

AGENDA ITEM: 22 Pages 161 – 168

Meeting	Cabinet Resources Committee
Date	28 February 2012
Subject	Children's Service – Contract Regularisation
Report of	Cabinet Member for Education, Children and Families
Summary	The report highlights current contracting arrangements within the Children's Service with Providers which need to be regularised and seeks waivers from relevant Contract Procedure Rules to enable this.

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Status (public or exempt)	Public
Wards affected	All
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in	Not applicable

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1. RECOMMENDATION

1.1 That the Committee agree to:

- (i) waive the Contract Procedure Rules identified below to enable the contracts identified in Groups A to D, inclusive, of this report to be regularised and made compliant in accordance with the council's requirements:
 - a. Contract Procedure Rule 5.1 to 5.5, inclusive and Table 5-1 – Authorisation and Acceptance;
 - b. Contract Procedure Rule 6.4 to 6.6, inclusive and Table 6-1 – Selecting Contractors and Barnet Tendering and quotation thresholds for works, supplies and services;
 - c. Contract Procedure Rule 10.2.4; 10.2.5; and 10.2.6 – Contract Contents.
- (ii) waive the requirements of Contract Procedure Rule 5.6 and authorise a limited extension of contracts with the Providers listed in Group B to allow time for a procurement exercise to be undertaken;
- (iii) waive the requirements of Contract Procedure Rule 10.3.7.2 and 10.6 to remove the need for a bond, with respect to the social care contracts identified in Group C and to enable the Director, or an Assistant Director or a Head of Service for Children's Services to sign such contracts which would, otherwise, need to be sealed on behalf of the council; and
- (iv) authorise the council to regularise contractual relationships with existing Providers, listed in Group C and Group D

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Audit Committee, 16 June 2011 and 6 September 2011 – reviewed and agreed the Procurement Controls and Monitoring Plan produced following the comprehensive review of the Council's contract monitoring arrangements.
- 2.2 Cabinet Resources Committee, 7 November 2011 – waived certain, relevant, rules within the Contract Procedure Rules and authorised the regularisation of contractual arrangements with social care and Special Educational Needs ("SEN") Providers.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The regularisation of contracts and the efficient handling of placements, going forward, will progress the priorities of the Council's Corporate Plan. It will support the priority 'Better services with less money' through enabling efficient procurement and contract management. By providing a range of quality services which enhance the council's reputation with local communities and schools, it will contribute towards the priority 'A successful London suburb'.

4. RISK MANAGEMENT ISSUES

- 4.1 There is a significant reputational risk attached to failure to regularise existing contractual relationships within the timescales presented to the Audit Committee. Waivers of the CPRs are being sought in order to secure authority to expedite regularisation and thereby, mitigate this risk.

5. WAIVER OF CONTRACT PROCEDURE RULES

- 5.1 The contracts listed below require a waiver of the Contract Procedure Rules, set out in the Recommendations under section 1 (above) of this report, to, retrospectively, authorise the existing contractual relationships, enabling the arrangements to be regularised and made compliant in accordance with the council's requirements.

Contract Name	Contract Description	Name Contractor/Supplier	Duration and end date
Group A			
Aidhour	Provision of specialist chairs for safeguarding meetings	Aidhour Limited	31 March 2013
Play activities for children with learning disabilities	provide out of school play activities for 11- 19 year olds with learning disabilities	Mapledown School	1 year (31 March 2012)
Health and Safety training	Provision of Training Services in schools	Skills Training Centre Ltd	1 year (31 March 2012)
Staff Training	Training Programmes	The Hay Group Management Limit	2 years (31 March 2012)
Training programmes.	Training programmes.	Middlesex University	1 year (31 March 2012)
Group B			
Children's Right Service	Advocacy Service for Children in Care	Barnardos	3 years (31 March 2012)
Children in care healthcare	Provision of Health care needs for children in care	Barnet Community Services	3 years (31 March 2012)
Group C			
Provision of Semi independent accommodation	Provision of Semi independent accommodation	Housing Plus Ltd	3 years (31 March 2013)
Semi independent accommodation and support.	Provision of Semi independent accommodation	London Care Solutions	3 years (31 March 2013)
Semi independent accommodation and support.	Provision of Semi independent accommodation	One Step (Support Ltd)	3 years (31 March 2013)
Semi independent accommodation and support.	Provision of Semi independent accommodation	Silver Birch Care	3 years (31 March 2013)
Semi independent accommodation and support.	Provision of Semi independent accommodation	Stonham Home	On-going
IT Management information System for Schools	IT Management information System for Schools	RM Education Plc	1 year (31 March 2012)

Hospital home tuition agency staff	Agency staff for hospital home tuition team	Capita Education Resourcing	On-going
Provision of teaching staff.	Supply of Teachers	CLASSROOM LIMITED	
Provision of Tutor's (Temp)	Provision of Tutors	Fleet Education Services Limit	
Provision of SEN agency staff	Agency staff for Complex Needs division	Care Visions Resourcing Ltd	
Food Packaging	Recycled food Service Packaging	London Bio Packaging	
Group D			
Kosher Meat for Catering Services	Jewish Kosher Butchers	Ecksteins	On-going
Kedassia Supervision.	Kedassion Kosher Supervision for various suppliers.	KEDASSIA PRODUCTS LTD.	

- 5.2 In addition to seeking a waiver to the rules referenced above in paragraph 5.1, an additional waiver to Contract Procedure Rule 5.6 (which sets out rules relating to acceptance parameters for contract additions, extensions and variations) is required to enable extension of the contract period for two of the contracts listed above which are due to end at the end of March 2012 (Children in Care Healthcare and Children's Right Service). This extension will enable the Corporate Procurement Team to undertake a procurement exercise on behalf of the Children's Service.
- 5.3. Within group C the Children's Service has needed to obtain temporary staff: educational supply teachers for the Pupil Referral Unit, Hospital tuition staff, tutors for looked after children, and specialist SEN practitioners. Also within this group are semi-independent providers for looked after children. A waiver is required to allow an interim written contract to be put in place prior to the Corporate Procurement Team undertaking a procurement exercise on behalf of the Children's Service.
- 5.4 Also within group C for the semi independent Providers, CPRs require all contracts with a value of £156,422 or above to be sealed unless the Assistant Director – Legal directs otherwise. The main 'framework' contract with each Provider will be executed by sealing. Authority is sought herein, for each Individual Placement Agreement/Individual Funding Agreement entered into with these providers pursuant to the main 'framework' contract (with respect to individual service users), to be signed (without being sealed) by the respective Director or Assistant Director or a Head of Service for Children's Services. In addition to the above, no requirement for a performance bond.
- 5.5 Within group D Providers are the Children's Service Kosher catering and supervision Providers, who provide specialist, services to Barnet's Jewish Orthodox schools. As this is a niche market the Council has had limited success in tendering for these services, as local providers will not compete for another provider's livelihood. Although the two providers are independent, the relationship between the catering provider and supervisory provider is co-dependant. It is not possible for the catering provider to operate without the supervisory service.

6. EQUALITIES AND DIVERSITY ISSUES

- 6.1 Pursuant to The Equalities Act 2010, public sector organisations have a responsibility to take into account equalities as part of every procurement/tendering exercise.
- 6.2 The Council is also under an obligation to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, pregnancy, and maternity, religion or belief and sexual orientation.
- 6.3 This duty, also, applies to a person, who is not a public authority but who exercises public functions and therefore must, in the exercise of those functions, have due regard to the general equality duty. This includes any organisation contracted by a local authority to provide services on its behalf.
- 6.4 Implementation of the Procurement Controls and Monitoring Plan will ensure that the Council addresses any non-compliant contracts, taking action to ensure that all contractors comply with the general equality duty set out above
- 6.5 Any contracts drafted will include explicit requirements fully covering the Council's duties under equalities legislation.
- 6.6 Two of the contracts for which regularisation is sought, Kosher food products for Catering Services and Kedassia Supervision, provide for the orthodox Jewish community. Barnet has a large Jewish population: in the 2001 Census, 15.7% of the under 16 population identified themselves as Jewish.

7. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

7.1 Procurement

- 7.1.1 For Providers in Group A, contracts already exist. Procurement will be undertaken where required prior to contract expiry. In relation to Group B Providers, contracts already exist. With respect to procurement, as these are social care services, they fall within Part B of Schedule 3 to the Public Contracts Regulations 2006 (as amended), and are not, therefore, subject to the full European procurement rules.
- 7.1.2 For Group C Providers, in order to procure appropriate recruitment Providers, the Corporate Procurement Team is working to secure the use of the M-STAR Framework provided by Eastern Shires Purchasing Organisation (ESPO). The framework is compliant with current EU Procurement legislation, so local authorities wishing to use it do not have to conduct a full OJEU Procurement. In relation to the Semi-Independent Providers, an eight borough semi-independent framework is near completion (expected May 2012). In addition to this framework, the Children's Service is in the process of establishing an approved list for a range of social care and SEN provision types of which Semi-Independent accommodation is one.
- 7.1.3 For Group D Providers, ESPO on behalf of the Council will again seek to procure providers of kosher food; providers who will work for the local supervisory provider, with a view to the procurement process being completed in July 2012.

7.2 Finance

The funding for these providers is met from existing budgetary provision, a breakdown of estimated expenditure from 2010/11 to date for each contract is provided below.

Contract Name	Name Contractor/Supplier	Estimated expenditure /annual value
Group A		
Aidhour	Aidhour Limited	£187,726/£120,000pa
Play activities for children with learning disabilities	Mapledown School	£100,000 pa
Health and Safety training	Skills Training Centre Ltd	£82,407pa
Staff Training Programme	The Hay Group Management Limit	£168,000/£84,000pa
Staff Training programmes.	Middlesex University	£89,735pa
Group B		
Children's Right Service	Barnardos	£156,000/ £52,000pa
Children in care healthcare	Barnet Community Services	£360,000/£120,000pa
Group C		
Provision of Semi independent accommodation and support.	Housing Plus Ltd,	£390,887/ £240,510pa
Provision of Semi independent accommodation and support.	London Care Solutions	£261,605/ £105,510pa
Provision of Semi independent accommodation and support.	One Step (Support) Ltd)	£489,195/ £69,067pa
Provision of Semi independent accommodation and support.	Silver Birch Care	£100,795/£33,390pa
Stonham Home	Stonham Home	£61,415/£30,000pa
IT Management information System for Schools	RM Education Plc	£134,976pa
Hospital home tuition agency staff	Capita Education Resourcing	£115,062 pa
Provision of teaching staff.	Classroom Ltd	£61,085/£35,000
Agency staff for Complex Needs division	Care Visions Resourcing Ltd	£35,385 pa
Provision of Tutor's (Temp)	Fleet Education Services Limit	£65,676/£28,451pa
Food Packaging	London Bio Packaging	£68,242/£35,497pa
Group D		

Kosher Meat for Catering Services	Ecksteins	£30,000pa
Kedassia Supervision.	Kedassia Products Ltd	£49,067/ £29,710pa

- 7.3 Staffing – within Group C there are four providers, which the Service has used to supply temporary staff for specialist areas, which currently cannot be sourced from the current corporate agency contract. It is proposed that a novation clause is inserted into the interim contract for each provider to transfer into the vendor neutral arrangement (MSTAR) should the provider wish to continue work with council for this service.
- 7.4 Expenditure will be contained within the Children’s Service budgets.
- 7.5 There are no ICT, Property or Sustainability implications.

8. LEGAL ISSUES

- 8.1 Social care services fall within Part B of Schedule 3 of The Public Contracts Regulations 2006 (as amended) (“the Regulations”). These Regulations implement the, relevant, European Directive into domestic law.
- 8.2 Because social care services fall within Part B, they are not subject to the full European procurement regime. Where the contract value is at, or above, the, relevant, EU threshold (£156,442 up to January 2012; now £173,934), the council must comply with the relevant, less onerous, requirements of the Regulations.
- 8.3 In the circumstances addressed within this report, it is considered that the risk of challenge, with respect to regularisation of contractual arrangements and in terms of the Regulations, is low to medium.

9. CONSTITUTIONAL POWERS

- 9.1 The Constitution, Part 3, Section 3.6 sets out the functions of the Committee.
- 9.2 Section 5.8 of the Contract Procedure Rules enables a Cabinet Committee to waive the requirements of the Contract Procedure Rules if satisfied that the waiver is justified because:
- 9.2.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or
- 9.2.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
- 9.2.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
- 9.2.4 there are other circumstances which are genuinely exceptional

9.2 This report seeks waivers on the basis of 9.2.1 9.2.3 and 9.2.4, above. The timescale required to comply with the recommendations of the Audit Committee Procurement Controls and Monitoring Plan cannot be achieved without this waiver.

10. BACKGROUND INFORMATION

10.1 A comprehensive audit of the council's contracts and procurement processes was carried out earlier this year and identified a number of contractual relationships requiring regularisation. Over the years, not all purchasing and contracting activity which, on a day-to-day basis, secures services to schools and vulnerable young people and indirect services to the directorate's day to day operations has been subject to a formal procurement process.

10.2 In Groups A, B and C there are a range of providers for which contracts exist covering workforce development, out of school provision and Social Care and safeguarding services. Including, Semi Independent Providers offer Children looked after aged 16 - 18, to support the transition from care to full independence. The schools ICT support service provides 97 out of 98 Barnet nursery, primary and special schools, including two pupil referral units, with local support and discounted licensing for schools management information system & school finance software, enabling schools to benefit from reduced licensing costs through economy of scale.

10.3 In relation to Group D: Kosher Food Providers provide school meals to eight primary schools within the borough as well as staff and civic functions. The Kosher central production unit is required to have a Kedassia licence to comply with all the Jewish dietary requirements. This takes the form of a Shomer to supervise the production of all meals throughout the day and to ensure that all the food used in the production for the meals complies with the requirements of the Kashrus Committee of the Union of Orthodox Hebrew Congregations.

11. LIST OF BACKGROUND PAPERS

11.1 None

Legal – SS
CFO – MC