

CABINET

16 DECEMBER 2014

GATEWAY 1 PROCUREMENT COMMENCEMENT: SHORT BREAKS FOR DISABLED CHILDREN AND THEIR CARERS

Portfolio Holder: Councillor Mike O'Brien, Children's Services (Lead Member)

Report from: Barbara Peacock, Director of Children and Adults Services

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SUMMARY

This report seeks permission to commence the procurement of short breaks contracts for disabled children. This Gateway 1 report has been approved for submission to the Cabinet after review and discussion at the Children & Adults Directorate Management Team Meeting on 25 November and Procurement Board on 3 December 2014.

The Children & Adults Directorate Management Team has recommended that this project be approved as a Category B, high risk procurement. Whilst the individual services are regarded as medium risk, given the high overall aggregate value of the services it has been recommended to review the procurements within the Gateway review process.

There are potential political and/or service sensitivities due to the policy changes being proposed in the delivery of short breaks. These were the subject of Children and Young People Overview and Scrutiny and Cabinet reports in September 2014.

1. BACKGROUND INFORMATION

1.1 Service Background Information

1.1.1 Medway Council has a legal obligation to provide or commission short breaks for disabled children and their carers. Short breaks are enjoyable activities for children and young people with disabilities, which also provide a break for the parents and other adults with caring responsibilities.

- 1.1.2 The Council procures 23 short break services from a range of providers (currently 20) to deliver the short breaks programme in Medway. The list of projects is in the exempt appendix.
- 1.1.3 These services are currently funded by quarterly payments. There are formal contracts in place for thirteen of these services which expire on 31 March 2015. No formal contracts are in place for the remaining nine services which received approval for an exemption to contract rules for up to one year until 31 March 2015. A formal tendering process is required to secure services in the future whilst increasing compliance and best value.
- 1.1.4 A review of short breaks services has recently concluded and a Short Break Policy for Disabled Children and Young People in Medway 2014-2019 has been developed. Recommendations to approve the policy and the delegation to officers to commence the Short Break implementation plan were agreed by Cabinet on 30 September 2014.
- 1.1.5 The new policy responds to feedback from families and will ensure that short break services will be more equitable, accessible, and tailored to meet the unique needs of families. Services will be both targeted to support families of children and young people with complex and specialist needs and will facilitate inclusion and participation in services at a universal level. Families reaching the assessment criteria for a short break will be offered a personal budget from which to purchase short break services. It is possible that not all families will wish to take up this offer and instead may prefer to access commissioned services. It will therefore be necessary to procure a range of core short break activities to be in place for those families with the added flexibility in the contracts to be able to reduce or increase demand for those services in a developing personal budget market. Impact assessments are underway to try to understand the extent of the effect that decommissioning or reducing services will have on families.
- 1.1.6 Work to develop the new eligibility and assessment process is underway. Assessments will need to take account of health needs so that the level of need for each family is absolutely clear. It is now unlikely that this work will be completed before April 2015. With this in mind, it is proposed to seek a further exemption to contract rules for a number of current short break services for six months. This will ensure that services continue for families whilst new processes together with the commissioning of new services are taking place.
- 1.1.7 A preferred provider framework is recommended to be developed in order to procure the range of flexible services required over the next few years. Providers will then be called upon to deliver or reduce services as the need materialises.

1.2 Urgency of Report

- 1.2.1 A decision is required to enable new services to be commissioned with a sensible mobilisation period provided in time for delivery in September 2015.

1.3 Funding/Engagement From External Sources

- 1.3.1 Since 2012 funding for these short break services has been through Children's Services revenue streams categorised as Aiming High budget. Please see the exempt appendix for a detailed breakdown of the financial implications for the provision of these services .

1.4 Parent Company Guarantee/Performance Bond Required

- 1.4.1 For some contracts this may be required.

2. PROCUREMENT DEPENDENCIES & OBLIGATIONS

2.1 Project Dependency

- 2.1.1 There are no project dependencies for this project.

2.2 Statutory/Legal Obligations

- 2.2.1 Medway Council has a legal obligation to provide or commission short breaks for disabled children under the following legislation:

- Breaks for Carers of Disabled Children Regulations 2011
- The Children's Act 1989
- The Children and Families Act 2014 requires authorities to publish the full range of service provision on offer and the cost of each service which includes short breaks

- 2.2.2 Financial flexibilities are afforded by Section 75 of the National Health Service Act 2006

3. BUSINESS CASE

3.1 Procurement Project Outputs / Outcomes

As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
1. Families with severe, complex or specialist need have improved equity and accessibility to a range of flexible targeted short break services	Take up of services; data capture by services and new Local Offer performance management tool.	Partnership Commissioning Team	Six monthly intervals
2. Short breaks are accessed through the phased implementation of both personal budgets and commissioned services	The range of commissioned short break services; take up of personalised budgets; support provided to families and providers.	Partnership Commissioning Team	Six monthly intervals

3. Families with a severe, complex or specialist need are able to access universal services and maximise inclusion and participation	Take up of universal services; Data capture by services; Local Offer performance management tool	Partnership Commissioning Team	Six monthly intervals
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3.2 Procurement Project Management

- 3.2.1 Partnership Commissioning (Ann Judges, Interim Partnership Commissioning Manager for Children & Adults) and Category Management (James Welch, Category Lead People) will work together on this procurement.

3.3 Post Procurement Contract Management

- 3.3.1 The contract will be managed by a new Partnership Commissioning Programme Lead for SEN & D.

4. MARKET CONDITIONS & PROCUREMENT APPROACH

4.1 Market Conditions

- 4.1.1 There will be a number of providers in the market for each requirement.

4.2 Procurement Process Proposed

- 4.2.1 A market engagement event is proposed to gauge market opinion and seek views on improving the services and proposals.

- 4.2.2 Each provider is currently paid a set amount in quarterly in advance payments. Going forward, outcomes based specifications will be developed. Commissioners will also be looking at developing payment by performance.

- 4.2.3 There are a number of options for the future delivery of the service:

- (a) Commission each service separately

This option is not recommended due to the need to ensure flexibility over the coming year as personal budgets come on stream and take up increases.

- (b) Commission one provider to deliver a range of short break services

This option is not recommended as is likely to limit the specialisms and flexibilities needed to meet the needs of families.

- (c) Commission through a provider framework / Dynamic Purchasing System (DPS) in specific lots.

This option is recommended and affords the greatest flexibility during the transition from commissioned services to those accessed directly by personalised budgets from families. Providers will then be called upon to deliver or reduce services as the need materialises.

- 4.2.4 An open OJEU tender procedure will be used to establish the DPS as recommended in option (c).

- 4.2.5 The DPS is an electronic system which allows the council to maintain a list of providers from which it can achieve better value for money for the services over the course of the contract. Providers that are selected to participate in the DPS will have the opportunity to bid for each requirement as it becomes available – i.e. a mini-competition. The individual requirements will be published within the DPS.
- 4.2.6 However, unlike a framework agreement where the choice of providers is fixed from the time of award through to the agreement's expiry, under the DPS new providers can be added during the contract. This keeps the market place competitive as prices will remain current and new providers are able to participate. Additionally, it should be quick and simple for providers as the DPS is an electronic system and providers are not required to provide the same information throughout the DPS' duration.
- 4.2.7 All providers must however meet minimum qualitative criteria in order to be selected for inclusion on the DPS. Similarly, providers who no longer meet the minimum quality standards can be deselected. They can however re-apply to be a participant but need to be re-evaluated to ensure they meet the required standard.

4.3 Evaluation Criteria

- 4.3.1 The evaluation will be based on 60% quality and 40% price.

5. RISK MANAGEMENT

5.1 Risk Categorisation

1. Risk Category: Service Delivery	Likelihood: E	Impact: II
Outline Description: The market may be weak with few providers delivering a limited range of services		
Plans to Mitigate: Commissioning via DPS will enable flexibilities to add or remove providers as needs change		
2. Risk Category: Financial	Likelihood: C	Impact: I
Outline Description: There may be insufficient budget from which to secure the range of services needed		
Plans to Mitigate: Plans to develop more cost effective options for short break services will ensure wider reach within limited budgets		
3. Risk Category: Financial	Likelihood: C	Impact: II
Outline Description: Families may choose to access personal budgets resulting in a limited take up of commissioned short breaks		
Plans to Mitigate: Contracts will be written with flexibilities to allow for an increase or reduction in services provided		
4. Risk Category: Financial & Service delivery	Likelihood: D	Impact: II
Outline Description: Families may choose not to access personal budgets putting pressure on commissioned services		
Plans to Mitigate: Families and providers will be informed and supported to manage the new arrangements in a phased way to suit their needs		

6. CONSULTATION

6.1 Internal (Medway) Stakeholder Consultation

6.1.1 A workshop was held with stakeholders to scope and plan service delivery.

6.2 External Stakeholder Consultation

6.2.1 Consultation of parents, carers and young people to plan and develop services has taken place. Engagement through the commissioning process will be key.

7. PROCUREMENT BOARD

7.1 The Procurement Board considered this report on 3 December 2014 and supported the recommendation as set out in paragraph 11 below.

8. SERVICE IMPLICATIONS

8.1 Financial Implications

8.1.1 The procurement requirement and its associated delivery (as per the recommendations at Section 11) will be funded from existing revenue budgets.

8.1.2 Further detail is contained within Section 2.1 Finance Analysis of the Exempt Appendix.

8.2 Legal Implications

8.2.1 The services which are under consideration in this report are Part B services, and so the requirement to comply with the formal publication procedures set out in the Public Contracts Regulations 2006 (“the 2006 Regulations”) does not strictly apply.

8.2.2 However, the 2006 Regulations do require that procurement exercises to which the formal procedures do not apply should still follow the principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality.

8.2.3 Although not mandatory, using the OJEU Open Procedure gives a high degree of confidence that the above requirements are met.

8.2.4 The proposed procedure gives a high degree of confidence that the Council’s primary objectives for procurement are met, as required by Rule 1.2.1 of the Council’s Contract Procedure Rules (“the CPRs”).

8.2.5 The services should also be advertised on the Kent Business Portal in order to comply with the Contract Procedure Rules advertising provisions (rule 3.3.1).

8.3 TUPE Implications

8.3.1 There is the possibility that the Transfer of Undertaking Protection of Employment regulations are likely to apply to this award on the basis of a Service Provision Change in the event that the same or similar services are to be continued by the new contractors. The outgoing and incoming contractors are required to comply with their respective obligations under the TUPE Regulations to minimise the risks of successful legal challenges. The council is neither the transferor nor transferee in this award.

8.4 Procurement Implications

8.4.1 The OJEU Open Procedure would be used to establish the DPS. Individual requirements for short breaks will be subject to mini-competition within the DPS to ensure value for money is achieved.

8.5 ICT Implications

8.5.1 There are no ICT implications associated with these requirements.

9. OTHER CONSIDERATIONS

9.1 Diversity & Equality

9.1.1 The Council's General Conditions of Contract will be incorporated into the contract for this service which provides the required adherence to the provisions of the Equality Act 2010. Officers will ensure that the Council's equalities policy will be followed during the proposed procurement process, including relevant evaluations of provider's own policies and abilities to meet necessary requirements.

9.1.2 A Diversity Impact Assessment has been undertaken to support this proposal.

9.2 Social, Economic & Environmental Considerations

9.2.1 The service will provide short breaks to Medway's disabled children and young people with severe, complex or specialist needs. Local providers will have the opportunity to tender for the activities.

10. OTHER INFORMATION

10.1 Other Information

10.1.1 A short breaks review was undertaken in 2014 to inform this report. The findings were presented to Children and Young People Overview and Scrutiny Committee and Cabinet in September 2014.

11. RECOMMENDATION(S)

11.1 The Cabinet is requested to approve this Gateway 1 High Risk Report for progression to Gateway 2 for the commencement of an open tender procedure for option (c) – a preferred provider framework / DPS, as set out in paragraph 4.2.3 (c) of the report.

12. SUGGESTED REASONS FOR DECISION

12.1 Medway Council has a legal obligation to provide or commission short breaks for disabled children and their carers. Short breaks are enjoyable activities for children and young people with disabilities, which also provide a break for the parents and other adults with caring responsibilities

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BACKGROUND PAPERS

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

Description of Document	Location	Date
N/A		