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|  | <p style="text-align: center;">Executive 16th April 2007</p> <p style="text-align: center;">Report from the Director of Children and Families</p> |
| <p>For Action Wards Affected: ALL</p> | |
| <p style="text-align: center;">Authority to tender contract for Speech and Language Therapy Services</p> | |

Forward Plan Ref: C&F-06/07-027

1.0 Summary

- 1.1 This report concerns the provision of a Speech and Language Therapy ("SALT") service primarily to key stage 1, 2, 3, and 4 Brent pupils with Statements of Special Educational Needs attending Brent maintained primary and secondary schools but also to other groups requiring a SALT service.
- 1.2 Officers are seeking experienced contractors to provide speech and language therapy services and consider that this is best and most flexibly done through the procurement of a Framework Contract with one contractor.
- 1.3 This report requests approval to invite tenders for a Framework Contract in respect of SALT services as required by Contract Standing Orders 88 and 89.

2.0 Recommendations

- 2.1 The Executive to give approval to the pre-tender considerations and criteria to be used to evaluate tenders for a Framework Contract as set out in paragraph 3.11 of this report.

- 2.2 The Executive to give approval to officers to invite tenders for the provision of SALT services and evaluate them in accordance with the approved evaluation criteria referred to in paragraph 2.1 above.

3.0 Detail

- 3.1 The Council has a statutory obligation to provide services for children and young people with Statements of Special Educational Needs. The SEN Code of Practice (2002) stipulates that the LEA must make effective arrangements for pupils with Special Educational Needs by ensuring that the needs of children and young people are identified and assessed quickly and matched by appropriate provision.
- 3.2 Historically the Special Educational Needs Assessment Services team has been responsible for commissioning SALT services for children in Brent.
- 3.3 Speech and Language therapists work with persons who have difficulties with communication, or with eating, drinking and swallowing. They also work closely with parents and carers and other professionals, such as teachers, nurses, occupational therapists and doctors.
- 3.4 The demand for SALT services has increased over the years it is expected to increase further, this due mainly to the fact that Brent is a growing borough with increasing numbers of children requiring speech and language therapy services.
- 3.5 SALT services for Brent pupils with Statements of Special Education Needs attending mainstream schools have historically been commissioned from Brent Teaching Primary Care Trust ("Brent PCT"). The Council's contract with Brent PCT never fully covered the provision of all SALT services to Key Stage 1 – 4 pupils however, with the result that Brent PCT effectively subsidised SALT services. In 2005 Brent PCT indicated that as it had no statutory duty to provide SALT services, it would stop providing SALT services to Key Stage 3 and 4 pupils in Secondary schools. The Council was therefore forced to find alternative providers for these Key Stage groups and did so by spot purchasing services from a range of organisations. In 2006 Brent PCT indicated that it would no longer continue to subsidise SALT services to Key Stage 2 pupils. The Council subsequently tendered for SALT services for Key Stage 2 providers. Brent PCT successfully bid for the contract and the Council entered into a contract in which it fully funded Key Stage 2 SALT services. As a result of the above, SALT services are currently delivered by the following providers:

- Key stage 1 pupils – Brent PCT
- Key stage 2 pupils - Brent PCT

- Key Stage 3, 4 pupils – BINOH (Jewish Special Educational Needs Service) and other independent therapists.
- 3.6 The number of Key Stages 1-4 pupils currently receiving SALT services in Brent is 283. As detailed in paragraph 3.4, it is anticipated that the number of pupils will increase. Current estimated numbers of pupils requiring the service are 132 for mainstream Primary schools and 176 for mainstream Secondary schools.
- 3.7 The Council's current contracts for SALT services are due to expire on 31st of August 2007 for the various Key Stages. The Council is therefore obliged to re-commission the service
- 3.8 In re-commissioning the SALT service, it is proposed that that the Council enter into a Framework Contract with a single provider instead of spot or fixed cost commissioning. The reasoning for this is:
- i) Spot commissioning would allow flexibility for the service to be commissioned from one of several agencies available to most suit the child's needs but could introduce difficulties in the monitoring of quality standards and service provision. This option also does not enable unit cost savings to be made on hourly rates charged by the provider as the charge for each service would be negotiated on an individual spot basis. The unit charge would also be subject to 'open market' cost increases on an annual basis.
 - ii) A fixed cost contract to commission a set number of SALT pupil places annually may be more administratively efficient, but may not provide value for money as the set number of pupil places would still need to be funded even if they have not been provided.
 - iii) Tendering for a framework contract would allow for the provision of SALT services for the numbers of pupils currently requiring such services as well as for future increases or decreases in demand. This would allow the Council to have flexibility on the number of pupils that it wishes to procure the service for in the future without making a firm commitment to the exact number. It would enable unit cost savings to be made on hourly rates charged by the provider, and would also remove the need for further procurement exercises in the contract period if demand were to change.
- 3.9 Providers currently provide the service using their own offices as a main base, with therapists travelling from the base to schools to visit SALT pupils. It is proposed that this model of service continue although Officers are investigating the possibility of therapists being based in one of the special schools within the borough and additionally
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providing an Outreach SALT service from this base. Whilst it is considered this would produce greater user satisfaction, Officers are investigating the likely cost implications. Officers are also looking at the most appropriate way to price the service and investigating the likely cost implications of pricing on the basis of banding according to the therapists level of expertise. Whilst the proposed Framework Contract will provide for SALT services to key stage 1,2,3 and 4 pupils, it is also intended to include provision in the Framework Contract for any other SALT services that may be required in the future, such as at Children's Centres. This would lead to an increase in numbers using the Framework Contract as detailed in paragraph 3.6. The use of a Framework Contract allows for this flexibility.

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

Pre – tender Considerations

| Ref. | Requirement | Response |
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| (i) | The nature of the contract. | A Framework Contract for the provision of a SALT service for Brent pupils with a Statement of Special Educational Needs and for other groups requiring SALT services. |
| (ii) | The estimated value. | £933,000 over the period of the Framework Contract including any extensions provided for under the Framework Contract. |
| (iii) | The contract term. | The period of the Framework Contract will be two years with the possibility of a one year extension. The proposed start date of the Framework Contract is 3rd of September 2007. |
| (iv) | The tender procedure to be adopted including whether any part of the procedure will be conducted by electronic means and whether there will be an e-auction. | <p>The tender will follow the Open (Single Stage) tender procedure and will be undertaken within legal timescales and the Council's reporting framework.</p> <p>The Open Procedure was selected because:</p> <ul style="list-style-type: none"> · Speech and Language Therapy is a specialist area. · There are few suppliers in the market. · Time constraints for the service to be operational for the new academic year commencing September 2007. <p>The tender procedure will lead to the award of a Framework Contract. .</p> |
| v) | The procurement | Indicative dates are: |

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| | timetable. | <p>Adverts placed</p> <p>Deadline for tender submissions</p> <p>Panel evaluation and Panel decision</p> <p>Report recommending Contract award circulated internally for comment</p> <p>Executive approval</p> <p>Contract start date</p> | <p>18 April 2007</p> <p>10 May 2007</p> <p>10 May 2007 – 10 June 2007</p> <p>12 June 2007</p> <p>16 July 2007</p> <p>01 Sept 2007</p> |
| (vi) | The evaluation criteria and process. | <p>The preferred procurement route is the Open Procedure and this is a one stage process. The applicants will have their financial standing tested, together with their health and safety and diversity policies, in accordance with Contract Standing Orders. The tender will be assessed on the basis of the Most Economically Advantageous Tender. The panel will evaluate the tenders against the following criteria:</p> <ul style="list-style-type: none"> · Economic and financial standing. · Business planning & continuity arrangements · Ability to meet the requirements of the service specification. · Experience of providing SALT services. · Quality control and assurance · Safeguarding Children Procedures · Effective Collaborative working in schools · Human resources and diversity · Best Value considerations · Health and Safety · Proposals for innovation in service delivery | |
| (vii) | Any business risks associated with entering the contract. | No specific business risks are considered to be associated with entering the proposed Framework Contract. | |

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| (viii) | The Council's Best Value duties. | <ul style="list-style-type: none"> · The Framework Contract will be advertised to encourage lower prices through open competition thus providing value for money for the Council. · By using the Framework Contract, it will allow further purchases to be “called off” from the Framework Contract as and when required thereby avoiding the need for further complex and time consuming procurement processes to be implemented. · By offering a Framework Contract with the potential for further “call offs”, the tender will be more attractive to contractors with the prospect of contractors offering lower tender prices. · The tenders will be assessed on the basis of the most economic advantageous tender. Part of this assessment will be to look at the whole life costs of the service. |
| (ix) | Any staffing implications, including TUPE and pensions. | See paragraph 5 and 6 below. |
| (x) | The relevant financial, legal and other considerations. | Financial and legal considerations are detailed at paragraph 4 and 6 of this report. |

3.12 The Executive is requested to give its approval to the proposals as set out in the recommendations and in accordance with Standing Order 89.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 90.

4.2 The estimated value of this services contract is £933,000 over the 3 year period of the Framework Contract including proposed extension of 1 year.

- 4.3 It is anticipated that the cost of this contract will be funded from the central element of the dedicated schools budget. There is an existing budget of £181,000 in the central element of the dedicated schools budget. The additional annual cost will of £125,000 will also be charged to this budget with compensating savings being sought from other central items within The DSB.
- 4.4 The provision of Speech and Language Therapy services is required to meet the Council's ongoing statutory obligations in respect of pupils with statements of Special Educational Needs. The council are legally obliged to treat children a with speech and language therapy needs. It would therefore be prudent to tender for a Framework Contract to account for increases or reductions in service demand to ensure that further procurement exercises are not required. This will ensure that the Council benefits from cost efficiencies arising from reduced administration costs from conducting the procurement process once. There will be no commitment from the Council to guarantee levels of purchasing under the Framework Contract.

5.0 Staffing Implications

- 5.1 The SALT service is currently provided by external providers and indeed has never been undertaken internally. There are therefore no implications for Council staff arising from the recommended procurement process using the Framework Contract. The staffing issues inherent in the tendering process (including the transfer of staff pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006) will be the responsibility of the existing contractors and the new contractor (depending on the outcome of the tender process).

6.0 Legal Implications

- 6.1 The estimated value of this Framework Contract over its lifetime is above the EU threshold for services of £144,371. As the Framework Contract is for educational provision, it falls within Part B of Schedule 3 of the Public Contracts Regulations 2006 ("the Regulations") and is not therefore subject to the full application of the Regulations. The Regulations are of residual application only (the need to issue a contract award notice, etc) and do not determine the procurement process to be followed. However the overriding principles of EU law (equality of treatment, fairness and transparency in the award process) continue to apply and should be upheld at all times in relation to the award.
- 6.2 The estimated value of this Framework Contract over its lifetime is in excess of £500,000 and therefore its procurement and award is subject to the Council's Contract Standing Orders and Financial Regulations in

respect of High Value Contracts. Contract Standing Orders provide that for High Value Contracts, approval of the Executive is required for authority to tender. Contract Standing Orders also provide that the Executive are required to approve the evaluation criteria to be used in the tender process.

- 6.3 Once the tendering process is undertaken Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contract and recommending award.
- 6.4 Officers propose that the procurement of Speech and Language Therapy should be by way of a Framework Contract which will be binding on both parties. A framework contract is a contract with contractors which sets out terms and conditions under which specific purchases (“Call-offs”) can be made throughout the term of the contract. The Framework Contract proposed will allow for the provision of SALT services for the numbers of pupils currently requiring such services as well as for future purchases. This will allow the Council to have flexibility on the number of pupils that it wishes to procure the service for in the future without making a firm commitment to the exact number.
- 6.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) operate so as to protect the continuity of service and the terms and conditions of employees where there is a “relevant transfer”. If there is a “relevant transfer” then staff assigned to the undertaking transfer to the new employer, unless they object to transferring. There can be a relevant transfer where there is a “service provision change”. A service provision change takes place where there is a change in the contractor carrying out activities on the client’s behalf and immediately before the transfer, there is an organised grouping of employees situated in Great Britain which has its principal purpose the carrying out of activities concerned on behalf of the client. There can also be a “relevant transfer” where there is a transfer of “ an economic entity which retains its identity”. In the present case TUPE is likely to apply to the transfer of the provision of SALT services from one contractor to another but further information from the current contractors must be obtained to determine which particular individuals will transfer. If TUPE applies, those employees of the existing contractors who are assigned to SALT services immediately prior to the Framework Contract start date and who do not object to transferring will transfer to the employment of the contractor awarded the contract on their existing terms and conditions.
- 6.6 As none of the staff currently providing the SALT service are former Council staff who transferred from the Council as a result of an outsourcing of the SALT service the Best Value guidance issued by the

Government called the “Code of Practice on Workforce Matters in Local Authority Service Contract” will not be applicable.

7.0 Diversity Implications

- 7.1 Service providers are expected to provide an inclusive service. Diversity is included in the evaluation criteria within the evaluation process prior to award of the contract.
- 7.2 The proposal will improve the delivery of speech and language therapy services in Brent maintained schools for pupils with a statement of Special Educational Needs.

8.0 Background Papers

Speech and Language Procurement File

Contact Officer(s)

Rik Boxer
Assistant Director
Achievement & Inclusion
Children & Families department
Chesterfield House
9 Park Lane
Wembley, Middlesex HA9 7RW

John Christie
Director of Children and Families