



Report of: **Executive Member for Health and Social Care**

Meeting of	Date	Ward(s)
Executive	14 June 2018	All

Delete as appropriate	Exempt	Non-exempt
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SUBJECT: PROCUREMENT STRATEGY FOR A POSITIVE BEHAVIOUR SUPPORT (PBS) SERVICE FRAMEWORK AGREEMENT FOR PEOPLE WITH LEARNING DISABILITIES

1. Synopsis

- 1.1 This report seeks pre-tender approval for the procurement strategy in respect of a Positive Behaviour Support (PBS) Service Framework Agreement for People with Learning Disabilities in accordance with Rule 2.5 of the Council's Procurement Rules.
- 1.2 The London Borough of Haringey is in the process of establishing a Positive Behaviour Support service for people with learning disabilities. A compliant OJEU process is being followed to establish the framework agreement. The contract notice on OJEU includes provision for other London Boroughs, including Islington, to join the framework agreement during its lifetime.

2. Recommendations

- 2.1 To approve the procurement strategy for a Positive Behaviour Support (PBS) Service Framework Agreement for People with Learning Disabilities as outlined in this report.
- 2.2 To delegate authority to award any subsequent contract award for a call-off from the framework agreement to the Corporate Director Housing and Adult Social Services in consultation with the Executive Member for Health and Social Care.

3. Background

- 3.1 **Nature of the service**
In line with the Haringey and Islington Wellbeing Partnership, the PBS framework agreement has been identified as an opportunity for collaborative working and further integration. This is due to the

common Transforming Care Partnership objectives and shared challenges of finding competent providers to meet the needs of service users who present the most complex and challenging behaviours.

The Transforming Care Programme (TCP) is a high profile national policy which has driven Haringey's implementation of this PBS service framework agreement. The objectives of the TCP are to:

- reduce the number of individuals in inpatient settings
- ensure that people with a learning disability and/or autism in hospital who could be supported in the community are discharged into a community setting as soon as possible
- put in place robust admission gateway processes, so that where an admission to hospital is considered for someone with a learning disability and/or autism, a challenge process is in place to check that there is no available alternative – and where an individual does need to be admitted, they have an agreed discharge plan from the point of admission
- ensure the development of the new service model to prevent new admissions and readmissions to hospitals.

Islington currently supports a growing number of people with complex needs and expects a long-term increase in numbers of people who display behaviours that challenge. Therefore, a mechanism is required to ensure that the needs of the people with the most complex and challenging behaviours, can be met in the most appropriate way while delivering value for money.

Haringey Council have initiated the commissioning of expert providers, onto a framework agreement and will use this framework agreement as the means to manage and maintain the quality of PBS provision in supported living settings.

Although, there is ongoing procurement activity in Islington relating to a Dynamic Purchasing System (DPS) for learning disability accommodation and support services (procurement strategy approved by Executive on 27 April 2017), Haringey's PBS framework agreement would offer the opportunity to work with providers who may offer additional skills relating to meeting the care needs of individuals who display complex and challenging behaviour.

In accordance with the Care Act 2014, Islington, like all local authorities, must continue to consider more flexible approaches to commissioning that help to create a market which is as responsive as possible to individual needs. Joining Haringey's PBS framework agreement would contribute towards achieving this.

3.2 **Estimated Value**

No additional costs will be incurred by joining the PBS framework agreement. Existing staffing resources in commissioning, assessment, and brokerage would be able to make use of the framework agreement without any additional work.

Funding is provided by the existing budget for Learning Disabilities. The estimated value will depend on how many contracts are called-off through the framework agreement. The current block contract arrangements for supported living have a value of just over £5 million per annum. The total spend on learning disability accommodation and support services, includes the block contracts and all spot purchase arrangements, is currently over £14 million per annum.

Savings to NHS England are possible where service users are enabled to move out of specialist secure facilities and into supported living. However, this is likely to be an additional cost to the Local Authority and CCG. Cost reduction is possible in the case of creating a supported living service which is at a lower cost than a residential spot placement.

The length of each individual contract is seven years. The framework agreement will last for four years. The table below shows an estimate of the total cost, assuming that each individual care package costs a total of £150k per year

Year	Number of Service Users	Total Cost Per annum (Cumulative)
1	4	£150k x 4 = £600 k (£600k)
2	8	£1.2 m (£1.8m)
3	12	£1.8 m (£3.6m)
4	16	£2.4 m (£6.0m)
5	16	£2.4 m (£8.4m)
6	16	£2.4 m (£10.8m)
7	16	£2.4 m (£13.2m)
8	12	£1.8 m (£15.0m)
9	8	£1.2 m (£16.2m)
10	4	£600 k (£16.8m)

Joining the framework agreement does not commit Islington to using it or to making a given number of placements through it, it simply provides an additional avenue for identifying a provider with the appropriate skills and experience to meet the needs of some of our most complex individuals.

3.3 Timetable

The framework has now been established by Haringey and is available for use.

3.4 Options appraisal

Options considered:

1. To continue with current arrangements of a mixture of block contracts and spot purchasing.

Block contracts restrict the degree of responsiveness and personalisation that can be achieved. This means that service users who require PBS plans, in many cases, find that the environment of a supported living scheme, where they have to share communal spaces, is not the right place for them to achieve positive outcomes. The current block contract arrangements, therefore, do not allow the council to meet the goals of the Care Act which requires care markets to be shaped to respond to need and offer choice and control to customers. Furthermore, due to the nature of the needs of service users who display challenging behaviour, it is more often than not, unsuitable for them to live in a supported living scheme with other service users. This is because their behaviours are likely to impact detrimentally on other service users who live in the scheme. The PBS framework agreement will allow bespoke accommodation and support service to be designed for the individual in a way which will give them as much choice as possible while ensuring that value for money is achieved.

2. Using the Tri-Borough (Waltham Forest, Enfield and Hackney) Supported Living Framework Agreement

Islington have access to the framework agreement, but it does not meet all of Islington's commissioning and procurement needs. The providers on the framework agreement do not offer the specialist skills needed for the most complex service users in Islington.

3. Make use of the Haringey PBS framework agreement.

This framework agreement will give Islington Council the opportunity to access highly qualified and experienced providers of Positive Behaviour Support. This option will mean that care manager can call upon a pool of providers to establish bespoke supported living services for highly complex service users, rather than approaching expensive out of borough residential facilities, on a spot purchase basis. Although it is unlikely to lead to any cashable savings, it is expected to avoid the need for high cost residential placements. The providers on the framework agreement have experience of facilitating discharge from long stay hospitals and secure treatment units and have the capacity to meet the anticipated demand in Islington.

3.5 **Key Considerations**

The Care Act 2014 states that local authorities must shape the local market to offer people with care and support needs a diverse and vibrant range of provision.

This PBS framework agreement will ensure that we have highly qualified specialist providers who are able to offer the option of supported living in the community to service users who would otherwise be destined to living residential facilities, learning disability long stay hospitals or secure assessment and treatment units.

Integrating people with learning disabilities into the community is a key requirement of the Transforming Care Programme and Valuing People Now. The service will also have a positive social impact on the lives of the people using the service as it will support individuals in making choices about their future, and where possible, enable individuals to remain living at home with the minimum number of interventions necessary for independence.

Social value has been defined as 'the additional benefit to the community from a commissioning and procurement process over and above the direct purchasing of goods, services and outcomes'. Providers of this service will be expected to pay due and positive consideration to the employment needs within their local community when recruiting and selecting staff. The provider must consider how their recruitment processes support the local economy, its demographic composition and its social and environmental wellbeing. Providers will be encouraged to involve Customers and carers in staff recruitment, quality assurance and service review processes.

Currently the local service provision for this type of care and support is dominated by a limited number of service providers. This has its own associated risks if these providers go into administration, or if there are issues related to quality and/or safeguarding.

Agreeing packages through this framework agreement has the potential to contribute to local savings targets given that packages will be funded at 80% of the true cost, with the remaining funding coming from social investment. In addition, through implementing behaviour management strategies etc., providers are incentivised to reduce the level of support required over time. In the long term, i.e. at the end of the seven-year contract, the support package required should be significantly reduced.

A requirement for providers to pay the London Living Wage will be included as a condition of any call-off contract awarded by Islington Council.

As this framework agreement will be used to establish new supported living services, TUPE will not need to be a consideration.

3.6 **Evaluation**

This tender has been conducted in two stages, known as the Restricted Procedure as the tender is 'restricted' to a limited number of organisations. The first stage was a Selection Questionnaire (SQ) which established whether an organisation meets the financial requirements, is competent and capable and has the necessary resources to carry out the contract. The SQ is backwards looking and explores how the organisation has performed to date, its financial standing, information about their history and experience.

A limited or 'restricted' number of these organisations meeting the SQ requirements as specified in the advertisement were then invited to tender (ITT). The second stage is forwards-looking using award criteria. All suppliers who are successfully accepted onto the framework agreement following the selection stage are automatically invited to tender for every support package we issue. Bids are evaluated on the basis of the tenderers' price and ability to deliver the services as set out in the evaluation criteria in order to determine the most economically advantageous offer.

The framework agreement award criteria is 70% quality and 30% cost. Having 30% of the score based on cost, puts the emphasis on the quality of the PBS provision but still allows for some price based competition on the hourly rates submitted.

3.7 Business Risks

The block contracting arrangements currently in use, have historically given providers some financial stability in terms of business planning, however, when the contracts are due for tender, there are substantial risks for local providers, where the majority of their business has been tied in with the council. The council could potentially purchase packages of care from providers through the PBS framework agreement on an individual rather than block purchase basis. This offers providers the potential for new business.

The seven-year length of each contract is a potential risk as the needs of the individual may change significantly over the period of time, meaning that the PBS service is no longer needed. However, this is unlikely as only the most complex service users would be considered for this framework agreement.

3.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to sign the Council's anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.

3.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.6 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	Positive Behaviour Support Service Framework Agreement for people with learning disabilities See paragraph 1.1
2 Estimated value	The framework agreement is proposed to run for a period of four years. The framework agreement has an estimated value of less than £2.4m per annum of Islington Council spend. See paragraph 3.2
3 Timetable	See paragraph 3.3
4 Options appraisal for tender procedure including consideration of collaboration opportunities	The outcome of an options appraisal is included in this report See paragraph 3.4
5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	A requirement to pay LLW will be included as part of the contract. TUPE will not apply. See paragraph 3.5
6 Evaluation criteria	The price/quality split will be 30% price and 70% quality/outcomes See paragraph 3.6
7 Any business risks associated with entering the contract	There are some business risks but these are low and manageable. See paragraph 3.7
8 Any other relevant financial, legal or other considerations.	See paragraph 4 below

4. Implications

4.1 Financial implications

There are no direct financial implications arising from the introduction of the PBS Service Framework. This is based on the expectation that new packages will be commissioned within the current cash envelope allocated.

The PBS service framework is expected to contribute to the achievement of the departmental MTFS savings.

There is a financial risk linked to the Transforming Care Programme however, this should be mitigated where appropriate with CCG partners. If any additional pressures are incurred, management actions will need to be identified to cover this.

Payment of London Living Wage is a requirement of the contract and should not result in any additional costs.

Any TUPE cost implications that may arise from this tender will have to be met by existing resources outlined above

4.2 Legal Implications

The Council has a duty to make arrangements for providing residential accommodation and care for persons who by reason of illness and disability are in need of care and attention which is not otherwise available to them (section 21 National Assistance Act 1948 (as amended)). The Care Act 2014 also provides the council with duties and powers to meet the needs for care and support of eligible adults (sections 18 and 19). The Council has power to enter into contracts with providers of such services under section 1 of the Local Government (Contracts) Act 1997. The Executive may provide Corporate Directors with responsibility to award contracts with a value over £2,000,000 (Procurement Rule 14.2).

The social care services being procured are subject to the light touch regime (Light Touch Services) set out in Regulations 74 to 77 of the Public Contracts Regulations 2015 (the Regulations). The threshold for application of this light touch regime is currently £615,278.00. The value of the proposed contract is above this threshold. The council's Procurement Rules for Light Touch Services require competitive tendering for contracts over the value of £500,000. Using a framework that has been properly established by another local authority in accordance with the Regulations and with advertisement in the Official Journal of the European Union (OJEU) will satisfy the council's obligation to comply with the Regulations as well as the council's Procurement Rules.

Call off contracts may be awarded in accordance with the contract conditions set out in the framework agreement, subject to the tender providing value for money for the council.

4.3 Environmental Implications

No negative impacts are expected.

4.4 Resident Impact Assessment

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment has been completed. This proposal is not expected to discriminate or have negative impacts on people with protected characteristics. All those people affected will

have learning disabilities and many will have additional needs, disabilities and/or other protected characteristics. Procuring services through the PBS framework agreement will help to ensure services are designed around individual needs and preferences, including needs and preferences which are related to protected characteristics.

5. Reason for recommendations

- 5.1 There is an increasing need in the borough for supported living accommodation for people with a learning disability who display complex and challenging behaviour. The PBS framework agreement will offer access to a range of support providers who are able to meet the needs of these individuals.

Appendices: None

Background Papers: None

Final report clearance:

Signed by:

Janet Burgess

25 May 2018

Executive Member for Health and Social Care

Date:

Report Author: Raymond Murphy
Tel: 020 7527 8841
Email: raymond.murphy@islington.gov.uk

Financial Implications Author: Shakeel Yasin
Tel: 020 7527 8929
Email: shakeel.yasin@islington.gov.uk

Legal Implications Author: Ramani Chelliah
Tel: 020 7527 3084
Email: ramani.chelliah@islington.gov.uk