

Report of: Director of Adult Social Care

Report for:	Date	Agenda item	Ward(s)
Chief Officer approval	30/03/2022	n/a	All
Delete as appropriate	Exempt	Non-exempt	

SUBJECT: London Living Wage (LLW) consideration report for Nursing beds Procurement
1 Synopsis

- 1.1 This report considers the implications of applying the council's London Living Wage (LLW) policy and procedures to the procurement of the contract named above.

2 Recommendations

- 2.1 A requirement for the payment of LLW should be included as a condition of this contract.

3 Council's policy and procedure on LLW

- 3.1 The London Living Wage is set annually by the Greater London Authority (GLA). It is defined by the Family Budget Unit as "a wage that achieves an adequate level of warmth and shelter, a healthy palatable diet, social integration and avoidance of chronic stress for earners and their dependents"
- 3.2 The council's policy on LLW, adopted in March 2010, requires that for all new contracts the paying of the LLW to all staff involved in delivering the contracted services should be given consideration and adopted whenever it is shown to add value. The council's Procurement Rule 12 states: "As a matter of policy, London Living Wage (LLW) must be considered on all contracts where the Citizen's UK accreditation criteria for contracts apply. LLW shall be adopted on all contracts insofar as this is permitted by law. A report shall be produced setting out all relevant considerations."
- 3.3 The council received accreditation from Citizen's UK as a London Living Wage Employer in March 2012. The Citizen's UK accreditation criteria require the payment of the LLW to staff employed in the provision of contracted services who provide a service for or on behalf of the council involving: two or more hours of work in any given day in a week; for eight or more consecutive weeks in a year; on the council's premises and/or property owned or occupied by the council; and/or land which the council is responsible for maintaining or on which it is required to work.

- 3.4 In dealing with the legal issues raised by the use of LLW in relation to European Union laws on cross border tendering the council's procurement procedure distinguishes between Standard Procurements which are unlikely to be of interest to contractors established in other member states within the European Union and Non-standard Procurements that could potentially be of cross border interest.

4 Procurement of the contract

- 4.1 An existing contract for eighteen nursing beds ends in November 2023 and we are seeking new contract(s) to maintain and possibly expand existing capacity up to a maximum of 36 beds should more than one suitable provider respond to the tender.
- 4.2 The new contract will be procured in accordance with the requirements of the council's Procurement Rules and the EU regulations.
- 4.3 This contract will be advertised to the wider market as a service contract. The estimated maximum value of the contract per year is £2,245,149.
- 4.4 For the purpose of London Living Wage, this is a Standard Procurement because it falls within the Citizen's UK accreditation criteria and lacks cross border market consideration.
- 3.3 Therefore a requirement for the payment of LLW should be included as a condition of this contract.

5 Best value consideration

- 5.1 A research report published by London Economics entitled "An independent study of the business benefits of implementing a Living Wage policy in London" (February 2009) and commissioned by the GLA found that paying the Living Wage increases productivity and improves service quality as a result of lower staff turnover, reduced absenteeism, and improved morale, motivation and commitment.

6 Implications

6.1 Financial

The majority of the costs for reprocurring the 18 beds will be funded from the existing block budget held in Adult Social Care (£1,000,869), however since the current contract does not include payment of the London Living Wage this budget will need to be increased by £121,706, to accommodate the London Living Wage requirement in the new contract, therefore creating a budget pressure. In 2022/23 the part year impact of £40,568 will be funded from one off resources and a submission will be made as part of the MTFS process to allocate market inflation funding for the £121,706 going forward. Management actions will be identified to fund the increase if this is not agreed.

6.1 Legal

- 6.2.1 The council has a duty under the Public Contracts Regulations 2015 (the Regulations) to treat all economic operators equally and without discrimination and to act in a transparent and proportionate manner (Regulation 18(1)). The council also has a duty to act in compliance with the Posted Workers Directive (96/71/EC) that regulates work force matters,

including wage rates, paid to the employees of contractors engaged in delivering contracts across national borders. The procurement of this contract has been judged to be a Standard Procurement for the reasons stated in this report. It is therefore unlikely to be of interest to bidders outside the UK. Therefore the LLW requirement for this contract is unlikely to discriminate against any economic operator who may be interested in this contract nor trigger challenge for breach of the Posted Workers Directive.

- 6.2.2 The council is prevented from including contract conditions which relate to “non-commercial matters”. (Local Government Act 1988, sections 17(5) and 19(10)). However the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 enables the council to consider workforce matters (including terms and conditions of employment such as wage rates) but only in so far as necessary to permit or facilitate compliance with the council’s best value duty. The best value duty requires the council to secure continuous improvement in the way in which it exercises its functions having regard to a combination of economy, efficiency and effectiveness (Local Government Act 1999, section 3). The London Economics study quoted in the report provides evidence that productivity and service quality is improved as a result of paying a living wage.
- 6.2.3 The council has a duty to consider social value in relation to all service contracts to which the Regulations apply. For such contracts the Public Services (Social Value) Act 2012 requires the council to consider how what is being procured might improve the economic, social and environmental wellbeing of the London borough of Islington. The payment of the LLW to workers employed in delivering the services under this contract is likely to improve the economic wellbeing of the borough.

6.2 Environmental Implications

Care homes are contractually required to have adequate systems in place for the storage, disposal and documentation associated with any clinical waste produced.

There are a number of environmental implications for care homes. These include energy use in the building for heating, cooking and appliances, water use and waste generation by residents. The council is committed to engaging residents and partner health sector organisations in their drive to meet emission reductions as part of the Net Zero Carbon 2030 Programme – recommended environmental improvements at the care home will be introduced, where feasible.

The Council will encourage measures that mitigate environmental impact and promote the council’s ambitions, assessed as part of the 20% social value evaluation criteria.

6.3 Equality 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.

An Equality Impact Assessment Screening Tool has been completed for this service, a summary of which is included below.

The contract is for a service specifically for older residents in the borough (usually 65+). It is intended to have a positive impact on this group by offering care home placements to those with complex needs who can no longer live at home. Such services are for some of the most vulnerable in our communities and by accessing them older people can expect to:

- improve their quality of life
- reduce their risk of social isolation and exclusion
- Reduce their risk of harm.

The contract is for a service specifically for older residents, many of whom will have a disability or long term conditions, therefore it is intended to have a positive impact on residents of the borough with this protected characteristic.

For all the other protected characteristics, the contract is deemed to be equality neutral in the category as all groups are treated with equality of opportunity by the service.

Appendices

- No appendices.

Background papers: (available online or on request)

- Executive Report – London Living Wage (March 2010) (Online)

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