

AGENDA ITEM 8

TITLE OF REPORT: Home Care Framework Extension to Support Re-Tender Process

CONTRACT APPROVAL

Key Decision No. CACH R50

**CPC MEETING DATE
(2020/21)**

08/03/2021

CLASSIFICATION:

Open with exempt appendixOpen with an exempt appendix A

By Virtue of Paragraph(s) 3 Part 1 of schedule 12A of the Local Government Act 1972 appendix A is exempt because it contains Information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

If exempt, the reason will be listed in the main body of this report.

WARD(S) AFFECTED

ALL

CABINET MEMBER

Cllr Kennedy - Health, Adult Social Care and Leisure

KEY DECISION

YES

REASON

- Affects two or more wards
- Spend

GROUP DIRECTOR

Denise D'Souza
Interim Group Director Adults, Health and Integration.

1. CABINET MEMBER'S INTRODUCTION

- 1.1. The Council is committed to ensuring that residents requiring home care receive high quality care that is consistent and meets their needs.
- 1.2. The delivery of home care helps residents to maintain their independence and delays them needing long term residential care provision, such as care homes.
- 1.3. It has been recognised and acknowledged during the current COVID 19 pandemic that home care services are an integral part of the health and social care system.
- 1.4. The Council's current framework providers were able to provide additional capacity during the first wave of COVID 19, as well as during the second and third wave and also support the wider health and social care system during the winter periods.
- 1.5. The contract framework is due to end on the 31st March 2021, and as well as to support the current challenges being faced by the health and social care system following the effects of the pandemic and the recent cyber attack on the Council's IT systems; it is prudent that the existing home care providers on the framework are given a suitable extension to help them to support our residents, stabilise their organisations and ensure that they are sustainable in the longer term. The Council has a duty to support providers as laid out in The Care Act 2014, section 5, which requires local authorities to ensure there is sufficient quality care provision in their area.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1. This report seeks approval to extend the current Framework Agreement for Home Care services to enable a service redesign and procurement; this work has been delayed to the pandemic but is now underway.
- 2.2. The provision of good quality home care enables people to remain living at home with their needs and identified outcomes met. This aligns to the Council's commitment to promoting and maintaining an individual's independence.
- 2.3. In particular, the recent pandemic, and subsequent changes in hospital discharge policy have meant that the plans for the future redesign and re-procurement of home care need to take a wider focus, in particular seeking to address the challenges that will be faced by the wider health and social care system. This is part of the rationale for this extension request.
- 2.4. The pandemic, and the recent Cyber attack on the Council has led to a review of priorities. Extension of the Framework for 12 months (with provision to extend for up to a further 12 months) beyond the 4 year term is considered justified by the extenuating circumstances detailed in this report. This recommended course of action will ensure that effective contracts can be put in place to stabilise the market and to cover both existing and new packages of home care whilst recommissioning work is undertaken.

3. RECOMMENDATION(S)

- 3.1 Cabinet Procurement Committee is recommended to extend the Framework Agreement for the delivery of home care services with the 8 companies listed in Appendix A.
- 3.2 Estimated total expenditure under the home care framework is £14.2 million for a one year period. With an option to extend for a further one year (1 + 1 years) the total forecasted spend for this extension period is between £28.7 million to £29.3 million.

4. RELATED DECISIONS

- 4.1 Award of Contract for Outcome based Homecare Services presented to Cabinet Procurement Committee on 4th April 2016.

5. REASONS FOR DECISION/OPTIONS APPRAISAL

5.1 The Service provides support to adults aged 18+ who have a range of adult social care needs. A key focus of service provision is to maximise and/or maintain independent living within the community.

5.1.1 To achieve this, the Council has an **outcomes based homecare service** offering a range of support which can respond flexibly to the changing needs of service users and can:

- Promote reablement, enablement and independence;
- Reduced and prevent social isolation;
- Deliver the health and well-being principles in line with the duties of the Care Act 2014¹
- Contribute in the delay and reduction of the care and support needs of Adults and Carers in Hackney.

5.1.2 The specification for the outcomes based homecare service are aligned to the:

- The Care Act 2014,
- Department of Health's "Transparency in Outcomes" Framework,
- Public Health Outcomes Framework
- Adult Social Care Commitment Statement²

5.1.3 Providers are required to deliver services in accordance with the following key requirements of the the service specification:

- Person centred and flexible service that meets the needs of the service user.
- Outcomes based support planning, that is aligned to the care and support plan that is developed by the health and social care practitioner;
- Promoting the use of telecare/assistive technology
- Providing information to service users and signposting to universal or targeted preventative services

5.1.4 Since the framework was let, a number of changes and initiatives have taken place which have impacted on how these services can be delivered in the future. These include (but not limited to):

- The development of neighbourhood working
- The new hospital discharge policy 2020: Home First
- Lessons learnt from COVID response
- Integration agenda and NHS changes
- The changing nature of the health and social care market
- The sustainability of the homecare market

¹ Care Act 2014, S1(1-4)

² <http://www.hackney.gov.uk/Assets/Documents/Adult-Social-Care-Services-commitment-statement.pdf>

5.1.5 The agreement to extend the current Framework will allow commissioners to look at designing new home care services to meet the changing needs of the system, providers and service users and their families, to ensure the service is future proof, while offering value for money, and choice. A high-level timeline for this work and subsequent procurement exercise is provided as Appendix B.

5.1.6 The future business case will also explore the viability of insourcing home care services, either fully or partially. The extension will provide time to conduct comprehensive benchmarking around the contract and service delivery models, and undertake a SWOT analysis of the options available.

5.1.7 The current framework is structured as follows:

- The framework consists of three Lots :
 - Lot One - Generic Homecare, split into 4 geographical quadrants (sub-lots)
 - Lot Two - Culturally specific care for Turkish/Kurdish community
 - Lot Three - Culturally specific care for Orthodox Jewish community
- The awarded “Tier One” provider for each Lot (or sub-lot) is expected to aim to deliver all call-off requirements.
- In the event that the Tier One provider cannot meet a requirement the tier two provider is approached
- There are currently eight providers on the framework. This is following two of the original ten providers exiting the homecare market in Hackney.

5.1.8 The advantages of extending the Framework will be to:

- Ensure continuity of existing provision for service users, which is particularly important at this critical time;
- Avoid short term TUPE transfers of care workers to new providers;
- Avoid potentially inflated prices seen in an external framework option (See options considered and rejected below).
- Provide a straightforward system for awarding new packages required during the 12 month period.

5.1.9 This Contract Award report also seeks an option to extend for up to a further 12 months, in particular as the landscape for service delivery is critical at the moment. Should the pandemic exacerbate or take a new and unexpected development, this will impact Adult Social Care in Hackney and will continue to affect the Home Care Market as well as the wider health and social care system.

5.1.10 The Commissioning team has been and will continue to engage with Providers throughout the recommissioning process in order to make an informed decision as to the ability of the market to respond once the tender is ready to be published. This will avoid placing extra pressure on the market, which is working hard to support residents during the pandemic and which could disadvantage smaller businesses in particular, without the capacity to

continue to provide services during a pandemic or take part in a tender process.

5.2. ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

| Option | Advantages | Disadvantages |
|---|--|--|
| Use of the NHS "Any Qualified Provider" Framework | <p>Compliant route to market, with minimal procurement resource requirement for Hackney</p> <p>Mechanism for awarding new packages of care, and possibility of retaining existing packages where current providers are successful in joining the Framework</p> | <ul style="list-style-type: none"> - Not available to access immediately, as we are not named as a contracting authority until the retendering of the Framework is complete - Inflexible rates due to the costing model tool that is used combined with Hackney's requirement for payment of LLW to staff - May result in changes of providers and loss of continuity for service users, as well as risk around transfer of workforce, where current providers are not on the Framework |
| Extend Framework contracts | <p>Enable Adult Social Care to have stability to ensure response to COVID and Cyber and Vaccines is prioritised.</p> <p>Continuity of provision for service users and the workforce in relation to existing care packages.</p> <p>Avoid short term TUPE transfers of care staff to new providers</p> <p>Some stability of pricing compared to use of an external framework or a wholly new procurement</p> | <ul style="list-style-type: none"> - May be lack of choice / options of provider for residents |

| | | |
|--|---|---|
| | exercise, due to the ability to use the current framework rates as the basis for negotiations. | |
| Procure immediately via competitive tender | <p>Fair and robust process compliant with Public Contracts Regulations 2015</p> <p>Ability to build in a mechanism for awarding new packages of care during the contract period</p> | <ul style="list-style-type: none"> - Service disruption to residents at this critical time of pandemic. - Time constraints mean there is no time to complete a full tender process before the Framework expires. - Re-procurement may result in changes of providers and loss of continuity for service users, as well as risk around transfer of workforce - The Specification remains the same pending full redesign of the service, only minor operational changes are sought during the recommissioning period. Therefore a full reprocurement process would not be expected to add any real value. - Wider Adult Social Care department is responding to hospital discharges and need to support care homes and care provider stability in Hackney. |

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| <p>Direct negotiation new contracts with existing Framework providers</p> | <p>Ensure continuity of existing provision for service users</p> <p>Avoid short term TUPE transfers of care staff to new providers</p> <p>Ability to build in a mechanism for awarding new packages of care during the contract period</p> | <ul style="list-style-type: none"> - Limited time available for full negotiation and Governance process - The Specification remains the same pending full redesign of the service, only minor operational changes are sought during the recommissioning period. Therefore a full reprourement process would not be expected to add any real value. - Risk of challenge if negotiating new contracts with existing providers without prior notification. |
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6 PROJECT PROGRESS

6.1 Developments since the Business Case approval.

Not applicable.

6.2 Whole Life Costing/Budgets:

6.2.1 The whole life costing/budget is estimated between £28.7mn and £29.3mn for a two year period. For a 12 month period (21/22) the cost is estimated at £14.2m.

6.2.2 The whole life costing has been developed based on the following assumptions:

- Current forecast for the full year of (20/21) which has been projected at £13.9m;
- London Living Wage (LLW) and the demographic growth based on the office for national statistics data has projected a spend of £14.2m for 21/22;
- LLW is not known for 22/23 so the projected spend is estimated in the range of £14.5m to £15.1m

6.2.3 The total forecasted spend across the two year period would be in a range of £28.7 to £29.3m

6.2.4 A majority of the providers on the framework have agreed to adopt the same hourly rate that takes account of the yearly uplifts that are based on the London Living Wages annual increase. See exempt appendix for details.

6.3 SAVINGS

6.3.1 There are no savings required for these contracts.

7 SUSTAINABILITY ISSUES

7.1 Procuring Green

As part of the negotiations organisations have been asked to work toward helping the Council meet its procurement green ambitions. This includes encouraging organisations to encourage staff to use public transport, walking or cycling between calls, central offices promoting recycling and energy efficient heating and lighting as well as having green policies.

7.2 Procuring for a Better Society

The PRIMAS highlighted the positive impact these contracts will have on the local economy. It provides employment for Hackney residents, with the requirement to employ staff on LLW rates, with additional training and support. The proposed providers state that they will continue to generate meaningful employment for local people.

7.3 Procuring Fair Delivery

As part of the negotiation of the extension we have ensured that the contract includes the need to have an Equality Policy for each provider and that this is reviewed annually. Organisations are also required to employ local staff which represent the diverse cultural and characteristic make up of the local Hackney community.

7.4 Equality Impact Assessment and Equality Issues:

A new Equality Impact assessment (EIA) was completed for this contract in January 2021. Areas identified include issues relating to ageism and staff perceptions of older adults in general, older LGBTQ adults and meeting the social and cultural needs of clients using the service. All of which can be mitigated by staff education and training, and establishing good working practices as well as ensuring all those organisations contacted have active Equality policies and can evidence how they challenge the use of stereotypes and promote respectful practice.

8 ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

See section 5.2 above

9 TENDER EVALUATION

9.1 Not Applicable

9.2 Recommendation:

9.2.1 The recommendation is for the framework contract agreement to be extended with the eight existing home care agencies.

10 CONTRACT MANAGEMENT ARRANGEMENTS

10.1 Resources and Project Management (Roles and Responsibilities):

10.1.1, The contract will be managed by the Strategic Commissioner for Older Adults and long term conditions, a role that sits within the Adult Services Commissioning Team.

10.1.2 The Service Providers shall submit Quarterly reports with updates of the achievements of the Outputs and Outcomes specific to this service as outlined in Schedule 2 of the Service Specification, in addition to quarterly Performance Indicator Workbooks. These outputs and outcomes will be reported via a quarterly monitoring return, which the service provider will be expected to submit together with all other performance information

10.1.3 Providers are also subject to CQC assessments and are required to maintain a minimum standard in order to continue to accept packages of care from the Council.

10.2 Key Performance Indicators:

| Main KPI Targets Set | Monitoring |
|--|--------------------|
| 1. Percentage of service user who have had their defined outcomes met during the reporting period | Quarterly Workbook |
| 2. Percentage of referrals for Home Care packages accepted by the Providers during the period | Quarterly Workbook |
| 3. The percentage of visits which started outside 15 minutes of the stated time of arrival on the Care Plan | Quarterly Workbook |
| 4. Percentage of Home Care visits that were missed during the reporting period | Quarterly Workbook |

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| Percentage of staff that have had formal supervision with their line manager within the last three months | Quarterly Workbook |
| Percentage of permanent staff leaving the service during the reporting period | Quarterly Workbook |
| The percentage of Service Users who have responded to service user surveys stating that they are extremely satisfied with the service during the reporting period | Quarterly Workbook |
| Percentage of Apprenticeships, provided to Hackney Residents by the Provider during the reporting period | Quarterly Workbook |
| 30% of employees recruited are Hackney Residents | Quarterly Workbook |

6. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

- 6.1. The recommendation of this report is to extend the Framework Agreement for the delivery of home care services with the current eight providers listed in Appendix A for a period of twelve months, with an option to extend for a further twelve months. The Framework contract with the current eight providers is due to end in March 2021, and it has not been possible to complete the necessary commissioning work for the successful redesign and delivery of the new service by this date.
- 6.2. By awarding this extension it would ensure continuity of the service for our vulnerable residents, and support the Council in its response to the current Covid-19 pandemic in keeping residents safe. It will also allow sufficient time for Adult Services to complete the redesign of home care services including the possibility of bringing part or all of the service in-house as highlighted in Section 5 of this report.
- 6.3. The annual contract value for the initial twelve month extension period is estimated at £14.2m, and between £14.5m and £15.1m if the contract is extended by a further twelve months. The total estimated contract value across two years is between £28.7m to £29.3m. The contract value is based on projected annual activity for home care services and this will need to be closely monitored to contain costs associated with increasing demand for the service. The cost of the contract extension will be met from existing Adult Services resources.
- 6.4. It is also anticipated that over the life of the extension, Adult Services will continue to ensure optimal use of the framework and actively ensure that the

use of spot provision for home care services is minimised whenever possible.

7. VAT Implications on Land & Property Transactions

The most common target for HMRC is exempt licences to occupy land, such as markets and venues, following the Upper Tier Tribunal case in *Craft Carnival (Kati Zombory-Moldovan trading as, [2016] UKUT 433, UT/2015/0119)*. HMRC is paying close attention to local authorities' because of the recently increased involvement in using land and property for investments and revenue generation.

This area of VAT is complex and where most high value errors and assessments from HMRC occurs.

8. COMMENTS OF THE ACTING DIRECTOR, LEGAL & GOVERNANCE 16

- 8.1. The current contracts for Homecare Services are due to expire on 31st March 2021 and this Report sets out the reasons why it has not been possible to undertake a procurement process to continue service provision after such date. To undertake a procurement in order to appoint a short term provider to commence the service immediately would be economically disadvantageous for the Council in terms of the price of tenders received and is unlikely to meet the needs of the Council. Therefore it is proposed to extend the current contracts with providers whilst the Council undertakes a substantive procurement exercise for future service provision as well as confirm its proposals regarding in-sourcing some elements of the current service.

It should be noted that there is, therefore, some risk to the Council that a challenge to the award of the contracts could come from competitors the Council have not approached to undertake the services. If such a challenge were successful it is likely that the Council would be liable to pay the lost profits of a party who has successfully challenged as well as the costs of bringing such a challenge and potentially a fine from the government for a breach of the Regulations. This should be considered in the decision to approve the award in this Report. It is hoped that this risk can be minimised as all of the current providers will continue to provide services pending confirmation of future arrangements for a new contract.

9. COMMENTS OF THE PROCUREMENT CATEGORY LEAD

- 9.1. The total value of the Framework, including the requested extension, is above the relevant UK public procurement threshold (Social and Other Specific Services "light touch" regime), and not provided for within the

original agreement. Written authorisation from the Director of Legal and Governance is therefore required to extend the agreement in line with the Public Contracts Regulations 2015.

- 9.2. The value of the estimated framework expenditure during the extension period is above the delegated authority of the Group Director. This may be agreed, in consultation with the Group Director of Finance, if authorised by the Group Director of Legal and Governance. A written report setting out the justification for the variation is presented for approval by Cabinet Procurement Committee in accordance with CSO 4.
- 9.3. The justification for extension of the Framework beyond the 4 year term is the impact of the COVID-19 pandemic which caused initial delays to the recommissioning project and identified new service design considerations which are being incorporated into the future proposals. This means that there is no longer time to complete a full re-procurement exercise before expiry of the framework.
- 9.4. There is some risk of challenge to extending this framework beyond the original term without an approach to the market. However, compared with the other contract award options explored, the proposal to extend the existing framework is supported as this will minimise the risks of disruption for both service users and the workforce and ensure some stability of cost and service quality during the current pandemic.
- 9.5. The commissioners have taken the opportunity to agree suitable KPIs and sustainability objectives with the providers for the extension period, including confirming payment of LLW.
- 9.6. A business case for re-procurement is expected to be presented to CPC by June 2021, at which point procurement and/or insourcing activity will commence. The extension covers the period up to 31st March 2022, with a contingency of up to a further 12 months to mitigate against further impacts of the pandemic on the homecare market. This will provide sufficient time to complete the recommissioning process following the appropriate Hackney Governance route, as set out in the timeline provided, and is being fully supported by the Central Procurement Service.

APPENDICES

Exempt Appendix A: Providers, Hourly Rates and Geographical Areas and Cultural Specialisms.

EXEMPT

By Virtue of Paragraph(s) **Category 3** Part 1 of schedule 12A of the Local Government Act 1972 this report and/or appendix is exempt because it contains Information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

Description of document (or None)

None

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| Report Author | Sharon Ellis 0208 356 4710 Strategic Commissioner for Older People and Long Term Conditions email address Sharon.ellis@hackney.gov.uk |
| Comments for and on behalf of the Group Director of Finance and Corporate Resources | Naeem Ahmed Director of Finance (Children, Education, Adults & Integration) email address Naeem.Ahmed@hackney.gov.uk |
| Comments for and on behalf of the Acting | Patrick Rodger (Senior Lawyer) Legal Services Tel: (020) 8356 6187 Email: patrick.rodger@hackney.gov.uk |

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| Director, Legal & Governance | |
| Comments of Procurement Category Lead | Dawn Cafferty - Tel : 0208 356 8697 Procurement Category Lead - Social Care (Interim) dawn.cafferty@hackney.gov.uk |

APPENDIX B

Recommissioning Timeline

| Activities/ Tasks | Description | Indicative time required | Notes |
|---|--|------------------------------|--|
| Workshops and Consultation | Including project management, market engagement, financial and demand modelling, options appraisal | September 2020 -January 2021 | Core/project working group and project board established and meetings monthly |
| Business Case | Draft BC for CPC | February-May 2021 | Presentation to CPC June 2021 |
| Specification Design and Tender Documents drafting | Write specification(s) - develop tender documents and outline outcomes required | March-June 2021 | To begin towards the end of the design phase and run concurrently with the governance process for approval of the Business Case. |
| Tender Stage | Tender docs finalised and out to tender | June-October 2021 | Anticipated two-stage (restricted) tender for multiple Lots or contracts. |
| Contract Award | Write contract award for CPC | September-December 2021 | Presentation to CPC January 2022 |
| Mobilisation | Award of contract to selected providers and transition to new service arrangements | January 2022 onwards | Service start/transition to new providers from 01 April 2022 |