

CABINET

2 June 2015

Title: Procurement of Various Children's Centre Nursery Services	
Report of the Cabinet Member for Education and Schools	
Open Report	For Decision
Wards Affected: Abbey, Becontree, Gascoigne, Heath, Parsloes, Thames and Village	Key Decision: No
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Accountable Divisional Director: Jane Hargreaves, Divisional Director of Education	
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. In September 2010 all three and four year olds became entitled to 15 hours a week of free early education. Since September 2014 it is the Council's duty to provide free education to 2,055 disadvantaged two year olds in the borough, which has placed pressure on the existing childcare market.</p> <p>This report seeks authority to commence a competitive tender exercise to appoint providers of nursery services at:</p> <ul style="list-style-type: none">a) Gascoigne, Sue Bramley and William Bellamy Children's Centre Nurseries - This will be a re-tender of the nursery services. The current provider of these services is Chestnut Nursery School Limited. The nurseries provide approximately 75, 64 and 61 FTE places, respectively, for children between the ages of 0-5 years. Sue Bramley also provides an additional 12 sessional/pre-school places that are for 15 hours a week, term time only. The current contract for Sue Bramley is due to expire on 5 June 2016 and the contracts for Gascoigne and William Bellamy are due to expire on 31 August 2016.b) Becontree and Sydney Russell Children's Centre Nurseries - This will be a re-tender of the nursery services. The current provider of these services is Playaway Limited. The nurseries provide approximately 30 and 27 FTE places, respectively, for children between the ages of 0-5 years. Sydney Russell also provides an additional 24 sessional/pre-school places that are for 15 hours a week, term time only. The current contract for Becontree is due to expire on 31 August 2016 and the contract for Sydney Russell is due to expire on 2 November 2016.c) Abbey and John Perry Children's Centre Nurseries – The current provider of these	

services is the Council. The nurseries provide approximately 52 FTE places each, for children between the ages of 0-5 years. However, before the new contracts commence, the provisions may be extended to allow for up to an additional 40 places and an additional 16 places, respectively. The new contracts are expected to commence on 1 April 2016.

Gascoigne, Sue Bramley and William Bellamy Children's Centre Nurseries will be tendered as one lot, Becontree and Sydney Russell Children's Centre Nurseries will be tendered as a second lot and Abbey and John Perry Children's Centre Nurseries will be tendered as a third lot. Providers will have the opportunity to apply for any one of the three lots. There will be one appointed provider for each lot. The new contracts and leases to be awarded will each be for a period of five years, with an option for a further three year extension.

Recommendation(s)

The Cabinet is recommended to:

- (i) Agree the procurement of five year contracts, with extension options up to three years, for the provision of nursery services at Gascoigne, Sue Bramley and William Bellamy Children's Centre Nurseries (Lot 1), Becontree and Sydney Russell Children's Centre Nurseries (Lot 2) and Abbey and John Perry Children's Centre Nurseries (Lot 3) as detailed in the report;
- (ii) Indicate whether Cabinet wishes to be further informed or consulted on the progress of the procurement and the award of the contracts; and
- (iii) Delegate authority to the Corporate Director for Children's Services, in consultation with the Cabinet Member for Education and Schools, the Chief Finance Officer and the Head of Legal and Democratic Services, to award and enter into the contracts and coterminous leases to the successful bidders in accordance with the strategy.

Reason(s)

Securing sufficient childcare to enable parents to access work and training and providing early education for children, supports the Council's three priorities of "Encouraging civic pride", "Enabling social responsibility" and "Growing the borough".

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 90 per cent of three and four year olds access their free entitlement.
- 1.2 Since September 2009, 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. The Government 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 also confirmed that two year olds living in households which met the eligibility criteria for free school meals would

be entitled to a free early education place, along with children looked after by the state.

- 1.3 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.
- 1.4 The Government invested heavily 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 expansion. Additional funding has also been provided to local authorities in 2014- 15.
- 1.5 From September 2014 the number of two year olds entitled to a place rose to around 40 per cent of two year olds with the Government extending 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.
- 1.6 Barking and Dagenham were required to deliver places to 1065 eligible two year olds from September 2013 and 2055 from September 2014. Some capital funding was awarded to meet these delivery targets.
- 1.7 There are, at present, 13 Council commissioned nurseries in the borough, run by a variety of providers in the voluntary and private sector, 2 Council run nurseries and Markyate a new nursery that is currently being tendered:

Council Nurseries	Provider
Abbey	Council
Arden House	Chestnut Nursery School Ltd
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
Halbutt Street (opening June 1 st 2015)	Chestnut Nursery School Ltd
John Perry	Council
Leys	London Early Years Foundation
Sue Bramley	Chestnut Nursery School Ltd
Sydney Russell	Playaway Ltd
Marks Gate	London Early Years Foundation
Markyate	Chestnut Nursery School Ltd
William Bellamy	Chestnut Nursery School Ltd

2. Proposed Procurement Strategy

2.1 Outline specification of the works, goods or services being procured.

- 2.1.1 The nursery services will provide high quality, affordable and sustainable childcare. Eligibility for the nursery services will be any child from the age of three months, up to the end of foundation stage, five years. The services will be accessible to all

families and children that meet the eligibility criteria, from Monday to Friday, 8am to 6pm for fifty one weeks a year.

2.1.2 The services will promote and support all children to develop new skills, ensuring that children make progress towards the early learning goals and will allow children to play and learn together in well organised, safe and structured environments.

2.2 Estimated Contract Value, including the value of any uplift or extension period.

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

2.2.2 Market rent for each of the nurseries has been assessed by an independent agency. Rent will be paid to the Council and will be used as and when required for any necessary repairs to the nurseries. The providers will pay a service charge that will cover all utilities and other services related to the buildings/services, so the rent is an income for the Council that can be used to maintain the nurseries and make the provisions cost effective. Providers, where applicable, will also be expected to pay business rates for each nursery.

2.3 Duration of the contract, including any options for extension.

2.3.1 The duration of the contracts and coterminous leases will be five years with an option to extend for a further three years (eight years in total).

2.4 Is the contract subject to the (EU) Public Contracts Regulations 2006? If Yes, and contract is for services, are they Part A or Part B Services.

2.4.1 As the services being procured will be provided and charged directly by the provider, with no element of income, only rent, being paid to the Council, this contract will constitute a concession contract. Concession contracts for services are currently exempt from the (EU) Public Contracts Regulations 2006 (the "Regulations").

2.5 Recommended procurement procedure and reasons for the recommendation.

2.5.1 The tender process will be conducted in compliance with any European Union rules and principles and the Council's Contract Rules. The tendering of the 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.

2.5.2 There is no requirement for this tender to be advertised in the OJEU as these contracts are service concessions 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.

2.5.3 All providers who express an interest in the tender will be issued with a tender pack which will give clear details on the lots that can be applied for and the price/quality criteria and weightings. The weighting will be 100% quality and if at the end of the procurement exercise the two providers for a particular Lot have the same quality score then the fee price being charged to parents and submitted as part of the providers tender submission will be taken in to account and the provider charging the lowest fee price will be awarded the contract. So award will be based on the most economically advantageous tender.

2.5.4 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 (Evaluation of Method Statements)

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

Stage Two (Unannounced visit)

- 10% based on an unannounced visit to a nursery operated by the selected provider/s;

Stage Three (Interview session)

- 45% on a presentation and interview session. Again, tenderers will be made aware of all sub criteria in advance.

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

2.5.5 Expected Tender Outline

Cabinet approval	2 June 2015
Advertise and send out tender application packs	Early June 2015
Tender submissions to be returned	Late July 2015
Tender evaluations, unannounced nursery visits and interview	Early to mid August 2015
Approval and award of contracts	Early to mid September 2015
Start of contract delivery	For Lot 1 and Lot 2 contracts will commence as and when previous contracts expire. For Lot 3 the new contracts are expected to commence on 1 April 2016

2.5.6 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 five providers for each Lot will then have their tender application reviewed and scored.

2.5.7 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 bidder, for each Lot, for a period of five 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.

2.6 The contract delivery methodology and documentation to be adopted.

2.6.1 Service to be delivered by external providers. Documentation to be adopted will be the Council's standard terms and conditions.

2.7 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract.

2.7.1 Service Outcomes

- a) Provision of additional childcare places for children, allowing more parents (especially lone parents) the chance to study, enter or re-enter the job market;
- b) Provision of a nursery service that ensures every child at the setting makes progress and no child is left behind. Equality of opportunity and anti-discriminatory practice will ensure that every child at the nursery is included and supported;
- c) Provision of a nursery service where children are safeguarded and where they feel safe, secure and well.

2.7.2 Savings, income and efficiencies

By tendering the running of the services, especially the two in – house run nurseries (Abbey and John Perry), will ensure no recruitment or staffing costs for the Council. Market rent and business rates will be paid to the Council on all seven nurseries, at present these are only paid on the five outsourced nurseries. The rent payments will be used for and will ensure the upkeep and repair of the nursery buildings. This means not just savings but also additional income for the Council.

2.8 Criteria against which the tenderers are to be selected and contract is to be awarded

2.8.1 Overall quality/price weighting: quality 100% and if at the end of the procurement exercise the two providers for a particular Lot have the same quality score then the fee price being charged to parents and submitted as part of the providers tender submission will be taken in to account and the provider charging the lowest fee price will be awarded the contract. So award will be based on the most economically advantageous tender.

2.9 How the procurement will address and implement the Council's Social Value policies.

2.9.1 The Council's Social Value policies and the Social Value Act 2012 are broadly aligned, and thus, these contracts will address and implement the aims by:

- providing job opportunities and apprenticeships for local people;
- providing childcare places, enabling parents/carers to seek employment and/or training;
- provide a safe and secure environment for children to play, learn and develop.

3. Options Appraisal

3.1 The following options were considered.

Option 1 - The Council continues to run Abbey and John Perry Children's Centre Nurseries or takes over the running of all the nurseries

It is not a viable option for the Council to continue to run its two nurseries or to take on the running of further 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. Council nursery staff are paid in line with the National Joint Council (NJC) Salary scales with salaries being higher and employment benefits being far more substantial than those usually paid or offered by private, voluntary or independent (PVI) childcare providers. Such pay and employment benefits tend to make outsourcing of the services difficult. To cover the costs of running the nurseries (over 75% of which are generally staffing costs) the Council would have to, and does, charge parents/carers a higher fee, than a number of other PVI childcare providers in the borough. Due to the reasons listed, there was concern about outsourcing Abbey and John Perry Children's Centre Nurseries; however by increasing the number of places at the nurseries, they should prove much more attractive to PVI childcare providers.

Option 2 – The Council closes some or all of the nurseries

Since September 2014 the Council is required to deliver free early education places to 2,055 two year olds, in addition to the statutory 3 and 4 year old places It is the duty of the local authority to manage its market to ensure that sufficient capacity is available to deliver this. If any of the nurseries were to be closed, the Council would not be in a position to meet its statutory duty.

Option 3 – The services are tendered

By tendering the nursery services and awarding the contracts and coterminous leases to providers in the PVI sector, the Council will ensure that it secures affordable and sufficient childcare places 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, given the rise in the 0-5 population in the borough and there is now the additional pressure of providing 15 hours of free education to more disadvantaged 2 year olds. By tendering the two in-house run nurseries, the Council will also no longer be responsible for paying any nursery staffing costs, service charges or consumable costs. Market rent and business rates will be paid to the Council on all seven nurseries, at present these are only paid on the five outsourced nurseries. This means not just savings but also additional income for the Council.

3.2 Option 3 is the recommended option.

4. Waiver

Not applicable.

5 Equalities and other Customer Impact

5.1 Children's Services will be responsible for supporting the providers to deliver high quality and fully inclusive childcare which is financially sustainable. With a number of families now opting for part time places, the nurseries will be providing childcare for 100's of families. Parents will be eligible for all current childcare support, including access to free education places. The providers will be able to signpost parents and children to other services including Children's Centre services.

5.2 As part of the procurement process, potential providers will be assessed for adherence to necessary legislation and regulations in particular around equalities. Equality of opportunity and anti-discriminatory practice will ensure that every child with a place at the nurseries is included and supported.

6. Other Considerations and Implications

6.1 Risk and Risk Management

6.1.1 The procurement exercise will assist in assessing the financial stability of any prospective providers. Credit checks will be conducted and audited accounts reviewed, if necessary. Providers will also be asked to submit a proposed financial plan for the first three years of running each nursery in the Lot they have applied for.

6.1.2 Once financial stability has been established the main risk will be the quality of the service to be delivered. Technical ability will be assessed during the tender stages and will cover a range of areas including: experience, management and staffing, and safeguarding.

6.1.3 Once providers have been chosen and approval has been given, written contractual arrangements will contribute to ensuring a quality service. The contracts and leases will be monitored and managed by a dedicated Contract Manager. The Contract Manager will liaise with the Council's Legal Team in order to resolve any contractual issues that arise during the life of the contract. Quarterly monitoring meetings will be conducted, with providers having to complete and submit monitoring forms before any monitoring meeting.

6.1.4 Council Officers will conduct unannounced visits to the nurseries to monitor the quality of the provisions. Quality surveys will be conducted by the provider and the Council and will be aimed at parents / carers and children attending the nursery. Parents/carers will be made fully aware of how to make a complaint about the service being delivered. The providers will have to report any complaints made to the Council and where relevant Ofsted.

6.1.5 The nurseries will also be subject to external inspection from Ofsted.

6.2 TUPE, other staffing and trade union implications.

6.2.1 Non Council run nurseries - Becontree, Gascoigne, Sue Bramley, Sydney Russell and William Bellamy

There may be Transfer of Undertakings (Protection of Employment) TUPE implications for staff currently employed at by the incumbent providers Chestnut Nursery School Limited and Playaway Limited. 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. 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.

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

6.2.2 Council run nurseries – Abbey and John Perry

The process will be the same for both establishments. The Council's HR Department will be fully involved in this process and with Legal support will ensure that TUPE legislation is adhered to at all times, ensuring meaningful consultation with the recognised Trade Unions and staff affected. The key objectives of the HR plan are as follows:

- a) to inform staff and representatives of a potential transfer including the opportunity for a full discussion around the rationale for this decision;
- b) to set up regular meetings and produce FAQs to support staff throughout the process and therefore demonstrate meaningful consultation and clear communication,
- c) to ensure staff are fully engaged and supported through out the process until transfer, using existing HR procedures and welfare interventions,
- d) to ensure that the correct information is shared with tenderers and any preferred provider throughout the process and in line with TUPE legislation.

6.3 Safeguarding Children

Any chosen providers will be required to conform to all the Council's local safeguarding procedures. This will be explicitly dealt with in the contract which will be drafted by the Council's Legal Department.

6.4 Property / Asset Issues

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 contracts awarded. The nurseries will be let at market value which will cover the cost of the Council carrying out routine repairs at the property.

7. Consultation

- 7.1 The most recent Childcare Sufficiency Assessment was finished in August 2014. Details can be found at <http://www.lbbd.gov.uk/ChildrenAndYoungPeople/ChildChoices/Pages/SufficiencyAssessment.aspx>.
- 7.2 Consultation for this tender exercise has taken place through circulation of this report to all relevant Members and officers. The proposals within this report were also approved at the Corporate Procurement Board of 16 February 2015.

8. Corporate Procurement

- 8.1 As the service is a concession, the EU Regulations in regards to mandated timescales do not apply, however it is recommended that the procurement is managed in the same manner as an open ITT tender to ensure transparency and a level playing field approach is utilized to mitigate any risk of challenge.
- 8.2 Although 100% Technical seems one-sided, due to the fact that the service is of a technical and regulated nature, this is deemed to be appropriate for this procurement.
- 8.3 It is noted that the requirement on the leases is fully maintaining and will be charged at Market Rent levels, it is recommended that if the market returns a nil response that the Council could look to reduce the rent, or offer a grant to ensure the market can sustain the service without causing financial hardship for its residents through higher fees to cover the full cost of service

9. Financial Implications

Implications completed by: Patricia Harvey, Interim Group Manager Children's Finance

- 9.1 Resources will be from the Dedicated Schools Grant (DSG) £227,986,000 (including retained carry forwards) Early Years block (EYB) funding and for 2014/15 the allocation was £11,668,000 (including retained carry forwards) and 2 year old funding £7,052,000 (including retained carry forwards). The funding to the childcare providers is distributed via an Early Years Single Funding Formula (EYSFF) allocation and based upon 'take-up' of the places within each of the settings from 2015/16.
- 9.2 Indicative allocations reported to Schools' Forum in March 2015 of the DSG for 2015/16 was £224,524,000 of which EYB £10,989,000 and 2 year old funding £5,917,000 without any retained carry forwards from 2014/15.
- 9.3 Final allocations for 2015/16 as advised by the Department for Education are total DSG £229,038,000 of which the EYB is £12,182,000.

10. Legal Implications

Implications completed by: Daniel Toohey, Principal Corporate Solicitor, Legal and Democratic Services

- 10.1 This report is seeking Cabinet's permission to tender the contracts for the nurseries identified in the report.
- 10.2 The proposal set out in the report is that the contracts are let as concession contracts which means that there is no direct cost to the Council and all costs are borne solely by the Contractor. On this basis, the procurement is not subject to the Public Contract Regulations 2006 (the "Regulations") provided for under Regulation 6 (2) (m) which states that the Regulations do not apply to the seeking of offers in relation to a proposed public contract 'which is a services concession contract awarded by a contracting authority'. 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.
- 10.3 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 a contract to identify the opportunity and bid for a contract, 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.
- 10.4 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) and the Head of Legal and Democratic Services, to award and enter into the contracts and coterminous leases to the successful bidders. Contract Rule 47.15 provides that in the absence of any direction to the contrary from Cabinet, contracts may be awarded by the Chief Officer or in accordance with the scheme of delegation as long as the necessary financial approval has been given by Corporate Finance.
- 10.5 The report author and responsible directorate are advised to keep Legal Services fully informed at every stage of the proposed tender exercise. Legal Services are on hand and available to assist and answer any queries that may arise.
- 10.6 The Council owns the freehold of the property and able to grant the required lease. The Council's powers are contained in section 123 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 also provides local authorities with a general power of competence.

Background Papers Used in the Preparation of the Report: None

List of appendices: None