

DELEGATED POWERS REPORT NO.**SUBJECT: EXTENSION OF SHORT BREAK CONTRACTS WITH SPECIAL SCHOOLS
2013 / 2014****Control sheet**

All of the following actions MUST be completed at each stage of the process and the signed and dated report MUST be passed to the Governance Service for publishing

All reports		
1. Governance Service receive draft report	Name of GSO Date	DPR 07.02.13
2. Governance Service cleared draft report as being constitutionally appropriate	Name of GSO Date	Paul Frost 15.03.13
3. Finance clearance obtained (<i>report author to complete</i>)	Name of Fin. officer Date	Collette Sutton 07.02.13
4. Staff and other resources issues clearance obtained (<i>report author to complete</i>)	Name of Res. officer Date	N/A
5. Strategic Procurement clearance obtained (<i>report author to complete</i>)	Name of SPO Date	Lesley Meeks 08.03.13
6. Legal clearance obtained from (<i>report author to complete</i>)	Name of Legal officer Date	Shelia Saunders 20.02.13
7. Policy & Partnerships clearance obtained (<i>report author to complete</i>)	Name of P&P officer Date	Andrew Nathan 07.02.13
8. Equalities & Diversity clearance obtained (<i>report author to complete</i>)	Name of officer Date	Andrew Nathan 07.02.13
9. The above process has been checked and verified by Director, Head of Service or Deputy	Name Date	Jay Mercer 15.03.13
10. Signed & dated report, <u>scanned or hard copy</u> received by Governance Service for publishing	Name of GSO Date	DPR 15.03.13
11. Report published by Governance Service to website	Name of GSO Date	Andrew Charlwood 02.04.13
12. Head of Service informed report is published	Name of GSO Date	Andrew Charlwood 02.04.13
Key decisions only:		
13. Expiry of call-in period	Date	N/A
14. Report circulated for call-in purposes to Business Management OSC members & copied to Cabinet Members & Head of Service	Name of GSO Date	

ACTION TAKEN BY Officer (EXECUTIVE FUNCTION)

Subject	Extension of Short Breaks Contracts with Special Schools 2013/14
Officer taking decision	Deputy Director of Children Service
Date of Decision	15 March 2013

Summary	This report seeks authorisation to extend the current contract with Oakleigh and Mapledown special schools as single source suppliers to the value of £55,000 for the period of 1 st April 2013 – 31 st June 2013.
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Officer Contributors	Sue Reeve, Interim Divisional Manager, Complex Needs, Children's Services
Status (public or exempt)	Public
Wards affected	All
Enclosures	None
Reason for exemption from call-in (if appropriate)	
Key decision	No

Contact for further information: Sue Reeve, Interim Divisional Manager, Complex Needs, Children's Services. Tel 020 8359 7721.

Serial No. 1986

1. RELEVANT PREVIOUS DECISIONS

- 1.1 Cabinet Resources Committee on 7 November 2011 agreed to the regularisation by the use of waivers from relevant Contract Procedure Rules for social care and Special Educational Needs (“SEN”) Providers.

2. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 2.1 The Short Breaks contribute to the priorities of the Council’s Corporate Plan by delivering ‘Better services with less money’ through efficient procurement and contract management. ‘Sharing opportunities, sharing responsibilities’ by supporting families to continue caring for their children within their community and ‘A successful London suburb’ by providing a range of quality services which enhance the council’s reputation with families, schools and the local community.
- 2.2 Short breaks provide support to disabled children, young people and their families which increase their capacity to achieve their potential, reduce the risk of family breakdown and the need for more expensive interventions including out of family and specialist placements. This contributes to the corporate priorities of reducing the gap in achievement and the early intervention and prevention strategy.

3. RISK MANAGEMENT ISSUES

- 3.1 If the contracts for the Short Break providers are not extended for commencement from 1 April 2013 there will be disruption to the delivery of these services to families. This would have the dual effect of some of the most vulnerable disabled children and young people not receiving the support they require and reputational damage to the Council.
- 3.2 This risk will be mitigated by the extension of the contracts and efficient monitoring of the provider’s performance throughout the duration of the contract.

4. EQUALITIES AND DIVERSITY ISSUES

- 4.1 The Equality Act 2010 requires that a public body in the exercise of its functions must have “due regard” to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act; (b) advance equality of opportunity between different groups; and (c) foster good relations between different groups. The Council in extending the contracts has considered the potential impact on the protected groups, pursuant to the Equality Act 2010.
- 4.2 Short Break services support a diverse population of disabled children and young people with a wide range of physical and learning

disabilities sensory impairments, Autistic Spectrum conditions and complex health needs including life limiting conditions. Children and young people with the highest levels of need and the most vulnerable have been targeted to benefit from the Short Break services delivered through the schools.

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

Finance

- 5.1 The funding of the Short Break contracts is held within the short breaks budget. The budget for 2013/2014 is £1.21m and the value of the special school short break contracts to be extended is £55,000 for the period 1 April 2013 – 30 June 2013.
- 5.2 A further report will be taken to Cabinet Resources Committee on 18 April 2013 to seek future authority for the provision of these services.

Procurement

Contracts were awarded from April 2012 following the recognition of the special schools as sole suppliers.

Performance & Value for Money

- 5.4 Under the Terms and Conditions of their current contracts the special schools have been subject to quarterly monitoring of their performance, reporting on both qualitative and quantitative information related to service delivery. Additionally, the Short Break Co-ordinator regularly reviews performance and the outcomes for the children and young people referred to their service.
- 5.5 The value of the Short Break contracts are fixed with no uplift included throughout the contract period 2013-2014.

Staff, IT and property

- 5.6 There are no implications arising from this request.

6. LEGAL ISSUES

- 6.1 From 1 April 2011, under the Breaks for Carers of Disabled Children Regulations 2011, local authorities have a new statutory duty to provide a short breaks service to carers of disabled children. Schedule 2 paragraph 6 of the Children Act 1989 as amended by s25 of the Children and Young Persons Act 2008 places a duty on local authorities to *'assist individuals who provide care for disabled children to continue to do so, or to do so more effectively, by giving them breaks from caring.'*

- 6.2 The basic premise applying to the letting of contracts for works, supplies or services by contracting authorities is that the provisions of Directive 2004/18/EC, as implemented by the Public Contracts Regulations 2006 (as amended), should be adhered to. For the most part this set of rules (the “Procurement Rules”) requires there to be fair and open competition across the European Community for government contracts.

The Procurement Rules as apply to services differentiate between Part A services and Part B services. Part A services are subject to the full tendering regime. Part B services have a comparatively relaxed regime applying to them, covering only matters such as ensuring that specifications for services are not discriminatory and that reporting and notifying obligations are met. The services which fall within Part B are various, but generally cover Health and social services.

It should be noted that the Commission takes the view that the Treaty obligations of transparency and non-discrimination apply to Part B services, which means that the contracting authority is expected to ask itself whether there is a market for these services in other member states and if so what form of appropriate notification and advertisement should apply before an award of contract. It has also been confirmed in case law that in the case of sub-threshold contracts and other contracts falling outside of the procurement directives it was only where there was certain cross border interest that the general EU principle of transparency would apply

In addition, it is expected that the Council’s own standing Orders and financial regulations would expect some form of tendering to apply to such contracts or at least an exemption to be sought to standing Orders if not followed.

7. CONSTITUTIONAL POWERS

- 7.1 Constitution, Part 3 – Responsibility for Functions, Section 6.1 – Powers of Chief Officers - Chief Officers may use whatever means they consider appropriate to discharge the functions allocated to them.
- 7.2 Council Constitution, Part 4, Contract Procedure Rules Paragraph 6.17 regarding single source suppliers states that: “where the Director/Assistant Director is satisfied, following the making of suitable investigations, that there is only one supplier in the market for the required supplies/services/works, the competitive tendering provisions will not apply provided that the Director/Assistant Director and Commercial Director approve the entry into the contract with the single provider and there is compliance with the Authorisation and Acceptance procedures.
- 7.3 Constitution Part 3, Responsibility for Functions- Section 6 – Powers delegated to officers and Contract Procedure Rule 5.6 and table 5-2 which authorise a Director/Assistant Director to approve contract

extensions and variations up to the value of £173,933 per provider contract. The Director/Assistant Director must report afterwards to the relevant Cabinet Member.

- 7.4 Contract extensions are permitted, subject to compliance with the provisions of Council Constitution, Contract Procedure Rule 5.6.1 - The Acceptance thresholds for contract additions, extensions and variations, provide that:

5.6.1 In the case of an extension to a contract:

5.6.1.1 The initial contract was based on a competitive tender or quotations;

5.6.1.2 The initial contract has not been extended before;
and

5.6.1.3 The value of the extension is less than half the cost of the existing contract without the extension and has a budget allocation having had regard to the following:

- i. If initial contract was subject to EU tender procedure that the extension option was declared within the OJEU notice; acceptance report (Delegated Powers Report/Cabinet Resources Committee Report) and the contract includes extension clauses
- ii. If initial contract value was subject to sub EU threshold procedure (Barnet tender/ quotation process) the extension does not take the value past EU threshold.

The initial contracts have not been extended before. The initial contracts were not subjected to tender; however, as outlined at paragraph 6 above, Health and social services are Part B Services under public procurement rules, so the Council only needs to act transparently and fairly and in a non discriminatory way in awarding the contracts

8. BACKGROUND INFORMATION

- 8.1 Barnet's Special Schools did not submit tenders as part of the re commissioning of Short Breaks in 2011 and it became apparent that despite the award of contracts to ten providers, the market was not able to meet the very specialist needs of some disabled children and young people including those attending special schools. Approval was given to award contracts to two of Barnet's Special Schools Mapledown and Oakleigh for the provision of short break services from April 2011 to the end of March 2013. These schools were selected because of their specialist knowledge and experience of working with children and young people with the highest and most complex needs including those with physical disabilities, life limiting conditions and young people with levels of challenging behaviour which other providers were frequently unable to accommodate.
- 8.2 The highly skilled school workforce and appropriately equipped premises enable the schools to offer short breaks principally to the

learners attending the schools; providing a comprehensive service to families which reduce the demand for residential services and their dependency on SEN transport.

- 8.3 The special schools provide a range of out of school services including after school and holiday provision.
- 8.4 Given the specialist nature of the service and evidence from the market testing in 2011/12 that other providers were not able to meet the needs of this cohort of disabled children and young people, the two special schools were considered to be single source suppliers for primary and secondary provision.
- 8.5 The funding for the special schools' current contracts for 2013/2014 has been identified within the short break budget.
- 8.6 It is recommended that the contracts are extended for a further 3 months as follows:

Organisation	Current Contract Values 1 April 2012 – 31 March 2013	Recommended Contract Extension Values 1 April 2013 – 30 June 2013
Oakleigh School	£50,000	12,500
Mapledown School	£170,000	42,500
TOTAL	£220,000	55,000

9. LIST OF BACKGROUND PAPERS

- 9.1 None.

10. OFFICER'S DECISION

I authorise the following action:

- 10.1 To extend the current contract with Oakleigh and Mapledown special schools as single source suppliers to the value of £55,000 for the period of 1 April 2013 –30 June 2013.

Signed

Jay Mercer

Deputy Director of Children's Services

Date

15 March 2013
