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REPORT AUTHORISATION FORM 4.C.214**

**CARDIFF COUNCIL
CYNGOR CAERDYDD**

CABINET MEETING: 18th January 2017

PROCUREMENT OF DOMICILIARY CARE

REPORT OF DIRECTOR OF SOCIAL SERVICES

AGENDA ITEM:

PORTFOLIO: Social Care, Health & Well-being (Councillor Susan Elsmore)

Reason for this Report

1. The reason for this report is to:
 - a. Update Cabinet on the current commissioning arrangements for domiciliary care
 - b. Seek Cabinet support to the proposed overarching approach to commissioning domiciliary care in the future

Background

2. The Council currently arranges domiciliary care packages using a specific methodology and IT platform. The methodology is known as a Dynamic Approved Provider List (DAPL), which is akin to a Dynamic Purchasing System (DPS). An IT supplier called ADAM (previously Matrix SCM) provides the end-to-end IT system that underpins the processes of procuring and managing domiciliary care packages. The cost of this process is approximately £190,000 per year.
3. The Council is approaching the end of two separate contractual arrangements, which are:
 - a. DAPL – This ends on 3rd November 2018. If the Council chooses to continue with this approach it must create a new DAPL, decide the terms and conditions for this contractual arrangement and seek agreement from providers to join the DAPL
 - b. Contract with ADAM – This ends on 3rd November 2018. If the Council chooses to continue with this type of arrangement it must agree a new contract with a supplier to provide the IT system to support the DAPL.
4. The Council intends to enter into a new arrangement with providers for commissioning domiciliary care to become effective no later than 4th

November 2018. In doing so, the Council can choose to take any of the following approaches:

- a. To fundamentally change its overarching approach to commissioning domiciliary care, moving away from the DAPL model
- b. To enter into overarching commissioning arrangements similar to those currently in place, by creating a new DAPL and extending the IT contract with ADAM
- c. To enter into overarching commissioning arrangements similar to those currently in place, by creating a new DAPL, but choosing a different supplier (not ADAM) to provide the IT system that supports the DAPL.

Issues

Current approach to commissioning domiciliary care

5. The DAPL consists of a group of domiciliary care providers that have demonstrated they meet the standards required by the Council and who have signed up to the Council's contractual terms and conditions. Any provider can join this DAPL at any point, providing they meet the criteria in relation to professional registration and service quality. When the Council wishes to procure a package of care for an individual, it does so under the terms and conditions of the DAPL.
6. The DAPL was implemented on 4th November 2014 on a four year contract.
7. Here is an overview of the process currently used to arrange a domiciliary care service:
 - a. Social workers provide the Brokerage Team with a completed assessment
 - b. Brokerage use this information to populate a pre-agreed and anonymous template
 - c. Brokerage post the completed template through an online portal (called 'SProc.net' and provided by ADAM), which can be viewed by any provider on the Council's DAPL
 - d. Providers on the DAPL that wish to take on this care package must provide information, by a specific deadline, to show how they will provide care to the person and the rate they will charge for this
 - e. The Council uses pre-agreed and publicised quality and cost criteria to evaluate offers and identify which provider will be asked to take on each package of care.
8. This particular approach is akin to a 'Dynamic Purchasing System', which is allowed for within the Public Contract Regulations 2015 (PCR 2015). It is a requirement of PCR 2015 that the process and communications should be completely electronic, and as stated above, the IT infrastructure that underpins the Council's DAPL is currently provided by ADAM.

9. The Council commissions between 30,000 – 35,000 hours of domiciliary care per week, for approximately 2,200 people. The annual cost of this provision is approximately £23.5m per year.

Impact of the current approach to commissioning domiciliary care

Quality of service provision

10. The Council has introduced a suite of effective measures that support the DAPL process to improve the quality of provision. The measure most crucial to the functioning of the DAPL process is the Provider Quality Scoring (PQS).
11. The PQS was designed with providers and combines a number of different elements relating to the quality of their care, to create a single score for each provider. These elements include; site visits and inspections (announced and unannounced), self-assessment returns and customer feedback.
12. All providers are given a PQS and when they submit an offer to take on a care package their PQS is combined with the rate they submit, to create a ranking for providers. The quality (i.e. PQS) and the cost (i.e. rate) are given an equal 50% weighting and the top ranked provider is awarded the care package.
13. The equal weighting for quality and cost demonstrates that Cardiff Council (unlike many other Local Authorities) do not simply place packages with the cheapest provider. To illustrate this, approximately 85% of new packages awarded in the last 12 months went to the bidder with the highest quality score.
14. The Directorate acknowledge the need to continue their efforts to maintain and improve quality in the domiciliary care sector, but believe that the current approach to commissioning care packages is ensuring that people are receiving high quality care.

Cost of care packages

15. Following the introduction of the DAPL, initially there was an increase in the rates for new domiciliary care packages. However, this soon stabilised and the rate for new packages has since reduced. All the indications are that this is the result of increased competition and capacity within the marketplace. This is despite the significant financial pressure in the sector, especially in relation to staff (such as the introduction of the National Living Wage), which make up the majority of Provider's costs.
16. The information in 17 and 18 illustrates the reducing rates over the last few years.
17. Average rate per hour for **new** care packages commissioned in the month:

- a. December 2015 = £17.62
 - b. November 2017 = £15.79
 - c. This is an 11% decrease
18. Average rate per hour for **all spot** domiciliary care packages commissioned by the Council at the end of each month:
- a. November 2014 = £16.61
 - b. October 2017 = £15.62
 - c. This is a 6% decrease
19. The Directorate is confident that factors specific to the DAPL are delivering efficiencies that would not exist under other commissioning arrangements. These factors are:
- a. The increased competition for care packages – Providers are submitting competitive bids to secure care packages.
 - b. The transparency of the process – All of the commissioning processes used across the Council are transparent and fair. This is also true of the DAPL, but this approach gives providers visibility over; what their PQS is, why they have been given this score, how they can improve it and how this affects the likelihood of them being awarded new packages in the future. These factors provide additional assurance that the process is transparent and fair and prevent any perception to the contrary. Council officer's believe this has encouraged more providers to participate in the DAPL than may be the case with other arrangements.
 - c. The 'high-cost authorisation process' – The Council has conducted research in partnership with the market and relevant professional bodies to determine a upper threshold for bids. Where there is only one bid for a care package and this is higher than the upper threshold, these cases are referred to the Assistant Director – Adult Services. They are then evaluated on an individual basis, to judge if the rate is realistic when compared with the Care and Support requirements. Of the cases that come under this process, approximately 70% are approved and 30% are declined.
As well as providing a check and balance for agreeing high rates, this process also creates an ongoing dialogue that helps providers understand what the Council considers to be a reasonable rate for certain care packages and helps the Council understand the cost pressures facing providers, especially for complex care packages.

Stability and sustainability of provision

20. The Council's approach of using a DAPL has been generally well received by providers who have reported through the regular forums that they are comfortable that this is a proportionate, efficient and effective approach to commissioning care. The challenges affecting the domiciliary care market in Cardiff are no different to those across the UK and include; difficulties recruiting care workers, changes to legislation, rising business costs and a lack of capacity. However, the DAPL gives providers flexibility to respond to these challenges through the rates they bid.

21. The Directorate is confident that the current approach to commissioning care has contributed to a more dynamic and viable domiciliary care sector in Cardiff. There are currently 70 providers on the DAPL, which is more than the 38 that joined when the DAPL was introduced in November 2014 and more than at any point since then. The majority of these providers are proactively engaging with the DAPL.
22. For each care package submitted through the DAPL, there will typically be two to four providers submitting an offer to take this on, which is at the high end of what would be expected under any model. Packages are typically taken on at the first attempt (i.e. without having to be re-submitted through the DAPL) in 80% of cases. When the DAPL was first introduced this figure was as low as 40%.
23. Prior to the introduction of the DAPL, the Council procured care from a closed framework containing a limited number of providers. With a significant rise in demand year on year this placed a strain on the capacity of agencies and caused delays in placing packages of care.

Risks and mitigation

24. The Council has positive working relationships with individual care providers and the sector as a whole. This is supported by clear and transparent ways of working, regular interaction and quarterly Provider Forum meetings. This provides a good platform for consultation with the sector and these channels have been used to establish provider's views on a number of areas covered by this report. As a result, the risks and mitigations set out in this section are based on feedback from the market and an understanding of the challenges they face.

Impact of changing domiciliary care commissioning arrangements

25. The Directorate has received feedback from providers that the current arrangements are a good balance of keeping the market sustainable and competitive. Many providers have also commented positively on the level of care they are asked to take on and the flexibility to take on more or less packages, and to charge different rates, as they wish.
26. These arrangements have been in place for four years and providers have created internal structures and processes to work with them. Any significant change to these arrangements would require the 70+ providers on the DAPL to change how they operate to deal with any new commissioning arrangements. This would cause significant disruption to the Council and providers and is likely to result in some providers currently delivering care on behalf of Cardiff Council choosing not to join the new arrangement. Under these circumstances, the Council will have to find alternative provision for the service users these providers currently work with.
27. The views from provider's generally support the evidence set out in this document, that significant change to the current commissioning arrangements is neither needed nor appropriate. However, the Council

will review all aspects of the current commissioning arrangements and whilst the recommendation is to continue with the current overarching approach, the Council does expect to make some changes to the detail of how these arrangements operate.

Ending contracts for current care packages

28. The creation of a new DAPL creates three specific issues, all of which put at risk the continuity of care for current service users. These issues are that:
 - a. When the current DAPL arrangement ends in November 2018, the contracts the Council has with each provider to deliver care to each service user also effectively end. At this stage, both the Council and providers can walk away from any or all of these contracts.
 - b. The dynamic nature of the care sector means there is ongoing change in terms of which providers work with Cardiff Council. As a result, the Council expects some providers that currently deliver care on our behalf not to join the new DAPL.
 - c. Providers may wish to join the new DAPL, but use this as an opportunity to seek higher rates of pay for some of the care packages they currently provide.
29. The Council will, wherever possible, ensure the continuity of care for service users. To support this approach, the Council is working with providers to understand which are considering the actions stated in 28 and to obtain confirmation from providers well before November 2018, that they wish to join the new DAPL. This will give certainty to all parties, including service users, and give time to resolve any concerns providers may have about the new DAPL.
30. In summary, the Council's approach to managing this risk is to:
 - a. Identify as early as possible where this could, or will, happen
 - b. Do all it can to avoid a situation where a new care provider has to be found for a current service user.
 - c. Ensure that were a change in provider is needed, the current provider and new provider work together to ensure the transition process is done in a safe way with the minimum of disruption to the service user.

Potential impact of future rates, capacity or market sustainability

31. During the life of the current DAPL contract, the Council has taken a number of actions that have led to competitive rates for domiciliary care, alongside improved quality of care and a more sustainable market, as already set out in this report. However, the nature of the domiciliary care market is that there are many external factors that can have a negative impact on providers and commissioners, which cannot always be predicted or controlled. A recent example relates to the announcement of the National Living Wage, which caused significant challenges for the sector.

32. The Directorate believes that many aspects of the current commissioning arrangements mitigate this risk and that further changes to the DAPL could further reinforce this. Despite this mitigation, there remains a residual risk, but the Council will do what it can to work with providers to continue to minimise the likelihood of this occurring and the impact if it does.

Cardiff Council could benefit from changing the approach to commissioning domiciliary care

33. This report recommends that Cardiff Council continue to use a Dynamic Purchasing System type of arrangement beyond November 2018. This conclusion was reached following a detailed analysis of the current arrangements, which is set out throughout this report. It is also based on an analysis of the alternative approaches to commissioning domiciliary care and consideration of how well these would work in Cardiff.
34. The main alternative approach is a Framework. This was the approach used by Cardiff Council prior to the introduction of a DAPL in 2014. Therefore, we understand how the Framework approach works in Cardiff and the benefits and challenges it would bring.
35. The Directorate is clear in our view that we should continue with the DAPL approach, instead of moving to a Framework or any other commissioning arrangement.

Cardiff Council may wish to change the approach to commissioning domiciliary care in the future

36. The current status of the DAPL and ADAM contracts means that the Council is seeking to have new arrangements in place by the end of November 2018. The Directorate expects these new arrangements to be in place for up to six years. However, it is acknowledged that within social services and particularly within domiciliary care, circumstances may arise that require the Council to make significant changes to the way it commissions domiciliary care, prior to the expiry of any new contractual arrangements. This could be due to external factors (e.g. Funding or Policy) or internal factors (e.g. a wish to use a Locality Based Model for commissioning care). There will be two specific features of the new commissioning arrangements that mitigate and future proof these risks.
37. The first is to ensure that new arrangements create an infrastructure that has the flexibility to support different commissioning and delivery models. A specific example is that the new DAPL will allow the creation of different lots, making it straightforward to commission specialist provision from a small number of providers on the basis of a particular type of care (e.g. specialist dementia care or care focussed on supporting reablement) or the location of care packages (e.g. within specific areas of the city as part of a Locality Based Model).

38. The second approach is to ensure that the DAPL and the IT contract each have appropriate break clauses to allow the Council, if appropriate, to end either or both of these contractual arrangements.

Local Member consultation (where appropriate)

39. This report will be presented to Scrutiny on 17th January 2018. This will be for their early attention and consideration, with the commitment that the further detail about the new commissioning arrangements will be brought back to Scrutiny for further discussion later in 2018.

Reason for Recommendations

40. The reason for this recommendation is to ensure the continued provision of care for Citizens in Cardiff, as current contractual arrangements come to an end on 4th November 2018.

Financial Implications

41. The report recommends the continuation of the present model based on a Dynamic Approved Provider List (DAPL) supported by an IT system that underpins the processes of procuring and managing domiciliary care packages. The system itself currently costs c.£190,000 per annum with the cost of the domiciliary care provision within individual care packages being based on the requirements of the package and the prices offered by the care market through the DAPL. The overall cost of domiciliary care is currently £23.5 million per annum, the significance of the spend emphasising the need to ensure cost effectiveness within this process. The current system was implemented in November 2014. At first the level of demand and the availability of provision within the DAPL meant that prices rose reflecting the market conditions. More recently however, in the past year, prices have stabilised and begun to reduce as measures have been taken to increase the market supply, to improve processes and as a reflection of controls put in place by the Directorate. The report also identifies a number of other positive outcomes from the DAPL including stability and sustainability of provision and the ability to measure and improve quality of services.
42. The financial implications of continuing with the present model cannot be assessed with any accuracy as they are dependent on a range of factors, in particular the future relationship between supply and demand for domiciliary care provision. In that regard both the availability of services and the level of demand will need to continue to be managed if costs are to be controlled and cost effective services procured on behalf of the Council. Other factors which will also impact on the future cost of domiciliary care include the on-going impact of increases to the National Living Wage, changes to legacy cases from previous framework agreements and changes to the Council's approach to commissioning such as a move to a more locality based model. The costs associated with the system will be reviewed as part of any new contract arrangements.

Legal Implications (including Equality Impact Assessment where appropriate)

43. The proposed recommendation, put simply, is to authorise the proposed overarching approach to put in place a new Dynamic Approved Provider List, as set out in the report.
44. By way of background, the Council currently procures domiciliary care services via its Approved Provider List (“APL”). The term of the current APL is due to expire on 3 November 2018. The electronic software currently used to support the Council’s APL is provided by Adam (external provider) under contractual arrangements which are also due to expire in November 2018.

Proposed overarching approach

45. The proposed approach is to establish a dynamic accredited provider list under which the Council undertakes “mini” tenders so as to award individual contracts for domiciliary care services in relation to individuals who require the said services. The proposed Dynamic Accredited Provider List (DAPL) will encompass a two-stage process.
46. The first stage encompasses the appointment of providers to the DAPL. Subject to meeting the predetermined selection criteria (that is, criteria equivalent to the PQQ stage) any provider who requests to join the DAPL must be admitted to the DAPL. Unlike a framework agreement, providers may apply to join the DAPL at any point during the lifetime of the DAPL.
47. During the second stage, as and when an individual requirement arises, a tender (this is equivalent to a “mini tender” stage under a framework agreement) will be carried out reflecting the particular requirements of the individual(s) concerned, with such tender to be assessed using MEAT (the most economically advantageous tender) and sub criteria.
48. The recommendation provides that the development of the criteria at both stages, that is, at the selection stage (first stage) and the “mini” tender stage (second stage) will be matters for the Director in consultation with others.
49. In terms of procurement law, the services concerned (domiciliary care services), being classified as Schedule 3 services under the Public Contracts Regulations 2015 (“the Regulations”), fall under the so called Light Touch Regime. This means that the set requirements with regard to procurement procedures (e.g. the Open procedure, Restricted, Competitive Dialogue and Dynamic Purchasing System) do not have to be followed to the letter of the Regulations. However, the Council is required to comply with certain requirements (including advertising in the OJEU) and the EC Treaty based principles of transparency and non-discrimination and proportionality, and certain procurement regulations which require the Council to ensure that the process is open, transparent, and non-discriminatory. To that end, it is proposed that the Council will

adopt a hybrid model which will contain elements of the Restricted procedure and elements of the DPS procedure and which will be designed to meet the EC Treaty based principles and those procurement regulations which relate to the Light Touch Regime. It is important that detailed legal advice is sought on the detail of the procurement as it is developed and, to that end, Legal Services are a member of the project team.

50. Given the nature of the proposed DAPL arrangement, the proposed approach does not give any certainty as to price (as with a framework agreement) with the price being ascertained at each “mini” tender stage. This is a risk with the proposed model. Accordingly, the proposed model should be set up on the basis that the Council is not granting any exclusivity for the services to the providers appointed to the DAPL and that the Council is entitled to enter into other arrangements in respect of individual packages of domiciliary care that it may require. It should also be appreciated that those providers appointed to the DAPL will not be obliged to submit a response to a mini tender requirement. That said, one would not expect a provider to apply to go onto the DAPL if it was not interested in mini tendering for work. This is raised because there may be particular cases (e.g. complex needs) where the market may not respond or may respond with much increased prices to reflect the complexities of individual cases.
51. Reference is also made in the body of the report to the use of technology to support the model. Legal advice should be sought on any IT related acquisitions and consideration will need to be given to the integration of the technology with the Council’s software systems.
52. Legal Services understands that with regard to those service users currently receiving a service from a provider, and then provided that the provider meets the selection criteria then the arrangements will continue to be provided by the same provider in order to ensure continuity of care. Consideration will need to be given to whether there are any TUPE implications, in particular if an existing provider chooses not to apply to join the new DAPL.

Equality duty

53. In considering this matter the decision maker must have regard to the Council’s duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment, (c) Sex, (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation and (i) Religion or belief – including lack of belief.
54. Consideration should be given as to whether an equalities impact assessment (EQIA) is required, (including an updated assessment if

there has been a time lapse since the assessment was carried out), to ensure that the Council has understood the potential impacts of the proposed decision in terms of its public sector equality duty.

55. The decision maker should also have regard when making its decision to the Council's wider obligations under the Social Services and Wellbeing (Wales) Act 2014 and The Wellbeing of Future Generations (Wales) Act 2015. In brief, both acts make provision with regards promoting / improving wellbeing.

HR Implications

56. None

RECOMMENDATIONS

57. The Cabinet is recommended to:
- a. Authorise the proposed overarching approach to secure a new Dynamic Approved Provider List for domiciliary care services as further detailed in the body of the report; and
 - b. Delegate authority to the Director of Social Services in consultation with the Cabinet Member for Social Care, Health and Well-being, the Section 151 Officer and the Director of Governance and Legal Services:
 - 1) To carry out all aspects of the procurement, without limitation to include:
 - i. approving the establishment of a new Dynamic Accredited Provider List
 - ii. approve the tender evaluation criteria to establish the dynamic accredited provider list
 - iii. appointing new providers to the dynamic accredited provider list subsequent to them meeting the selection criteria as stated by the Council
 - iv. further delegate authority to award contracts that are required during the life of the dynamic accredited provider list, such further delegations to be in accordance with the Council's Scheme of Delegations
 - v. to deal with all associated matters;
 - 2) To authorise any required procurement process to obtain the supporting technology required to support the dynamic accredited provider list, up to and including the award of contract.

Tony Young
9th January 2018