

Report for: Cabinet, 8th October 2019

Title: **Award of Contract for the Delivery of a Pupil Referral Unit Provision**

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Ward(s) affected: All

**Report for Key/
Non Key Decision: Key Decision**

1. Describe the issue under consideration

- 1.1 Under the Education Act 1996 (Section 19) local authorities are required to make arrangements for the provision of suitable education at school or otherwise for children of compulsory school age who have been excluded from school.
- 1.2 This report sets out the grounds for the award of a contract for the delivery of such education provision through the commission of a dedicated Pupil Referral Unit (PRU) for the academic year 2019-20. The PRU model is not a new approach to meeting the needs of Haringey pupils who may not receive a suitable education unless arrangements are put in place for them by the Council. It forms part of a range of provision seeking to address the educational needs of some of Haringey's most disadvantaged and vulnerable children and young people and to this end, is an important part of the wider alternative provision network and offer across the borough. The current proposal for the commission of the PRU on a one year basis sits within the context of an on-going strategic review of Alternative Provision, in its widest sense, and a real drive to transform the outcomes for children and young people who have been excluded, or are at risk of exclusion, from school.
- 1.3 This purpose of this report is to seeks authorisation of Cabinet for a direct contract award under Council's Contract Standing Order (CSO) 9.01.2 (g) negotiation without prior publication of an advertisement to TBAP Trust (TBAP) for the delivery of Haringey's Pupil Referral Unit (PRU) for one academic year, covering the period 1st September 2019 to 31st August 2020 at a total cost of not exceeding £857,580.00.

2. Cabinet Member Introduction

- 2.1 This report asks the Cabinet to award a one year contract to Contractor A for the academic year 2019/2020.
- 2.2 This proposal sits within the context of an on-going strategic review of Alternative Provision, in its widest sense, and a real drive to transform the outcomes for children and young people who have been excluded, or are at risk of exclusion, from school.
- 2.3 This extensive and strategic review is due to report by the end of this calendar year. It will provide recommendations for alternative commissioning arrangements for children and young people who need to access alternative provision. These will be brought to Cabinet in due course.
- 2.4 In the meantime ensuring a one year contract for this academic year will enable the Council to meet its statutory duties in relation to children and young people who are in need of alternative provision, whilst doing the necessary parallel planning for the new arrangements to be introduced from September 2020.

3. Recommendations

- 3.1 That Cabinet pursuant to the provisions of CSO 9.01.2(g) and in accordance with CSO 9.07.1(d), approve the award of the contract for the provision of Haringey's Pupil Referral Unit (PRU) to TBAP for a period of one academic year covering the academic period 1st September 2019 to 31st August 2020 at a total cost of not exceeding £857,580.00.

4. Reasons for decision

- 4.1 The recommendation for Cabinet to agree the proposal to award a contract for one year only to TBAP is made on the basis that:
 - A Strategic Review of Alternative Provision is underway which will lead to new arrangements affecting longer term commissioning of a PRU for Haringey and this approach will enable the continuation of educational services for some of the most vulnerable young people in the borough whilst it reaches its conclusion in autumn 2019. The wide-ranging review encompasses fresh consideration of the current delivery models for existing PRUs within the borough. It is anticipated that one outcome of the review will be a set of recommendations that will be put forward to Cabinet later in the year, including proposals for the longer term approach to and delivery model for PRU provision in Haringey.
 - this would maintain the Council's ability to fulfil its statutory duties in relation to the arrangements for the provision of suitable education at school or otherwise for those children and young people permanently excluded from school or at high risk of permanent exclusion from school. The award of a contract for one academic year only will support the Council's ability to manage the transition from existing arrangements to any future arrangements in a way that reduces the risk of disruption for the children and young people being supported via the PRU.

- taking into account the above, and the complexity of the provisions of the Academy Arrangements 2010, making preparations for the re-provision of the PRU in the longer term requires more time. Initial testing of the market for a short term commission through a Prior Information Notice yielded little interest and were anyway rejected on the grounds that they could lead to a disrupted education for vulnerable children and young people in the borough.

5. Alternative options considered

- 5.1 An alternative option would have been to undertake a competitive tendering exercise to secure a longer term provider of the PRU service working to the same model as currently from September 2019. However, this was not considered to be a viable option as the Alternative Provision Review will lead to change which will need to be reflected in the future model for a PRU.

6. Background information

6.1 National Context

- 6.1.1 The Education Act 1996 (Section 19) requires local authorities to make arrangements for the provision of suitable education at school or otherwise than at school, for those children of compulsory school age who, due to illness, exclusion from school or otherwise, may not, for any period, receive suitable education unless such arrangements are made for them.

- 6.1.2 In the context of increasing youth violence and on-going concerns about children missing from education and those young people not in education or employment, there has been national attention on the impact of school exclusion on outcomes for children and young people. Changing patterns of exclusions highlighted the need for attention to be paid to the profile of pupil being excluded, as well as the nature of these exclusions.

- 6.1.3 In 2017, the Department for Education (DfE) signalled the Government's intention to review policy on school exclusion and alternative provision and this was reflected in its commission of the review of school exclusion, led by Edward Timpson and published in May 2019. Amongst the 30 recommendations made by the Timpson review, and subsequently accepted by Government, were some strong indications towards the reform of practice amongst schools, local authorities, alternative provision providers and OFSTED.

- 6.1.4 The findings of the Timpson Review provide a strong sense of the future direction of travel for education legislation and policy. The Council is ensuring that consideration is given to potential Government action in the near future and how this informs the development of future PRU provision in the borough.

6.2 Local Context

- 6.2.1 Since 2014, Haringey Council has discharged elements of its duties through the commission of a Multi-Academy Trust (MAT) provider, contracted to deliver a high quality education provision for children and young people unable to attend mainstream school due to permanent exclusion or those at risk of permanent

exclusion. The MAT provider, under the provisions of the Academy Arrangements 2010, maintains an existing, direct funding agreement with the Department for Education which provides the base element of funding for an agreed number of education places. It is the responsibility of Haringey Council to provide a top-up element to the base funding, drawn from the High Needs Block (HNB) within the Dedicated Schools Grant (DSG).

- 6.2.2 Places commissioned have generally comprised of a mixture of places for primary and secondary school pupils. In general, the large majority of places have been taken up by secondary aged pupils. The number of places proposed for the 2019/20 academic year, and covered by this commission, is 53. This reflects the average demand across three academic terms seen in previous years. The terms of this contract will allow for additional places, up to a maximum of 5, to be purchased on an ad hoc basis.
- 6.2.3 It is clear that continuing to improve outcomes for these cohorts of children and young people, through the provision of ambitious learning environments, must be a priority. Over the coming year, the Council will ensure that work with Haringey's schools, education partners and wider services to achieve higher levels of successful reintegration back into mainstream school for the greater majority of pupils and good levels of attainment for those who may be unable to return to mainstream education. In addition to this, attention will be paid to the role of families, social networks and communities in supporting these ambitions, through partnership work across key strategies, such as the Young People at Risk of Violence and SEND strategies.
- 6.2.4 The current contract period expired on 31st August 2019 and there is a need for new funding arrangements to be put in place for the academic year, commencing 1 September 2019.

6.3 **Review of Alternative Provision in Haringey**

- 6.3.1 The current review of Alternative Provision in the borough provides the scope and rationale to reshape the way in which the PRU offers education and support to excluded pupils and those at risk of exclusion. Proposals for the future configuration of the PRU provision are emerging from the AP review work, with options for the shape and function of an effective provision in the longer term, being informed by discussions with school stakeholders, parents, children and young people, statutory and community partners and AP providers. There is also scope to learn from developments in other areas of London and across the country.

6.4 **Proposal for the award of a one-year contract**

- 6.4.1 Emerging from the Alternative Provision Review, is the understanding that the size, shape and function of the PRU may need to change and any recommissioning of the provision needs to be informed by the outcome of the review exercise. Given this, it was felt that a one-year contract to cover the forthcoming academic year would be a sensible approach, minimising the risk of disruption for pupils whilst allowing the development of the specification for the longer-term model from September 2020. Implementation of the longer-term model is likely to adopt a phased approach with for example the establishment

of a smaller, redesigned PRU over the first period and the possibility of creating a landscape without the need for a PRU over a three to five year period.

- 6.4.2 A Prior Information Notice (PIN) was issued on the Official Journal of the European Journal (OJEU) on 15 May 2019. The PIN was used to gauge market interest from interested suppliers. There was only one response but this organisation said that it was only interested in bidding for the contract start date 1 September 2020.
- 6.4.3 Given there were no expressions of interest received in response to the PIN, negotiations commenced with TBAP, the current supplier of the service with a view to securing an arrangement covering the 2019-20 academic year. Work has been undertaken to develop a service specification that sets out detailed expectations for the quality and rigour of an educational and pastoral support offer that would be delivered from September 2019.
- 6.4.4 Haringey's ambitions for all pupils, including those excluded, or at risk of exclusion, remain high. The proposal to award a one year contract is underpinned by intentions to work closely with Contractor to ensure that the education offer delivered is of a standard that those pupils accessing it could expect to receive in a well performing mainstream school. There will be a focus on how the, often complex, needs of the young people accessing the provision are being addressed and in articulating the Council and partners' drive to see improved outcomes. There will be a continued approach in which service delivery and impact on outcomes for children and young people are closely monitored.
- 6.4.5 Through this commission, the Council will be ensuring that a multi-agency approach is embedded across the PRU and delivers more effective support to children, young people and their families. The expectations for a robust multi-agency working will be central to any future delivery model for a PRU in Haringey and it is intended that this be an explicit element of any future model/arrangements for supporting children and young people to remain engaged in education.
- 6.4.6 For background and for clarity, agreement has been reached with the current supplier to ensure that services continue to be provided for the period 1st September 2019 to 8th October 2019 whilst the proposed award of contract is considered for decision by Cabinet.

7. Contribution to strategic outcomes

- 7.1 The proposals set out in this report will contribute to Haringey's Borough Plan (2019-23) ambitions. In particular, the following outcomes:
- Best Start in Life: the first few years of every child's life will give them the long-term foundations to thrive
 - Happy Childhood: all children across the borough will be happy and healthy as they grow up, feeling safe and secure in their family and in our community
 - Every young person, whatever their background, has a pathway to success for the future
 - Strong communities where people look out for and care for one another

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Finance

8.1.1 The Octagon Academy PRU has been provided by TBAP for the previous contract period from 01 September 2017 to 31 August 2019..

8.1.2 There is a specific revenue funding to deliver this service of £857,580 p.a. as part of the dedicated schools budget (DSG-HNB), which should be sufficient to run this service.

The High Needs Block (DSG) overall has a carried forward deficit of £2.3m. The in year deficit is forecast to be £5.5m, bringing the end of year position to a deficit £7.8m. However, this is a national issue and government are assessing the level of funding currently provided

8.1.3 The 53 places commissioned under this contract reflects the average number of pupils in place across a given academic year, however the contract provision allows for a fluctuation of up to 5 pupils which would otherwise be required to be purchased on a spot purchase basis. These are generally more expensive.

8.1.4 The contract will make provision for the Council to commission up to five additional places from TBAP, depending on demand. The top up rate for these places will not exceed the standard place rate agreed with the Council.

8.1.5 This proposal, provides assurance that there are places available, which often required at short notice due to exclusions and also ensures that the top up rate is set at a maximum.

8.1.6 The nature of the contract requires the Council to identify key performance indicators for the provision to monitor the performance of TBAP, both financial and operational, to ensure that teaching and learning standards are being monitored and raised.

8.1.7 The commissioned organisation is required to ensure that they remain within the contracted costs provided and maintain a balanced budget at the end of every financial year.

8.2 Strategic Procurement

8.2.1 Strategic Procurement recommended the use of the Negotiated Procedure without prior advertisement under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 because there was no interest in the market for a one-year contract to provide the service. The Council issued a Prior Information Notice (PIN) to test the market for a potential supplier and only one potential supplier responded to the PIN issued by the Council and the only potential supplier that responded said that they were only keen to participate in a procurement

process to select a provider for the service that would commence in September 2020 and not a one year contract commencing September 2019.

8.2.2 Strategic Procurement also recommended the use of Negotiated Procedure without prior publication of advertisement for the award of the year contract to the incumbent supplier because of the degree of complexity of unbounding the current complex arrangement with the Department for Education (DfE) and the need for the Council to continue to fulfil its statutory duties regarding the provision of suitable education at schools or otherwise for those children and young people permanently excluded from school or at high risk of permanent exclusion from school.

8.2.3 Strategic Procurement is supportive of the comments made in this report.

8.3 Legal

8.3.1 The Assistant Director of Corporate Governance notes the content of this report.

8.3.2 Pursuant to the Council's Contract Standing Order (CSO) 9.01.2(g) and Regulation 32 of the Public Contracts Regulations 2015, the Council may procure a contract through the negotiated procedure without prior publication of an advertisement following consultation with the Head of Procurement.

8.3.3 Pursuant to CSO 9.07.1(d), Cabinet may approve the award of a contract if the value of the contract is £500,000 or more and as such Cabinet has power to approve the award of the Contract in this Report.

8.3.4 The Assistant Director of Corporate Governance further comments is contained in Part B of this report.

8.4 Equality

8.4.1 The Council has a public sector equality duty under the Equality Act (2010) to have due regard to:

- Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
- advance equality of opportunity between people who share those protected characteristics and people who do not;
- foster good relations between people who share those characteristics and people who do not.

8.4.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

9. Use of Appendices

N/A

10. Local Government (Access to Information) Act 1985

Exempt information in Part B under paragraph 3 Schedule 12A to the 1972 Act
Information relating to the financial or business affairs of any particular person
(including the authority holding that information).