



Executive
20th May 2013

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

For Action

Wards affected:
ALL

**Authority to tender contracts for speech and language
therapy services**

1.0 Summary

- 1.1 This report concerns the procurement of Speech and Language therapy services in Brent and requests approval to invite tenders as required by Contract Standing Orders 88 and 89.
- 1.2 Approval is also sought to participate in a West London Alliance (WLA) led tender for this service in accordance with the requirements of Contract Standing Order 85 should that organisation's time frame for contracting align with the authority's timetable. If this is not possible approval is sought to let a Brent only contract.
- 1.3 This report seeks Executive approval of the project timetable and selection criteria for the procurement exercise as set out in section 3 below.

2.0 Recommendations

- 2.1 That the Executive give approval to the pre-tender considerations and the criteria to be used to evaluate tenders for two Speech and Language Therapy contracts as set out in paragraph 3.1 of the report.
- 2.2 That the Executive give approval to officers to invite expressions of interest, agree shortlists, if relevant, and invite tenders in accordance with the procurement timetable and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.
- 2.3 That the Executive note that options are being explored for a collaborative procurement with other West London Alliance boroughs, and to agree that if this is feasible then the same procurement described in paragraphs 2.1 and 2.2 will

proceed by way of procuring two framework agreements for Speech and Language Therapy Services.

3.0 Detail

- 3.1 A Statement of Special Education Needs (SEN) sets out the special needs of a particular child and outlines the special education provision that a child will receive to meet those needs. Speech and Language Therapy (SLT) can be specified in either Part 3 (educational provision) or Part 6 (non-educational provision) of a Statement.
- 3.2 The SEN Code of Practice, last amended in 2001, states that 'since communication is so fundamental in learning and progression, addressing speech and language impairment should normally be recorded as educational provision unless there are exceptional reasons for not doing so'.¹
- 3.3 Case law has established that speech and language therapy can be regarded as either educational or non-educational provision, or both, depending upon the health or developmental history of each child. However, since communication is so fundamental in learning and progression, addressing speech and language impairment should normally be recorded as educational provision, (therefore funded from educational funds), unless there are exceptional reasons for not doing so. Several Local Authorities have challenged health authorities in the High Court around payment for therapy services. As a result, there is also established case law to underline that it is the Local Authority that has the ultimate duty to make the provision in a statement and there is no mandatory duty on another body to assist, although they could be asked to help. The local Authority can name health authorities in a statement of SEN and state that they should fund health-related rather than educational provision. In Brent, officers are confident that we do not pay for any service that is classed as a health responsibility. The current specification has been significantly tightened over the last few years to ensure that it only covers the LA's responsibility for supporting children with SEN statements. There were some gaps identified over the last year or two which were health responsibility and Brent commissioning officers have worked with colleagues in health to ensure that their specification is in line with their responsibilities. Therefore where a health need is identified, health does provide this.
- 3.4 The Service is delivered in all of the 74 mainstream schools and Academies in Brent and supports over 370 children with SLT needs identified in Part 3 of their Statement of Special Educational Need.
- 3.5 In addition, some services are delivered in Brent Children's Centres which have a focus on improving outcomes for young children and their families, with a particular focus on the most disadvantaged. The aim of Children's Centres is to support children and ensure that they are equipped for life and ready for school. A key part of this is child development and school readiness and it has been shown through research and the work commenced through Sure Start that SLT is an essential component of early intervention. Pre-school children will not have an SEN statement and the need for SLT services is identified through the Common Assessment Framework process in

¹ DfE, (2001) *Special Educational Needs Code of Practice*, p.105.

children's centres and as completed by multi-agency practitioners working with families with children aged 0-4

- 3.6 There are currently 17 Children's Centre sites from which Children's Centres deliver direct services to families. Additional service delivery occurs through outreach to community venues and family homes, coupled with services available through partner agencies to families. The network of Brent Children's Centres operates as a hub and spoke model that enables families with young children access to multi-agency and multidisciplinary services throughout Brent in each of five localities.
- 3.7 Overall there are currently four separate contracts. The Service for Brent schools is currently delivered through two contracts and by two different providers; Key Stage 1&2, children aged 5-11 years is delivered by Ealing Hospital Trust and Key Stages 3&4, children aged 11-16 years by North West London Hospital Trust. Executive approval was obtained in November 2012, to extend both contracts for a further year until March 2014. The service for Children's centres is delivered by Hillingdon NHS Community Services and expires in March 2014. The procurement is required because the current contracts are due to expire on the 31st March 2014 and an opportunity now exists to deliver better value for money through consolidating contracts with Children's centres commissioning and potentially other WLA authorities.
- 3.8 If Brent carries out a standalone procurement exercise, the council would be expecting 3% savings from the exercise. As an alternative to carrying out its own procurement exercise, Brent has proposed to the WLA that this procurement offers an opportunity for collaboration as all 9 member councils currently provide these services and the scope for savings beyond 3% may exist. WLA is currently investigating the possibility of a joint contract and is meeting with commissioners and procurement staff in each Borough to establish if an opportunity exists. A report detailing findings and including a final recommendation is due to be discussed and a final decision made at a WLA Directors Board meeting on the 20th May 2013. WLA officers' emergent findings indicate an opportunity for a collaborative arrangement exists and offers scope for service and price enhancements across all Boroughs.
- 3.9 Should a collaborative procurement take place Brent would act as the lead Borough and supported by WLA officers would deliver the procurement with input from all other participating Boroughs. Two multi-supplier frameworks are likely to be established from which authorities can call off one block contract, or services as and when required. One framework would cover early years- Children's centre provision. The other will cover mainstream school provision. Should all WLA member Boroughs participate, the estimated value of a WLA contract is likely to be in the region of £35million based on a 3 year contract with the option to extend for a further 2 year. The estimated value of a Brent only contract over 5 years is £3,324,540.
- 3.10 The Council's current arrangements expire on the 31 March 2014 and to ensure service continuity a new arrangement needs to be tendered and put in place by January 2014. Officers' preferred option is to pursue a collaboration with other WLA authorities, however, should, the WLA not reach a decision at its meeting on the 20th of May then Brent will have to undertake its own procurement. This would be on the basis

of letting two service contracts covering the lots referred to above at point 3.7. A single supplier would be selected for each contract.

Pre-Tender Considerations

In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Executive.

Ref.	Requirement	Response
(i)	The nature of the service.	<p>(1) Provision of speech and language therapy services to children with a statement of need at Key Stages 1 to 4 attending Brent mainstream schools and academies and</p> <p>(2) Speech and language therapy for children aged less than 5 years registered with Brent Children's Centres or where a CAF is in place identifying early support needs related to communication and development for children 0-4 years.</p>
(ii)	The future estimated value of the contract/s	<p>An estimated potential spend in Brent of up to £358,208 per annum for Key Stages 1,2,3 & 4 and £306,700 for services to Children's Centres (based on 2012/13 spend). With a potential total value across the 2 contracts and over the proposed 3+2 years of £1,994,724 (£3,324,540 over 5 years).</p> <p>WLA estimated spend across 9 authorities is in excess of £35m for the two client groups</p> <p>If there is no collaborative procurement, then two contracts will be awarded:</p> <ol style="list-style-type: none"> 1. Early Years – Children's Centre provision 2. Mainstream Schools provision <p>If there is a collaborative procurement then it is proposed to tender for two multi-supplier frameworks for Brent and the other boroughs to call off, for the same two service areas listed above</p>
(iii)	The contracts / frameworks term	3 years with an option to extend by up to 2 additional years

(iv)	The tender procedure To be adopted.	<p>A standard two stage tender process in accordance with the Council's Standing Orders will be followed.</p> <p>As Social Care transactions are 'Part B Services', under the Public Contract Regulations 2006 ("the Regulations"); the Regulations apply only in part to the tender (see further legal comments).</p>	
(v)	The procurement timetable	<p>Indicative dates are:</p> <ul style="list-style-type: none"> • Adverts placed • Expressions of interest (Pre-Qualification Questionnaire) returned • Shortlist drawn up in accordance with pre-determined minimum standards as to financial standing and technical competence • Invite to tender • Deadline for tender submissions • Panel evaluation • Report recommending Contract award circulated internally for comment • Executive approval • Contract start date 	<p>14 June</p> <p>22 July</p> <p>7 August</p> <p>16 August</p> <p>25 September</p> <p>15 October</p> <p>29 October</p> <p>December (tbc)</p> <p>2 April 2014</p>
(vi)	The evaluation criteria and process	<p><u>Stage 1: pre-qualification stage</u> Shortlists are to be drawn up in accordance with the Council's Contract</p>	

		<p>Management Guidelines by a pre-qualification questionnaire (PQQ).</p> <p>The pre-qualification will test the capacity and capability of potential bidders as well as potential bidder eligibility to take part in the Procurement. This will include the following:</p> <ul style="list-style-type: none"> • Subcontracting/consortia arrangements • Professional conduct • Economic and financial standing • Insurance • Resources • Health and safety • Quality assurance • Equality • Environmental • Previous experience and references • Child Protection policies <p>The outcome of this stage will be a list of pre-qualified bidders for the Procurement and a short-list of bidders to be invited to tender.</p> <p><u>Stage 2: Invitation to Tender (ITT)</u> For those that are selected by Stage 1 there will follow an Invitation to Tender (ITT) stage.</p> <p>Tenders will be evaluated on the basis of the most economically advantageous tender using the following criteria and overall weightings.</p> <p>1. Quality Quality will consist of 40% of the evaluation weightings. The quality assessment will be evaluated using the following criteria that may be subject to minor change as required:</p> <ul style="list-style-type: none"> • Proposed business model (to include consideration of). <ul style="list-style-type: none"> ○ Meeting the requirements of the specifications ○ Method of contribution to improving outcomes for children ○ Meeting the requirements and standards
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		<p>as set out in the SEN Code of Practice, the Reform of provision for children and young people with Special Educational Needs, and any other legislation / guidance</p> <ul style="list-style-type: none"> ○ The Tenderer's proposals for the number, qualification, experience, training, supervision and retention of personnel to be engaged in relation to the performance of the Service ○ Resource mobilisation and start-up commitment plans if awarded a contract/ including provision to ensure that there would be no discernible break in Service. • Tenderer's proposed plans for ensuring effective quality management of the Services and maintenance of the Contract Standard, including self-monitoring and evaluation. • the Tenderer's proposals for adhering to Child Protection requirements • Tenderer's proposed approach for working in partnership with the Council, Health, Schools and any other relevant providers. • Health and Safety <p>2. Price Price will consist of 60% of the evaluation weightings.</p>
(vii)	Any business risks associated with entering the contract	No specific business risks are considered to be associated with agreeing the recommendations in this report.
(viii)	The Council's Best Value duties	This procurement process and on-going contractual requirement will ensure that the Council's Best Value obligations are met.
(ix)	Any staffing implications	See sections 7 below
(x)	The relevant financial, legal and other considerations	See sections 4, 5 6 and 8 below

4.0 Financial Implications

- 4.1 Funding for the mainstream schools contract is funded from the Dedicated Schools Grant, and it is envisaged that this will continue to be met from existing budgets.
- 4.2 The budget for the Children's Centre provision is funded from the Children and Families Departmental budget.
- 4.3 Expenditure through the DSG and through the Department's Budget will continue to be reviewed as part of the annual and medium term budget planning process to ensure the best and effective use of resources. This procurement aims to realise at least 3% savings on the current contract.

There will be costs incurred in the contract process for professional advice, in particular legal costs if a collaborative procurement proceeds. These will be funded from existing resources. Costs incurred by the authority, including any additional resources necessary to deliver a collaborative procurement, will be apportioned equally across all participating authorities.

5.0 Legal Implications

- 5.1 The Council has the necessary powers to enter into the proposed contracts. For the SEN services, provision is mandatory where part 3 of an SEN statement specifies the provision of SLT services. For discretionary services, under the Children Act 1989, the Council has a duty to provide services for children who are in need.
- 5.2 The estimated value of the contracts over their lifetime is in excess of £500,000 and therefore the procurement and award of this contract/s are subject to the Council's Contract Standing Orders and Financial Regulations in respect of High Value contracts.
- 5.3 The provision of Speech and Language Therapy services to children are classified as Part B Services under the Public Contracts Regulations 2006 ("EU Procurement Regulations") and as such are not subject to the full application of the Regulations (save that there must be a technical specification contained in the contract documents and on award of contract the Council must issue a Contract Award Notice in the OJEU within 48 days of award). The services are however, subject to the overriding EU Treaty principles of equality of treatment, fairness and transparency in the award of contracts.
- 5.4 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 contracts and recommending award.
- 5.5 If the procurement proceeds by way of a collaborative procurement, then the same considerations apply to the tendering of the two proposed frameworks. Appointment to these frameworks will be made by the Executive, as well as call off from the frameworks for Brent's own needs. Because the frameworks are for part B services,

then the Council is not bound by the rule that applies to all part A services, namely that frameworks cannot last for more than 4 years.

6.0 Equality Implications

- 6.1 An Equalities Impact Assessment is underway in accordance with the Equality Act 2012, and will be finalised once the arrangements for the WLA collaboration are confirmed.
- 6.2 This contract arrangement relates to the delivery of speech and language therapy to those with an identified requirement in their Statement of Special Educational Need. The presence of speech and language difficulties can contribute to poor behaviour, low educational attainment and difficulty communicating in both the classroom and in social situations.
- 6.3 The aim of this provision is to improve and raise awareness of the speech and language therapy needs of pupils attending mainstream schools in Brent. The therapists work with school based staff to identify pupils who are affected by speech, language and communication difficulties and offer appropriate support. The service aims to improve the educational attainment of these pupils and promote their participation in the curriculum.
- 6.4 The service will ensure that children in mainstream Brent primary schools will have access to targeted, appropriate and high quality speech and language therapy provision. The service will ensure effective assessment, treatment and support, for both children and their families, and will support school based staff to develop classroom strategies to assist children with communication difficulties. Each child is assessed to ensure that interventions are appropriate to specific individual needs. Current service users are representative of the ethnic and cultural diversity in Brent.
- 6.5 The aim of the early years provision of this service is to support children's readiness for school through support to effective parent/child interactions that encourage appropriate communication development. As a non-statutory early intervention service, we are especially keen to see improvement in the skills of practitioners working with very young children and parents to identify potential communication needs with children, encourage evidence based approaches to supporting parent/child interactions that promote effective communication development and to engage children and parents in any specialist intervention as quickly as possible at the earliest possible stage.
- 6.6 We recognise that the early years programme incorporates a mix of group based work and individually tailored programmes that are developed and implemented in children's centres, community venues and through home based interventions using appropriately skilled and qualified practitioners working alongside and supporting children's centre and early years paid and volunteer practitioners.

7.0 Staffing/Accommodation Implications

- 7.1 Speech and Language Therapy Services are currently being provided by external providers and there are no implications for Council staff arising from this tendering exercise.
- 7.2 Where the award of contract/s is made to one or more new providers other than the incumbent; the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) may apply so as to transfer from the current providers to the new, those employees of the incumbent provider. TUPE implications will be considered by Officers as part of the procurement exercise and TUPE information will be made available to bidders if appropriate to enable tender prices to be compiled. Where a collaborative procurement is followed, then appropriate provision will have to be made within the procurement for TUPE considerations; it may be that any additional costs of complying with TUPE cannot be included in the procurements of the frameworks but will be addressed at call off stage.

8.0 Public Services (Social Value) Act 2012

- 8.1 Since 31st January 2013, the council, in common with all public authorities subject to the EU Regulations, has been under duty pursuant to the Public Services (Social Value) Act 2012 to consider how the services being procured might be structured to 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 applies to the procurement of the proposed contract as Part B Services over the threshold for application of the EU Regulations are subject to the requirements of the Public Services (Social Value) Act 2012
- 8.2 The market for these services is highly specialised and limited which narrows the opportunities available to the Authority in terms of the requirements of the Act. Officers, however, will throughout the new procurement exercise take account of its provisions and seek to implement these as appropriate.

Background Papers

- Executive Report titled ‘Renewal of existing contracts for the delivery of Speech and Language Therapy Service to Key Stage 1&2 and Key Stage 3&4 for pupils in mainstream Brent schools’ dated 12th November 2012.
- Executive Report titled ‘Renewal of existing contracts relating to services at Children’s Centres for the delivery of Speech and Language Therapy and Independent Advice, Information and Guidance to Brent Families with children aged under 5 years’ dated 11th February 2013.

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