



London Borough of Hammersmith & Fulham

CABINET

4 MARCH 2013

CONTINUED INFORMATION, ADVICE AND GUIDANCE SERVICES FOR YOUNG PEOPLE WITH LEARNING DIFFICULTIES

Report of the Cabinet Member for Children's Services – Councillor Helen Binmore

Open Report

Classification: For Decision

Key Decision: Yes

Wards Affected: All

Accountable Executive Director:

Andrew Christie, Executive Director for Tri-Borough Children's Services

Report Author:

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1. EXECUTIVE SUMMARY

- 1.1. Local Authorities have a statutory responsibility to provide Information, Advice and Guidance (IAG) services to young people with Learning Difficulties and Disabilities (LDD). Local Authorities must also fulfil tracking and monitoring responsibilities for all young people in Years 11 and 12 attending borough schools and those residents who are Not in Employment, Education or Training (NEET).
- 1.2. The existing H&F contract with CfBT Advice and Guidance Limited (CfBT) to discharge these duties is due to expire 31 March 2013. In order to ensure service continuity of these statutory services:-
 - a) whilst a new Bi-borough contract with Westminster City Council is tendered in 2013, with an expected start date of 1 April 2014; and,
 - b) to ensure that this new Bi-Borough contract fully reflects yet to be enacted changes contained in the Children's and Families Bill – approval is sought to waive Contracts Standing Orders and negotiate a new contract with the existing provider, CfBT, at reduced cost, until the joint contract with WCC is operational.

- 1.3. The original (“Connexions” service) contract was awarded to CfBT in 2006 and expired on 31 March 2011. The contract has since been renewed, without competition, for one year from 1 April 2011, with a further one year extension agreed from 1 April 2012. On each occasion the contract was not put out to competitive tender as the extension approved was expected to be a transitional step due to Government changes to the service, delays in enacting the 2011 Education Bill, and further subsequent changes to the statutory guidance, and it was intended that a new contract would be tendered within 12 months.
- 1.4. However, yet further changes to the service are now expected when the Children’s and Families Bill is enacted later this year. The Bill proposes to replace SEN statements and separate learning difficulty assessments with a single, simpler birth-to-25-years-old assessment process and education, health and care plan from 2014. This will have significant implications for the contract with regards to the current requirement to produce S139a assessments.
- 1.5. Whilst normal procurement practice would be to tender a new contract in advance of the expiry date of the current one, this is outweighed by the need to maintain a statutory service and to align with a bi-borough procurement in March 2014, with a service specification that is informed by the Children and Families Bill.
- 1.6. It would, furthermore, be extremely difficult to run a good competition and elicit market interest in the circumstances described above; ie. a one year-only contract surrounded by legislative uncertainty. Instead, officers believe that better value for money and use of the public purse in 2013 will result from an interim contract being negotiated with the incumbent - enabling the new service and contract to be aligned with WCC, and ensuring the 2014 Bi-borough contract fully reflects amended Local Authority responsibilities as a result of the Children and Families Bill.

2. RECOMMENDATIONS

- 2.1. That the requirement contained in the Council’s Contract Standing Orders to seek competitive tenders be waived in accordance with CSO 3.1, and that approval be given to negotiate a new contract for IAG services with the existing provider, CfBT, in accordance with CSO 9.11.
- 2.2. That the new interim contract with CfBT be for no more than 24 months, with provision for a break clause after one year, at 31 March 2104, be approved.
- 2.3. That the cost for the first 12-months of the interim contract with CfBT for the Careers Learning Disability and Difficulty IAG and tracking service, for one year to 31 March 2014, be no more than £280,580, representing a contract value reduction of 22%, be approved.

3. REASONS FOR DECISION

- 3.1 In order to meet our statutory duties as outlined in the Education Act 2011, it is essential to secure a service for April 2013. An interim one-year contract negotiated with the incumbent provider (with the option to continue for no more than a further 12-months), will enable statutory duties to be met whilst bi-borough services are commissioned for April 2014, and with a specification that can take into account the Children and Families Bill amendments to Local Authority responsibilities for young people with LDD, expected in 2014.

4. INTRODUCTION AND BACKGROUND

The changing legislative landscape and statutory responsibilities

- 4.1. The Education Bill, passed on the 15 November 2011, changed the statutory duties on schools and local authorities in relation to Careers Information, Advice and Guidance.
- 4.2. From September 2012, secondary schools had a new duty to secure independent and impartial careers advice and guidance for all pupils, removing the universal IAG duty from local authorities.
- 4.3. Local authorities continue to have a duty to encourage, enable or assist young people into Education, Employment or Training. However the Secretary of State is no longer able to direct local authorities on how to deliver this duty.
- 4.4. Local authorities will also continue to be responsible for maintaining accurate data on young people, using the Connexions Client Information Service (CCIS) database, and, undertaking S139a assessments.
- 4.5. CfBT Advice and Guidance Limited are commissioned in Hammersmith and Fulham to discharge these statutory duties on behalf of the Local Authority.
- 4.6. In March 2011, Cabinet agreed to a one year transitional contract with CfBT Advice and Guidance Limited to deliver our statutory duties in relation to Careers Information, Advice and Guidance (IAG).
- 4.7. The extension was granted to enable The Local Authority to meet the requirements of The Education Bill 2011, which changed the statutory duties on schools and local authorities in relation to Careers Information, Advice and Guidance.
- 4.8. Due to the Education Act 2011 being enacted later than expected and the subsequent statutory guidance changing, it was not possible to invite tenders for the service.

- 4.9. On the 17th February 2012 a Leader's Urgent Decision was agreed to waive standing orders to approve a further one year extension for the Connexions Service contract with CfBT Advice and Guidance Limited to 31 March 2013 at a total cost of £360,000.

Service profile and current contract

- 4.10. The contract currently delivers the following services:
- Contributing to the Year 9 review of all young people with a statement of education need and learning difficulty that are borough residents.
 - Supporting young people with learning difficulties and disabilities including the completion of Section 139A assessment in line with the council's s139a policy.
 - Ensuring all parents and carers of young people requiring a Section 139A assessment receive appropriate information and advice
 - Tracking and recording the status of all young people 13-19, in line with national Department of Education MI/CCIS requirements using national management information guidelines and currency rules.
 - Annual Activity Survey (year 11-13 students) at the end of October each year.
 - Year 11 September Guarantee at the end of September each year.
 - 17 Year old/Year 12 September Guarantee at the end of September each year.
 - 16-18 NEET and Not Known tracking and monthly reporting.
 - Identify and report on the intended destinations of Year 11 students in the Spring term.
 - Initial Guidance and Benefits Advice to young people who are NEET
 - Development and coordination of a NEET brokerage service with, Education, Employer and Training (EET) providers.
 - Offer an initial contact with young people who are identified as newly NEET to identify and record their choices on CCIS and provide advice those seeking to register to claim benefits.
- 4.11. The current contract for the Careers LDD IAG and universal tracking service expires on 31 March 2013.

Bi-borough working and collaboration

- 4.12. It was anticipated that Contractors would be invited to tender to provide these services for April 2013 onwards. However, we are seeking a contract extension to enable alignment with the Westminster Council IAG contract, which ceases on 31 March 2013. This would enable a bi-borough service to be commissioned.

- 4.13. A re-negotiated contract for up to no more than 24-months will also enable expected changes to Local Authority LDD responsibilities, as a result of the Children and Families Bill, to be incorporated into the Service Specification.
- 4.14. The contract value would be reduced to £280,580 for 2013/14, representing a 22% saving.
- 4.15. In discussions the contractor has indicated that they would deliver against a revised specification to reflect the contract value reduction. The revised specification would include the statutory duties required which includes LDD and Tracking services.
- 4.16. In the revised specification the contractor would no longer be required to deliver the NEET brokerage service or to provide guidance to those identified as newly NEET.
- 4.17. The contractor has identified that CfBT staffing would reduce by 1 FTE in 13/14 as a result of restructuring to reflect the revised contract value. The contractor has outlined that the equivalent 1FTE does not equate to a post but a variety of functions and it is anticipated were any staff vulnerable to redundancy they would be redeployed within the company. The Local Authority would not be liable for any redundancy costs.
- 4.18. Clause 2 of the contract allows for extension if agreed by both parties, however, whilst it is contractually permissible to extend the contract, as the contract was not competitively procured in 2011 a waiver to contract standing orders to implement a final extension is required.

5. PROPOSAL AND ISSUES

- 5.1. The key identified issue is that the contract which currently undertakes the Local Authorities statutory duties for IAG is due to expire on the 31 March 2013, whilst the statutory duty remains.
- 5.2. It is requested that the Standing Orders be waived in accordance with paragraphs 3.1 and 9.11 in order to negotiate a new interim contract with the incumbent provider; and that the interim contract be for no more than 24-months, with a break clause after 12-months. If H&F and WCC are in a position to commence the new Bi-borough contract by 1 April 2014, the break clause will be used; if not, the CfBT contract will run up to the date the Bi-borough arrangement starts, but no later than 31 March 2015.
- 5.3. CfBT have performed consistently well since contract commencement in 2006, they have been instrumental in reducing the NEET figure in Hammersmith and Fulham from 15.9% in 2005 to consistently between 4-5% in 2012/13.

- 5.4. Were the existing contract be extended for one year statutory duties would continue to be met, the contract would align with the Westminster IAG contract to enable a bi-borough IAG service to be commissioned for 2014/15 onwards. The new bi-borough specification could also take account of amended responsibilities with regards to the Education Bill and LDD, identified to be implemented in 2014.

6. OPTIONS AND ANALYSIS OF OPTIONS

Option one

- 6.1. Negotiate a new contract with the current provider, with a revised specification and revised price as outlined in section 4.
- 6.2. Discussions have taken place with the existing provider and they have indicated that they would be willing to enter into a one year contract with a revised value of £280,580 saving £79,120, 22%
- 6.3. Officers would then undertake a joint procurement exercise with WCC in 2013, in line with EU procurement rules to secure a new contract and shared service for 2014 onwards.

Option two

- 6.4. The Council could undertake delivery of the service through an in-house team. All CfBT staff (5 FTE) currently working on the local contract would have the right to transfer to the Council under TUPE regulations. However this would then require a re-organisation of the service to make the reductions.
- 6.5. The estimated cost of delivering the transitional service in-house is £300,000 for delivery staff salaries and associated liability costs for transferring staff. This also includes an estimate with regards to a possible redundancy that is unlikely if the contract were to stay external to the council as the staff member would likely be redeployed internally. This does not include costs associated with the possible further staffing reductions, senior management or overhead costs.
- 6.6. Assuming the full staffing liabilities through TUPE transfer together with the additional management and administration costs, without the efficiencies the current provider can achieve through economies of scale, make this a more expensive option.
- 6.7. The implementation time required to successfully transfer staff and functions to the Local Authority would likely have an impact on performance of statutory functions for an initial period, whereas if the contract were to remain with the existing provider transition to a revised specification would likely have significantly less impact.

- 6.8. Taking account of the quality of service provided to date, the potential risks associated with disrupting service delivery in terms of young people's outcomes and the cost, option one would provide the best value for money.

7. EQUALITY IMPLICATIONS

- 7.1 There is no anticipated equality impact as the recommendation is to continue with the existing contractor with a broadly similar specification.

8. LEGAL IMPLICATIONS

- 8.1 The services described in this report are classified as Part B services under the Public Contracts Regulations 2006. They are therefore not subject to the full regime of the procurement rules set out by these Regulations. However, in the procurement of these services the Council is still bound by the EU Treaty principles of transparency, non-discrimination and proportionality. It is also good practice to comply with the procurement rules set out in the Regulations in respect of all procurements carried out by the Council.
- 8.2 Failure to comply with EU procurement rules can put the Council at risk of challenge being brought by contractors who consider they have been denied the opportunity to tender for a contract.
- 8.3 This contract was due to be retendered with effect from 31 March 2011. A new one year contract and a further one year extension were awarded to the incumbent provider without competition due uncertainty around the future of the services and the statutory requirements.
- 8.4 The current extension of the contract for the Information, Advice and Guidance service expires on 31 March 2013. Under EU procurement rules and principles, save in exceptional and limited circumstances, the award of a new contract should be carried out following a competitive procurement process.
- 8.5 The Council's internal contract standing orders require that a contract valued at over £100,000 be procured by seeking not less than 5 tenders.
- 8.6 However, it is noted that for the reasons set out in the report there is considered to be justification for the waiver of the Council's contract standing orders to renew the contract with CfBT for a further period of one year to 31 March 2014.
- 8.7 Legal Services will, where instructed by the client department, assist with drafting the necessary documentation to formalise the extensions.

8.8 Implications verified/completed by: (Catherine Irvine, Principal Contract lawyer, telephone 020 8753 2774)

9. FINANCIAL AND RESOURCES IMPLICATIONS

- 9.1. There has already been significant savings made from this contract due to the reduced statutory responsibilities the Local Authority are required to provide.
- 9.2. The reduction in contract price reflects a 22% reduction, or £79,120 saving off the current price.
- 9.3. There is sufficient budget for the new contract in 13/14 at this level of expenditure, and the saving can be taken towards the attainment of overall savings targets for Children's Services.
- 9.4. Implications verified/completed by: Alexandra Ward, Finance Manager, 0208 753 5040.

10. RISK MANAGEMENT

- 10.1 The council has a residual risk which it is required to tolerate and manage due to the period of uncertainty resulting from the Governments plans around the future service provision in this area. This has resulted in the recommendation that the extension of the contract is made with the current provider and that this can be achieved. This secures some continuity of service during which it is envisaged that there will be a reprocurement in order that it aligns with a Bi-borough contract that satisfies and reflects the requirements of the Children's and Families Bill. As such the report proposes a pragmatic solution.
- 10.2 Implications verified/completed by: Michael Sloniowski, Head of Risk Management 020 8753 2587

11. PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 11.1. The current contract extension for the delivery of IAG services expires on 31 March 2013 and, normally, a procurement would be undertaken for a new contract. However, for reasons made clear in the report, the level of certainty and clarity about future requirements needed to run a good competition and efficient procurement for a new (short-term) contract does not presently exist, and it would not be in the Council's or service users interests to do so, for reasons also explained in the report.
- 11.2. Section 3.1 of the Council's CSOs allow waivers to the normal competition requirements where there are exceptional circumstances and/or it is not in the Council's interests to run a competitive exercise at any given moment in time. As the services are defined as being "Part B" rather than "Part A"

under the Public Contract Regulations 2006 (as amended) they are not regulated in terms of the statutory competition requirements.

- 11.3. Paragraph 9.11 of the Council's CSOs specifically requires Member authority before officers enter into any negotiation of contractual terms with commercial or voluntary sector organisations.
- 11.4. Whilst negotiating a new contract with the incumbent after previous extensions is not ideal, in the current exceptional circumstances the report recommends a pragmatic interim solution that seeks to ensure continuity of a sensitive statutory service, whilst at the same time delivering cost reductions and positioning the service to enable a Bi-borough procurement. The recommendation for the interim arrangement to run up to a maximum of 24 months, with a break clause at 31 March 2014 will, furthermore, provide operational flexibility should the new Bi-borough contract not be ready to commence at that point in time.
- 11.5. The recommended approach is supported by the Tri-borough Commissioning and Contracts Board for Children's Services, and by the Director for Procurement and IT Strategy in H&F.
- 11.6. Implications completed by: John Francis, Principal Consultant, H&F Corporate Procurement 020-8753-2582

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
	None	Vikki Wilkinson 020 7641 4099	Young Peoples Commissioning Kensington Town Hall