



London Borough of Enfield

Report Title	Extension of the Council's Dynamic Purchasing System for people with Learning Disabilities
Report to:	Tony Theodoulou - Executive Director of People
Date of Report:	19th July 2023
Directors:	Doug Wilson, Director of Health and Adult Social Care Tony Theodoulou, Executive Director of People
Report Author:	Christopher Reddin, Service Development Manager, Learning Disabilities and Autism
Ward(s) affected:	All
Key Decision Number	KD 5635
Implementation date, if not called in:	21 August 2023
Classification:	Part I Public
Reason for exemption	Not applicable

Purpose of Report

1. To provide a proposal to the Director of Health and Adult Social Care and Cabinet Member requesting an extension to the Dynamic Purchasing System for care and support services for people with Learning Disabilities.

Recommendations

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| <ol style="list-style-type: none">I. Agree the extension of the Dynamic Purchasing System for Care and Support Services for people with Learning Disabilities from October 2023 to November 2025 |
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Background and Options

2. The Council has a Dynamic Purchasing System (DPS) used to commission care and support services for adults with learning disabilities aged 18 and over assessed as eligible under the Care Act 2014 and for whom the Council has a duty to meet needs for care and support.
3. The Integrated Learning Disabilities Service (ILDS) expenditure on care purchasing for adults requiring care and support was £38,869,505 for the last financial year (SAP actual year end for 2022/23). This includes self-directed support, support provided in supported living settings, residential care, nursing care and residential respite. The annual budget for the ILDS is agreed separately as part of the Adult Social Care budget and expenditure through the DPS is therefore not additional spend.
4. The decision to extend the DPS is a key decision under the Council's constitution as it relates to expenditure of £500,000 or above per annum during the extension period. Under public contract regulations it is the value of the contracts going through the system that should be included in the consideration as to whether it is a key decision. Furthermore, in addition to level of expenditure, the decision affects adults with learning disabilities living in two or more wards of the Council. A substantial amount of learning disabilities service spend will go through this system and therefore will easily exceed the £500,000 limit. The decision is not to determine the level of spend which will be within budget parameters and monitored through the budget monitoring system as normal.
5. The DPS commenced 9th October 2018 for a five-year period to 8th October 2023 and allows providers of care and support services to apply and be accepted throughout the term (providers can apply between 27th June 2018 to 31st July 2023).

6. Previously, the Strategic Service Development and Procurement Board agreed to extend the DPS to March 2024 to allow additional time for the Procurement Bill to pass and to incorporate the new regulations as part of the procurement options and ongoing strategy. The Procurement Bill has been further delayed and it is now anticipated that the new Procurement Act will commence October 2024. The Council will move towards a new framework as soon as practical and allowed by the new legislation.
7. The DPS facilitates a competitive procurement process that the Council has been able to utilise to maintain sufficiency and diversity of supply of care provision which is secured at competitive prices to meet best value requirements. The DPS is a compliant procurement approach in accordance with both the Council Contract Procedure Rules and the Public Contracts Regulations 2015 (PCR).
8. Providers can apply to the DPS through completion of a Standard Selection Questionnaire (SSQ), this is assessed for the purposes of selecting suitable providers to proceed to the next stage of the procurement with those providers successful in passing the defined criteria being accepted onto the relevant lots of the DPS.
9. If accepted onto the DPS, providers can view and quote for individual contracts based upon proposed support arrangements outlining individual outcomes. There are six lots under the DPS setting out varying level of complexity of need and whether accommodation is required. The lots are as follows;

Lot 1a - Moderate to severe learning disabilities - Care & Support

Lot 1b - Moderate to severe learning disabilities - Care & Support with Accommodation

Lot 2a - Profound and multiple learning disabilities and /or complex health needs - Care & Support

Lot 2b - Profound and multiple learning disabilities and /or complex health needs - Care & Support with Accommodation

Lot 3a - Learning disabilities and behaviour that challenges and/or mental health issues - Care & Support

Lot 3b - Learning disabilities and behaviour that challenges and/or mental health issues - Care & Support with Accommodation
10. Providers submit their best and final offer which is subject to evaluation (price 40%, quality 60%), the provider ranked first invited to carry out an assessment of the service user (other providers may however also be invited to assess at the discretion of the Council).

11. The DPS allows providers to join at any time throughout the duration of the tender, this has enabled the Council to contract with a number of market entrants as well as more established providers, ensuring competitiveness in the local market.
12. Providers are monitored by professionals reviewing individual outcomes six weeks from commencement of the service and annually thereafter. Any quality issues identified are addressed through this process with any concerns raised to the Safeguarding Information Panel (sharing intelligence with partner agencies to inform actions/decisions, this can include decision to invoke the Provider Concerns policy to work with a provider to improve standards where necessary).
13. Also relevant as background is the future intention when re-procured by November 2025 to align re-provision to include all care groups in the new contractual arrangement under a framework agreement as soon as practical and allowed by the new legislation. This will enable the Council to have a clear and transparent process for the procurement of support services across these pathways and potentially achieve efficiencies through the fixing of price at tender stage. There will be a further key decision report presented on the details of the new framework envisaged.
14. Whilst the DPS has been successfully utilised to achieve best value for the Council and service users, a new framework will offer greater options and greater flexibilities, including to fix the price at tender stage when the framework is awarded, rather than the process under the DPS of obtaining prices from pre-selected providers each time a contract is being awarded. This will stabilise pricing and reduce variances in cost across Adult Social Care.
15. It is necessary to consider the options available to the Council given the DPS is due to expire on 8th October 2023. There are two options identified;

Option 1 Set up a new arrangement for Care and Support Services for people with Learning Disabilities from 9th October 2023 to replace the DPS as a compliant route to market under existing PCR

Option 2 Extend the existing DPS to November 2025 to re-evaluate the Council's options for procurement once the Procurement Bill has become law and new procurement regulations published and to set up a new and appropriate arrangement under the new regulations for all care groups from November 2025

Unfortunately, the delay in the legislation has caused us an unexpected problem and therefore the viable option is option 2 which is therefore the recommended option.
16. The second option would take advantage of the new procurement law and anticipated benefits of the new law; greater flexibility with favourable implications is anticipated with respect to framework agreements though the position will only be known when the bill is enacted and the regulations on

light touch regime contracts become law. The Bill in its current form allows for the charging of fees at a fixed percentage of the estimated value of the contract awarded under the framework, the possibility of permitting open frameworks to admit new suppliers when needed and to exclude providers that fail to deliver the required objectives.

17. The option to open the framework after commencement would allow for new and innovative providers to join and enable the Council to benefit from a diverse range of providers.
18. The Procurement Bill was in its final stages and there continues to be consideration of amendments before the Bill can receive Royal Assent, it is therefore possible that the flexibility proposed in relation to framework agreements could change. In addition, there remains the risk of further delay and of a transition period once the Bill is enacted.

Preferred Option and Reasons for Preferred Option

19. The preferred option for the Council is option 2; to extend the current DPS until November 2025 to benefit from the provisions proposed within the Procurement Bill in relation to framework agreements and to align this work as part of a procurement strategy to cover the commissioning of care and support services for all care groups across adult social care.
20. Commencing a procurement exercise to replace the DPS with a framework agreement from October 2023 will mean that the current PCR will apply. There will be no flexibility to re-open the framework periodically or to change underlying call off contracts and further consideration will be required once the Procurement Bill is enacted as to the implications of the new Procurement Act.
21. Extending our current arrangements until the new Procurement Act is implemented would enable the Council to take advantage of current proposed favourable implications in respect of our procurement strategy for a new framework agreement. Furthermore, the Council will be able to potentially achieve efficiencies through the fixing of price at tender stage for all care groups. By extending there are no additional costs at this stage. The cost of the software used is £35,350 per annum, this software is used for other purchasing in any case and would be a cost regardless of this decision. Additionally, because of this need in other areas of Adult Social Care, we have recently reprocured this for a five-year term starting 20th April 2023. Work will continue on developing a new framework over the time to re-procure and the subsequent key decision report on the new framework will consider the financial aspects in further depth of that future decision.

Relevance to Council Plans and Strategies

22. The Enfield Council Plan, 'Investing in Enfield', sets out how we will deliver positive outcomes for our communities. Priority two is for strong, healthy and safe communities and includes the Council's aim to protect vulnerable adults from harm and deliver robust early help and social care services. Providing services in line with individual outcomes will support adults with learning disabilities to be independent and in control of their own lives.

Procurement Implications

23. Any procurement related activity must be undertaken in accordance with the Council's Contract Procedure Rules (CPR's), the Public Contracts Regulations (PCRs) and the Council's Sustainable and Ethical Procurement Policy. The proposed extension to the Dynamic Purchasing System (DPS) will go through the Procurement Services Assurance process and the necessary Gate Report shall be prepared.

24. The value of the DPS is above the relevant Threshold of the PCRs. This will mean the proposed extension must be conducted in accordance with the requirements of the PCRs.

25. The lead officer within the Service Area must keep records of approvals to proceed with the proposed extension to evidence compliance with the rules.

26. The Service Area shall ensure the extension takes place via the Council's eTendering system, the London Tenders Portal (LTP) and work with Procurement Services to publish a notice on Find a Tender for the extension.

27. All evidence of authority to extend the DPS, as well as all contractual documents relating to this decision, must be uploaded on to LTP.

28. Information regarding the awarded contracts should be promoted to Contracts Finder to comply with the Government's transparency requirements.

29. In accordance with the Council's CPR's, the service must ensure that a Contract Manager continues to be assigned to the DPS and ensures the monitoring requirements are adhered to, including evidence of regular contract / performance reviews.

30. The Service Area has completed the Contract Management Tiering tool, this DPS has been classified as "Gold". The Service Manager has met with the Contract and Supplier Relationship Manager within Procurement Services, who has gone through the contract management requirements for the management of this DPS. It is acknowledged that services are procured via the DPS and as such, it is through numerous providers which are matched to the specific requirements of the individuals concerned.

31. The Service Area has had a formal presentation regarding contract management and the team is aware of the responsibilities of the service manager in respect of diligently managing such contracts.

Financial Implications

32. The service has confirmed that there are no direct and incremental costs related to this decision. This decision is around procurement methodology and the software and systems to be used going forward, pending changes in legislation and the review of the existing system and the development of a new framework. The costs of such new framework will need to be reviewed at that time. The decision will affect the ongoing procurement of a large part of learning disability care purchasing, the use of this particular system can vary time to time and year to year. Learning disability care purchasing spend is monitored closely and variances and issues reported through the normal corporate procedures. Therefore, the decision does have indirect financial implications in that it informs and governs the results of a high value of care purchasing decisions supporting vulnerable adults and resultant contract awards, however, this is part of an existing system that is well proven and compliant with legislation and regulation and the decision is merely to extend the beneficial existing operations with a view to legislative timescales and an appropriate lead time to affect any necessary work, changes and will be subject to a further key decision in the future.

Legal Implications

33. The Council has a duty under section 1 of the Care Act 2014 ('Care Act') to promote individuals' well-being (as defined in the Care Act). The Council has a further duty under section 18 of the Care Act 2014 to meet the care and support needs of adults assessed as eligible under the Care Act including arranging for a person to provide services for the provision of accommodation and the provision of care and support at home or in the community. Additionally, section 111 of the Local Government Act 1972 gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to the discharge of its functions. Further, the Council has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may generally do provided it is not prohibited by legislation. The recommendations within this Report are in accordance with these powers and will enable the Council to continue to fulfil its duties under the Care Act.

34. The value of the dynamic purchasing system (DPS) is above the threshold for light touch regime contracts (currently £663,540 inclusive of VAT) under the Public Contracts Regulations 2015 (PCR 2015). The DPS was set up in the accordance with the PCR 2015 and fully complies with the requirement of the PCR 2015 and the Council's Contract Procedure Rules.

35. Unlike framework agreements, there is no specific maximum duration for a DPS under the PCR 2015. The period of validity must be stated on the original contract notice but this period can be amended by the publication of a notice. Further, the extension of the DPS must comply with the principles of

procurement set out in regulation 18 PCR 2015 namely, equal treatment, non-discrimination, transparency, and proportionality. Regulation 34(28) PCR 2015 further provides that where the period of validity is changed without terminating the DPS, the contracting authority shall submit for publication on the UK notification service a notice of the kind used initially for the call for competition for the DPS.

36. Accordingly, it is advised that a notice should be published on Find a Tender for the extension of the validity period recommended in this report. It is further advised that the DPS must be kept open to all interested candidates that satisfy the selection criteria to join the DPS throughout the validity of the DPS and the form of contracts published when the DPS was set up must continue to be used for all awards with providers during any extension period. Any interested candidate that meets the minimum requirements for admission to the DPS, as published when the original contract notice was set up, will continue to have the opportunity apply to join the DPS until expiry of the system. Accordingly, no provider on the market who meets the selection criteria will be disadvantaged by the extension of the DPS.
37. The Key Decision process under the Constitution must be followed as the contract value is above the Key Decision threshold of £500,000.

Equalities Implications

38. A full Equality Impact Assessment (EqIA) has been completed and is available in Appendix 1. The EqIA identifies a general positive impact in terms of facilitating care and support arrangements for adults with Care Act eligible needs in line with the Council's statutory duties. The decision to extend the DPS for a further 2 years is not anticipated to have a negative impact on any of the protected groups.
39. The EqIA has identified the need for ongoing monitoring of monthly data on protected characteristics which, together with engagement activity with all client groups and market engagement with providers will be used to inform the development of a new contractual arrangement from November 2025. The Council will continue to monitor the quality of providers commissioned through the DPS.

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Appendices

1. Equality Impact Assessment

Background Papers

None