and without discrimination and to act in a transparent and proportionate manner. In this case the intention is that a procurement process for the service will commence shortly and continuity of service is required until a new contract is awarded.

ii) New procurement:

As the potential contract total value is over £5 million the decision maker for this report is the Executive.

6.2 The procurement process will need to comply with the requirements set out in the Public Contract Regulations 2015.

6.3 The report author will need to consult with the Legal Department regarding the execution of the variation to the contract.

8. PROCUREMENT IMPLICATIONS

8.1 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 is set at £589,148.

8.2 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 £589,148. 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.

8.3 The financial evaluation of tenders will include identifying any bids that are deemed to be unrealistic in consideration of TUPE requirements and the current market. The Council may

exclude bids assessed to be (a) too low to be credible (subject to necessary assessments, as stated in the Public Contract Regulations (Regulation 69) or, (b) any bid received that has been priced above 25% of the mean price of all bids received.

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

9. CUSTOMER PROFILE

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

10. STAKEHOLDER CONSULTATION

10.1 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.

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

11. SERVICE PROFILE / DATA ANALYSIS

11.1 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.

11.2 Tenders will be awarded on the basis of price (60%) and how bidders have answered and evidenced their responses against award criteria (40%). The following award criteria will be covered within specific questions that are themselves weighted:

- The tenderer's financial resources and fiscal structure to implement and deliver the contract over the full term (Finance question 5%)
- Their strategy to implement the contract (Implementation Question 20%)
- Their training processes and how they monitor and ensure staff compliance (Recruitment Training & Workforce Development Question 20%)
- Quality assurance of outcomes including measurement and monitoring processes (Quality Assurance Question 20%)
- How the provider meets complex needs whilst supporting independence (Outcomes related Question 20%)
- How the provider promotes community and family engagement in support (Community & Family Engagement Question 15%)

11.3 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.

12. MARKET CONSIDERATIONS

- 12.1 The tender is advertised to ensure it attracts bids from experienced specialist providers. Notification is undertaken in consideration of all procurement legislation.
- 12.2 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.

13. OUTLINE CONTRACTING PROPOSALS & PROCUREMENT STRATEGY

- 13.1 The proposed tender will be undertaken in accordance with the Council's Financial Regulations & Contract Procedure Rules and procurement policies.
- 13.2 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.
- 13.3 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.
- 13.4 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.

14. SUSTAINABILITY / IMPACT ASSESSMENTS

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

Non-Applicable Sections:	Personnel Implications
Background Documents: (Access via Contact Officer)	None.