

CABINET

12 FEBRUARY 2013

GATEWAY 3 CONTRACT AWARD: OUTSOURCING OF LINKED SERVICE CENTRES - NELSON COURT & ROBERT BEAN LODGE

Portfolio Holder: Councillor David Brake, Portfolio Holder for Adult Services

Report from: David Quirke-Thornton, Assistant Director for Adult Social Care

Authors: Jane Love, Head of Partnership Commissioning, Adult Services
Genette Laws, Head of Category Management, Strategy and Operational Support

Summary

Medway currently has three Linked Service Centres (LSCs) that provide residential care and support for older people with dementia, adults with rehabilitation needs, respite for adults and day care for older people. A contract has been awarded for Platters Farm Lodge and this report relates to a recommendation for contract award for Robert Bean Lodge and Nelson Court.

This report seeks permission from Cabinet to the award of a contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix. This is based upon the recent negotiated procedure exercise in relation to Robert Bean Lodge and Nelson Court.

This Procurement Gateway 3 Report has been approved for submission to the Cabinet.

1. Budget and Policy Framework

1.1 Contract Award Decision

The decision to award a contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix for this procurement requirement is within the Council's policy and budget framework and ties in with all the

identified Core Values, Strategic Priorities, Strategic Council Obligations and Departmental/Directorate service plans.

This report is being presented as an urgent item because of the need to prevent any further delay so that this procurement exercise can be concluded providing certainty for both the residents and staff of both of the services.

In line with rule 16.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. The Chairman of the Health & Adult Social Care Overview and Scrutiny Committee has agreed that the decisions proposed are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.

The values of Nelson Court and Robert Bean Lodge are each likely to exceed £1m, therefore, the disposals of these will be a matter for Full Council (see paragraphs 9.2 and 9.3).

1.2 Statutory Requirements

The Council has a range of statutory duties and powers to provide services to vulnerable adults such as older people, people with learning disabilities, physically disabled people, people with mental health needs, drug and alcohol misusers and carers. Duties and powers are contained within the National Assistance Act 1948, the Chronically Sick and Disabled Persons Act 1970, the NHS and Community Care Act 1990, the Mental Health Act 1983 together with other statutes and regulations. These services include residential care and day care.

Care Homes are subject to Section 23(1) of the Health and Social Care Act 2008, which requires the Care Quality Commission (CQC) to produce guidance for providers of health and adult social care, to help them comply with the regulations within the Act that govern their activities.

The guidance is used to decide whether to register individual providers, and also when monitoring their services afterwards to check that they are continuing to comply with the regulations. CQC also refer to this guidance when using their powers of enforcement.

2. Background

2.1 Permission Required From the Cabinet

2.1.1 This Procurement Gateway 3 Report seeks permission from the Cabinet to award a contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix.

2.1.2 This is based upon the recent negotiated procedure exercise to outsource Robert Bean Lodge and Nelson Court.

2.2 Contract Details

2.2.1 Procurement type

The proposed award of the contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix relates to a Services contract.

2.2.2 Contract duration

The contract is for two services: residential care for older people with dementia and day care services.

The contract duration for this procurement requirement in relation to residential care for older people with dementia is 25 years with a 5-yearly break clause and there are no provisions within the contract to extend.

The contract duration for this procurement requirement in relation to day care is 3 years with an option to extend for a further 2 years.

The contract for residential care is proposed to commence on 1 April 2013 and conclude on 31 March 2038. The contract for day care is proposed to commence on 1 April 2013 and conclude on 31 March 2016.

2.2.3 Contract value

The total value contract associated with this contract over the 25 year period £33,696,000.

2.3 Procurement Tendering Process

In line with Medway Council's Contract Procedure Rules this procurement requirement was subjected to a formal tender process in line with the EU Procurement Restricted process. This was due to the associated total contract value of this contract being above the EU Procurement Threshold for Services of £173,934 and was approved by the Monitoring Officer in consultation with the Cabinet.

An OJEU notice was placed within the Official Journal of the European Union (OJEU) on 17 September 2012 and an advert was placed on Medway Council's website in conjunction with the then Strategic Procurement Team on 17 September 2012. The tendering opportunity was for three lots relating to each of the three Linked Service Centres. This meant that tenderers could bid for one or more of the lots.

The decision as to how it was determined that all companies invited to tender were of a comparable stature was based upon a prequalification questionnaire being assessed for each company that expressed an interest in the tendering opportunity. The assessment included financial standing, health and safety, equalities, sustainability and service delivery.

The evaluation criteria set within the Invitation to Tender document was the Most Economically Advantageous Tender (MEAT) based upon a

composite mixture of quality and price, 70% for quality and 30% price equating to 100% in total.

After a compliance check against the instructions set out in the Invitation to Tender document, the bids were found to be compliant tenders and evaluated. The results of this evaluation process are set out in the Exempt Appendix.

3. Options

In arriving at the preferred option as identified within Section 4.1 'Preferred Option', the following options have been considered:

3.1 Options Resultant From Procurement Tender Process

This procurement tendering process has resulted in the following procurement contract award options:

3.1.1 Do not award any contract and cancel procurement process

The option of not awarding any contract and cancelling the procurement process has been considered but there is no justification for not awarding this contract as it provides best value and has been delivered in accordance with the original advertisements and associated procurement documentation and therefore this option has been discounted.

3.1.2 Award contract to the contractor as highlighted within the Exempt Appendix.

The option of awarding the contract to the supplier as highlighted within the Exempt Appendix has been considered and is recommended because although it will not fully achieve the anticipated efficiency in year one, the contract will exceed the anticipated efficiency in year 2 by a greater amount, and each year thereafter, which results in a significant overall gain on the efficiency being realised.

4. Advice and analysis

4.1 Preferred option

Further to a review of procurement contract award options as highlighted within Section 3 'Options' above, the following preferred procurement award option is recommended to the Cabinet including justification for this recommendation.

The recommended preferred option is the most viable option for a contract award because the proposed contract award supports the budgetary requirements as set out in the Medium Term Financial Plan and the quality requirements as agreed through the development of the specification and evaluation criteria, prior to the release of the documentation.

4.1.1 Procurement Project Outputs / Outcomes

The following procurement outcomes/outputs identified as important to the delivery of this procurement requirement have been appraised in the table below to demonstrate how the recommended procurement contract award will deliver the agreed outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended procurement contract award option deliver outputs/outcomes
1. Quality and service improvements	As set out within the Key Performance Indicators (KPIs) for contract monitoring	Partnership Commissioning Team, closely working with Performance and Intelligence colleagues	At least quarterly intervals as set out in the contract	The evaluation process has ensured that the recommended supplier demonstrates that they can deliver this outcome/output
2. Service user satisfaction	As set out within the Key Performance Indicators (KPIs) for contract monitoring	Partnership Commissioning Team, closely working with Performance and Intelligence colleagues	At least quarterly intervals as set out in the contract	The evaluation process has ensured that the recommended supplier demonstrates that they can deliver this outcome/output
3. Achieving Best Value	Review of the price submissions in accordance with the evaluation criteria set out in the ITT	Finance	As part of the tender evaluation process	The prices submitted will deliver savings for the Council.
4. Retaining and recruiting excellent, high quality staff	As set out within the Key Performance Indicators (KPIs) for contract monitoring	Partnership Commissioning Team, closely working with Performance and Intelligence colleagues	At least quarterly intervals as set out in the contract	The evaluation process has ensured that the recommended supplier demonstrates that they can deliver this outcome/output

4.1.2 Procurement Project Management

This procurement project will be taken through the remainder of the Gateway Procurement Process through the utilisation of the following project resources and skills provided by the Partnership Commissioning Team and Category Management Team.

4.1.3 Contract Management

The contract management of this recommended contract award will be resourced as detailed in the following contract management strategy:

Performance reports will be submitted by the provider at least quarterly and will be reviewed by Officers within the Partnership Commissioning Team to ensure that the required outputs and outcomes as set out within the Key Performance Indicators (KPIs) are delivered.

Quarterly meetings will be held to discuss performance and future planning between the provider and the Partnership Commissioning Team. Annually, the Category Management Team will join these meetings to fully review the contract.

4.1.4 TUPE Issues

Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it was identified that as this is a Services related procurement contract award, TUPE does apply to this procurement process.

The recommended contract award will result in up to 122 employees being affected by TUPE as a result of the services being outsourced to an independent sector provider as part of this tender process.

4.1.5 Other Issues

The DIA from the consultation was reviewed as part of the procurement process. The outcome of this review can be found at Appendix 1.

5. Risk Management

5.1 Risk Categorisation

The following risk categories have been identified as having a linkage to this recommended procurement contract award:

Procurement process	<input type="checkbox"/>	Equalities	<input type="checkbox"/>
Contractual delivery	<input type="checkbox"/>	Sustainability / Environmental	<input type="checkbox"/>
Service delivery	<input checked="" type="checkbox"/>	Legal	<input type="checkbox"/>
Reputation / political	<input checked="" type="checkbox"/>	Financial	<input checked="" type="checkbox"/>

Health & Safety



Other/ICT*



Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
Service delivery	The current satisfaction with the service levels may not be maintained if the contract monitoring is not sufficiently robust	C	II	Regular reporting of key performance indicators, regular contract monitoring meetings and unannounced compliance visits
Financial	The council must maintain best value in terms of managing the annual price review	C	II	The annual price review clause reflects the fact that the Council will give due regard to the costs of care and shall be limited to the percentage increase permitted by the Council to all other service providers in the same category of care as the Service Provider for the relevant Financial Year.

Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
Reputation / political	As part of approving the decision to outsource the LSCs, the Cabinet agreed that service user concerns should be taken into account as part of the tender evaluation	C	II	Service user feedback informed the weightings of the quality evaluation.
Property	Sale of both properties may mean that buildings are not used for the purpose of providing care to vulnerable older people	D	II	Both properties will have restrictive covenants and if the freeholds are sold buy back provisions imposed upon them to prevent the provider from changing the use of the building without prior agreement of the Council

6. Consultation

6.1 Internal (Medway) Stakeholder Consultation

6.1.1 Before commencement of the procurement process in order to inform the specification, the internal stakeholder consultation included, questionnaires from and meetings with affected staff.

6.1.2 The Service Manager for Older People's services was part of the evaluation panel.

6.1.3 As part of this procurement project, the Partnership Commissioning Team will consider feedback from the care management teams for Older People Services, and other care management teams, that will refer into the service to inform the contract management meetings that will take place with the provider.

6.2 External Stakeholder Consultation

6.2.1 As part of this procurement project, the following external stakeholder consultation was undertaken before the commencement of the procurement project in order to direct the specification:

Meetings with service users and their families/carers were undertaken and the opportunity to provide feedback through questionnaires. In addition, Officers sought feedback from sector representatives such as Age UK, WRVS and Medway Older People's Partnership.

6.2.2 As part of this procurement project external stakeholder feedback was used to inform the specification and evaluation process. This included contributions from service users via questionnaires and meetings. The evaluation panel included an Associate of the Institute of Public Care (Oxford Brookes University) who led the service user consultation for specification development.

6.2.3 As part of this procurement project, service user satisfaction surveys will be required as part of the key performance indicator reporting to aid the contract management process.

7 Procurement Board

The Procurement Board considered this report on 1 February 2013 and supported the recommendations set out in section 11, below.

8 Financial implications

8.1 The total saving realised by awarding the contract is £430,000 in year 1, £1,203,760 in year 2 and £1,332,720 from year 3 and each subsequent year following for the remainder of the 25-year contract.

9 Legal Implications

This recommended procurement contract award as set out in the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 11, has the following legal implications which the Cabinet must consider

9.1 The preferred bidder is seeking to purchase both Linked Service Centres. Cabinet will protect the future of the services by placing a suitable covenant on each site and the preferred bidder has agreed to this as they are committed to providing residential care from the sites going forward. Although freehold the sites would achieve a higher capital

receipt, this is not an undervaluation for the council as the savings realised by the contract will exceed the freehold value of the sites over the 25 year contract.

- 9.2 The Council is under a duty under S123 of The Local Government Act 1972 to obtain best consideration, when it disposes of properties or lets them for over 7 years. In assessing whether a proposed letting constitutes best consideration, the Council is entitled to take into account any benefits, which result from sales or lettings, which have a financial value to the Council. In this case, the unrestricted freehold value (as accessed by specialist valuers) for Nelson Court is £1.15M. However, due to the nature of the care contract, the Council will be selling the properties for less than this. As set out in paragraph 8.1 above, the annual saving which will be realised as a result of the letting of the care contract and grant of the lease will be £430,000 in year one, £1,203,760 in year two and £1,332,720 from year 3 onwards. These savings exceed the unrestricted value of the properties and as a result, the sales are not at an undervalue. As the value for Nelson Court is over £1 million and the value of Robert Bean Lodge is likely to also be over £1million, these disposals will need to be agreed by Full Council.
- 9.3 The valuation for Robert Bean Lodge is currently underway and the outcome will not be known until at least 8 February 2013. An addendum report will follow with regard to Robert Bean Lodge, on or shortly after 11 February 2013.

10 Procurement Implications

- 10.1 This recommended contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 11, has the following procurement implications which the Cabinet must consider:
- 10.2 Residential care is a part B service and therefore does not need to strictly adhere to the EU regulations, but must be undertaken in the spirit of fairness and transparency set out in the regulations.
- 10.3 In accordance with the EU Procurement regulations and the Council's Contract Rules, This contract was tendered on the basis of Most Economically Advantageous Tender (MEAT). Category Management supported the procurement process of tendering in terms of placing the OJEU notice and advert which require, a formal tender process via OJEU and advertisement on the council's website, preparing the tender documentation, managing the clarification questions and moderating the evaluations at both the pre-qualification and invitation to tender stages.
- 10.4 Category Management is satisfied that the procurement route taken will deliver best value.
- 10.5 Subject to the expiration of the Alcatel period the client department must liaise with Legal and complete all necessary contractual requirements in accordance with Contract Procedure Rules.

10.6 It is the Partnership Commissioning Team's responsibility to ensure that the contract is managed in terms of the terms of conditions developed for this service. Category Management will support the Partnership Commissioning Team in relation to annual reviews of the contract.

11 Recommendations

11.1 Cabinet is requested to approve the procurement contract award to the contractor as outlined within Section 2.5 'Procurement Contract Award Recommendation' of the Exempt Appendix.

11.2 Cabinet is asked to delegate authority to the Assistant Director, Adult Social Care, in consultation with the Portfolio Holders for Finance and Adult Services, Assistant Director of Legal and Corporate Services and the Chief Finance Officer, to finalise the arrangements to ensure effective mobilisation of the service.

11.3 Cabinet is asked to recommend to Full Council that it delegates authority to the Assistant Director, Adult Social Care, in consultation with the Portfolio Holders for Finance and Adult Services, Assistant Director of Legal and Corporate Services and the Chief Finance Officer, to dispose of the Nelson Court and Robert Bean Lodge properties.

12 Suggested reasons for decision(s)

12.1 The recommendations contained within Section 11 'Recommendations' above are provided on the basis of:

12.2 The outsourcing of these services will provide best value and maintain the quality of the service.

12.3 Delegated authority will enable mobilisation of the new provider to gather momentum so that service users have certainty about the future of the service and the authority can realise efficiencies as soon as possible.

Lead officer contact

Name	Genette Laws/Jane Love	Title	Head of Category Management / Head of Partnership Commissioning, Adults
Department	Category management / Partnership Commissioning	Directorate	Business Support / Children and Adults
Extension	1193 /3099	Email	genette.laws@medway.gov.uk / jane.love@medway.gov.uk

Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Medway Council's Vision for Commissioning and provision of Adult Social Care services in Medway	http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=9511&nobdr=2	14 February 2012

Full Diversity Impact Assessment – Nelson Court and Robert Bean Lodge

Directorate Children and Adults – Learning and Caring	Name of Service Change/Policy/Function Outsourcing of Nelson Court and Robert Bean Lodge			
Officer responsible for assessment Genette Laws, Social Care Commissioning and Voluntary Sector Manager		Assessment date 10 February 2012	New or existing? New	
Identify potential issues and factors				
1. In regard to which groups are there concerns that there <u>could</u> be a differential impact?	Race	Religious belief	Trans-gendered or transsexual	
	Disability	Age	Other (specify)	
	Gender	Sexual orientation	Expressed anxiety by carers about the potential implications for the future of the services at Nelson Court	
2. What differential impact do you think there <u>could</u> be on this/these group(s)?	The outsourcing of the service will cause anxiety to those that use the service due to the uncertainty around who may be the new provider. There is a clearly expressed lack of confidence about the independent sector's ability to meet some of the challenging needs of those that currently use the service and a concern about the council's ability to maintain the current quality of care through a contracting arrangement.			
Map existing data				
3. What existing evidence do you have for this – e.g. take-up, complaints?				
Information/data	When collected	Source	Strengths of data (e.g. up-to-date)	Gaps
People were concerned about the prospect of the service being outsourced together with the property being sold as well	12 December 2011 to 9 February 2012	Questionnaires, correspondence and information from consultation meetings	Up to date and in a variety of formats to triangulate the views shared	None due to a full consultation process taking place

People were concerned about that the quality of the service would deteriorate under private ownership. In particular that the delivery of service would become task orientated and not person-centred	12 December 2011 to 9 February 2012	Questionnaires, correspondence and information from consultation meetings	Up to date and in a variety of formats to triangulate the views shared	None due to a full consultation process taking place
People were concerned about the affordability of the service in relation to third party top ups for current and future residents of the service	12 December 2011 to 9 February 2012	Questionnaires, correspondence and information from consultation meetings	Up to date and in a variety of formats to triangulate the views shared	None due to a full consultation process taking place
People were concerned about the continuity of care from the staff and in particular the management of the home because they felt they were the key to the quality of the care at the service	12 December 2011 to 9 February 2012	Questionnaires, correspondence and information from consultation meetings	Up to date and in a variety of formats to triangulate the views shared	None due to a full consultation process taking place
People were concerned that people would not be able to access or afford the facilities if they transferred to the independent sector	12 December 2011 to 9 February 2012	Questionnaires, correspondence and information from consultation meetings	Up to date and in a variety of formats to triangulate the views shared	None due to a full consultation process taking place

Concerns were raised about access to the minibus service in terms of day care	12 December 2011 to 9 February 2012	Questionnaires, correspondence and information from consultation meetings	Up to date and in a variety of formats to triangulate the views shared	None due to a full consultation process taking place
Concerns were raised about the quality of the food falling or the price becoming more expensive in the day care facilities	12 December 2011 to 9 February 2012	Questionnaires, correspondence and information from consultation meetings	Up to date and in a variety of formats to triangulate the views shared	None due to a full consultation process taking place
Equalities monitoring data for people using the service	February 2012	Care Director – the council's electronic social care record system	Collated in February 2012	There is insufficient information in relation to sexual orientation or religious belief to either support or refute concerns about adverse impact.
4. What are implications of the gaps in evidence (e.g. people with visual impairments do not know about council services)?	There are no implications in relation to the gaps identified because the personalised approach to assessment means that any needs in relation to sexual orientation or religious belief would be identified, respected and supported.			
5. What is the key question you want answered, and by whom.	What do people think about the proposal to outsource Nelson Court and Robert Bean Lodge and, in particular, what, if any, are the concerns?			

Formal Consultation		
6. Are there any experts/ relevant groups who you could approach to ask their views on the issues?	YES	Please list: Officers have met with Medway Older People's Partnership
	NO	
7. Have you discussed your consultation request with Research and Review?	YES	
	NO	

8. Describe in detail the views of the relevant groups/experts on the issues.

1. People valued the support that they had received, or are receiving, from the services.
2. People were concerned that there was not a full understanding of the demand for the day care service at this unit. As one of two providers of dementia day care services, their service is currently oversubscribed.
3. People said that Adult Social Care, and particular older people, should not bear the same level of savings as other council departments
4. Some people were concerned that the proposal was about closing the service and this view persisted throughout the consultation period
5. People were concerned about that the quality of the service would deteriorate under private ownership. In particular that the delivery of service would become task orientated and not person-centred
6. Concerns that the changes could result in additional burdens for carers of people that use the day services and anxiety for relatives of those that are resident at the service
7. People were concerned about the affordability of the service in relation to third party top ups for current and future residents of the service
8. People were concerned about the continuity of care from the staff and in particular the management of the home because they felt they were the key to the quality of the care at the service
9. People were concerned that people would not be able to access or afford the facilities if they transferred to the independent sector

9. What options, alternatives or reasonable readjustment(s) have been considered?

1. Service users and their families to agree the outcomes and outputs that are necessary to maintain the excellent standard of care available within the service.
2. In developing a specification for the contracted service and the incoming provider, the council would also involve representatives from the service users, carers and families in the evaluation of the service.
3. In awarding a contract the council will frequently visit the service during the first six months and review the frequency of visits as part of those meetings.
4. Officers developing a Third Party Top Up & Legacy Placements policy would address the issue of affordability for existing residents.
5. Outsource the care service only.
6. The council specifies a number of beds or wing for people with challenging behaviours to be supported either during crisis and for long term placements.
7. The council works with all independent sector providers to ensure that they respect and support the religious beliefs of current and prospective residents so that all care homes are inclusive.

Conclusion and recommendations

10. In your own words, briefly state what changes (from the customers' point of view) are reasonable adjustments to make access fair.

In order to ensure that the outsourcing of Nelson Court and Robert Bean Lodge safeguards the quality and affordability of the service, the reasonable adjustments, from the customer's perspective) would be to:

1. Service users and their families to agree the outcomes and outputs that are necessary to maintain the excellent standard of care available within the service.
2. In developing a specification for the contracted service and the incoming provider, the council would also involve representatives from the service users, carers and families in the evaluation of the service.
3. In awarding a contract the council will frequently visit the service during the first six months and review the frequency of visits as part of those meetings.
4. Officers develop a Third Party Top Up & Legacy Placements policy would address the issue of affordability for existing residents.
5. Outsource the care service only – not the property.
6. The council specifies a number of beds or wing for people with challenging behaviours to be supported either during crisis and for long term placements.
7. The council works with all independent sector providers to ensure that they respect and support the religious beliefs of current and prospective residents so that all care homes are inclusive.

Target setting

Outcome	Actions (with completion dates)	Measure of progress
<p>Service user involvement in the development of the specification and the tender evaluation</p> <p>Confidence is established and maintained in the new service provider</p>	<p>Meetings with service users and their families to develop the specifications (By 26 March 2012)</p> <p>Identify representatives to contribute to the evaluation of the tenders (By 26 March 2012)</p> <p>Service users and their families participate in the tender evaluation (April to September 2012)</p>	<p>Completed</p> <p>This was considered, however it proved difficult to find a fair and objective way to make such a selection whilst retaining the integrity of the evaluation process, and so service user feedback and comments from representative bodies informed the evaluation.</p>

Increased confidence that care homes provide support for people to practice their religious beliefs	Incorporate into the Medway College of Social Care programme regarding dignity and respect and make a key theme for contract monitoring (By September 2012)	Completed
Signed (officer responsible for achieving above DIA actions) David Quirke-Thornton, Assistant Director for Adult Social Care		Date
Signed (completing officer/service manager) Genette Laws, Social Care Commissioning Manager		Date
Signed (service manager/Assistant Director) David Quirke-Thornton, Assistant Director for Adult Social Care		Date