

## Notice of KEY Executive Decision

<b>Subject Heading:</b>	Approval to award contracts following competitive tender process and to enter into direct negotiations with providers with the intention of awarding contracts where the tender process was unsuccessful.
<b>Cabinet Member:</b>	Councillor Wendy Brice-Thompson Lead Member for individuals.
<b>SLT Lead:</b>	Barbara Nicholls, Director of Adult Social Care.
<b>Report Author and contact details:</b>	Michelle Brown, Senior Commissioner and Projects Manager, 01708 433113, <a href="mailto:michelle.brown@havering.gov.uk">michelle.brown@havering.gov.uk</a>
<b>Policy context:</b>	<p>Havering Health &amp; Wellbeing Strategy 2015 – 2018, Theme A: Preventing, reducing and delaying the need for care and support through effective demand management strategies.</p> <p>A Strategy to Manage Growing Demand 2015-2018 –</p> <p>4. Build and strengthen community resilience.</p>
<b>Financial summary:</b>	<p>It is proposed to award 7 of the 15 Lots available through this tender. Each lot has a value of up to £40,000 per annum.</p> <p>The 7 Lots will cost up to £40,000 per annum, which totals £280,000 per annum.</p> <p>Over 4 years these 7 lots total £1,120,000.</p> <p>The remaining 8 Lots will be subject to direct negotiation and award.</p> <p>The 8 Lots will cost up to £40,000 per annum, which totals £320,000.</p> <p>Over 4 years these 8 lots will total</p>

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	<b>£1,280,000.</b> <b>The total proposed spend is therefore up to £600,000 per annum and up to £2,400,000 for up to 4 years. This is to be funded by Adult Social Care and Better Care Fund budgets.</b>
<b>Reason decision is Key</b>	<b>Expenditure or saving (including anticipated income) of £500,000 or more.</b>
<b>Date notice given of intended decision:</b>	<b>7<sup>th</sup> March 2017.</b>
<b>Relevant OSC:</b>	<b>OSC Individuals.</b>
<b>Is it an urgent decision?</b>	<b>Not applicable.</b>
<b>Is this decision exempt from being called-in?</b>	<b>No.</b>

### **The subject matter of this report deals with the following Council Objectives**

Communities making Havering [X]  
Places making Havering [X]  
Opportunities making Havering [X]  
Connections making Havering [X]

## **Part A – Report seeking decision**

### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

Following the completion of the tender evaluation for the Havering Carers, Inclusion and Peer Support services (Preventative Services) the Corporate Leadership Team Director with responsibility for Adult Social Care is asked to approve the following:

1. The award of seven contracts in relation to seven Lots tendered for, to the highest scoring tenderers, and to extend current contract/funding arrangements where necessary, to ensure that service users are not without provision and to prepare for new contracts implementation.
2. To address Failed Procurement, to enter into direct negotiations with provider(s) deemed to be best placed in the market, with a view to directly awarding up to eight contracts thereafter. To extend current contract/funding arrangements where necessary to allow for direct negotiations, to ensure service users are not without provision and to prepare for new contracts implementation.

### **AUTHORITY UNDER WHICH DECISION IS MADE**

Part 3, paragraph 3.3 of the London Borough of Havering Constitution (Powers of Members of the Corporate Management Team), Contract Powers (b), to award all contracts with a total contract value of between £156k and £5 Million.

### **STATEMENT OF THE REASONS FOR THE DECISION**

There is no intention to deliver savings from this exercise. The purpose is to support the development of an offer which will prevent or reduce the need for support making better use of available assets to ensure that Havering residents get the best interventions and outcomes from the investments made by the Council. By so doing, the Council will also be fulfilling its statutory obligation as stated in section 2 of the Care Act 2014.

A tender seeking Preventative Services for vulnerable adults and their adult carers has been undertaken based on three key areas of need/outcomes: Inclusion, Peer Support and Carers support. Each area of need was sub divided into individual client groups which led to 15 Tender Lots, each with up to £40,000 assigned and making a total investment of up to £600,000 per annum.

Needs analyses conducted in Havering identified that informal carers within the borough number over 25,000 people, higher than the London average. A Havering Carers Strategy has been developed that commits to supporting carers in their role. The identification of this as a key outcome for providers will ensure a shift to carers' support as a priority for Havering.

Building community resilience and the ability of the community to help themselves is a stated objective of the Council's Health and Wellbeing Strategy. By building networks of peer support in Havering this will support people in maintaining their independence and also means that the assets of the community are used to a maximum extent, meaning the local authority does not have to fill that gap, mitigating the risk of significant costs through the alternative

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provision of statutory services.

Havering's Demand Management Strategy also highlighted Social Isolation as the main driver for demand on Adult Social Care services and public services more generally.

### **The tender process**

The Invitation to Tender was published on 7<sup>th</sup> March 2017 on Capital eSourcing the Council's procurement portal.

The deadline for providers to submit clarification questions was 5pm on 12<sup>th</sup> April 2017.

The deadline for submission of tenders was 12 noon on 21<sup>st</sup> April 2017.

The tender submissions were evaluated using a ratio of 70% Quality score and 30% Price score.

The tender evaluation panel members were:

- Commissioning Programme Lead for Disabilities: Mental Health, Learning Disabilities, Dementia, Physical Disabilities and Older People;
- Senior Commissioner and Projects Manager: Carers and the Voluntary Sector Lead;
- Commissioner and Project Manager: Carers and the Voluntary Sector;
- Commissioner and Project Manager, Social Reablement lead.

In total, tender submissions were received from five providers.

A Moderation exercise was undertaken by the Council's Procurement team to identify any issues or discrepancies in the evaluations. The Moderator approved that the scoring was justified, consistent and formally closed the evaluation.

### **Awarded Contracts**

Carers of Barking and Dagenham, emerged as the highest scoring tenderer in the following five Lots:

- **Lot 3: Adult carers of adults with physical disabilities/sensory impairment**

There were three submissions for Lot 3:

Carers of Barking and Dagenham scored 72.5% for Quality, 100% for Price, which gave a total overall score of 80.75%.

The second highest scoring tenderer scored 62.25% for Quality, 93.8% for Price, which gave an overall score of 71.72%.

The third ranking tenderer scored 41% for Quality, 93.8% for Price, which gave an overall score of 56.85%.

- **Lot 6: Adult carers of older adults, the frail elderly**

There were three submissions for Lot 6.

Carers of Barking and Dagenham scored 72.5% for Quality, 100% for Price, which gave a total overall score of 80.75%.

The second highest scoring tenderer scored 64.5% for Quality, 93.8% for Price, which gave

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an overall score of 73.29%.

The third ranking tenderer scored 36.25% for Quality, 94.19% for Price, which gave an overall score of 53.63%.

### **Lot 9: Adult carers of adults with mental health needs**

There were three submissions for Lot 9.

Carers of Barking and Dagenham scored 72.5% for Quality, 100% for Price, which gave a total overall score of 80.75%.

The second highest scoring tenderer scored 63.25% for Quality, 93.81% for Price, which gave an overall score of 72.42%.

The third ranking tenderer scored 45.75% for Quality, 94.03% for Price, which gave an overall score of 60.24%.

- **Lot 12: Adult carers of adults with learning disabilities and/or autism**

There were three submissions for Lot 12.

Carers of Barking and Dagenham scored 71.25% for Quality, 100% for Price, which gave a total overall score of 79.88%.

The second highest scoring tenderer scored 62.25% for Quality, 93.81% for Price, which gave a total overall score of 71.72%.

The third ranking tenderer scored 39.75% for Quality, 94.17% for Price, which gave an overall score of 56.08%.

- **Lot 15: Adult carers of adults with dementia**

There were three submissions for Lot 15.

Carers of Barking and Dagenham scored 68.5% for Quality, 100% for Price, which gave a total overall score of 77.95%.

The second highest scoring tenderer scored 63.25% for Quality, 93.81% for Price, which gave an overall score of 72.42%.

The third ranking tenderer scored 45.5% for Quality, 94.75% for Price, which gave an overall score of 60.28%.

We are also seeking approval to award two contracts to Age UK Redbridge Barking Dagenham and Havering, who were the highest scoring tenderer in the following two Lots:

- **Lot 4: Older adults, the frail elderly in relation to Inclusion.**

There were three submissions for Lot 4.

Age UK Redbridge Barking Dagenham and Havering scored 71.75% for Quality, 96.73% for Price, which gave a total overall score of 79.24%.

The second highest scoring tenderer scored 38.75% for Quality, 96.33% for Price, which gave an overall score of 56.02%.

The third ranking tenderer scored 34.75% for Quality, 100% for Price, which gave an overall score of 54.33%.

- **Lot 5: Older adults, the frail elderly in relation to Peer Support.**

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There were two submissions for Lot 5.

Age UK Redbridge, Barking and Dagenham scored 71.75% for Quality, 100% for Price, which gave a total overall score of 80.23%.

The second highest scoring tenderer scored 35.83% for Quality, 99.59% for Price, which gave an overall score of 54.96%.

The above proposals were approved at Checkpoint 2 Panel meeting on 27<sup>th</sup> July 2017.

Please see Appendix I (Preventative Services Tender Quality and Price tender scores), for a full break down of how many tenderers applied for each Lot and each tenderer's scores.

### **Failed Procurement**

Ensemble Community Solutions, a Special Purpose Vehicle consisting of (14) voluntary sector organisations were the only tenderer for the following eight Lots which all failed as they did not meet the quality requirements set in the procurement.

The Lots were:

- **Lot 1: Adults with physical disabilities and/or sensory impairment in relation to Inclusion**

The score was 35% for Quality and 100% for Price, giving a total overall score of 54.5%.

- **Lot 2: Adults with physical disabilities and/or sensory impairment in relation to Peer Support**

The score was 35% for Quality and 100% for Price, giving a total overall score of 54.5%.

- **Lot 7: Adults with mental health needs in relation to Inclusion**

The score was 53.5% for Quality and 100% for Price, giving a total overall score of 67.45%.

- **Lot 8: Adults with mental health needs in relation to Peer Support**

The score was 54.75% for Quality and 100% for Price, giving a total overall score of 68.33%.

- **Lot 10: Adults with learning disabilities and/or autism in relation to Inclusion**

The score was 44.75% for Quality and 100% for Price, giving a total overall score of 61.33%.

- **Lot 11: Adults with learning disabilities and/or autism in relation to Peer Support**

The score was 43.5% for Quality and 100% for Price, giving a total overall score of 60.45%.

- **Lot 13: Adults with dementia in relation to Inclusion**

The score was 40% for Quality and 100% for Price, giving a total overall score of 58%.

- **Lot 14: Adults with dementia in relation to Peer Support.**

The score was 41% for Quality and 100% for Price, giving a total overall score of 58.7%.

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Commissioners now propose to enter into direct negotiations with the individual members of Ensemble Community Solutions (ECS) with a view to directly awarding up to eight contracts thereafter and to extend current contract/funding arrangements where necessary to avoid gaps in current provision. The individual members of the ECS would be approached based on previous market testing, market engagement exercises and service delivery monitoring spanning over 2 years which have revealed these providers to be the most likely to respond to a subsequent tender or the only ones capable of delivering the services locally. Commissioners will also work with the selected organisations to ensure that adequate quality standards are developed and sustained throughout the contract period.

Diversity and Equality have been given due consideration within this procurement. Services are required to respond to individual needs for all protected characteristics for equalities purposes. Services are required to be accessible to people regardless of their disability, condition or illness. Indeed the design of the service, addressing a range of disabilities, is intended to achieve benefits for people with disabilities and their carers.

Tenderers have also been evaluated against a range of criteria contained in method statements including their willingness and ability to work in a partnership group with the Council and other organisations to deliver services across client groups.

Each contract duration would be for 3 years with an option to extend for up to 12 months, subject to funding and performance. A 12 month break clause would be included in all contracts.

The above proposal was approved at Checkpoint 2 Panel meeting on 27<sup>th</sup> July 2017.

## **OTHER OPTIONS CONSIDERED AND REJECTED**

### **Awarded Contracts**

**Option 1:** Continue to fund current services.

**Option rejected.**

A review of Voluntary and Community Sector provided services to support adults in 2015/2016 found that the financial arrangements with the Voluntary and Community Sector lacked contractual compliance and consistency in alignment with the outcomes that Havering needs to be delivered.

**Option 2:** Decide not to commission preventative services.

**Option rejected.**

Section 2 of the Care Act 2014 places a statutory obligation on local authorities to provide or arrange “services, facilities or resources or take other steps, which it considers will –

- (a) contribute towards preventing or delaying the development by adults in its area of

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- needs for care and support;
- (b) contribute towards preventing or delaying the development by carers in its area of needs for support;
- (c) reduce the needs for care and support of adults in its area;
- (d) reduce the needs for support of carers in its area.

This is a statutory obligation on local authorities to provide such services therefore to do otherwise would be a breach of that obligation.

### **Failed Procurement**

**Option 1:** To re-tender.

**Option rejected.**

**i) Low likelihood of any other providers coming forward to participate in a re-tender.**

The Havering Carers, Inclusion and Peer Support services tender was divided into 15 Lots to maximise its appeal, manageability and accessibility to the market and to include small, medium size and large providers.

Comprehensive market engagement activity to engage with incumbent providers and the wider market was undertaken over a 2-year period to ensure awareness and to maximise market interest in the tender as follows:

- February 2015: A series of Market Position Statement sessions to engage with providers in relation to demand for services, local need and commissioning intentions.
- March and April 2015: Understanding Procurement sessions - half-day briefings for voluntary and community sector organisations who want to understand more about the procurement and tendering process.
- September 2015 to March 2016: 1 to 1 meetings with incumbent providers;
- April 2016, June 2016 and October 2016: Voluntary and Community Sector Provider Forum meeting, with presentations by commissioners, Q&A sessions and table discussions facilitated by commissioners;
- May 2016: Development Masterclass to raise awareness of the Sustainable Care in Havering Project, to support Adult Social Care providers to build business sustainability, incorporating business planning, workforce development planning and leadership and management support. As part of the project the consultants delivered a masterclass to share knowledge, best practice and experiences, aimed at providers seeking to understand how to make their business thrive and become sustainable.
- July 2016: A series of provider co-production workshops for Preventative Services;
- December 2016: Two further Voluntary and Community Sector market awareness/market warming events for the Preventative Services tender;
- February 2017: Publication of Intention to Tender notice issued to inform the market of the Havering Carers, Inclusion and Peer Support tender (Preventative Services).

**ii) If we retender we will likely get the same outcome**

Market testing revealed a limited number of providers in the market are able to meet the outcomes of vulnerable adults, for example, only one provider of mental health services responded following two years of market warming activity.



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**PRE-DECISION CONSULTATION**

Consultation with Legal and Procurement.

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: John Green

Designation: Head of Commissioning

Signature:



Date: 6<sup>th</sup> September 2017

## **Part B - Assessment of implications and risks**

### **LEGAL IMPLICATIONS AND RISKS**

#### **Awarded Contracts**

1. Section 2 of the Care Act 2014 places a statutory obligation on local authorities to provide or arrange “services, facilities or resources or take other steps, which it considers will –
  - (a) contribute towards preventing or delaying the development by adults in its area of needs for care and support;
  - (b) contribute towards preventing or delaying the development by carers in its area of needs for support;
  - (c) reduce the needs for care and support of adults in its area;
  - (d) reduce the needs for support of carers in its area.

This procurement has therefore been conducted with a view to fulfilling that obligation.

2. It would also appear that Officers have adopted the flexibilities afforded by the light touch regime for social care contracts valued at over £589k contained in Chapter 3, (Regulations 74 -76) of the Public Contracts Regulations 2015 (the Regulations). This is evidenced by the splitting of the contract into lots and the use of a Prior Information Notice as a call for competition as permitted by Regulation 75.
3. Officers should also ensure that the timing of a 12-month break clause in the terms and conditions of contract is managed such as to minimise the financial liability that could accrue to the Council as a result.
4. Although a stand still period upon award is not prescribed in the Regulations for contracts of this category, the Crown Commercial Service (CCS) Guidance recommends it as good practice. Officers are therefore advised to observe a standstill period upon notifying tenderers of the outcome of the procurement exercise.

#### **Failed Procurement**

1. Officers are proposing to enter into direct negotiations with individual organisations making up Ensemble Community Solutions (ECS). This is on the premise that the concluded procurement failed to produce suitable tenders as the submissions for the affected lots failed to meet the quality thresholds set in the tender. Regulation 75(2) permits this on the ground that a negotiated procedure without publication is adopted.
2. Regulation 32(2) permits the adoption of the negotiated procedure without prior publication where ‘no suitable tenders’ have been returned from a procurement. Regulation 32(3)(a) states: “ *a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority’s needs and requirements as specified in the procurement documents.*” Officers assessment of the ECS tender submissions is that whereas the pricing was acceptable, the quality was lacking and it is proposed that this

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will be addressed in the course of the proposed negotiations.

3. As Officers have shown that extensive market engagement has been undertaken over a 2 year period before this procurement was run, the risk of possible challenge by any other provider in the sector is limited. The provisions of Regulation 32 quoted above also lend themselves to the proposed option. Officers must however ensure that a proper audit trail of all subsequent negotiations is kept as prescribed by the Regulations.

## **FINANCIAL IMPLICATIONS AND RISKS**

The successful contracts will be funded from existing budgets held within the Adult Social Care Commissioning area, with £658k earmarked for the Prevention services. Although the overall contract value for the successful lots at £280k falls below this amount, the balance of £320k will be used to fund the elements of the original tender that is not being awarded at this point. As mentioned in the body of the report, commissioning this element of the procurement will now take the form of direct negotiations with providers and will constitute the maximum commitment to spend on those services. The £58k balance will be mobilised to help deliver other complementary services as part of the overall service objective to use prevention as one of the demand management tools at its disposal. As the contracts are fixed, there is little risk to the Local authority in financial terms however, the break clause included as part of the contract terms will address the funding uncertainty around the use of £558k BCF funding that forms part of the £658k budget.

## **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

There are no risks to the Council or its workforce that can be identified at this time in relation to the proposed decision and recommended action set out in this report. The prospective tenderers for these contracts would have been advised of the possibility of Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applying and of their responsibility to seek legal advice as to their own position if they are successful in securing a contract under this exercise, which includes consideration of the treatment of any pension provisions under TUPE.

## **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

Draft Equality Impact Assessments have been produced at this stage. These are being developed and finalised in partnership with stakeholders. These will be finalised before all new contract arrangements start from 1st February 2018. There are gaps in service Equalities data which we are addressing with providers. Any outstanding consultation will be undertaken to ensure that service users are informed where provision is ending, continuing and/or changing

## **BACKGROUND PAPERS**

Not applicable.

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### **Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

#### **Decision**

Proposal agreed

*Delete as applicable*

Proposal NOT agreed because

#### **Details of decision maker**

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

#### **Lodging this notice**

The signed decision notice must be delivered to the proper officer, Andrew Beesley, Committee Administration & Interim Member Support Manager in the Town Hall.

#### **For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_