

CABINET

15 December 2015

Title: Procurement of New Nursery Service and Annual Childcare Sufficiency Assessment Report 2015	
Report of the Cabinet Member for Education and Schools	
Open Report	For Decision
Wards Affected: Gascoigne	Key Decision: No
Report Author: Joy Barter, Group Manager Early Years and Childcare	Contact Details: Tel: 020 8227 5533 E-mail: joy.barter@lbbd.gov.uk
Accountable Divisional Director: Jane Hargreaves, Divisional Director of Education	
Accountable Director: Helen Jenner, Corporate Director of Children's Services	
Summary: Procurement of a New Nursery Service - 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. The recent Government proposal to extend free childcare for 3 and 4 year olds to 30 hours in the future is likely to lead to a further impact on the childcare market. The location of a new nursery service on the Shaftesbury Estate, Barking is well placed to alleviate childcare pressures in Gascoigne, Abbey and Thames wards. This report seeks authority to commence a competitive tender exercise to appoint a provider of nursery services at a site on the Shaftesbury Estate (previously the site of The Maples Resource Centre) which is currently being redeveloped by Children's Services to serve as an 80 full time equivalent (FTE) place nursery for children from three months to five years old. It is envisaged that capital works will be completed by the second quarter of 2016 and that services will commence from September 2016. The contract and lease will be awarded for a period of seven years, with an option for a further three year extension. Annual Childcare Sufficiency Assessment update - The Childcare Act 2006 places a duty on local authorities to undertake a childcare sufficiency assessment. This assessment is a necessary first step towards securing sufficient childcare provision. The local authority must report annually on how it is meeting its duty to secure sufficient childcare and it must make this report available and accessible to parents. This report seeks to advise Cabinet of the Childcare Sufficiency Assessment Report 2015 which is attached as Appendix 1.	

Recommendation(s)

The Cabinet is recommended to:

- (i) Agree the procurement of a seven year contract, with an extension option for up to three years, for the provision of nursery services at a new nursery on the Shaftesbury Estate;
- (ii) Indicate whether Cabinet wishes to be further informed or consulted on the progress of the procurement and the award of the contract;
- (iii) Delegate authority to the Corporate Director for Children's Services, in consultation with the Cabinet Member for Education and Schools, the Strategic Director of Finance and Investment 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; and
- (iv) Note the Childcare Sufficiency Assessment Report 2015 as set out at Appendix 1 to the report.

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 is 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 and 2 Council operated nurseries.

Council Nurseries	Provider
Abbey	Council
Arden House	Chestnut Nursery School Ltd
Becontree	Playaway Ltd
Castle Green	Harmony House CIC
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
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 service will provide high quality, affordable and sustainable childcare. Eligibility for the nursery service will be any child from the age of three months, 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, 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 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.

2.2.2 Market rent for the nursery 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 nursery. Utilities and services will be paid for by the provider. The provider will also be expected to pay business rates for the nursery.

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 2015? If Yes and the Contract is for services, is it subject to the light touch regime?

2.4.1 As the services being procured will be provided and charged directly by the provider, with no element of income, only rent and business rates, being paid to the Council, this contract will constitute a concession contract. Concession contracts for services are currently exempt from the remit of the (EU) Public Contracts 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 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 contract 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 details on the price/quality criteria and weightings. The weighting will be 95% quality and 5% cost and 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)

- 5% 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.

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	15 December 2015
Advertise and send out tender application packs	Late December 2015
Tender submissions to be returned	Early February 2016
Tender evaluations, unannounced nursery visits and interview	During February 2016
Approval and award of contract	During March 2016
Start of contract delivery	The new contract is expected to commence on 1 st September 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 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 an provider. 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 Income

Market rent and business rates will be paid to the Council. The rent payments will be used for and will ensure the upkeep and repair of the nursery building and business rates will mean additional income for the Council.

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.

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 95% and price 5% with award to 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 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 nurseries 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 its Gascoigne 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. Waiver

4.1 Not applicable.

5 Equalities and other Customer Impact

5.1 Children's Services will be responsible for supporting the provider to deliver high quality and fully inclusive childcare which is financially sustainable. With a number of families now opting for part time places, the nursery 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 provider 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 nursery 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 provider. 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 the nursery.

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 a provider has 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 the provider having to complete and submit monitoring forms before any monitoring meeting.

- 6.1.4 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.
- 6.1.5 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 service contract awarded. The nursery will be let at market value which will cover the cost of the Council carrying out any routine repairs at the property.

7. Consultation

- 7.1 Consultation for this tender exercise has taken place with all relevant officers and the proposals were endorsed by the Corporate Procurement Board on 12 November 2015.

8. Corporate Procurement

Implications completed by: Euan Beales, Category Manger – Finance and Resources

- 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 95% 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 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

9. Financial Implications

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

- 9.1 Resources will be from the 2015/16 Dedicated Schools Grant (DSG) £228,815,000 (excluding retained carry forwards £10,833,668 and prior to academy recoupment). Early Years block (EYB) funding for 2015/16 the allocation is £10,834,000. This allocation includes the early years pupil premium of £340,027 but excludes retained carry forwards and EYB capitalisation. The 2 year old funding allocation is £3,782,064.
- 9.2 The funding to all childcare providers, both in-house and commissioned services is distributed via an Early Years Single Funding Formula (EYSFF) allocation and based upon 'take-up' of places within each of the settings from 2015/16. The EYSFF was remodelled and agreed with Schools' Forum in preparation of Funding Reform with increased rates to all providers based upon a fair and equitable distribution of early years block funding.
- 9.3 Final allocations for 2015/16 as advised by the Department for Education will be announced later in the financial year to accommodate any census growth within the early years settings as at January census.

10. Legal Implications

Implications completed by: Kayleigh Eaton, Contracts and Procurement Solicitor, Legal and Democratic Services

- 10.1 This report is seeking Cabinet's permission to tender the contract for the appointment of a provider at a new Nursery on the Shaftesbury Estate, Barking.
- 10.2 The proposal set out in the Report is that the 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. Until the draft Concession Contracts Regulations 2016 come into force, expected to be 18 April 2016, the Public Contract Regulations 2006 (the "Regulations") continue to provide for the general exclusion for service concession contracts 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 Legal services note that an expected tender outline has been inserted in paragraph 2.5.5 of the report. Legal Services would advise that should there be any slippage or deviation from the proposed timetable, resulting in delays in the procurement

exercise being carried out, that advice should be sought from Legal Services on any possible implications of the draft Concession Contracts Regulations 2016.

- 10.5 One of the recommendations of this report is that Cabinet delegate authority to the Corporate Director of Children's Services, in consultation with the Strategic Director of Finance and Investment (Section 151 Officer) and the Head of Legal and Democratic Services, to award and enter into the contract and coterminous lease to the successful bidder. 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.
- 10.6 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.
- 10.7 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.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

Appendix 1 - Childcare Sufficiency Assessment Report 2015