

WESTMINSTER CITY COUNCIL

STATEMENT OF DECISION

SUBJECT: ALTERNATIVE PROVISION AND BEHAVIOUR OUTREACH CONTRACT

Notice is hereby given that Councillor Timothy Barnes , Cabinet Member for Young People and Learning, has made the following executive decision on the above mentioned subject for the reasons set out below.

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Summary of Decision

1. Recommendations

- 1.1. A contract for the provision of full-time alternative provision (AP) education from Latimer and Beachcroft AP Academies to be directly awarded to Ormiston Academy Trust (OAT).
- 1.2. To waive the Contract Regulations' requirement for competitive tendering prior to contract award to make this direct award for full-time AP to OAT for a period of twelve months from September 2021, with the option to extend the contract for a further period of three years, dependent on a successful negotiation between WCC and OAT. In WCC, the value of the initial twelve-month term for the AP contract is £603,500 and the estimated value of the three-year extension period is £1,906,288.
- 1.3. A contract for the provision of behaviour outreach (off-site managed intervention placements for secondary students from the Westminster Education Centre (WEC) and Golborne Education Centre (GEC) and on-site behaviour interventions for primary pupils) to be directly awarded to OAT.
- 1.4. To waive the Contract Regulations' requirement for competitive tendering prior to contract award to make this direct award for behaviour outreach to OAT for a period of twelve months from September 2021, with the option to extend the contract for a further period up to one year, with a three-month break clause, dependent on a successful negotiation between WCC and OAT and on the outcome of a service review in line with the principles set out in the Bi-Borough Inclusion Strategy ahead of approaching the market with a competitive tender to deliver these services. The value of the initial twelve-month term for the behaviour outreach contract is £244,000 and the estimated value of the one-year extension period is £244,000¹.

¹ There are other targeted elements of the current SLA that would not be included in the proposed contract as they will continue to be purchased through micro-commissioning arrangements, for example children with an AP setting named on their EHC plan taking up special school places.

2. Reasons for Decision

2.1. It is recommended that arrangements are made for the provision of these services in order to meet the following duties:

- The Local Authority has a statutory duty to arrange and fund full time education provision for children and young people who are permanently excluded from school. We are also responsible for children who have had trouble getting a school place and who are placed via the Fair Access Panel (FAP).
- Schools have a duty to arrange and fund education provision for children and young people who receive a fixed term exclusion (from the sixth day). Schools are also responsible for children and young people who are directed off-site for short term interventions to improve their behaviour.

2.2. The provision of these services is currently covered by a Service Level Agreement (SLA), which is set to expire in August 2021. Published guidance does not detail any expectations for whether a contract or SLA should be put in place for this type of service. Over the last few years other LAs have moved away from SLA arrangements for these services in favour of contracts that provide more robust legal assurances and protections². Therefore, it is recommended that these arrangements are formalised under a contract.

2.3. The recommendation to waive the Procurement Code's requirement for competitive tendering and to directly award the contracts to OAT is made because:

- There is a risk that if this contract was to go out to the market with a September 2021 start it would not be attractive to smaller providers who do not already have the backing of the DfE. The current Multi-Academy Trust (MAT) responsible for the delivery of these services on behalf of WCC is in the process of being dissolved, and the transfer of the TBAP academies to OAT by September 2021 is being overseen and managed by the Regional Schools Commissioner (RSC). The TBAP academies are currently loss-making and therefore OAT, as one of the largest MATs in the country, has been identified by the RSC as a provider that will be able to transform the service into one that is financially viable. This will help to provide some much-needed stability to the delivery to this statutory provision.
- Market research has indicated that there are no other AP settings within the borough that would be in a position to deliver the volume of provision that is required to meet need in WCC. In addition to this, there are children and young people living in Westminster who are currently on roll at Latimer and Beachcroft AP Academies. Directly awarding the contract to OAT would ensure continuity for these placements and avoid destabilising children and

² A contract deals with provisions that the SLA does not including Information Governance and information sharing, insurance and indemnity, TUPE, termination provisions, confidentiality, payment provisions, default provisions, premises and property requirements, subcontracting and novation.

young people who are already at risk of poorer educational and life outcomes than their peers.

2.4. The recommendation to include an option to extend the contract for AP education for a period of three years after the initial term is made because:

- As part of their due diligence process, OAT is keen to establish the financial viability of the academies before committing to take them on as the new MAT sponsor. There is a risk that without a commitment from WCC to explore a longer-term arrangement with OAT, their Board of Trustees will not agree to take over the sponsorship of the academies and there will be no provider in place for the 2021/22 academic year.
- There is an ongoing requirement for WCC to invest High Needs Block (HNB) funding into Beachcroft AP Academy, whether or not commissioning arrangements to use this provision are in place. As the academy was previously an in-house PRU it continues to be the duty of WCC to provide the place funding for this setting, at a rate of £10,000 per place.

2.5. The recommendation to include an option to extend the contract for behaviour outreach for a period of up to one year is made because:

- Although likely that the extension period will be asked for, commissioners want the flexibility to vary and extend the contract after the initial period to ensure the service is meeting need and is delivering value for money. Following the development of the Bi-borough Inclusion Strategy (due to be launched during the 2021 Summer term) there are several related areas of work to pilot targeted interventions for children and young people at risk of exclusion. These pilot programmes will commence in September 2021 and the impact of these interventions will not be seen for at least two terms which will not afford enough time to run a competitive procurement based on this learning.

2.6. The level of investment from the HNB into the AP contract reflects a reduction in the per place contributions for managed moves as the referring mainstream schools will be asked to contribute to the cost of delivering these places from September 2021. The onus will be on the new provider (OAT), with support from the Local Authority, to agree future contributions from schools to ensure there is no funding gap for non-statutory provision. This change reflects the ambitions of the inclusion strategy as it is expected to increase accountability for the young people placed into AP. This change will help to ensure that the right placements are being arranged at the right time, that all avenues have been explored before a managed move into AP is considered and that opportunities for reintegration into a mainstream setting are proactively pursued.

Reasons for Decision

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Implementation Date:

Reference: