

Decision Maker: PORTFOLIO HOLDER FOR CHILDREN, EDUCATION AND FAMILIES

Date: 14 September 2021

Decision Type: Non-Urgent Executive Key

Title: APPROVAL TO AWARD CONTRACT: INDIVIDUAL SHORT BREAKS SERVICE

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Chief Officer: Janet Bailey, Director of Children's Services

Ward: All

1. REASON FOR REPORT

- 1.1 The existing contract for this service terminates on **30 September 2021**. Consequently, permission to tender for this service was secured via a Gateway 1 report in February 2021. The tender went live on the 27th April 2021 and the initial phase concluded on 25th May 2021.
- 1.2 The new contract for this service is expected to commence on **1st October 2021**. The initial proposed contract period is for **three years**, with an option to extend for two periods of up to one year each. If both extension clauses are utilised the contract will terminate after **five years** on **30th September 2026**.
- 1.3 Following the earlier Gateway 1 report, this report provides an update on the progress of this tender and sets out the rationale for awarding this contract.

2. RECOMMENDATION(S)

- 2.1 The Portfolio Holder is recommended to award this contract, following a negotiated tender process, to Bromley Mencap for a three year contract commencing October 2021 with an option to extend for up to two years.
- 2.2 The Portfolio Holder is recommended to delegate the approval of the 2 year extension options to the Chief Officer; subject to agreement with the Assistant Director Governance & Contracts, the Director of Corporate Services and the Director of Finance.

1. Summary of Impact:

As well as providing meaningful, fulfilling activities for children and young people with SEND and respite for parents and carers, Short Breaks have been shown to play a vital role in family cohesion and support. Many parents have reported that Short Breaks, particularly overnight respite, are vital in allowing them time away from their caring responsibilities. In this sense, Short Breaks are incredibly important as a preventative service, without which an increased number of children and young people with SEND are more likely to be subject to care orders when families are unable to continue to fulfil their caring responsibilities due to the physical, mental and emotional strain of the role.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Children and Young People
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Financial

1. Cost of proposal: Estimated Cost is detailed in the Part 2 report
 2. Ongoing costs: Recurring Cost
 3. Budget head/performance centre: 3408
 4. Total current budget for this head: as detailed in the Part 2 report
 5. Source of funding: Revenue
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Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
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Legal

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

1. Summary of Procurement Implications: Three Year Contract with two one year extension options
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Up to 6,000 local CYP
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Ward Councillor Views – N/A

3. COMMENTARY

- 3.1 Preparation for this tender included a refresh of the specification. In particular, underperforming elements such as the the Sitting service (childminder attending the family home) and the Buddying service (volunteer befrienders) were revisited. It was decided that, as take up was exceptionally low during the first two years of the Sitting service (only **399** hours provided in total), with the majority of these being self-funded, that the service should be discontinued. The Buddying service was included in the new specification with targets for numbers of 'matches' between volunteers and young people and an emphasis on a wider recruitment strategy which is consequently able to meet needs in more areas of the borough than in the previous service. It was also hoped that the successful provider may be able to accept childcare vouchers as well as direct referrals to be funded from the block contract and direct payments.
- 3.2 Due to reasons detailed in sections 3.2 to 3.4 of the Part 2 report (which are not outlined here in order to protect the reputation of competitive bids), permission was again sought and received from the Director of Corporate Services, the Director of Finance and the Assistant Director of Governance and Contracts to enter into negotiation with **Bromley Mencap** on price alone while retaining all the other elements of the tender. The rationale for this approach was that the market had been tested, both in 2018 and in this tender, in an open process with very little response. It was therefore considered unlikely that a different outcome would result if the service were to be retendered in the near future.
- 3.3 The negotiation meeting was held on 21 July 2021 with procurement chairing the meeting and commissioners and the provider discussing their position and clarifying anything relating to pricing that was not clear to the tenderer during the earlier part of the tender process. The maximum budget was restated and the expected income from direct payments was emphasised as it appeared that the tenderer had not factored this into their bid. It also appeared that they had not realised that the total budget stated was for five years, rather than three years. They confirmed that they were not able to accept childcare vouchers directly as they were not Ofsted registered, but agreed that they would explore this with individual childminders who are Ofsted registered. It was agreed that a budget would be resubmitted on 29 July 2021.

Summary of the Business Case

- 3.7 There are approximately 400 Children and Young people with Disabilities in Bromley whose needs are sufficiently high to reach the social care threshold and are therefore eligible for a service from the Children with Disabilities Service. There are an estimated 6,000 children and young people with SEND in Bromley and as of 11 May 2021 there were over 3,000 children and young people with an Education, Health and Care Plan (EHCP).
- 3.8 Among the duties placed on local authorities by The Short Breaks for Carers of Disabled Children Regulations 2011 are the stipulations that they must: 'provide a range of short breaks services'; and 'give families the choice to access short breaks services using a direct payment', The current service provided by Bromley Mencap is a key part of the fulfilment of these duties

Service Profile / Data Analysis

- 3.9 Monitoring for the first two quarters of year 3 of the service, Oct 2020 – March 2021, have been received. They show that whilst the service overall has exceeded targets considerably (by **1627** hours), the majority of these have been in the Community Support service, with the Childminding service slightly exceeding targets, while the Sitting, and Buddying services have fallen well below targets as seen previously, which vindicates the decision to discontinue the sitting service and to seek to revamp the Buddying service. The monitoring also shows that **20.5%** of **Bromley Mencap's** income over this period came from Direct Payments.

Service	Q1 Hrs Actual	Q2 Hrs Actual	Qtrly Hrs Target	Q1&2 Cumulative	Qtrly Target Cumulative	Plus/Minus Target
Childminding Standard LBB funded	371	362	312.5	733	625	108
Childminding Enhanced LBB funded	78	60	275	138	550	-412
Childminding Self Funded	313	293	275	606	550	56
Childminding - Direct payments	267	124		391	0	0
Childminding - all (Summary)	1029	779	862.5	1808	1725	83
Sitting Service LBB funded	5	0	45	5	90	-85
Sitting Service Self Funded	0	0	16.25	0	32.5	-32.5
Sitting Service - Direct payments	0	0		0	0	0
Sitting Service - all (Summary)	5	0	61.25	5	122.5	-117.5
Community Support LBB funded	1002.5	827.5	112.5	1830	225	1605
Community Support Self Funded	178	204.75	137.5	382.75	275	107.75
Community Support - Direct payments	227.75	342.25		570	0	0
Community Support- all (Summary)	1408.25	1374.5	250	2782.75	500	2282.75
Buddying LBB funded	0	18.25	237.5	18.25	475	-456.75
Buddying Self Funded	79	82.25	175	161.25	350	-188.75
Buddying Direct payments	0	24		24	0	0
Buddying - all (Summary)	79	124.5	412.5	203.5	825	-621.5
Totals	2521.25	2278	1586.25	4799.25	3172.5	1626.75
			D. Payment Total	985	(20.5%)	

Options Appraisal

Award of Contract via Negotiated Procedure

- 3.10 In accordance with contract standing orders, It is proposed that the contract be directly awarded to Bromley Mencap via a negotiated process, using the current specification and ITT requirements (to remove any risk of challenge for those who did not bid based on the current ITT requirements but who might argue that they would have if those requirements were changed) and current provider bid. **This is the recommended option.**

Re-Tender

- 3.11 As noted in 3.5 above and 4.1 below, this service was tendered in 2018, receiving one bid and in 2021, when two bids were received. There is nothing to suggest that retendering the service now, without significant changes to the budget and specification, would garner any more bids than received in this and the previous tender. It would also entail a considerable outlay in officer time for minimal reward. For these reasons, **this option is not recommended.**

Do Nothing

- 3.12 The current contract terminates on 30th September 2021. Failure to award this contract would leave a considerable number of families without the support they need and is likely to increase the numbers of families in crisis. It would also pose a risk to the Council's reputation. Another likely outcome would be an increase in the ad-hoc use of personal assistants to support families at a higher cost and an increased risk of children with disabilities being accommodated due to their parents and carers being unable to cope with their caring roles. **This option is not recommended.**

Preferred Option

- 3.13 The award of this contract to **Bromley Mencap** would secure up to five more years of service for vulnerable children and young people and their families with no disruption to the current delivery of this service. Given commissioners ability to work with the provider to continue to shape this service over the course of the contract period, this option gives the best opportunity to ensure that families in Bromley receive the best possible service at best possible value to the council. Therefore, **this is the preferred option.**

4. MARKET CONSIDERATIONS

- 4.1 Market engagement activities undertaken prior to the start of the tender included; phone and email communication with potential providers for awareness raising and market testing; virtual provider forums, with one chaired by a member of the Council for Disabled Children; and the tender itself was advertised nationally via the Pro-Contract website. Despite these efforts, only two submissions for this tender were received. It is worth noting however that this is an improvement on the previous tender for this service which only attracted one bid from the incumbent. It seems that that this service is something of a niche market. Evidence from other recent tenders suggest that there is no shortage of providers for adults' care and more generic children's services. This service requires childminders, personal assistants, and volunteer buddies focused on the needs of children with disabilities and their families.
- 4.2 The cost of sourcing comparable provision to that provided by this service, spot purchased outside of a contractual agreement, would be disadvantageous both financially and in terms of consistency and continuity of service for families.
- 4.3 As a long-standing local provider, **Bromley Mencap** have built up an excellent network of contacts within the council, and SELCCG Bromley, as well as across the voluntary and independent sector. While it might have been possible to source another provider for this service, there would've been a considerable loss of local knowledge and connections had this been the case.

5. SOCIAL VALUE AND LOCAL / NATIONAL PRIORITIES

- 5.1 [The Public Services \(Social Value\) Act 2012](#) requires providers to demonstrate how their service can provide additional social value in Bromley.
- 5.2 In their tender bid, **Bromley Mencap** referenced a number of ways in which they felt that their service could add social value. These included, providing potential employment and work experience opportunities for local people, as well as a wide range of community access and cohesion for service users and their families. As the tender bid will form part of the contract, the initiation of the social value approach will be monitored.

6. STAKEHOLDER ENGAGEMENT

- 6.1 Actions taken to stimulate interest in the tender included communication with relevant providers by email, phone and via virtual sessions, including one facilitated by the Council for Disabled Children.
- 6.2 A number of virtual focus groups have been held with parent and carers during 2020. These followed a number of parental consultation and co-production events undertaken in the previous year.
- 6.3 It is expected that a range of local parents' groups will be among the local groups who will help to ensure that this service is meeting the needs of children and young people with SEND and their families in Bromley via regular focus groups, surveys and the collection of ad-hoc comments on the service. This work is to be partly led by two locally commissioned service user engagement groups: Your Voice In Health and Social Care; and Bromley Parents Voice.

7. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS

- 7.1 **Estimated Value of Proposed Action:** as detailed in Part 2 of this report.
- 7.2 **Other Associated Costs:** Variable funding expected from Direct Payments.
- 7.3 **Proposed Contract Period:** An initial contract of three years with options to extend for two periods of up one year each, making a total possible contract period of **five years**, ending on **30 September 2026**.
- 7.4 **Anticipated Contract Timetable:**

Confirmation of contract award (subject to Portfolio Holder Approval)	LBB Commissioners/Procurement	Week commencing 16 August 2021
Contract Mobilisation Start	LBB/CCG Commissioners/ Successful Provider(s)	August 2021
Portfolio Holder Approval	Portfolio Holder/Council Members	14 September 2021
Formal Contract Award date (following Call-In Period)	LBB Procurement/Commissioners	Week commencing 27 September 2021
Contract Mobilisation Completion	LBB Commissioners/Provider	September 2021
Contract Commencement Date	LBB Commissioners/ Procurement/ Successful Provider	1st October 2021

8. IMPACT ASSESSMENTS

- 8.1 As well as providing meaningful, fulfilling activities for children and young people with SEND and respite for parents and carers, Short Breaks have been shown to play a vital role in family cohesion and support. Many parents have reported that Short Breaks, particularly overnight respite, are vital in allowing them time away from their caring responsibilities. In this sense, Short Breaks are incredibly important as a preventative service, without which an increased number of children and young people with SEND are more likely to be subject to care orders when families are unable to continue to fulfil their caring responsibilities due to the physical, mental and emotional strain of the role.
- 8.2 An Equality Impact Assessment has been produced for the proposed recommissioning of the existing service. This will be kept under review as the contract progresses.

9. POLICY CONSIDERATIONS

9.1 National Policies

Breaks for Carers of Disabled Children Regulations 2011; Children and Families Act 2014; Carers Act 2014; SEND Code of Practice 2015

9.2 Local Policies

Joint SEND Strategic Vision and Priorities; LBB ECHS Business Plan; LBB Children and Young Peoples Plan

10. IT AND GDPR CONSIDERATIONS

- 10.1 All documentation and processes were reviewed and amended (where required) when GDPR regulations were introduced. The successful tenderer will continue to ensure compliance with regulations when delivering these contracts.
- 10.2 A Data Protection Impact Assessment has been produced for the recommissioning of the existing service. This will be kept under review as the contract progresses.

11. STRATEGIC PROPERTY

- 11.1 N/A

12. PROCUREMENT RULES

- 12.1 This report seeks to award a contract to Bromley Mencap for a contract for the **Provision of Individual Support for Short Breaks for Children and Young People with Special Educational Needs and Disabilities (SEND) and their Families** for an initial period of three years with options to extend for two periods of one year each, making a total possible contract period of five years, ending on 30 September 2026 if both extension clauses are utilised. The total estimated contract value is as detailed in Part 2 of this report.
- 12.2 Health, social and related services are covered by Schedule 3 of the Public Contracts Regulations 2015, and thus any tender would be subject to the application of the “Light Touch” regime (LTR) under those regulations. This procurement was run as a below LTR threshold regime as the value was below the current threshold. An open procedure was used. However, with all LTR services, the Council has the flexibility to use any process or procedure they choose to run the procurement but must comply with the principles of fairness, transparency and non-discrimination applied proportionately.
- 12.3 Under the Council’s Contract Procedure Rules, the Councils requirement for proceeding to Procurement and an award of Contract, must be in accordance to CPR 1.3 and CPR 16.
- 12.4 In line with clause 14.4 of the Contract Procedure Rules, as this tender is valued as over the relevant threshold; and fewer than three responses were received, the Assistant Director Governance and Contracts, the Director of Corporate Services and the Director of Finance were consulted to authorise tender evaluation.
- 12.5 Following elimination of one tenderer at evaluation, further authorisation to proceed to post tender-negotiation on price only was sought and executed in accordance with CPR 15. The use of post-tender negotiation in this case would also fall within the permissible flexibility of the LTR regime. The rationale for going into negotiation on price only is explained at 3.5 above.
- 12.6 Since this is an award following negotiation, the authorisation for a contract of this value is with the Portfolio Holder following agreement of the Budget Holder, Chief Officer, Assistant Director Governance and Contracts, Director of Corporate Services, and Director of Finance. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.
- 12.7 As the contract value exceeds the relevant threshold, an award notice will need to be published on Contracts Finder.
- 12.8 The actions identified in this report are provided for within the Council’s Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

13. FINANCIAL CONSIDERATIONS

- 13.1 The estimated contract value per annum and over the potential life of the contract, including the extensions is detailed in part 2 of this report.
- 13.2 It is hoped that as well as direct provision of services from the Council, service users will be directed to this contract to utilise their direct payments if relevant. This will assist in the contract to keep sufficient levels of activity as high as possible and assist service users to procure relevant provision. This element of the contract will need to be monitored in terms of demand for the different functions of the contract.
- 13.3 There is sufficient budget within the service to manage this contract.

15. LEGAL CONSIDERATIONS

- 15.1 The Council has the power to receive and spend any Government Grant outlined in this report. The Council has various legal duties and powers under 'The Public Services (Social Value) Act (2012)', the 'Breaks for Carers of Disabled Children Regulations (2011)' the 'Children and Families Act (2014)' and the 'Carers Act (2014)', as mentioned under clause 9.1-9.1.3 of the Report, to ensure the health, wellbeing, achievement and safeguarding of vulnerable children. This is also echoed generally under the Care Act 2014 and the Children Act 2004, as well as the SEND Code of Practice 2015 and the Local Policies as mentioned specifically at clause 9.21-9.23 of the Report. In furtherance of these powers, the Council has the legal power to award and enter into a Contract with Bromley Mencap and may also provide and commission through the contract, the services outlined in this report.
- 15.2 This Report seeks to approve an award of Contract to Bromley Mencap, for providing support in relation to short breaks for Children and Young People with SEND and their families. The existing Contract terminates on 30.09.21. The proposed Contract period is from 01.10.21 for a period of three years, with the option to extend for two periods of up to one year each. The Contract will terminate on 30.09.26, if both extension clauses are utilised in the Contract. The estimated contract value per annum (i.e Contract costs and childminder top-up fees) is detailed in Part 2 of this report. The estimated contract's overall whole life cost over the whole life of five years (i.e total cumulative spend) is detailed in Part 2 of this report.
- 15.3 This is a public services Contract (i.e below the LTR threshold) within the meaning of Schedule 3 of the Public Contracts Regulations 2015 (PCR), whereby the Light Touch Regime applies. An open procedure has been undertaken.
- 15.4 Proceeding to Procurement is in accordance to 1.3 of the Contract Procedure Rules (CPR's), where advice should be sought from the Procurement Team, Legal Services (Contracts) and the Head of Finance for any procurement above the relevant threshold. Advice should also be sought from Human Resources, Information Technology and Strategic Property as required. Furthermore, the advice of the Director of Corporate Services, Assistant Director Governance & Contracts and the Director of Finance (or their nominees) must also be sought in accordance to the specified contracts as mentioned under the relevant criteria.
- 15.5 Under the Council's Contract Procedure Rules, the Councils requirement for authorisation of an award of Contract, is in accordance to CPR 16. The decision to commence an award of this value of the Contract, over the proposed contract period and authorisation for such procurement actions are at the agreement of the Budget Holder, approval of the Chief Officer and the agreement of the Assistant Director of Governance and Contracts only. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.
- 15.6 In accordance to CPR 14.4, for tenders with an estimated Value reaching the relevant threshold or above, where fewer than the minimum number of Tenders required have been received, the Assistant Director Governance & Contracts, Director of Corporate Services and the Director of Finance have already been Consulted regarding the tender process.
- 15.7 In accordance to CPR 15.1-15.3, the principles of post tender negotiation were applied. As per CPR 15.4, any post-tender negotiation must only be conducted in accordance with the guidance issued by the Assistant Director Governance & Contracts who, together with the Head of Procurement, were already Consulted where it was proposed to enter into post-tender negotiation.
- 15.8 In accordance to CPR 15.5, where any post-tender negotiation has resulted in a fundamental change to the specification (or contract terms if any), the contract must not be awarded but re-tendered unless the Director of Corporate Services, Assistant Director Governance & Contracts and the Director of Finance agree to an alternative course of action.
- 15.9 As the Contract holds a value over the relevant threshold, a Contract award notice will need to be published via Contracts Finder within 30 days of awarding the Contracts.

15.10 The Contract can be awarded in accordance with the Council's Contract Procedure Rules and the Public Procurement Regulations 2015. Officers should ensure they comply with all Grant conditions.

Non-Applicable Sections:	Personnel Implications
Background Documents: (Access via Contact Officer)	[Title of document and date]