

DELEGATED POWERS REPORT NO.

1996

SUBJECT: Provision of Home Care Support to Disabled Children

Control sheet

All of the following actions MUST be completed at each stage of the process and the signed and dated report MUST be passed to the Governance Service for publishing

All reports		
1. Governance Service receive draft report	Name of GSO Date	DRR Inbox 16.3.13
2. Governance Service cleared draft report as being constitutionally appropriate	Name of GSO Date	Paul Frost 27.3.13
3. Finance clearance obtained (<i>report author to complete</i>)	Name of Fin officer Date	Farhana Begum 20.3.13
4. Staff and other resources issues clearance obtained (<i>report author to complete</i>)	Name of Res officer Date	Rena Abraham 23.3.13
5. Strategic Procurement clearance obtained (<i>report author to complete</i>)	Name of SPO Date	Lesley Meeks 22.3.13
6. Legal clearance obtained from (<i>report author to complete</i>)	Name of Legal officer Date	Phlilipa Dieobi 20.3.13
7. Policy & Partnerships clearance obtained (<i>report author to complete</i>)	Name of P&P officer Date	Andrew Nathan 18.3.13
8. Equalities & Diversity clearance obtained (<i>report author to complete</i>)	Name of officer Date	Andrew Nathan 18.3.13
9. The above process has been checked and verified by Director, Head of Service or Deputy	Name Date	Kate Kennally 28.3.13
10. Signed & dated report, <u>scanned or hard copy</u> received by Governance Service for publishing	Name of GSO Date	DPR 2.4.13
11. Report published by Governance Service to website	Name of GSO Date	Andrew Charlwood 3.4.13
12. Head of Service informed report is published	Name of GSO Date	Andrew Charlwood 3.4.13
Key decisions only:		
13. Expiry of call-in period	Date	N/A
14. Report circulated for call-in purposes to Business Management OSC members & copied to Cabinet Members & Head of Service	Name of GSO Date	

ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER (EXECUTIVE FUNCTION)

Subject **Provision of Home Care Support to Disabled Children**

Officer taking decision Director for People

Date of decision 28 March 2013

Summary

This report details an urgent decision to put in place a contract with Dynamic People for a period of 6 months from 1st April 2013 to 30th September 2013 to the value of £35,000.

The report also seeks an urgent decision to put in place a contract with Pulse Community Healthcare for a period of one year from 1st April 2013 to 31st March 2014 to the value of £58,000.

This report seeks to give authorisation to the named contracts.

Officer Contributors Carolyn Greenaway, Head of Assessment and Children In Need

Status (public or exempt) Public

Wards affected All

Enclosures None

Reason for exemption from call-in (if appropriate) Not applicable

Key decision No

Contact for further information: Carolyn Greenaway (Head of Assessment and Children In Need x 4241)

Serial No. 1996

www.barnet.gov.uk

1. RELEVANT PREVIOUS DECISIONS

- 1.1 Cabinet Resources Committee on 28th February 2012 agreed to the regularisation of contracts and a limited extension of contracts by the use of waivers from relevant Contract Procedure Rules.
- 1.2 Cabinet Resources Committee on 20th June 2012 'Contract Procurement Plan' approved contract procurement activity for the 2012/13 financial year, including £49,320 for personal assistants providing personal care in the home.

2. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 2.1 Providing services to vulnerable children and their families is a key priority across the council and its partners. The Corporate Plan 2012-13 includes the strategic objective of 'safeguarding vulnerable children and adults' and also of 'investing in early intervention and prevention to reduce the number of children and families experiencing complex problems'.
- 2.2 Barnet's Inclusion Strategy aims to ensure that disabled children are supported to remain living within their communities and attending local schools where possible.
- 2.3 Barnet's understanding of the specific needs and outcomes of local children and young people is well supported by the Council's Profile of Children and Young People in Barnet.

3. RISK MANAGEMENT ISSUES

- 3.1 There is no current contract with Pulse Community Health care as the spend in 2012/13 was under £25,000 and contained within the annual budget for the Disabled Children's Team
- 3.2 Pulse Community Healthcare are currently providing a home care service to one young person who has a terminal illness and requires a high level of support from medically trained carers. This agency were identified by colleagues in Health as appropriate to support the young person. An inability to continue to offer this support to this highly vulnerable young person could cause a breakdown in the home care arrangements which may then mean that the young person required 'looking after' by the local authority at significant expense, or that the parent requested alternative expensive out of borough residential school provision.
- 3.3 Dynamic People are a provider of home care support to children, young people and adults who have severe physical and learning disabilities including autistic spectrum conditions. Adult Social Care hold a current contract with Dynamic People which is due to expire on 30th April 2013 but no contract is held by the Children's Service. A full procurement exercise is required going forward but this has not yet been completed. This is, in part, due to the timing of the transfer of services for disabled children and young people from the Complex Needs Division to Children's Social Care and the consequent need for a change of contract owner. An inability to continue to provide home care to some of the borough's most

vulnerable children would place them at risk and may lead to parents requesting alternative expensive out of borough residential provision.

- 3.4 The Council will continue to ensure that, during this interim period, Dynamic People remain compliant with all relevant and appropriate standards in terms of their service, quality, policies and procedures.
- 3.5 The Council will ensure that during the course of the contract Pulse Healthcare are compliant with all relevant and appropriate standards in terms of their service, quality, policies and procedures.
- 3.6 I do not consider the issues involved are likely to raise significant levels of public concern or give rise to policy considerations.

4. EQUALITIES AND DIVERSITY ISSUES

- 4.1 Dynamic People and Pulse Community Healthcare are providers of home care support to children, young people and adults who have severe physical disabilities and learning difficulties including autistic spectrum conditions.
- 4.2 Dynamic People and Pulse Community Healthcare provide services to disabled children and young people of all faiths and cultures, and are committed to ensuring that there is equality of service provision to all. The ongoing monitoring arrangements with these providers ensure that the service provision meets the diverse needs of Barnet's children with disabilities.
- 4.3 Under current Equalities legislation the Council and all other organisations exercising public functions on its behalf are required when doing so to have due regard to the need to i) eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited under the Equality Act 2010; ii) advance equality of opportunity between those with a protected characteristic and those without; iii) promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 4.4 The extent to which services meet the diverse needs of Barnet's children and young people will continue to be reviewed and quality assured through regular performance monitoring of contracts.

5. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

Finance

Pulse Community Healthcare

- 5.1 The estimated value of the contract for the year 2013/14 with Pulse Community Healthcare is projected at £58,000. The exact value of the spend can vary as

although the majority of home care is part of a planned package of support, there are inevitable occasions when emergency provision is required. In addition, as the young person concerned has a terminal illness, the full year provision may not be required. The service is funded by the London Borough of Barnet and will be contained within the Children's service budget for the 2013/14 year.

Dynamic People

- 5.2 For the period from 1st April 2013 to 30th September 2013 it is projected that the value of the contract will be £35,000. The service is funded by the London Borough of Barnet and will be contained within the Children's service budget for the 2013/14 year.

Procurement, Performance, Value for Money and Sustainability

- 5.3 As outlined at paragraph 6 below, under European procurement rules, provision of services of this nature falls within Category B of Schedule 3 to the Public Contracts Regulations 2006. Procurement of Category B services do not have to follow the full European procurement regime in terms of European wide advertising.
- 5.4 The contract will be regularly monitored to ensure that they meet the specified outcomes and represent value for money.
- 5.5 Within the next six months a full competitive tendering exercise will be conducted in line with current legislation, with a view to awarding a three year contract to a number of home care providers. This will ensure that parents of disabled children retain a level of choice over Home Care providers, while ensuring that the Council achieves best value. Unfortunately this tendering exercise has not yet been completed, in part due to the timing of the transfer of responsibility for social care services for disabled children from the Complex Needs Division to Children's Social Care.

Staffing, IT, Property

- 5.6 There are no staffing, IT or property implications in relation to the Dynamic People or Pulse Community Healthcare contracts.

6. LEGAL ISSUES

- 6.1 The basic premise applying to the letting of contracts for works, supplies or services by contracting authorities is that the provisions of Directive 2004/18/EC, as implemented by the Public Contract Regulations 2006 (as amended), should be adhered to. For the most part, this set of rules (the "Procurement Rules") requires there to be fair and open competition across the European Community for government contracts.

The Procurement Rules as applied to services differentiate between Part A services and Part B services. Part A services are subject to the full tendering regime. Part B services have a comparatively relaxed regime applying to them, covering only matters such as ensuring that specifications for services are not discriminatory and

that reporting and notifying obligations are met. The services which fall within Part B are various, but generally cover Health and Social Services.

It should be noted that the Commission takes the view that the Treaty obligations of transparency and non-discrimination apply to Part B services, which means that the contracting authority is expected to ask itself whether there is a market for these services in other member states and if so what form of appropriate notification and advertisement should apply before an award of a contract. It has also been confirmed in case law that in the case of sub-threshold contracts and other contracts falling outside the procurement directives it was only where there was certain cross border interest that the general EU principle of transparency would apply.

In addition, it is expected that the Council's own standing Orders and financial regulations would expect some form of tendering to apply to such contracts or at least an exemption to be sought to standing Orders if not followed.

- 6.2 Under the Children Act 1989 local authorities have various statutory duties in relation to children in need. Specifically, Section 17 of the 1989 Act provides that every local authority has a duty to safeguard and promote the welfare of children within their area who in need by providing a level of services appropriate to those children's needs. Disabled children and young people are defined as children in need by virtue of their disability.

7. CONSTITUTIONAL POWERS

- 7.1 Constitution, Part 3, Responsibility for Functions, Section 6.1 - Powers Delegated to Officers - Chief Officers (i.e. the Chief Executive, Directors and Heads of Service as listed in Article 12) can take decisions without consultation with the Cabinet Member concerned where it is a decision authorised to be taken by the Chief Officer under the Contract Procedure Rules for approved schemes with sufficient estimate provision.
- 7.2 Constitution, Part 4, Contract Procedure Rules, Section 7.3 (Table 7.3) sets out acceptance thresholds for social care, education/children's service and temporary housing contracts. Directors/Assistant Directors can accept contracts up to £999,999 in value. For contracts up to £499,999 the Contract Procedure rule the tender process required should be a reasonable means of selection, i.e. an unbiased selection process based on the relative merits of the quotation provided and taking account of previous purchasing practices for supplies, services or works of a similar type.
- 7.3 The value of the contract with Dynamic People is within the acceptance threshold for Directors/Assistant Directors.
- 7.4 The value of the contract with Pulse Community Healthcare is also within the acceptance threshold for Directors/Assistant Directors.
- 7.5 Contract Procedure Rules, 5.7 also provides that Directors/Assistant Directors may take decisions on urgent or emergency matters as set out in the Leader's Scheme of Delegation providing they report afterwards to the relevant decision making body

setting out the reasons for the urgency. The decision to waive the CPR will be made, where considering a written report by the appropriate officer, the waiver is justified on the basis of urgency and for one or more of the matters set out in rule 5.8, i.e that:

5.8.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or

5.8.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have before except in situations of urgency that could not reasonably have been foreseen; or

5.8.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or

5.8.4 there are other circumstances which are genuinely exceptional.

7.6 With regards to both contracts, authorisation is sought under Contract Procedure Rules 5.8.4 as the delay to undertaking a tendering process is in part due to the timing of the transfer of services to disabled children and young people from Complex Needs to Social Care. The continued provision of these services are required to uphold the Council's statutory responsibilities to disabled children as set out in Section 17 Children Act.

8. BACKGROUND INFORMATION

8.1 Barnet's vision of 'ordinary lives' for disabled children and their families requires both universal and specialist services to provide opportunities which are timely, reliable, local, and meet their individual needs.

8.2 There is now an increased focus on the personalisation of the offer to families; this will mean that services will need to work with families to tailor their provision to meet their needs and preferences.

8.3 The direction of travel towards personal budgets for disabled children and young people means that an increasing number of families will be encouraged to purchase and manage their own home care support.

8.4 Within Barnet, the current emphasis on the provision of Direct Payments means that the majority of families are already choosing to purchase their own home care support. However there are a small number of families where, due to specific issues and vulnerabilities, the local authority is required to continue to make home care provision.

Dynamic People

8.5 There are currently seven families using the Dynamic People home care support service. These children have regular carers with whom they are familiar and the parents feel confident with the provider.

- 8.6 Dynamic People will be in a position to tender for a continued contract, but should they choose not to do so, or should they not be successful, then the three families using the service will be assisted to make the transition to a new provider.

Pulse Community Healthcare

- 8.7 Pulse Community Healthcare is used to provide a service for only one young person who has a terminal illness and requires medically trained carers. This agency is also used by Central London Community Healthcare to provide night time support. This enables the young person to have consistency of care.

9. LIST OF BACKGROUND PAPERS

- 9.1 None

10. OFFICER'S DECISION

I authorise the following action:

- 10.1 The Contract Procedure Rules relating to tendering and quotation be waived to allow the Council to enter into a contract with Dynamic People for the provision of home care for disabled children for the period 1 April 2013 to 30 September 2013 to the value of £35,000.**
- 10.2 The Contract Procedure Rules relating to tendering and quotation be waived to allow the Council to enter into a contract with Pulse Community Healthcare for the provision of home care for one disabled young person for the period 1 April 2013 to 31 March 2014 to the values of £58,000**

Signed Kate Kennally
 Director for People

Date _____