



**Executive
22 April 2013**

**Report from the
Director of Children and Families**

Wards Affected:
ALL

**Authority to establish a Dynamic Purchasing System (DPS)
for the provision of cleaning services to Brent schools**

1.0 Summary

- 1.1 Following a Report seeking authority to invite tenders for a Cleaning Framework Agreement at the August 2011 Executive, this report updates members and seeks necessary approvals for an alternative procurement approach.

2.0 Recommendations

- 2.1 That the Executive gives approval to establish a Dynamic Purchasing System (DPS) for the provision of cleaning services to schools rather than a Framework Agreement (with multiple suppliers) recommended by the previous report.
- 2.2 That the Executive approve the Pre-Tender consideration set out in section 4 of the report, and authorise officers to invite providers to apply for admission onto the DPS.
- 2.3 That the Executive authorise the Head of Procurement to appoint new service providers onto the DPS subsequent to them meeting the selection criteria as stated by the Council in the tender documentation as and when required.

3.0 Detail

- 3.1 The report approved by the Executive in August 2011 is attached as Appendix 1 and requested that a Framework Agreement be tendered for the provision of cleaning services to all schools within Brent. At that time the report requested that a multiple suppliers be appointed to the framework, however following further discussions between Council Officers and Schools it was agreed that any contract / agreement to be put in place had to be suitable for small and local service provider to participate in and have the flexibility of adding service providers to the contract / agreement during its period of operation.

3.2 Whilst a framework agreement would be able to deliver the flexibility of including small and local service providers in the tender process, it would not offer the flexibility of adding service providers to the agreement once it has been set up. Therefore it was agreed to put in place a DPS as it would offer all the benefits of a framework agreement including the flexibility of adding service providers to the DPS during its period of operation (however any service provider to be admitted onto the DPS system would have to demonstrate that will meet the minimum criteria as specified in the tender documentation by the Council).

4.0 Pre Tender Considerations

4.1 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations have been set out below for the approval of the Executive.

| Ref. | Requirement | Response |
|-------|--|---|
| (i) | The nature of the service. | A dynamic purchasing system for the provision of cleaning services to schools located within the Borough. |
| (ii) | The estimated value of services purchased by Brent | The current combined expenditure of the schools who have already indicated they wish to participate in any arrangement put in place by the Council is approximately £350k per annum giving a total value of £1.4m over a four year period. However this will be greatly increased as other schools use the DPS. |
| (iii) | The contract term | A dynamic Purchasing system for a 3 year period with the option to extend for up to one year |
| (iv) | The tender procedure to be adopted. | An open tender process which is mandatory under the EU Public Procurement Regulations. |
| (v) | The procurement timetable | Adverts placed and documents made available to organisations by – 13 th May 2013. As required by the EU Regulations, the Council will give any organisation the opportunity of joining the DPS by offering full access to the DPS documentation via the Council's e-tender system London Tender Portal System until the DPS ceases to operate. Organisations can upload their indicative tenders for evaluation at any time throughout the duration of the dynamic purchasing system. |
| (vi) | The evaluation criteria and | Admittance to the dynamic purchasing |

| | | |
|--------|---|--|
| | process | <p>system will depend on organisations submitting an indicative tender and meeting the selection criteria as stated in the tender documentation by the Council.</p> <p>The selection criteria will be drawn up in accordance with the Council's Contract Management and Procurement Guidelines namely the prequalification questionnaire including meeting the Council's financial standing requirements, health, safety and environmental standards and technical expertise; Other selection criteria potential tenderers will be expected to meet with their indicative tender are:</p> <ul style="list-style-type: none"> ❖ Ability to meet the requirements of the service specification. ❖ Approach to service delivery and ensuring standards are achieved ❖ Approach to TUPE <p>. Price will not be one of the criteria assessed on admittance onto the DPS. This will be assessed by the schools at the point of calling off the DPS as this will enable potential tenderers to tailor the prices to the specific requirements of the school. However organisations will be asked to set out the basic elements of their pricing i.e. standard labour cost – setting out hourly rate for staff, overheads – what this is made up of and the expected percentage that this will take up of the pricing schedule.</p> |
| (vii) | Any business risks associated with entering the contract. | No specific business risks to the Council are considered to be associated with entering into the proposed contract |
| (viii) | The Council's Best Value duties | The Council has a duty under Best Value to secure cost-effective and efficient services that meet the needs of the Borough's customers. |
| (ix) | Any staffing implications, including TUPE and pensions. | See section 8 .2. |
| (x) | The relevant financial, legal and other considerations. | See sections 5 and 6 |

4.2 Establishing and Admitting Organisations onto the DPS

4.2.1 The DPS tender process will be based on an open procedure. Adverts for the opportunity will be placed in the Official Journal of European Union (OJEU), the Council's website and the appropriate local newspaper. DPS documentation will be made available by electronic means via the Councils e-tendering system - London Tenders Portal. The tender documentation will set out the selection criteria organisations will be required to achieve in order to be appointed onto the DPS.

4.2.2 Returned tender documentation consisting of a completed pre- qualification and method statement will be evaluated by a panel made up of representatives from the Council and the Schools after an invitation to submit tenders (usually 15 days of the the submission of tenders). The process for deciding which organisations go onto the DPS will consist of 2 stages (the assessment of the questionnaires and submitted method statement):

4.2.2.1 **Stage 1:** Included with the tender documentation will be a questionnaire. The questionnaire will be used to assess organisation’s financial viability, legal capability to trade, experience and their capacity.

4.2.2.2 **Stage 2:** Included with the tender documentation will be a method statement template. The Council will evaluate the submitted method statement to assess the organisation’s capability of providing the required services.

4.2.3 In order for organisations to be considered eligible for appointment on to the DPS organisations will be expected at-;

- stage one of the assessment to obtain a “pass” for each of the sections within the questionnaire where it will stated as being a pass or fail assessment and at least 3 marks out of the available 5 for each of the marked questions. Organisations that fail this initial assessment will be excluded from further consideration in the procurement process.
- stage of the assessment to score at least 3 marks out of the available 5 for each question in each section in the method statement.

4.2.4 The assignment of scores will be based on the table below.

| Assessment | Score |
|--|-------|
| No response to the question | 0 |
| Deficient – Response to the question (or an implicit requirement) significantly deficient. | 1 |
| Limited – Limited information provided, or a response that is inadequate or only partially addresses the question. | 2 |
| Acceptable – An acceptable response submitted in terms of the level of detail, accuracy and relevance. | 3 |
| Comprehensive – A comprehensive response submitted in terms of detail and relevance. | 4 |
| Superior – As Comprehensive, but to a significantly better degree. | 5 |

4.2.5 The Council will offer unrestricted, direct and full access to the specification and to any additional documents by electronic means (via the London Tenders Portal) from the date of publication of the contract notice until 6 months to the date when the DPS ceases to be operated.

- 4.2.6 The Council will give any organisation throughout the entire duration of the dynamic purchasing the opportunity of joining the DPS this would involve-;
- (a) The organisation submitting a tender electronically (as documentation will be available throughout the duration of the DPS).
 - (b) The Council will evaluate tenders on receipt in accordance with the evaluation methodology within a stipulated period.
 - (c) If the organisation meets the stipulated criteria then they will be admitted onto the dynamic purchasing system.
 - (d) Where the organisation does not meet the criteria the Council will inform the organisation of this and they will not be admitted onto the system.
- 4.3 The number of organisations that can be admitted on to the DPS will not be limited, but it should be noted that only organisations who can demonstrate that they can meet the Council's set selection criteria will be admitted onto the DPS. The Council would also set out the circumstances upon which a service provider will be removed from the DPS this would include continued poor performance on contracts and non participation in the call off process.
- 4.4 As the Council will give any organisation the opportunity of joining the DPS until the DPS ceases to operate, Officers have recommended that the Head of Procurement been given authority to appoint Service providers onto the Dynamic Purchasing System as and when required to prevent officers from returning to the Executive to obtain approval each time a Service Provider is required to be appointed onto the DPS.
- 4.5 It is anticipated that the DPS will become operational in June / July 2013 (provided there are enough organisations on the DPS which would allow schools to carry out an effective competitive exercise). The schools would be able to use the DPS by carrying out a mini competition exercise between the service providers on the DPS at that point in time, as this will enable the service providers to price against specific requirements of the school which will ensure that the school's needs can be adequately met. An OJEU notice will be placed each time before a contract is awarded under the DPS. The evaluation criterion for such awards will be specified in the OJEU notice.

5.0 Financial Implications

- 5.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500,000 or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 90.
- 5.2 The estimated value of this services contract is £1.4 million over the maximum 4 year contract period.
- 5.3 The cost of this contract will be funded by the schools calling off the dynamic Purchasing System and therefore there is no financial impact on the Council.

6.0 Legal Implications

- 6.1 The estimated value of the Dynamic Purchasing System (DPS) for cleaning services over its lifetime is in excess of £500k and therefore the procurement and award of the DPS is subject to the Council's Contract Standing Orders and Financial Regulations in respect of High Value Contracts.
- 6.2 The estimated value of the DPS over its lifetime is higher than the EU threshold for Services under the Public Contracts Regulations 2006 ("the EU Regulations"). Cleaning services are classed as Part A Services under the EU Regulations and therefore the DPS must be procured fully in accordance with the EU Regulations, to include advertising the DPS in the Official Journal of the European Union. The EU Regulations also require that the duration of a DPS is no more than 4 years save in exceptional circumstances.
- 6.3 The procedure for a dynamic purchasing system is set out in Article 33 of the Public Sector Directive and implemented by Regulation 20 of the Public Contracts Regulations 2006. The Council can legally establish a Dynamic Purchasing System that complies with the regulations and the Contract Standing Orders.
- 6.4 Once an award decision for Tenderers under the DPS is made, all remaining bidders must be advised of the proposed award decision and the mandatory standstill period observed as this is a Part A service requiring full compliance with EU procurement Regulations.
- 6.5 Public Authorities pursuant to the Public Services (Social Value) Act 2012 now have a duty to consider how the services being procured might improve the economic, social and environmental well-being of its area: how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. This duty in our view does not apply to the Dynamic Purchasing System proposed to be established which is likened in nature to call offs under a Framework Agreement. The application of the duty imposed by the Public Services (Social Value) Act will in reality be at the award stage and undertaken by the schools. The application of the duty imposed by the Public Services (Social Value) Act will be at the award stage under the DPS and this will be by the schools awarding contracts under the DPS as contracting authorities. The arrangement proposed under the DPS will encourage local business to participate and promote the social and economic well-being of the area. The environmental well-being will also be considered as the specification of service for contract award under the DPS will consider the effect of cleaning agents, chemicals and their effects on the Schools environment. The DPS is being established by the Council for use by Schools. The Council will not itself be awarding any contract under the DPS to be established.

7.0 Diversity Implications

- 7.1 Officers have screened the proposals set out in this Report and consider that there are no significant diversity implications.

8.0 Staffing/Accommodation Implications (if appropriate)

8.1 There are no accommodation implications

8.2 There are no staffing implications for the Council in establishing the DPS. There may be staffing implications for schools that would use the DPS. Any current contractor's staff and in house staff (as appropriate) will be entitled to transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 to a successful service provider following a mini competition carried out by schools between organisations on the DPS. There will be the provision within the call-off Protocol in the contract to ensure that providers on the DPS can price for the services against TUPE information supplied by the incumbent Contractor.

Background Papers

May and August 2011 Executive reports attached.

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