

From: Richard Smith, Corporate Director of Adult Social Care and Health

To: Clair Bell, Cabinet Member for Adult Social Care and Public Health

Decision No: 20/00030

Subject: **CONTRACT AWARD FOR RESIDENTIAL CARE FOR PEOPLE WITH LEARNING DISABILITY, PHYSICAL DISABILITY AND MENTAL HEALTH NEEDS**

Classification: Restricted Appendix (Exempt from publication by Schedule 12A to the Local Government Act 1972, as it contains commercially sensitive information)

Past Pathway of Paper: Adult Social Care Cabinet Committee 4 July 2018
Adult Social Care Cabinet Committee 27 September 2019

Future Pathway of Paper: Adult Social Care Briefing – 5 June 2020

Electoral Division: All

Summary: To inform the Cabinet Member for Adult Social Care and Public Health on the progress to date to establish new contracts for care homes for People with a Learning Disability, People with a Physical Disability and People with Mental Health Needs and to request approval to award new contracts from June 2020.

Recommendation(s): The Cabinet Member for Adult Social Care and Public Health is asked to:

a) **AWARD** contracts to provide residential care for people with a learning disability, people with a physical disability and people with mental health needs to the successful bidders as identified following a procurement process and detailed in exempt appendix A; and

b) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health to take relevant actions, including but not limited to finalising the terms of and entering into required contracts or other legal agreements, as necessary to implement the decision.

1. Introduction

- 1.1 Residential Care contracts for People with a Learning Disability and People with a Physical Disability were last let in 2002 while contracts for People with Mental Health Needs were last let in 2004. With these contracts last competitively tendered 16-18 years ago, most placements are linked to historic Terms and Conditions, which do not reflect the Council's current practice. The need to regularise this is high and the current pricing of placements requires stabilising.
- 1.2 Recommissioning of these contracts comes with a risk in terms of financial impact, however when balanced with the risk to the Council on the legality of the existing contracts, it is necessary to understand full exposure of the Council's liability.
- 1.3 The council has statutory duties to ensure that there is sufficient and fit for purpose provision of care services to Kent residents who are eligible under the Care Act 2014 and that a sustainable market is maintained. Residential Care Home Services contribute to the offer of services to meet assessed need.
- 1.4 The proposal to commence market engagement in relation to the recommissioning and awarding of contracts was discussed at and endorsed by the Adult Social Care Cabinet Committee on 4 July 2018. An update on progress was provided to the Committee in September 2019.
- 1.5 These contracts represent approximately £103m of spend on care home provision, but no guarantee is given as to the actual value of the Contract Lot for each provider due to fluctuations in demand for the Service and any National Living Wage and inflationary increases that may be applied during the lifetime of the contract.
- 1.6 Owing to the complexity of the various Service Specifications and in line with Commissioning for Success guidelines, it was agreed that the Competitive Procedure with Negotiation would be used.
- 1.7 In-depth detailed work carried out by Strategic Commissioning, Commissioners and Finance Teams identified what is currently being commissioned from providers, what is being delivered and at what cost. The work also considered the council's approach to Sleep-in Payments in light of the market's varied interpretation of the original HMRC guidance and the pending further Court Appeal granted by the Supreme Court, with the continued uncertainty around the Sleep-in Payments and the potential pay liabilities. It was proposed that the council changes Sleep-in Payments from the current customary fixed payment to an hourly amount, set at the National Living Wage (NLW) rate.
- 1.8 In line with national strategy the aim of adult social care is to reduce the number of placements to care homes and to work with the market to develop and make available a range of other alternative options, including an increase in supported living options.

- 1.9 To progress in developing the offer of services, the new LDPDMH Care Home Contract aligned and dovetailed with the commissioning of Phase 2 of the Care and Support in the Home Contract - Supported Living. This gave a clear message to the market and reduced unnecessary duplication internally as well as with providers who chose to tender for both service types.
- 1.10 Market and stakeholder engagement was undertaken to gather views around shaping the new contracts and how services could best be managed in the future. Engagement included a market event in August 2018; a Provider Workshop in July 2019; a further engaged event in September 2019; and attendance at Trade Association events, where the Council outlined its intentions for the new services, the project timeline and the procurement process. A Working Group was also set up with the relevant representatives.
- 1.11 This report summarises the commissioning intentions, procurement process and evaluation, together with recommendations for the award of this contract.

2. Strategic Statement and Policy Framework

- 2.1 Kent County Council's Strategic Commissioning unit managed the procurement exercise for these contracts. The new contracts will replace existing services and bring the delivery of multiple services together under one contract to form an 'umbrella' of interventions. These interventions aim, wherever possible to support a person to achieve the outcomes that are important to them, in line with the Care Act 2014, and the vision for adult social care as set out in the 'Your Life, Your Wellbeing' strategy.
- 2.2 Staff from the council's Strategic Policy and Corporate Assurance Division were part of the working group to make sure that the new contract is consistent with policy and practice.

3. The Report

Commissioning Intentions

- 3.1 To introduce a well-managed contract for adult social care and to have systems and measures in place to manage its day-to-day operational requirements. This includes:
- Key Performance Indicators (KPIs). Ongoing management and monitoring of quality ensures that all providers remain compliant to their contractual commitments
 - Purchasing. A requirement for a more efficient, streamlined purchasing function, that minimises bureaucracy and is responsive to the levels of demand. Efficiency could be enhanced with improved procedures and processes.
 - Systems. More effective use of systems to record the contracts and fees and to enable automated payments to providers.

- Contract Management. Regular communication with the market continues to strengthen the relationship. With over 200 care homes the resource is very intensive to contract manage this service. Regular analysis of KPIs, and management information for quality of care and improved contract monitoring.
- 3.2 The contract scope included both long term and short-term placements and the ability to contract with care homes based outside of Kent. During the lifetime of the contract it will be open to include our strategic health partners e.g. CCGs and the commissioning and contracting of Continuing Health Care (CHC) placements. The integration of commissioning and contracting arrangements is a key priority to release efficiencies and better manage the whole market.
- 3.3 In line with national strategy the aim of adult social care is to reduce the number of placements to care homes and to work with the market to develop and make available a range of other alternatives, including an increase in supported living options.
- 3.4 It was therefore decided that this will require two contracts.
- A Framework Contract with Cost Model for providers of lower level services that are in ample supply, to reduce and control supply and
 - A Dynamic Purchasing System (DPS) Contract with Cost Model for specialist homes to address gaps in the market. Should a lower level home wish to re-model, they will be able to access a specialist contract through the DPS.
- 3.5 To progress in developing the offer of services, the new Care Home Contract aligned and dovetailed with the commissioning of Phase 2 of the Care and Support in the Home Contract - Supported Living.
- 3.6 The diagram below illustrates the aims and intentions to change services to meet future needs and demand and to shape the market to respond to the demand.



3.7 Work is underway between the Adult Social Care and Health Directorate and the Strategic Commissioning Division to deliver a plan to grow a joint culture for change in approach and to review the current internal procedures and processes to support the new contract

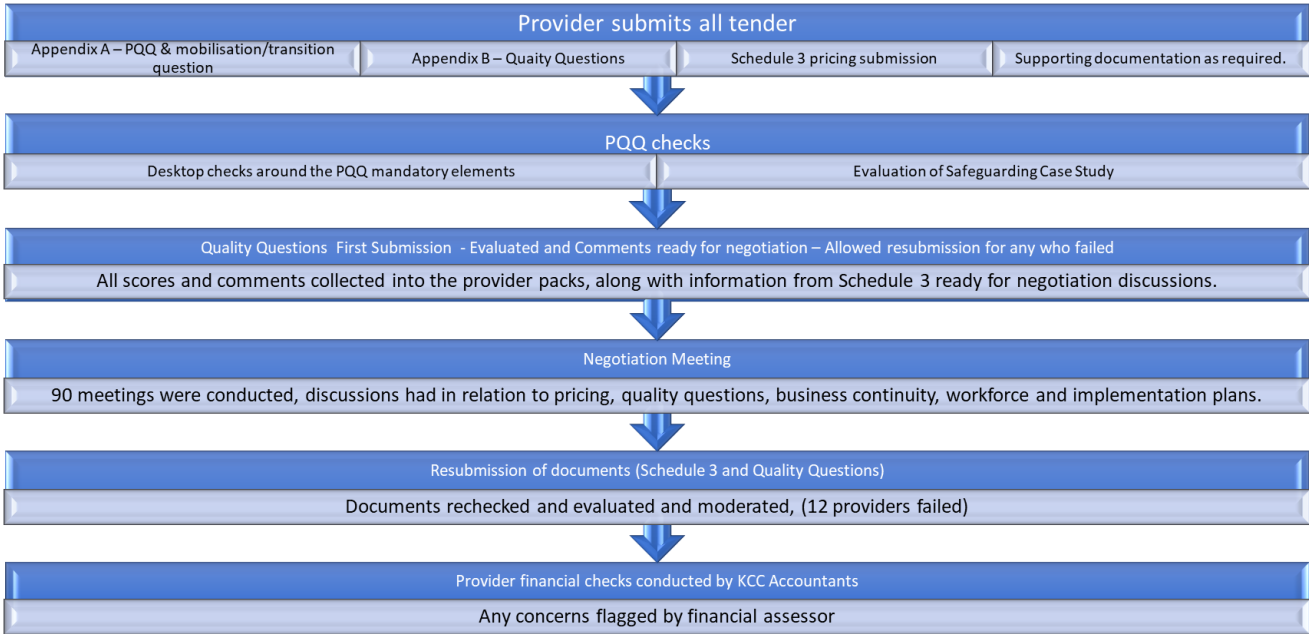
Procurement process

3.8 This procurement process was divided into the following lots:

3.9 Lots 1 and 2 form the basis of the Learning Disability, Physical Disability and Mental Health (LD/PD/MH) Care Residential Home Services.

- **Lot 1 (LD/PD/MH Residential Care Home Services – Specialist & Specialist Plus Needs)** includes those individuals aged 18+ who have been assessed as requiring a residential care service, whose primary assessed need is in relation to a Learning Disability, Physical Disability, or Mental Health, and whose level of need has been assessed as Specialist and Specialist Plus Needs. Full details for this requirement can be found in the service specification. The council proposes to establish a Dynamic Purchasing System for these services.
- **Lot 2 (LD/PD/MH Residential Care Home Services – Mid to High Level Needs)** includes those individuals aged 18+ who have been assessed as requiring a residential service, whose primary assessed need is in relation to a Learning Disability, Physical Disability, or Mental Health, and have been assessed as having mid to high level needs. Full details for this requirement can be found in the service specification. The council proposes to enter into a Framework Agreement with selected providers for these services.

3.10 The illustration below shows the Procurement process taken



3.11 Table 1 shows the Procurement Timetable

Table:1 Procurement Timetable

Activity	Date
Publish advert and Invitation to Tender (ITT)	1 October 2019
Deadline to submit requests for clarification via the Kent Business Portal	24 October 2019
Closing date and time for Tender Submissions	Noon on Friday 1 November 2019
Tender Evaluation Period	1 November – 18 November 2019
Negotiation Period	18 November – 6 January 2020
Tender resubmission	By 5 January 2020
Moderation	14 – 18 January 2020
Award Clarification Meetings	11 May 2020
Contract Award* and Standstill	5-14 June 2020.
Contract Commencement Date	15 June 2020

3.12 Following closure of this opportunity:

- 108 providers submitted a response; many providers submitted for multiple lots.
- 18 providers ‘opted out’ from the process ahead of the deadline.
- 154 providers who had initially expressed an interest in the tender process at the Expression of Interest stage prior to the ITT did not go on to submit a response.
- Of the 108 providers who submitted a response, 93 of these passed the initial selection criteria evaluation.

- 63 providers passed the Quality Question criteria in the first instance. Providers who did not meet these requirements were permitted to resubmit this element prior to negotiations.

* Note: the responses above are responses for all lots advertised in the opportunity including, Phase 2 of the Care and Support in the Home Contract - Supported Living.

Full details of providers who took part in the Procurement process can be found in Appendix A. This is a Restricted Appendix that is exempt from publication by Schedule 12A to the Local Government Act 1972, as it contains commercially confidential information.

4. Financial Implications

4.1 In-depth detailed work carried out by the council’s Strategic Commissioning and Analytics and Finance Teams at the pre-procurement stage identified a potential cost of £3.2m. The work also considered the council’s approach to Sleep-in Payments in light of the market’s varied interpretation of the original HM Revenue and Customs (HMRC) Guidance and the pending further Court Appeal granted by the Supreme Court. With the continued uncertainty around the Sleep-in Payments and the potential pay liabilities it was proposed that the council changes Sleep-in Payments from the current customary fixed payment to an hourly amount, set at the National Living Wage (NLW) rate. The estimated financial impact to implement this change to sleep-in payments is £1.2m per annum.

4.2 Table 2 shows the estimated combined cost to procure new contracts.

Table 2: Estimated cost pressure pre- procurement stage

Summary	Maximum Potential Increase
Financial analysis	£3.2m
Change to Sleep-in	£1.2m
Total	£4.4m

4.3 Following the procurement exercise, further work was undertaken and identified the estimated full year cost of the new contracts as being £5.7m. See Table 3 for further detail.

Table:3 . Estimated cost pressure post procurement, start date June 2020.

ALL	Full Year £000's	2020-21 Part Year £000's
Financial Increase from annual price increase April 2020	£4m	£4m
Additional Increase resulting from tendered contracts -Full Year	£514k	
From 15/06/2020		£415k
Increased cost following the tender process	£4.6m	£4.5m
Additional Contingency identified by Finance - Full year	£1.1m	
From 15/06/2020		£884k
Total Potential Cost Requirement	£5.7m	£5.4m

4.4 A detailed breakdown of all tendered, non-tendered and out of county placements and costs can be found in Appendix A.

4.5 The term of the contract will run for a minimum of 4 years with the option to extend for a further two years plus two years. Based on eight years duration the estimated lifetime value of the contract is £45.6m.

5. Legal Implications

5.1 The Strategic Commissioning Division enlisted the support of Legal Services through the development of the contract specification and Terms and Conditions, although the standard Care Services Terms and Conditions will be used. There will need to be resource allocated at the end point contract award for contracts to be signed and sealed. The new contracts will be taken forward in a way which ensures the Council's statutory responsibilities are discharged accordingly.

6. Equality Implications

6.1 The Equality Impact Assessment has been updated as part of the project plan when changes have occurred and have been fully considered. All the significant changes will be approached in a manner that respect and adhere to the Council's equalities responsibilities. All appropriate advice will be sought from the Strategy, Policy, Relationships and Corporate Assurance Division.

7. Data Protection Impact Assessment Implications

7.1 A Data Protection Impact Assessment has also been developed and will be updated as the work to deliver the new contracts is progressed.

8. Conclusions

- 8.1 The council has statutory duties to ensure that there is sufficient and fit for purpose provision of care services to Kent residents, who are eligible under the Care Act 2014 and that a sustainable market is maintained. Care home services contribute to the offer of services to meet assessed need.
- 8.2 These contracts were last let in 2002 and 2004. Most placements are linked to historic Terms and Conditions, which do not reflect the Council's current practice. The need to regularise this is high and the current pricing of placements requires stabilising.
- 8.3 Comprehensive work has been carried out in developing the new contract to minimise the disruption to individuals affected by these contracts and to minimise the risk to the Council.
- 8.4 A thorough procurement process was undertaken in accordance to the Public Contract regulation 2015 (PCR15).
- 8.5 Continue the work that is underway between the Adult Social Care and Health Directorate and the Strategic Commissioning Division to deliver a plan to review the current internal procedures and processes to support the new contract.

9. Recommendation

- 9.1 Recommendation: The Cabinet Member for Adult Social Care and Public Health is asked to:
- a) **AWARD** contracts to provide residential care for people with a learning disability, people with a physical disability and people with mental health needs to the successful bidders as identified following a procurement process and detailed in exempt appendix A; and
 - b) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health to take relevant actions, including but not limited to finalising the terms of and entering into required contracts or other legal agreements, as necessary to implement the decision.

10. Background Documents

Residential Care for People with a Learning Disability, People with a Physical Disability and People with Mental Health Needs

<https://democracy.kent.gov.uk/documents/s84961/Item%208%20-%20Residential%20Care%20for%20People%20with%20LD%20PD%20and%20MH%20Needs.pdf>

Update on Care Homes contracts for people with a learning disability, people with a physical disability and people with mental health needs

<https://democracy.kent.gov.uk/documents/s92295/Item%209%20-%20Update%20on%20Care%20Home%20Contract%20for%20LDPDMH.pdf>

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