

CABINET

19 November 2013

Title: Procurement of Castle Green, Arden House and Halbutt Street Day Nursery Services	
Report of the Cabinet Member for Children's Services	
Open Report	For Decision
Wards Affected: Goresbrook, Heath and Longbridge	Key Decision: Yes
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Accountable Divisional Director: Christine Pryor, Divisional Director of Targeted Support	
Accountable Director: Helen Jenner, Corporate Director of Children's Services	
Summary: <p>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 by a local authority. The Council also has a duty to provide free early education to 2,300 disadvantaged 2 year olds by September 2014, which places pressure on the existing childcare market and requires new developments to meet potential demand for childcare.</p> <p>This report seeks authority to commence a competitive tender exercise to appoint providers of day care nursery services at:</p> <ul style="list-style-type: none">a) Arden House and 202a Halbutt Street – Arden House, formerly the borough registry office, is currently being re-developed by Children's Services to serve as a 57 full time equivalent (FTE) place nursery. It is envisaged that capital works will be completed by May 2014 and that services will commence from June 2014. Halbutt Street, formerly an adult social care building, is also being re-developed by Children's Services to serve as a nursery with capacity for approximately 70 FTE children. It is envisaged that Halbutt Street nursery will open in September 2014.b) Castle Green Day Care Nursery - This will be a re-tender of the service. The current provider of these services is Lifeline Community Projects Limited. The nursery provides approximately 75 FTE places for children between the ages of 0-5 years. The current contract is due to expire on 31st August 2014. <p>Castle Green Nursery will be tendered as one lot and Arden House and Halbutt Street will be tendered together as a second lot. Providers will have the opportunity to apply for either lot. There will, therefore, be one appointed provider for Castle Green and another for Arden House and Halbutt Street day care nurseries. The new contracts and leases to be awarded will each be for a period of seven years, with an option for a further three year extension.</p>	

There will be no direct costs arising from the contracts for the Council. The operational running costs of the nursery will be met by the contractor through fees paid by parents/carers on a total cost recovery basis.

Recommendations

The Cabinet is recommended to:

- (i) Agree the procurement of seven-year contracts, with extension options up to three years, for the provision of day-care nursery services at Castle Green Nursery (Lot 1) and Arden House and Halbutt Street Nurseries (Lot 2) as detailed in the report; and
- (ii) Delegate authority to the Corporate Director of Children's Services, in consultation with the Chief Finance Officer, to award and enter into the contracts and coterminous leases with the successful tenderers upon conclusion of the procurement process.

Reasons

Securing sufficient childcare to enable parents to access work and training supports the Council's vision of "Encourage growth and unlock the potential of all Barking and Dagenham residents".

1. Introduction and Background

- 1.1 In September 2010 all three- and four-year-olds became entitled to 15 hours a week of free early education, an increase from 12.5 hours a week. Currently approximately 99 per cent of three and four-year-olds access their free entitlement.
- 1.2 All 152 local authorities in England have been delivering a targeted offer of between 10 and 15 hours free early education to some of the most disadvantaged two-year-olds since September 2009.
- 1.3 The Government has now committed to extending this to around 20 per cent of the least advantaged two-year-olds, around 150,000 children from September 2013. In May 2012 the Government confirmed that two-year-olds who live in households which meet the eligibility criteria for free school meals will be entitled to a free early education place, along with children who are looked after by the state.
- 1.4 In October 2012 regulations - cited as the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012 - were laid which set out the eligibility criteria for the first phase of the two-year-old entitlement to free early education from September 2013.
- 1.5 Additional funding is being provided to local authorities rising to £760 million in 2014-15. The Government is also investing over £5 million in 2012-13 to help build capacity, fund places and trial new approaches, including a series of local authority trials and a national contractor to support local authorities and providers to prepare for the expansion.

- 1.6 From September 2014 the number of two-year-olds who will be entitled to a place will rise to around 40 per cent of two-year-olds. The Government proposes to build on the eligibility criteria for the first phase – so children who meet the free school meals criteria or who are looked after would continue to be eligible - and to extend free places to more low-income families, two-year-olds with special educational needs or disabilities, and those who have left care but are unable to return home.
- 1.7 Barking and Dagenham are required to deliver places to 1200 eligible 2 year olds from September 2013 and to 2300 eligible 2 year olds from September 2014. Capital funding has been awarded to meet delivery targets and this funding is being used to deliver Arden House nursery and Halbutt Street nursery. Castle Green Day Nursery was part of an ambitious £30 million Private Finance Initiative (PFI) project that comprised of a secondary school, public library, sport facilities and community services, it opened in September 2005. The current provider of these services is Lifeline Community Projects. The current contract is due to expire on 31 August 2014.
- 1.8 There are currently 11 Council commissioned nurseries in the borough, provided by a variety of providers in the voluntary and private sector and 2 Council run nurseries as follows:

Council Nurseries	Provider
Abbey	Council
Becontree	Playaway Ltd
Castle Green	Lifeline Community Projects
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

2. Proposal and Issues

- 2.1 The current Castle Green Nursery contract with the provider (Lifeline Community Projects Limited) is due to expire on 31 August 2014.
- 2.2 Arden House is being re-developed to serve as a 57 full time equivalent (FTE) place nursery. Children's Services are investing capital in refurbishing, re-modelling and equipping the building. It is envisaged that capital works will be complete by May 2014 and that services will commence from June 2014.
- 2.3 Halbutt Street is also being re-developed to serve as a nursery with capacity for approximately 70 FTE children. The building is being refurbished, remodelled and equipped using Children's Services capital funding. It is envisaged that Halbutt Street nursery will open in September 2014.

- 2.4 The proposal is to conduct a competitive tender exercise for the provision of nursery services and to award contracts and leases to providers in the Private, Voluntary or Independent Sector. The new contracts and leases to be awarded will be for a period of seven years, with an option for a further three year extension, at the sole discretion of the Council and depending on performance. The period of ten years is a slightly longer period than previous nursery contracts/leases have been issued for. A number of other Local Authorities, Newham and Lewisham, for example, are putting nursery contracts and leases in place for over ten years. The reasoning behind this is that it takes a while for a provider to settle in at a nursery and to start building up their occupancy levels and reputation whilst providing a quality service. A longer contract/lease period also means more consistency for parents, who tend to get very anxious when informed of a tender process. The longer contract/lease period will also, hopefully, attract more competition for the lots, in particular for the Castle Green Nursery.
- 2.5 The proposal is to tender the nurseries as two lots. Castle Green Nursery will be a re-tender of the current service and will be tendered as one lot and Arden House and Halbutt Street will be tendered together as a second lot. Providers will have the opportunity to apply for either lot.
- 2.6 There will be a competitive tender exercise for the appointment of providers for the nursery services in accordance with the Council's Contract Rules. The contracts and coterminous leases will be awarded to the preferred bidders upon successful completion of the procurement process. The contracts 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 all three nurseries

- 3.1.1 It is not a viable option for the Council to take on the running of these childcare services. This is due to the high cost of running nurseries in-house and the volatility of the childcare market, particularly during such a prolonged challenging economic environment. For Castle Green Nursery a key risk to the Council is that of employing staff who might have to be made redundant at a later date if the nursery proves to be unsustainable, due to high in-house running costs.

3.2 Option 2 - The current services are not tendered and work for the two new nurseries is stopped

- 3.2.1 Castle Green Nursery - Our Childcare Sufficiency Assessment shows that there is a continued demand for full day-care in Goresbrook ward. Not re-tendering the contract will result in a loss of approximately 75 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.
- 3.2.2 Arden House and Halbutt Street - The Council is required to deliver free early education places to 1,200 eligible two year olds from September 2013 and 2,300 two year olds from September 2014. It is the duty of the local authority to manage

its market, to ensure that sufficient capacity is available to deliver this. If works stop for the nurseries the Council would not be in a position to meet its statutory duty.

3.3 Option 3 - The services are tendered

3.3.1 By tendering the services and awarding the contracts and coterminous leases to provider/s in the Private, Voluntary or Independent Sector, 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.

3.4 Option 3 is the recommended option.

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: Gaspare Nicolini, Group Accountant, Children's Services

5.1 There will be no direct costs arising from the contracts and ancillary leases to run the nurseries for the Council. The operational running cost of the nurseries will be met by the providers, through fees paid by parents/carers on a total cost recovery basis. The costs of the provision will be borne solely by the providers.

5.2 The indirect cost of the tender process and the managing of the contract and lease 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 providers. 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. Credit checks will be requested for those providers who progress through to the second stage of the tender.

5.4 The chosen providers 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. Providers will have to advise the Council three months in advance of any future fee increases.

5.5 The successful providers will receive full use of the nurseries and their equipment, in return for full market rent at Arden House and Halbutt Street and an annuity payment at Castle Green which is a (Private Finance Initiative) PFI build. For Castle Green the service charges will be calculated in line with the PFI agreement. Arden

House and Halbutt Street are stand alone nurseries and the provider will be solely responsible for paying all service charges associated with the nurseries.

- 5.6 The full market rent and annuity payment will be used to cover the cost of repairs and maintenance of the buildings and equipment.

6. Legal Implications

Completed by Eldred Taylor-Camara; Legal Group Manager

- 6.1 This report is seeking Cabinet's permission to tender the contract for the appointment of a provider of day-care nursery services at the Castle Green Nursery and the appointment of a provider at Arden House and Halbutt Street Nurseries.
- 6.2 Under Section 6 of the Childcare Act 2006 the Council is required to ensure the provision of sufficient childcare within the area for parents in education, work or training.
- 6.3 Recent government policy also requires Councils to make available free childcare places for eligible two year olds.
- 6.4 In order to fulfil the requirements of the above legislation and policy, the Council is seeking to retender the provision of the day nursery service at Castle Green Nursery and provide new childcare places at the Arden House and Halbutt Street Nurseries.
- 6.5 As the services being procured will be provided and charged for directly by the provider, with no element of the income being paid to the Council, these contracts will constitute concession contracts. Concession contracts for services are exempt from the Public Contracts Regulations 2006 (the "Regulations"), and thus not subject to the normal tendering requirements. However in conducting the procurement, the Council still has a legal obligation to comply with the relevant provisions of the Council's Contract Rules and with the EU Treaty principles of equal treatment of bidders, non-discrimination and transparency in conducting the procurement exercise.
- 6.6 The EU Treaty principles noted above encourage the advertisement of contracts in a manner that would allow any providers likely to be interested in bidding for the contracts to identify the opportunity and bid for the contracts, should they wish to do so. This report states that the Council's website and the Contracts Finder website will be utilised for advertising to potential bidders. Paragraph 7.2.2 states the tender procedure that will be adopted in the procurement exercise. This would allow all parties interested to have the opportunity to be considered at the pre-qualification stage.
- 6.7 The report sets out in paragraph 7.2.5 the anticipated tender timetable for the procurement of this service. The contract is to be advertised in November 2013 while tender responses are expected to be returned in January 2014. Evaluation of tenders will be undertaken between January and February, with a view to appointing the successful bidders and awarding the contract in between February and March 2014.

- 6.8 One of the recommendations of this report is that Cabinet delegate authority to the Corporate Director of Children's Services, in consultation with the Chief Finance Officer (Section 151 Officer), to award the contracts and coterminous leases upon conclusion of the procurement process. Contract Rule 13.3 provides delegated authority to the commissioning Corporate Director, in consultation with the Section 151 Officer, to approve the award of a contract upon conclusion of a duly conducted procurement exercise, in the absence of direction to the contrary from Cabinet.
- 6.9 At Castle Green, as the services are to be provided from PFI 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 private investor's and the Council's interest in the properties. As with Arden House and Halbutt Street nurseries, this will be in the form of a coterminous lease and such other legal agreements as may be required.
- 6.10 The leases will fully detail, by way of appended inventories, any equipment that the Council will be supplying to the providers. The leases will clearly set out the repair and maintenance obligations of both the premises and any equipment. The providers will not be able to remain at the premises on the expiry or earlier termination of the contracts.
- 6.11 Arden House and Halbutt Street day care nurseries will be let at market value rents, together with service charges which will cover the cost of the Council carrying out routine repairs at the respective properties. Castle Green will be let in accordance with the PFI Contract and the tenant shall pay a unitary payment per annum. This will cover the cost of repair and maintenance of the building. The Legal Practice should be consulted on the preparation and completion of the leases.

7. Other Implications

7.1 Risk Management

- 7.1.1 The tender exercise will assist in assessing the financial stability of any prospective providers. Credit checks will be conducted and providers will be requested to supply two years of audited accounts that will be reviewed by the Council's Finance Department. Providers will also be asked to submit a proposed financial plan for the first three years of running the nurseries.
- 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 stage across a range of areas including: experience and management and staffing.
- 7.1.3 Once providers have 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 the Private Finance Initiative Team and the Council's Legal and Property Services Teams, 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 providers 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 nurseries. The providers will have to report any complaints made to the Council and Ofsted. 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 any European Union rules and principles and the Council's Contract Rules. The tendering of these nurseries will be advertised on the Council's website and on Contracts Finder. Contracts Finder 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 service concession and this tender is therefore, not subject to the Regulations. The Council's own Contract Rules require a formal tender process to be followed and the EU Treaty principles of transparency, non-discrimination and equality of treatment do apply. The route of a tender process has previously worked well: providers engaged with and had no issues with the way in which the procurement process was run. Interested parties will be invited to tender on the basis of a compliant tender process.

7.2.3 All providers who express an interest in the tender will be issued with a tender pack which will give clear detail on the price/quality criteria and weightings. The weighting will be 98% quality / 2% cost and award will be based on the most economically advantageous tender.

7.2.4 The weightings are expected to be as follows (this is an overview; tenderers will be made aware of any sub criteria in the tender documents):

Stage One of the tender (Evaluation of Method Statements)

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

Stage Two of the tender (Unannounced visit)

- 8% based on an unannounced visit to a nursery operated by the selected provider/s;

Stage Three of the tender (Interview session)

- 45% on a presentation and interview session. Again, tenderers will be made aware of all sub criteria in advance but the interview session is likely to cover quality and staff training, safeguarding and working together).

If there are any revisions to the weightings during the tender exercise all providers who have requested a tender pack would be informed immediately.

7.2.5 Expected Tender Outline

Cabinet approval	19 November 2013
Advertise and send out tender application packs	Late November 2013
Tender submissions to be returned	Early January 2014
Tender evaluations, unannounced nursery visits and interview	Mid January to mid February 2014
Approval and award of contracts	Late February to Early March 2014
Start of contract delivery	Contract start dates will range from 01/04 to 01/09/2014

7.2.6 Providers will also be issued with an Application Questionnaire as part of the tender pack. Providers will be informed that they have to reach a pass mark of 75 or above. Of those providers that score 75 or above the top four providers for each lot will then have their tender application reviewed and scored.

7.2.7 Following the scoring of the tender application the top two providers for each lot will then be invited to a presentation and interview session. Before the interview sessions take place Council Officers will make unannounced visits to one of the provider's nurseries. The contracts and leases will be awarded to the successful provider for each lot, for a period of seven years with an option to extend for a further three years depending on performance. The contract period has been agreed upon to ensure consistency of service provision.

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 Castle Green nursery by the incumbent provider. Because of this the process that will be followed as part of this procurement exercise is as described below:

- a) the incumbent provider will be advised that, in line with their current contractual terms, they will be requested to supply certain employee information to the Council before the tender exercise commences. The information supplied by the provider will be included in the Council's tender pack ;
- b) it will be made clear in the advert and tender application pack that TUPE may apply for Castle Green Nursery. Prospective tenderers' are then aware of this matter before they submit a tender;
- c) at the tender and interview stage the Council will make it very clear to providers that TUPE will be an issue that will need to be dealt with between the incumbent provider and any new provider.

7.3.2 At all stages of the procurement process providers will be made aware that they should obtain their own independent legal advice around TUPE.

7.4 Customer Impact

- 7.4.1 Children's Services will be responsible for supporting the providers to deliver high quality, inclusive childcare which is financially sustainable. The contracts 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 At Castle Green, 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 At Castle Green, once the preferred provider has been awarded the contract and lease all parents / carers of children attending the nursery 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/lease the Council will ensure that meetings are arranged at the nursery, which will 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 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 the Council's 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 are put in place and run concurrently with the contracts and are capable of being terminated, for whatever reason and justification, in accordance with the service contract awarded. Arden House and Halbutt Street day care nurseries will be let with market value rents, together with service charges which will cover the cost of the Council carrying out routine repairs at the respective properties. Castle Green will be let in accordance with the PFI Contract and the tenant shall pay a unitary payment per annum. This will cover the cost of repair and maintenance of the building.

Background Papers Used in the Preparation of the Report: None

List of appendices: None