



Executive
11 February 2013

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

Wards Affected:
ALL

**Authority for exemption to award a two- year and one term
contract for Special Educational Needs independent
special school provision**

Appendix 1 is NOT FOR PUBLICATION

Reason for non-publication

This Appendix is not for publication as it contains the following categories of exempt information as specified in Schedule 12A to the Local Government Act 1972, namely: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 commissioning of school places for secondary students with Statements of Special Educational Need (SEN) for autistic spectrum disorders, (ASD) at Centre Academy, an independent day special school in Wandsworth. It outlines the current ‘spot’ purchase arrangements and seeks an exemption from tendering in accordance with paragraph 84(a) of Standing Orders to allow a two year and one term contract to be awarded to Centre Academy for 15 places with an anticipated commencement date from 1 April 2013. 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 That an exemption be approved from the usual tendering requirement of Contract Standing Orders to allow the award of a contract to Centre Academy from 1 April 2013 to 31 August 2015.
- 2.2 That delegated authority be given to the Director of Children and Families to conclude negotiations with Centre Academy and award the proposed two years and one term block contract on the basis of the rates outlined in this report and agreed in principle with Centre Academy.

3.0 Detail

- 3.1 The purpose of this report is:
 - a) To explain why approval is sought for an exemption from the requirement to undertake a competitive tender exercise in compliance with Brent Contract Standing Orders for two years and one term;
 - 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.
- 3.2 The Council makes provision for children with special educational needs in both special schools and mainstream schools. The Council has recently increased in-borough provision for young people with SEN and has reduced significantly its reliance upon independent schools. In September 2012 for the first time no pupil was placed in an independent school at secondary transfer stage. However, in the short to medium term there is an on going need to continue to place young people with SEN in independent or non-maintained schools. It is not possible to source additional maintained ASD special school provision from neighbouring local authorities as this is very limited and places are consistently taken by the host local authority pupils;
- 3.4 Currently, officers commission ASD 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 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 43 pupils placed with providers, of which 22 are currently placed with Centre Academy at a full year average cost of approximately £36,000 per place (in practice the price varies according to year group).
- 3.5 Of the 22 Brent young people attending Centre Academy, all require special school places to meet their needs and over time have all been the subject of 'spot' purchasing of places. Such spot purchasing for

individual needs is not subject to the competitive requirements of Contract Standing Orders.

- 3.6 Centre Academy was originally approached in the summer of 2012, as a continuing part of the activities in the One Council Review of SEN, and following a successful negotiation with another independent school, with a view to negotiating the unit cost of placements down. Officers sought to negotiate across a number of different areas including a percentage reduction of fees, putting in place a formal contract with agreed terms and agreement on a 'block' number of places over a fixed term with a discounted rate applied to places beyond the 'block' threshold.
- 3.7 Following lengthy negotiations both parties have agreed on 15 places at a flat rate of £35,000 per annum per place (all year groups). Full details of the agreement are set out in section 4 and at Appendix 1, however, it should be noted that it has been negotiated that all places purchased above the block of 15 will be at the same rate as the 15 places within the block contract.
- 3.8 In summary, a two year and one term agreement with Centre Academy as outlined will save £68,537 for the total cohort of Brent pupils commencing from the first contract year in April 2013.
- 3.9 Approval is therefore sought for an exemption from the tendering requirements of Brent Contract Standing Orders to enable the direct award of a two year and one term contractual arrangement with Centre Academy as outlined above in order to achieve these more cost efficient arrangements for ASD placements.
- 3.10 There are strong supporting arguments in favour of a non-competitive approach on this occasion. There is a highly specialised market for schools able to provide education for children with ASD. There are alternative potential day independent schools that cater for ASD children with similar need only two of which are within reasonable travel distance of Brent, Holmewood School and Hillingdon Manor School. Both schools are more expensive than Centre Academy and more importantly, it is unlikely that either school would be capable of competing for a contract of this size in terms of having available places. In light of this, officers consider the risk of challenge to a direct contract award to Centre Academy to be minimal.
- 3.11 Many of the current pupils are likely to continue to be placed at Centre Academy for a number of years until they complete their statutory education. Of the 23 pupils currently at Centre Academy, 5 are due to leave in 2013 and 4 are due to leave in 2014. Centre Academy offers post 16 education and it is likely that a small number of these children will stay on into years 12 and 13.

- 3.12 Officers did consider whether a framework would 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 arrangement. If the award of contract were to await a competitive process the time-line would result in losing the immediate savings.
- 3.13 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 low risk of challenge arising from a direct award, 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.
- 3.14 Although there is a small element of risk associated with this contract award, officers have carefully considered the implications and have compiled a risk register, which will be reviewed and closed off. On balance the recommendations of this report represent the best educational and financial arrangement for the Council.

4.0 Financial Implications

- 4.1 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.
- 4.2 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 resulted in a cumulative schools budget overspend of approximately £5.7 million by the end of 2010/11. This overspend increased by a further £1.5m in 2011/12 to £7.2m. The One Council SEN Review project is addressing this overspend and indications are that interventions such as this project (establishing new financial arrangements with existing independent providers) are halting the overspend situation, and will achieve a reduction in spend in 2012/13. This is in accordance with a budget recovery plan agreed with the Schools Forum and in conjunction with planned savings in SEN.
- 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' purchased places over the proposed two year and one term contract, the estimated value of services for the 22 Brent young people at Centre Academy up until the end of the contract term is £1,470,042 against the current price for the same period of £1,538,579, a potential saving of £68,537 over the period.
- 4.5 Further to the above, Centre Academy has agreed to freeze the agreed rates for the life of the contract negating the need for an annual price review clause in the terms and conditions of contract. Assuming an uplift of 1.5% in years 2013/14, 14/15 and 15/16 this would have a potential cost avoidance of £22,709 over the existing estimated cost for the stated contract term.
- 4.6 It is anticipated that the cost of the two year and one term contract will be funded from existing resources within the DSG funds currently utilised for the 'spot' purchase arrangement with Centre Academy.

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 Centre Academy over the two year and one term duration is approximately £1,295,037 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 Centre Academy 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 does not contravene these general duties.

- 6.4 The value of the proposed block contract with Centre Academy 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 Centre Academy 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.

7.0 Public Services (Social Value) Act 2012

- 7.1 Since 31st January 2013, the Council, in common with all public authorities subject to the EU Regulations, has been under duty to consider the economic, social and environmental well-being of their area when undertaking public procurements. This is set out in the Public Services (Social Value) Act 2012. This duty applies to this award of contract until such time as a contract is entered into. The duty requires authorities to consider how what is procured might improve economic, social and environmental well-being of their area, and how it might act in procuring the service to secure that improvement.
- 7.2 In this case, an assessment of the service is that as it is required for the purpose of meeting individual SEN needs, there are no improvements to the economic, social and environmental wellbeing of the Council's area that might be secured through this procurement.

8.0 Diversity Implications

- 8.1 The provision of quality education for children with SEN is part of providing equal access for people with disabilities.

9.0 Staffing/Accommodation Implications (if appropriate)

- 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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