

Sandwell Metropolitan Borough Council

**Action Taken Under Delegated Powers – Exemption from
Procurement and Contract Procedure Rules**

Flying Starts Nursery

1. Summary Statement

- 1.1 An exemption is being sought in accordance with Rule 15 of the Contract Procedure Rules to directly award a contract for the provision of Flying Starts Nursery for a period of 4 months.
- 1.2 Flying Starts Nursery is currently delivered by Murray Hall Community Trust. It is part of Lot 3 of the Children's Centre contract for Rowley.
- 1.3 The Children's Centre retendering, now known as the family offer, did not include the nursery provision. The nursery provision was extracted from the Family Offer tender and advertised separately as a service concession contract.
- 1.4 The service concession contract was advertised in line with Contract Procedure Rules however there were no tenders submitted.
- 1.5 Following the closing of the tender process without any bids contact was made with providers that had expressed an initial interest and they advised that they did not submit a bid due to the liabilities related to the staff group and the fact that the nursery was currently operating at a loss.
- 1.6 The current contract for the provision of the nursery will end on 31st March 2017. Due to the unattractive nature of the business opportunity it is unlikely that any providers will be willing to take on the running of the nursery if we were to re-advertise the service concession contract.

- 1.7 The directly awarded contract will provide a continuity of provision for service users until the end of the 2016/17 academic year. The contract value will be equivalent to the projected deficit for the 4 month period, not more than £10,000.
- 1.8 The period of the direct award will be utilised to undertake the necessary steps to close the nursery and ensure that any children that utilise the provision will have places post July 2017.
- 1.9 The contract falls below the EU Light Touch Regime threshold being health and social care related and is considered not likely to generate cross border interest and therefore is not required to be advertised in the Official Journal of the European Union.
- 1.10 The risk of directly awarding a new contract is that the decision to do so could be potentially challenged as an unlawful extension of the original contract and argued not to be permissible under the Public Procurement Regulations 2015.
- 1.11 The risk detailed in paragraph 1.6 above can be mitigated to an extent based on the new contract being for a short period of time.
- 1.12 The Procurement Services Manager has been consulted during the production of this report.
- 1.13 Legal Services have been consulted and have advised on the proposals in this report. They have advised that liability for redundancy payments sits with the Council; the approximate cost of this will be £17,000.
- 1.14 In accordance with the Council's Procurement and Contract Procedure Rules (Rule 15), any exemption request must be approved by the Cabinet Member for Core Council Services having been endorsed by the Section 151 Officer.

2 Recommendation

- 2.1 That a contract is directly awarded to Murray Hall Community Trust for the provision of Flying Starts Nursery for a 4 month period from 1 April 2017 until 31 July 2017 at a cost of up to £10,000.
- 2.2 That the Council enter into sign and seal, the necessary agreements and associated documents required in order to execute the identified contract in 2.1 above.
- 2.4 That any necessary exemptions be made to the Council's Procurement & Contract Procedure Rules to enable the course of action referred to in 2.1 and 2.2 above to proceed.

In accordance with the Council's Procurement and Contract Procedure Rules, I intend to take the action(s) recommended above.

I ~~do~~ do not have an interest to declare in this matter


Jim Leivers
Interim Director of Children's Services

Date

Darren Carter
Executive Director of Resources

Date : 30-3-2017


Cllr Trow
Cabinet Member for Core Service.

Date: 30 MARCH 2017

Contact Officer

Mandip Chahal, Interim Resources Manager, Children's Services
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2 Procurement Implications

- 2.1 Flying Starts Nursery was originally procured in line with contract procedure rules for the period 1st July 2012 to 31st March 2015 with an option to extend the service for a further 2 year period.
- 2.2 There are no further options to extend the existing contract. Therefore it is proposed to directly award a new contract for the provision of Flying Starts Nursery.

3 Legal and Statutory Implications

- 3.1 The contract falls below the EU Light Touch Regime threshold being health and social care related and is considered not likely to generate cross border interest and therefore is not required to be advertised in the Official Journal of the European Union.
- 3.2 The risk of directly awarding a new contract is that the decision to do so could be potentially challenged as an unlawful extension of the original contract and argued not to be permissible under the Public Procurement Regulations 2015.
- 3.3 The risk detailed in paragraph the above can be mitigated to an extent based on the new contract being for a short period of time to allow service closure.

4 Background Details

- 4.1 Flying Starts Nursery is currently delivered by Murray Hall Community Trust. It is part of Lot 3 of the Children's Centre contract for Rowley.
- 4.2 The Children's Centre retendering, now known as the family offer, did not include the nursery provision. The nursery

- provision was extracted from the Family Offer tender and advertised separately as a service concession contract.
- 1.15 The service concession contract was advertised in line with Contract Procedure Rules however there were no tenders submitted.
 - 1.16 Following the closing of the tender process without any bids contact was made with providers that had expressed an initial interest and they advised that they did not submit a bid due to the liabilities related to the staff group and the fact that the nursery was currently operating at a loss.
 - 1.17 There are 5 staff currently employed by the nursery.
 - 1.18 The Ofsted registration to deliver the nursery provision is held by Murray Hall Community Trust. An alternative option considered would be to transfer the operation of the nursery to the Council however the transfer of the Ofsted registration could not happen in a timeframe to allow continuity of service from 1st April 2017.

Source Documents

(Do not list documents which contain exempt information).

