

CABINET

19 November 2013

Rutland Adult Learning Service: Procurement Process

Report of the Director for People

STRATEGIC AIM:	Creating a Brighter Future for All		
KEY DECISION	Yes	DATE ITEM FIRST APPEARED ON FORWARD PLAN	September 2013

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to present Rutland County Council Cabinet with a summary of the proposed procurement process for the sub-contract of a section of the Rutland Adult Learning Service (RALS) to an external provider and to commence provision of the reorganised RALS in August 2014.
- 1.2 The report seeks approval of four key recommendations which are business critical to the effective operation of the procurement process and the successful forward movement of the process against a planned schedule.
- 1.3 The report sets out the key delivery dates and deadlines within the planned procurement process schedule.

2. RECOMMENDATIONS

- 2.1 That Cabinet **notes** the following key points regarding the proposed procurement process as set out in the supporting information herein:
 - 2.1.1 The rationale and principles for the proposed procurement process and related key risks for Rutland County Council;
 - 2.1.2 The financial and HR implications involved in the proposed procurement process including commitment by the Council to a major Award of Contract;
 - 2.1.3 The range of criteria and allocated weightings to inform the Evaluation Panel work within the procurement process;
 - 2.1.4 The financial objectives of the proposed procurement process;
 - 2.1.5 The required membership of the Evaluation Panel and key dates for the Dialogue Meetings and Evaluation Panel elements of the procurement process.
 - 2.1.6 The planned schedule of dates and key actions critical to the procurement process.

2.2 That Cabinet **approves** the following four key recommendations to enable the forward movement of the procurement process:

2.2.1 Approval of delegated authority to the Chief Executive in consultation with the Portfolio Holder for Children to undertake Award of Contract following due process;

2.2.2 Approval of the criteria and weightings for Pre-Qualification Questionnaire (PQQ) and Award of Contract as set out in the supporting information and appendices;

2.2.3 Approval of the principles for the procurement process;

2.2.4 Approval of the membership of the Evaluation Panel.

3. REASONS FOR THE RECOMMENDATIONS

3.1 The planned schedule for the procurement process is designed to seek approval of the Award of Contract at Cabinet on 18 March 2014. However, should the schedule encounter any unavoidable delay the provision to undertake Award of Contract through delegated authority to the Chief Executive in consultation with the Portfolio Holder for Children would ensure the Award of Contract is completed at the earliest date possible.

3.2 The rationale, principles, criteria and weightings of the proposed procurement process are fundamental to the effective completion of the process.

3.3 The procurement proposal is required to comply with the most recent version of the Rutland County Council Contract Procedure Rules.

3.2 The recommendations arise from a comprehensive business analysis of the current service provision and structure and the projected business position that the Rutland Adult Learning Service will need to achieve by 1 August 2014.

4. Background Information

4.1 The Rutland Adult Learning Service (RALS) is a relatively small scale service and is located within the Lifelong Learning Services team of the People Services Directorate, Rutland County Council. The service has been in operation for over a decade. Since 2010 it has received grant funding from the Skills Funding Agency (SFA) which provides revenue funding to RALS for both staff and operational costs. Previously, the service was funded by the Learning and Skills Council (LSC). Over recent years the service has maintained a business profile above the £500k Minimum Contract Value (MCV) threshold set by the Skills Funding Agency and remains dependent on SFA grant funding for all operational service costs including staffing.

4.2 Over the period 2009/10 to 2013/14 the service has experienced two main budget dynamics: a year-on-year reduction in the grant receipt from the SFA and an increasing staff structure cost. From 2010/11 the service has also responded to the national skills policy development of Apprenticeships and the increasing priority placed on this development in terms of funding allocated by the SFA.

4.3 By 2014/15, with no further action, the service would continue to be at risk of expenditure exceeding income and staffing and service delivery misaligned with national funding criteria and policy development. A strategic proposal has been

identified to address this situation. The strategic intention is twofold: to relocate a section of the current RALS staff structure to an improved delivery location and to reduce the cost of the overall current staff structure to a level which will fall within the projected SFA grant fund receipt for 2014/15 whilst maintaining an overall Minimum Contract Value profile with the SFA above the £500k threshold.

- 4.4 To achieve the new strategic position for the service a procurement process is proposed which will move service delivery equivalent to approximately 65% of the current SFA annual grant value to a sub-contracted position with a new provider, whilst Rutland County Council will retain responsibility for 35% of the annual SFA grant and service delivery and will remain the overall and Primary Contract Holder with the SFA.
- 4.5 The purpose of the procurement process set out in this report is to clarify the strategic intention to Cabinet and seek approval to move forward with the procurement process, to ensure compliance with Rutland County Council contract procedure rules and to achieve a viable sub-contract position with an effective provider who has the experience, skills and organisational capability and capacity to effectively deliver an Adult Skills Budget contract over an initial 2 year contract period and beyond, subject to performance. The value of the proposed annual sub-contract value is set out in **Appendix A**.

5 Proposed Procurement Process

5.1 Aim of Procurement

Rutland County Council wishes to proceed with a procurement process to identify a sub-contracted provider to deliver a significant part (approximately 65%) of the RALS annual SFA grant receipt value in the 2014/15 SFA year commencing 1 August 2014.

5.2 Rationale

The rationale for the procurement process has three main elements:

- a. The existing Rutland County Council Adult Learning Service does not have the specific skills set to deliver the changes to curriculum, programme and service delivery and the range of premises for specialist skills training in 2014/15 that are required to ensure long-term sustainability, as a result of changing SFA criteria for funding. The Council is therefore seeking to enter in to sub-contracted arrangements with a provider to deliver the Adult Skills Budget (ASB) programme side of the overall service provision commencing in August 2014 and for a 5 year (2 years plus 1 year plus 1 year plus 1 year) contract period;
- b. The existing Rutland County Council Adult Learning Service is seeking to develop a business model which is capable of incremental year-on-year development of a predominantly skills-led programme over a mid-term financial period in order to enable and secure its ability to respond to predicted further changes in SFA criteria for funding. This would not be possible by retaining the current staff structure and service provider arrangements;

- c. The existing Rutland County Council Adult Learning Service staff structure is over-weighted towards Community and Classroom Based Learning and an immediate correction to the provider profile is required to re-align the service to a viable position to attract and secure SFA funding which has increasingly prioritised skills-led programme provision over recent years. This immediate correction can most effectively be achieved through a sub-contract arrangement where provider experience, staff skills-sets and organisational capability and capacity are in place, are appropriate and meet robust SFA requirements for delivery of skills programmes including the increasing emphasis on Apprenticeships.

5.3 Process

5.3.1 The proposed procurement is subject to the European Treaty of Rome principles of transparency, fairness and equal treatment. This proposed procurement process falls into the Part B category available to Education, Health and Social Care which does not require the full OJEU procurement procedures to be followed.

5.3.2 Additionally, guidance from the Skills Funding Agency (SFA) with regard to procurement and contracts involving the use of SFA funding states:

“You (The Local Authority) must not appoint sub-contractors that are not listed on the Register of Training Organisations (ROTO) if they already hold contracts with an overall value of £100,000 or above per academic year with one or more directly funded providers, or if the sub-contract from you would take the total value of their contracts over £100,000. In such cases, the sub-contractor must be listed on the Register before you enter into a sub-contract with them.”

5.4 Timeline

5.4.1 The target dates of March 2014 for Award of Contract and 1 August 2014 for sub-contract commencement have been identified and are key actions for successful completion of the procurement process. It is critical that a new service position including realignment and sub-contracting is achieved in time for the 2014/15 SFA financial year.

It is recognised that a decision to enter into the procurement process to sub-contract a significant part of the current Rutland Adult Learning Service to a new provider will increase the pressure on service management and delivery in the autumn 2013 and spring 2014 terms as it prepares for and undergoes a predicted Ofsted Inspection and enters into a staff re-structure process.

5.4.2 The timeline for the proposed procurement process is shown at **Appendix B**. It should be noted that it is possible to achieve Award of Contract in March 2014 but this target date is the earliest possible opportunity for due process to be conducted. This Award of Contract date, if achieved, would then provide approximately 4 months for the completion of all relevant RALS staff Transfer of Undertakings (Protection of Employment) regulations (TUPE) processes, service preparation and mobilisation for launch of the new RALS service

including sub-contracted provision by 1 August 2014, which is the start of the SFA financial year.

6. Contract Option Analysis

6.1 The RCC project team leading the preparations for the procurement process has carried out a detailed analysis of a number of options for the structure of the contract. The main considerations influencing the option analysis have included:

- a. The structure of the sub-contract required by Rutland County Council for formative monitoring and annual contract control and determination purposes;
- b. The length of contract;
- c. The Treaty of Rome and Part B procurement requirements;
- d. The SFA Minimum Contract Value;
- e. The Adult Learning market and interest levels of bidders;
- f. The primary contract holder position of Rutland County Council;
- g. The SFA grant process;
- h. The confirmation point to instruct to move to additional years;
- i. The use of conversion to contract blocks of years to offer continuity of contract.

6.2 Main Contract Options

Four main contract approaches were identified by the procurement project team following analysis of the procurement factors above and strengths and weakness of different approaches. The four main contract approaches are set out in **Chart A** below.

Chart A Main Contract Approaches for RALS Procurement Process

Option	Initial Contract Period	Additional Contract Period(s)	Total Contract	Comments
Option A	1 Year	1 year plus 1 year	3 years	Affords high control but may deter larger contract bidders.
Option B	3 years	2 years	5 years	Offers contract continuity but presents high risk to RCC if provider quality is inadequate. Will attract national bidders.
Option C	2 years	2 years	4 years	Similar to Option B but with reduced risk and increased contract control.

Option D	2 years	1 year plus 1 year plus 1 year.	5 years	Offers initial block of contract to attract regional and national bidders. Provides contract control in subsequent years. If quality of provider is good can be converted to subsequent block contract e.g. 3 years.
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6.3 Preferred Option

The preferred option following the analysis is Option D: 2 years plus 1 year plus 1 year plus 1 year.

This Option provides the following advantages not found with Options A,B and C:

- a. Initial contract control (2 years);
- b. Initial contract block (2 years) to attract regional/national bidders with appropriate experience and skills;
- c. Incentive approach to achieve subsequent contract award for years 3/4/5 (possibly as a block award to a high quality provider;
- d. Facility to achieve annual management control and monitoring;
- e. Facility to align with SFA criteria year-on-year;
- f. Facility to terminate contract after 2 years if provider is unsatisfactory (Note: it is possible to introduce a control clause to achieve termination after 1 year);
- g. A 5 year contract will be expected by regional/national bidders;
- h. This Option will demonstrate greater rigour in monitoring and management control to both the SFA and Ofsted.

It is recommended that Option D is proposed and that the procurement process seeks to achieve this contract structure.

6.4 The following key dates have been identified for the procurement process. Please see **Appendix B** for the detailed timeline.

Date	Activity	Purpose
30 October 2013	Procurement Project Team meeting	Consider draft advert to commence procurement process.
11 November 2013	Procurement Project Team Meeting	Finalise specification.
14 November 2013	Children's Scrutiny	Presentation of procurement process proposal.
15 November 2013	Procurement Project Team Meeting	Prepare PQQs and Tender Documents.
19 November 2013	Cabinet	Formal approval to go to procurement and approval of criteria and weightings for selection and award process.
19 November 2013	Procurement Project Team	Sign off PQQs, Tender Documents and Specification

20 November 2013	Procurement Project Team meeting	Advertise/issue PQQs and Tender Documents providing a minimum of 35 calendar days for response by bidders.
10 January 2014	Procurement Project Team meeting	Deadline for PQQs and Tender bids.
13/14/15 January and 20/21/22 January 2014	Dialogue Meetings (2 x 0.5 day meetings)	Select 3 bidders to participate in dialogue meetings. Requires attendance of all Evaluation Panel members.
February 2014	Procurement Project Team meeting	Receive final submissions.
24-26 February 2014	Evaluation Panel Meeting	Evaluation of bids. Requires attendance of all Evaluation Panel members.
26-28 February 2014	Evaluation Panel	Decision and Feedback to Bidders
18 March 2014	Cabinet/Delegated Authority	Formal Award of Contract.
April 2014	Contract Implementation Planning Meeting	Commence contract processing between RCC and successful bidder including TUPE transfers.

Note: Shaded areas of timetable require Evaluation Panel attendance.

6.5 Principles for Procurement Process

Advice from Rutland County Council contract team recommends that a strong set of procurement principles is established and informs the procurement process. Additionally, the procurement process will closely follow guidance set down in the recently updated Rutland County Council Contract Procedure Rules guidance document.

A list of proposed principles for this procurement process is shown below:

- a. The procurement process should be compliant with the Treaty of Rome (transparency, equal treatment), European and national legislation and Rutland County Council Contract Procedure Rules).
- b. A minimum of three bidders to be included on the shortlist;
- c. A minimum of two dialogue meetings for bidders;
- d. Evaluation panel to include political and officer representatives;
- e. Criteria and weightings to comply with European guidance;
- f. Contract should be 2 years plus 1 year +1 year +1 year in structure to provide optimum management and contract control;
- g. Advertising to be at least regional and should not preclude bidders from sources other than local to the Rutland area (evaluation criteria must avoid specific use of 'local' requirement or a related constraint presented to bidders but can include use of 'access' and 'responsiveness' as essential characteristics);
- h. Final bids should be received before the end of February 2014;
- i. Shortlisted bidders may be invited to interview following tender evaluation;
- j. The evaluation panel size, evaluation criteria and weightings, evaluation panel arrangements and membership and decision making powers relating to Award of Contract should be approved by Cabinet;
- k. The evaluation panel will be actively involved in the dialogue meetings;

- i. The Award of Contract must be timely in order to provide sufficient time to complete any Transfer of Undertakings (Protection of Employment) regulations (TUPE) requirements;
- m. Cabinet should be recommended to delegate authority to the Chief Executive in consultation with the Portfolio Holder for Children to Award Contract to support the achievement of the procurement process timeline deadlines.

6.6 Composition of Evaluation Panel

The composition of the evaluation panel should operate within the principles of the procurement process and include the following representatives for Rutland County Council:

- a. Councillor representation (minimum of two): Portfolio Holder for Children and one other Councillor;
- b. Council Senior Officers (minimum of three): from Assistant Director, People Directorate; Head of Lifelong Learning Services, People Directorate, People Services Team 5 Manager; Adult Learning Manager;
- c. An experienced procurement representative (adviser role – non decision making): Head of Welland Procurement Unit.

6.7 Procurement Activity

6.7.1 The proposed sub-contract will be awarded over an initial 2 (two) years of the contract profile with the option to extend for a further 1 year +1 year +1 year (three) years, subject to performance of the sub-contracted provider.

6.7.2 Adult Learning provision falls within Part B Services of the Public Contract Regulations 2006. Although, the full European regulations would not apply to this procurement, it is advised that this procurement process will be subject to the Treaty of Rome principles of transparency and equal treatment. In order to meet these principles, the Council will undertake a competitive procurement exercise which will allow potential providers to bid for the contract including an appropriate level of advertisement (see paragraph 6.9 below).

6.7.3 Bidders will be required to complete and submit a Pre-Qualification Questionnaire (PQQ) and the Evaluation Panel will shortlist at least 3 (three) bidders to invite to submit a full tender.

6.7.4 The bid evaluation process will take account of agreed Award Criteria to be approved by Cabinet. A detailed specification will ensure that only providers who evidence the requisite skills and experience are shortlisted.

6.7.5 Pre-Qualification Criteria and Weightings (for shortlisting)

The Award Criteria and Weightings will be supported by and coordinated with Pre-Qualification Criteria and Weightings which will be used for shortlisting. The PQQ criteria are based on the SFA PQQ framework which all sub-contracted adult learning providers in receipt of SFA grant will have been required to complete. There are 9 technical envelopes (excluding declarations) to the SFA PQQ with each containing several

questions and requests for evidence. The SFA PQQ envelope areas are shown below and it is recommended that this method is used within the RALS procurement process for shortlisting purposes.

Pre-Qualification Criteria	Weighting
1 Quality	25%
2 Capability and capacity	15%
3 Financial Management	15%
4 Compliance	15%
5 Customer Needs	12%
6 Procurement	6%
7 Delivery Model	5%
8 Organisation Structure	5%
9 Organisation Details	2%

Sub criteria to support the Pre-Qualification Criteria and Weightings are shown at **Appendix D**.

6.8 Award Criteria and Weightings

It is proposed that the following Award Criteria and Weightings are used for the evaluation of bids and approval of these will need to be secured from Cabinet prior to proceeding with the procurement process. The delegation of authority to apply these criteria and weightings and to make a decision regarding the Award of Contract should also be considered and approved by Cabinet.

Award Criteria	Weighting
1. Service provision and capability (skills and experience).	30%
2. Quality of Business Plan including financial management experience and proposal and added value measures.	20%
3. Quality assurance and management experience proposal.	10%
4. Staffing proposal	10%
5. Access and support for students.	10 %
6. Ability to conform to the agreed implementation timeline.	10%
7. Social value proposal.	5%
8. Organisational resilience, capability and capacity.	5%

The above Award Criteria and Weightings are designed to provide the evaluation panel with a robust method for assessing the following characteristics of the shortlisted bids:

- a. The range, quality and appropriateness of provider experience presented by each shortlisted bidder;
- b. The staff teaching, management and administration skills-set offered by each shortlisted bidder;
- c. The quality, viability, efficiency and clarity of the Business Plan presented by each shortlisted bidder;
- d. The type, level and range of social value the bidder will add to Rutland Adult Learning Services and Rutland County Council.

Sub criteria to support the Award Criteria and Weightings are shown at **Appendix E**.

6.9 Advertising

Advertising of the procurement process is proposed to be through Source Rutland and the Rutland County Council website. This will meet European procurement law requirements.

Source Rutland is a part of Source East Midlands and will therefore lead to advertising being picked up multi-regionally.

A copy of the proposed advert is shown at **Appendix C**.

6.10 Target Date

The target date for Award of Contract is March 2014 with the new service mobilisation in April-July 2014 in preparation for commencement of service delivery on 1 August 2014. It is essential that the proposed procurement process receives approval from Cabinet on 19 November 2013 to provide delegated authority to the Rutland County Council Chief Executive in consultation with the Portfolio Holder for Children in order to meet the above target date and procurement timeline as set out in **Appendix B**.

The planned schedule for the procurement process is designed to seek approval of the Award of Contract at Cabinet on 18 March 2014. However, should the schedule encounter any unavoidable delay the provision to undertake Award of Contract through delegated authority to the Chief Executive in consultation with the Portfolio Holder for Children would ensure the Award of Contract is completed at the earliest date possible and without undue delay.

6.11 RALS Procurement Project Team

The RALS procurement project team will comprise:

- Assistant Director People Directorate RCC
- Head of Lifelong Learning Services People Directorate RCC
- Team Manager Contracts and Procurement, People Directorate RCC
- Team 5 Leader Lifelong Learning Services People Directorate RCC
- Quality and Development Manager Adult Learning Service People Directorate RCC
- HR Representative RCC
- Finance Representative RCC

The procurement process will be advised and supported by the Head of the Welland Procurement Unit and the Rutland County Council Contract and Procurement Manager (People Directorate).

7. Key Risks

The key risks to the proposed procurement process are set out below. Each of the risks is considered to be **High Risk** to Rutland County Council.

- 7.1 Maintenance of the current RALS service structure and cost would prevent Rutland County Council from being able to effectively align to SFA criteria for the receipt of funding for Adult Learning provision. This would present a high risk to Rutland County Council budgets in 2014/15 and beyond for the Council.
- 7.2 Sub-contracting a part of RALS would necessarily need to follow a re-structured RALS service to ensure that an appropriate delineation and weighting towards Skills-led programmes and related SFA grant streams was identified for the purpose of the sub-contract;
- 7.3 Sub-contracting will introduce staff concern about Transfer of Undertakings (TUPE) arrangements, pension continuity and Terms and Conditions and engage employee representatives in protection of their members;
- 7.4 The procurement process proposal requires approval by Cabinet on 19 November 2013. Any delay will seriously impact on the viability of the proposed project, date of Award of Contract and start date for the new service which needs to be effected by 1 August 2014;
- 7.5 It is not clear at this stage where future thresholds for Minimum Contract Values (MCVs) will be set beyond 2013/14 by the SFA. However, there is a possibility of a future minimum MCV in excess of the £500k threshold which is the current value. This is a key strategic factor for consideration when planning the future of RALS and assessing the financial risk to Rutland County Council;
- 7.6 Procurement must be undertaken compliantly to avoid delays, sanctions and possible legal issues.
- 7.7 A co-terminus proposal to re-structure RALS, approved by SMT, will place staff at risk in November/December 2013 and may present an additional pressure on the procurement process.

8. Risk Management

Strategic Lead:	Mark Naylor		
Key decision?	Yes	Has portfolio holder been briefed?	Yes
Risk Assessment:			
Time	H	<p>Within the attached procurement timeline it should be noted that Sign Off of PQQs, Tender Documents and Specification should be completed by 20 November 2013 and Receipt of Final Submissions by the end of February 2014 in order to achieve completion of Contract Award by March 2014. Achievement of these target dates will provide readiness for commencement of delivery of the new structure and provision for the start of 1 August 2014.</p> <p>Procurement and sub-contracting are significant areas of high risk at a time when the RALS</p>	

		Service is undergoing an Ofsted Improvement Process, predicted Ofsted Inspection and Staff Re-Structure and will place additional pressure on the successful performance of the service.
Viability	H	The Skills Funding Agency (SFA) will cease to contract with any provider that is below MCV. RALS will not be able to operate unless it meets the MCV set by SFA. This may increase from the current level of £500k in future years.
Finance	H	<p>Whilst RALS is funded externally and does not draw upon core RCC funds there would be impact on RCC finances in the form of corporate recharge and salary contribution, should RALS cease or enter in to sub-contract arrangements that moved the Service out of direct control of the Council.</p> <p>In particular, RALS provides salary contributions towards the Lifelong Learning management structure (£20,000 in 2012/13) and corporate recharges towards back office support (£45,200 in 2012/13). These charges have already been reduced for 2013/14.</p> <p>A SFA audit is possible during the project period. This will present a high risk should the findings lead to any measure of claw back or reduction of funding by the SFA to Rutland County Council for the provision of Adult Learning. Delays in delivery of these recommendations are likely to increase the risk that adult learning delivery will not fulfill the terms of the SFA contract, leading to potential claw back and possible termination of contract</p>
Profile	H	<p>If not managed effectively, there is the potential for RALS to cease to exist as a funded body, with the loss of employment for staff and training opportunities for local people.</p> <p>Staff reduction and change is currently built into the RALS re-structure proposal to address required efficiency and funding factors.</p>
Equality & Diversity	M	<p>Arrangements need to satisfy Equality Impact Assessment (EIA) protocols and allow a continued focus on the most vulnerable and deprived members of the local community. Significant opportunities for that section of local society would be lost were the Service to cease to exist. However, the service will come under increasing pressure to adjust to a Skills-led programme offer to meet year-on-year and projected changes in SFA funding criteria. The Social Value element of the procurement criteria is important.</p>

8. REASONS WHY THE REPORT IS MARKED “NOT FOR PUBLICATION”

- 8.1 The exempt Appendix A is Not for Publication in line with paragraph 3 of Schedule 12A of Part 1 to the Local Government Act 1972: “Information relating to the financial or business affairs of any particular person (including the authority holding that information).”**

Background Papers

Report Author

Mark Naylor

(NB If Report contains Exempt Information, no reference should be made to Background Papers)

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A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.