

**Report of Head of Commissioning and Market Management**

**Report to Director of Children & Families**

**Date: 9<sup>th</sup> July 2018**

**Subject: A report to request the waiver of Contract Procedure Rules 8.1 and 8.2 to award a call off contract for 1:1 tuition for children with special educational needs and disabilities from the Provision of Temporary Teachers Framework**



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:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

- 1 This report seeks approval to award contracts directly to two providers from the Provision of Temporary Teachers framework to continue to deliver one to one tuition to children with special educational needs and disabilities (SEND) from 1<sup>st</sup> September 2018 to the 9<sup>th</sup> February 2019. This additional time is required to enable officers from the Complex Needs Service to work with the Projects, Programmes and Procurement Unit and the Children and Families Commissioning Team to review the service to and explore the option for it to be delivered in house by the Complex Needs Service to improve outcomes and continuity for this vulnerable group.

**Recommendations**

3. The Director of Children & Families is recommended to approve:
  - The waiver of Contract Procedure Rules 8.1 and 8.2 (intermediate value procurements) to award a call off contract to the current providers of the One-To-One Tuition Service for

Children with SEND from the Provision of Temporary Teachers Framework. The contract will commence on 1<sup>st</sup> September 2018 for a period of five months up to a value of £77,000.

## **1 Purpose of this report**

- 1.1 The purpose of this report is to seek approval from the Director Children and Families to waive Contract Procedure Rules (CPRs) 8.1 and 8.2 to directly award short term new contracts to the existing providers delivering one-to-one tuition for children and young people with SEND. This will allow sufficient time for officers to complete the review of the service and explore the option to bring the service in house or undertake a new procurement exercise.

## **2 Background information**

- 2.1 Each year, a very small number of pupils with complex special educational needs (SEN) are left without any education provision - sometimes for extended periods - whilst they are placed on the roll of a Leeds school. These pupils have generally moved into Leeds from elsewhere in the UK or overseas, mid-academic year and require a school place, but are left without any provision whilst an appropriate place is sought.
- 2.5 Private one-to-one tuition is offered to these children to ensure that they can continue with their education until a suitable school place is found.
- 2.6 A twelve month interim call off contract for the service at a value of £185,000 was awarded in October 2017 (backdated to 1<sup>st</sup> September 2017) under the Provision of Temporary Teachers and Educational Staff Framework to enable a full review of the service to be completed.

## **3 Main issues**

- 3.1 The review of the service has almost been completed and the preferred option for the future delivery of the service is for the Council to recruit additional specialist teachers within the Learning Inclusion Team of the Children and Families Directorate for an initial period of two years.
- 3.2 The completion of the review has been delayed by an internal restructure of the Complex Needs Service and changes to senior management within the team.
- 3.3. The option to bring the service in house has been reached following a review of the current service and an analysis of the needs of young people with SEND who are not currently on school roll.
- 3.4 Providing the service within the council could improve the quality of education for the young person by having a consistent and personalised provision that better links with their education and healthcare plan and supports them through the transition into a school setting. It also presents best value as it will require a lower budget than that currently allocated to the service.
- 3.5 If the proposal to bring the service in house is approved, it will take some time to establish the service and recruit teaching staff. It is therefore proposed that tuition continues to be delivered by the current providers until the new service is established, or a new procurement process is completed.

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

- 3.2 The current contract with the two providers ends on 1<sup>st</sup> August 2018 and there is no opportunity to extend the contract further. Without a contract in place, the service will cease

and vulnerable young people with SEND will be without education until a school place is agreed.

## **Advertising**

- 3.3 There is no proposal to undertake a formal tendering exercise for the service due to the reasons set out in this report.

## **4 Corporate considerations**

### **4.1 Consultation and engagement**

- 4.1.1 Consultation about the need for the new contract has taken place with SENSAP, PPPU and the providers.
- 4.1.2 Procurement has also been provided the opportunity to comment on this waiver report.

### **4.2 Equality and diversity/cohesion and integration**

- 4.2.1 An Equality Impact Screening was undertaken for the initial contract award, and there are no significant changes to the service or the needs of the beneficiaries to require a new assessment. The service promotes equality legislation by ensuring that children and young people with protected characteristics are not disadvantaged by the lack of education.

### **4.3 Council policies and best council plan**

- 4.3.1 Continuity of the service delivers against priorities within the Best Council Plan 2015-2020 and the new Children and Young People Plan 2015-19, specifically “Improve at a faster rate educational progress for children and young people vulnerable to poor learning outcomes” and “Increase the number of children and young people participating and engaging in learning”.

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

- 4.4.1 The costs of these interim contracts will be met by revenue funding from the Children and Families Directorate. The budget for the five month interim service is up to £77,000.
- 4.4.2 The new contract is required to deliver the service until the service review is completed and the new arrangements are in place. There is no increase in the amount paid for each tuition session under the new contract.

### **4.5 Legal implications, access to information and call-in**

- 4.5.1 The decision is a significant operational decision and is not subject to call-in. The report does not contain any exempt or confidential information.
- 4.5.2 Awarding contracts directly to these providers in this way could leave the Council open to a potential challenge from other providers to whom this contract could be of interest. The contract falls within social and other specific services under the Public Contracts Regulations 2015 (Regulations). The total value of the contract is below the threshold set down by the Regulations for social and other specific services. However, it should be noted that case law suggests that the Council should always consider whether contracts of this value should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising is appropriate.

- 4.5.3 The Director of Children and Families has to consider the nature of the services being delivered, the requirement to physically deliver the services in Leeds and relatively low value of the contracts being offered, and is satisfied that it would not be of interest to providers in other EU member states.
- 4.5.4 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 4.5.5 Although there is no overriding legal obstacle preventing the waiver of CPR 8.1 and 8.2, the above comments should be noted. In making their final decision, the Director of Children and Families should be satisfied that the course of action chosen represents best value for the Council.

## **4.6 Risk management**

- 4.6.1 Aside from the risk of service disruption and the risk of challenge detailed in section 4.5 above, which is mitigated by the circumstances described, there are no specific risks with respect to this report. The interim contract has an extension provision in case there are any delays to the review and establishment of new arrangements, whether in house or through a procurement process.

## **5 Conclusions**

- 5.1 The review of the 1:1 tuition service for children with SEN has concluded that it may be beneficial to provide the service by an internally managed team of teaching staff. In order to complete the review and agree the recommendations, it is necessary to continue with the current arrangements until the new service is in place or a procurement exercise is completed.
- 5.2 The new contract will be offered on the Council's standard terms and conditions; a review of performance measures will take place and implemented to ensure robust performance monitoring continues to take place. This will ensure that the Council continues to receive value for money.

## **6 Recommendations**

- 6.1 The Director of Children & Families is recommended to approve:
- 6.2 The waiver of Contract Procedure Rules 8.1 and 8.2 (intermediate value procurements) to award a call off contract to the current providers of the One-To-One Tuition Service for Children with SEND from the Provision of Temporary Teachers Framework. The contract will commence on 1<sup>st</sup> September 2018 for a period of five months up to a value of £77,000.

## **7.0 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.