

Abandonment of the contract for ReAble Somerset - care and support services for reablement in Somerset

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Cabinet Member: Cllr William Wallace

Division and Local Member: Somerset / All

1. Summary

On 14 December 2016, the Cabinet decided to award contracts (by two geographical lots) to Provider A for the provision of Reablement Services.

Officers carried out the appropriate due diligence checks prior to the decision to award. However, due diligence is a continuing obligation with further significant checks carried out following the award decision but prior to the signing of the contract(s).

During the standstill period, Officers received information from an unsuccessful tenderer which merited careful consideration and the standstill period was formally extended for Lot 2. As Provider A was the successful bidder for both lots, the contract for Lot 1 has not been progressed to signature either.

Provider A has informed the Council that it would need to make material changes to their delivery model. The changes were not part of the tender that was evaluated by the Council.

Information has also been obtained from Provider A's referees and from Provider A in order to ensure the Council makes an informed and proportionate decision which respects EU procurement principles and complies with the Public Contracts Regulations 2016.

As a direct consequence of the information received at various stages since the decision on 14 December 2016, including that information voluntarily provided by Provider A, Officers do not consider that it is in the best interests of the Council or the vulnerable users of the Reablement Service to proceed with concluding the award to Provider A. Further, Officers recommend that the entire procurement (both lots) is abandoned in order to take time to consider carefully the issues raised by the current procurement process and whether they might need to be reflected in a revised procurement.

2. Issues for consideration / Recommendations

2.1. The Committee is asked to consider and comment on the decision of the Leader of the Council:

1. The ReAble Somerset procurement (both lots) is abandoned with immediate effect for the reasons set out in this report; and
2. Appendix A is subject to legal professional privilege and is also treated as exempt information, as the case for the public interest in maintaining the exemption outweighs the public interest in disclosing that information.

3. Background

1. The procurement process was conducted under the Light Touch Regime in accordance with the requirements of the Public Contracts Regulations 2015 and as set out in the tender documentation. The evaluation process was robust with a strong representative evaluation panel. Each panel member scored each Tender on an individual basis prior to the meetings held between 31 October – 02 November 2016, where the whole panel agreed scores and comments on a consensus basis. A member of the SCC Commercial and Procurement Team was present to facilitate all aspects of this meeting to ensure fairness and transparency.
2. The Council has lost confidence in Provider A's ability to deliver the service in accordance with its tender and the procurement documents to the standard the Council requires.
3. Provider A has indicated that, for reasons it claims to be beyond its control, it would now need to change the model by which they would deliver the service from that set out in its tender – to a sub-contracting model for at least for the first 12-18 months. This model was not part of the tender and was not evaluated. The Council is unable to accept this change, as to do so would breach the EU procurement principles of equal treatment and transparency.
4. Furthermore, it appears that the newly proposed model is in its infancy with much work required to put in place the necessary arrangements with the result that the full service may not be capable of delivery from the outset on 27 March 2017.
5. Provider A has also requested changes relating to price, which the Council is unable (and unwilling) to accept, for reasons of equal treatment, transparency and its own commercial interest.
6. Officers consider that it is in the best interests of the Council and vulnerable service users to abandon the procurement in order to examine the issues which have arisen since the decision on 14 December 2016. This is considered necessary and proportionate, as the outcome of such careful examination may need to be reflected in a revised procurement – whether through a revised specification (e.g. lots, delivery model), different selection/award criteria and other aspects

of the procurement documents.

4. Consultations undertaken

- 4.1. Wide consultation for the procurement process was undertaken and this is detailed within the original cabinet decision paper (add appendix number) dated.
- 4.2. Legal advice on the events as they emerged following the Cabinet decision on 14 December 2016 has been provided by the Council's Senior Solicitor. Additional advice has been provided by Counsel. This advice is summarised in Confidential Appendix A. The advice is subject to legal professional privilege and is exempt information for the purposes of Section 100 of, and Schedule 12A to, the Local Government Act 1972

The Senior Solicitor is satisfied that the Council has the right and justification to abandon the procurement process, even at this late stage.

5. Implications

- 5.1. There are implications in relation to ensuring sufficient reablement services (or similar services which can deliver the required outcomes) after March 2017. Officers are currently considering a number of options on this.

It has to be remembered that the reablement service is short-term intervention of up to a maximum of, 6 weeks. It is not therefore envisaged that existing users will be adversely affected by a change in service provision or delay in the procurement. However, officers will be alive to this issue and work hard to ensure service continuity where needed.

Officer's key aim has always been to ensure that a high quality and viable reablement services is available to those people that have need it in Somerset. All options have been considered and risks balanced, which would show that the risk of limited or no service, in some or all of Somerset would be a distinct possibility, posing the greatest risk to vulnerable adults, health partners and Somerset County Council by a service not being available, in an unplanned way.

Other than the staff time and resources required in considering future service delivery and any resulting procurement, there are no internal HR implications. However, with the current homecare contracts coming to an end on 26th March 2017, officers are alive to the implications for staff of the existing providers and will need to engage with those providers sensitively.

There has been a cost in terms of officer time and resources in running the procurement process, including the prior market engagement events. There will be a further cost to the Council in running a fresh procurement process, should that be the decision taken following the review outlined above.

The value of the contracts was £3.8 million per annum. It cannot be ruled out that the value of future contracts will be higher than that. There will also be the cost of any interim arrangements that the Council may in future decide to put in

place, pending the completion of any new procurement process.

We are working with a wide range of stakeholders including our acute trusts, community and care provider partners to ensure that we can continue to deliver a consistent service whilst we consider our longer term options.

6. Background papers

- 6.1.** Appendix A: Confidential Key Decision Report 1st February 2017
- Appendix B: Confidential Legal Advice
- Appendix C: Cabinet Decision Report (award) December 2016