

CABINET

16 JANUARY 2018

GATEWAY 3 CONTRACT AWARD: KENT & MEDWAY INDEPENDENT FOSTERING PROVISION (JOINT PROCUREMENT)

Portfolio Holder: Councillor Andrew Mackness, Children's Services (Lead Member)

Report from: Ian Sutherland, Director of Children and Adults Services

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SUMMARY

This report seeks permission to award a contract, which has been commissioned jointly by Medway Council and Kent County Council (KCC being the contracting authority) to the supplier(s) as highlighted within section 3.2 of the Exempt Appendix.

The Cabinet approved the commencement of this requirement at Gateway 1 on 4 April 2017.

This Gateway 3 Report has been approved for submission to the Cabinet after review and discussion at the Directorate Management Team Meeting on 28 November 2017 and consideration by the Procurement Board on 13 December 2017.

1. BACKGROUND INFORMATION

1.1 Budget & policy framework

1.1.1 This paper provides an overview on the planned future commissioning and procurement arrangements for external fostering placements for children and young people aged 0 – 18 years.

- 1.1.2 Currently the annual direct expenditure on external fostering placements in Medway is in the region of £4.5m per annum. This figure does not include mother and baby placements which are increasing and currently in the region of £700,000.00 pa. However, it is expected overall that this spend will reduce in future years as Medway Council increases the in-house foster care provision.
- 1.1.3 The Medway Council Plan 2016/17 to 2020/21 includes the objective that children and young people have the best start in life in Medway, including the commitment to work with partners to ensure the most vulnerable children and young people are safe.
- 1.1.4 The Joint Health and Wellbeing Strategy for Medway 2012-2017 sets out five strategic themes, including working together to give every child a good start (theme 1).
- 1.1.5 The Looked after Children's Strategy 2015-18 for Medway states that we need to be sure that we have the right range of placements to meet the assessed needs of our looked after children as outlined in the Sufficiency Report, and offer placement choice. We want to ensure that placements provide quality services and good value for money. In order to support this Medway will work to increase the numbers of available quality independent foster placements close to Medway.
- 1.1.6 Local Authorities, as part of their Sufficiency Duty, must take steps to secure, as far as reasonably practicable, sufficient accommodation within its area to meet the needs of children they are looking after. The proposed award directly relates to this duty by aiming to provide a sufficiency of foster care placements which meet demand and the needs of the children and young people, and helps to support social workers in matching these requirements to providers and foster carers.
- 1.1.7 Medway Council has a comprehensive in-house fostering service which is seeking to develop its capacity to meet complex needs. A wider range of training courses are being delivered, alongside support and practice groups for carers who wish to develop specialisms in areas such as adolescence, parent and child placements, therapeutic parenting, sibling groups and disabilities. However, there will always be a need for external provision when the needs of individual children cannot be met by the in-house foster carers that are available.
- 1.1.8 To ensure we meet our Sufficient Duty and are able to achieve the required outcomes for each child and young person, the Council is therefore procuring this Framework with Independent Fostering Providers.

1.2 Background information

- 1.2.1 Kent County Council and Medway Council have operated a jointly procured Framework agreement since 2012/13 with 33 Independent Fostering Providers. This Framework will cease on 31 January 2018.

1.2.2 In November 2016, Children and Adults Directorate Management Team (CADMT) endorsed the option to pursue a Joint Framework with Kent County Council.

1.2.3 The focus and aim of this Framework contract remains on looking at the most effective and efficient means of placing with foster carer's, children and young people who have a wide range of needs, whilst ensuring safeguarding and quality is maintained. All of this must be considered whilst being conscious of the imperative to seek the best cost for the right placement from a Framework of accredited Independent Fostering Providers identified through the tender process.

1.2.4 Providers are interested in working with both Councils in delivering services aligned to the outcome focused service specification and the updated arrangements.

1.2.5 Efficiencies are likely to be achieved by and through:

1. Ensuring that this Framework works alongside, and complements the continuing development of our in-house service.
2. Obtaining greater value for money.
The Council will be working with high performing providers where the quality of outcomes is proportionate to the fees charged and who have a track record of delivering quality services. It is expected that foster carers within each category are able to meet the child or young person's needs and have the necessary experience and training to ensure the required outcomes for each individual are met.
3. Mitigation against placement breakdown.
The Framework ensures that independent fostering providers (IFP's) make available to their foster carers training and appropriate support to ensure the effective delivery of contracted services.
4. Reducing the need for spot purchasing.
The Framework will deliver increased choice in validated Framework providers, thereby reducing the need to search for placements outside of the new Framework Agreement arrangement. This approach will bring greater transparency, and will build levels of trust and stronger partnerships between all stakeholders.
5. Specific commissioning arrangements with fewer providers in tighter management of placement need, delivery and matching, thereby fulfilling placement requirements.
6. Effectiveness of service delivery.
The new contractual arrangement will have clear requirements regarding the measurement and aggregated reporting of outcomes achieved for all placements. Continuous improvement is a joint process whereby the Council and the Provider actively review the services provided with the objective of finding and implementing improvements to the operation and management of the contract

that delivers increased value for money, improved quality and better outcomes.

1.2.6 The Councils will commission a 2-Lot Framework Agreement, utilising the recently revised service specification and terms and conditions relating to Kent County Councils Standard Terms and Conditions (as the Contracting Authority in this joint contract); the National Fostering Contract Terms and Conditions, and the South East Together (SET) Project Outcomes Framework.

1.2.7 The Councils have sought to identify and select new and existing providers that are suitable for partnering arrangements and are willing to become partner providers. These providers represent a cross section of provider types but are mainly Kent and Medway-based businesses and not for profit organisations.

1.2.8 The Councils will come to new arrangements with these providers through supplier development and product development of the providers' offers and scope of provision to meet the majority of the Councils' future needs. The Councils will seek reciprocal benefits to continued loyalty to these providers that should result in more placement stability, sustainability for both the Councils and selected Kent and Medway based businesses.

1.2.9 The Councils require the following range of specific placements:

- Long Term placements (as per the Care/Placement Plan; 12 months and over);
- Short Term/Task Focused/Bridging Placements;
- Short Break Placements;
- Parent(s) and Child(ren) Placements; and
- Step Down Placements.

1.2.10 In Medway these placement types will be required for the following cohort of Children and Young People:

- Age bands (5-10 years, 11-15 years, 16-17 years);
- Placement types (Core, Sibling, Parent(s) & Child(ren) & Disabled Children);
- Solo placements, with no other Children/Young People within the foster household;
- Sibling placements; and
- Short Breaks.

1.2.11 The Council requires that the areas listed below will be covered by the Framework and Providers are expected to have established local provision in these areas.

- Gillingham and Twydall;
- Luton and Rainham;
- Strood Peninsula and Rochester West; and
- Rochester East, Chatham and Walderslade.

1.3 Engagement activity

- 1.3.1 Consultation has taken place with the IFA providers at two market testing consultation events, together with discussions and consultation with Commissioners and Procurement Leads from other local authorities, including benchmarking exercises. A focus group with Kent and Medway's respective Children's Services was identified and extensive consultation took place within this group to ensure that professional views from both Councils informed the development of the Councils joint service specification.
- 1.3.2 The views and feedback from the Children in Care Council and from past consultation including the Ofsted Children Social Care Questionnaire (what children have told us) has also been reflected in the service specification.

2. PROCUREMENT PROCESS

2.1 Procurement process undertaken

The Process

- 2.1.1 It was elected to conduct an Open Tender in accordance with the guidelines set out in the EU Public Contract Regulations (PCR 2015).
- 2.1.2 The tender was divided into two lots:
- Lot 1 - Framework Providers - a preferred provider list (a closed framework) of accredited organisations.
 - Lot 2 - Partner Providers - organisations who are prepared to work more closely with the local authorities and who are open to supplier development and product development to build up capacity to meet more demand and also to reciprocate with more favourable offers.
- 2.1.3 Separate Lot 1 and 2 offers were made at the same time. Lot 1 providers who were unsuccessful in passing the Lot 1 criteria did not have their Lot 2 tenders considered and were also rejected from Lot 1.

Procurement result

- 2.1.4 There were 72 expressions of interest from a range of providers with 48 providers responding to the invitation to tender (ITT) for Lot 1 and 7 providers for Lot 2.

Procurement timetable	
Publication of Kent Business Portal advert, OJEU notice and Documentation on the Kent Business Portal.	Tuesday 5 September 2017.
Deadline to submit requests for clarification via the Kent Business Portal (ProContract) Discussion facility.	12:00 (noon) on Tuesday 26 September 2017.
Deadline for Tender Responses.	12:00 (noon) on Wednesday 4 October 2017.
Commencement of Tender Evaluation Period (including Post-Tender Clarifications).	Wednesday 4 of October– Friday 27 October 2017.
Lot 2 Presentation/Interviews.	Wednesday 8 November – Thursday 9 November 2017 (with shortlisted providers).
Lot 2 Pre-Award Clarification Meetings.	W/c Monday 13 November 2017.
Strategic Procurement Board Meeting (KCC) .	Thursday 14 December 2017.
10-Day Standstill Period (KCC)	From Friday 15 December until midnight Wednesday 27 December 2017.
Contract Award KCC only.	KCC week commencing Tuesday 2 January 2018.
Medway Council Procurement Board Meeting	13 December 2017
Medway Council Cabinet	16 January 2018
5 Day call-in period	5 working days expires Wednesday 24 January 2018 @ 5pm
Issue successful/unsuccessful notification letters to providers	10 working days standstill period
Issue Contract of documentation for signature.	Note: As KCC is the Contracting Authority, Medway Council can activate use of the Framework and Lot 2 Providers following Medway's Governance timeline as outlined above.
Contract Commencement for both KCC & Medway Council.	1 February 2018.

2.2 Evaluation criteria

- 2.2.1 Providers were required to self-certify a number of pass/fail questions including statutory questions required to be asked by Local Authorities e.g. history of insolvency etc.
- 2.2.2 Lot 1 providers had to meet a quality threshold of 60% and then their submitted price would be used to create the price quality point (PQP)

Category Managers, the Commissioning Managers and the responsible individual/s for organisations to discuss any issues.

- To be open to suggestions of improved ways of working that may suggest where support/achievement of outcomes is obtainable.
- To share need and demand forecasting information that may impact on the services delivered together providing certainty of supply.
- A commitment from the Councils to share details of changes that may be of interest, including strategic developments, structural or legal changes, partnership working and other appropriate information.

Evaluation

- received 72 Expressions of Interests in the tender (two were a KCC and Medway "test");
- received 48 bids to the ITT and Lot 1;
- from the total number of bidders 7 tenderers bid for Lot 2;
- passed 42 out of 48 tenders for Lot 1 -the framework, (33 providers were on the previous framework);
- passed 4 tenders out of 7 for Lot 2- Partner Providers;
- no tender submissions failed on discretionary grounds; and
- quality scores have been combined with prices (PQP) to create the Lot 1 rankings for the 45 different placement types.

Outcome of procurement

- 2.2.6 KCC are planning to award the new contracts in January 2018 for a go-live date of 1 February 2018. As KCC is the Contracting Authority (Medway is a named commissioner contained within the definition of the contract), they will award in line with their Governance and will want to proceed at the earliest opportunity to award and will inform providers and issue contract schedules.
- 2.2.7 This will avoid any further delays whilst Medway Council gain approval through our Governance with Cabinet scheduled for 16 January 2018 plus 5-days call-in period resulting in a possible award date of 24 January 2018.
- 2.2.8 Following approval to award, Medway Council will be able to activate the use of the Framework and do business with the Lot 1 and Lot 2 providers.
- 2.2.9 The framework agreement does not place any obligations on Medway to call-off and there are no other obligations e.g. to collaborate with providers under lot 2.
- 2.2.10 The new Lot 1 Framework of providers represents an increased number of providers which will allow greater opportunities for securing matches for placements.

2.2.11 The procurement required a formal collaborative approach (Partnership Agreement) for Lot 2 to reduce any potential competition for carers between the Councils and make our demand more attractive to the market. This has been positively received by providers as evidenced by the significant number of providers tendering.

2.2.12 We have been successful in line with our commissioning intentions and tender to attract and create a small cohort of quality providers who are prepared to work in partnership with both Councils. Medway Council will work closely with KCC managing the demand for placements across the area and creating more opportunities for placement matches to be available, together with robust contract management arrangements and including outcome performance indicators.

3. BUSINESS CASE

3.1 Delivery of Procurement Project Outputs / Outcomes

The following procurement outcomes/outputs identified as important at Gateway 1 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. Increased availability of affordable, appropriate and quality placements	Ability to place within the framework and infrequent need to spot purchase	<ul style="list-style-type: none"> - Number of bids received and evaluated and awarded through the procurement process - Placements team - Children's social care 	<ul style="list-style-type: none"> - Ongoing analysis of activity data - Performance meetings - Outcome of Framework procurement 	<ul style="list-style-type: none"> • Increased number of providers and quality level • Enhanced contract and performance management across Councils • Greater financial analysis
2. Increased availability of placements meeting a wide spectrum of needs	Success in appropriate timely matches of foster carer and child/young person	<ul style="list-style-type: none"> - Placements team - IFA Providers - Children's social care 	<ul style="list-style-type: none"> - Ongoing analysis of activity data - Stability of placements - Care plan reviews 	<ul style="list-style-type: none"> • Data analysis with ART team to confirm levels of success
3. Reduced placement costs	<ul style="list-style-type: none"> - Reduced spend on individual placements - Number of discounts negotiated 	<ul style="list-style-type: none"> - Placement teams - Finance lead - Children's social care 	<ul style="list-style-type: none"> - Outcome of Framework (Lot 1) and Partnership Providers (Lot 2) procurement - Ongoing finance monitoring and reporting 	<ul style="list-style-type: none"> • to be determined at 3/6/9 months into new contract • financial analysis

			- Performance meetings	
4. Long term provider sustainability	<ul style="list-style-type: none"> - Review meetings with commissioners and providers. - Commitment from providers to meet the demands and recruit appropriately skilled foster carers 	<ul style="list-style-type: none"> - Social Care - Placement teams - IFA Providers 	<ul style="list-style-type: none"> - Ongoing - Continuity and long term placements/permanency plans 	<ul style="list-style-type: none"> • To be reviewed at 6/12/18 months
5. To commission high quality foster care that's provides stability and meets individual children and young peoples needs	<p>Monitoring of:</p> <ul style="list-style-type: none"> - recruitment/assessment - Training - Matching - Support to foster carers - cost and spend 	<ul style="list-style-type: none"> - Number of foster carers in/out - Number registered foster carers - Number of referrals to DBS - Number of foster carers with training TSDS - Referrals accepted/declined - Number of placement breakdowns - Provider min/average/max cost per placement by type/age 	<p>Increased:</p> <ul style="list-style-type: none"> - Sufficiency of foster placements that can meet all levels of need - Quality of care - Specialism to meet complex and challenging placements - Timely and appropriate placements/referrals <p>Reduced:</p> <ul style="list-style-type: none"> - placement breakdowns 	<p>By delivering placements that allow children and young people to:</p> <ul style="list-style-type: none"> - Grow up in safe families and communities - Have good physical and mental health - Learn to have opportunities and achieve throughout their lives - Make safe and positive decisions - KCC and Medway Council maximises value for money

4. RISK MANAGEMENT

4.1 Risk Categorisation

1. Risk Category: Procurement	Likelihood: Low	Impact: High
Outline Description: There is a risk that interface and joint working between Medway Council and Kent County Council including decisions, pricing models, processes and governance process and timelines may not be aligned.		
Plans to Mitigate: Regular dialogue and meetings with Kent Commissioners, including procurement, legal and finance leads from Kent and Medway to ensure procurement plans and pathways/protocols are fully aligned, and that all parties are fully informed of timely decisions which will impact the project plan including timelines. Formal partnership agreement to be signed with KCC and Medway Council for the duration of this contract		
2. Risk Category: Procurement Process	Likelihood: Low	Impact: High
Outline Description: There was a risk that there may be a lack of providers expressing an interest in the tender and submitting bids. This may result in a need to spot purchase and a decrease in negotiating power		
Plans to Mitigate: This has been mitigated with good engagement and communication with incumbent and prospective providers throughout the consultation process. The level of business within the joint procurement and revised framework arrangements was an incentive for providers to be part of the framework and Lot 2 providers.		
3. Risk Category: Procurement Process/ mobilisation	Likelihood: Medium	Impact: High
Outline Description: There was a risk that providers may seek to secure an increase in unit cost as placements on existing framework have remained firm for the last 4 years.		
Plans to Mitigate: Significant financial analysis has been undertaken with existing prices and new tendered pricing The financial analysis shown in Exempt Appendix 2.1. However it should be noted that Lot 2 tendered prices were capped at 2012 rates plus an allowance for CPI.		

4. Risk Category: Service delivery and Reputational/political	Likelihood: Low	Impact: Medium
<p>Outline Description: There is risk that new service providers fail to deliver required improvements in scope of service and offer opportunities for delivering savings and efficiencies.</p>		
<p>Plans to Mitigate: There is a joint process and commitment whereby the Council and the provider actively review the service provided with the objective of finding and implementing improvements to an operation and management of this contract that delivers increased value for money, improved quality and better outcomes.</p>		
5. Risk Category: Service delivery	Likelihood: Medium	Impact: High
<p>Outline Description: There is risk that there are inadequate numbers of appropriate foster carers capable of meeting increased complexity of need.</p>		
<p>Plans to Mitigate: To include KPI's within the contract to ensure that framework providers actively recruit appropriate workforce, including specialist training and support to meet the needs of our LAC</p>		

5. PROCUREMENT BOARD

5.1 The Procurement Board considered this report on 13 December 2017 and supported the recommendation set out in section 8 below.

6. SERVICE COMMENTS

6.1 Financial Comments

6.1.1 The procurement requirement and its associated delivery (as per the recommendations at Section 8), 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 The contract for this procurement is based on the standard terms and conditions.

6.2.2 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 Report being made to the Cabinet.

6.3 TUPE Comments

6.3.1 It has been identified that TUPE will not apply to this procurement process where existing services have been re-tendered.

6.4 Procurement Comments

6.4.1 In accordance with Regulation 84 of the Public Contracts Regulations 2015, the following details will be provided in this report.

Regulation 84	Data	Required	Included?
84(1)(a)	Name and address of contracting authority	Yes	Yes
84(1)(a)	Subject-matter and value of the contract	Yes	Yes
84(1)(b)	Names of candidates/tenderers passing any selection (SQ) stage and the reasons for their selection	If relevant	Yes
84(1)(b)	Names of candidates deselected following any selection (SQ) stage and the reasons for their deselection	If relevant	Yes
84(1)(b)	Names of bidders selected (following a "reduction of numbers" under Regulation 66), to continue to take part in a competitive with negotiation or competitive dialogue process, and the reasons for their selection	If relevant	Yes
84(1)(b)	Names of bidders deselected (following a "reduction of numbers" under Regulation 66) from a competitive with negotiation or competitive dialogue process, and the reasons for their deselection	If relevant	Yes
84(1)(c)	Reasons for rejection of any tender found to be abnormally low	If relevant	

84(1)(d)	Name(s) of successful bidder(s)	Yes	Yes
84(1)(d)	Reasons why successful bid(s) was/were selected	Yes	Yes
84(1)(d)	Share of the contract/framework agreement that the successful bidder intends to sub-contract	If relevant	
84(1)(d)	Names of the main sub-contractors	If relevant	Yes
84(1)(e)	Justification for use of competition with negotiation process or competitive dialogue process (see Regulation 26)	If relevant	
84(1)(f)	Justification for use of negotiated procedure without a notice (see Regulation 32)	If relevant	
84(1)(g)	Reasons why the contracting authority decided not to award the contract/framework agreement	If relevant	Yes
84(1)(h)	Reasons why non-electronic means was used for submission of tenders	If relevant	
84(1)(i)	Details of conflicts of interest detected and measures taken to nullify these	If relevant	

6.5 ICT Comments

6.5.1 The service will be externally hosted and therefore there are no issues for ICT.

6.5.2 No requirements have been provided to integrate to any existing, or future, applications operated by Medway Council (e.g. Framework i, Mosaic).

7. OTHER INFORMATION

7.1 Collaboration with KCC with this procurement and ongoing commissioning arrangements with this contract will provide economies of scale regarding the ongoing quality monitoring and contract performance arrangements. This also mitigates against the providers using each Council as competition against each other.

7.2 There were very positive responses from the Lot 2 providers at evaluation/moderation interviews concerning the partnership arrangements particularly the joint management of the flexi block arrangements. This is expected to develop within the first year of the contract resulting in both Councils benefiting from additional discounts on the tendered prices depending on numbers being placed.

7.3 KCC have already approved the award of the contracts for Lot 1 and Lot 2, in-line with their Governance procedures, as set out in the Procurement Timetable at section 2.1 of the report.

8. RECOMMENDATION

8.1 The Cabinet is asked to approve the award of Lot 1 (Framework Providers) and Lot 2 (Partner Providers) to the providers as set out within section 3.2 of the Exempt Appendix.

9. SUGGESTED REASONS FOR DECISION

9.1 The Providers' proposed solutions and offer to deliver the service meets the objective criteria set out in the tender documents and represents value for money for Medway Council but also provides an opportunity for positive change to the service delivery model.

- 9.2 A Full tender process has been completed in line with Medway Council's and Kent County Council's procedures and the evaluation process was vigorous to ensure quality compliance in line with the Councils' requirements.
- 9.3 It is felt that the existing arrangements are too complex and the revised specification is outcome focused which, together with a revised robust contract management framework, will ensure safeguarding and quality is maintained and the Council receives a value for money service.
- 9.4 The new approach should improve partnership arrangements with a small number of providers (Lot 2), bringing greater transparency and building levels of trust.

LEAD OFFICER CONTACT

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APPENDICES

Exempt Appendix

BACKGROUND PAPERS

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

Description of Document	Location	Date
GW1 – Cabinet	https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MID=3377	4 April 2017