



**Executive**  
12 March 2012

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

Wards Affected:  
ALL

**Authority for exemption to award a three-year contract for  
Special Educational Needs Independent Special School  
Provision**

**Appendix 1 is not for publication**

Appendix 1 is not for publication as it contains the following categories of exempt information as specified in Schedule 12A to the Local Government Act 1972, namely:

“Information relating to the financial or business affairs of any particular person (including the authority holding that information)”.

**1.0 Summary**

1.1 This report concerns the placement of the London Borough of Brent, secondary aged students with Statements of Special Educational Need (SEN) for Behavioural, Emotional and Social Difficulties (BESD). It specifically addresses the arrangements for students placed with the North West London Independent Special School (NWLIS), an independent day special school for students with BESD run by Transitional Care Education Services (TCES). It outlines the current ‘spot’ purchase arrangements and seeks an exemption in accordance with paragraph 84(a) of Standing Orders to allow a 3 year contract to be awarded to TCES for 15 places with an anticipated commencement date from 1 September 2012. The term of the contract will allow significant savings to be realised whilst also allowing officers time to assess longer-term strategic and procurement options aimed at ensuring that competitive, quality provision is sustained.

## **2.0 Recommendations**

- 2.1 The Executive to give approval for an exemption from the usual requirement of Contract Standing Orders in accordance with paragraph 84(a) of Contract Standing Orders for the good operational reasons set out in section 3.1 – 3.2.9 of the report, to allow the award of a three-year contract to TCES from 1 September 2012 to 31 August 2015 at the rates outlined in this report and agreed in principle with TCES.
- 2.2 That the Executive note the cost reduction in current 'spot' purchase rates for Brent young people already placed at NWLIS for the interim period March 2012 to August 2012 from when the 3 year contract will proceed.
- 2.3 The Executive to give delegated authority to the Director of Children and Families to conclude negotiations with TCES and award the proposed 3 year block contract.

## **3.0 Detail**

- 3.1 The purpose of this report is:
  - a) To explain why approval is sought for authority to seek an exemption to the requirement to undertake a competitive tender exercise in compliance with Brent Contract Standing Orders for three years;
  - b) to identify and analyse the procurement risks associated with the proposals of this report and recommend solutions to enable officers to manage these risks successfully to enable the award of the contract to take place.
- 3.1.1 Brent, as a Local Authority has a statutory duty to provide full time education for all children and young people between the ages of 5 and 16. This includes a duty to assess, identify and make appropriate provision for those with Special Educational Needs.
- 3.1.2 Children and young people identified with SEN who have extremely challenging behaviour and/or mental health difficulties may require a statement of SEN to be drawn up by the local authority. In some cases the required provision may be a special school maintained by the authority or an independent or non-maintained special school registered with the DfE.
- 3.1.3 Many local authorities do not maintain BESD special school provision which can be very fragile and susceptible to high staff turnover and poor Ofsted outcomes. There is no local authority maintained secondary BESD special school provision in the borough of Brent and

insufficient local authority maintained provision in neighbouring authorities. This is an issue under discussion within the West London Alliance (WLA) but there are currently no firm proposals for establishing additional local authority maintained provision within the WLA.

- 3.1.4 The local authority is therefore limited in the options it has to comply with its duties to provide education to this group of young people. It can:
- a) Source maintained BESD special school provision from neighbouring LAs – this is very limited and places are consistently taken by the host LA pupils;
  - b) develop its own maintained BESD special school provision – this is very costly and carries a high risk in terms of sustaining success due to reasons outlined above;
  - c) source independent or non-maintained special school provision – this is very costly but is easier to monitor in terms of successful outcomes and costs can be reduced through smarter commissioning and contractual processes
- 3.1.5 Currently, officers commission BESD special school places from the independent and non-maintained school sector on a ‘spot’ purchase basis. This has proven to be very costly with unit costs currently running at an average of **£51,000** per annum for individual places ranging from £36,000 to £79,000 depending on the complexity and severity of need. There are currently 44 pupils placed with providers of which 18 on average are placed with North West London Independent School at a full year cost of £48,000 per place.
- 3.1.6 There are currently 18 Brent resident young people with statements of SEN for BESD needs in Brent attending the NWLIS. They all require special school places to meet their needs and over time have all been the subject of ‘spot’ purchasing of places. This school was originally located in Brent but re-located to new premises in East Acton, Ealing in September 2011.
- 3.1.7 TCES, the proprietors of the school were approached in October 2011, as part of the activities in the One Council Review of SEN, with a view to negotiating the unit cost of placements down. The result of this was an offer by TCES of a revised unit cost of **£38,880** for 15 places subject to agreement to a 3 year block contract. Further, TCES agreed to extend the price reduction to the remaining 3 ‘spot’ purchased places if an agreement can be reached before the end of February 2012. The need to ensure that places above the 15 included in the contract remain on a ‘spot’ purchase basis allows officers to have a certain amount of flexibility if referrals dip, without losing the benefit of the advantageous contract rate.

- 3.1.8 Further to the earlier meeting in October, officers met again with representatives of TCES on 27 January 2012 to explore in more detail the prospect of a 3 year contract and supporting arrangements such as contract terms, start and end-dates and prices. TCES stated a preference for a contract that runs in line with the academic year; this would give a start-date of 1 September 2012.
- 3.1.9 However, this would not address the immediate problem of the high 'spot' purchase rates that would continue to apply until anticipated commencement date of the proposed new contract in September 2012. TCES have therefore agreed reduced prices from 1<sup>st</sup> April 2012 through to and including 31<sup>st</sup> August 2012 and a "cash back" agreement to cover the period September 2011 to end of March 2012. Full details of prices agreed in principle with TCES are contained in Appendix 2 of this report along with potential savings arising from the contract.
- 3.1.10 In summary, a 3 year agreement with TCES as outlined will save £136,800 per annum for the 'block' purchased 15 places commencing from the first contract year in September 2012. If the current level of 18 places are sustained, the savings will be £164,700.
- 3.1.11 There will also be savings of £30,000 from September 2011 to end of March 2012 and £40,000 from April to August 2012.
- 3.1.12 Approval is therefore sought for an exemption to Brent Contract Standing Orders to enter into a three year contractual arrangement with TCES as outlined above in order to achieve these more cost efficient arrangements for BESD placements.
- 3.2 There are strong supporting arguments in favour of a non-competitive approach on this occasion and these are assessed in the context of risk in the Risk Matrix currently compiled by officers and outlined as follows:
- 3.2.1 This contract has not previously been tested by the market. However, although officers support the general requirement to test the market, there are clear supporting arguments in favour of setting this provision aside in the short-term and pursuing a non-competitive award.
- 3.2.2 There is a highly specialised market for schools able to provide education for children with BESD. Other potential day independent placements are Insights in Ealing and Chilworth House in Oxfordshire, which is a 90 mile round trip for pupils. The costs of both of these placements inclusive of transport are greater than for NWLIS. NWLIS is the closest of the 3 schools and children will spend less time on transport which is clearly beneficial.

- 3.2.3 The needs of the young people already placed at NWLIS would require that they remain at the 'spot' purchase rates until their education placement is complete or they move on in accordance with their needs. Many of the pupils are likely to continue to be placed at NWLIS for a number of years until they complete their statutory education. Of the 17 pupils currently at NWLIS, none are due to leave in 2012 and 3 are due to leave in 2013. It is unlikely that another education provider would be able to tender on the basis of having a sufficient number of vacancies. The transition of the contract from the incumbent to the successful provider would be extended and based upon new referrals.
- 3.2.4 The quality of provision for the pupils at NWLIS is good overall. Brent Officers have visited the new premises of the school to observe the teaching and learning of the pupils and were satisfied about the effectiveness of the school's approach to meeting the needs of the pupils placed there. Outcomes for each pupil are monitored annually and these have been good for Brent pupils over the last two years. TCES is a leading provider of specialist education for pupils with BESD in the South East through NWLIS and 2 other special schools in Essex (Essex Fresh Start Independent School) and Newham (East London Independent School). All 3 schools have been inspected by Ofsted in 2010 and 2011 and all received Good judgements identifying a significant number of outstanding features in the provision.
- 3.2.5 Officers consider that a framework contract may be a more efficient contractual vehicle for this service; however, with a market limited by the number of actual competitors, further limited by geography there is a risk of collusion between competitors and framework prices that fail to achieve the discounts achievable in a cost and volume arrangements.
- 3.2.6 The time-line associated with getting a competitive process underway and completed will result in significant lost opportunity in terms of achieving savings against a budget that is overspent and under increasing demand.
- 3.2.7 The service is part B under the Public Contract Regulations 2006 ("the EU Regulations"). However, although the principles of transparency, non-discrimination and equality apply there is a reduced risk of challenge arising from a non-competitive process, particularly in the context of the reasons outlined at 3.2.2. Despite this officers have addressed the issue of risk in terms of challenge and attempted to gauge not just the risk but also the implications for the Council.
- 3.2.8 Officers are also aware that although there is an exemption in Brent Council's Standing Orders for 'spot' purchase arrangements relating to individual packages of care such as those in place at the school at the moment, there is no such exemption listed in the EU Regulations. Appendix 2 attempts to examine the risk associated with converting a

'spot' purchase arrangement valued at £720,000 per annum to a 'block' arrangement worth £583,200.

- 3.2.9 There are strong operational reasons related directly to the prospects and welfare of the young people attending the school. Young people at the school tend to settle quickly and make good progress; placement breakdown is generally below average, and the school have developed and sustained an effective collaborative partnership aimed at getting the best possible outcomes for Brent children. There is every reason to work at keeping this arrangement in place for the foreseeable future.
- 3.2.10 Brent officers are committed to seeking more innovative and collaborative arrangements that secure immediate savings. Although there is an element of risk associated with this contract award, officers have carefully considered the implications and have compiled a risk register, which shall be reviewed by officers and closed off accordingly. Officers are of the opinion that the recommendations of this report represent the best quality and financial arrangement for Brent Council and Brent young people.

#### **4.0 Financial Implications**

- 4.1 All costs covered in this report fall within The Schools Budget which is funded via the ring-fenced Dedicated Schools Grant (DSG) that the Council receives from the Department for Education. The ring-fenced nature of the Schools Budget means that any savings identified in this report must remain within the Schools Budget. The demands on these budgets have significantly increased over the last 3 years largely as a result of the increase in demand for SEN provision. This has resulted in a cumulative Schools Budget overspend of approximately £5.7 million, which urgently needs to be addressed. This overspend is set to worsen by a further £1.5m in 2011/12 to £7.2m and this must be recovered in accordance with a plan agreed with the Schools Forum from Schools Budget resources in conjunction with planned savings in SEN.
- 4.2 The One Council Review of SEN has been established to address the transformation of SEN services to achieve greater efficiencies and cost effectiveness and is progressing in several strands of activity, one of which is to develop smarter commissioning processes.
- 4.3 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval.
- 4.4 Taking into account the re-negotiated 'spot' purchase prices during 2011/12 and the proposed 3 year contract, the estimated value of services for 15 young people up until the end of the 3 year contract term is £1,949,600 against the current price for the same period of £2,400,000, a potential saving of £450,400 over the period.

- 4.5 In addition to the above, TCES have agreed to extend the 'contract' rate to the 3 'spot' purchased places over the block purchased 15 places, giving a total cost of £389,920 against the current cost of £480,000, giving a saving of £90,080 over the period.
- 4.6 There will also be a negotiated cash back sum of £30,000 relating to the 2011/12 financial year.
- 4.7 Total potential savings over the period of the contract are therefore £570,480.
- 4.8 It is anticipated that the cost of the interim period and subsequent 3 year contract will be funded from existing resources within the DSG funded Schools Budget currently utilised for the 'spot' purchase arrangement with TCES.

## **5.0 Staffing Implications**

- 5.1 This service is currently provided by an external contractor and there are no direct implications for Council staff arising from the award of the interim block contract.

## **6.0 Legal Implications**

- 6.1 The Council, being a public body, has to comply with legislation which includes the EU Treaty Principles; the Public Contract Regulations 2006; the Council's Financial Regulations and Contract Standing Orders when awarding contracts.
- 6.2 The nature of the services are categorised under the Public Contract Regulations 2006 ("the "EU Regulations") as a part B service.
- 6.3 The value of the proposed contract with TCES over the three-year duration is approximately £1,949, 600 and therefore higher than the EU threshold for Services under the EU Regulations. However, the services are Part B services under the EU Regulations and as such are not subject to the full application of the regulations with regard to competitive tendering. An Interpretative Communication was issued by the European Commission in July 2006 which indicates that the general requirements for transparency, non-discrimination and equal treatment will normally require advertising and some form of competitive process before contract award; even for Part B services, especially if the contract is likely to be of interest to overseas EU providers. Given the current limited market in the type of services provided by TCES in addition to the results of the soft market-testing carried out by officers and highlighted at paragraph 3.2.2; it is

considered that the award of the contract should be permissible under the EU Regulations.

- 6.4 The value of the proposed contract with TCES is such that it is classed as a High Value Contract for the purposes of the Council's Contract Standing Orders. The Council's Contract Standing Orders provide that High Value Contracts should be let by inviting competitive tenders. However Contract Standing Order 84(a) states the Executive may agree otherwise where there are "*good operational and/or financial reasons*". Officers consider that there are good operational and good financial reasons for agreeing a contract with TCES rather than carrying out a formal tendering process at this stage. These reasons are set out in sections 3.1 to 3.2.9 of the report.
- 6.5 Although this contract is subject to only those aspects of the EU Regulations that apply to Part B services, the Council will voluntarily observe the requirements of the mandatory minimum 10 calendar days' standstill period imposed by the EU Regulations for Part A services before the proposed contract is awarded.

## **7.0 Diversity Implications**

- 7.1 There are no direct diversity implications associated with the letting of a 3 year contract to TCES. Full provision for diversity implications, if required will be made in the contract documentation.

## **8.0 Staffing/Accommodation Implications (if appropriate)**

- 8.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from awarding the proposed contract.

## **9.0 Background Papers**

- 9.1 There are no background papers associated with this report. Supporting information to this report is contained within the appendices.

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