

Committee: Cabinet

Date: 15th February 2016

Wards: All

Subject: Merton Adult Education: Commissioning

Lead officer: Simon Williams, Director of Community and Housing

Lead member: Councillor Martin Whelton, Cabinet Member for Education

Contact Officer: George Gilvear, Project Manager – Merton Adult Education Commissioning

Recommendations:

- A. That Cabinet note the progress made so far in moving to a commissioning model for adult education and specifically the procurement process.
 - B. That Cabinet agree to proceeding with Contract Awards on the basis set out in 2.4 and detailed in Appendix 1.
 - C. That Cabinet agree to proceeding with remaining services in the way proposed.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. Subsequent to the Cabinet decision on the 16th February 2015 to move to a commissioning model for adult education, officers have been working to implement that decision.
- 1.2. This paper provides an update of progress made so far including the outcomes of the initial procurement process and seeks approval to proceed to the next stages.
- 1.3. Five separate Lots were put out to tender on 4th November 2015 with a closing date of 4th December 2015. The Lots were:
 - Lot 1 Main Services: indicative value £800,000
 - Lot 2 Employability Services: indicative value £18,000
 - Lot 3 Learners with Learning Difficulties and Disabilities (LLDD): indicative value £92,000
 - Lot 4 Adult Apprenticeships: indicative value £34,000
 - Lot 5 Family Learning: indicative value £45,000
- 1.4. At this stage we would propose to award contracts for Lots 1, 2 and 5 where we have received satisfactory bids.
- 1.5. We are exploring further options for commissioning Lot 4 including integration with Lot 1 at a later stage or commissioning separately under a lighter procurement process.
- 1.6. We received one bid for Lot 3 LLDD provision, which did not meet the evaluation criteria. We propose to engage further with the market and develop a way forward to ensure that good quality provision is put in place.
- 1.7. In summary, overall progress is on track with additional effort being put in to ensure that an appropriate LLDD solution is developed such that all services can be transferred by the end of July 2016 in time for the 2016/17 academic year. Contingency plans are in place for all Lots as part of the project governance.

2 DETAILS

- 2.1. The tendering process concluded on 4th December 2015. Bids were received for each Lot except Lot 4. Seven bids were received in total but two were eliminated based on pass/fail criteria. Details of the five compliant bids are attached at Annex 1
- 2.2. A team of four evaluators has evaluated the bids:
- Head of Adult Education
 - Service Manager Adult Learning
 - Business Partner - Community & Housing
 - Project Manager – Adult Commissioning
- 2.3. Each evaluator scored the eligible bids using the assessment criteria and weightings that were set out in the ITT documentation. Three bids scored very highly against Lots 1, 2 and 5. The evaluation of Lot 1 also included a presentation and site visit stage.
- 2.4. Based on the evaluation process we would propose to proceed to contract award stage for the highest scoring bidders for these Lots. The contracts will be for three years with options to extend by up to two years. The funding will be allocated on an annual basis in line with the funding allocations received from the Skills Funding Agency.
- 2.5. Despite very high levels of interest in the smaller Lots 2-5 with over 50 expressions of interest logged on the Procurement Portal, by comparison the number of tenders was low.
- 2.6. It is likely that the financial liabilities attached to the service, wider uncertainty around future funding and the robust requirements around locally based provision were barriers to potential providers. This is particularly so for Lot 3 LLDD provision where providers may struggle to ensure financial viability as a standalone service.
- 2.7. We propose to engage immediately after the standstill period in further market testing with a number of local organisations who expressed interest in Lot 3 who did not proceed to bid.
- 2.8. The aim of this market testing stage is to understand more fully the perceived and/or actual barriers from a supplier perspective and seek to address these in the service specification such that a good solution can be procured.
- 2.9. This approach builds on the strong engagement we have developed with the sector during recent months and there is a strong probability that a viable and high quality offer can be developed and procured by end of April 2016. This would allow a 3-month transition period before service take-on by the new provider and 4 months before learners transferred.
- 2.10. For Lot 4 - Adult Apprenticeships, we did not receive any bids but this does not present any major risk from a commissioning perspective. Apprenticeships have previously been delivered under a sub-contract model and there will be no learners in place at the time of transition. Equally, there are no staff directly involved in delivery and no TUPE implications. We are also reviewing the market potential for Adult apprenticeships such that we might increase our modest provision in this area.
- 2.11. It proposed to procure Adult Apprenticeship provision for 2016/17 either by conjoining it with other provision or by running another procurement commensurate with the contract value and procurement guidelines.

Ofsted Inspection

- 2.12. Merton Adult Education was subject to an inspection on 17-20th November 2015 linked to the move to a commissioning model. Each area of assessment and the overall assessment was rated as “requires improvement” although some areas of good practice were also identified.
- 2.13. The report highlighted as a strength the Council’s approach to commissioning and the consultation processes in particular.
- 2.14. Many of the issues identified by the inspectors have been picked up and reflected in the Invitation to Tender documents. This includes the need for improved progression for LLDD students and the need to rebalance the accredited and non-accredited provision.
- 2.15. However, the report is useful in highlighting other developments that need to be delivered through the commissioning process such as better setting of learning targets/outcomes, better evaluation of learning and teaching and higher levels of achievement.
- 2.16. The Commissioning Team will ensure that these improvements are embedded in the detailed contract negotiations and contract monitoring arrangements going forward.

Commissioning Principles

- 2.17. When approving the move to a commissioning model of adult education Cabinet agreed a number of commissioning principles. The procurement process has sought to adhere to and deliver against these principles and a brief commentary against each is provided below:

- (i) That commissioning should look to continue the same breadth of courses currently provided. This does not mean that the courses must be the exact same year to year as needs change but that the breadth and variety should be maintained.

We set out broad subject areas and indicative numbers in the ITT documents and received outline curricula that can offer most of what we already do but also includes a wider range of interesting and exciting learning opportunities for the residents of Merton that are not currently available.

- (ii) That courses should continue to be delivered within the borough

This was an ITT stipulation with the exception of Work Based Apprenticeships where we stipulated easy travelling distance. All future provision apart from some Work Based Apprenticeships will take place in the borough.

- (iii) That the economic development and skills agendas of the council should be prevalent through the commissioning process

This was implicit in the procurement process but will become more explicit as we finalise course details with providers to reflect the Skills Funding Agency priorities and the emphasis on skills and employability objectives highlighted by Ofsted.

- (iv) That TUPE regulations will be followed and every effort made to retain the highly valued tutors.

TUPE applies as a matter of law to all employees and detailed analyses have already been undertaken of employee liabilities to inform further discussions with providers.

- (v) That the environment and support of each provider should be assessed as part of the commissioning process

This is clearly set out in the ITT documents and thoroughly assessed through the rigorous evaluation processes. It remains a central criterion as we seek alternative LLDD provision.

- (vi) That adults with disabilities and their carers should be involved in the commissioning process for courses specifically tailored for them

We have engaged with learners and carers throughout the process through a variety of formal and informal channels. Stakeholders were consulted on the drafting of the service schedule for LLDD provision and will remain involved in key stages as we seek to develop the new service.

- (vii) That discussions about the provision of facilities for art and craft courses should involve user representatives from those courses

The ITT, whilst not mandating any specific courses, has specifically encouraged the continuation of specialist arts such as stained glass, pottery and upholstery through asset transfer. This position has been communicated to learners and staff through various channels including noticeboards, website, presentations and newsletters.

- (viii) That a focus on wellbeing and aging well and on helping learners to gain employment should be key elements of the commissioning process to go alongside any focus on qualifications and learning

The future curriculum will have a balance of vocational and non-vocational, accredited and non-accredited learning with an increased focus on outcomes.

- (ix) That hobbies, crafts and non-vocational skills courses should still be commissioned in line with SFA funding

These courses will continue to form part of the course offer.

- (x) That fees should be set by the council as part of the commissioning process and controlled accordingly

We propose to follow best practice and allow the providers to set their own fee structures to broaden the offer and reflect their own cost structures. This flexibility will be a key instrument for providers to vary the degree of subsidy between different types of provision to ensure best value and maximum participation. The Council will monitor providers' fee structures closely including concessionary pricing.

- (xi) That effort should be made to ensure provision is spread around the borough and not just located at one site, although quality and cost will remain key considerations.

This is a central element of the procurement process although it has to be recognised that certain aspects of provision lend themselves more to decentralised, outreach delivery than others. For example, we are looking for LLDD provision to be at a largely fixed point of delivery whereas Family Learning is largely distributed local delivery.

- (xii) That, where possible, services should be commissioned with not-for profit organisations.

We have encouraged and received bids from all types of organisations and given them equal status. However, the initial 3 Lots recommended for contract award in this paper would be provided by non-profit organisations.

- (xiii) That the outcomes for learners should be closely monitored to ensure that job prospects, well-being, support for vulnerable learners and safeguarding aspects are all considered as part of the commissioning cycle.

As previously mentioned this aspect of the service will be significantly strengthened through the commissioning process and we will work with stakeholders to improve standards.

3 ALTERNATIVE OPTIONS

3.1. As described above a number of options have been considered to deliver this procurement exercise, and officers have taken procurement advice and followed OJEU guidelines to ensure that the appropriate decision is made.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. Consultation has taken place with the public before the Cabinet decision as relates to the model of adult education. Further consultation and engagement has taken place with stakeholders (learners, staff, interest groups) throughout the commissioning process. This has included a number of invited focus group meetings and open presentations. Feedback from these engagements has fed in to the final service specification.

4.2. Formal consultation with staff will take place as part of the TUPE process.

4.3. Informal consultation, communication and dialogue will continue with stakeholders as the commissioning process moves forward.

5 TIMETABLE

5.1. There are a number of key actions to move the commissioning process forward.

5.2. If Cabinet approve the proposed award of contracts for the initial three lots, we will issue a notice of contract award and initiate the standstill period. Thereafter, and on the basis there is no challenge, we will proceed to negotiate the final scope of the contracts for 2016/17 including detailed work around funding, curriculum and staff transfer.

5.3. We are expecting to receive notice of our 2016/17 funding from the SFA in mid-February, which will facilitate the above.

5.4. Following announcements of the selected providers, there will be a series of engagements with staff and students on the implications for them and the next stages of the commissioning process.

5.5. We will continue to develop, as a matter of urgency, a solution to the LLDD provision and take that through the necessary governance and approvals processes as quickly as possible.

5.6. As contracts are agreed, we will begin the detailed processes around transition, working closely with the appointed providers to ensure a smooth transition to the new service.

5.7. Contract extensions, if exercised after the initial 3 year period, will be approved under delegated responsibility by the Director of Community and Housing following a review of performance.

Cabinet Approval	15 th February 2016
Contract Award notice	17 th February 2016
Standstill period	10 days
Contract Negotiations	29 th February
SFA Funding Notice 2016/17	Mid- February
Service Transfer	1 st August 2016

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are funding challenges for the service. The Skills Funding Agency have made significant in year budget cuts. There could be further cuts in 2016/17 and future years as a result of the outcome of the Comprehensive Spending Review.
- 6.2. MAE is currently forecast to over-spend by £278k.
- 6.3. The summary of Skills funding agency funding for 2015/16 are detailed in the table below:-

Maximum Contract Values	Aug 15 - Mar 16	Apr 16 - Jul 16	Total
Adult Skills ASC-2621	£330,326	£223,594	£553,920
<i>of which must be used for 19+ Apprenticeships</i>	£8,845	£5,761	£14,606
Community Learning CL-2400	£525,585	£262,793	£788,378
Discretionary Learner Support DLS-2631	£13,087	£4,538	£17,625
24+ Advanced Learning Loans Bursary ALLC-2141	£13,330	£4,443	£17,773
Total Funding for this contract			£1,377,696

- 6.4. Current identified employee liabilities that will be incurred by the Council as a direct result of the transfer, in year restructuring and the cessation of Adult Learning at Whatley Avenue (the site will not be used by commissioned providers as agreed at Cabinet 14th September 2015) are approximately £75,000.
- 6.5. Depending on the final course offer of the winning providers and any future grant cuts from the Skills Funding Agency there may be further financial impacts if there are redundancies or additional pension liabilities. These liabilities have been assessed at approximately £630,000 in total. Given the uncertainty around SFA funding and year to year funding agreements with providers the Council's current proposal, in line with normal commercial practice and to provide some mitigation of risk, is to indemnify future providers for up to 50% of this amount if there is any major restructuring required after the first year of the contract. Some of these liabilities may be realised pre-transfer and incurred by the Council.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The main statutory basis for the adult education service is section 15B of the Education Act 1996. This section empowers local authorities to secure the provision for their area of full-time or part-time education suitable to the requirements of persons who have attained the age of 19, including provision for persons from other areas. It includes power to secure the provision of training, including vocational, social, physical and recreational training, and of organised leisure time occupation which is provided in connection with the provision of education or training. The authority may do anything which appears to them to be necessary or expedient for the purposes of or in connection with the exercise of their functions under this section. In exercising their functions, the authority must in particular have regard to the needs of persons with learning difficulties or disabilities.
- 7.2. The authority does not therefore have a statutory duty to maintain an adult education service but must in considering whether to provide a service and what service to provide take account in particular of the needs of people with learning difficulties or disabilities.
- 7.3. In considering changes to service provision the council must also have regard to consultation responses and to its Public Sector Equality Duty.

- 7.4. Case law establishes that the Council must not rule out any alternative options prior to consultation and must take the responses to consultation conscientiously into account in finalising any proposals.
- 7.5. The Council's public sector equality duty is set out in section 149 of the Equality Act 2010, which provides that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, foster good relations and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to: (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. Relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- 7.6. To meet the public sector equality duty the authority must assess the risk and extent of any adverse impact of proposals and the ways in which such risk may be eliminated before the adoption of a proposed policy.
- 7.7. When making the decision to move to a commissioning model the council consulted with the public and conducted an Equality Analyses. The outputs from both of these pieces of work were included within the Cabinet report on the 16th February and used as part of the decision making process.
- 7.8. The proposed procurement is for services that fall within Schedule 3 of the Public Contracts Regulations 2015 and accordingly are not subject to the full rigours of the Regulations, but given the overall value of the lots, are subject to the Light Touch Regime and the Councils Contract Standing Orders and procurement must be in compliance with these.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. A detailed Equalities Analysis was included as part of the Cabinet report on the 16th February. We are following the action plan agreed within that report.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. N/A

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. A detailed risk register is being maintained alongside this procurement project.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- 11.1. N/A

12 BACKGROUND PAPERS

- 12.1. Adult Education in Merton - evidence and options for achieving a value for money service – Cabinet Report 16/2/15
- 12.2. Adult Education Commissioning Update – Cabinet Report 14/9/15

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