



Mayor and Cabinet

Report title: Learning Disability Framework – Permission to procure contracts for Supported Living Services and Contract Extensions

Date: 06 July 2022

Key decision: Yes

Class: Part 1

Ward(s) affected: All

Contributors: Executive Director of Community Services,
Director of Law, Governance and Elections
Executive Director for Corporate Resources

Outline and recommendations

This report sets out the procurement process to re-procure 22 supported living services for adults with learning disabilities called-off under the Framework Agreement for Services to Adults with Learning Disabilities: Lot 1 Supported Living. This procurement forms the third and fourth stage of the recommissioning of all existing in-borough Learning Disability Framework contracts.

This report seeks agreement from Mayor and Cabinet to:

- a) initiate two procurement exercises under the Framework Agreement for the Provision of Services to Adults with Learning Disabilities as follows:
 - 1) The recommissioning of 10 existing supported living contracts services coded as Project LDF3 to be carried out this year (2022)
 - 2) The recommissioning of 12 existing supported living contract services coded as Project LDF4 to be carried out early 2023

- b) Agree extensions of 6 months for specified contracts included in LDF3 and LDF4, as set out at section 2.2 in this report. The total cost of extensions at 2022/23 contract prices is £1,685,478.27.

Timeline of engagement and decision-making

The Framework Agreement for Adults with Learning Disabilities 2019-23 was implemented on 01 September 2019 following agreement by Mayor and Cabinet on 26 June 2019.

Phase one (Project LDF1) which involved the re-commissioning of 12 supported living service contracts was completed in early 2020 and recommendations for the award of contract approved by Mayor and Cabinet on 05 February 2020 (Report headed 'Framework Agreement for Services to Adults with Learning Disabilities – Call off supported living contracts').

The intention was for the second phase of procurement to take place in 2020, however, due to the impact of the Covid-19 pandemic a decision was made to postpone all procurement activity to enable both commissioners and providers to focus their full capacity on managing the response to the pandemic. On 24 March 2021, Mayor and Cabinet approved recommendations to extend a range of social care contracts, including all Learning Disability Framework contracts, to allow for completion of the postponed procurement processes at a later date. (Report headed; 'COVID related contract extensions').

Following the easing of restrictions in 2021, phase two (Project LDF2) which involved the re-commissioning of 7 supported living service contracts and 3 registered care home contracts was completed in early 2022. Recommendations for the award of contract were approved by Mayor and Cabinet on 09 March 2022 (Report headed 'Framework Agreement for Services to Adults with Learning Disabilities – Call off supported living contracts').

This third procurement phase (Project LDF3) consisting of 10 supported living service contracts is planned to start immediately on approval from Mayor and Cabinet and a final fourth phase (Project LDF4), consisting of a further 12 supported living service contracts is due to be carried out in early 2023 .

As in previous phases, Commissioners will be seeking the active participation of service users and their families in the evaluation process. Training workshops run by Lewisham Speaking Up will be held in August and September 2022 to support service users prepare for their participation in the evaluation interviews for short listed providers in each phase.

1. Summary

- 1.1. The purpose of this report is to seek approval from Mayor and Cabinet to initiate two procurement exercises. This procurement will involve the re-commissioning of 22 supported living services contracts as a call off under the Framework Agreement for the Provision of Services to Adults with Learning Disabilities.
- 1.2 These procurement exercises form the third and fourth stage of the re-commissioning of all existing in-borough Learning Disability Framework contracts. The third phase (Project LDF3) consisting of 10 supported living service contracts is planned to start immediately on approval from Mayor and Cabinet and a fourth phase (Project LDF4), consisting of a further 12 supported living service contracts is due to be carried out in early 2023.
- 1.3 LDF3 and LDF4 procurement will be carried out under Lot 1: Supported Living of the Framework Agreement and the providers appointed to the Framework for this category will be invited to bid. Providers can choose to bid for any or all of the services being re-commissioned.
- 1.4 The Framework was implemented on 1 September 2019 with a term of 4 years. The Framework Agreement allows the Council to both call off contracts using the prices and

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quality information submitted on appointment to the Framework Agreement or through a mini competition amongst Framework Providers. The Framework Agreement does not preclude an open tender process if the Council does not believe that existing Framework providers could deliver the type and complexity of service required.

- 1.5 Procuring these services through the Framework Agreement will enable commissioners to continue to ensure contracts deliver best value. The new contractual agreements will give the flexibility to commissioners to review services and costs to reflect changing needs and support requirements and strategic priorities.
- 1.6 The procurement process will complete beyond the current expiry dates for 14 supported living services contracts for adults with learning disabilities included in LDF3 and LDF4. Commissioners are therefore recommending an extension for these 14 contracts to the end dates as detailed in the tables at 2.2. The extension is to allow for these contracts to be re-commissioned through the Learning Disability Framework Agreement prior to the revised contract end dates.

2. Recommendations

2.1 Mayor and Cabinet are recommended to approve:

2.1.1 the initiation of the procurement of the following 10 supported living contracts via a mini-competition under Lot 1: Supported Living of the Framework Agreement for Adults with Learning Disabilities 2019-2023. This procurement will be known as Project LDF3 and each contract will be for a period of 4 years. For the purposes of the procurement exercise these services will be anonymised using the codes given below:

Supported Living Services	Current Annual Value	Total Value of Contract (4 years)	Current contract end date
LDF3A	£204,158.60	£816,634.42	31/12/2022
LDF3B	£198,047.40	£792,189.59	30/06/2022
LDF3C	£201,478.15	£805,912.59	31/12/2022
LDF3D	£238,056.18	£952,224.74	31/12/2022
LDF3E	£180,866.03	£723,464.13	30/06/2022
LDF3F	£304,792.54	£1,219,170.17	30/06/2022
LDF3G	£187,982.41	£751,929.64	30/06/2022
LDF3H	£209,863.07	£839,452.28	30/06/2022
LDF3J	£283,561.82	£1,134,247.27	30/06/2022
LDF3K	£104,684.36	£418,737.43	31/12/2022

2.1.2 the initiation of the procurement of the following 12 supported living contracts via a mini-competition under Lot 1: Supported Living of the Framework Agreement for Adults with Learning Disabilities 2019-2023. This procurement will be known as Project LDF4 and each contract will be for a period of 4 years. For the purposes of the procurement exercise these services will be anonymised using the codes given below:

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Supported Living Services	Current Annual Value	Total Value of Contract (4 years)	Current contract end date
LDF4A	£211,201.71	£844,806.82	30/06/2023
LDF4B	£235,742.11	£942,968.45	30/06/2023
LDF4C	£246,390.66	£985,562.65	31/12/2022
LDF4D	£234,584.55	£938,338.19	31/12/2022
LDF4E	£327,017.29	£1,308,069.14	30/06/2023
LDF4F	£246,622.18	£986,488.70	31/12/2022
LDF4G	£204,719.33	£818,877.34	31/12/2022
LDF4H	£308,528.08	£1,234,112.33	30/06/2023
LDF4J	£208,886.57	£835,546.29	31/12/2022
LDF4K	£202,867.23	£811,468.91	31/12/2022
LDF4L	£492,752.65	£1,971,010.61	31/12/2022
LDF4M	£347,897.55	£1,391,590.21	31/12/2022

2.1.3 an extension of 6 months for 6 contracts included in Phase 3, LDF3B, LDF3E, LDF3F, LDF3G, LDF3H and LDF3J to the end dates detailed in 2.2 below. This is to allow for the current procurement process to be completed within contract expiry dates for these contracts.

2.1.4 an extension of 6 months for 8 contracts included in Phase 4, LDF4C, LDF4D, LDF4F, LDF4G, LDF4J, LDF4K, LDF4L & LDF4M detailed in 2.2 below. This is to allow for the future procurement process to be completed within expiry dates for these contracts.

2.2 Should the above recommendations be approved, the 14 contracts will have the following extension dates and costs:

Supported Living Services	Annual Value 22/23	Value of 6 Month extension	Extension to:
Phase Three			
LDF3B	£198,047.40	£99,023.70	31/12/2022
LDF3E	£180,866.03	£90,433.02	31/12/2022
LDF3F	£304,792.54	£152,396.27	31/12/2022
LDF3G	£187,982.41	£93,991.21	31/12/2022
LDF3H	£209,863.07	£104,931.54	31/12/2022
LDF3K	£104,684.36	£52,342.18	31/12/2022
Phase Four			
LDF4C	£246,390.66	£123,195.33	30/06/2023
LDF4D	£234,584.55	£117,292.27	30/06/2023
LDF4F	£246,622.18	£123,311.09	30/06/2023
LDF4G	£204,719.33	£102,359.67	30/06/2023
LDF4J	£208,886.57	£104,443.29	30/06/2023
LDF4K	£202,867.23	£101,433.61	30/06/2023
LDF4L	£492,752.65	£246,376.33	30/06/2023
LDF4M	£347,897.55	£173,948.78	30/06/2023

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3. Policy Context

- 3.1. In line with other councils, Lewisham Council became the lead agency for commissioning services for adults with a learning disability on 1st April 2009. The Joint Commissioning Section 75 signed in 2014 means that it leads on commissioning in respect of adult services for Mental Health, Learning Disabilities, Older Adults, Physical Disabilities and Carers.
- 3.2. The Care Act 2014 is the most substantial piece of legislation relating to adult social care to be implemented since 1948. It consolidated previous legislation, common law decisions and other good practice guidance. The Care Act places a wide emphasis on prevention, the provision of advice and information, changes to eligibility, funding reform and market shaping and commissioning.
- 3.3. The Council requires that contracts continue to be delivered in accordance with the principles laid out in Transforming Care, the Government's Concordat Programme of Action (2012) and the national plan "Building the right support" (2015) to develop community services for people with a learning disability and/or autism. These principles are:
- 1) People should be supported to have a good and meaningful everyday life
 - 2) Care and support should be person-centred, planned, proactive and coordinated
 - 3) People should have choice and control over how their health and care needs are met
 - 4) People should be supported to live in the community
 - 5) People should have a choice about where and with whom they live
 - 6) People should get good care and support from mainstream NHS services
 - 7) People should be able to access specialist health and social care support in the community
 - 8) People should be able to get support to stay out of trouble
 - 9) When health needs cannot be met in the community people should be able to access high quality assessment and treatment in a hospital setting
- 3.4. The Framework Agreement established in 2019 links with the Council's Corporate Strategy (2018 – 2022). The Framework operates in line with the Council's commitments:
- to ensure all health and social care services are robust, responsive and working collectively to support communities and individuals:
 - to defend and deliver health and social care services that protect the most vulnerable in our borough:
 - to ensure everyone receives the health, mental health, social care and support services they need
- 3.5. The contracts being commissioned are being procured under the Framework Agreement and in line with these Council commitments.

4. Background

- 4.1. In June 2019, Mayor and Cabinet awarded contracts for a new Framework Agreement for its adult learning disability services covering four categories of service: Supported

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Living (Lot 1); Registered Residential Care (Lot 2); Day Care (Lot 3); Non-residential Respite Care and Outreach (Lots 4.1 and 4.2). The Framework was implemented on 1 September 2019 with a term of 4 years.

- 4.2 Twenty-one organisations were appointed to the Framework Agreement for the service category of supported living. Providers appointed to the Framework for this category (Lot 1) will be invited to bid for any or all of the recommissioned services.
- 4.3 The Framework Agreement allows the Council to both call off contracts using the prices and quality information submitted on appointment to the Framework Agreement or through a mini competition amongst Framework Providers. The Framework Agreement does not preclude an open tender process if the Council does not believe that existing Framework providers could deliver the type and complexity of service required.
- 4.4 All existing Framework supported living services (approximately 41 in total) and residential care services (3 in total) were to be recommissioned under the Framework Agreement, and carried out in four phases in line with contract end dates.
- 4.5 Phase one (Project LDF1) which involved the re-commissioning of 12 supported living services was completed in early 2020 and recommendations for contract award agreed by Mayor and Cabinet on 05 February 2020 (Report headed 'Framework Agreement for Services to Adults with Learning Disabilities – Call off supported living contracts').
- 4.6 The intention was for the second phase of procurement to take place in early 2020, however, due to the impact of the Covid-19 pandemic a decision was made to postpone all procurement activity to enable both commissioners and providers to focus their full capacity on managing the response to the pandemic. On 24th March 2021, Mayor and Cabinet approved recommendations to extend a range of social care contracts, including all Learning Disability Framework contracts, to allow for completion of the postponed procurement processes at a later date. (Report headed; 'COVID related contract extensions').
- 4.7 Phase two (Project LDF2), which involved the re-commissioning of 7 supported living services and 3 registered care services was completed in early 2022 and recommendations for contract award agreed by Mayor and Cabinet on 09 March 2022 (Report headed 'Framework Agreement for Services to Adults with Learning Disabilities – Call off supported living contracts').
- 4.8 Phase three and Phase four (Projects LDF3 & LDF4) include the remaining 22 supported living services to be procured through the Learning Disability Framework Agreement for adult learning disability services under the category of Supported Living (Lot 1).

5. Reason for procuring services

- 5.1 These two procurement exercises form the third and fourth phase of recommissioning all in-borough Learning Disability Framework contracts.
- 5.2 The intention was for the procurement of the third and fourth stage to take place in 2021, however, due to the impact of the Covid-19 pandemic a decision was made to postpone all procurement activity to enable both commissioners and providers to focus their full capacity on managing the response to the pandemic. On 24th March 2021, Mayor and Cabinet approved recommendations to extend a range of social care contracts, including all Learning Disability Framework contracts, to allow for completion of the postponed procurement processes. (Report headed; 'COVID related contract extensions').
- 5.3 The third phase, Project LDF3, covers the contracts for 10 (ten) supported living services.

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Recommendations for award of these contracts will be taken to Mayor and Cabinet in December 2022. The fourth stage, with a project title of LDF4 covers the contracts for a further 12 (twelve) supported living services.

- 5.4 This procurement is being carried out under Lot 1: Supported Living and the providers appointed to the Framework for these categories will be invited to bid. Providers can choose to bid for any or all of the services being recommissioned.
- 5.5 Specifications issued under the Learning Disability Framework Agreement are based on current best practice and learning from the existing Framework Agreement contractual arrangements. Contract specifications and pricing schedules reflect the need for providers to deliver personalised services for individuals in accordance with assessed needs and specified financial modelling.
- 5.6 The Supported Living specification issued through this procurement process comprises a general specification detailing the values, standards and holistic approach required of providers delivering these services in the borough and individualised specifications for each service detailing commissioners' expectations and requirements for the service and key outcomes expected for each service user.
- 5.7 Procuring these services through the Framework Agreement will enable commissioners to continue to ensure contracts deliver best value. The new contractual agreements will give the flexibility to commissioners to review services and costs to reflect changing needs, support requirements, current and future strategic priorities.
- 5.8 The contracts will be managed under the Council's Contract Management Framework and will involve contract monitoring meetings and periodic service performance reviews. This measures the outcomes, outputs and performance of the contracts. Key Performance Indicators will be completed each quarter by individual providers. Provider performance is also reported quarterly to the Corporate Procurement Board.

6. Procurement Process

- 6.1 For this mini-competition council officers are issuing a tender pack that will include:
 - Invitation to Tender
 - Form of Tender
 - Pricing Schedule
 - Specification
 - Method Statements including social value KPIs
 - Anonymised care act assessments
 - Framework Agreement
 - Procurement Code of Practice
 - Procurement Contract Management Dashboard
- 6.2 The mini-competition will be open for 35 days to enable bidders to respond in sufficient detail to the proposals.
- 6.3 The evaluation of the mini-competitions will be split 60:40 between quality and price in line with the evaluation criteria for securing a place on the Framework. This approach is

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proposed because all of the potential bidders have already competed on price when they were appointed to the Framework.

- 6.4 The price element of the evaluation will be scored on the overall contract value. The bidder with the lowest total weekly cost will score the highest in the price evaluation. This approach will support ensuring best value for money.
- 6.5 Supported living rates are set within the Framework Agreement and in this procurement exercise bidders will be required to price the service based on the Council's rates. Bidders are advised they cannot submit prices above the Council's maximum rates. Providers will be informed in tender documents that bids received above the framework rates will be rejected.
- 6.6 The Learning Disability Framework Agreement has been established on the basis of an hourly cost inclusive of the London Living Wage and it will be a requirement of the successful bidder, as detailed in the Council's Invitation and Instructions to Tenderers that any employee working on the contract awarded via this procurement exercise will be remunerated at a rate which is, at a minimum, equal to the London Living Wage at the time the new contract starts (currently £11.05 per hour).
- 6.7 TUPE will apply to the services being procured. TUPE requirements mean that, where there is a recommended change of provider, the service staff in place prior to transfer will transfer to the new provider. This will help to maintain stability for the service user and continuity of staff support around the maintenance of activities and support for health and well-being during any transition. All staff currently working in the LDF3 and LDF4 service contracts are already being paid at rates inclusive of the London Living Wage and under the TUPE Regulations the staff's rates of pay are protected.
- 6.8 The quality evaluation will be tailored to this mini-competition and will comprise of 6 written method statements, which all bidders will need to complete, detailing how they will deliver the service to the required standard and meet the specific needs of the individual clients and client group.
- 6.9 One of the method statements concerns Social Value and requires tenderers to detail targets around social value across the four council objectives:
- Employment, skills and economy
 - Creating a greener Lewisham
 - Training Lewisham's future
 - Making Lewisham Healthier
- 6.10 Tenderers will be asked to detail their KPI social value targets in areas including the employment of LBL residents, reducing carbon footprint and use of local businesses. Tenderers will also be made aware that if they are successful they will also be required to meet targets around the following social value KPIs:
- Demonstrate commitment to work practices that improve staff physical and mental wellbeing and reduce absenteeism due to ill health
 - Any accreditation that promotes health and wellbeing of service users staff and/or wider community (Dementia Friendly, Disability Confident)
 - Demonstrate commitment to support the re-building of the local economy and environment

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- 6.11 Tenderers will also have to submit two additional written method statements specific to the service for which they are bidding. These cover their understanding of how the commissioner’s statement will influence staffing and management of the service and how they will support the achievement of the key outcomes identified for the individuals in the service. Outcomes will be set in line with the key objectives of ‘Empowering Lewisham’ and the progression approach in ensuring that people are supported to be as independent as possible in their lives, using targeted learning opportunities and natural supports.
- 6.12 The top 3 shortlisted providers will be invited to interview which will account for a percentage of the overall quality weighting. Shortlisted bidders will need to deliver a presentation to the panel and answer questions on topics specific to the needs of the service. The interview evaluation panel will comprise of representatives from Adult Social Care, Lewisham Integrated -Commissioning Team, Procurement, people using the service and family members. Commissioners are currently identifying individual service users and their families to participate in the interview and evaluation stage of the procurement process.
- 6.13 This mini-competition is being procured in accordance with the Council’s Contract Procedure Rules and the terms and conditions of the specific Framework Agreement. A report on the outcomes of the procurement process and recommendation for award of contract will be presented to Mayor & Cabinet. For phase three, it is anticipated this will be in December 2022 based on the procurement timetable as detailed below.
- 6.14 Proposed Procurement Timetable for Phase 3

Activity	Proposed Date
Publish Tender Documentation to all providers appointed to the Learning Disability Framework Agreement in the categories of Supported Living (Lot 1)	01 August 2022
Clarification Request Deadline	26 August 2022
Tender return deadline	05 September 2022
Tender Evaluation Period	06 September 2022 – 13 November 2022
Contract award	07 December 2022 (TBC)
10 day notification standstill	08 December – 18 December 2022 (TBC)
Mobilisation period for new contract	01 January – 31 March 2023
Contract commencement	Between 01 January and 31 March 2023

- 6.15 For phase four, a procurement timetable will developed in early 2023.
- 6.16 The extension of 6 contracts in LDF3 and 8 contracts in LDF4 is required under the Contract Procedure Rules as this is due to the exceptional circumstances caused by the impact of the Covid 19 pandemic. Further lockdowns imposed in 2021 delayed the planned second phase of the recommissioning cycle (Project LDF2) and this in turn has pushed back the launch of the following phases. It would not be practical to incorporate all 22 contracts in one phase due to the impact on commissioning and adult social care in managing the process as all services need to be individually specified and evaluated with, at the evaluation phase, the involvement of service users and families in separate service interviews.

- 6.17 In addition the council has to be mindful of the potential impact on the local learning disability provider market of a large scale tender. Extending these contracts will allow for managed tender processes and will provide a period of continued stability and certainty. This will ensure people supported under these framework contracts have a stable and safe service provision whilst the remaining phases of the reprocurement process are completed

7. Financial implications

- 7.1 This report recommends the procurement of 22 supported living contract for adults with learning disabilities and / or autism. Each contract will be for a period of four years. These contracts are currently funded through the Package & Placement Budget.
- 7.2 The Council procures contracts totalling in value approximately £14 million per annum across the service categories covered by the Framework Agreement: This procurement covers approximately £5.4 million or 38.6% of the total annual value of services covered by Framework contracts.
- 7.3 The total current contract price for each service covered in this procurement is set out in the table below:

Service	Annual Value of Contract	Total Value of Contract (4 Years)
Phase three		
LDF3A	£204,158.60	£816,634.42
LDF3B	£198,047.40	£792,189.59
LDF3C	£201,478.15	£805,912.59
LDF3D	£238,056.18	£952,224.74
LDF3E	£180,866.03	£723,464.13
LDF3F	£304,792.54	£1,219,170.17
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LDF3J	£283,561.82	£1,134,247.27
LDF3K	£104,684.36	£418,737.43
Phase Four		
LDF4A	£211,201.71	£844,806.82
LDF4B	£235,742.11	£942,968.45
LDF4C	£246,390.66	£985,562.65
LDF4D	£234,584.55	£938,338.19
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LDF4F	£246,622.18	£986,488.70

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LDF4J	£208,886.57	£835,546.29
LDF4K	£202,867.23	£811,468.91
LDF4L	£492,752.65	£1,971,010.61
LDF4M	£347,897.55	£1,391,590.21

- 7.4 This report also recommends the extension, in total, of 14 (fourteen) contracts to 3 (three) organisations for a period of six months as detailed. The extension to the existing contracts will be funded through the Package and Placement Budget.
- 7.5 The total contract price for extension of contracts due to be included in the procurement of phase three and phase four of recommissioning of each service and maximum cost of each extension is set out in the tables below:

Supported Living Services	Annual Value 22/23	Value of 6 Month extension	Extension to:
Phase Three			
LDF3B	£198,047.40	£99,023.70	31/12/2022
LDF3E	£180,866.03	£90,433.02	31/12/2022
LDF3F	£304,792.54	£152,396.27	31/12/2022
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LDF4L	£492,752.65	£246,376.33	30/06/2023
LDF4M	£347,897.55	£173,948.78	30/06/2023

- 7.6 The total cost of the contract extensions is £1,685,478.27 based on proposed 2022/23 contract rates. This includes the inflationary increase for 2022/23 currently on offer to Providers on the Learning Disability Framework. The offer is 1.84% which reflects the increase in London Living Wage introduced in November 2021. At the current time not all providers on the Framework have confirmed acceptance of the offer.
- 7.7 Providers awarded contracts through this procurement process will be required to provide evidence that all staff are remunerated at rates equal to or above the London Living Wage as standard terms and conditions of employment. The Contract will require providers to maintain the London Living Wage for the lifetime of the Contract.

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- 7.8 Any changes in contract price, following award of contracts, will be as a result of Council agreed uplifts or due to changing service user need which could lead to either an increase or decrease in price. Any changes agreed by the Council during the period of the contract will be applied in line with the Council's standard terms and conditions of the Framework Agreement.
- 7.9 Use of the Framework Agreement will continue to help the Council achieve savings and control costs. While savings from the Framework moving forwards may be lower than in earlier exercises, the risk of cost pressure if contract prices are not contained is high.
- 7.10 The Framework Agreement has been commissioned on the basis of a 60% Quality & 40% Price weighting. This weighting reflects the need to appoint providers to the Learning Disability Framework Agreement who are committed to delivering economically efficient services, which are also of a high quality in the respect of the support provided and outcomes achieved. Local authorities have a duty under the Local Government Act 2003 to obtain best value in the procurement of works, services and supplies and to secure continuous improvement in the way they carry out their functions, having regard to a combination of economy, efficiency and effectiveness

8 Legal implications

- 8.1 The call off contracts referred to in the report are social health care contracts and their potential value means that the light touch Find a Contract (formerly OJEU) threshold is exceeded. The proposed call off contracts are category A contracts under the Council's Constitution (Contract Procedure Rules) and fall under the Public Contracts Regulations 2015.
- 8.2 A Category A contract must be subject to a formal tender exercise and bidders must be invited to tender by either a public advertisement, alternatively by a compliant public consortium Framework, or by a dynamic purchasing system. The Council may use a Framework Agreement provided it complies with the requirements in section 33 of the Public Contract Regulations. The proposal is to use the existing compliant framework to obtain suitable bids by way of mini competition meeting the requirements. The award of the contract must be published in accordance with legal requirements.
- 8.3 Find a contract (formerly OJEU) reporting procedures will need to be followed on award as necessary.
- 8.4 The report also requests extensions of existing contracts for 6 months for the reasons set in this report. Rule 17 of the Council's Contract Procedure Rules allows for extensions of contracts in certain circumstances. These include necessary changes to purchase new works, services or supplies from the contractor and not included in the original procurement, or for changes to deal with unforeseen circumstances. This can only be relied on where a change of contractor would cause significant inconvenience (or substantial duplication of cost) or, a change of contractor cannot be made for economic or technical reasons. In addition, the change must not result in an increase in price of more than 50% of the total value of the contracts across their term. This price limit applies to each separate change however, it must not be used as a means of circumventing the procurement rules.
- 8.5 Where Rule 17 does not apply to certain contracts, Rule 18 applies which means an exemption from the Contract Procedure Rules is to be sought. The Rules say that an exemption can only be given in exceptional or unforeseen circumstances (Rule 18). When consideration is to be given as to whether an exemption should be approved, the

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following matters should be considered: • the nature of the market for the services to be provided has been investigated and is such that the proposed approach is justifiable; or the contract is for services that are required in circumstances of extreme urgency; or there are other circumstances which are genuinely exceptional; • it is in the Council's overall interest; and • there is no breach of legislation.

- 8.6 The award of the call off contracts and the extensions will be a key decision which should go in the forward plan.
- 8.7 The Public Services (Social Value) Act 2012 requires that when the Council is procuring services above the EU threshold it must consider, before commencing a procurement process, how the procurement might improve the social, economic and environmental wellbeing of the area. Officers have reported on social value below.
- 8.8 The Council has a public sector equality duty (the equality duty or the duty - The Equality Act 2010, or the Act). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.9 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 8.10 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for Mayor and Cabinet, bearing in mind the issues of relevance and proportionality. Mayor and Cabinet must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 8.11 The Equality and Human Rights Commission (EHRC) has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance. The Council must have regard to the statutory code in so far as it relates to the duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found on the EHRC website.
- 8.12 The EHRC has issued five guides for public authorities in England giving advice on the equality duty. The 'Essential' guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are

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legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice.

9. Equalities implications

- 9.1 The Council has a public sector equality duty covering nine protected characteristics. These contracts concern the protected characteristic of Disability as the recommendations made in this report relate to one specific group of people with disabilities, people with a learning disability. Implementing these recommendations will not compromise the quality of support delivered to those affected as they will continue to be monitored through commissioning's contract monitoring arrangements. The Council will ensure that as individual contracts are re-let it will comply with the Equality Act 2010 and will not allow any unlawful discrimination
- 9.2 The Council requires that contracts continue to be delivered in accordance with the principles laid out in the national plan "Building the right support" (2015) to develop community services and inpatient facilities for people with a learning disability and/or autism.
- 9.3 People with learning disabilities from black and minority ethnic communities often suffer from a double discrimination. In order to combat this, service specifications include specific sections on meeting the cultural and religious needs of users in the service. These standards and requirements are monitored as part of the overall contract monitoring arrangements.
- 9.4 Government reports such as 'Death by Indifference' have highlighted the risk to people with learning disabilities of being discriminated against in how their health and wellbeing is supported. The service specifications require providers to recognise their specific responsibilities for supporting people with their health through Health Action Plans, and working in partnership with generic primary and secondary health providers to meet these needs.

10 Climate change and environmental implications

- 10.1 There are no specific environmental implications arising from this procurement process. However, procurement of the Framework Agreement required tenderers to demonstrate sound environmental, and sustainability practice, supported by robust policies and procedures. The Council's environmental objectives are further addressed in tenderers Social Value submission and targets set will be monitored within the Council's contract monitoring process for learning disability Frameworks contracts.

11 Crime and disorder implications

- 11.1 There are no specific crime and disorder implications arising from this piece of procurement. However, contract compliance measures around safeguarding, assertiveness and anti-bullying initiatives are built into service specifications.

12 Health and wellbeing implications

- 12.1 There are no specific health and well-being implications. Any service transfers involve no change in housing for service users and TUPE requirements mean that service staff in place prior to transfer will transfer to the new provider. This will help to maintain stability for the service user and continuity of staff support around the maintenance of activities and support for health and well-being during any transition.
- 12.2 It will be a requirement of both the existing and new provider to work together to manage any anxiety or worries that service users and their families have about the change of provider users and inform commissioners of any issues that may arise.

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13 Social Value implications

- 13.1 The Public Services (Social Value) Act 2012 came into force on 31st January 2013. It is now a legal obligation in certain circumstances for local authorities and other public bodies to consider the social good that could come from the procurement of services before they embark upon it.
- 13.2 Social Value is defined as the additional economic, social and environmental benefits that can be created when Lewisham Council purchases services outside of the organisation.
- 13.3 Lewisham aims to agree social value through commissioning and procurement activities through four objectives:
- Employment, skills and economy
 - Creating a greener Lewisham
 - Training Lewisham's future
 - Making Lewisham Healthier
- 13.4 The procurement for LDF3 & LDF4 will require providers to detail how they would ensure social value across their contracts and provide the Council with targets covering the 4 objectives listed in 13.3
- 13.5 The providers awarded the contracts for these services under the Framework Agreement will therefore need to ensure that the Borough receives a strong added value offer from performance of these contracts.
- 13.6 Section 6.9 above details the specific social values set for the contracts being tendered through these procurement exercises.
- 13.7 Progress against these will be monitored in line with the Council's Social Value Policy (2019), and will be built into the formal contract management and monitoring processes.
- 13.8 The Council has a stated commitment in its Corporate Strategy (2018-2022) to fair pay as a Living Wage employer and to increasing the number of Living Wage employers in Lewisham. The Framework Agreement has a contractual requirement that providers pay staff the London Living Wage as a minimum
- 13.9 The Council has a stated commitment in its Corporate Strategy (2018-2022) to fair pay as a Living Wage employer and to increasing the number of Living Wage employers in Lewisham. The Framework Agreement has a contractual requirement that providers awarded contracts pay staff the London Living Wage as a minimum. This will also be monitored through the Council's contract management and monitoring processes.

14. Background papers

The table below sets out the key reports presented to Mayor and Cabinet regarding this proposal.

Report Title	Date	File Location	Contact Officer
Framework Agreement for Services to Adults with Learning Disabilities – Call off of supported living and	09/03/2022	Joint Commissioning Team, 3rd Floor,	Joanne Lee Joint

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registered residential care contracts		Laurence House	Commissioner
COVID related contract extensions	24/03/21	Joint Commissioning Team, 3rd Floor, Laurence House	Heather Hughes, Joint Commissioning Lead, Complex Care & Learning Disability
Framework Agreement for Services to Adults with Learning Disabilities - Call off supported living contracts	05/02/2020	Joint Commissioning Team, 3 rd Floor, Laurence House	Tom Bird Joint Commissioner
Learning Disability Framework - Request for permission to re-procure contracts for Supported Living and Residential Care services through call off from the Framework	11/12/19	Joint Commissioning Team, 3 rd Floor, Laurence House	Tom Bird Joint Commissioner
Framework Agreement for the Provision of Services To Adults With Learning Disabilities 2019-2023 – Stage Two: Appointment to Framework	26/06/19	Joint Commissioning Team, 3 rd Floor, Laurence House	Tom Bird Joint Commissioner

15. Glossary

Term	Definition
Commissioning/Commissioner	<p>A person or organisation that plans, buys and monitors the services that are needed by the people who live in the local area.</p> <p>The local council is the commissioner for Adult Social Care. NHS care is commissioned separately by local clinical commissioning groups (CCG). In many areas health and social care Commissioners work together to make sure that the right services are in place for the local population.</p>
Framework Agreement	<p>A Framework Agreement provides an overarching agreement with potential suppliers to establish general terms and conditions governing contracts that may be awarded during the life of the Framework. It operates essentially as a list of preferred providers, who have evidenced competence and financial sustainability against a generic service specification at a competitive price.</p>

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London Living Wage	means the hourly rate of pay as calculated and published annually by the Greater London Authority taking into account the higher cost of living in London and the rate of inflation
Progression	is part of the Empowering Lewisham service development programme ensuring that people are supported to be as independent as possible in their lives, using targeted learning opportunities and natural supports.
Social Value	is defined as the additional economic, social and environmental benefits that can be created when Lewisham Council purchases services outside of the organisation.
TUPE	Means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) and any subsequent amendments thereto.

a) Report author and contact

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b) Comments for and on behalf of the Executive Director for Corporate Resources

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c) Comments for and on behalf of the Director of Law, Governance and Elections

Mia Agnew, Senior Lawyer mia.agnew@lewisham.gov.uk (Ref JW)

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