


London Borough of Hammersmith & Fulham		
CABINET 4 JULY 2016		
DIRECT AWARD OF A CONTRACT FOR A LEARNING DISABILITY (LD) SERVICE AND EARLY TERMINATION OF THE CONTRACT FOR A LD SERVICE		
Report of the Cabinet Member for Health and Adult Social Care : Councillor Vivienne Lukey		
Open Report		
Classification - For Decision		
Key Decision: YES		
Wards Affected: All		
Accountable Director: Mike Boyle, Director of Strategic Commissioning and Enterprise Adult Social Care and Health		
Report Author: David Goulding, Supplier Relationship Manager	Contact Details: Tel: 020 8753 5070 E-mail: David.Goulding@lbhf.gov.uk	

1. EXECUTIVE SUMMARY

- 1.1 Adult Social Care Strategic Commissioning and Enterprise is in the process of developing a procurement strategy for services for people with learning disabilities across the three boroughs. The proposed procurement strategy will be outlined in a separate paper. The aim of the new strategy is to improve outcomes for customers by increasing choice and control through personalised services and will include the option for customers to use Individual Service Funds as a mechanism to purchase some or all of their care and support.
- 1.2 This report requests approval to waive the H&F Contract Standing Orders to allow the direct award of one contract to an existing provider.
- 1.3 The direct award of one contract will help provide market stability and the opportunity for market development prior to the implementation of the procurement strategy and would allow for a phased introduction of a proposed

new model for learning disability services between 1st April 2017 and 30th June 2017.

- 1.4 This report requests approval to invoke the break clause in one contract to affect an early termination of one H&F supported living service in order to align the end dates of services in the proposed procurement strategy and so allow procurement of new services at the same time.

2. RECOMMENDATIONS

- 2.1 To note that the recommendations in this report will align the end dates for learning disabilities accommodation services across the three boroughs to allow for a phased introduction of a proposed new model for learning disabilities services between 1st April 2017 and 30th June 2017.
- 2.2 That in accordance with table 3.1 of the H&F Contract Standing Orders, the Cabinet Member for Health and Adult Social Care and the Leader of the Council agrees to waive the H&F Contract Standing Orders to allow the contract for learning disabilities services detailed in Table 2.3.1 to be extended to 30th June 2017 by means of direct award to the existing provider.
- 2.3 That in accordance with H&F Contract Standing Orders, the H&F Cabinet agree to the direct award of a contract as detailed in Table 2.3.1

Table 2.3.1

Provider	Contract	Length of extension	Value of extension
Yarrow Housing	9 Homes, 43 units	1 st October 2016 - 30 June 2017	2,023,305

- 2.4 That in accordance with section 20.4.1 of the Contract Standing Orders H&F Cabinet agrees to utilise the break clauses for the contract with Metropolitan Support Trust for 12 supported living units in order to bring forward the end date from 30th September 2017 to 30th June 2017.

3. REASONS FOR DECISION

- 3.1 Direct award of a contract for one existing service is required to provide time to re-model and re-commission in a strategic way in line with Adult Social Care strategic priorities in order to deliver service transformation and budget savings from 2017-18.
- 3.2 The early termination of one contract allows the alignment of contract end dates to fit with the phased start of the remodelled services .

4. PROPOSAL AND ISSUES

- 4.1 Direct award of a contract is required for one accommodation based service. The proposal is to award a contract to the existing provider to run to 30 June 2017.

There is provision in the current contract to extend to 31 December 2016 only. The total core spend on this service is £2.02million per annum.

- 4.2 During the extension periods of contracts, Commissioners will be working with providers around quality issues and the development of flexible support strategies. Current provision varies in quality and an opportunity to develop provision in line with the Care Act and the personalisation agenda will be welcome.
- 4.3 Early termination of a contract is required for one supported living service. The contract is due to end on 30 September 2017. The proposal is to bring the contract end date forward to 30 June 2017. The total core spend on this service is £131,882 per annum.

5. OPTIONS AND ANALYSIS OF OPTIONS

5.1 Do Nothing

Failure to extend the existing service provision by way of a direct award of a contract will not allow time to implement the Learning Disabilities Procurement Strategy. There will be a risk to customers if alternative arrangements are not in place before contracts end. There is a risk to the Council of operating out of contract as the service provision will not cease with the expiration of contracts. For this reason this option is not recommended.

5.2 Tender for New Services

Re-tendering for existing services will be contrary to the Learning Disabilities Procurement Strategy and does not help with our duties under the Care Act to shape the market to ensure customers have a variety of options to consider when making up their personal support plan.

5.3 Directly Award a Contract to the Existing Provider

Direct award to the existing provider, along with bringing forward the end date of one contract, will align the end dates of the contracts in scope. This will allow a single procurement exercise for these services and will realise the benefit in the savings in Procurement Team resources and attendant cost savings that running a large procurement exercise brings. Further, a single procurement exercise will generate great interest in the market, bringing in new providers, and could lead to savings due to economies of scale. **This is the recommended option.**

6. CONSULTATION

- 6.1 There will be extensive consultation with Hammersmith and Fulham customers and advocates regarding the Learning Disabilities Procurement Strategy. A meeting will be held with existing contract providers for the services that are in scope to consult on the role of strategic partners. Consultation with customers will be undertaken in conjunction with strategic partner organisations and will necessarily follow the establishment of strategic partners.

7 EQUALITY IMPLICATIONS

- 7.1 The services included in this report are for vulnerable people with learning disabilities. There are no negative equality implications associated with the recommendations in this report. The requested direct award will offer service continuity and support the improvement of services proposed in the LD Procurement Strategy.
- 7.2 The proposals in this report have a positive impact on equality implications as they are designed to facilitate the transition to new arrangements which are contained in an accompanying Key Decision Report. The proposed new contract arrangements in the LD Procurement Strategy will extend choice, control, quality, community engagement and person-centred approaches, offering better solutions in line with people's needs, backgrounds and identity.

8. LEGAL IMPLICATIONS

- 8.1 Health and Social Services fall within the Light Touch Regime (LTR) under Chapter 3, Section 7 of the Public Contracts Regulations 2015 ("Regulations 2015"), as set out in Schedule 3 for contracts relating to social and other specific services. Services subject to the LTR, with a contract value that exceeds the current threshold of £589,148 is subject to the full requirements of Regulations 2015. The contracts for the services in this report for people with learning difficulties fall within the LTR. The contracts that are below the LTR threshold do not need to be advertised in accordance with Regulations 2015 as they are not subject to the full EU procurement rules.

The relevant Council can also consider modifying contracts to extend the term under Regulations 72(1) (b), (e) and 72(8) of Regulations 2015 so long as the relevant requirements are met.

The recommendations in this report are to extend and or award contracts without advertising in accordance with the relevant Council's Contract Standing Orders, Procurement Code and Contract Regulations ("Orders, Code or Regulations").

A waiver is required for non-compliance with the relevant Orders, Code or Regulations with regards to the process and advertising of the contracts prior to award or to grant an extension. Justification for such waiver have been sought to be explained in the body of this report. Which arise from a proposed procurement strategy for all three borough councils that will introduce a new model for learning disability services.

The legal implications are as follows with regards to the Yarrow Housing Residential Care and Supported Living Block Contract.

This contract would not meet the requirements of Regulations 72(1) (b), (e) and 72(8) to allow for it to be extended by way of a modification. The recommendation of an extension or a direct award for the value of this contract

would be at risk of challenge because its value is above the LTR threshold, so subject to the full procurement rules. To mitigate the risk, the re-scoping of the services for all three borough councils should be concluded to enable the procurement exercise to commence the provision of the new services for the award a new contract(s) at the earliest opportunity.

Legal implications comments approved by Sharon Cudjoe, Solicitor Shared Legal Services, Tel: 020 7361 2993.

9. FINANCIAL IMPLICATIONS

- 9.1 Direct award of a contract is required for one accommodation based service. The proposal is to award a contract to the existing provider to run to 30 June 2017. There is provision in the current contract to extend to 31 December 2016 only. The total core spend on this service is £2,697,740 per annum. The extension of the contract for a further 9 months will cost £2,023,305.
- 9.2 Early termination of a contract is required for one supported living service. The contract is due to end on 30 September 2017. The proposal is to bring the contract end date forward to 30 June 2017. The total core spend on this service is £131,882 per annum. Ending the contract early will save £32,970.
- 9.3 The savings to be achieved in 17/18 (approximately 10 - 12%) will be established over the next year during the period of the learning disability strategic review. Details will be outlined in the separate procurement strategy report. These savings will contribute to the ASC MTFS targets / outcome based budgeting exercises.
- 9.4 Both the Yarrow Housing accommodation based services and the Metropolitan Support Trust supported living service are fully budgeted for in the ASC budget.

LBHF Finance Comments approved by Andrew Lord, Head of Strategic Planning and Monitoring, Corporate Finance (tel: 020 8753 2531)

10. IMPLICATIONS FOR BUSINESS

- 10.1 The Approved List could potentially promote local business opportunities for care and support providers including small and medium enterprises.
- 10.2 We anticipate a number of H&F based organisations will express interest in submitting bids when the procurement process commences. We also anticipate that any additional support staff employed are likely to live locally.

11. OTHER IMPLICATIONS

Risk Management

- 11.1 Market testing is a key strategic risk on the Council's Shared Services Risk Register, risk number 4 delivering the best possible services at least cost to the local taxpayer. Direct Awards, in this case, are being applied to align the service

contracts with the Learning Disabilities Procurement Strategy thus ensuring business continuity to the service user. Business continuity is also a key strategic risk and the report recommendations would support that, in this case, the service department is willing to accept the procurement risk. The Adult Social Care Department monitors risk in accordance with corporately agreed protocols, where risks escalate they are discussed at Senior Leadership Team level and if necessary may inform the Shared Service Register.

Risk Management implications verified by: Michael Sloniowski, Shared Services Risk Manager telephone 020 8753 2587.

Procurement Strategy

- 11.2 The contract extensions and direct contract awards detailed in this report are essential to the Learning Disabilities Procurement Strategy. Failure to extend the existing contracts (by extension or direct award) will not allow time to implement the Learning Disabilities Procurement Strategy. This is because, implementation will involve a process of market engagement, consultation, establishment of strategic partners and establishment of an Approved List and/or Framework Agreement. There will be a risk to customers if alternative arrangements are not in place before contracts end. There is a risk to the Council of operating out of contract as the service provision will not cease with the expiration of contracts.
- 11.3 This report seeks approval to directly award the contract for provision of supported accommodation and provision of care in care homes to 43 H&F residents to the existing contractor, Yarrow Housing, for a further period of nine months on the same terms and conditions and for the same price as the existing contract. The original contract made no provision for the extension.
- 11.4 Section 3 paragraph 12.3 of the Contract Standing Orders states that for contracts of £172,514 or greater total estimated value, a minimum of five tenders should be sought.

Section 3 paragraph 12.3 of Contract Standing Orders (CSOs) states that for contracts with a total contract value of £100,000 the Cabinet is responsible for award. Therefore this report will be submitted to Cabinet for approval.

Approval for a waiver of the requirement to conduct a competitive exercise is being sought in order to directly award a contract to the existing service provider to ensure service continuity during the time required to implement the Learning Disabilities Procurement Strategy.

A waiver is being sought in accordance with Section 3 of the Contract Standing Orders which states that a prior written waiver to these CSOs may be agreed by the appropriate persons if they are satisfied that a waiver is justified because it is in the Council's overall interest. There can be no waiver of the legal requirements contained in the Regulations and where such is proposed a justification for the recommendation and risks need to be detailed in the Cabinet Member Report.

The legal implications are set out in Section 9 above and highlights the risk to the Council relating to this proposal. The risk of challenge is mitigated by the following factors: direct award is only an interim measure, delay can be justified due to the work being undertaken with Yarrow Housing as a strategic partner to introduce Individual Service Funds; direct award has a neutral impact on service users.

11.5 This report seeks approval to utilize the break clause in one contract for supporting living services. There is provision within the contract for either side to serve six-months' notice of termination without fault. Paragraph 20.4.1 (C) of Contract Standing Orders states where there is a requirement to prematurely terminate a contract the decision shall be made by the Cabinet where the contract value is £100,000 or greater.

11.6 Timetable

Stage	H&F
Cabinet Approval	Mon 4 July

Procurement Strategy Comments approved by Sherifah Scott, Head of Procurement and Contracting, ASC (tel: 07796 313 662)

It Strategy

11.7 There are no IT systems implications for the direct award or early termination of the contracts for the services in this report.

12. BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None.