

CABINET

20 MARCH 2012

Title: Re-tendering of Five Children's Centre Day Nurseries	
Report of the Cabinet Member for Finance and Education	
Open Report	For Decision
Wards Affected: Chadwell Heath, Eastbury, Village and Whalebone.	Key Decision: No
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Accountable Divisional Director: Christine Pryor, Targeted Support	
Accountable Director: Helen Jenner – Corporate Director of Children's Services	
Summary: <p>There are eighteen children's centres in Barking and Dagenham, thirteen of which provide full day care for children aged 0-5. The Council currently manages two of the nurseries (Abbey and John Perry): the remainder are managed by a variety of voluntary sector and private providers.</p> <p>This report seeks the authority to commence a competitive re-tender exercise to appoint a provider of day-care nursery services at five children's centres - Eastbury, Ford Road, Furze, Leys and Wellgate. The current provider of these services is London Early Years Foundation (LEYF). The current contracts are due to expire on 31st December 2012. The new contract and leases to be awarded will be for a period of five years with an option for a further two year extension depending on performance.</p> <p>There will be no direct costs arising from the contract to run the nurseries for the Council. The operational running costs of the nurseries will be met by the contractor through fees paid by parents/carers on a total cost recovery basis. The nursery fees will not be capped by the Council and so the provider will be able to determine the fee charged to parents.</p>	
Recommendations <p>Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) agree that a competitive procurement exercise is conducted for the appointment of a provider of full day-care nursery services at Eastbury, Ford Road, Furze, Leys and Wellgate Children's Centres, in accordance with the Council's Contract Rules, on the terms detailed in this report;(ii) agree that following the procurement exercise, service contracts and coterminous leases for each of the children centres are entered into with the appointed provider for the duration of the contracts;	

- (iii) advise, in accordance with the Constitution (Contract Rules 3.6.4) whether Cabinet would wish to be further informed or consulted on the progress of the procurement and award of contracts and coterminous leases, or would be content for the Corporate Director of Children's Services, in consultation with the Director of Finance and Resources, to award the contract and coterminous leases upon conclusion of the procurement process.

Reasons

The Childcare Act 2006, places a duty on local authorities to secure sufficient childcare for parents who are in education, training or work. The requirement to manage the market implies co-ordination of services and partnership working rather than direct delivery. In Barking and Dagenham the duty is discharged by working in partnership with the private and voluntary sector. Our Childcare Sufficiency Assessment shows that there is a continued demand for full day care in these areas.

Securing sufficient childcare to enable parents to access work and training supports the Council's vision of "Building a Better Life for All" by helping to raise household incomes.

1. Introduction and Background

- 1.1 In 1998 the Government launched the National Childcare Strategy. This was a joint initiative by the then Department for Education and Schools and the Treasury. It aimed to increase the stock of accessible, affordable childcare places in order to allow more parents, especially lone parents, to re-enter the job market. It also aimed to improve the quality of the early education experience for children below five years of age.
- 1.2 The Neighbourhood Nursery Initiative, launched in 2001, recognised that while independent providers were developing sustainable childcare in moderately disadvantaged areas, extending this to the most deprived areas would require significant financial support. Funding was allocated to local authorities in order that pump-priming grants could be issued to providers from the statutory, private, or not-for-profit sectors thus creating a three-year lead-in period to achieve full sustainability.
- 1.3 In 2003 the Government introduced its children's centre initiative. This aimed to integrate existing day-care provision with the health, family support, and training service developed through Sure Start, locating the full range of services for under-fives in appropriate neighbourhood locations. It was recommended that neighbourhood nurseries were absorbed into children's centres. Capital funding for new children's centres was allocated with the requirement that all major new-build projects provided at least 50 full day-care places.
- 1.4 There are currently 18 children's centres in the borough, 13 of which provide full day care. Of the 13 which provide full day care, the Council manages two of the nurseries, the remainder are provided by a variety of providers in the voluntary and private sector as follows:

Children's Centre Nursery	Provider
Abbey	Council
Becontree	Playaway Ltd
Castle Green	Lifeline
Eastbury	London Early Years Foundation
Ford Road	London Early Years Foundation
Furze	London Early Years Foundation
Gascoigne	Chestnut Nursery School Ltd
John Perry	Council
Leys	London Early Years Foundation
Sue Bramley	Chestnut Nursery School Ltd
Sydney Russell	Playaway Ltd
Wellgate	London Early Years Foundation
William Bellamy	Chestnut Nursery School Ltd

- 1.5 The Childcare Act 2006, Section 6, places a duty on local authorities to secure sufficient childcare for parents who are in education, training or work. The requirement to manage the market implies co-ordination of services and partnership working rather than direct delivery. In Barking and Dagenham the duty is discharged by working in partnership with the private and voluntary sector.
- 1.6 In 2007, as part of phase three of the children's centre programme, four of the nurseries (Eastbury, Ford Road, Furze and Leys) were outsourced after a competitive tender exercise. Wellgate was originally operated by the Council but was outsourced, following a competitive tender exercise, in 2009. London Early Years Foundation was chosen as the preferred provider for all five nurseries.
- 1.7 The five nurseries are sustained through fees paid to the providers by parents/carers. At present the providers pay business rates, utility costs and recharges for various other services such as cleaning, waste disposal and grounds maintenance to the Council.
- 1.8 A report regarding the re-tendering of Gascoigne, William Bellamy, Becontree and Sydney Russell Children's Centre nurseries was presented and agreed by Cabinet on 10 May 2011.

2. Proposal and Issues

- 2.1 The current contracts with the provider (London Early Years Foundation) for all 5 nurseries are due to expire on 31 December 2012. The proposal is to re-tender the five children's centre day nurseries (Eastbury, Ford Road, Furze, Leys and Wellgate) as one lot and to award the contract to one provider in the Private, Voluntary or Independent Sector.
- 2.2 There will be a competitive tender exercise for the appointment of a provider for all these nursery services in accordance with the Council's Contract Rules. The contract and coterminous leases will be awarded to the preferred bidder upon successful completion of the procurement process. The contract will specify clearly the need for the childcare to be of the highest quality and will be closely monitored by Children's Services.

3. Options Appraisal

The following three options have been considered.

3.1 Option 1 - The Council takes on the running of the nurseries

It is not a viable option for the Council to take on the running of the childcare. This is due to the high cost of running the nurseries in-house and the volatility of the childcare market, particularly during such a prolonged challenging economic environment. The key risk to the Council is that of employing staff who might have to be made redundant should the childcare market decline further.

3.2 Option 2 - The contract is not re-tendered

Our Childcare Sufficiency Assessment shows that there is a continued demand for full day-care in Chadwell Heath, Eastbury, Village and Whalebone wards. Not re-tendering the contract will result in a loss of 180 childcare places for 0-5 year olds. This will mean that the Council will not be able to fulfil its statutory duty to secure sufficient childcare places to meet the demand of parents.

3.3 Option 3 - The contract is re-tendered.

3.3.1 By re-tendering the contract, the Council will ensure that it secures sufficient childcare places in the wards affected, to meet the needs of parents in line with its statutory duty. Demand for the free 15 hour entitlement for 3 and 4 year olds is particularly high due to the ongoing rise in the 0-5 population. There is also the additional pressure to provide 15 hours of free education to the most disadvantaged 2 year olds.

3.3.2 The proposal is to re-tender the five children's centre day nurseries (Eastbury, Ford Road, Furze, Leys and Wellgate) as one lot and to award the contract to one provider in the Private, Voluntary or Independent Sector. Currently one provider (London Early Years Foundation) is delivering services in all five of the nurseries. This has led to consistency of practice across the nurseries. Monitoring costs have also been considerably reduced by being able to have one quarterly monitoring meeting with the provider covering all five nurseries.

3.3.3 Awarding the contract as one lot will also ensure that all the nurseries are taken on by a provider. The Council recently tendered four nurseries as four separate lots. This led to concerns that providers would not apply for certain nurseries because of relatively low occupancy and profit margins: this would have meant that those nurseries might need to close. Deciding how to allocate the different lots was also problematic. Re-tendering all five nurseries as one lot will alleviate the concerns experienced previously.

4. Consultation

4.1 A detailed consultation with parents, local employers, local providers, schools and employment agencies was undertaken as part of the Childcare Sufficiency Assessment in March 2011. Details can be found at <http://www.lbbd.gov.uk/ChildrenAndYoungPeople/ChildChoices/Pages/SufficiencyAssessment.aspx>

5. Financial Implications

Implications verified by: Kathy Freeman, Group Manager Corporate Finance

- 5.1 There will be no direct costs arising from the contract and ancillary leases to run the five nurseries for the Council. The operational running cost of the nurseries will be met by the provider, through fees paid by parents/carers on a total cost recovery basis. The costs of the provision will be borne solely by the provider.
- 5.2 The indirect cost of the tender process and the managing of the contract and leases throughout the contract term will be met through existing resources within Children's Services. The tender exercise will assist in assessing the financial stability of any prospective provider. One of the tender evaluation criteria will be based on the financial viability of the providers to ensure the sustainability of the provision.
- 5.3 All prospective providers will be required to submit a business plan based on a specified template. This will be used to assess their financial viability. Providers will also be requested to submit a copy of their accounts for the last two years and credit checks will be requested for those providers who progress through to the second stage of the tender.
- 5.4 The chosen provider will be able to determine their own level of fees in line with their business plans. Therefore they will be able to recover the operational running costs of the nurseries through the income generated.
- 5.5 The successful provider will receive full use of the nurseries and equipment, which are both owned by the Council, in return for an appropriate rent and service charge. The service charges will be calculated using an assessment of shared spaces between the nurseries and the other occupants of the building.
- 5.6 An independent market valuation will be undertaken on the properties to determine the level of rent to be charged. The rent will generate additional income for the Council as previously the buildings were leased to the provider on a peppercorn rent basis. The rent will be used to cover the cost of repairs and maintenance of the building and equipment.
- 5.7 The provider will also be recharged by the Council for insurance, utilities, telephone, cleaning and any other charges associated with the nurseries. This will be based on the actual usage.

6. Legal Implications

Implications verified by: Eldred Taylor-Camara, Legal Group Manager

- 6.1 The Council is required to comply with Section 6 of the Childcare Act 2006 to secure sufficient childcare within the area for parents who are in education, work or training.
- 6.2 This report is seeking Cabinet's approval to tender for a contract for the provision of nursery services at five children's centre day care nurseries based at Council-

owned properties for a period of 7 years. The current contract expires on 31 December 2012.

- 6.3 The services to be provided under the contracts to which this report relate are classified as “Part B” services under the Public Contracts Regulations 2006 (the “Regulations”) therefore the full rigour of the Regulations do not apply.
- 6.4 It is proposed that the service will be advertised in Contracts Finder as well as on the Council’s website to take account of potential cross-border interest. The service will be tendered in a single lot using a two stage process based on the Restricted Procedure which allows a procuring authority to shortlist the service providers to be invited to tender. The Council will be seeking one provider to deliver the services at all 5 centres
- 6.5 Further details of the proposed procurement strategy are set out at 7.2. The proposed strategy complies with the Regulations and the EU Treaty principles of equal treatment of bidders, non-discrimination, and transparency.
- 6.6 As the services are to be provided from Council-owned premises, due consideration will need to be given to the property elements of the proposed re-tender and the appropriate documentation put in place to protect the Council’s interest in the properties. This will be in the form of coterminus leases and such other legal agreements as may be required.
- 6.7 The leases will fully detail, by way of an appended inventory, any equipment that the Council will be supplying to the provider. A full valuation to ascertain the appropriate rent will be carried out and also provided to the Insurance Team. The leases will clearly set out the repair and maintenance obligations of both the premises and any equipment. The provider will not be able to remain at the premises on the expiry or earlier termination of the contract.
- 6.8 The report is furthermore seeking a decision pursuant to Council Contract Rule 3.6.4, as to whether or not Cabinet should be kept informed on the progress of the procurement or would wish to be involved in the award of the contract or whether it is content for the commissioning Chief Officer to award the contract to the successful Contractor.
- 6.9 Under Contract Rule 13.3, a commissioning Chief Officer acting in consultation with the Council’s Section 151 Officer has the power to award a contract of this value, in the absence of direction to the contrary from Cabinet.
- 6.10 The Legal Practice confirms that there is no legal reason preventing Cabinet from approving the recommendations of this report. Furthermore, the Legal Practice has been instructed to draft the contracts and co-terminus leases.

7. Other Implications

7.1 Risk Management

- 7.1.1 The tender exercise will assist in assessing the financial stability of any prospective provider. A potential risk is that the provider raises fees to such an extent that they

are not affordable to local people on low incomes. However this risk will be mitigated by a robust business plan.

- 7.1.2 Once financial stability has been established the main risk involved will be the quality of the service delivered. Technical ability will be assessed during the tender stages. Providers will be expected to demonstrate/provide:
- five years relevant experience;
 - a commitment to quality and continuous improvement;
 - evidence of running Ofsted registered nurseries rated “good” or “outstanding”;
 - evidence of providing inclusive childcare;
 - evidence of how they intend to deal with the matter of TUPE for staff currently employed by the incumbent provider/s.
- 7.1.3 Once a provider has been chosen, written contractual arrangements will contribute to ensuring a quality service. The contracts and leases will be monitored and managed by the dedicated contract manager. The contract manager will liaise with Property Services as and when required in order to resolve any issues which arise specifically in relation to the leases. Quarterly monitoring reviews will be conducted and the preferred provider will be requested to complete a monitoring form on a quarterly basis before these reviews. The monitoring form will collect information about the service and will be based on the contract terms and conditions and service specification.
- 7.1.4 Council officers will conduct unannounced visits to the nurseries to monitor the quality of the provision. Quality surveys will be conducted by the provider and the Council and will be aimed at parents / carers and children attending the nursery. The provider will have to report any complaints made to the Council. The nurseries will also be subject to external inspection from Ofsted.

7.2 **Contractual Issues**

- 7.2.1 The tender process will be conducted in compliance with European Union rules and principles and Council Rules. The tendering of the nurseries will be advertised on the Council’s website and on Contracts Finder: this is a free service for businesses, government buyers and the public. The service comes from the government under its commitment to transparency and allows suppliers to find contract opportunities.
- 7.2.2 There is no requirement for this tender to be advertised in the OJEU as this is a Part B service and this tender is, therefore, not subject to full EU regulations. The contract for the five nurseries is being tendered as one lot with five individual leases. Therefore, tenderers must be prepared to bid for all five nurseries. Interested parties will be invited to tender on the basis of a restricted tender.
- 7.2.3 Consideration was given, in liaison with Legal Services, as to whether the contracts/leases could be let out as a concession. Following discussion it was agreed that as this service is a Part B service, and therefore not subject to the full rigours of the EU Regulations, that the impact of letting the contract/leases as a concession would be limited. The Council’s own Contract Rules require a formal tender process be followed. The route of a restricted tender previously utilised worked well: providers engaged with and had no issues with the way in which the procurement process was run.

- 7.2.4 At the Expression of Interest Stage, Pre-Qualification Questionnaire submissions will be invited from any provider who is able to demonstrate the criteria outlined in paragraph 7.1.2. Only those providers scoring over 60 marks out of 100, at this stage, will be considered to be invited to tender.
- 7.2.5 Up to a maximum of six providers will be invited to tender. At Stage One, tender returns will be evaluated in accordance with the tender evaluation criteria. Stage Two will consist of an unannounced visit to a nursery run by the provider. These processes will result in a shortlist of a maximum of up to four preferred providers being invited to interview (Stage Three). The contract and leases will be awarded to the successful provider for a period of five years with an option to extend for a further two years depending on performance. The contract period has been agreed upon to ensure consistency of service provision.
- 7.2.6 All providers invited to tender will be advised of the detailed price/quality criteria and weightings in the tender documentation. The price weighting will be 5% and quality will be 95%. Price has been given a relatively low weighting for the following reasons:
- a) sustainability of the nurseries is a major issue and the Council has had the foresight to recognise this by ensuring that nursery prices are not capped and that market forces prevail;
 - b) during a similar nursery re-tender that took place this year all providers who were invited to tender came in with a fee rate that was below the rate currently being charged by the Council;
 - c) the maximum difference in fees in the tender submissions that were received earlier this year was £8.

The weightings are expected to be as follows for quality:

Stage One

- 15% on service delivery and business planning;
- 20% on management and staffing;
- 10% on communication and partnership working;

Stage Two

- 20% based on an unannounced visit to a nursery operated by the selected provider/s;

Stage Three

- 30% on a presentation and interview session. (Tenderers will be made aware of sub criteria that are expected to cover service delivery, monitoring and evaluation, staffing and business management in advance).

The above weightings may change slightly but any revisions will be fully set out in the Invitation to Tender documentation.

7.2.7 Expected Tender Outline

Cabinet approval / advertise	20 March 2012
Expressions of Interest to be returned and evaluated	Early May 2012
Invitations to tender to be sent out	Mid May 2012
Invitations to tender to be returned	End June 2012
Tender evaluations, nursery visits and interviews	Early to mid July 2012
Approval and award of contracts	Early to mid August
Facilitate possible TUPE meetings	September – November 2012
Start of contract delivery for the five nurseries	1 st January 2013

7.3 Staffing Issues

7.3.1 There are no staffing issues in respect of the Council's workforce. However there could be possible Transfer of Undertakings (Protection of Employment) TUPE implications for staff currently employed at the five nurseries by the incumbent provider. Because there are possible TUPE implications the process that will be followed as part of this procurement exercise is as described below:

- a) the incumbent provider will be advised that they will need to supply TUPE information to the Council before the re - tender exercise commences;
- b) it will be made clear in the advert and Expression of Interest documents that TUPE may apply so that prospective tenderers are aware of this matter before they apply to be on the select tenderers list;
- c) six weeks before the tender documents are due to be sent to selected tenderers, a TUPE template document will be sent to the incumbent provider to complete. In this case, as there are five nurseries, five templates will be sent out so that the provider can complete a template for each nursery. The incumbent provider will also be asked to send any supporting documents (policies/procedures/pension information etc) to the Council and to advise the Council of any changes once the template has been completed and returned;
- d) the returned completed templates and any supporting documentation will be included in the Invitation to Tender packs so that all tenderers have this information available to them when completing their tender return;
- e) tender returns will be carefully reviewed to ensure that TUPE has been considered and returns reflect TUPE considerations: where necessary clarification will be sort by the Council;
- f) at interview stage TUPE will be discussed with providers. The Council will make it clear to providers that the Council will be available to facilitate meetings between providers in the case of TUPE. The Council's role will, however, be minimal as TUPE will be an issue that will need to be dealt with between the incumbent provider and any new provider;
- g) on award of contract/takeover of service delivery, the Council will monitor the situation to ensure that all TUPE matters are dealt with properly and efficiently.

7.3.2 At all stages of the procurement process providers will be made aware that they should obtain independent legal advice if TUPE is deemed to apply.

7.4 Customer Impact

7.4.1 Children's Services will be responsible for supporting the provider to deliver high quality, inclusive childcare which is financially sustainable. The contract will specify expectations in this respect. Regular equality impact assessments will be made. Parents will be eligible for all current childcare support, including access to free early education places and access to the childcare element of the Working Tax Credit.

7.4.2 Parents and carers will be kept fully informed of all events and processes. Prior to and during the procurement of the contract, parents and carers will be kept informed of any events/processes by the incumbent provider. Where relevant or necessary, Council officers will attend any meetings and respond to any individual concerns raised by parents/carers on the procurement process and possible effects on the nursery services.

7.4.3 Once a preferred provider has been awarded the contract and leases all parents / carers of children attending the nurseries will be informed by the incumbent provider in writing. The format of any letters will be agreed in advance with the Council. Parents/carers will be advised of any proposed changes in the service provider or service delivery. Where new providers are awarded the contract/leases the Council will ensure that meetings are arranged at the nurseries that include relevant representatives from the incumbent provider, the new provider and a dedicated Council officer. All parents/carers whose children are attending the nursery will be invited to these open meetings to enable them to raise any concerns they may have. Parents/carers will also be issued with contact details of a dedicated Council Officer so that queries/concerns can be raised on an individual basis in writing, or over the telephone.

7.5 Safeguarding Children

7.5.1 This re-tendering exercise will ensure that the childcare needs of working parents continue to be met. The chosen provider will be required to conform to all our local safeguarding procedures. This will be explicitly dealt with in the contract.

7.6 Property / Asset Issues

7.6.1 Children's Services will work closely with the Council's Legal and Property Services to ensure that leases for the five children's centre nurseries are put in place and run concurrently with the contract and are capable of being terminated, for whatever reason and justification, in accordance with the service contract awarded.

Background Papers Used in the Preparation of the Report:

None

List of appendices: None