

Cabinet

11 March 2025

Gateway 3 Contract Award: Deprivation of Liberty Safeguards (DoLS) Assessments

Portfolio Holder: Councillor Teresa Murray, Deputy Leader

Report from: Jackie Brown, Assistant Director for Adult Social Care

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Procurement Overview:

Total Contract Value: £1,291,500

Project Budget: N/A

FTS reference number: 2024/S 000-038310

Contract Term: Three years, with the option to apply three
further two-year extensions

Contract Start Date: 01/04/2025

Initial Contract End Date: 31/03/2028

Extension End Date: 31/03/2034

Summary

This report seeks permission to award the procurement of the Deprivation of Liberty Safeguards (DoLS) Assessments Contract.

1. Recommendation

1.1. It is recommended that the Cabinet agrees to award the contract to the provider named at 2.2.1 in the Exempt Appendix, as they have been evaluated as the most advantageous against the Council's award criteria, as per the evaluation table contained within 2.1 of the Exempt Appendix.

2. Suggested reasons for decision

2.1. The award of the contract will enable the Council to continue the provision of the DOLS assessments service sourcing from the most economically advantageous provider.

3. Background Information

3.1. Budget and Policy Framework

3.1.1. As a statutory requirement this contract complies with the Council's budget and policy framework.

3.1.2. The previous contract came to an end in August 2023.

3.1.3. Currently services are purchased under the previous contractual conditions, including price.

3.2. Background Information and Procurement Deliverables

3.2.1. Deprivation of Liberty Safeguards (DoLS) are an amendment to the Mental Capacity Act (MCA) 2005. The DoLS under the MCA allows restraint and restrictions that amount to a deprivation of liberty to be used in hospitals and care homes, but only if they are in a person's best interests. To deprive a person of their liberty, care homes and hospitals must request standard authorisation from a local authority, the supervisory body.

3.2.2. There are six assessments necessary to satisfy the requirements of the MCA DoLS, these are: Age, Mental Capacity, Mental Health, Eligibility, Best Interests, and No Refusals (the authorisation cannot contradict or conflict with any advance decision the person has made refusing treatment).

3.2.3. Most of the assessments can be carried out in-house by Best Interest Assessors (BIAs), however, the Mental Health and Best Interest aspects must be carried out by different assessors, with the Mental Health assessor being a doctor (who must be approved under section 12 of the Mental Health Act 1983, or a registered medical practitioner with at least three years' post-registration experience in the diagnosis or treatment of mental disorder).

3.2.4. The purpose of this contract is to commission an organisation to provide the Mental Health Assessments which must be carried out by a Section 12 registered (s-12) doctor. Medway Council commissioned the current provider, South East Memory Assessment Services (SEMAS Ltd), in 2018 to provide the Mental Health assessments from 1 August 2018 on a three-year contract with options to extend for two further years.

3.2.5. DoLS were due to be replaced by the Liberty Protection Safeguards (LPS) which were enacted by Parliament as part of the Mental Capacity (Amendment) Act 2019. However, implementation of the LPS has been postponed several times. On 5 April 2023, the government announced that the implementation of LPS would now be delayed "beyond the life of this Parliament".

3.2.6. The contract requires the provider to carry out the Mental Health assessment within a set time frame (7 days), for a fixed price. The provider has a pool of registered doctors that it is able to call on to

provide the assessments. This pool of registered doctors extends beyond Medway into Kent, Essex and Sussex.

3.3. Parent Company Guarantee/Performance Bond Required

3.3.1. Not required, as each individual assessment is likely to cost less than £250 and will be paid on a case-by-case basis after the service has been received. In the event of provider failure, the DoLS team will be able to liaise directly with the registered doctors to ensure that DoLS assessments continue.

4. Procurement Process

4.1. Procurement Process Undertaken

4.1.1. An Open Procedure was adopted for this procurement. Bidders must have completed a selection questionnaire and submit responses to five quality-based questions to ascertain their ability to deliver the contract. Providers were also advised that the cost of each assessment would be capped at £215 and therefore tendered prices had to be within this cap.

4.2. Evaluation Criteria Used

4.2.1. Tender submissions were evaluated based on 60/40% ratio of quality and price as detailed in the table below:

Question	Weighting
Describe the method and approach to meeting the statutory deadlines within the specification of requirement	18%
Describe how would you provide and maintain a person-centred approach to assessments particularly when there is a high volume of cases.	12%
Describe your approach to equality and diversity in the provision of services.	12%
Describe the processes you have in place to manage human resource matters in relation to section 12 Doctors including training updates for DOLS, continuous improvement of professional standards and development, vetting/barring, safeguarding vulnerable children and adults, professional registrations, work permits for working in the UK and visas.	9%

How will you ensure data is securely stored and electronically transmitted to Medway Council?	9%
Total Quality Score	60%
Price Score	40%
Total	100%

4.3. Contract Management

4.3.1. The management of the contract will be the responsibility of the Head of Adult Partnership Commissioning and the BCF, and usually delegated to a Commissioning Officer.

4.3.2. It is proposed that the below table is used for the purpose of further reporting.

Contract Start Date	Initial Contract End Date	Extension Period in months	Reprocure Period in months	Project Extension Review (GW4) Date	End of project review (GW4) Date
01/04/2025	31/03/2028	3 x 24-month periods	8	01/07/2027	30/06/2027

For the above table, it is assumed that the:

- Extension period must be greater than the reprocure period.
- Project Extension date (if applicable) gives officers sufficient time to reprocure the service should the extension not be granted.
- End of Project date mandates officers present a contract management report to board prior to starting a new procurement process.

5. Risk Management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Provider failure	Provider unable to fulfil its contractual obligations, either operationally or financially.	Ongoing contract monitoring will provide information regarding financial viability. Operationally, the Local Authority will hold details of the s-12 doctors so will approach them directly whilst identifying new provider.	CIII
Data security	Data loss or a breach of the data protection protocols. The DoLS Service and	The DoLS Service and provider are required to use a secure email and data transfer platform; currently nhs.net is used for this purpose. Continue to use the	CIII

Risk	Description	Action to avoid or mitigate risk	Risk rating
	provider require the use of a secure email system, currently nhs.net is used for this purpose.	NHS email system for communication between local authority and provider.	

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely	I Catastrophic
B Likely	II Major
C Unlikely	III Moderate
D Rare	IV Minor

6. Service Implications

6.1. Financial Implications

6.1.1. The procurement requirement and its associated delivery as per the recommendations will be funded from existing revenue budgets.

6.2. Legal Implications

6.2.1. This procurement activity was above the FTS threshold and therefore an FTS notice was required.

6.2.2. The procedure gives a high degree of confidence that the Council's primary objectives for procurement are met, as required by Rule 2.2 of the Council's Contract Procedure Rules ("the CPRs").

6.2.3. Under the Council's Contract Procedure Rules, the procurement is a Process 3 procurement (Rule 18), and the process set out in this report meets the requirements for such procurements. The procurement was advertised on the Kent Business Portal, in compliance with rule 18.4 of the CPRs.

6.2.4. 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.

6.2.5. The process described in this report complies with the Public Contracts Regulations 2015 and Medway Council's Contract Procedure Rules.

6.2.6. This report has been presented as a Process 3 procurement, and therefore the report must be presented to Cabinet. The Monitoring Officer, in consultation with the Procurement Board will set the risk and

reporting stages for the remainder of the procurement process for Gateway 4.

6.3. TUPE Implications

6.3.1. TUPE does not apply to this requirement.

6.4. Procurement Implications

6.4.1. An open procurement procedure was used for the tender due to a limited market for this type of service.

6.5. ICT Implications

6.5.1. There are no ICT implications for this report.

6.6. Climate Change implications

6.6.1. The provider should source Section 12 doctors close to the assessment location to limit unnecessary traveling and promote the use of public transport where possible.

6.6.2. New vehicles purchased by the provider for the delivery of this contract must be electric.

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Appendices

Exempt Appendix 1 – Financial Analysis

Background Papers

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

[Mental Capacity Act](#);
[The Mental Capacity \(Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence\) Regulations 2008](#);
[Law Commission's recommendations to abolish DoLS and replace them with Liberty Protection Safeguards](#)