

London Borough of Hammersmith & Fulham

Report to: Cabinet

Date: 11 May 2020

Subject: Procurement Strategy to commission an external provider for delivery of Alternative Provision School Places in Hammersmith and Fulham

Report of: Cabinet Member for Children and Education, Councillor Larry Culhane

Report author: Kevin Gordon Assistant Director Assets, Operations and Programmes

Responsible Director: Jacqui McShannon, Director of Children's Services

Summary

This report seeks approval of the Procurement Strategy to award TBAP Academy Trust a contract pursuant to the negotiated procedure without prior publication for the delivery of Alternative Provision School Places in Hammersmith and Fulham. The Council has a statutory responsibility to ensure that there is an adequate supply of good quality Alternative Provision (AP) and that all children and young people of compulsory school age have access to a school or a form of Alternative Provision. This includes short-term (one term maximum) intervention for pupils at risk of exclusion and full-time/longer-term placements as an alternative to permanent exclusion.

The previous shared service (Tri Borough) was commissioned to provide 171 places. However, analysis of H&F requirements suggested that our need for places should be much lower than was historically commissioned. Over the last two years the number of places has been reduced in phases and we propose to shift our commissioning approach to take account of work undertaken with schools to promote inclusion and thus reduce the need for AP places in borough.

It is anticipated that the phased reduction in places will achieve significant savings over the next 2 years of £701,360 reducing the deficit of the High Needs Block (HNB) further in second phase savings. The total savings including the reduction of Education Health and Care Plan (EHCP) funding for SEN places and the reduction of post-16 top-up could be approximately £1.2m by the end of academic year 2021/22.

Recommendations

That Cabinet:

1. Notes that Appendices 3 and 4 are not for publication on the basis that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in

paragraph 3 or information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 5 of Schedule 12A of the Local Government Act 1972 (as amended).

2. Approves the Procurement Strategy as set out in Appendix 1.
3. Approves the award of the Alternative Provision services contract to TBAP Multi-Academy Trust for the period of 1st June 2020 until 31st August 2022 for the total of £6,313,311.

Wards Affected: All

H&F Priorities

Please state how the outcome will contribute to our priorities

Our Priorities	Summary of how this report aligns to the H&F Priorities
<ul style="list-style-type: none"> • Building shared prosperity 	<p>Local provider and employer will have improved financial certainty as it moves to a new business model over the next three years.</p>
<ul style="list-style-type: none"> • Creating a compassionate council 	<p>Pupils have a strong educational offer that also helps meet additional needs.</p>
<ul style="list-style-type: none"> • Doing things with residents, not to them 	<p>Increased choice and opportunity for pupils and schools.</p>
<ul style="list-style-type: none"> • Being ruthlessly financially efficient 	<p>Contributes to stabilising and significantly reducing the HNB overspend. Also, in light of the Covid-19 pandemic this is the most ruthlessly financially efficient and robust way we can address AP provision in this current climate.</p>
<ul style="list-style-type: none"> • Taking pride in H&F 	<p>Quality provision and increased outreach to keep as many children in mainstream schools as possible. Children should feel that they are in a safe and nurturing environment. As a result, they can take pride in their schools and in their Borough.</p>

Financial impact

In the first phase, places were reduced to 128 with an approx. saving of £280k. Currently in the second phase, the number of commissioned places will reduce to 88 places by 2022 in a staggered approach. The negotiations have also absorbed price increases with approximate savings of £150k in academic year 2019/20 followed by further reductions of £417K and £694K in years 2020/21 and 2021/22 respectively

when factoring in the reduction of the Post 16 and SEN top-up rates. These figures are summarised in the table below.

Alternative provision delivery of projected savings against 2018/19 expenditure

Area	2019/20 £	2020/21 £	2021/22 £	Total £
Alternative Provision*	182,960	-83,245	-361,324	-261,609
Post-16	-60,000	-60,000	-60,000	-180,000
SEN top-up	-273,379	-273,379	-273,379	-820,137
Total	-150,419	-416,624	-694,703	-1,261,746
*includes Westside AP Free school				

The proposed TBAP SLA incorporates a three-year funding model and will achieve a reduction in costs of £441,609 on the delivery of Alternative Provision over the three-year period from 2019/20 to 2021/22. This saving is reduced to £261,609 when the costs of the alternative provision commissioned at Westside AP Free School are included as part of the council's overall AP costs.

In 2019/20, Alternative Provision costs will increase by £182,960 primarily due to an increase set by TBAP in their top-up rate, additional funding of £50,000 on the TBAP outreach contract and that the council also commissioning alternative provision places from Westside school for a set of vulnerable students. A reduction is expected in 2020/21 of £83,245 compared to 2018/19 and a further reduction of £361,324 is expected in 2021/22 giving a cumulative reduction of £261,609 against 2018/19 costs. This reduction is dependent on the number of commissioned AP places reducing from 116 in 2019/20 to 103 in 2020/21 and then 88 in 2021/22. The outreach contract will also revert to £310,000 per annum as the additional £50,000 applies to 2019/20 only. Again, these figures include the cost of alternative provision at Westside AP Free School.

TBAP are requesting an increase in top up for 2019/20 of £2,820 per place representing an increase of 36.7% on previous top-up values which had remained unchanged in the lifespan of the Tri-Borough agreement. An additional 7% top-up increase is requested in 2020/21 and 2021/22. This increase has also been reflected in the savings calculations.

The place numbers have increased by 10 commissioned places to 16 places at The Courtyard AP Academy which is the primary phase academy. These levels will remain constant over the three-year period. The place number reduction will be at The Bridge AP Academy which serves the secondary phase.

The above figures do not include claw-back for AP pupils that are placed from other local authorities or from schools that are out of borough. The council should reduce payments by top-up funding to reflect the number of out of borough pupils that are on roll. This is set out clearly in the Service Level Agreement. TBAP will invoice other local authorities or schools directly for these costs.

Proposed commissioned places for The Courtyard are 16 places based on projected need and this reflects the current level of activity.

Post-16

The council continue to commission 15 post-16 places at the TBAP 16 – 19 Academy. The council will not pay SEN top-up for these pupils as was the practice under the previous SLA. This generates a cumulative cost reduction of £288k for the 3 years compared to 2018 to 2019 expenditure levels.

The costings for the post 16 provision include £36,000 for element 2 place funding for a further 6 places at £6,000 per place above the commissioned level of 15 places. This is the current level of activity delivered by the provision and represents a risk following potential challenge from either the provider or other local authorities with respect to the commissioned places and place funding provided. LBHF have received £6k import funding on the High Needs block from other local authorities for non-resident pupils.

SEN top-up

For a child with an Education Health and Care Plan (EHCP) the additional EHCP funding will be awarded on the date of admission or of the EHCP start date – whichever is later.

- **Element 1 – Place Funding** is the EFSA base funding of **£10,000**.
- **Element 2 – Alternative Provision Top-Up** is the agreed Alternative Provision Top-up funding of £10,500 (increasing by 7% in years 2020/21 and 2021/22).
- **Element 3 – SEN Top-up** is the EHCP additional payment of 7,638 reducing in line with the element 2 top-up in years 2020/21 and 2021/22.

Element 3 funding has been calculated by deducting the notional SEN funding (AP Top-up) from the fulltime H&F LSA rate of £18,138. Because H&F are paying a premium for the alternative provision above the EFSA funding, this premium is deducted from the fulltime rate for additional needs as it is assumed that the basic needs of a child with an ECHP should be met within the payments of elements 1 and 2.

Payments to the provider

The SLA states that there will be 10 instalments paid on the first working day of each month September to June, with payment reaching provider bank accounts by working day 5.

Alternative Provision top-up will be paid on an estimated basis in advance over 10 months of profile payments and adjusted on a termly basis in arrears so that the figure for additional outreach can be calculated. This calculation is the potential top-up (based on the commissioned numbers) and the participation usage (actual numbers of H&F resident learners) minus any places used by out of borough

residents (TBAP will charge other boroughs for the top-up amount of any place used by their resident).

SEN top-up will be paid termly in arrears on a participation basis following the receipt of activity data from TBAP as stated in the SLA.

TBAP have been provided payments in lieu of this SLA being agreed to enable them to continue to be financially sustainable. Therefore; TBAP have been funded up until 31st January 2020 with the expectation that the SLA would have been agreed by this date. As a result, a waiver will be sort to cashflow TBAP until the SLA is agreed by the full Cabinet. Any payment should be contingent on TBAP responding to and settling current and aged debt with Hammersmith & Fulham.

Financial Implications provided by Tony Burton, Head of Finance for Children's Services and Education, 07909004710

Financial implications verified by Emily Hill, Assistant Director for Corporate Finance, 020 8753 3145

Legal Implications

This report recommends that the Council approves the procurement strategy in order to enter a contract with TBAP Multi Agency Trust for a contract term of two years commencing 1st June 2020.

The contract value is £6,313,311, which is above the EU threshold for social and other services, which is currently £633,540. The Public Contracts Regulations 2015 ('PCR') therefore applies in full.

This contract is awarded in accordance with the negotiated procedure without prior publication (reg. 32 PCR). The PCR states that this procedure can be used for public service contracts where the services can be supplied only by a particular economic operator due to the absence of competition for technical reasons. This only applies where no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement. It has been confirmed that there are no other service providers with the ability to provide the Council's requirements for these services.

The decision makers must be satisfied that these services can only be provided by TBAP Multi Agency Trust for technical reasons in accordance with reg. 32 PCR.

It is recommended that the Council obtains legal advice in relation to the contract terms.

Legal implications provided by: Natasha Barlow, paralegal at Sharpe Pritchard on secondment to the Council, nbarlow@sharpepritchard.co.uk and Hannah Ismail, Solicitor at Sharpe Pritchard, hismail@sharpepritchard.co.uk

Procurement implications

The report requests the approval for a contract for Alternative Provision services to be awarded to TBAP Multi-Academy Trust for the period of 1st June 2020 until 31st August 2022 for the total of £6,313,311.

The procurement implications are comprised within the Legal implications section of this report. The Council's Contracts Standing Orders (CSOs) 18.1 require all procurement strategies for contracts in excess of £5,000,000 to be approved by Cabinet. CSOs 21.1 require that the contract award decision is made by the relevant Cabinet Member.

There is an obligation on all local authorities to consider social value during the letting of all service contracts as set out in the Public Services (Social Value) Act 2012. The procurement strategy does not set out any precise Social Value deliverables. These shall be discussed with the supplier before the start of the contract. It is recommended that Social Value is one of the KPIs in the contract and will be managed accordingly.

A contract entry shall be created in the Council's Contracts Register to comply with statutory transparency requirements.

Officers shall work with Legal to prepare the appropriate contract documentation.

Procurement implications verified by: Andra Ulianov - Head of Procurement and Contracting -Contracts and Procurement

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Background Papers Used in Preparing This Report – *ALL PUBLISHED*

1. Review of Alternative Provision (AP) for London Borough of Hammersmith and Fulham: A way forward. Gary Kynaston June 2019
2. Alternative Provision: Statutory guidance for local authorities (2013)
3. High Needs Funding Arrangements: 2020 to 2021 – Operational Guide

DETAILED ANALYSIS

Proposals and Analysis of Options

1. The Council has a statutory responsibility to ensure that there is an adequate supply of good quality Alternative Provision (AP) and that all children and young people of compulsory school age have access to a school or a form of Alternative Provision. This provision needs to be local, large enough to accommodate the demand from Hammersmith & Fulham schools and tailored to meet the needs of our learners. TBAP as the incumbent local supplier can provide this. There are currently no other local/regional settings that have the capacity to meet these needs.

School places and Alternative Provision

Phase	Community	Free School / Academy	Foundation or Voluntary Aided Academy	Foundation or Voluntary Aided School	Total	School Places Oct19
Nursery	2			2	4	300
Primary	13	11		12	36	10,425
Secondary	1	6	4		11	8,723
All Through*			1		1	n/a
Special	4				4	505
Alternative Provision		4			4	147
16 Plus	1				1	848

*Places at all through school are distributed across primary and secondary provision

2. There are sixty-one schools delivering education at nursery, primary, secondary, special education needs and alternative provision settings across Hammersmith and Fulham (LBHF).
3. The DfE requires Local Authorities to commission AP places for children who have been permanently excluded from the sixth day of their school exclusion.
4. The recommendations from the internal review of Alternative Provision in June 2019 highlighted several improvements to how the Council commissions this resource, two key areas were;
 - LBHF must have a central role and build capacity to have oversight of all commissioning and quality assure AP across the borough. This will include visits by head teachers to AP providers serving former and current pupils to monitor quality.
 - The per-pupil allocations need to be financially remodelled against the new priorities, in order to make an earlier impact and reduce numbers in AP over the medium and long term.
5. Alternative Provision is funded from the High Needs Block (HNB) of the Dedicated Schools Grant DSG. This budget is overspending in H&F with a cumulative 2017/18 brought forward deficit of £7m on a 17/18 HNB budget of £21m.

6. This significant reduction in overall AP spending is in line with the HNB recovery plan targets. Negotiations have taken place with the TBAP, who despite a significant overall reduction in their funding remain fully committed to providing a service to H&F schools.
7. Previously, AP was delivered via a legacy block arrangement with TBAP as a shared service (Tri Borough) across multiple sites. On H&F becoming sovereign, officers reviewed arrangements against Education Skills Funding Agency commissioning guidance and found markedly over commissioned numbers, differential rates for pupil cohorts and insufficient performance management of outreach and reintegration. In addition, schools were able to move children freely into TBAP (Managed Move) without going through a defined process from mainstream schools at the full cost to the Council which had an effect on the numbers of places used.
8. The new agreement will support the delivery of the aims of the review and shift activity and funding from AP to promoting inclusion in schools. Officers will work closely with the provider in reshaping their delivery model. This includes the introduction of a Managed Moves Protocol
9. Transitioning to the new approach is not without risk. The urgency of stabilising the HNB overspend means there is limited change or investment funds to pump prime or to run new services in parallel with the existing AP places that are occupied by pupils. Therefore, the revised agreement has been designed to incentivise TBAP to shift funding and resources incrementally into outreach as the number of AP places reduces. In addition, the Coronavirus emergency may present significant behaviour management challenges in school as and when they start to reopen. A new and improved outreach offer will help school during this time.
10. In parallel the commissioning mechanisms are also being regularised in line with the ESFA guidance over the funding term.
11. To ensure the transformation of the relationship between the Council and TBAP it is crucial that the new Service Level Agreement is robust and holds the provider to account.
12. As the statutory guidance states; responsibility of the alternative provision rests with the commissioner. The proposed SLA builds in monitoring and quality assurance of the AP provided by TBAP. The previous SLA had insufficient monitoring protocols in place.
13. There are presently two options to consider;

- **Option 1: Do not agree the Procurement Strategy (Not Recommended)**

This option is not recommended as the decision not to fund TBAP would mean certain closure of the organisation.

- There is a risk that the Council would have to spot purchase from private or out of borough provision in order to meet its statutory responsibility to ensure that there is an adequate supply of good quality Alternative

Provision (AP) and that all children and young people of compulsory school age have access to a school or a form of Alternative Provision.

- Learners will need to access AP out of borough and with potential contextual safeguarding issues
 - Community safety impacts of disruption to Education for AP cohort
 - Exclusions may rise further as outreach and the out of school intervention offer will cease and this will have a direct impact on all school in the borough.
- **Option 2: Agree the procurement strategy (Recommended)**
- This option is recommended as it will ensure the continuation of this statutory provision, in particular during this current climate; to provide alternative provision for excluded H&F children, support schools with in-school and out-of-school interventions.
 - It will achieve the safe level of reduction in AP places and costs in line with the review of Alternative Provision.

Reasons for Decision

14. The Council has a statutory responsibility to ensure that there is an adequate supply of good quality Alternative Provision (AP) as per Section 19 of the Education Act 1996, as amended by section 3A of the Children, Schools and Families Act 2010; and that all children and young people of compulsory school age have access to a school or a form of Alternative Provision. This includes offering a broad continuum of support, including short-term (one term maximum) intervention for pupils at risk of exclusion and full-time/longer-term placements as an alternative to permanent exclusion.
15. There is no suitable or appropriate alternative or substitute in the borough that could deliver this service. Whilst the Council do commission a small number of alternative provision places from Westside school for vulnerable students; overall spaces are limited, and this provision would not have the capacity to deliver the requirements of the full AP service in H&F. TBAP Multi Agency Trust is an established and experienced local provider of AP with a vast amount of local knowledge.
16. By not approving an award to TBAP Multi Agency Trust the Council would have to spot purchase from private or out of borough provision in order to meet its statutory responsibility to ensure that there is an adequate supply of good quality Alternative Provision.
17. Out of borough provision may not have the capacity to offer AP to all H&F learners as most places are commissioned by the host borough for their vulnerable resident children and there would be limited space for the H&F Cohort.
18. Exclusions will rise as outreach and out of school intervention offer will cease should TBAP not be awarded the contract. Out of Borough provision would not provide outreach services to our learners and this will have a direct impact

on all schools in the borough and may lead to an increase in permanent exclusions.

19. Retaining the service governed by the new agreement will allow H&F to achieve savings and ensure that progress is made towards regularising the service and implementing a participation-based funding model.
20. The new agreement with TBAP will support the delivery of the aims of the AP review and shift activity from funding AP places to prevention; outreach and direct support to pupils in mainstream schools.
21. Preventing exclusions is important for a plethora of reasons but mostly it is a key factor in improving future life chances for children. The 2018 literature review found that exclusion not only leads to isolation and poor academic progress in the short term, but also that it can have far reaching detrimental effects for the excluded pupil, such as a significantly higher likelihood of becoming a teenage parent, being unemployed or homeless later in life, or ending up in prison. Building on the previous findings about isolation, the review found that exclusion has a negative effect on pupils' aspirations and self-belief. This can result in increased marginalisation and disassociation with society in general, as those punished with exclusion can begin shunning opportunities and conventional social systems such as education. This marginalisation is often associated with increasing offending and increased likelihood of being involved with the criminal justice system, both as victims and offenders.
22. Council officers will work with TBAP in regularising and reshaping their delivery model to achieve the shift in activity, increase ownership and governance by the Council and Schools, promotion inclusion and increase re-integration.

Equality Implications

23. There are no anticipated negative implications for groups with protected characteristics, under the Equality Act 2010, by the approval of recommended options as vulnerable children and young people will continue to be supported.
24. The new SLA aims to ensure a more comprehensive set of management information will be available to scrutinise exclusion and re-integration rates across groups with protected characteristics.

Implications verified by Fawad Bhatti, Policy & Strategy Officer, tel. 07500 103617.

Risk Management Implications

25. The Council's Corporate Risk Register includes reference to management of risk with service providers and continuity risk. There is a high risk of supplier failure should the TBAP H&F provision become financially unviable and close. Previous intervention by ESFA raises concerns about the financial management and viability of the organisation that has necessitated the action.

26. The table shown the anticipated impact and possible mitigation. The department has confirmed that a budget is available, and need has been established in accordance with the Council's Ruthlessly Financially Efficient Priority.

Risk Impact	Mitigation	Action /Resources
TBAP closure - Loss of Education place for H&F learners circa 90-100	Place in AP outside of borough	Spot purchase from other providers Estimated cost £5m plus
TBAP closure - Community safety impacts of disruption to Education for AP cohort	Dedicated YP support team funded from the council to provide purposeful activities and temporary education whilst new school placement is found	Minimum ratio of 4:1 staffing to pupils in community settings approx. 20 staff required Possible agency staff anticipated cost £100k – 120k a month (in addition to spot purchase costs)
TBAP Closure - Exclusions rise as outreach offer in withdrawn	Outreach commissioned from other providers or with Schools directly.	Cost neutral
TBAP Closure - No out of school intervention programme available and increase in Permanent exclusions	Fund schools to include onsite exclusion units for 6 day plus fixed term exclusion	Possible agency staff anticipated cost £55k for at least one member of staff per secondary school.
TBAP Closure - Learners will need to access AP out of borough and face contextual safeguarding issues	Pay for taxi services to transport learners	Possible taxi costs of £200k

27. Further implications of not agreeing the award include having to negotiate with other AP providers outside of boroughs. This has contextual safeguarding implications, transportation cost implications and monitoring/QA implications.

Implications verified by Michael Sloniowski, Risk Manager, telephone 020 8753 2587.

ICT (required for any changes to IT systems) Information Management

28. IT Implications: No IT implications are considered to arise from the proposal in this report.
29. IM Implications: A Privacy Impact Assessment should be completed to ensure all potential data protection risks resulting from this proposal are properly assessed with mitigating actions agreed and implemented.
30. TBAP Multi-Academy Trust will be expected to have a GDPR policy in place and all staff will be expected to have received GDPR training.
31. The contract with TBAP Multi-Academy Trust should include H&F's data protection and processing schedule. This is compliant with the current data protection law (General Data Protection Regulation 2016 and Data Protection Act 2018).

Implications completed by: Karen Barry, Strategic Relationship Manager, tel 020 8753 3481.

Commercial

32. There are no commercial implications for local businesses

Implications completed by: Billy Seago, Work Matters Manager tel: 07818 076515

List of Appendices:

- Appendix 1: Procurement Strategy
- Appendix 2: Service Specification
- Appendix 3: AP Payment Profile – exempt from publication
- Appendix 4: Additional implications – exempt from publication