

**Report of 11-19 Framework Agreement Project Team**

**Report to Deputy Director, Learning**

**Date: 12<sup>th</sup> August 2015**



**Subject: Request to undertake a new competitive tender exercise for new providers of 11-19 Offsite Learning and waive CPR (Contract Procedure Rule) 15.2 and CPR 3.1.15 in respect of the evaluation of tenders for new contracts added to the 11-19 Offsite Learning Framework Agreement**

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. The provision of Learning Programmes for 11-19 Learners, in Off-Site Settings, is significant in Leeds with 7,000 learner days per year provided by a total of 29 providers from the FE, private and voluntary sectors. The value of the work approaches £2 million per year. The programmes are purchased by schools, SILCs (Specialist Inclusive Learning Centres) and PRUs (Pupil Referral Units) from their budgets.
2. The decision for Leeds City Council to hold the 11-19 Offsite Learning Framework Agreement was taken by the Deputy Director, Learning, Skills & Universal Services on 21<sup>st</sup> September 2012.
3. Part of the process set out in the procurement of 11-19 Offsite Learning Framework Agreement during 2013 was for an annual “refresh” of the Framework. Under the change control procedures for contracts awarded in April 2013, April 2014 and April 2015 there is an ability for providers to change their pricing for Offsite Learning. The “Refresh” process also includes the ability for new contracts to be awarded. Organisations that meet the required standards for the 11-19 Offsite Learning Framework will form a new framework YORE9YUN-AN8L9I – that sits alongside the existing frameworks LCC26894 / YORE-935PTT, YORE-9AUAMX / LCC26894A and YORE9P3M-VBV8I8 / LCC26894B. The 4 frameworks will be viewed as one by

schools making purchasing decisions as providers on all Framework Agreements will be in one list.

4. The same specification that was used in the previous tender process, as well as the same evaluation process, will be used for the new tender process. The same evaluation panel will be used. This will ensure the same standards are applied to existing and new providers, so they can be listed in a single list for schools to making purchasing decisions.
5. The Project Team are seeking to undertake an evaluation of tender submissions for the new Framework Agreement where submissions are scored 20% on price and 80% on quality. This is the same as the decision taken in October 2012 for the contracts awarded in May 2013, the decision taken in August 2013 for the contracts awarded in April 2014 and the decision taken in September 2014 for contract awarded in April 2015.

### **Recommendations**

1. It is recommended that the Deputy Director of Learning:
  - (I) approve a new competitive tender exercise to set up a new framework for 11-19 offsite learning providers, using the same service specification and tender evaluation process that was used for the framework agreements already established.
  - (II) approve the waiver of the following CPRs:
    - CPR 3.1.15 – Requirement to use the Council’s standard tender documents; and
    - CPR 15.2 – Tender evaluation - in order to evaluate tender submissions on the basis of 20% for price and 80% for quality.

## **1 Purpose of this report**

- 1.1 The purpose of this report is to request the approval from the Deputy Director, Learning, to conduct a procurement exercise for new organisations to be awarded contracts as part of the new 11-19 Offsite Learning Framework agreement.
- 1.2 To seek approval to waive CPR15.2 tender evaluation (quality criteria ratio) in order to evaluate bids for the 11 – 19 Offsite Learning Framework Agreement on a split of 20% price and 80% quality.
- 1.3 To seek approval to waive CPR3.1.15 and use the same documentation that was used for existing 11-19 Offsite Learning Framework Agreements instead of the new procurement documentation.

## **2 Background information**

- 2.1 The provision of Learning Programmes for 11-19 Learners, in Off-Site Settings, is significant in Leeds with 7,000 learner days per year provided by a total of 29 providers from the FE, private and voluntary sectors. The value of the work approaches £2 million per year. The programmes are purchased by schools, SILCs and PRUs from their budgets. There is no central funding from Leeds City Council for the purchase of this provision for young people.
- 2.2 Personalisation of provision is a challenge in the commissioning of learning opportunities for young people. In terms of the Learning Programmes in Off-Site Settings the actual component qualifications required are diverse, with the need for specific units to be chosen, to allow for the tailoring of the qualification to meet individual young people's needs and making every young person's experience unique. This is therefore not a commodity that one provider can challenge another over in terms of potential business loss. The expectation of flexibility from providers, to offer bespoke qualifications per learner, is essential to meet the overarching requirements set out in the Apprenticeship, Skills, Children and Learning Act 2009.
- 2.3 The decision for Leeds City Council to hold the 11-19 Offsite Learning Framework Agreement was taken by the Deputy Director, Learning, on 21<sup>st</sup> September 2012.
- 2.4 A Project Team is in place in order to review and plan the commissioning of 11-19 Offsite Learning. This team includes Officers from the 11-19 Off-Site Learning Support Team and the Commissioning & Market Management Team in Children's Services, as well as Officers from the Procurement Unit.
- 2.5 The project team reviewed and consulted with Service Users (schools, SILCs, PRUs) and providers to ensure the service specification used previously reflects the needs of young people. Young people give feedback on providers as part of the quality assurance process. This feedback was used to inform the service specification for the Framework Agreement.
- 2.6 A procurement exercise was undertaken which awarded contracts to organisations on the 11-19 Offsite Learning Framework. The approval of contract award was

taken by the Deputy Director, Learning, in April 2013. A second tender exercise was undertaken for the refresh of the contract and the approval of contract extensions and a new Framework Agreement to be awarded to new providers was taken by the Deputy Director, Learning, in April 2014. A third tender exercise was undertaken for the refresh of the contract and the approval of contract extensions and a new Framework Agreement to be awarded to new providers was taken by the Deputy Director, Learning, in April 2015.

### **3 Main issues**

- 3.1 Part of the process set out in the procurement of 11-19 Offsite Learning Framework Agreement during 2013 was for an annual “refresh” of the Framework. Under the change control procedures for contracts awarded in April 2013 there is an ability for providers to change their pricing for Offsite Learning on an annual basis. The “Refresh” process also includes the ability for a new Framework Agreement to be created so that new providers in the market are also given an opportunity to bid for this work. Organisations that meet the required standards for the 11-19 Offsite Learning Framework will form a new framework YORE9YUN-AN8L9I – that sits alongside the existing frameworks LCC26894 / YORE-935PTT, YORE-9AUAMX / LCC26894A and YORE9P3M-VBV8I8 / LCC26894B. The 4 frameworks will be viewed as one by schools making purchasing decisions as providers on all Framework Agreements will be in one list.
- 3.2 The refreshed table of providers, for September 2016, will include existing courses and new courses from the existing providers, new sites from these providers as well as new courses and new sites from new providers. This single table will be re-ranked on the basis that all providers have had the opportunity to offer new courses and prices. It is not anticipated that such a course of action will result in a challenge from existing providers as this is a personalised learning environment and tender details are so site and course specific as to be worthless to competitors.
- 3.3 The single refreshed table for September 2016 will be derived from a mixture of existing providers submitting revised courses, in which case only the revised course will be evaluated. However, where existing providers offer new sites they will be required to submit the full tender documentation with the exception of the PQQ. New providers will be required to submit the full tender documentation pack. The outcome will be a table which is produced from the existing quality but new price offer of existing providers against a new quality and new price offer of new providers.
- 3.4 The approach of an annual refresh was detailed in the report which informed the decision to hold the 11-19 Offsite Learning Framework Agreement. This decision was taken by the Deputy Director, Learning on 21<sup>st</sup> September 2012.
- 3.5 The same specification that was used in the previous tender process, as well as the same evaluation process, will be used for the new tender process. The same evaluation panel will be used. This will ensure the same standards are applied to existing and new providers, so they can be listed in a single list for schools to making purchasing decisions.

- 3.6 For the original tender evaluation process a weighting was applied to the price of courses to reflect the additional expense of courses requiring specific equipment / facilities or small teaching groups. These weightings were based on the formula used for post 16 education funding by the EFA. These weightings are no longer utilised by funding agencies and the weightings were not applied for the last year. The change was communicated to providers on existing contracts. Providers were asked to resubmit prices so they could be evaluated without the weighting being applied. This was possible within the change control procedures for the 2 current contracts. The weightings will not be applied this year, this is the only change to the original scoring process for bids.
- 3.7 Providers are aware that the Framework Agreements will be refreshed annually so that new courses and providers can be added to the offer to schools in this highly dynamic environment. Ongoing, and considerable, government reforms to education require a flexible procurement model in order to ensure that the Framework offer continues to meet the needs of both the schools and the young people. The approach taken allows the council to mitigate the risk of challenge by being open and transparent regarding the potential changes that may occur throughout the life of the framework. This includes making effective use of Change Control Procedures which set out the mechanism of how changes requested by either party are to be dealt with. Thus, any changes required at the 'refresh' stage can be dealt with openly and fairly.
- 3.8 The following steps were taken in order to mitigate the risk of challenge from providers appointed to the framework agreement in 2013:
- Inclusion of change of control procedure within the tender documents.
  - Existing providers are granted the opportunity to review their prices and ensure that their costs remain competitive. The review opportunity will take place at the same time as the refresh. This will reduce the risk of providers seeking to claim they had been discriminated against.
  - During the process a risk log is maintained and updated throughout.
- 3.9 It should be noted that this approach to the Framework Agreements has been used previously for the 13-19 Offsite learning agreement which was in place from 1<sup>st</sup> September 2010 to 31<sup>st</sup> September 2013. Refreshes were carried out and did not encounter any challenge from providers so there is no reason to suspect that they will do so in the future. Refreshes were undertaken for the current contract in 2013/14 and 2014/15, there were no legal challenges to the process undertaken. The process to be undertaken for September 2016 will replicate the one undertaken for September 2015.

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

- 3.10 The Project Team are seeking to undertake an evaluation of tender submissions for the new Framework Agreement where submissions are scored 20% on price and 80% on quality. This is the same as the decision taken in October 2012 for the contracts awarded in May 2013, the decision taken in August 2013 for the contracts awarded in April 2014 and the decision taken in September 2014 for contract awarded in April 2015.

- 3.11 Price has to be part of the evaluation of tenders. The price is included in the information on provision made available to schools, in order for schools to reach a decision on the provision to purchase. Price is part of the evaluation of value for money in 11-19 Offsite Learning, this provides the schools with fixed fees payable against individual training programmes. This contract is not a contract for a fixed value therefore the evaluation method cannot be based 100% on quality.
- 3.12 Schools have consistently identified that they make choices on the provision of Offsite Learning for young people based on the component qualifications and the delivery model required to meet an individual young person's needs. For this reason price is not a significant factor in decision making for a school purchasing from the Framework Agreement. Evaluating the tenders 40% on price and 60% on quality, would place too much emphasis on the price and would risk allowing providers offering a lower priced programme to be higher on the list than the quality of their provision would justify.
- 3.13 The evaluation of 80% on quality and 20% on price will ensure that price is taken in to account in the evaluation process and is part of the information made available to schools purchasing provision. It will also ensure that the focus during the evaluation process is on the quality of the learning offered to young people, ensuring that the learning available under the Framework Agreement meets requirements for the quality of provision to a vulnerable group of young people.
- 3.14 The project team are seeking to undertake the procurement without using the standard procurement documentation. The original contract was awarded before the new standard procurement documentation was put in place. It is suggested that the same specification that was used in the previous tender process, as well as the same evaluation process and terms and conditions, should be used for the new tender process. This will ensure the same standards are applied to existing and new providers, allowing them to be listed in a single list for schools to make purchasing decisions.

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

- 3.15 If the decision to evaluate 80% on quality and 20% on price is not approved then the new contract will not be in-line with the previous contracts awarded for the 11-19 Offsite Learning framework. This would mean that new providers could not be evaluated in the same way as existing providers.
- 3.16 If the decision to undertake the procurement without using the same procurement documentation as the previous Framework Agreements is not approved then the new contract will not be issued on the same format as the contract that are to be extended. This could lead to inconsistency in the offer to schools from learning providers.
- 3.17 **Advertising**
- 3.18 The new contract opportunity will be advertised on YORtender.

## **4 Corporate Considerations**

## **4.1 Consultation and Engagement**

- 4.1.1 Schools, as service users, are consulted on an annual basis. The communication with schools has set out the annual refresh of prices from existing providers and the ability of new providers to enter in to a new Framework Agreement which will add them to the list of 11-19 Offsite Learning Providers.
- 4.1.2 The annual provider network meeting held on 3<sup>rd</sup> July 2015 set out to current providers the plan for the annual refresh. It has also communicated the fact that new providers will also be appointed to the new Framework Agreement, thereby giving them an opportunity to be awarded contracts, if they are successful in the evaluation process.

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

- 4.2.1 A screening document has been completed and is attached to this report (Appendix 1). The outcome of this screening document indicates that a full impact assessment is not required.

## **4.3 Council policies and Best Council Plan**

- 4.3.1 The 11-19 Framework supports the statutory requirements of the local authority with regard to safeguarding all vulnerable groups under the Safeguarding Vulnerable Groups Act 2006.
- 4.3.2 It also supports the delivery of the CYPP NEET and Attendance obsessions and Key Performance Indicators 3 (Improving attendance), 4 (reducing NEET), and 9 (increasing the number of young people taking apprenticeships).

## **4.4 Resources and value for money**

- 4.4.1 Resource is required to manage the procurement process. This resource will include officers in the 11-19 Team, the Commissioning & Market Management Team and Independent Safeguarding Unit in Children's Services, as well as Officers from the Procurement Unit and the Health, Safety and Wellbeing Team.
- 4.4.2 The ongoing quality assurance of 11-19 Off-Site Learning Providers required by the Framework Agreement will require allocation of resource in the form of officers from the 11-19 Off-Site Learning Support Team in Children's Services, with support from the Independent Safeguarding Unit and the Health, Safety and Wellbeing Team. These officers will ensure providers meet the requirements in the Framework Agreement for safeguarding and the quality of teaching and learning, as well as ensuring good outcomes for young people accessing offsite learning. This resource is the same as that used for management of providers on the existing Framework Agreement.
- 4.4.3 Schools will make decisions to purchase from the Framework Agreement, based on the component qualifications and the delivery model required to meet an individual young person's needs. Schools will take account of the prices offered by different providers who are able to meet individual needs in order to ensure value for money in the provision they purchase. New providers appointed to the new Framework Agreement as a result of this tender process will be listed with

the other providers that are already appointed to the various 11-19 Offsite Learning Framework Agreements.

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

4.5.1 This is an administrative decision which is not subject to Call In. The council is not committing funding to purchase services as it is schools who will purchase services from the various Framework Agreements. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

4.5.2 Although there is no overriding legal obstacle in waiving CPRs 3.1.15 and 15.3 the contents of this report should be noted. In making their final decision, the Deputy Director of Learning, Skills & Universal Services should be satisfied that the use of historical tender documentation is still robust enough to adequately protect the Council's interests and that the course of action chosen represents best Value for Money.

#### **4.6 Risk Management**

4.6.1 A risk register is in place and managed by the project team.

### **5 Conclusions**

5.1 Having considered the options and the potential challenges and risks associated, the view of the project team is that it is appropriate to undertake a tender exercise to identify new providers of 11-19 Offsite Learning and appoint them to a new 11-19 Offsite Learning Framework Agreement, which will sit alongside the existing Framework Agreements. It is considered appropriate for the evaluation to take place on the basis of 20% for price and 80% for quality. It is considered appropriate to use the same procurement documentation as the previous Framework Agreements, which is not the Council's standard tender documents.

### **6 Recommendations**

6.1 It is recommended that the Deputy Director of Learning, Skills:

- (i) approve a new competitive tender exercise to set up a new framework for 11-19 offsite learning providers, using the same service specification and tender evaluation process that was used for the framework agreements already established.
- (ii) approve the waiver of the following CPRs:
  - CPR 3.1.15 – Requirement to use the Council's standard tender documents; and
  - CPR 15.2 – Tender evaluation - in order to evaluate tender submissions on the basis of 20% for price and 80% for quality.

### **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.