

Executive Decision report

From: Andrew Ireland, Corporate Director, Families and Social Care
Mark Lobban, Director of Strategic Commissioning

To: Jenny Whittle, Cabinet Member, Specialist Children's Services

Decision No: **13/00078**

Subject: **Children's Centre Single Source Tender**

Classification: **Unrestricted**

Past Pathway of Paper: N/A

Future Pathway of Paper: Cabinet Member decision

Electoral Division: Canterbury City North East, Dover North, Folkestone South, Hythe, Margate and Cliftonville, Sevenoaks Central, Sevenoaks West, Sheerness

Summary: This report provides detail on the current commissioned Children's Centres in Kent. It presents evidence in favour of a decision to allow the current providers to continue to deliver services for a further year through a single source procurement exercise.

Recommendation(s):

That the Cabinet Member for Specialist Children's Services agree that a single source tender is carried out on the eight commissioned Children's Centres with a one year contract being put in place from April 1st 2014 – 31st March 2015.

1. Introduction

- 1.1 Kent County Council currently commissions seven organisations to deliver eight Children's Centres in Kent. Arrangements with these current providers take a variety of forms including contracts, grant agreements and service level agreements. All contracts have been extended on a rolling basis for a minimum of the last two financial years. Existing arrangements are due to end on 31st March 2014.
- 1.2 In order to fully consider the implications of Facing the Challenge, the whole Council Transformation Plan, the development of a 0-11 children's strategy and our approach to wider scale commissioning, it is recommended that we undertake a single tender action to maintain service delivery from our current service providers for one year from 1st April 2014 – 31st March 2015.
- 1.3 It should be noted that Children's Centres are currently undergoing a Future Service Options review. A full public consultation ended on 4th October. A decision on the future of the service is expected in December. Timescales regarding arrangements for any Commissioned Children's Centres need to align with this review.

2. Financial Implications

- 2.1 Children's Centres have a current (2013/14) budget of £15.9 m, a percentage of this is spent on the commissioning of eight externally provided Children's Centres.
- 2.2 Any costs incurred in either a single source tender or a competitive procurement process would be broadly comparable. The budget for each Children's Centre will be based on a funding formula agreed by SCS DMT on 27th March 2013 which is based on deprivation and number of 0-4 years olds within Centre catchment areas.
- 2.3 Children's Centre budgets have yet to be set for 2014-15, pending the decision on the "Shaping the Future of Children's Centres in Kent" consultation and the results of the KCC budget consultation.
- 2.4 Budget savings of approximately £2.0m are proposed in 2014/15. Any savings figures will be applied across all Centres regardless of status.
- 2.5 In the case of a procurement exercise that resulted in all eight Centres contracts being delivered by the same provider, some financial savings could potentially be made.

3. Bold Steps for Kent and Policy Framework

- 3.1 At the heart of **Bold Steps for Kent** is the need to change the way we work, not only to improve our own services, but also to reflect the changing shape of wider public services. Increasingly, those directly responsible for delivering front line services will be empowered to design and commission services that better fit the needs of parents, children and communities. Therefore, we must adopt an approach that is both inclusive and sees prevention and intervention as a continuum so that it is never deemed too late to positively intervene and prevent the deterioration in an individual child or young person's circumstances.
- 3.2 KCC's Transformation Programme, **Facing the Challenge**, sets out KCC's commitment to meet the financial challenges (£330m between 2014/15 - 2017-18) faced by KCC over the medium term . This includes the integration of early intervention and prevention service provided to families and children aged 0 – 11 to create a single coherent service, focusing on early intervention and prevention, to reduce demand in education and children's social services by helping families earlier, improving parenting skills and the health and educational outcomes of young children, ensuring they are ready for school and being able to identify and intervene early to support families in crisis.
- 3.3 **The Kent Children's Centre Strategy 20-13 – 2016** formalises agreed principles to ensure that KCC continue to deliver high quality services through strong local partnerships that meet the needs of children and families, The strategy details the role of the Children's Centre's Future Service Options Programme in supporting the delivery of a number of strategies including the 0-11 Integrated Strategy and Early Intervention and Prevention Strategy.

4. Commissioned Children's Centre Options

4.1 Background information

4.1.1 Current model

There are 97 Children's Centres across Kent. Eight of these are commissioned centres, provided by seven organisations across the county. The remaining 89 are provided directly by KCC.

The current model of operation dates back to the inception of the Children's Centre Programme in Kent. As each centre site was developed, scoping activity took place to establish the possibility of existing providers, within the local community, expanding already existing levels of service delivery to encapsulate the Core Offer for Children's Centres.

Where locally no providers were delivering services, the Children's Centre Development Team, who were responsible for delivering the capital programme and ensuring effective service delivery within the new centres, sought out other opportunities, for example placing centres on existing school sites, co-locating sites with Health, and creating new sites.

The table below shows Centres that are currently commissioned. These Centres have historically received a disproportionately high amount of the Children's Centre Budget.

Table 1: Children's Centres in Kent that are currently commissioned

Children's Centre	District	Service Provider	2012/13 Annual Value of Contract	2013/14 Annual Value of Contract
Riverside CC	Canterbury	Canterbury City Council	Restricted	
Folkestone Early Years Centre	Shepway	Action for Children		
Hythe Bay CC	Shepway	Hythe Bay Primary School		
Millmead CC	Thanet	Millmead Children's Centre Partnership Ltd		
Seashells CC	Swale	Children & Families Ltd		
Snowdrop (Aylesham) CC	Dover	Aylesham Neighbourhood Project		
Spring House (Sevenoaks Central)	Sevenoaks	Spring House Family Service		
Westerham CC	Sevenoaks	Spring House Family Service		
SUBTOTAL				

Due to the way in which the Children's Centre Programme was established the providers of the 8 Commissioned Centres were not subject to a competitive procurement process and various agreements with different terms and conditions are in place as detailed below:

Table 2: Commissioned Children’s Centre Agreements

Centre	District	Agreement type	Original ‘contract’ dates	Notice / Termination periods
Riverside CC	Canterbury	SLA	Restricted	Restricted
Folkestone Early Years Centre	Shepway	Contract		
Hythe Bay CC	Shepway	SLA		
Millmead CC	Thanet	TBC		
Seashells CC	Swale	Grant Agreement		
Snowdrop (Aylesham) CC	Dover	Contract		
Spring House / Westerham CC	Sevenoaks	Grant Agreement		

In the intervening years since 2008, a considerable number of changes have been made to the Sure Start Statutory Guidance, Early Years Foundation Stage framework and Ofsted Inspection framework for Children’s Centres. As such the existing agreements in place with these seven providers are out of date.

As part of the future service options review of Children’s Centre services the eight commissioned Centres have been discussed at a number of governance groups since May 2013. These groups considered options for the Centres in line with the wider remodelling of services and the importance of ensuring a longer term solutions for the service.

4.1.2 Proposals considered

A number of proposals have been considered to support a short term holding position to allow for the development of an integrated 0-11 strategy, of which Children’s Centres will be part, and provide time to finalise wider plans prior to a decision on the longer term delivery model or all Children’s Centres to be taken in 2014.. Three options have been considered:

- i. Continue existing arrangements for a year through a Single Tender Action or other form of Agreement to allow time for development of the 0-11 strategy.
- ii. Undertake a competitive procurement process for the existing eight commissioned centres only
- iii. Bring all commissioned centre back “in-house” under KCC management from June 2014 to give more flexibility in the delivery of the 0-11 integrated strategy

4.1.3 Engagement with Commissioned Centres to date

During June and July meetings were held with each of the commissioned Children’s Centres to discuss the “Shaping the Future of Children’s Centres in Kent” consultation and potential future commissioning options, including procuring services through a Dynamic Purchasing System.

To remain Compact compliant, letters were sent to Commissioned Centres on 4th October 2013, advising managers of the start of a consultation period. The letter seeks their views on a number of options, including extending their service with a

reduction in funding, bringing the service “in-house” with KCC assuming responsibility for delivery and putting the Centres out to public tender.

The consultation period will end on 6th December, giving sufficient time for responses to be analysed prior to a decision on the “Shaping the Future of Children’s Centre” consultation being made. Service providers will need to be notified at the latest the week commencing 6th January in order to give them three months written notice of any changes to arrangements.

4.2 Options considered

4.2.1 Do nothing

Against

Current contracts expire on 31st March 2014, therefore doing nothing is not an option. In addition the arrangements with current providers take a variety of forms including contracts, grant agreements and service level agreements. The change in Ofsted requirements and the statutory guidance for Children’s Centres means contracts and specification for the services these providers deliver urgently need to be refreshed.

4.2.2 Renew contract through single source

For

Renewing the contract through a single source would also provide the flexibility for the Council to consider the full portfolio of Children’s Centres as part of the wider Transformation programme and fully assess the implications of the integrated 0-11 strategy, ensuring Children’s Centre services were embedded within this.

The current seven Children’s Centre providers are trusted, locally established, community integrated providers of services for 0-5 years olds and their families. Renewing their current contracts through a single source would ensure continuity of provision for children and their families through what will be a wider period of transition for services and Children’s Centres in particular.

Of the eight Children’s Centres that are currently commissioned, five of the buildings are owned by the service providers. If these providers were not successful through a competitive procurement process, the Children’s Centre accommodation may have to change. Renewing the contract through a single source would ensure continuity of provision from the same location.

It would allow extra opportunity for officers to negotiate savings and pilot a revised service specification for the current eight Children’s Centres and ensure centres were focused in line with the revised Ofsted framework, statutory guidance and ensure there is a strong concentration on outreach and supporting the most vulnerable families.

Procuring the eight centres through a single source would present the opportunity to pilot a redesigned service specification that would be worked to by the eight centres in question. In particular it would enable services to be specified to ensure with more targeted families to fall in line with the updated Ofsted inspection framework released in March 2013.

The 0-11 strategy is due for completion in April 2014 and will significantly impact on the future direction of Children's Centres and the services they provide. Procuring the service through a single source for one year will ensure the council is able to remain flexible to any changes in the future and would allow the Council to more fully consider the implications of the 0-11 strategy and how Children's Centres could be meaningfully integrated into this strategy in the longer term.

The top tier realignment paper, dated 14th October 2013, outlines a provisional structure that places 0-11 Integrated Services within a new people based services Directorate: Education and Young People services. Further detail regarding where Children's Centres may be located within any new structures may affect future commissioning decisions. As such a one year single source procurement will ensure the council remains flexible to any future transformational changes.

By tendering all the eight Centres together in the future we would have a greater chance of making efficiencies to the budget.

Against

The current combined value of these services totals over £1,000,000¹ - this is likely to be less in 2014/15. These contracts have not been openly tendered and as such the council may be subject to challenge for restricting open competition.

4.2.3 Go out to Tender

For

Going out to tender would ensure KCC is legally compliant as per section 3 above. A Dynamic Purchasing System was approved for creation in July 2013, for use in procuring Children's Services. It is recommended good practice, when procuring services in such a manner, that providers are given a minimum of 2 – 5 year contracts, the DPS would provide a process through which this could be implemented.

Against

Providing a 2-5 year contract could delay the full integration of the eight commissioned Children's centres into wider plans for Children's services in KCC. Any future transformation plans that might consist of bring all Centres back under KCC management or alternatively putting all centres out to open competitive procurement would thus be delayed.

The next year will be one of significant change management for services which may incur costs. Procuring at this stage for one year is likely to deter many providers. Tendering now would also limit the potential for savings by reducing the scope for making economies of scale. As the Centres are spread across the county the eight centres may not attract bids from the widest range of providers. The future 'commissioning' of the current 8 commissioned centres is also complicated due to building ownership. 5 buildings are owned by service providers. If these providers were not successful through a competitive procurement process, the Children's Centre accommodation may have to change.

¹ Precise value restricted information

4.2.4 Use a current framework

Against

The current Early Intervention and Prevention framework is a closed framework and was not widely advertised to Children's Centre service providers when it was created in August 2011. As such using this framework would not enable the correct calibre of providers to tender for the services required.

4.3 Legal implications of the suggested action

4.3.1 The Council's default position regarding competition is stated in the guidance document "Spending the Council's Money", Chapter 9. It states:

"The Council's preferred, and thus default, position is that competition is required for all purchases. As a consequence occasions where competition can be avoided must be treated as exceptions requiring authorisation and reporting above that normally required for a purchase of that size.

For a procurement to be classed as competitive at least three, legitimate, suppliers must have been invited to submit a response. This section applies where there is no plan to invite competition. It does not apply where appropriate competition has been properly sought but only one, or two, suppliers submit a response.

Additionally, the Treaty of Rome requires that competition will be part of the overall procurement approach to securing works goods and services. The Treaty of Rome obligations override specific EU Directives and UK legislation and it is therefore possible that contracts below the EU Directives financial thresholds could be challenged where the European Commission feels that competition has been stifled.

Competition is not compulsory where:

- goods or services are purchased internally, i.e. from within the Council or a Council owned company; or*
- urgent works, supplies or services are necessary for the immediate protection of life or property, or to maintain the immediate functioning of a public service for which the Council is responsible; or*
- works, supplies or services are required which must be provided by a public utility, a local authority other than the Council or a similar body in pursuance of their statutory powers; or*
- works, supplies or services are estimated to cost less than £8,000; or*
- the purchasing of adult and children's services are required by law under the National Assistance Act 1948 and the Children Act 1989. Alternative processes are set out in Directorate Operational Procedures; or*
- Property Group purchase or sell land or property; or*

- *the Chief Executive or Managing Director has decided that special circumstances exist.*

The Chief Executive and Managing Directors are free to determine the management processes and levels of delegation around non competitive procurements appropriate for their directorate.

*However they should, in determining these arrangements, consider the impact of the mandatory reporting requirements detailed in Chapter 13 - **Contract Award**. With the reporting required after the contract has been awarded there is no opportunity at that stage to revisit a decision.*

'Special circumstances' are unlikely to exist where it is claimed that:

- *only one firm is capable of supplying if;*
 - o *there is no evidence of reasonable research of the market supporting this; and*
 - o *the opportunity was not advertised on the South East Business Portal; or*
 - o *the requirement was written specifically to exclude competition; or*
 - o *an evaluation took place prior to competition being sought that excluded potential suppliers.*
- *prices or costs would be negatively impacted. Irrespective of indicative or published prices the only way of determining the price the Council will pay is by competition. Factors other than their costs, i.e. obtaining market share, may influence a firm's offer.*
- *there is an urgent need if the timescales were within the Council's control. Failure to adequately plan or act is not usually sufficient justification to avoid competition."*

4.3.2 In such circumstances Procurement would recommend a competition to establish best value. The Director takes sole responsibility for the decision to pursue a non-competitive process and has taken the view that on balance the business risks outweigh the procurement risks.

4.4 Decision making process

4.4.1 As a result of the proposal to procure the Commissioned Centres through a single source there will be no significant changes to service providers nor should there any impacts on service users or the wider community. As such this judgement has been selected as falling within the scope of a Member decision rather than needing to go to Cabinet Committee.

4.5 Equalities implications of the suggested action

4.5.1 There will be no negative equalities implications for the suggested action as it is suggested that current providers continue to deliver services. There is the potential for a positive impact on service users with protected characteristics as service level agreements will be revised and strengthen enabling services to be targeted and outreach developed into those communities most in need.

4.6 Implications for the council's property portfolio of the suggested action

4.6.1 Of the eight commissioned centres, five buildings are owned by service providers. If these providers were not successful through a competitive procurement process, the Children's Centre accommodation may have to change, potentially impacting on business continuity for service users and the council's property portfolio as additional accommodation would be required.

4.6.2 Renewing the centres contracts through a single source would have no impact on the council's property portfolio.

4.7 Delegations via the Officer Scheme of Delegation

4.7.1 A contract for each provider would need to be signed by Mark Lobban, Director, Strategic Commissioning

4.8 Risk

4.8.1 A non-competitive procurement route has been recommended for this requirement. However, there remain some risks that must be taken into consideration and the likelihood of these will vary depending on a number of factors, such as contract value, market specifics, appetite and readiness of competition, as well as the potential cost (to the complainant) of any potential litigation.

- This requirement will not comply with the Council's own guidance contained in "Spending the Council's Money"
- A single tender action does not comply with the EC Procurement Directive, the Treaty of Rome and associated legislations should still apply
- The transparency requirements of Central Government mean that any invoice in excess of £500 is publically available, along with this document
- Previous court cases involving public sector organisations for non-compliant procurements set precedent and clearly indicate that the risk is apparent and the impact (if such a challenge were to be successful) may include the contract being found to be ineffective and thus cancelled, subsequently requiring a re-procurement (of a fully compliant nature) along with the imposition of a fine (of unknown amount) and/or award damages to the complainant.
- An FOI enquiry could be received requesting details of the decision that may lead to a subsequent complaint.
- From initial discussions, existing providers are keen to continue with their service offer however a new resource model has been agreed from 2014/15. This is likely to impact on the level of individual Centre funding and therefore some existing providers may feel unable to continue to deliver the service.

4.8.2 In most previous single-source procurements, any supplier complaint has been robustly managed and potential complaint has been averted, however, it should not be assumed that this will always be possible.

5. Conclusions

- 5.1 Single source procuring the eight commissioned children's centres would present the opportunity to maintain service continuity and pilot a redesigned service specification that would focus services on more targeted families to fall in line with the updated Ofsted inspection framework released in March 2013.
- 5.2 The 0-11 strategy is due for completion in April 2014 and the top tier realignment paper, dated 14th October 2013, outlines a provisional structure that places 0-11 Integrated Services within a new people based services Directorate: Education and Young People services. Procuring a service through a single source for one year will ensure the council is able to remain flexible to any changes in the future and more fully consider the implications of the transformation and integration into the 0-11 strategy longer term.
- 5.3 It is recommended that a single source tender is carried out on the eight commissioned Children's Centres with a one year contract being put in place from April 1st 2014 – 31st March 2015. However, it should be considered that further detail with regards to structure and finance is subject to the decision regarding the "Shaping the future of Children Centres in Kent" consultation, which is expected in December 2013.

6. Recommendation(s)

Recommendation:

The Cabinet Member for Specialist Children's Services is asked to agree that a single source tender is carried out on the eight commissioned Children's Centres with a one year contract being put in place from April 1st 2014 – 31st March 2015.

7. Background Documents

- 7.1 Spending the Council's Money.

http://www.kent.gov.uk/business/growing_your_business/business_opportunities/selling_guide.aspx

8. Contact details

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