

## Report of Commissioning Programme Manager

### Report to Children's Services Deputy Director – Learning, Skills and Universal

Date: 27<sup>th</sup> March 2015

Subject: Waiver of Contract Procedure Rules for a prospectus and online application system



Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

1. [Leeds Pathways](#) is a website provided by the Local Authority in Leeds to assist all schools in providing students with impartial information, advice and guidance around the full range of opportunities available to them in their future. The website incorporates links to externally provided software, the current contract for hosting and managing a web-based software package which manages learners' transitions to learning, training and employment is held by UCAS Progress. The current contract ends on the 31<sup>st</sup> September 2015.
2. A market testing exercise was undertaken in December 2013; this identified 2 other potential providers of this system in addition to the existing supplier. Based on the findings of the market test, Children's Services wished to undertake a competitive process to procure a cost effective end to end solution to provide a full online prospectus of the courses and providers available in Leeds to assist young people in the 14 to 19 age range (and 14 to 25 for young people with additional needs) to make Post-16 learning choices. An invited only tender procedure was followed. Three suppliers were invited to tender. Of the 3 organisations invited to tender only 2 responded, the third declined to bid. The tender submissions were evaluated in accordance with the tender evaluation criteria. The results were reviewed by the evaluation panel taking into



account feedback from key stakeholders. Subsequent clarifications with the highest scoring bidder determined that the bidder was not prepared to accept the Council's Terms and Conditions. The bidder subsequently withdrew from the tender. The second placed bidder, although offering the best fit with the Council's requirements, was priced beyond the stated maximum budget. As neither bid was able to meet the Council's tender requirements in all aspects satisfactorily it was agreed that the tender should be therefore abandoned.

3. It has not been possible to put in place a contract for this work following a competitive tender process. A waiver of contract procedure rules is required in order to negotiate directly with 2 potential service providers in order to identify a suitable provider for a Prospectus and online application system and award a contract for delivery from July 2015. Negotiations will be conducted with the 2 potential service providers who submitted bids for the work. Negotiations will first be carried out with the provider who scored highest in the evaluation of the quality criteria, in order to identify if they can offer a suitable solution within the budget that is available. If they are unable to identify a suitable solution then negotiation will take place with the other potential service provider.
4. There is a low risk of challenge from providers to the decision to end the current process and enter in to direct negotiations. This risk is low as neither bid met the tender requirements and the contract value is below EU threshold.

## **Recommendations**

5. The Deputy Director of Children's Services is recommended to approve the waiver of the following Contracts Procedure Rule(s):

*Contracts Procedure Rule No 3.1.23 – Post tender negotiations\**

*Contracts Procedure Rules No 8.1 and 8.2 – Intermediate value procurements\**

and undertake direct negotiations with 2 potential service providers for the delivery of a Prospectus and online application system in order to reach agreement with one provider to award a contract for delivery from July 2015.



## **1 Purpose of this report**

- 1.1. The report is to seek permission to waiver contract procedure rules in order to negotiate directly with 2 potential service providers in order to identify a suitable provider for a Prospectus and online application system and award a contract for delivery from July 2015.

## **2 Background information**

- 2.1. [Leeds Pathways](http://www.leedspathways.org.uk) is a website provided by the Local Authority in Leeds to assist all schools in providing students with impartial information, advice and guidance around the full range of opportunities available to them in their future. This is supported by the Local Jobs & Careers branch of the website which focuses on the nine key growth sectors for jobs in Leeds, providing information (through local labour market information job sheets and employer videos) about the skills and qualifications needed to access different career routes. ([www.leedspathways.org.uk](http://www.leedspathways.org.uk))
- 2.2. The key stakeholders for the website are young people themselves (mainly in the age range 13-19); schools, colleges and other learning providers; parents; advisors; and the local authority.
- 2.3. The website was put in place to improve young people's decision making on post-16 learning opportunities. It provides a single place for young people to look at the range of post 16 learning opportunities that are available across Leeds, compare courses and apply for opportunities. It allows young people to follow one application system for a range of learning opportunities so it's a key tool in ensuring young people across Leeds have access to impartial information on post 16 learning to enable them to make the right choice to meet their personal needs and preferences. This is increasingly important following the change in responsibility for providing universal careers guidance which transferred from local authorities to schools in 2012.
- 2.4. The website incorporates links to externally provided software, currently delivered by UCAS Progress. This delivers a full prospectus of the courses and providers available in Leeds. We already have a strong base of providers that prepare profile and course information. The other important function of the software is to support online applications. The current contract for hosting and managing a web-based software package which manages learners' transitions to learning, training and employment is held by UCAS Progress. The current contract ends on the 31<sup>st</sup> September 2015.
- 2.5. A market testing exercise was undertaken in December 2013 (YORE-9D8P2R); this identified 2 other potential providers of this system in addition to the existing supplier. Based on the findings of the market test, Children's Services wished to undertake a competitive process to procure a cost effective end to end solution to provide a full online prospectus of the courses and providers available in Leeds to assist young people in the 14 to 19 age range (and 14 to 25 for young people with additional needs) to make Post-16 learning choices.
- 2.6. The Deputy Director of Children's Services agreed on 27<sup>th</sup> November 2014 to the undertaking of a competitive tender procedure inviting the 3 suppliers identified in the market testing exercise. The procurement exercise was not subject to the EU Regulations being valued below £100k.
- 2.7. An invited only tender procedure was published on the regional procurement portal YORtender on 18<sup>th</sup> December 2014 with a return date of 30th January 2015. The evaluation team for the tendering exercise was comprised of four experienced officers from Children's Services, two representatives from external stakeholders and one technical officer from ICT.



Procurement support was provided by the ICT Strategic Sourcing team. Three suppliers were invited to tender. Of the 3 organisations invited to tender only 2 responded, the third declined to bid.

- 2.8. The tender submissions were evaluated in accordance with the tender evaluation criteria. The tender was scored based on written responses to each of the requirements, supplier presentations and clarification responses. Bidder demonstrations were also attended by representatives from key stakeholders who contributed feedback on the proposed systems for the consideration of the evaluation panel.
- 2.9. The results were reviewed by the evaluation panel on 5<sup>th</sup> and 13<sup>th</sup> February 2015 taking into account feedback from key stakeholders. Subsequent clarifications with the highest scoring bidder determined that the bidder was not prepared to accept the Council's Terms and Conditions. The bidder subsequently withdrew from the tender. The second placed bidder, although offering the best fit with the Council's requirements, was priced beyond the stated maximum budget. As neither bid was able to meet the Council's tender requirements in all aspects satisfactorily it was agreed that the tender should be therefore abandoned.

### **3 Main issues**

#### **Reason for Contracts Procedure Rules Waiver**

- 3.1 It has not been possible to put in place a contract for this work following a competitive tender process.
- 3.2 A waiver of contract procedure rules is required in order to in order to negotiate directly with 2 potential service providers in order to identify a suitable provider for a Prospectus and online application system and award a contract for delivery from July 2015. Negotiations will be conducted with the 2 potential service providers who submitted bids for the work.
- 3.3 Negotiations will first be carried out with the provider who scored highest in the evaluation of the quality criteria, in order to identify if they can offer a suitable solution within the budget that is available. If they are unable to identify a suitable solution then negotiation will take place with the other potential service provider, this may require an agreement to accept the provider's terms and conditions, so may require a waiver of CPR 3.1.15.

#### **Consequences if the proposed action is not approved**

- 3.4 If the action is not approved it will not be possible to identify a supplier of a Prospectus and online application system. This would mean that the function to support young people in applying for Post 16 learning would not be available for young people in Year 11 from September 2015.
- 3.5 Schools expect this service to be delivered; it is a central part of the universal information available for all young people to use in planning their future progression pathways. If the contract is not in place then young people will not have access to one source of information on post 16 learning.

#### **Advertising**

- 3.6 This contract opportunity will not be advertised. It is below the threshold for EU procurement regulations.



## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Both of the bidders have been made aware of the closure of the previous tender process.
- 4.1.2 Feedback from stakeholders that was gathered for the tender process will be utilised to inform negotiations with potential providers.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1. Equality Impact Screening is attached as Appendix 1.

### **4.3 Council Policies and City Priorities**

- 4.3.1. The project will contribute to the Children and Young People's Plan priority to reduce the number of young people not in education, employment or training (NEET).

### **4.4 Resources and Value for Money**

- 4.4.1. Funding for the resource for 2015/16 is available within the Skills for Learning and Life budget.
- 4.4.2. Regular meetings will take place between LCC and the service provider to monitor progress and ensure delivery to the required standards once a contract is awarded.
- 4.4.3. Funding for future years of delivery is not yet identified. Any contract that is awarded will include options to extend for future years. The take up of options to extend the contract will be conditional on contract performance, the availability of funding, and national decision making on future prospectus and application arrangements.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 This contract is not subject to Call In under the provisions made in the Council Constitution.

### **4.6 Risk Management**

- 4.6.1 There is a low risk of challenge from providers to the decision to end the current process and enter in to direct negotiations. This risk is low as neither bid met the tender requirements and the contract value is below EU threshold.

## **5 Conclusions**

- 5.1 It is appropriate in these circumstances to not follow the requirements of:

- CPR 3.1.23, that no post tender submission negotiation takes place
- CPR 8.2, that at least **three** written tenders will be invited. These tenders may be invited by publishing either an open or a restricted tendering opportunity (restricted meaning that only selected suppliers are invited to tender) on the YORtender portal.

- 5.2 Instead direct negotiation should take place with up to 2 potential service providers in order to identify a suitable, affordable solution to provide a Prospectus and online application system.

## **6 Recommendations**



- 6.1. The Deputy Director of Children's Services is recommended to approve the waiver of the following Contracts Procedure Rule(s):

*Contracts Procedure Rule No 3.1.23 – Post tender negotiations\**

*Contracts Procedure Rules No 8.1 and 8.2 – Intermediate value procurements\**

and undertake direct negotiations with 2 potential service providers for the delivery of a Prospectus and online application system in order to reach agreement with one provider to award a contract for delivery from July 2015.

## **7 Background documents<sup>1</sup>**

- 7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.