

CABINET

27 January 2015

Title: Procurement of Markyate Day Nursery Services	
Report of the Cabinet Member for Education and Schools	
Open Report	For Decision
Wards Affected: Mayesbrook	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. The Council also has a duty to provide free education to 2,055 disadvantaged two year olds, which places pressure on the existing childcare market and requires new development to meet potential demand for childcare.</p> <p>This report seeks authority to commence a competitive tender exercise to appoint a provider of day care nursery services at Markyate Nursery. The building was formerly Markyate library and is currently being re-developed by Children's Services to serve as a 52 full time equivalent (FTE) place nursery. It is envisaged that capital works will be completed by March 2015 and that services will commence from June 2015. The contract and lease will be for a period of seven years, with an option for a further three year extension.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Agree that the Council proceeds with procurement of a seven year contract, with an extension option of three years, for the provision of day care nursery services at Markyate Nursery as detailed in the report; and(ii) Indicate whether Cabinet wishes to be further informed or consulted on the progress of the procurement and the award of the contract, or is content for 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 contract and coterminous lease to the successful bidder 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 99 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. Capital funding has been awarded to meet delivery targets and this funding is being used to deliver Markyate Nursery.
- 1.7 There are currently 13 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
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	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
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 This day nursery service will provide high quality, affordable and sustainable childcare. Eligibility for the service will be any child over the age of two years and up to the end of foundation stage, five years. The service 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 service will promote and support all children to develop new skills, ensure that children make progress towards the early learning goals and will allow children to play and learn together in a well organised, safe and structured environment.

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 provider. There will be no direct costs arising from the contract and ancillary lease to run the nursery for the Council. The operational running costs of the nursery will be met by the successful bidder, through fees paid by parents/carers on a total cost recovery basis.

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

2.3.1 The duration of the contract and coterminous lease will be seven years with an option to extend for a further three years (ten 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 being paid to the Council, this contract will constitute a concession contract. Concession contracts for services are 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 this nursery 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 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.

2.5.3 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 100% quality. 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 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)

- 10% 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.

2.5.5 Expected Tender Outline

Cabinet approval	27 January 2015
Advertise and send out tender application packs	Early February 2015
Tender submissions to be returned	Early March 2015
Tender evaluations, unannounced nursery visits and interview	Early to Mid March 2015
Approval and award of contracts	Late March to Early April 2015

Start of contract delivery	Contract start date is expected to be June 2015 but could be later dependent on building works and Ofsted registration.
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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 will then have their tender application reviewed and scored.

2.5.7 Following the scoring of the tender application the top two providers 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 contract and lease will be awarded to the successful bidder 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.

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 Efficiencies

A vacant building in the borough will be put to good use. Market rent will be charged that will ensure the upkeep and repair of the building.

2.7.3 Savings

By tendering the running of the service this will ensure no recruitment or staffing costs 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, this contract 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 takes over the running of the service

It is not a viable option for the Council to take on the running of this childcare service. 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. Providing the services in-house would require the recruitment of a Nursery Manager, Deputy Manager, and various other nursery staff in line with required staff to children ratios. Council nursery staff would be paid in line with the National Joint Council (NJC) Salary scales with salaries being higher and employment benefits being more substantial than those usually paid or offered by private, voluntary or independent (PVI) childcare providers. Such pay and employment benefits would also make any future outsourcing of the service difficult. To cover the costs of running the nursery (over 75% of which are generally staffing costs) the Council would have to charge parents/carers a higher fee than a PVI childcare provider which may discourage parents/carers from seeking a place at the nursery and have an effect on overall occupancy numbers and income.

Option 2 - Work on the nursery is not started or is stopped

The Council is required to deliver free early education places to 2,055 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 on the nursery, the Council would not be in a position to meet its statutory duty.

Option 3 – The services are tendered

By tendering the service and awarding the contract and coterminous lease to a provider in the PVI sector, the Council will ensure that it secures affordable and sufficient childcare places in Mayesbrook ward, 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.

3.2 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>.

4.2 Consultation for this tender exercise has taken place through circulation of this Cabinet Report. The draft report after having been circulated to all required consultees as listed at the beginning of this report was then put forward and approved at the Corporate Procurement Board Meeting of 29 October 2014.

5. Financial Implications

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

5.1 Resources will be from the Dedicated Schools Grant (DSG) 2014-15 of £228m of which the '2 Year Old' provision funding is £11.668m. Any under spends of the grant will be carried forward to 2015-16 and reported to School Forum as part of the year-end DSG monitoring and Cabinet as part of the Children's year end reporting.

5.2 The building conversion of Markyate Nursery as a 52 full time equivalent (FTE) place nursery will be supported from the Children's capital funding of Basic Need funding directly received from the Department for Education.

6. Legal Implications

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

6.1 This report is seeking Cabinet's permission to tender the contract for the appointment of a provider at Markyate Day Nursery.

6.2 The proposal set out in the Report is that this contract is let as a concession contract 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.

- 6.3 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.
- 6.4 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), to award the contract and coterminous lease upon conclusion of the procurement process. 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.
- 6.5 The Council owns the freehold to the property and is 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.
- 6.6 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.

7. Other Considerations and Implications

- 7.1 **Risk and Risk Management** - The procurement exercise will assist in assessing the financial stability of any prospective providers. Credit checks will be conducted where necessary and audited accounts reviewed. Providers will also be asked to submit a proposed financial plan for the first three years of running the nursery.

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.

Once providers have been chosen and approval has been given, written contractual arrangements will contribute to ensuring a quality service. The contract and lease 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.

Council Officers will conduct unannounced visits to the nursery 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. Parents/carers will be made fully aware of how to make a complaint about the service being delivered. The provider will have to report any complaints made to the Council and where relevant Ofsted.

The nursery will also be subject to external inspection from Ofsted.

- 6.2 **Safeguarding Children** - Any chosen provider 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.
- 6.3 **Property / Asset Issues** - Children's Services will work closely with the Council's Legal and Property Services to ensure that a lease 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 services contract awarded. Markyate Nursery will be let at market value, together with service charges which will cover the cost of the Council carrying out routine repairs at the property.
- 6.4 **Equalities and other Customer Impact** - Children's Services will be responsible for supporting the provider to deliver high quality and fully inclusive childcare which is financially sustainable. The nursery will provide 52 full time equivalent (FTE) places. With a number of families opting for part time places, the service could provide childcare for over 100 families. Parents will be eligible for all current childcare support, including access to free education places. The provider will be able to signpost parents and children to other services including Children's Centre services.

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 at the nursery is included and supported.

- 6.5 **Corporate Procurement** - 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.

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.

It is noted that the requirements on the lease 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.

Background Papers Used in the Preparation of the Report: None

List of appendices: None