

Notice of Non-key Executive Decision

Subject Heading:	Award of contracts to existing approved providers of adult education
Cabinet Member:	Cllr Robert Benham, Lead Member for Children and Learning
SLT Lead:	Robert South, Acting Director Children's Services
Report Author and contact details:	Kevin Thorpe, Quality and Curriculum Manager
Policy context:	Adult Skills
Financial summary:	Financial commitment estimated at a maximum of £400,000 from academic year 1 August 2021 to 31 July 2022, funded by existing Adult Education Budget grant.
Relevant OSC:	Children & Learning
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making Havering	X
Opportunities making Havering	X

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

1. To agree to award contracts via the Bloom/ NEPRO framework for a term of one academic year commencing on 1st July 2021 and with indicative values as follows:
 - a. Spotlight Multimedia Ltd –
 - i. £150,000 (Adult Skills Provision)
 - ii. £20,000 (Community Learning)
 - b. Specialist Trade Courses - £150,000 (Adult Skills Provision)

with an aggregate (buffer) optional spend value across both contracts of a further £50k as set out in this report; and
2. To note that the optional maximum £50k increase to the aggregate value of the contracts set out in 1 above if required will be made in line with the scheme of delegation and as required.

AUTHORITY UNDER WHICH DECISION IS MADE

3.4 Powers of Second Tier Managers Contract powers

- (a) To approve commencement of a tendering process for, and to award all contracts below a total contract value of £500,000 but above the EU Threshold for Supplies and Services.

STATEMENT OF THE REASONS FOR THE DECISION

The Havering Adult College (HAC) is an adult education service delivered by Local Authority staff, managing a range of national and local priorities and implements the statutory powers of the Local Authority to secure full and part time education suitable to the requirements of persons who have reached the age of 19. In discharging its statutory power, the Council sub-contracts a proportion of its Greater London Authority (GLA) and Education & Skills Funding Agency (ESFA) Adult Education Budget grant (AEB) to approved providers.

Havering Adult College has been implementing sub-contracting arrangements successfully since 2010. Sub-contractors are commissioned via the Bloom/ NEPRO3 framework agreement as mandated by the Council's contract standing orders. In line

Non-key Executive Decision

with AEB guidance, contracts are awarded for specialist curriculum offers which HAC [is not able to deliver as effectively as a contractor could.

HAC actively manages these sub-contracts throughout the year. The contract management process includes a regular review of performance data which includes earned grant funding, learner numbers and success rates. Contract review meetings with each provider are held quarterly as a minimum (and monthly for larger contracts) to discuss any performance issues and to record agreed actions. Based on the review outcome, maximum contract values are varied if necessary.

Other aspects of the provider's delivery are also discussed at the review meetings, including quality, safeguarding and health & safety and the relevant managers from the Havering Adult College also attend provider sites to monitor performance for their relevant specialist areas.

HAC has identified the below provision as requiring sub-contracting (listed with the identified sub-contractors, who have already been pre-approved by Bloom):

Spotlight - £150,000 (Adult Skills Provision) & £20,000 (Community Learning)
Specialist Trade Courses - £150,000 (Adult Skills Provision)

As the sub-contracted providers have their own premises and supply chain of learners, they are able to continue in their specialist subject areas (construction, creative media etc).

The contract values are indicative as providers are paid based on numbers of learners who access the education offer. In any given year, contract values may exceed or fail to reach their indicative value.

In the current COVID-related climate, direct delivery is restricted due to low uptake of learner places impacting on the College's capacity to fulfil its AEB contract. Because of this, high flexibility within and between contracts is required to allow response to changing requirements. On this basis, a buffer of £80k above the aggregate value of the contracts (£320k) has been identified within the HAC AEB budget pot which may be applied between the contracts as, if and when necessary.

The ESFA sets AEB grant value for each upcoming year based on spend in the previous year. If expected spend on adult education in the previous year is below the grant set, future grant will be reduced and unspent grant may be clawed back. The proposed £80k buffer will have the benefit of allowing HAC to tailor its offer to match required spend under the current grant. This will (i) safeguard the contract value for the following year and (ii) partially mitigate the potential risk to a future over-spend due to a claw-back of grant payments (incurred due to under delivery).

For the reasons set out above, the decision maker is requested to authorise Havering Adult College to enter into the contracts identified in this report for the 2020/21 academic year for delivery of the AES offer and to agree that the value of contracts with identified providers may be increased (or decreased) as required and in line with the review process set out above.

Non-key Executive Decision

OTHER OPTIONS CONSIDERED AND REJECTED

1. Do nothing – not recommended.
The Council is not able to offer this provision directly.
2. Procure the contracts via a tendering process on the open market – not recommended.
The Council is mandated to procure contracts of this type via Bloom by its contract standing orders. Furthermore, the Council is not able to procure contracts for terms of more than a year as there is no guarantee of level of grant year on year. Given the costs associated with an open tender, this option is not cost effective.

PRE-DECISION CONSULTATION

No formal consultation has taken place.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Kevin Thorpe

Designation: Quality and Curriculum Manager

Signature: *Kevin Thorpe*

Date: 16th June 2021

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The Council has a power to provide adult education within its area under the Education Act 1996. The Council has power to procure and enter into the contracts under s111 Local Government Act 1972 as the contracts will facilitate the Council to implement the discharge of this power.

The Council also has power to procure the contracts under the general power of competence contained in section 1 of the Localism Act 2011 which allows the Council to do anything that an individual may do subject to any statutory constraints on the Council's powers. None of the constraints on the Council's s.1 power are engaged by this decision.

The contracts fall within the light touch regime of the Public Contracts Regulations 2015 (PCR). Individually and in aggregate they fall below the light touch financial threshold of £663,540. Whilst not caught by the specific requirements in the PCR relating to procurement of light touch contracts, the procurement must comply with the Treaty Principles of equality of treatment, non-discrimination, proportionality and transparency.

The contracts must be procured in compliance with the Council's contract standing orders (CSO). Paragraph 17.5 of the CSO requires that contracts for consultancy or professional services must be procured via the NEPRO (Bloom) framework.

The NEPRO framework is a PCR compliant framework which by definition complies with the Treaty Principles. Procurement of the contracts via Bloom therefore complies with the CSO and EU law and the contracts may be procured in this fashion.

FINANCIAL IMPLICATIONS AND RISKS

The funding being sub-contracted forms part of the Havering Adult College's grant agreement with the Greater London Authority and Education & Skills Funding Agency. As such, the grant passes to the Local Authority and is administered through the Councils General Ledger in order to set up a budget to fund Adult Education provision. The expenditure is expected to be in the region of £400,000 for the 21/22 academic year, although actual costs will be subject to individual arrangements, and will be managed within the overall funding envelope.

This decision seeks to award contracts for the 21/22 academic year to existing contractors who were successful in the mini tender process. Contract monitoring processes are in place whereby the Havering Adult College monitors expenditure and quality of all its sub-contractors and takes actions to address any issues identified. The funding agency also requires an external audit be undertaken annually for compliance, supporting transparency. Value for money in terms of quality is addressed as part of this monitoring process. As stated above, amounts paid for each qualification will be based on the AEB funding methodology and as such are "uncontrollable" within set

Non-key Executive Decision

parameters. The subcontracted provision falls within the remit of Ofsted, and is monitored under the terms of their Framework as well.

The financial risk of not awarding is that the College will be unable to meet the demands of its own AEB contract allocations, thus resulting in a destabilising of the service, as well as both a risk of grant monies being clawed back, and this resulting in a significant underspend, impacting the service and the Council adversely.

The costs of implementing a provider list will be met from within existing Adult Education Budget annual grant. There are also resource implications due to the Councils ongoing responsibility to maintain the list, which will also be met from within existing grant.

The costs for provision of the courses will be funded from the GLA & ESFA grant to the Adult College for 2021/22 & 2022/23, on A30910 HCAE Central Office cost centre. There are therefore no further financial implications to the revenue budget for Havering.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There are no direct Human Resources implications or risks to the Council, or its workforce, arising from the recommendations made in this report, that can be identified at this time.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment. The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

Under Section 149 of the Equality Act 2010 a local authority has a duty when carrying out their functions to have due regard to the need to:

- a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;

Non-key Executive Decision

- b) Advance equality of opportunity between people who share a protected characteristic and those who do not;
- c) Foster good relations between people who have a protected characteristic and those that do not.

There are no Equalities implications and risks at this stage, as the awarding of the contracts does not reduce the scope for access, but rather increases the opportunity to widen participation for all.

BACKGROUND PAPERS

None

Non-key Executive Decision

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

Name: Trevor Cook

Cabinet Portfolio held:

CMT Member title:

Head of Service title: Assistant Director, Education.

Other manager title:

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____