

Report for:
ACTION

Item Number:

13

Contains Confidential or Exempt Information	NO
Title	Future Commissioning of Care Home & Community Services
Responsible Officer(s)	Stephen Day
Author(s)	Lorna Fleming / Gordon Crighton
Portfolio(s)	Hitesh Tailor
For Consideration By	Cabinet
Date to be Considered	15th September 2015
Implementation Date if Not Called In	28th September 2015
Affected Wards	All
Keywords/Index	Procurement, Care Homes, Community Services, Framework Contracts, Dynamic Purchasing Systems, WLA, Spot Providers

Purpose of Report:

To seek approval for the London Borough of Ealing to adopt a strategy that enables Adults Services to make direct awards for care home placements and community services to deal with a lack of capacity or availability within current block contract and framework agreements; to meet the Council's statutory duties to provide care services for residents with eligible social care needs; and meet customer choice regulations until new arrangements are in place in 2016

1. Recommendations

1.1 It is recommended that Cabinet:

1.2 Approves the proposal that direct awards to suppliers of care home placements, homecare, supported living services, community and transport services may be made on a spot contract basis where suitable arrangements cannot be made via existing block or framework contracts for the reasons set out in Section 2 of this report.

1.3 Delegates authority to award such spot contracts to the Director Adults Services either through a competitive process (where possible) or, where this is not possible, through a direct award to the supplier deemed best placed to provide necessary care services until such time that new procurement model / arrangements as described in Paras 2.4 and 2.6 of this report are in place

1.4 For information – spot suppliers will for the most part be CQC regulated care providers who have not tendered to be part of an existing Ealing Council or West London Alliance (WLA) block contract or framework agreement.

2. Reason for Decision and Options Considered

2.1 Ealing Council has a statutory duty to meet the care and support needs of vulnerable adults and their carers following an assessment of need and where certain conditions are met.

2.2 As a result Adults' Services may need to source care services outside current contractual arrangements where no suitable provision is available to meet a persons assessed care needs under existing arrangements

2.3 The current Accreditation, Procurement and Contract Management (APC) Scheme (West London Alliance) is an approved list of care suppliers (primarily for older people) covering the London Boroughs of Brent, Ealing, Harrow, Hillingdon, Hounslow, Hammersmith & Fulham, and Barnet which is due to expire in February 2016. As consequence new procurement arrangements are required across the WLA boroughs for 2016

2.4 The new model proposed to replace the scheme is a Dynamic Purchasing System (DPS). The DPS has been nominated as the most suitable vehicle for the future contracting of social care services.

2.5 However, it is envisaged that fully operational DPS's will not be in in place until the 1st September 2016, hence interim arrangements being required to be in place.

2.6 What is a DPS:

2.6.1 A Dynamic Purchasing System (DPS) is an electronic marketplace for the contracts of works, services and goods commonly available from the market. It has similar aspects to a framework agreement, but allows an unlimited number of suppliers to join at any time subject to meeting prescribed exclusion and selection criteria

2.6.2 The DPS will be a restricted (2-stage) process. In order to progress, suppliers will be assessed regarding their knowledge, experience and expertise in delivering affordable high quality care services – including key areas such as safeguarding, recruitment, management and training of staff, dignity in care, choice and control, and the ability to provide person centred care.

2.6.3 All suppliers who qualify under the exclusion and selection must be admitted to the DPS

2.6 A further report seeking approval to participate in and / or develop cross-borough and local DPS models will be submitted to Cabinet in November 2015.

3. Key Implications

3.1 Ealing Council will be at risk of failing in its statutory duty to meet persons' eligible care needs if required care arrangements are not in place. The often urgent nature of Adults' Services requires care services to be actioned at short-notice e.g. on a person's discharge from hospital or as a result of an emergency or crisis; events that may preclude Adults' Services from undertaking formal tender processes to secure required care services in a timely fashion – hence direct awards may be necessary.

3.2 To mitigate the use of 'spot' suppliers, Adults' Service will ensure that as a minimum:

- Where appropriate providers are registered (and inspected) with the Care Quality Commission (CQC); and are compliant with CQC quality standards
- Sign 'agreements' that detail the terms & conditions they must comply with
- Sign a formal 'information sharing agreement' with the council
- Are appropriately indemnified to operate and deliver care services

3.3 DPS's are seen as the appropriate procurement model for the future purchasing of care services. As indicated a further cabinet report will be forthcoming and will set out the proposed DPS models in detail, the procurement timetable and a request to invite and evaluate tenders.

3.4 It is envisaged that a placement / accommodation based DPS will be a collaborative procurement exercise, led by Ealing Council, on behalf of participating WLA authorities. As with previous collaborative procurement exercises, WLA governance structures will be used to provide the necessary assurance for participating boroughs in monitoring the proposed DPS.

4. Financial

a) Financial impact on the budget (mandatory)

The 2014-15 budget allocation for care home, domiciliary, community services was in the region of £35m (gross).

Based on in-year activity the amount spent on 'spot' provision included circa:

- Home support services £2.2m per year
- Care home placements £3.2m per year
- Supported living placements £1.2m per year
- Accessible transport £0.050m per year

The average annual individual care placement values range from £0.024m to £0.145m per year.

There is no envisaged additional budgetary impact.

5. Legal

- 5.1 Under the Care Act 2014 the Council is required to assess the care and support needs of individuals. If a person has needs which meet national minimum eligibility criteria and the conditions in S18 or S20 of the Act are met the Council must work with the individual to draw up a plan for meeting them. The plan will include the personal budget of the individual.

Local Authorities are under a duty to promote the wellbeing of adults with care and support needs including so far as relating to control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided).

Local Authorities also have 'aftercare' responsibilities under the Mental Health Act 1983 towards certain people who have needs on discharge from hospital

The Care, Support and After-care (Choice of Accommodation) Regulations 2014 make particular provision for individuals to express a preference for accommodation which must be met in prescribed circumstances by the Council contracting with the preferred provider.

- 5.2 S149 Equality Act 2010 requires public authorities to have due regard to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

- c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a) Tackle prejudice, and
- b) Promote understanding

5.3 The Council's Contract Procedure Rules ("CPRs"), require all procurements to be competitively tendered. The CPRs also recognise that at times exceptions may be required from this requirement. The CPRs permit such exceptions to be granted in certain circumstances by the Executive Director of Corporate Resources or his authorised deputy. Given the value of direct awards that may be made by Adults Services, authority is being sought from the Cabinet.

- a) The Public Contracts Regulations 2015 ("PCR") abolished the distinction between Part A services (subject to the full rules) and Part B services (subject to only limited procedural requirements).
- b) The PCR introduced a new "simplified regime" for certain social and other services which would include Support Services and Care Home Placements called the Light Touch Regime.
- c) These services are only covered by the PCR if contracts meet a higher threshold of EUR 750,000 (£626,582). Procurement of such services will involve only limited procedural requirements: advertisement of the contract (through contract notice or prior indicative notice) and announcing award of the contract (possibly in a "grouped" notice published on a quarterly basis) and compliance with the EU Treaty principles of transparency and equal treatment of economic operators.

Making direct awards to providers without competition could potentially be challenged as being a breach of the Treaty principles of non-discrimination and equal treatment, transparency.

The principles of equal treatment and non-discrimination imply an obligation of transparency which, according to the ECJ case-law means that contracts should be advertised and be opened up to competition.

6. Value for Money

6.1 Direct awards - Adults' Services will ensure that value for money is secured by striving to source a minimum of 3 quotations from 3 separate spot

providers. The quotations will in turn be appraised to ensure that the offer secures best value in meeting an individual clients' assessed care and support needs. Individual service agreement provides the minimum terms and conditions for the contractual and service delivery requirements expected to adhered to by the Council

- 6.2 It should be noted that all proposed spot expenditure is in-turn authorised by a budget holder prior to any service arrangement being entered into; and we continue to use fair pricings tools, and existing Framework rates to benchmark spot provider costs where appropriate

7. Sustainability Impact Appraisal

- 7.1 Direct awards support sustainable service delivery and assist in supporting / sustaining a diverse local care market

8. Risk Management

- Statutory duties: the proposed arrangements will mitigate the risk of the Council being in breach of its statutory duties towards vulnerable adults
- Financial risk: will be managed through the budget setting process and through effective commissioning within the directorate budgets.
- Contract risk: will be managed through the issuing of spot individual contract terms and conditions
- Quality risk: will be managed through undertaking CQC compliance and host authority safeguarding checks; and proportionate contractual monitoring regimes
- Contract risks will be managed through adherence to Contract Procedure Rules, management of procurement timetables.
- Care and Quality risks will be managed through assessment the procurement processes, and through on going contract and compliance monitoring.

9. Community Safety

Not applicable

10. Links to the 6 Priorities for the Borough

The council's six priorities for the borough are to make Ealing:

- prosperous
- safer
- healthier
- cleaner

- fairer
- accessible

The procurement of services for vulnerable adults supports the strategic priorities as follows

The Public Services (Social Value) Act 2012 requires us to consider, at the early, pre-procurement stage of proposed procurement for services, how contracts being procured can help improve the economic, social and environmental wellbeing of the relevant area. This includes considering how we can secure improvements in wellbeing through the procurement process itself, and also considering whether to consult on either of these issues.

Ealing uses definitions of social value drawn from the priorities of the Ealing Community Strategy and Council Corporate Plan, with a focus on actions that help support local economic development and prosperity, reflecting current priorities.

In participating in collaborative procurement Ealing will ensure that our statutory duties are met in relation to Social Value, and that quality criteria used within the procurement process reflects the participating WLA boroughs definitions of Social Value.

11. Equalities, Human Rights and Community Cohesion

- 11.1 Equalities considerations are taken into account through equality assessments in procurement processes, with separate EAAs conducted for each procurement exercise, ensuring that detailed consideration will be given to the specific impacts of decisions.

12. Staffing/Workforce and Accommodation implications:

Not applicable

13. Property and Assets

There are no property implications

14. Any other implications:

Not applicable

15. Consultation

Consultation with the Adults Senior Management Team, Service Managers, Commissioners, Contracts Managers, the legal and finance departments, Commercial and Procurement Unit, and Boroughs participating in the WLA Adults Services Programme.

16. Timetable for Implementation

Immediate

17. Appendices

None

18. Background Information

- Adults Services – Care Home Placement Sourcing Protocol
- Adults Services – Support at Home Sourcing Protocol
- Ealing Council – Contract Procurement Rules
- Choice of Accommodation & Additional Payments Regulations (Care Act 2014)
- Dynamic Purchasing Systems – Public Contracts Regulations (2015)
- EU Public Contracts Regulations (2014)

Consultation (Mandatory)

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Cllr Tailor	Portfolio Holder	14 th August		
Louella Harteam	Commercial & Procurement Partner	14 th August	17/08/15	
Chuhr Nijjar	Senior Contracts Lawyer	1st August	05/08/15	
Jane Batalona	Head of Social Care Legal	1st August	05/08/15	
Stephen Day	Director Adults' Services	14 th August		
Judith Finlay	Executive Director Children and Adults Services	14 th August		
Jonathan Sholtz	Finance Partner – Adults	1st August	13/08/15	
External				
Hari Pillai	Head of Adults Stream – West London Alliance	1 st August		

Report History

Decision type:	Urgency item?
Key decision	No
Report no.:	Report author and contact for queries:
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	Gordon Crighton (Operations Manager – Adults Services) crightongo@ealing.gov.uk 0208 825 7632