

CABINET

7 JUNE 2016

GATEWAY 3 CONTRACT AWARD: PROVISION OF DEPRIVATION OF LIBERTY SAFEGUARD (DOLS) ASSESSMENTS

Portfolio Holder: Councillor David Brake, Adult Services

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

Author: Johanna Elwell, Commissioning Officer
James Welch, Category Manager

Summary

This report seeks permission to award a contract to the supplier(s) as highlighted within section 3.2 of the Exempt Appendix for a period of 1 year with an option to extend by 1 year.

The commencement of this procurement was approved by the Monitoring Officer at the Category Management Portfolio Holder's Meeting on 14 December 2015.

This Gateway 3 Report has been approved for submission to the Cabinet after review and discussion at the Children and Adults Directorate Management Team Meeting on 26 April 2016 and Procurement Board on 11 May 2016

1. BACKGROUND INFORMATION

1.1 Budget & Policy Framework

1.1.1 The Mental Capacity Act (2005), as amended to include the Deprivation of Liberty Safeguards (DOLS), was implemented on 1 April 2009. The safeguards provide legal protection for vulnerable people who are, or may become, deprived of their liberty in a hospital or care home. They apply to people who have a mental disorder and who are assessed as lacking capacity to consent to the arrangements made for their residence, care or treatment.

1.1.2 The Deprivation of Liberty Safeguards require hospitals and care homes (Managing Authorities) to apply to the Supervisory Body (in this case, Medway Council) for an authorisation to deprive the relevant

person of their liberty. Before authorisation is issued, the Supervisory Body must ensure that six assessments are completed. A Best Interests Assessor (BIA) completes four assessments which are Age, Mental Capacity, No Refusals and Best Interests. An independent Section 12 mental health approved, DOLS trained doctor works alongside the BIA and undertakes the Mental Health Assessment. The Section 12 doctor will also complete the Eligibility Assessment in the absence of a BIA who is also a qualified Approved Mental Health Practitioner (AMHP).

- 1.1.3 The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008 require that the person undertaking the Mental Health assessment must be:
- a. approved under section 12 of the Mental Health Act 1983 or
 - b. a registered medical practitioner who the Supervisory Body is satisfied has three years post registration experience in the diagnosis or treatment of mental disorder.

- 1.1.4 Due to these specific requirements there are a limited number of doctors in Medway who can complete DOLS assessments.

1.2 Background Information

1.2.1 Service Requirement:

The Supreme Court judgement, *P v Cheshire West and Chester Council and P and Q v Surrey Council* (UKSC 19, 19th March, 2014) now provides the “acid test” for deprivation of liberty. This has resulted in a significant increase in applications for DOLS as hospitals and care homes respond to the clarified legislation. The DOLS service has been redesigned to cope with the increase in applications and requires the provision of a doctor’s assessment service that can also meet this demand.

1.2.2 Contract Duration:

The Law Commission DOLS Consultation Paper’s provisional view is that there are future plans to introduce an Approved Mental Capacity Professional to the DOLS assessment process. This would mean a reduction in the number of assessments completed by doctors. A shorter term contract may be less attractive to the market but this would afford maximum flexibility around future service delivery and responding to imminent changes in legislation.

1.3 Funding/Engagement from External Sources

- 1.3.1 The requirement is funded through revenue budgets.

- 1.3.2 A benchmarking exercise completed August 2015 confirmed that the current price Medway Council pays for a Mental Health Assessment and Eligibility Assessment, where applicable, is in line with other authorities and is therefore recommended as a ceiling price for the proposed contract. This was also the agreed figure for the previous contract during 2015/16.

- 1.3.3 The situation since the Supreme Court Judgment is still evolving where an estimation of likely demand for the service can only be given. It is anticipated that Medway Council could receive in the region of 750 – 1000 DOLS applications per year. The budget is £190,000 for 2016/17.
- 1.3.4 Contract duration is for 1 year with option to extend for an additional year.

2. PROCUREMENT PROCESS

2.1 Procurement Process Undertaken

- 2.1.1 Project approval was agreed by the Monitoring Officer at the Category Management Portfolio Holder's meeting on 14 December 2015 to tender for the renewal of the contract for provision of DOLS assessments. South East Memory Assessment Services (SEMAS) currently provide DOLS assessments. A competitive tendering process has taken place in accordance with the Light Touch Regime defined by the Public Contracts Regulations 2015, which applies to health services.
- 2.1.2 The report was presented to Procurement Board on 11 May 2016, which made recommendations to Cabinet with a view to the new contract commencing 1 July 2016. In light of the fact that this procurement has been identified as a high risk, approval of the recommendations is a matter for Cabinet.

2.2 Evaluation Criteria

- 2.2.1 The evaluation criteria set out within the Invitation to Tender document was based on the Most Economically Advantageous Tender (MEAT) using a ratio of 60% quality and 40% price.

3. BUSINESS CASE

3.1 Delivery of Procurement Project Outputs / Outcomes

3.1.1 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 said 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 deliver outputs/outcomes?
1. Completion of DOLS assessments within statutory timeframes.	Success is measured by the number of cases that are completed within statutory timeframes.	DOLS Team and Partnership Commissioning.	Quarterly contract meetings.	The provider will coordinate referrals and doctors to ensure assessments are completed and returned to the DOLS team within statutory timeframes.
2. Completion of quality DOLS Assessments that are person centred.	Ensuring each assessment is written clearly in a personalised way.	DOLS Team, Best Interests Assessors and DOLS Authorisers.	Quarterly contract meetings and daily observation of assessments as they are processed.	Compliance with equality and diversity policies and participating in contract meetings.

4. RISK MANAGEMENT

4.1 Risk Categorisation

1. Risk Category: Service Delivery	Likelihood: C - Significant	Impact: II Critical
<p>Outline Description: Currently there is not a procured DOLS Assessment contract in place. The previous provider (who is also the only company to tender for the new contract) continues to provide assessments on a spot purchase basis. The arrangement could end at their convenience. The DOLS Service is reliant on the provider to coordinate doctors to clients taking into account the doctors specialist training and experience.</p> <p>The Mental Capacity Act and the Deprivation of Liberty Safeguards are founded upon Human Rights Legislation. The DOLS Service is a statutory function for Medway Council. Completion of Mental Health and Eligibility assessments are a mandatory part of the DOLS assessment process.</p> <p>Breaches of the regulations can lead to litigation. The case of Stephen Neary led to reputation damage for Hillingdon Council for poor practice and unlawfully depriving Stephen of his liberty. The case was reported widely in the press (<i>London Borough of Hillingdon v Steven Neary (2011) EWHC 1377 (COP)</i>).</p>		
<p>Plans to Mitigate: To award a DOLS Assessment Contract</p>		
2. Risk Category: Other/ICT	Likelihood: D - Low	Impact: II Critical
<p>Outline Description: The DOLS Service and provider require the use of a secure email system, currently cjsm is used for this purpose; however any technical issues with switchover to Egress is a risk if secure communications are disrupted.</p>		
<p>Plans to Mitigate: DOLS Service to liaise with ICT to make sure they have a secure email system in place at all times and to advise ICT immediately if any issues arise. DOLS Service to update the proposed provider on any changes to secure email systems so they can implement and test a compatible system.</p>		

5. PROCUREMENT BOARD

- 5.1 The Procurement Board considered this report on 11 May 2016 and supported the recommendation set out in paragraph 7 below.

6. SERVICE COMMENTS

6.1 Financial Comments

- 6.1.1 The procurement requirement and its associated delivery, as per the recommendations at Section 6, will be funded from existing revenue budgets.
- 6.1.2 Further detail is contained within Section 2.1 Financial Analysis of the Exempt Appendix.

6.2 Legal Comments

- 6.2.1 Medway Council has the power under the Local Government (Contracts) Act 1997 and the Localism Act 2011 to enter into contracts in connection with the performance of its functions.
- 6.2.2 The process described in this report complies with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules.
- 6.2.3 This is a level 4 high-risk category B procurement and therefore the decision to award is for Cabinet. Level 4 (High Risk) Procurement Process are prescribed by the Monitoring Officer, in consultation with the Procurement Board with recommendations for the decision-making associated with the initial Gateway 1 Report and subsequent Gateway 3, 4 & 5 Reports being made to the Cabinet.
- 6.2.4 Although only one tender was submitted, Medway Council will have met its best value statutory duty, by conducting a benchmarking exercise in 2015 to ensure that the new cost of DOLS assessment services represent value for money.
- 6.2.5 The new contract for the DOLS assessments includes special conditions drafted by legal services, which deal with the contract risks identified in guidance published by the Department of Health and the code of practice published by the Office of the Public Guardian.

6.3 TUPE Comments

- 6.3.1 TUPE will not apply to this requirement.

6.4 Procurement Comments

- 6.4.1 The market for this service is very limited. The requirement was advertised on Kent Business Portal and Contracts Finder utilising the Light Touch Regime in accordance with the Public Contracts

Regulations 2015. A price cap was also specified in the tender to avoid cost increases.

6.5 ICT Comments

6.5.1 ICT have been in the process of testing a secure email service from Egress. Good progress is being made and subject to their being no significant issues then Egress is anticipated to be live by the end of May 2016. The secure email will work with Medway Council's existing Microsoft Exchange service. Egress will fully encrypt the email and any attachments. The facility will also provide a secure file transmission for capability large files.

7. RECOMMENDATION

7.1 The Cabinet is recommended to award the contract for the provision of DOLS (Deprivation of Liberty Safeguards) assessments to the supplier as highlighted in paragraph 3.2 of the Exempt Appendix for a period of 1 year with an option to extend by 1 year.

8. SUGGESTED REASONS FOR DECISION

8.1 The recommended supplier meets the minimum criteria in regard to quality and cost.

LEAD OFFICER CONTACT:

Name	Johanna Elwell	Title	Commissioning Officer
Department	Children & Adults	Directorate	Partnership Commissioning
Extension	4516	Email	johanna.elwell@medway.gov.uk

BACKGROUND PAPERS

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

Description of Document	Location	Date
Project and Budget Authorisation form	http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?lId=16934&PlanId=249	14 December 2015