

## CABINET

2 NOVEMBER 2010

### REPORT OF THE CABINET MEMBER FOR CHILDREN AND EDUCATION

<b>Title:</b> Tendering of Sue Bramley Children's Centre Day-Care Nursery Services	<b>For Decision</b>
<p><b>Summary:</b></p> <p>This report seeks authority from Cabinet to commence a tender exercise to appoint a provider of day-care nursery services at Sue Bramley Children's Centre.</p> <p>The contract and lease to be awarded will be for four years with a further one year extension depending on performance. The contract value will be approximately £503,880 per annum (based on 52 places at £190 per week for 51 weeks of the year). These costs will be met by parents' fees, not by the Council.</p> <p>Officers are undertaking a feasibility study in relation to the future provision of nursery services at the two other remaining Council-run nurseries at the Abbey and John Perry Children's Centres, which will be the subject of further reports in the near future.</p> <p><b>Wards Affected:</b> Thames</p>	
<p><b>Recommendations</b></p> <p>The Cabinet is recommended to :</p> <ul style="list-style-type: none"><li>(i) approve a competitive tender exercise for the appointment of a provider of day-care nursery services for Sue Bramley Children's Centre Day Nursery, in accordance with the Council's Contract Rules, on the terms detailed in this report;</li><li>(ii) advise, in accordance with the Constitution (Contract Rules 3.6) if Councillors wish to be further informed or consulted on the progress of the procurement and award of contract;</li><li>(iii) authorise the Corporate Director of Children's Services, in consultation with the Corporate Director of Finance and Resources and Legal Partners, to award the contract and coterminous lease for Sue Bramley Children's Centre Day Nursery Services to the preferred bidder directly upon successful completion of the tender process; and</li><li>(iv) note that a further report will be presented to Cabinet in relation to the provision of Council-run nursery services at the Abbey and John Perry Children's Centres.</li></ul>	
<p><b>Reason</b></p> <p>To assist the Council in achieving its Community Priority of "Inspired and Successful" by ensuring the future sustainability of the nursery.</p>	

### **Comments of the Chief Financial Officer**

The current level of subsidy for the Sue Bramley Children's Centre is estimated to be £120,000 following a review of staffing ratios and take up. Existing staff will be transferred into vacant roles within the two remaining Council run children's centres or redeployed into other roles within the Integrated Family Services division.

The premises will be leased to the successful contractor at an appropriate rent and service charge which will cover the cost of the repair, maintenance and capital charges of the building.

The current subsidy to the nursery is funded by the ring-fenced General Sure Start Grant and is not supported by the Council's General Fund. The funds used to subsidise the nurseries will be re-directed to support other essential early intervention and preventive family support services.

### **Comments of the Legal Partner**

This report is seeking Cabinet's approval to tender a proposed service concession contract for the provision of day nursery services at the Sue Bramley Children's Centre.

The Council has the power under section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000 to enter into service concession contracts for the provision of day nursery services on the basis that such services are properly required for the discharge of the Council's duties. The value of the contract exceeds £400,000 therefore there is a requirement under Council Contract Rule 3.6 for the strategy for the procurement of the contract to be submitted to Cabinet for approval. The Corporate Director of Children's Services has accordingly set out the proposed strategy for the procurement of the contract in Paragraph 5.2 of this report, for approval by Cabinet.

Service concession contracts fall outside the scope of the application of the Public Contracts Regulations, 2006 (the EU public procurement regulations), therefore the full rigour of the EU public procurement regulations do not apply to the procurement of this contract. However, as the value of the contract exceeds the European Union (EU) threshold for services (currently £156,442), the Council still has a legal obligation to comply with the EU Treaty principles of equal treatment of bidders, non-discrimination and transparency in procuring the contracts. This includes a requirement to publicise the contract opportunity in a manner that would allow any providers likely to be interested in the contract the opportunity to bid for the contract should they wish to do so.

The procurement strategy outlined in the report complies with the EU Treaty principles of equal treatment of bidders, non-discrimination and transparency. 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.

In the event that Cabinet will not be involved in award of the contract, the report is seeking delegation of Cabinet's authority to award the contract to the Corporate Director of Children's Services, in consultation with the Corporate Director of Finance and Commercial Services, following the conclusion of the procurement process.

The Cabinet has the power under Section 15 (6) of the Local Government Act 2000 and under Part C of the Council's Constitution to delegate its powers to officers. The Legal Partner (Procurement, Property and Planning) confirms that there is no legal reason preventing Cabinet from approving the recommendations of this report. The Legal Practice should however be consulted in respect of the contractual arrangements (including the lease) with the successful concessionaire.

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## 1. Background

- 1.1 The Council currently manages three children's centre nurseries (Sue Bramley, Abbey and John Perry). The nurseries were built as part of the Neighbourhood Nurseries Initiative which sought to provide childcare in disadvantaged areas in order to support parents to access training and employment.
- 1.2 Revenue funding to support the sustainability of the nurseries ended in 2006. Since then the nurseries have continued to be subsidised by the General Sure Start Early Years and Childcare Grant. There is uncertainty about future levels of this grant following the Comprehensive Spending Review. However, a significant cut is expected which will mean that the Council will not be in a position to continue to subsidise the nurseries.
- 1.3 It is estimated that fees would need to be raised from the current £190 to approximately £250 per week in order for the Council run nurseries to be self-sufficient. This is because the staffing costs of Council employees are higher than all other voluntary or private sector day care providers in the borough of Barking and Dagenham.
- 1.4 Fees of £250 per week would be £82 per week more than the average cost of a full day care place in the borough (£168). The average cost of a full day-care place in London according to the 2010 Childcare Survey is £206. This survey makes no distinction between inner and outer London.
- 1.5 In view of the likely reduction in Government grant funding, officers looked at the ways to ensure the sustainability of the three Council-run nurseries. The service provided at the Sue Bramley Centre is considered at this stage to be the most attractive to an external provider as it has a long waiting list and the developments at Thames View and Barking Riverside would generate a need for more childcare in the area.

1.6 The proposed approach is to:

- proceed with outsourcing the nursery at the Sue Bramley Children's centre;
- market test a sustainable price by raising the fees at the remaining two nurseries;
- consider lifting the fee cap on the other providers operating nurseries from children's centres;
- explore the potential for schools to run the childcare;
- report back on progress and savings.

## **2. Proposal**

2.1 The proposal is to outsource the running of the Sue Bramley Children's Centre Nursery to a provider in the Private, Voluntary or Independent Sector. This would enable the nursery to be financially viable and sustainable without having to increase fees to a level which local people on low incomes could not afford.

2.2 There will be a competitive tender exercise for the appointment of a provider of nursery services in accordance with the Council's Contract Rules. The contract and coterminous lease will be awarded to the preferred bidder upon successful completion of the tender 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' officers.

## **3. Financial Issues**

3.1 Sue Bramley nursery is not financially viable without a subsidy from the General Sure Start Grant. It is anticipated that this Grant will be reduced from 2011-12 as part of the Comprehensive Spending Review. Without a subsidy fees would need to be raised to approximately £250 a week to ensure the sustainability of the nursery. To increase fees to this level would render the childcare unaffordable for local residents on low incomes. The projected subsidy to be funded by the General Sure Start Grant for 2010-11 is £120,000. In 2009-10 it was £140,900 and in 2008-09 it was £68,600.

3.2 Sue Bramley Children's Centre Day Nursery has 52 day places and fees are currently set at a maximum of £190 per place for 51 weeks a year paid by the parents. Income for the provider from parent's fees is therefore approximately £503,880 per annum.

3.3 The successful provider will receive full use of the nursery and equipment, which is owned by the Council, in return for an appropriate rent and service charge. This will cover the cost of repairs and maintenance of the building which is estimated to be approximately £10,000 per annum. The provider will also be recharged by the Council for utilities, telephone, cleaning and rates amounting to approximately £20,000 per annum.

## **4. Legal Issues**

4.1 The relevant legal issues are covered within comments of the Legal Partner above.

## **5. Other Implications**

### **5.1. Risk Management**

- 5.1.1 The tender exercise will assist in assessing the financial stability of any prospective provider. Providers will be requested to submit a copy of their accounts for the last two years and credit checks will be requested for those providers put through to the second stage of the tender. Once financial stability has been established the main risk involved will be delivery of the service. Technical ability will be assessed during the tender stages; providers will be expected to be able to demonstrate five years relevant experience, a commitment to quality and continuous improvement and providers would also have to be running an Office for Standards in Education (OFSTED) registered nursery rated “Good” or “Outstanding”.
- 5.1.2 Once a provider has been chosen, written contractual arrangements will contribute to ensuring a quality service. The contract will have a dedicated contract manager. Quarterly monitoring reviews will be conducted and the chosen 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 around the contract terms and conditions and service specification. Council Officers will conduct unannounced monitoring visits to the nursery (these visits will focus on general or specific matters). 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 nursery will also be subject to external inspection from OFSTED.

### **5.2. Contractual Issues**

- 5.2.1 The tender process will be conducted in compliance with European Union rules and principles and Council Rules. The tendering of the nursery would be advertised on the Council’s website and on any other relevant websites and/or in appropriate trade journals. Interested parties would be invited to tender on the basis of a two stage process.
- 5.2.2 In the first stage expressions of interest would be invited from providers who are able to demonstrate five years relevant experience, a commitment to quality and continuous improvement and have financial stability. Providers would also have to be running an Ofsted registered nursery rated good or outstanding. At expression of interest stage providers will be required to complete a Pre-Qualification Questionnaire which will be assessed against the responses given. This process will result in a shortlist of up to six preferred providers being invited to tender. The contract/s and lease will be awarded to the successful provider/s for a period of four years with an option to extend for a further year dependent on performance.
- 5.2.3 The evaluation of the tender submissions will be based on quality and business planning. Quality will be assessed against:
- service delivery;
  - management and staffing;
  - evaluation, monitoring and performance;
  - communication and partnership working;
  - a visit to a nursery run by the provider;

- a presentation and interview session.

5.2.4 All tenderers will be advised of the detailed quality weightings in the tender documentation. The weightings will be as follows:

- 20% on service delivery;
- 15% on management and staffing;
- 20% on evaluation, monitoring and performance;
- 15% on communication and partnership working;
- 10% based on an unannounced visit to a nursery operated by the provider;
- 20% on a presentation and interview session.

5.2.5 Expected Tender Outline

Cabinet approval / advertise	November 2010
Expressions of Interest returned and evaluated	Mid December 2010
Invitation to tender sent out and returned	End of January 2011
Tender evaluations, nursery visits and interviews	Early / Mid February 2011
Approval and award of Contract	Early March 2011
Start of contract delivery	Beginning of June 2011

### 5.3 Staffing Issues

5.3.1 It is proposed that the Council workforce at Sue Bramley Children's Centre Day Nursery will be absorbed into the two remaining Council run nurseries or other roles within Integrated Family Services. This will mean that the nursery can be outsourced to an external provider without any TUPE implications. Consultations with staff and Trade Unions around this issue are ongoing.

### 5.4 Customer Impact

5.4.1 Parents and carers will be kept fully informed of the proposed changes to the service provider. Once a provider has been awarded the contract for the provision of Sue Bramley Children's Centre Day Nursery all parents / carers of children attending the nursery will be informed of the proposed change in the service provider by writing. They will also be invited to raise any concerns with a dedicated Council Officer at an open meeting at the nursery.

### 5.5 Safeguarding Children

5.5.1 The outsourcing of the nursery to an alternative provider will ensure that the childcare needs of working parents continue to be met and the local authority meets its childcare sufficiency duty under the Children Act 2006. The chosen provider will be required to conform to all our local safeguarding procedures.

### 5.6 Property / Asset Issues

5.6.1 Children's Services will work closely with the Council's Legal and Property Services Departments to ensure that a lease for Sue Bramley Children's Centre Nursery is put in place and runs concurrently with the contract and is capable of being terminated, for whatever reason and justification, in accordance with the service contract awarded.

## **6. Options appraisal**

### **6.1 Option 1 - Outsource all three nurseries immediately**

- 6.1.1 To outsource all three remaining nurseries could achieve a potential saving of at least £250,000 (to the General Sure Start Grant) which is the projected loss for 2010-11. However, this would be extremely difficult to effect because of the TUPE regulations. Available evidence strongly suggests that potential providers will not consider taking over a nursery if there are staff eligible for TUPE, given the relatively high levels of pay and benefits in the public sector.
- 6.1.2 A new provider would need to employ the LBBB nursery staff and absorb all their associated salary costs, pension contributions, sick pay and leave entitlement. As the Council cannot run the nurseries profitably with staffing costs at their current level, it is highly unlikely that another provider would want to take on the staff and be able to operate a profitable business. The only way to avoid this would be to absorb all the current nursery staff into other roles within Children's Services. Legally we would be unable to make the LBBB nursery staff redundant and then outsource the nursery to another provider to employ their own staff.
- 6.1.3 The recession is having an effect on the viability of many childcare settings. Many of our local childcare providers and indeed some of the larger nursery chains operating in Barking and Dagenham are struggling with occupancy levels. In the current financial climate, outsourcing all three nurseries is not the preferred option.

### **6.2 Option 2 - Stage the outsourcing of the nurseries**

- 6.2.1 Outsourcing one nursery at a time will be more achievable than attempting to outsource all three simultaneously. Existing staff from one nursery could be absorbed into the remaining two nurseries. This would mean that the selected nursery could be outsourced without staff eligible for TUPE. This would make it a more attractive proposition to a childcare provider. This option would also allow officers to consider the impact of the other measures referred to in paragraph 1.6 of this report.

## **7. Background Papers Used in the Preparation of the Report**

None

## **8. List of appendices**

None