

CABINET

13 MARCH 2012

GATEWAY 3 PROCUREMENT TENDER PROCESS REVIEW AND CONTRACT AWARD CONNEXIONS SERVICES

Portfolio Holder: Councillor Les Wicks, Children's Services

Report from: Rose Collinson, Director of Children and Adult Services

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Summary

This report seeks permission to award the contract for Connexions Services to the supplier highlighted within 5.1 of the Exempt Appendix. The contract will begin as soon as possible after April 2012 for a 5-year term with an option to extend for a further two years. An interim contract has been approved for up to five months to ensure no gap in service when the current contract ceases in March 2012 whilst the funding decision was awaited. This is a Category B High Risk procurement project.

This Gateway 3 report has been approved for submission to the Cabinet after review and discussion at Children's and Adult's Directorate Management Team and Strategic Procurement Boards on 30 November 2011 and 18 January 2012.

The Cabinet gave approval to the commencement of this procurement at Gateway 1 on 4 October 2011. The approved Gateway 1 report is available upon request.

1. Budget and Policy Framework

- 1.1 The decision to award a contract to the supplier as highlighted within 5.1 of the Exempt Appendix for this procurement requirement is within the Council's policy and budget framework and relates to all the identified Core Values, Strategic Priorities, Strategic Council Obligations and Departmental/Directorate service plans as highlighted within the Procurement Gateway 1 Report.
- 1.2 The funding for the procurement of Connexions Services is provided from the Early Intervention Grant. Further information is included within the exempt appendix.

2. Background

- 2.1 This Gateway 3 Report seeks permission from the Cabinet to award a services contract to the supplier as highlighted within 5.1 of the Exempt Appendix. This is a Category B High Risk procurement project.
- 2.2 This proposal is based upon the recently undertaken procurement process to re-tender Connexions Services in Medway. In anticipation of the expiry of the Connexions Services contract in March 2012, the Cabinet agreed to go out to tender for a five year contract with provisions to extend for a further 2 years. The contract is proposed to commence on 1 April 2012 and conclude on 31 March 2017. The contract value is contained within the exempt appendix.
- 2.3 The new contract was subsequently approved in principle by the Strategic Procurement Board on 30 November 2011 and that decision re-affirmed on 18 January on consideration of new information. Strategic Procurement Board confirmed that no final decision would be made until the full Council budget was set on 23 February 2012. The budget was approved and includes provision for this contract.
- 2.4 The new contract will begin as soon as possible after April 2012. An interim contract has been approved in the meantime for up to five months to ensure no gap in service when the current contract ceases in March 2012. This allowed preparation for appropriate provisions once the final decision on the funding was known.
- 2.5 This procurement is required to fulfil Medway's statutory obligations under section 68 of the Education and Skills Act 2008. These statutory obligations place a duty on local authorities to make available to young people below the age of 19 and relevant young adults (i.e. those aged 20 and over but under 25 with learning difficulties) support that will encourage, enable or assist them to participate in education and training. This includes:
- Not in Education Employment and Training (NEET) prevention and reduction
 - SEN: Transition reviews, statutory section 139a assessments and identifying suitable post 16 learning provision
 - Careers Guidance until September 2012
 - The tracking, monitoring and reporting to monthly DfE of young people's engagement in learning and employment via CCIS (Client Caseload Information system)
 - A September Guarantee of an offer of education or training for all young people increasing duty as the school leaving age rises
 - Maintaining close working links with Job Centre Plus
- 2.6 From September 2012, the duty to provide Careers Guidance in schools passes to all schools under section 29 of the Education Act 2011. All other duties listed above will remain with the local authority.

3. Procurement Tendering Process

- 3.1 In line with Medway Council's Contract Procedure Rules this procurement requirement was subjected to a formal EU Procurement Open Tender process whereby an OJEU notice was placed within the Official Journal of the European Union (OJEU) on 7 October 2011. An advert was also placed upon

Medway Council's website in conjunction with the Strategic Procurement Team and in Children and Young People Now publication on 8 October 2011.

- 3.2 This was due to the associated total contract value being above the then EU threshold of £156,442.00 for Services and was approved by the Monitoring Officer in consultation with the Strategic Procurement Board at Gateway 1.
- 3.3 It was decided to follow a formal EU combined Open tender process as the market place is relatively small and due to the specialist nature of the current market. Therefore, the procuring client department was confident and happy to invite open tenders and evaluate all those companies that expressed an interest to tender.
- 3.4 The advert inviting interest was published on 7 October 2011. The Exempt Appendix highlights that 30 expressions of interest were received following publication of the advert. Prospective tenderers were sent the Invitation To Tender documentation between 13 October and 3 November 2011. By 3 November 5 companies had advised of their intention to submit a tender.
- 3.5 Subsequently, 3 companies returned the Invitation To Tender documentation within the prescribed deadline for completed submissions of 12:00 on Friday 4 November 2011 as defined within the Invitation To Tender document.
- 3.6 The evaluation criteria set within the Invitation To Tender document was 100% price / Most Economically Advantageous Tender (MEAT) based upon a composite mixture of quality and price - **80 %** for quality and **20 %** price equating to 100% in total.
- 3.7 After a compliance check against the instructions set out in the Invitation To Tender document, compliant submissions were evaluated. One company subsequently challenged notice that their bid was non-compliant. Following legal advice further evidence was evaluated by the same panel. The results of the final evaluation of all compliant tenders are set out in the Exempt Appendix.

4. Options Resulting From Procurement Tender Process

- 4.1 This procurement tendering process has resulted in the following procurement contract award options:

4.2 Do not award any contract and cancel procurement process:

- 4.2.1 The option of not awarding any contract and cancelling the procurement process has been considered but there is no justification for not awarding this contract as it provides best value and has been submitted in accordance with the original advertisements and associated procurement documentation and therefore this option has been discounted.

4.3 Award contract to the contractor as highlighted within the Exempt Appendix:

4.3.1 The option of awarding the contract to the contractor as highlighted within the Exempt Appendix has been considered and below are the advantages and disadvantages of this option:

4.3.2 Advantages: The contract will be legally compliant and demonstrate best value. The market was fully tested and resulted in interest from expected sources.

4.3.3 Disadvantages: None.

4.4 Other alternative options:

4.5 Do not award contract, stop the current procurement process and go out to the market again:

4.5.1 Advantages: The contract will be legally compliant and demonstrate best value.

4.5.2 Disadvantages: We are unlikely to reach more sources than those already reached.

4.6 No alternative options have been identified.

5. Advice and analysis

5.1 Preferred option

5.1.1 Further to an extensive review of procurement contract award options as highlighted within Section 4 'Options' above, the following preferred procurement award option is recommended to the Cabinet including justification for this recommendation:

Option 4.3: Award contract to the contractor as highlighted within the Exempt Appendix.

5.1.2 The recommended preferred option is the most viable option for contract award because the proposed contract award meets the requirements as set out in Section 2 'Business Case' within the Gateway 1 Report.

5.1.3 Justification for this recommendation is based on the following:

- What is the project's strategic context: Children and young people having the best start in life in Medway.
- Statutory obligations: This procurement is required to fulfil Medway's statutory obligations under section 68 of the Education and Skills Act 2008. These statutory obligations place a duty on local authorities to make available to young people below the age of 19 and relevant young adults (i.e. those aged 20 and over but under 25 with learning

difficulties) support that will encourage, enable or assist them to participate in education and training.

- Market consultation/benchmarking: This is a relatively small and specialist national market providing services to young people since 2000. The level of interest from potential and actual bidders was as expected. This procurement is in line with other public sector bodies; the procurement of the Connexions Services contract is an established process. Prices are competitive in relation to the bids received.
- The option of doing nothing: This is not a viable option because the current contract expires on 31 March 2012 and a planned interim contract will run for just a few months.
- The option of an exemption to contract rules to single source: This was considered because of the risks around the procurement process due to lack of national guidance and the potential to link with other future procurements. An exemption would have meant not going out to the market and subjecting our requirements to competition. We would not be adhering to the EU Treaty principles of fairness, equal treatment of suppliers and transparency of process. The option of providing this requirement through in-house service provision has been considered and the disadvantages of doing so far outweigh any advantages.
- The option of using another local authority to deliver procurement requirements: This has been considered but is not a viable option due to the timing of the Connexions contract serviced by Kent CC, our nearest partner, which does not end until March 2013 and their current contract does not allow other authorities to participate.
- No EU compliant frameworks have been identified from which Medway Council's procurement requirements can be satisfactorily delivered. The option of procuring requirements through internal collaboration between Medway Council departments in order to exploit economies of scale and synergies has been considered but no such opportunities currently exist.
- The option of procuring requirements through external collaboration between Medway Council and other external public sector organisations in order to exploit economies of scale and synergies has been considered and is not a viable option due to the lack of available opportunities with near neighbour authorities. There are no current collaborations in place for Connexions Services.

5.2 Procurement Project Outputs / Outcomes

5.2.1 The following procurement outcomes/outputs identified as important at Gateway 1 to the delivery of this procurement requirement have been appraised in the table below to demonstrate how the recommended procurement contract award will deliver said outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended procurement contract award option deliver outputs/outcomes
1. Successful selection of providers to invite to tender for the service	Between 5 and 10 potential providers at PQQ stage	Inclusion service manager, Commissioner for Integrated Youth Support and affected Service Areas	Monitored fortnightly through procurement timetable and close working relationship with suppliers	A fair and transparent process was adopted inviting competitive tenders through national advertising of the proposed tender. 30 organisations responded to advert
2. Successful selection of tenders submitted to consider for service delivery	Between 3 and 5 potential providers at ITT stage	Inclusion service manager, Commissioner for Integrated Youth Support and affected Service Areas	Monitored fortnightly through procurement timetable and close working relationship with suppliers	Advertising was open and transparent. Clear tender documents informed interested parties. A robust evaluation process at PQQ stage identified potential contractors. 3 organisations were successful at PQQ
3. Successful appointment of provider to deliver service based on specification and business requirements identified	Successful procurement of provider that delivers identified outputs and outcomes	Inclusion service manager, Commissioner for Integrated Youth Support and affected Service Areas	Monitored fortnightly through procurement timetable and close working relationship with supplier	The successful contractor has a proven track record of delivering the specification within the pricing structure
4. Successful handover from current incumbent to future provider	CCIS database and TUPE negotiations undertaken successfully	Inclusion service manager, Commissioner for Integrated Youth Support and affected Service Areas	Monitored fortnightly through procurement timetable. Close working with current incumbent and future provider	An interim contract with the incumbent provider allows sufficient time for a mobilisation period for the new contract. Current contract includes clauses to ensure timely handover of essential information.

5.3 Procurement Project Management

5.3.1 This procurement project will be taken through the remainder of the Gateway Procurement Process through the utilisation of the following project resources and skills – Commissioning and Strategy Team will continue to manage this project in conjunction with the Manager Integrated Youth Support.

5.4 Post Contract Award Contract Management

5.4.1 The contract management of this recommended procurement contract award will be resourced post award through the following contract management strategy – Commissioning and Strategy Team will support the Integrated Youth Support Manager in monitoring this project. A robust service level agreement will be developed to clarify roles and responsibilities.

5.5 Other Issues

5.5.1 Medway Youth Parliament (MYP) has recently started a campaign to improve the standard of careers advice in schools. Services are working with MYP and the incumbent provider to enable a transparent and inclusive outcome and to ensure results inform future development of services.

5.6 TUPE Issues

5.6.1 Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it was identified that as this is a Services related procurement contract award, TUPE does apply to this procurement process.

5.6.2 The recommended contract award would result in 56 employees being affected by TUPE if the incumbent provider were not successful as part of this procurement tender process.

5.6.3 The Council considered its options for the future delivery of Connexions when preparing the tender. It had ruled out the prospect of 'in-house delivery' at that time. Therefore no staff would TUPE to the Council. TUPE applies between outgoing and in coming contractors, where all or part of the undertaking is transferred. Staffing arrangements and liabilities are the responsibility of the employing organization.

6 Risk management

6.1 The following risk categories have been identified as having a linkage to this recommended procurement contract award:

Procurement process	<input checked="" type="checkbox"/>	Equalities	<input checked="" type="checkbox"/>
Contractual delivery	<input checked="" type="checkbox"/>	Sustainability / Environmental	<input type="checkbox"/>
Service delivery	<input checked="" type="checkbox"/>	Legal	<input type="checkbox"/>
Reputation / political	<input checked="" type="checkbox"/>	Financial	<input checked="" type="checkbox"/>
Health & Safety	<input checked="" type="checkbox"/>	Other/ICT*	<input checked="" type="checkbox"/>

6.2 For each of the risks identified above, further information has been provided below:

Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
a) Procurement process	Due to a delay with Government guidance, there is a risk that the timing of the procurement process will inhibit the ability to be ready to commission the new service from April 2012.	D	II	Close cooperation with Strategic Procurement has been maintained. An interim contract has been awarded due to the delayed formal decision. The contract includes variation clauses to enable flexible provision once guidance is known.
b) Contractual delivery	Chosen provider fails to meet contractual obligations	D	I	Specific contractual milestones will be included as part of contract monitoring
c) Service delivery	Chosen provider fails to meet service obligations	D	I	Specific service milestones will be part of contract monitoring process
d) Reputation / political	Reputation will be affected if procurement is not seen as fair or does not deliver perceived benefits	D	II	Close liaison with strategic procurement and legal in terms of approach and evaluation of tenders has been maintained.

e) Health & Safety	Provider may fail in its health and safety duty either to its staff or its young people users	D	I	Specific H&S requirements have been included as part of tender process
f) Equalities	Failing to take equalities into account when procuring these services may discriminate against users from specific groups	D	I	Specification and tender documents have included requirements regarding equalities
g) Sustainability/ Environmental	N/A	N/A	N/A	N/A
h) Legal	N/A	N/A	N/A	N/A
i) Financial	Funding may be reduced from the EIG The future of this funding stream is uncertain, although it is unlikely that the services that it supports would not be funded in some guise.	C	II	To mitigate against this an interim contract has been awarded whilst final budgets are approved. A number of clauses have been included within the new full contract document enabling either 'break', 'variation' or 'reduction in funding'
j) Other/ associated procurements	Major procurements are being considered within youth services within the next 12 to 24 months. By going out to tender for Connexions Services now we could be limiting the potential for more attractive packages of services.	C	II	Close collaboration with IYS Service Manager has been maintained. Contract includes flexibility to respond to changing service needs in the future.
k) Other/ moving offices/ICT	A new incumbent would be required to source new offices from which	C	II	An interim contract has been awarded which will

	to deliver services. This could take time to finalise.			enable a 3-month mobilisation period between end of current and start of full contract.
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7 Internal (Medway) Stakeholder Consultation

7.1 Before commencement of the procurement process the following internal stakeholder consultation was undertaken in order to direct the specification:

- Service Manager Inclusion Division
- Internal providers on the IYS partnership group
- internal providers on the 14-19 partnership group
- Medway Young Commissioners
- Medway Young Inspectors

7.2 During the procurement process in order to aid the evaluation process the following internal stakeholder consultation was required and was undertaken during the procurement process in order to aid the evaluation process:

- Service Manager Inclusion Division
- Commissioning Manager 14 – 19 services
- Commissioner Aiming High (Disabilities)
- Commissioner Looked After Children
- Manager Youth Offending Team
- Strategic procurement team
- Corporate Finance team
- Legal team

7.3 Post procurement/tender award in order to aid the contract management process the following internal stakeholder consultation will be required and will be undertaken post procurement/tender award in order to aid the contract management process:

- Service Manager Inclusion Division
- Commissioning Manager 14 – 19 service

8 External Stakeholder Consultation

8.1 Before commencement of the procurement process the following external stakeholder consultation was undertaken in order to direct the specification:

- Medway Youth Trust
- Partners on the IYS partnership group
- Partners on the 14-19 partnership group
- Voluntary sector providers in Medway
- Medway Young People
- Medway parents and carers

8.2 During the procurement process no external stakeholder consultation was required nor undertaken in order to aid the evaluation.

8.3 Post procurement/tender award the following external stakeholder consultation will be required and will be undertaken in order to aid the contract management process:

- Voluntary sector providers in Medway
- Education providers in Medway

9 Financial and legal implications

9.1 This recommended procurement contract award as per the preferred option highlighted at Section 5.1 'Preferred Option' can be met within existing revenue budgets.

9.2 Detailed finance and whole-life costing information is contained within Section 3 Finance and Whole-Life Costing of the Exempt Appendix.

10 Legal Implications

10.1 This recommended procurement contract award per the preferred option highlighted at Section 5.1 'Preferred Option' and the recommendations at Section 13, has the following legal implications which the Cabinet must consider.

10.2 The procurement has been undertaken in accordance with Medway council's Contract Procedure Rules and the EU Procurement Open Tender process has been fully complied with.

11 Procurement Implications

11.1 The value of the proposed contract exceeds the EU threshold for Services, currently set at £173,934.00.

11.2 The subject matter of this procurement activity qualifies as a 'Part B' service within the meaning of EU procurement rules and as such are not subject to a full application of said rules. There is however a requirement to comply with requirements of the Treaty on the Functioning of the European Union such as transparency which will be satisfied by engaging in a sufficient degree of advertising.

11.3 The client department is advised of the need to observe a voluntary 10 day standstill period (Alcatel period) as a matter of good practise which will take effect after the cabinet call in period. After this, Client department is required to liaise, with Legal Services for guidance with regard to issuing successful/unsuccessful letters to candidates of the tendering process in line with debrief requirements.

11.4 Following the successful completion of the 10 day standstill period, the client department is further advised to liaise with Legal Services to formalise preparation of the contract documentation and any related performance bond/parent company guarantee documentation.

11.5 The client department is also advised to liaise with the Strategic Procurement Team to ensure a contract award notice is posted 48 days post contract award.

11.6 Client department should note that any substantial reduction of the budgetary value by cabinet which amounts to a significant and material change of the budgetary value stated in the tender documentation and also triggers a need to renegotiate the financial model, scope of services or charging arrangements could result in the need to engage in a new competitive tender process. Client department is therefore advised to seek guidance from strategic procurement in the event of this occurring.

12 Strategic Procurement Board

12.1 Strategic Procurement Board considered this report on 30 November 2011 and recommended to Cabinet to approve this project to proceed to award on settlement of the Council Budget. The Board re-affirmed this decision on 18 January 2012 on consideration of new information.

13 Recommendations

13.1 Cabinet is requested to approve the procurement contract award to the contractor as outlined within Section 5.1 'Procurement Contract Award Recommendation' of the Exempt Appendix.

14 Suggested reasons for decision(s)

14.1 The recommendations contained within Section 13 above are provided on the basis of the information gathered during the procurement process.

Lead officer contact

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Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Gateway 1 Procurement Commencement: Connexions Report to Cabinet	http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=2334&Ver=4	4 October 2011