

**Report of: Executive Member for Children, Young People and Families**

<b>Meeting of:</b>	<b>Date:</b>	<b>Ward(s):</b>
Executive	7 February 2019	All

<b>Delete as appropriate</b>		Non-exempt
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**SUBJECT: Procurement Strategy for the operation, delivery and facilities management of Islington’s 12 adventure playgrounds**

**1. Synopsis**

- 1.1 This report seeks pre-tender approval for the procurement strategy in respect of Islington’s 12 adventure playgrounds in accordance with Rule 2.7 of the Council’s Procurement Rules.
- 1.2 The contract is for the operation, delivery and facilities management of the twelve adventure playgrounds in Islington.
- 1.3 This report proposes a number of procurement options, dependent on the budget available, to preserve and drive quality and outcomes for children, to achieve such efficiencies as may be required and to contribute to the long term sustainability of the offer.

**2. Recommendations**

- 2.1 To approve the procurement strategy for the operation, delivery and facilities management of Islington’s 12 adventure playgrounds for up to 15 years as outlined in this report (an initial 3-year contract followed by 4 opportunities to extend by 3 years at a time (15 = 3+3+3+3+3)). The recommended contract length will maximise opportunities for leveraging in additional revenue and capital funds over the 15-year period, providing much needed additional resource to support facilities management and capital improvement across the adventure playground estate.

2.2 To delegate authority to award the contract to the Corporate Director of Children, Employment and Skills in consultation with the Executive Member for Children, Young People and Families.

### **3. Background**

3.1 Adventure playgrounds have been a key feature of play opportunities in Islington for over 40 years, reflecting the need for children to have access to play in a borough with the second lowest level of open space per head nationally. There are twelve adventure playgrounds in Islington.<sup>1</sup> All twelve adventure playgrounds are protected in perpetuity for the benefit of children's play through Deeds of Dedication held between Islington Council and Fields in Trust.

Details of the current adventure play offer in Islington:

- There are 12 adventure playgrounds, all protected through Deeds of Dedication for the use of children's play in perpetuity
- Services are for children aged 6 and up
- The offer is a universal one, i.e. open for all children, including those with special educational needs or disabilities (SENDs)
- Activities are child-led and vary day to day, although some formal activities based on the time of year or needs of the local population are scheduled. In general, children always have the chance to climb, dig, make dens, safely explore fire, engage with others across a wide range of ages, genders and abilities.
- Adventure playgrounds support children and young people's physical, social and emotional health and well-being as well as their overall development and can be a protective factor for those children at risk
- Adventure playgrounds improve outcomes for children through positive relationships with play workers who identify and support children that may need additional help as they develop ('earliest help')
- The services are free at the point of access and open year round: after school, at weekends and during school holidays. The times vary based on the needs of local families, who are consulted about this regularly by playground staff.
- Some breakfast and lunch clubs are offered during school holidays at very low cost, which contribute to the borough's overall childcare offer for families
- There are family days that take place on Saturdays in the term time, which encourage families to play together, meet the staff at the adventure playground and learn more about the services that they provide

3.2 There are currently two contracts in place to deliver and manage the 12 adventure playgrounds (each contract is for 6 playgrounds) which run until 30 September 2019 with no provision for extension. The council is also about to begin a programme of commissioning after school clubs and childcare offers, alongside holiday meal services, that will engage with a wide range of play providers in the borough. The budget envelopes available for adventure play provision and the early years' elements that will directly relate to play providers from 2019/20 are not yet clear.

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<sup>1</sup> <https://www.islington.gov.uk/children-and-families/things-to-do/adventure-playgrounds>

There is a corporate KPI agreed in relation to adventure play, regarding the participation level in the offer. This will require the council to be able to continue to monitor and gather data on the performance of (a) service provider/s from October 2019.

### 3.3 **Estimated Value**

The overall budget available for the operation and management of the 12 adventure play sites is up to £1.15m per annum.

### 3.4 **Timetable**

<b>Activity</b>	<b>Date</b>
Executive meeting	28 February 2019
Publication of opportunity to the market	end of March 2019
Approximate date of contract award	June 2019
Mobilisation plan	July – September 2019
Start date	01 October 2019

### 3.5 **Options appraisal**

A range of routes have been appraised in order to secure the adventure play offer over the long term and to ensure that it continues to respond clearly to local needs, engages effectively with children with SENDs and is able to realise the maximum amount of additional income is raised.

The development of partnerships and local knowledge in the delivery of adventure play in Islington is considered to be a priority in this options appraisal.

Work being undertaken in HASS is exploring the options for the council to secure and maintain relationships with high-performing providers which are likely to be part of the provider market in the borough over the longer term. This work is at an early stage and proposals have not yet been tested against legal and procurement requirements and the council's own processes.

Alliance contracting has also been explored as a potential procurement methodology. This approach would require two or more organisations to successfully tender in order to become part of an alliance, which would then be awarded one contract to manage the 12 adventure playgrounds. All organisations making up the alliance would be required to work collaboratively in partnership as they would be equally accountable for the success or failure of the contract.

The market for adventure play is made up of charities and ELM organisations. A number of these have engaged in stakeholder activity in relation to the development of a new specification for Islington's adventure play offer.

The options for securing the required services are set out in the table below:

<b>Options Appraisal</b>	
<p><b>Option A:</b> grant aid the current two providers to operate and manage the 12 adventure playgrounds as part of <b>a provider consortium</b>, with a requirement to deliver in the same quality and value factors as a traditional procurement approach</p>	
<b>Benefits</b>	<b>Risks</b>
<ul style="list-style-type: none"> <li>• Local providers are protected from the market</li> <li>• Local providers are prioritised</li> <li>• The service is delivered by providers with a clear track record of managing adventure play in Islington</li> </ul>	<ul style="list-style-type: none"> <li>• Current providers may not readily accept being required to form a consortium</li> <li>• Best value may not be demonstrated without the use of a competitive process</li> <li>• Only broad objectives can be assigned to a grant (which is seen as a 'gift')</li> <li>• Advice from the council's contracts lawyer states that the council "should not wilfully set out to avoid the Public Contracts Regulations 2015 and the council's own Procurement Rules by using the grant form in order to purchase services that ought to be procured as a contract". There is a risk that this service could be seen as one that should be procured as a contract</li> <li>• The council has already protected an employee-led mutual (ELM), owned by Islington play workers (which manages six playgrounds) from the full provider market for the maximum three-year period to September 2019.</li> <li>• There is a risk that a situation of State Aid could occur, where it may be perceived that the council's actions have actively distorted the competition in the market without an effective competitive process, resulting in legal challenge</li> </ul>
<p><b>Option B:</b> procure <b>two separate contracts</b> via an open procedure, consisting of:</p> <ul style="list-style-type: none"> <li>• <b>Contract 1</b> - 11 adventure playgrounds</li> <li>• <b>Contract 2</b> - single adventure playground (Hayward, the specialist adventure playground for children with special educational needs and disabilities)</li> </ul> <p>Ensure that the market is stimulated to form partnerships and/or consortium bids through the specification and the award criteria (set out in paragraph 3.7)</p>	
<b>Benefits</b>	<b>Risks</b>
<ul style="list-style-type: none"> <li>• One main contract is likely to result in a more consistent approach across the adventure play offer</li> <li>• It is likely that economies of scale will increase efficiency allowing for increases in the extent of the offer,</li> </ul>	<ul style="list-style-type: none"> <li>• The provider market is relatively small and it may not produce strong bids for a larger contract for 11 playgrounds</li> <li>• There are risks to resources, including finance and staff, with TUPE considerations and potential</li> </ul>

<p>higher quality delivery or other benefits</p> <ul style="list-style-type: none"> <li>Working with a single provider for the open-access offer will ensure that council capacity for contract management is able to be streamlined whilst service quality is maximised</li> <li>A single contract for Hayward will deliver greater accountability as well as better opportunities for attracting resources through co-commissioning</li> <li>Any partnership arrangements would be driven by providers, not the council</li> </ul>	<p>reorganisations of management structures</p> <ul style="list-style-type: none"> <li>This approach may not result in the receipt of partnership bids nor a partnership being awarded the contract/s</li> </ul>
<p><b>Option C:</b> procure <b>one alliance contract</b> through an open procedure, consisting of all 12 adventure playgrounds and in which 2 or more providers are required to join the alliance should their tenders be successful</p>	
<p style="text-align: center;"><b>Benefits</b></p>	<p style="text-align: center;"><b>Risks</b></p>
<ul style="list-style-type: none"> <li>Quality and capacity is maximised with more than one provider delivering adventure play across the 12 sites</li> <li>Providers work together, streamlining resources and sharing expertise, especially in relation to Hayward</li> <li>All members of the alliance have an equal stake in the contract being delivered</li> <li>The council is part of the alliance, encouraging collaboration</li> <li>The alliance could allow the streamlining of commissioning capacity in the medium to long term</li> </ul>	<ul style="list-style-type: none"> <li>The provider market is relatively small and it may not produce strong bids for an alliance contract opportunity</li> <li>There may be an increased risk of a failed procurement</li> <li>There may be a range of challenges for providers with being required to become part of an alliance</li> <li>There could be incentives for providers to tender in order to 'win a contract' rather than out of a desire to be part of an alliance</li> <li>Based on evidence of other alliance contracts, issues may arise around accountability for delivery, finance and operational approaches, leading to a decrease in quality or a lapse in service</li> <li>The level of commissioner involvement required to support an alliance to form successfully is unclear, potentially creating resource pressures for the council</li> </ul>
<p><b>Option D:</b> procure <b>one alliance contract of separate lots</b>, through an open procedure, consisting of 'lots' of playgrounds (precise structure to be agreed) in which providers are required to join an alliance or partnership should their tender/s be successful</p>	
<p style="text-align: center;"><b>Benefits</b></p>	<p style="text-align: center;"><b>Risks</b></p>

<ul style="list-style-type: none"> <li>• Providers can bid for the number of playgrounds they feel able to manage within a contract</li> <li>• The management and delivery of Hayward APG could be treated as a separate lot</li> <li>• Lots could be shaped in order to best stimulate market response</li> <li>• The variation in the quality of buildings could be better balanced across a number of different contracts with a range of providers</li> <li>• Successful bidders would have to work in partnership to ensure a cohesive offer across the borough</li> </ul>	<ul style="list-style-type: none"> <li>• The provider market is relatively small and it may not produce strong bids for a larger contract</li> <li>• Providers may bid for the same playgrounds while omitting others, meaning that some playgrounds could be left without an organisation to run them</li> <li>• There may be a range of challenges for providers with being required to become part of an alliance</li> </ul>
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### 3.6 Key Considerations

In line with the council's commitment to apprentices, the successful organisation(s) will be required to demonstrate how they will ensure that local apprentices are engaged over the life of the contract, with the quota of 1 apprentice for every £1 million of expenditure.

Organisations will be required to demonstrate how income generation acquired through their activities will be reinvested into the delivery of services and facilities management to support children and young people's adventure play. It will be essential that the provider/s is/are (a) partner/s in helping to improve the capital estate, ensuring that income generated is reinvested into the buildings and outdoor spaces in most need of repair.

To contribute to the sustainability of the offer overall, at procurement stage, the council will require tendering organisations to submit a business plan which will include plans to generate additional income to be reinvested into the offer. The contract specifications will set out requirements for flexibility around the application of additional income generated in order to best maintain and maximise the offer whilst managing the future financial position of the council.

London Living Wage has been considered in a separate report and it will be a requirement that all paid members of staff, with the exception of apprentices or trainees, must be paid the London Living Wage where permitted by law.

In addition to the intrinsic social benefits that will be realised through the contract's nature itself, organisations will be asked to demonstrate their role as community hubs within the localities the adventure playgrounds are based.

There may be TUPE, pensions and staffing implications to be considered. These will be published with the procurement documents to ensure that the market can respond adequately to what is required.

### 3.7 Evaluation

It is proposed that the tender will be conducted in one stage, known as the Open Procedure as the tender is 'open' to all organisations who express their interest in the tender. The Open Procedure includes minimum requirements which the organisation must achieve before its evaluation Award Criteria responses are considered.

The proposed approach is a split of 20% cost versus 80% quality.

#### **Cost 20%**

1. Financial forecast in line with the length of the service contract	10%
2. Sustainability, including income generation, fundraising and resources in-kind	10%

#### **Quality 80%**

3. Proposed approach to quality assurance including: proposed systems to ensure services are effectively reviewed and evaluated; reach across the local child and young person population; effective use of data available about service users to effectively plan and deliver the offer; effective communication and marketing	20%
4. Proposed approach to the delivery of playwork on adventure playgrounds in line with the Playwork Principles	10%
5. Proposed approach to safeguarding, early intervention and earliest help including: policies and procedures; staff training and development; holistic approaches to working with children and families in need of additional support	10%
6. Proposed approach to partnerships and integrated working (supported by evidence of extensive local knowledge and ability to engage with the local community) including: collaboration with local, regional and national organisations; coordination with other providers of adventure play and wider children's services including the Islington SEND Local Offer <sup>2</sup>	10%
7. Proposed approach to facilities management, including buildings and the adventure playground environment	10%
8. Proposed business plan including objectives, strategies, marketing and income generation in line with the length of the service contract	10%
9. Proposed approach to contract mobilisation including continuity of service, community engagement, TUPE and staffing considerations	10%

### **3.8 Business Risks**

The market for adventure play is small and it is essential that the successful providers are able to respond to the value and size of the contracts that are published. Organisations will need to be able to manage TUPE and to demonstrate financial viability, including income generation to reinvest in the adventure play offer in the longer term.

The options all have some level of risk involved, from managing complex transition plans to ensuring contract sizes are reasonable to the market. Through providing a longer-term contract of up to 15 years, the aim is to reduce the risk to the successful provider(s), as

<sup>2</sup> <http://directory.islington.gov.uk/kb5/islington/directory/localoffer.page?localofferchannelnew=0>

the organisation(s) will be taking on a larger contract than was available in previous procurement rounds (2012 and 2016). A longer contract period will allow for more substantive opportunities for revenue and capital fundraising. It will also create stability for staff teams and support management structures that are in line with the contract value and size of the capital estate.

In order to minimise risk, the provider market will be engaged throughout the development of the specification to ensure that it is realistic.

The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to complete an anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.

3.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.8 of the Procurement Rules:

<b>Relevant information</b>	<b>Information/section in report</b>
1 Nature of the service	The delivery, operation and management of the 12 adventure playgrounds in Islington, including facilities management.  See paragraph 3.1
2 Estimated value	The estimated value per year is up to £1.15 million.  The agreement is proposed to run for a period of three (3) years with four (4) options to extend for up to three (3) years each (3+3+3+3), giving a total possible duration of fifteen (15) years.  The total estimated value across the life of the contract if all extensions are utilised is £17.25 million.  See paragraph 3.3
3 Timetable	<ul style="list-style-type: none"> <li>• Executive meeting: February 2019</li> <li>• Advert: end of March 2019</li> <li>• Evaluation: May 2019</li> <li>• Contract award: July 2019</li> <li>• Start date: 1 October 2019</li> </ul> See paragraph 3.4

<p>4 Options appraisal for tender procedure including consideration of collaboration opportunities</p>	<p>The recommendation is to procure two contracts: one to operate and manage 11 'open for all' adventure playgrounds and one to operate and manage the specialist adventure playground for disabled children, young people and young adults (Hayward). This approach is compliant with the Public Contracts Regulations 2015 and the council's own procurement rules. It also avoids risks associated with the council <b>requiring</b> providers to work in partnership to obtain a contract, by instead <b>inviting</b> them to collaborate through the procurement process.</p> <p>See paragraph 3.5</p>
<p>5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications</p>	<p>Due consideration has been given to these key areas and the proposed strategy is compliant.</p> <p>See paragraph 3.6</p>
<p>6 Evaluation criteria</p>	<p>The award criteria breakdown is 20% price / 80% quality.</p> <p>The award criteria breakdown is more particularly described within the report.</p> <p>See paragraph 3.7</p>
<p>7 Any business risks associated with entering the contract</p>	<p>Business risk is medium due to the limited size of the market and the complexity of the operational aspects.</p> <p>See paragraph 3.8</p>
<p>8 Any other relevant financial, legal or other considerations.</p>	<p>See paragraphs 4.1 – 4.4</p>

## 4. Implications

### 4.1 Financial implications:

There is a £1.15m budget per annum to cover the cost of this contract. A risk exists if tenders exceed this amount.

## 4.2 **Legal Implications:**

The Council is required under section 507A(1) of the Education Act 1996 to secure adequate recreation and social and physical training facilities for children under the age of 13. This can include the establishment, management and maintenance of playgrounds. When making arrangements, the council must have particular regard to the expediency of cooperating with any voluntary bodies whose objects include the provision of similar facilities or activities (section 507A(3)). The council may enter into contracts with providers of adventure play services under section 1 of the Local Government (Contracts) Act 1997. The Executive may provide Corporate Directors with responsibility to award contracts with a value over £2 million using revenue money and over £5 million using capital money (council's Procurement Rule 16.2).

The services being procured are subject to the light touch regime set out in Regulations 74 to 77 of the Public Contracts Regulations 2015 (the Regulations). The threshold for application of this light touch regime is currently £615,278.00. The value of the proposed contracts is above this threshold. It will therefore need to be advertised in the Official Journal of the European Union (OJEU). There are no prescribed procurement processes under the light touch regime. Therefore, the council may use its discretion as to how it conducts the procurement process provided that it: discharges its duty to comply with the Treaty principles of equal treatment, non-discrimination and fair competition; conducts the procurement in conformance with the information that it provides in the OJEU advert; and ensures that the time limits that it imposes on suppliers, such as for responding to adverts is reasonable and proportionate. Following the procurement, a contract award notice is required to be published in OJEU. The council's Procurement Rules require light touch contracts over the value of £500,00.00 to be subject to competitive tender.

In compliance with the requirements of the light touch regime in the Regulations and the council's Procurement Rules the proposal outlined in the report is to advertise a call for competition in OJEU and procure the service using a competitive tender process.

## 4.3 **Environmental Implications:**

The main environmental impacts of the adventure playgrounds are the use of energy, water, and waste generation on the sites. However, this is kept to a minimum, with ecological efficiencies identified wherever possible. Organisations running adventure playgrounds have a vested interest in ecologically sound practice, with council commissioners ensuring this is adhered to through robust contract monitoring and quality assurance processes in place over the life of the contract(s).

It is expected that the letting of this/these contract(s) for adventure playgrounds will also have substantive beneficial impact to the local environment. Adventure playgrounds are protected in perpetuity through Deeds of Dedication, meaning that these natural spaces are safeguarded for children's play. The work required through the service specifications for adventure play includes food growing, effective recycling and composting and supporting children, young people and families' understanding of the environment.

Through ensuring that providers are contracted to effectively run quality services and deliver facilities management to a high ecological standard, both providers and commissioners ensure that the environment is integrated across work that takes place at

adventure playgrounds on a daily basis. Engagement with stakeholders and partners, including the council's Environment and Regeneration directorate, ensures that biodiversity and eco-friendly activities are incorporated into the services offered for children, young people and families.

#### **4.4 Resident Impact Assessment:**

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed on 16 November 2018 and the summary is included below:

This procurement will, as a minimum, maintain the current levels of service delivery at Islington's 12 adventure playgrounds, for example, the number of hours per year the service is available, availability of the service across term and holiday times and the number of locations from which the service is delivered.

By investing in a high quality adventure play offer, the council is likely to be contributing to the elimination of discrimination against children and families. These services will provide a wide range of high quality, inclusive, 'earliest help' programming through adventure playgrounds that will be centred around the needs of the children, their families and local communities. Based on regular and robust needs analyses, the council has identified that adventure playgrounds reach some of the most deprived communities in Islington.

These contracts will provide children with access to fun, exciting, safe (yet risky), well-supported, inclusive and natural play experiences that will support their physical and emotional health and wellbeing. Children will have opportunities to develop their own projects, build their social and emotional skills and explore the world around them, including their neighbourhoods, communities and the wider world.

Through providing these opportunities, the contracts will bring children from a range of different ages, abilities, gender identities, cultures and backgrounds closer together in a safe and supportive environment, fostering better understanding and communication, challenging stereotypes and developing mutual understanding.

## **5. Reason for recommendations**

- 5.1 It is recommended that the adventure play offer for Islington from October 2019 is secured through option B set out in section 3 of this report.

5.2 Option B would be compliant with the council's procurement rules and the Public Contracts Regulations 2015. It would also allow a full assessment of the market capacity to be made and would be likely to secure best value for the council. It would also allow consideration of any longer-term budget constraints that may emerge over the life of the contract.

The risks associated with options C and D are considered to be unacceptably high in terms of the likely operational challenges presented through the forming of an alliance via procurement.

The risks associated with option A are considered to be unacceptably high in relation to its lack of compliance with contract regulations and the council's own procurement rules.

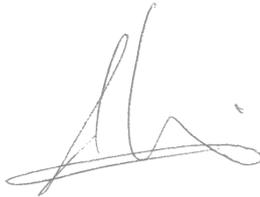
## Appendices

- RIA

**Background papers:** None

Final report clearance:

**Signed by:**



7 February 2019

Cllr Joe Caluori, Executive Member for Children and Families

Date

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