

Committee:

Date: November 2019

Wards:

Subject: Award of three contracts for the provision of Adults Advocacy Services

Lead officer: Phil Howell, Assistant Director: Strategy & Improvement

Lead member: Councillor Tobin Byers, Cabinet Member for Adult Social Care and Health

Contact officer: Godfrey Luggya, Commissioning Officer, Adult Social Care

Recommendations:

- A. The Council awards the contracts for the provision of Adults Advocacy Services (3 Lots) on the basis of three years with the option to extend for a further 2 years in 1 year increments and as outlined in the confidential Part B paper.
 - B. Delegate to the Director of Community and Housing, in consultation with the Cabinet Member for Adult Social Care and Health, the authority to extend the contracts by 2 further increment of 1 year each (as above).
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

The purpose of this report is to seek the approval of Chief Executive to award three contracts for the provision of statutory advocacy services.

- 1.1. This report details the commissioning, procurement process undertaken and the decisions taken by the evaluation panel and recommends that the Chief Executive agree to the recommendation detailed above.

2 DETAILS

- 2.1. The Council currently commissions approximately 560 hours per annum of Independent Mental Capacity Advocacy (IMCA), 420 hours per annum of Independent Mental Health Advocacy (IMHA) and 2,500 hours per annum of Deprivation of Liberty Safeguards (DoLS), Relevant Persons Representative (RPR) and Care Act Advocacy, which totals up to 3,480 hours per annum.
- 2.2. The above services were tendered in three Lots as follows:
 - Lot 1: Independent Mental Capacity Advocacy (IMCA);
 - Lot 2: Independent Mental Health Advocacy (IMHA);
 - Lot 3: Deprivation of Liberty Safeguards (DoLS), Relevant Persons Representative (RPR) and Care Act Advocacy.

The advocacy services were commissioned based on current usage. However in anticipation of the changes in legislation (Liberty Protection Safeguards to replace Deprivation of Liberty Safeguards in future) which could potentially impact on delivered hours, it was agreed that the Council would purchase 70% of the current usage under block contracts (for purposes of service sustainability, 70% of the contracts' value would be paid irrespective of the hours delivered). The remaining 30% and any other additional hours beyond current usage would be spot purchased if necessary (meaning the Council would only pay for actual hours delivered).

2.3. The core objectives of the services were as follows:

- To develop and run an independent community advocacy service which will provide the support and assistance required by residents who need additional advice and representation to that which is generally available, as well as for service users to navigate self-directed care and have satisfactory problem resolution.
- To encourage people to be as involved as possible in the planning of their own care decisions: and to ensure the needs and circumstances of vulnerable individuals are taken into account in the policy, practice and service provision of statutory, independent and third sector organisations.
- To build partnering relationships / pathway working with statutory health and social care services to provide a flexible advocacy service that responds to changing needs and demands whilst maintaining service users privacy and dignity.
- The Service to be provided in a manner which is sensitive to culture, race, sexuality, gender, age, impairment, spiritual, emotional and religious needs.

2.4. Description of the Tender process

The tender process was undertaken with assistance from Commercial Services in accordance with the Public Contracts Regulations 2015 (PCR 2015) and the Council's Contract Standing Orders.

The tender was managed via the Council's e-Tendering system ProContract, with advice from the South London Legal Partnership as needed.

The tender opportunity was advertised on 15th August 2019 through ProContract, in the Official Journal of the European Union (OJEU - Publication OJS Number: 2019/S 159-392810) under the Open Procedure. Service providers were invited to electronically express their interest and submit their bids via ProContract. The procurement was also advertised on Contracts Finder.

As part of the ITT it was stipulated that the maximum Block prices and Spot rates prices for each Lot were as follows:-

(a) Lot 1: IMCA

- (i) Block Contract (initial 390 hours per annum) - £14,000
- (ii) Spot purchase 1 (391-560 hours per annum) - £35.00 per hour
- (iii) Spot purchase 2 (561≥ hours per annum) - £30.00 per hour

(b) Lot 2: IMHA

- (i) Block contract (initial 290 hours per annum) - £11,000
- (ii) Spot purchase 1 (291-420 hours per annum) - £35.00 per hour
- (iii) Spot purchase 2 (421≥ hours per annum) - £30.00 per hour

(c) Lot 3: Care Act, DoLS and RPR

- (i) Block contract (initial 1750 hours per annum) - £62,000
- (ii) Spot purchase 1 (1,751-2,500 hours per annum) - £35.00 per hour
- (iii) Spot purchase 2 (2,501≥ hours per annum) - £30.00 per hour

Providers were also informed that bids submitted with values higher than the ceiling prices or rates indicated for each Lot above would be rejected.

The prices quoted by successful bidders as shown in Part B are fixed for two years. For subsequent years, after the expiry of the initial fixed period of 2 years, parties to the contract may agree to continue with the above rates or renegotiate rates by an increase of no more than 4% of the stated rates per annum. The negotiations between the Council and Provider for each Lot will be based on National Living Wage rates changes and advocacy services market rates in comparison with our neighbouring Boroughs.

If negotiations did not result in agreement, the Council would be able to require the provider to provide the service for a third year with a 4% uplift. [But / and could / could not require the provider to do so for the following two years on the same basis]

2.5. TUPE

The Council advised all bidders that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") might apply to these contracts. It was however, made clear in the invitation to tender that it would be up to bidders to make their own judgement on the potential implications of TUPE and factor it into their bid accordingly. Indications are that TUPE will not apply with regards these contracts and further legal advice will be sought in relation to this.

2.6. Tender Evaluation

The tender documents specified that the evaluation criteria was 20% price and 80% quality.

4 bids were received for Lot 1, 3 for Lot 2 and 4 for lot 3. These were evaluated and moderated in accordance with the tender documents and as shown in Part B.

2.7. Evaluation Panel

An Evaluation Panel was established consisting of:

- (i) Safeguarding and DoLS Manager (Adult Social Care)
- (ii) Team Manager, Older People Services (Adult Social Care)
- (iii) Commissioning Officer (Adult Social Care)

Moderator: Procurement Project Officer (Commercial Services)

2.8. Quality Evaluation (Method Statements)

During the period 17th September to 9th October 2019 the Evaluation Panel assessed each tender against pre-set evaluation criteria set out in Appendix 1. Following this a moderation meeting was held to agree on a moderated score for each question for each bidder. Details of moderated scores are available in Part B.

3 **ALTERNATIVE OPTIONS**

3.1. The following alternative options were considered:

- Do Nothing: If we do nothing, the Council would not be able to deliver statutory advocacy services. Under the Care Act (2014), the Council is obliged to arrange independent advocacy for any person with care and support needs who has substantial difficulty in being involved and if there is no appropriate individual to support them.
- Extend the existing contracts: This is not an option. The status of the current contracts is as follows:

Lot 1: The contract is due to expire on 31st January 2020 without any further extension options available.

Lot 2: The contract is due to expire on 31st January 2020 with an option to extend for a further 2 months until 31st March 2020, however the Council would benefit from a cheaper recommissioned service in comparison to the

existing block contract. The additional extension period is not sufficient to recommission the service if this offer is rejected.

Lot 3: The service is currently spot purchased from various providers at different rates. Average rate of the existing service is £35 per hour however the new service would enable the Council to have better control of the Market having fixed the rates for at least 2 years and would be cheaper.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The following key stakeholders were consulted at various stages throughout the tendering and evaluation process:

Internal:

Adult Social Care Commissioning Team
Commercial Services Team
South London Legal Partnership
Corporate Accountancy Team
ASC Safeguarding Team

External:

Current providers
Other Local Authorities

5 TIMETABLE

- 5.1. The timetable to re-tender the service is as follows:

Stage / Activity	Dates
Publication of ITT	15 th August 2019
Last date for ITT clarification questions	17.00pm, 6 th September 2019
Closing date for receipt of ITT	12.00pm, 16 th September 2019
Evaluation of ITT	9 th October 2019
Decision made	11 th November 2019
Notification of the Councils intention to award	18 th November 2019
Standstill Period	19 th November – 28 th November 2019
Confirmation of award	29 th November 2019
Implementation	30 th November – 31 st January 2020
Contract Commencement date	1 st February 2020

- 5.2. Upon award of the contracts the Council will agree with the successful bidders the mobilisation and implementation plan submitted to ensure that the new service commence on 1st February 2020, when the existing contract arrangements end to ensure continuity of service for residents within the borough.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

Details of financial implications can be found in Part B.

7 LEGAL AND STATUTORY IMPLICATIONS

The services to be procured are subject to the Light Touch Regime. Under the Public Contracts Regulations (PCR 2015), there is no prescribed procedure for the procurement of such services. Contracting Authorities have flexibility to use any process or procedure they choose as long as the procedure is in compliance with the EU treaty principles and the mandatory requirements set out in PCR 2015. Council CSOs must of course be followed.

The Council followed the Open Procedure and has up to the point of identifying the successful tenderers adhered to all of the relevant requirements of PCR 2015 and the EU Treaty Principles. The proposed award therefore presents no risk to the Council unless the Council omits to publish a contract award notice after all internal approvals have been obtained and the decision to award the contracts concluded.

The Council will need to seek further advice on TUPE before a contract is entered into to establish the financial implications of awarding a contract.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The tender documentation submitted by all selected bidders was assessed against the evaluation criteria, developed to comply with current equalities, diversity and human rights legislation as well as Council Policy with regard to equalities, diversity and human rights.

- 8.2. The successful bidder(s) confirm that they would be able to meet these requirements.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. There are no specific implications affecting this tender.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. All organisations that are awarded contracts must have a Health and Safety policy that compliments the Council's corporate procedures for effective health and safety and risk management. Tender documentation submitted by all bidders was assessed against criteria developed by the Council's Health and Safety and Emergency Planning Manager to ensure that any bidder who is awarded a contract complies with all statutory regulations in all matters related to the service.
- 10.2. The Council will ensure compliance to the contract specification and contract standards through the use of a robust monitoring procedure that will be developed for this service. This will use at least the following methods:
- The provider monitoring the contract through their own quality management and monitoring system (this will include: monitoring service delivery hours, service user outcomes achieved, analysis and investigation of complaints, monitoring of health and hygiene practices).
 - At least quarterly review meetings between the Council and the Service Providers in the first 12 months, thereafter reviewable.
 - The electronic submission at monthly and quarterly intervals by the provider to the Council of a range of statistical data (including: delivered hours per week reports, new referrals, on going referrals, closed referrals and no. of complaints) to enable the Council to determine whether the provider is continuing to perform to the contract specification and performance targets.
 - Providers undertaking client satisfaction surveys at least annually to recipients of the service for each Lot to determine whether they are satisfied with the service received. A report of the findings will be presented to the commissioners for further analysis of residents' views to work with the providers to continuously improve the service.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Part B - Tender Evaluation Process and Award Criteria

12 BACKGROUND PAPERS