

73-19



Notice of Non-Key Executive Decision

Subject Heading:	Approval to go out to tender for an Occupational Therapy Services single supplier Contract.
Cabinet Member:	Councillor Jason Frost, Cabinet member for Health and Adult Care Services
SLT Lead:	Barbara Nicholls, Director for Adult Services and Health
Report Author and contact details:	Jonathan Cassidy, Senior Commissioner & Projects Manager, Jonathan.Cassidy@havering.gov.uk
Policy context:	Care Act 2014: The local authority has a duty to assess people's needs and their eligibility for publicly funded care and support.
Financial summary:	Based on current costs the annual cost is approximately £100,000 per annum. The total value over the life of a 4 year contract is a maximum spend of £400,000.
Relevant OSC:	Individuals
Is this decision exempt from being called-in?	Yes, it is a non-key decision by a member of staff

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

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

1. That the Second Tier Manager approves the procurement strategy to undertake a tender exercise for an Occupational Therapy Services Contract as allowable under Council's Contract Procedure Rules (CPR), at an estimated whole life contract sum of up to £400,000 for a period of four 4 years, with an estimated start date of 1st April 2020.

AUTHORITY UNDER WHICH DECISION IS MADE

3.1 General provisions and limitations

- (a) Staff shall exercise powers under this scheme in compliance with:
- (i) the rules of procedure set out in Part 4 of this constitution
 - (ii) corporate policies and strategies
 - (iii) any additional conditions imposed either by the Council or by statute or any statutory code of practice.
- (b) The exercise by staff of the powers delegated under this constitution involving the incurring of any expenditure is subject to there being sufficient approved provision within the budget to cover that expenditure.

3.4 Powers of Second Tier Managers

Second Tier Managers are those managers directly reporting to a SLT Director. Second Tier Managers all have delegated authority to act as follows within the assigned service, subject to the general provisions and limitations set out in section 3.1 above.

Contract powers

- (a) To approve commencement of a tendering process for, and to award all contracts below a total contract value of £500,000 but above the EU Threshold for Supplies and Services.

STATEMENT OF THE REASONS FOR THE DECISION

Background

1. The Care Act 2014 states that Occupational Therapists are well placed to undertake assessment or review of an individual or carer with complex support

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needs. OT intervention is primarily preventative and the cost benefits associated with the provision of personalised home adaptations is well evidenced. Occupational Therapists are effective at preventing, reducing or delaying the need for care and support based on a holistic picture of the individual or family, taking into consideration informal support networks and an asset-based approach which is complementary to maximising individual and community Resilience.

2. Havering has been unsuccessful in recruiting Occupational Therapists, meaning there are a number of vacant posts within the community social work teams. As a result of this, the existing staffing resource has been unable to meet the current demand. This has led to a backlog of 100+ Occupational Therapy (OT) and Occupational Therapy Assistant (OTA) assessments.
3. The backlog consisted of Basic and Moderate OT assessments:
 - A 'Basic' case would involve: Full functional OT or OTA Assessment with an adult in their home, where minor adaptations and standard equipment are required and where the established need is straightforward and easy to identify.
 - A 'Moderate' case would involve: Full functional OT Assessment with an adult in their home where major adaptations such as level access showers; stair lifts & ramps etc. are required; where a visit with a company rep or surveyor may be required to establish feasibility or where specialist equipment is needed and or where the established needs are more difficult to identify / liaison with other social and health care professionals.
4. In order to reduce the backlog, Havering engaged 3 providers to submit a Request for Quotes. The OT Partnership was the provider awarded the contract based on the lowest price. The value of this contract was £24,900. This has been worked out based on 100 assessments being required. Approximately 30 of these assessments were basic cases, at a cost of £165 per assessment. The other 70 assessments were moderately complex cases, at a cost of £265 per assessment.
5. Following the completion of the 100 assessments, there remained a backlog and it was clear that a longer term solution is required.
6. Havering awarded an interim contract to a single provider to complete both Basic and Moderate OT assessments. The contract commenced on 1st September 2019 and is due to expire on 31st March 2020. The interim contract will allow the Council sufficient time to go out to tender for a long term contract.

Commissioning & Procurement

7. To mitigate against the risk of OT's shortages in the future whilst ensuring no guaranteed spend, it is recommended that Havering commissions a single supplier to deliver OT and OTA assessments and call-off when required.

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8. Following discussions with OneSource Procurement, it has been agreed that the best approach is to commission a single provider to deliver the contract for a 4 year contract, with no guaranteed spend. The successful lead provider will deliver OT and OTA assessments throughout the duration of the contract. We will offer 2-3 providers who were unsuccessful during the tender, but scored sufficiently, the opportunity to work with Havering as a reserve provider. The reserve providers will be called upon whenever the main provider is unable to deliver assessments.
9. The tender process will be led by the Joint Commissioning Unit, and will be fully compliant with the UK Public Contract Regulations 2015. The tender opportunity will be advertised using the CapitalEsourcing e-procurement portal.
10. The key deliverables / milestones for this project include:
- Production of all required tender and contract documents (including service specification)
 - Tender process managed in line with OJEU and Council procurement procedures
 - Contract awarded to the tenderers submitting the best / most advantageous bid to the Council
 - New contracts awarded and mobilised
11. If the decision to proceed with the tender is approved, the key milestones from the procurement timetable for the tender of the service are as follows;

Key Milestone	Date
Tender Published	1 st November 2019
Tender Evaluation	2 nd - 13 th December 2019
Award Approval via ED	January 2020
Award Notification	February 2020
Contract Commences	1 st April 2020

12. The tender will be evaluated by a panel consisting of representatives across Havering.
13. The method statements questions, used to evaluate the bids, will be designed and agreed by the tender evaluation panel. As per the councils default, the price to quality ratio is 70:30 in favour of price.

TUPE

14. The application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), will normally amount to a Service Provision Change under the TUPE,

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where there has been a change in the provider of the existing services provision. However, whether or not TUPE will apply is a matter for current and future provider to determine after seeking their own legal advice on the issue.

15. The Council is prepared to act as a conduit of information between the parties so as to ensure minimal disruption to service provision and comply with obligations under the regulations.

Finance

16. Between April and June 2019 the council spent £24,900 on a single provider to undertake 100 assessments. This was based on 30 Basic and 70 Moderate cases. In this agreement the costs were agreed as follows:

- Basic Case - £165 per assessment
- Moderate Case - £265 per assessment

17. The current interim contract is expected to cost a maximum of £89,000. This covers the period of 1st September 2019 to 31st March 2020. As the demand and capacity fluctuates there is no set number of assessments to be completed during this period. The costs for the interim contract are agreed as follows:

- Basic Case - £115 per assessment
- Moderate Case - £180 per assessment

18. There is no guaranteed spend over the life of the contract, and the successful provider will be used to cover the backlog of OT and OTA assessments. Based on the current backlog, it is expected that the provider will complete up to 20 assessments per week.

19. Based on current spend the annual cost is approximately £100,000 per annum. The total value over the life of a 4 year contract is a maximum spend of £400,000.

OTHER OPTIONS CONSIDERED AND REJECTED

Option 1 – Do nothing

The current contract is due to expire 31st March 2020 and there is no further option to extend. Therefore doing nothing would result in the Council being unable to manage the demand for OT and OTA assessments.

Option 2 – Extend the current contract

The current interim contract does not allow the Council to extend the contract further and so this approach would contravene the Council's Contracts Procedure Rules.

PRE-DECISION CONSULTATION

Internally we have consulted with Procurement, Finance, Legal and Adult Social Care.

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

Name: John Green

Designation: Head of Joint Commissioning

Signature:



Date: 15/10/2019

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. The Care Act 2014 sets out local authorities' duties in relation to assessing people's needs and their eligibility for publicly funded care and support. Section 2 of the Care Act 2014, places a general duty on local authorities to provide, arrange or otherwise identify services, facilities or resources to help prevent, delay or reduce the needs of adults for care and support. The recommissioning of the proposed Occupational Therapy service provision would assist the Council in satisfying this ongoing duty. In addition, the general power of competence in s.1(1) of the Localism Act 2011 states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation and subject to public law principles. The proposed recommendations within this report are in accordance with these powers.
2. The Second Tier Manager approves the procurement strategy to undertake a tender exercise for an Occupational Therapy Services Contract as allowable under Council's Contract Procedure Rules (CPR), at an estimated whole life contract sum of up to £400,000.00 for a contract period of four (4) years, with an estimated start date of 1st April 2020.
3. The estimated whole life value of proposed contract is £400,000.00, which is above the EU threshold for Service/Supply contracts and therefore any procurement route or award of contract is subject to the full requirements of the Public Contracts Regulations 2015 (the "EU Regulations").
4. The Council must procure its contracts in accordance with the Public Contracts Regulations 2015 ("PCR 2015") and the Council's Contract Procedure Rules ("CPR"). The body of the report sets out how the Council shall comply with the CPR and PCR 2015 requirements whilst procuring the new service provision.
5. The Second Tier member will be aware of the Public Sector Equality Duty (PSED) set out in section 149 of the Equality Act 2010. At each stage, in exercising its function (and in its decision making processes) the council must have due regard to the need to:
 - a) eliminate discrimination, harassment, victimisation or other prohibited conduct;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
 - c) foster good relations between person who share a relevant protected characteristic and those who do not share it.

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The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Second Tier Manager should take note of comments made within the body of the report, which sets out the consideration that has been given to equalities issues, which should be considered when approving the recommendations in this report.

6. The Transfer of Undertakings (for the Protection) of Employees Regulations 2006 ("TUPE") is likely to apply to this competitive process if there is a service provision change in providers. TUPE would apply between the new replacement providers and the incumbent providers should there be a change in service provider. In these situations the Council will act as a conduit of information between the parties so as to ensure minimal disruption to service provision. Consideration of timescales linked to the TUPE process has been accommodated within the project plan and appropriate provision for TUPE will be made within relevant conditions of contract.
7. The Legal and Governance officers are available to assist the client department in drafting and finalising the terms and conditions of the proposed contract between the parties.

FINANCIAL IMPLICATIONS AND RISKS

To mitigate against the risk of Occupational Therapist shortages within the Community Social Work Teams, resulting in backlogs in OT Assessments, this contract will allow Havering to deliver OT and OTA assessments and call-off as required.

Costs will only be incurred, against the contract, if there are Occupational Therapist vacancies within the structure at that time. If the structure were fully appointed to, the staffing resource would be sufficient to meet demand, and therefore, the contract would not be called upon.

The costs for this provision will be met from the assigned budget in the establishment that is funding these vacant posts. There is a risk that the expenditure incurred on the contract will exceed the budget available from the vacant Occupational Therapist posts. If this does materialise, the additional expenditure will have to be covered from within existing Adult Social Care Budgets.

There is also a risk that expenditure may be incurred through the providers when a full staffing compliment is in place. This would mean that there is no funding available to offset the costs of this additional expenditure. This risk is minimal as Occupational Therapist post are historically difficult to recruit to, however if this were to happen, then the additional costs would need to be funded.

The total value of the anticipated expenditure through the contract is estimated to be in the region of £100k per annum, based on current demand. If demand increases over current expectations, and therefore leads to increased costs over the existing budget allocations, then additional funding will need to be identified from within Adult Social Care.

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

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would directly or indirectly affect either the Council or its workforce.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants. Contractors will be required to evidence compliance with the above.

BACKGROUND PAPERS

None

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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

Details of decision maker

Signed



Name: Barbara Nicholls

Cabinet Portfolio held:

CMT Member title: Director of Adult Social Care and Health

Head of Service title

Other manager title:

Date: 29th October 2019

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on A.N.M.

Signed 29/10/19