

	<b>London Borough of Hammersmith &amp; Fulham</b>  <b>CABINET</b>  <b>4 MARCH 2013</b>
<b>CREATION OF AN EMPLOYEE-LED MUTUAL AND SELECTION OF THE BUSINESS PARTNER</b>	
<b>Report of the Leader of the Council and Cabinet Member for Children’s Services - Councillor Nicholas Botterill and Councillor Helen Binmore</b>	
<b>Open Report</b>	
<b>For Decision</b>	
<b>Key Decision: Yes</b>	
<b>Wards Affected: All</b>	
<b>Accountable Executive Director:</b> Lyn Carpenter - Executive Director for Bi-Borough Environment, Leisure & Residents Services	
<b>Report Authors:</b> Andy Ruane, Procurement Project Manager, Tri-Borough Children’s Services.  John Francis, Principal Consultant, H&F Corporate Procurement	<b>Contact Details:</b> 020 8753 2582 <a href="mailto:andy.ruane@lbhf.gov.uk">andy.ruane@lbhf.gov.uk</a>  020 8753 2582 <a href="mailto:john.francis@lbhf.gov.uk">john.francis@lbhf.gov.uk</a>

**1. EXECUTIVE SUMMARY**

1.1. This report seeks Cabinet approval for three main recommendations which, if agreed, will break exciting new ground in public service delivery:

- i) to create an Employee-Led Mutual (ELM) that will become external to the Council and (through a joint venture company between the ELM and an independent business partner) trade both in the provision of support services to schools across the tri-borough area, and beyond, and in the provision of strategic consultancy services to this and other Councils on education and schools-related matters;
- ii) to select Prospects Services Limited as the independent business partner to help establish, and then to help commercially grow, the ELM;
- iii) to award a contract for provision of the strategic consultancy services required by H&F to 3BM (3 Borough Mutual, a joint venture between the ELM and Prospects), subject to approval of Prospects as its business partner.

1.2 These recommendations are close to being the final steps in a journey first started in early 2011 when H&F was selected as a national “first wave”

Mutual Pathfinder by the Cabinet Office, keen to pilot and support new ways of public service delivery. The Cabinet Office announcement was quickly followed in July 2011 when H&F's Cabinet decided to explore the possibility of creating an ELM to trade in those services mentioned above; and, in order for the ELM to prosper in a commercial market place, to also find a suitable independent sector partner (ISP) to first help establish the ELM and transition it out of the Council, and then to help it expand, both in existing and new markets, with a shareholding given to the partner in return for its support and input. In effect, a "dragon's den" arrangement, but with the ISP's shareholding capped at less than 25% to ensure the joint venture remains employee-led. The partner supporting it - not running it or taking it over.

- 1.3 The ambition driving this approach, to set-up an ELM with a supportive business partner, is to improve public service and drive efficiencies. To enable a model of service delivery that empowers staff to take direct-ownership of the services they provide, developed through a sound commercial approach; to see schools benefit from more commercially-focussed services, with existing high quality at least maintained and preferably improved, but at lower cost; and for the Council to get better services at lower cost, with reduced liabilities.
- 1.4 The outcome of the procurement is a positive one. The officer team who have evaluated Prospects' final tender bid are unanimous in scoring it a strong one; consistently good throughout, and excellent in several areas. Prospects appointment should give the ELM as a good a start as possible to be a success story; a genuine pathfinder and possible template for others to follow elsewhere.
- 1.5 It is important also to note and acknowledge that the approach taken to find the right partner has been a robust and transparent one, with good use made of the Competitive Dialogue Procedure throughout to arrive at an efficient and effective outcome. Although, ultimately, only one final tender was returned, there has been considerable market interest and keen competition. More detail on how the competition proceeded and on the other short-listed bidders is contained in paragraphs 4.9 - 4.26 below. The reasons given by other short-listed organisations for not submitting a final tender, after they had previously submitted Outline Solutions and followed these up with further detailed dialogue (and invested not insignificant resources in the process along the way), are reported on the exempt part of the Cabinet agenda given aspects of their commercial confidentiality.
- 1.6 If the ELM, which will become 3BM on trading, is to be operational in time for the new financial year, the Council, ELM and Prospects will need to move quickly on a number of key transitional issues. These issues are reported-on in section 8, and reflected in some of the formal recommendations below.

## **2. RECOMMENDATIONS**

- 2.1 That approval be given to the creation of *3 Borough Mutual* (3BM), an Employee-Led Mutual that will become external to the Council and, through a joint venture company with an independent business partner, trade in the provision of support services to schools and consultancy services to local authorities.
- 2.2 That Prospects Services Limited are selected as the independent sector partner to help establish and support the growth of 3BM, with Prospects Service Limited taking a minority shareholding in the joint venture.
- 2.3 That approval be given to award a 4-year contract between the Council and 3BM for strategic consultancy services on education and schools-related matters which.
  - a) commences on 2 April 2013;
  - b) is for consultancy services valued at £977,891 for the 2013/2014 financial year, and which will incrementally reduce to £765,641 by 2017/18;
  - c) provides an option to extend, via one or more extensions, for a further 3-years if in the Council's interest to do so, and that the decision on activating any extension(s) is delegated to the Leader and Cabinet Member for Children's Services;
  - d) has a robust performance management specification, with clear provision for termination should a party default.
- 2.4 That approval to agree the final format form of the Agreement between the Council and 3BM be delegated to The Leader and Cabinet Member for Children's Services, in consultation with the Executive Directors for Children's Services and Environment, Leisure and Residents Services.
- 2.5 That approval be given to vary the Council's IT services contract with the H&F Bridge Partnership (HFBP) so as to enable 3BM to access ICT services from HFBP as an authorised Sub-Customer.
- 2.6 That approval be given to novate existing relevant contracts between the Council and schools for the provision of support services to 3BM.
- 2.7 That approval be given to delegate to the Leader and Cabinet Member for Children's Services (in consultation with the Executive Director for Finance & Corporate Services, the Executive Director for Tri-borough Children's Services, and the Bi-borough Director for Law) authority to arrange usage by 3BM of appropriate assets and leases, as described in paragraph 8.5 of the report.
- 2.8 That approval is delegated to the Executive Director of Finance & Corporate Governance, in consultation with the Leader of the Council to enter into such agreements as are considered necessary in relation to the pension and workforce matters referred to in paragraphs 8.2 and 8.3.

- 2.9 That Cabinet note the transitional issues described in section 8 of the report and receives a report on these from Executive Director for Tri-borough Children's Services at the 13<sup>th</sup> May 2013 meeting

### **3. REASONS FOR DECISION**

- 3.1 The reasons for creating the Employee-Led Mutual are reported above in paragraph 1.3 of the executive summary, and in paragraphs 4.1-4.3 below in the introduction and background section. In order to effect a good transition from in-house Council service, and then prosper in a competitive commercial environment, the ELM needs specialist assistance from a supportive business partner.

### **4. INTRODUCTION AND BACKGROUND**

#### **Public sector reform - piloting new ways of working**

- 4.1 As part of the Coalition Government's programme of public sector reform, H&F was chosen by the Cabinet Office in early 2011 to be a "first wave" Mutual Pathfinder in exploring new models of service delivery.
- 4.2 Following officer consideration of possible options, including the production of outline business cases, support and input from the Office of the Prime Minister, H&F Cabinet on 18<sup>th</sup> July 2011 approved the commencement of a wider consultation on the setting up an Education Support Services ELM. Amongst the reasons why these particular support services were chosen for "mutualisation" were:
- market research informing the business case strongly indicating that the services' existing schools/customers valued their quality and value for money, and would continue to buy these from the current source in an open market;
  - confidence that the services would deliver more effectively as a private company, and expand if allowed to operate in a commercial environment;
  - support from the affected staff for becoming an ELM;
  - the commitment to maintaining high quality services to schools from the staff and management team; and their concern that further budget reductions might affect their responsiveness in supporting Schools Leadership Teams' management and delivery of outstanding education in the borough's schools.
- 4.3 By way of recap, the guiding principles informing the 18<sup>th</sup> July Cabinet 2011 decision included:
- transferring staff and financial risk out of the Council;
  - the ELM having the opportunity to develop its market share not only within the three boroughs of H&F, RBK&C and WCC, but much wider, such as with Independent Schools and Free Schools, to enable a more

robust delivery model and further financial benefits through economies of scale;

- a form of Mutual (John Lewis Partnership type) model of staff ownership to encourage a sharper business focus, with all staff potentially becoming shareholders;
- and as part of the wider tri-borough direction of travel, removing the direct in-house delivery of discretionary services.

4.4 Recognising the ELM would need specialist support from a suitable business partner to help it leave Council control and work without the usual protections in-house services enjoy, and then to help expand it commercially as envisaged, July 2011 Cabinet also instructed officers to commence a procurement for an independent sector partner (ISP). In effect, a “dragon’s den type” exercise, but with the ISP’s shareholding capped to ensure that the joint venture, when established, would remain an employee-led body.

**Services the ELM will be providing**

4.5 18<sup>th</sup> July 2011 Cabinet agreed that, subject to the completion of a procurement process, the proposed ELM should provide a range of core strategic services to H&F Council, H&F Schools Forum, and RBKC Council, with the key to provision of these “Core Services” being the ELM’s support to allow for self-improvement in schools and children’s services. These Core Services to be provided to the Councils can be summarised as:

***To H&F*** strategic consultancy advice on

- Schools organisation;
- Education aspects of borough regeneration projects;
- Asset management of schools sites;
- The overarching schools capital programme

***To H&F and H&F Schools Forum*** strategic advice on:

- Schools financial management;
- Schools resources strategies.

***To RBKC***

- ICT strategic support for Family and Children’s Services.

4.6 The contract price paid for these core services to be delivered by the ELM to the Councils and Schools Forums will be £977,891 in 2013/14, and then incrementally reduce to £765,641 by 2017/18 to reflect cost reductions and efficiency improvements:

2014/2015:	£852,391
2015/2016:	£765,641
2016/2017:	£762,641

4.7 There may also be future occasions when the Council wishes to commission the ELM to undertake programme management of schools capital projects, for which benchmarking against an existing framework used by the Council suggests an industry norm of around 3% of the project

value. The ELM's ability to manage capital projects will be completely at the Council's discretion and will be considered on a case by case basis, with no guarantee of the work being placed with them.

#### ***Traded services to schools***

4.8 In addition, the ELM will make a range of specified traded services available to schools, if they wish to purchase them. These traded services will be commissioned by schools directly, and can be summarised as:

- Financial consultancy and accountancy services;
- Information management services; and
- ICT and Network Support services.

Currently, the ELM to-be provides these services to a total of 193 schools and educational establishments:

- 53 in H&F
- 44 in RBK&C
- 41 in WCC
- 53 in Ealing
- 2 non-school establishments.
- 

### **GOING TO MARKET - FINDING THE RIGHT PARTNER**

#### **Choosing the right procurement procedure**

4.9 Finding the right partner through a statutory procurement process would be innovative, challenging, and potentially complex; unique within the UK public sector, with no ready-made solutions available from similar exercises successfully completed elsewhere. As such, it was felt that the best route would be to use the Competitive Dialogue procedure, as defined under the Public Contracts Regulations 2006. In short, to first have focussed discussion with interested short-listed bidders, and to then invite Outline Solutions from them, before engaging in more detailed dialogue with the best of these before inviting final tenders.

#### **Advertising and short-listing**

4.10 A providers' event was held on 24th January 2012 at the West London Free School to "warm" the market and capture any early feedback prior to commencing the formal competition. Around 20 interested organisations attended and participated in a two-way question and answer session, along with the then Leader, Cabinet Member for Children's Services, and officials from the Cabinet Office and the Council

4.11 A contract notice in the Official Journal of the EU and on the H&F website followed in March 2012, to which 8 organisations returned completed Pre-Qualification Questionnaires. An initial long-list of 5 bidders was agreed in a Leader and Cabinet Member Decision taken in June, along with the award criteria for final selection of the partner. The five organisations invited to participate in initial dialogue with the Council and ELM-to-be, culminating in the submission of Outline Solutions, were:

- Babcock Training Ltd.

- Baxi/Improve LLP (a consortium formed specifically to bid to become the ELM's ISP).
  - MITIE Facilities Services Ltd.
  - Prospects Services Ltd.
  - Wey Education Plc.
- 4.12 The Council's dialogue team was led by the Director of Finance & Resources for 3B Children's Services, supported by an experienced procurement project team of officers, the putative Chief Executive and senior managers from the ELM to-be, and external Legal advisers from Trowers and Hamlins. Given the need to avoid potential conflicts of future interest in respect of the forthcoming service contract between the Council and the ELM, the ELM had their own external advisers, Field Fisher Waterhouse, financially supported by the Cabinet Office.

**Outline Solutions - reducing short-listed bidders from 5 to 3**

- 4.13 Initial dialogue with the five organisations took place throughout June and July. Four of the bidders submitted Outline Solutions, wanting to progress to more detailed dialogue and the development of final tenders. The nature of the short-listed bidders is briefly described below, along with a short summary of their Outline Solutions, in reverse order in which their Solutions were ranked.
- 4.14 **Babcock Training Ltd** has traded as Babcock Training since July 2010, its parent company being Babcock International Group Plc. In respect of Education services, the company has a good track record of developing joint ventures elsewhere, including ones with Surrey County Council (Babcock 4S) established in 2004, and more recently with Devon CC (Babcock LDP) formed in April 2012, though with significantly higher levels of Babcock shareholding in return for support and investment than the maximum 25% being offered for ISP share in the ELM. Babcock withdrew from the competition in the week leading up to submission of Outline Solutions, citing commercial reasons.
- 4.15 **Wey Education Plc.** was formed in July 2011 after previously operating as Wey Capital Plc. Its primary business is working with LEAs and schools to raise education standards, but also includes consultancy services to LEAs on how support services for schools might be delivered differently to reduce cost and trade more successfully. The company is relatively new, with a number of high profile individuals experienced in social entrepreneurship and of working in the educational sector, including a former Chair of Ofsted.
- 4.16 The Wey Outline Solution scored 58%, lowest of the Outline Solutions returned, and was not selected by The Leader and Cabinet Member for Children's Services for making the final cut of 3 bidders. Wey fielded a good team throughout the initial dialogue, led by their CEO. However, parts of their Outline Solution did not have the same depth of detail and explanation provided by other bidders who scored higher marks.
- 4.17 **MITIE Facilities Services Ltd** is a large integrated strategic outsourcing management business specialising in a wide range of facilities management services, delivered to public sector authorities and a number

of “blue chip” private sector clients. It has developed different business models to cover business start-ups, joint ventures, and social enterprises; experience of delivering each of these models informed the answers given in MITIE’s PQQ.

- 4.18 The MITIE Outline Solution scored well, 70%, was ranked 3<sup>rd</sup>, and was selected to proceed to the next stage. A good initial bid, it demonstrated their commercial acumen and ability to help the ELM grow via new potential markets, and scored strongly on the marketing and branding expertise they could bring to promote the ELM. MITIE’s size and resources demonstrated a number of value-added features.
- 4.19 However, midway through the more detailed dialogue, MITIE withdrew from the process citing commercial reasons decided on at Board level, and these are reported on the exempt part of the agenda due to their confidentiality.
- 4.20 Whilst this withdrawal was disappointing, it still left the Council and ELM to be in a good position, and confident of a positive outcome with the top two ranked bidders still in the competition and committed to submitting final tenders.
- 4.21 **Baxi/Improve LLP** is a new partnership comprised of four companies formed specifically to bid to become the ELM’s ISP. Capacity Ltd., Kinetics Consultancy Solutions, and Waste LLP recently combined to form Improve LLP. Baxi Partnership Ltd (BPL) is an employee-owned business founded as a result of an Act of Parliament, and was in December 2011 part of a successful consortium bidding to deliver the Government’s Mutuals Information Service. It has considerable experience of helping establish and support “Mutualisations” elsewhere, and then disengaging from the enterprise when it has become sufficiently commercially robust to continue alone.
- 4.22 The Baxi/Improve Outline Solution scored highly, 76%, was ranked 2<sup>nd</sup>, and was approved for making the final short-list of 3. Their Outline Solution provided a very clear proposal on the roles and responsibilities of their team and how this would help transition the ELM during its set-up phase, and was marked as being consistently good, and particularly strong on mutualisation, employee-ownership and cultural change.
- 4.23 However, at the point of closing dialogue and just before inviting final tenders, Baxi/Improve advised that they could not get final Board approval to proceed to submit a final tender for commercial reasons, which are reported on the exempt of the agenda due the nature of their sensitivity.
- 4.24 **Prospects Services Ltd** is an employee-owned mutual national company trading in education, employment and training activities. Formed in 1995, following the privatisation of the careers service, it successfully bid for the new service contract in four south London Boroughs: Bexley, Bromley, Croydon and Sutton. Since then, the company has progressively - and impressively - grown, primarily through winning contracts with other public bodies and acquiring other niche/specialist organisations, before expanding



into other education and schools-related areas and successfully becoming a Mutual itself in 2011.

4.25 The Prospects Outline Solution scored very highly, 82%, was ranked 1st and was accordingly selected to make the final cut of 3.

4.26 Details of Prospects' Final Tender, which further developed their Outline Solution, are reported below in section 6.

## **5. PROPOSAL AND ISSUES**

5.1 The proposal to create an employee-led mutual, along with the need and search for the right business partner, are described in previous sections of this report. Key issues needing to be navigated to successfully transition the ELM out of the Council and launch it as a viable enterprise, whilst avoiding disruption to schools, are highlighted in section 8 of the report.

## **6. OPTIONS AND ANALYSIS OF OPTIONS – THE PROSPECTS BID**

### **Options analysis**

6.1 An assessment of the options open to the Council once Baxi/Improve withdrew from the competition is contained on the exempt part of the agenda, given commercially confidential assurances.

### **Scoring the final tender**

6.2 Evaluation of all Outline Solutions and Prospects Final Tender was undertaken by two teams:-

#### **A Tri-Borough Group comprising:**

- The Tri-borough CHS Director for Finance and Resources;
- The Procurement Project Manager;
- The Tri-borough CHS Head of Commissioning;
- The Tri-borough CHS Head of Asset Strategy;
- The Programme Manager, Bi-borough Environment Family; and
- A Principal Consultant in H&F's Corporate Procurement Team.

#### **An ELM Group:**

Comprising the Director, members of the Management Team and Programme Manager.

The Outline Solutions and Final Tender were scored against the criteria previously agreed by us in June 2011.

6.3 The criteria and Prospects score on each of these is shown in the table below:

<b>Evaluation Criteria &amp; weighting</b>	<b>Prospects score</b>
Working relationship with the ELM (out of 20)	17
ELM business growth proposals (out of 20)	16
Knowledge of Public Sector and Schools (out of 5)	5
Ownership - shares and approach (out of 30)	24

<b>Evaluation Criteria &amp; weighting</b>	<b>Prospects score</b>
Support for investment (out of 10)	8
Partnering approach and sustainability (out of 15)	13
<b>Prospects overall total <u>weighted</u> score</b>	<b>83%</b>

6.4 Officers in each group first assessed Prospects bid independently, and then came together to agree a consensus score for each question. The ELM undertook the same process separately. After the initial evaluation had been carried out by the respective groups, there was a combined Tri-Borough/ELM Group meeting to consider the score of the two groups and agree a final score for each question. The final total score agreed for Prospects was 83%.

**The bid**

6.5 All officers involved in the evaluation believe Prospects submitted an impressive final bid and set of proposals, which were consistently scored as good across all areas and excellent in several. Their proposals contained excellent clarity and granularity of detail on all key issues. Their experience and capability in public sector areas - in particular the education and schools sector - was clearly evidenced throughout. As an employee-led mutual themselves, they were also able to demonstrate a strong cultural fit and informative commercial insights, as well as identifying a number of key issues needing to be addressed as the ELM moves forward and if it is to prosper. Prospects size and resources also helped demonstrate a number of value-added features.

**Shareholding and linkage to ISP performance**

6.6 Prospects propose a 24.9% shareholding (with voting rights) that would be incrementally secured over a 20-month period, and contingent upon a total of 46 milestones being achieved to the satisfaction of the ELM. As the shareholding is below 25%, there are no major issues in terms of vetoing the wishes of the employees in the Mutual, and is therefore an acceptable solution.

**Conclusion**

6.7 Prospects committed a strong team to dialoguing with the Council and ELM, led by its Executive Chairman and containing a number of very experienced Directors and senior managers – all of whom are identified in the final tender as having a specified role to play in growing the ELM and making it a success. Throughout the detailed stage of dialogue, theirs had been a consistently strong bid based on an acceptable solution, cultural fit, capability and expertise. Their final bid score of 83%, when benchmarked against the previous scores for the 3 shortlisted organisations' Outline Solutions, compares favourably.

6.8 Based on the continued and consistently high quality of Prospects proposals throughout the process, the benchmarking mentioned above, and their strong final tender, it is recommended that Prospects Services Ltd be selected as the ELM's business partner.

## 7. **LAUNCH TIMETABLE**

7.1 The key milestones for launching the ELM/3BM are:

<b>Stage</b>	<b>Date</b>
Cabinet selection of ISP	4 <sup>th</sup> Mar 2013
Issue of press release naming preferred bidder	5 <sup>th</sup> March
Statutory "Alcatel" standstill Period (should an unsuccessful bidder wish to challenge)	5-15 <sup>th</sup> March
Pre-contractual transition discussions & work between H&F/ELM/Prospects	5 <sup>th</sup> Mar+
Finalisation of services contract between Council and 3BM, and its legal execution.	March
Contract signature and promotional event	Late-March
<b>3BM goes live</b>	<b>2<sup>nd</sup> April</b>

## 8. **TRANSITIONAL ISSUES**

8.1 Before going "live", there are a number of issues, some complex, that will need to be successfully navigated by H&F, the ELM and their partner. An efficient transition will be essential to the continuation of effective support services to schools in the three boroughs, without disruption to them or any drops in performance due to TUPE transfers or contractual changes.

### **Pensions**

8.2 To help expedite a smooth transition and transfer of affected staff into the ELM, the Council has previously agreed to grant 3BM admitted body status to the Local Government Pension Scheme for current H&F, RBK&C and WCC employees. However, due to a change in pension regulations in the autumn of 2012, H&F has been advised by legal advisers to make an application to the Secretary of State for Communities & Local Government in order to facilitate this. Discussions are currently taking place between H&F Directors and Civil Servants, and a formal application has been submitted. It is hoped that that the DCLG is forthcoming with consent to enable a successful transition and launch on 2<sup>nd</sup> April.

### **Other workforce matters**

8.3 When 3BM goes live, it will comprise a total of 31 staff: 16 from H&F, 9 from RBKC, 4 from WCC, and 2 agency staff. Affected staff in RBKC and WCC who will form part of the ELM have already transferred into H&F to help simplify and reduce the overall number of TUPE transfers that would otherwise be required to start the ELM. On the "go live" date, the 31 staff currently employed in the service will TUPE out of H&F and into 3BM, with the necessary HR support and requirements undertaken before, during, and after the transfer date.

### **3BM's ICT**

8.4 An effective transition will need to see a transfer of all relevant ICT hardware and software requirements from the Council to the ELM, along with access to relevant H&F systems being allowed in order for them to continue providing the strategic consultancy services. This potentially complex exercise will include making sure all the necessary leasing and

licensing arrangements are in place to provide the Council with legal protections, and executing a variation to the Council's contract with H&F Bridge Partnership to enable them to provide ICT services to the ELM as an authorised Sub-Customer. There are, in addition, a number of issues concerning future data sharing, data protection and security, and general information governance that also requires careful consideration and resolution. Once 3BM has become independent, the Director for ICT has advised that the ELM will need to have access to appropriate systems for a minimum period of 3-months, and then decide whether it wishes to continue with these arrangements or obtain better value for money solutions if these exist, either from Prospects and/or the ICT market place.

### **Assets & Property**

- 8.5 In addition to ICT hardware and software, a range of other assets such as furniture will need to transfer or be made available to the ELM if, on launch, they are to be commercially viable, and for which an agreed price will need to be reached; some assets may need to be moved from the service into other areas of the Authority, and then lease agreements drawn up for property at appropriate market rates. Work on these areas is underway, and will require delegation to Executive Directors of authority to approve once finalised.
- 8.6 In respect of accommodation, the ELM will for the immediate future operate out of three sites, Addison Primary School in H&F, the Isaac Newton Personal Development Centre in RBKC, and City Hall in WCC, at agreed market rents. Longer term, 3BM may choose to review its future accommodation needs.

### **Central support services**

- 8.7 The ELM currently receives a number of other central support services such as HR, recruitment, and payroll. As with ICT, it will need to make a commercial judgement as to whether it wishes to continue receiving these services from the Council, or elsewhere if it can obtain better value for money. As well as the ELM's commercial judgement, the Council will need to consider advice from its external legal advisers that continuing to provide these support services to the ELM – an independent, profit-making organisation – could give rise to contractual and legal issues for the Council.

### **Marketing and sharing the experience**

- 8.8 The Council's success in creating the ELM and securing a good business partner will receive considerable wider interest. It breaks new ground in public service delivery, and may well be promoted as a possible way forward for other innovative and reform-minded Councils to follow.
- 8.9 3BM's launch will present exciting marketing opportunities – for the ELM especially, but also for the Council, the Cabinet Office, and Prospects – but will also see demands for a sharing of the Council's experience. This will need to be properly managed, and commercially capitalised upon to help recover some of our process costs. A co-ordinated approach has been agreed and will be implemented between all four bodies to help ensure this.

### **Schools – communicating the change and novating existing contracts**

8.10 At present, the ELM to-be delivers services to approximately 191 schools:

- 53 in H&F;
- 44 in RBKC;
- 41 in WCC;
- 53 in Ealing.

When launched, these schools will be 3BM's primary customers. There will need to be careful and effective management of on-going communications with affected schools, carefully carried out in tandem with the process of novating existing H&F contracts over to 3BM to ensure continuity of important services.

## **9. CLIENT-SIDE ARRANGEMENTS - MONITORING 3BM's SERVICES TO THE COUNCIL**

### **Guiding principles**

9.1 The majority of 3BM's future business will be with schools choosing to purchase their services. Agreeing the price of these services, and being satisfied with the quality of them, will be a matter for those schools not the Council - rightly so, given our desire to give schools greater choice and freedom in how they are run.

9.2 In respect of services 3BM will be providing to the Council for the next 4-7 years, a full service contract between H&F and the ELM has been robustly negotiated between the parties and their external legal advisers, to the satisfaction of all parties involved. This contract includes a detailed specification that defines the Council's requirements primarily in output and performance terms and, in certain prescribed circumstances, the process needed to meet the Council's requirements. The ELM has agreed that 3BM will:

- Provide an appropriate range of educational and support services against a backdrop of changing needs and demands for schools.
- Be proactive and an agent of change.
- Be innovative in its thinking, suggest and implement new ideas, new technologies, and new uses for existing technologies.
- Seek ways of achieving continuous improvement.
- Deliver timely solutions according to an agreed framework of performance criteria.

### **Monitoring performance standards**

9.3 In order to ensure the Specification's performance standards are being met by 3BM, the Council will put in place appropriate, robust client-side monitoring arrangements and use an agreed payment mechanism agreed by all parties and their legal advisers. The payment mechanism forms a central part of the service contract. The Council client-side Responsible Officer within Tri-borough Children's Services will use the payment

mechanism to check 3BM is delivering the services to the required high standard by ensuring:

- The payment made to 3BM for the Core Services is based on the delivery of services in accordance with the specification requirements and shall be subject to financial deductions from the contract price if services are not delivered accordingly;
- 3BM have a financial incentive to deliver services which meet the performance standards identified in the specification, deductions will be made for failure to do so.
- If performance standards which are the responsibility of the ELM directly are not met, financial deductions will be made to incentivise the ELM to correct the situation at an early stage.
- The 3BM shall monitor the delivery of services and report its performance to the Council on a regular schedule; and
- The Council shall at any time be able to monitor and/or audit the delivery of any of the Core Services and examine 3BM's records relating to the delivery of those services.

#### **Payment Mechanism**

9.4 The payment mechanism has been developed to ensure:

- It is straightforward and simple to apply.
- The audit trail is clear and unambiguous, with every failed performance standard easily identified in a transparent invoicing procedure;
- 3BM has the right incentives to perform effectively.
- The management and administrative burden placed on 3BM, Council and service users is minimised.

### **10. EQUALITY IMPLICATIONS**

10.1. Implications for affected staff are addressed below in paragraph 14.6 of the report.

10.2. Where 3BM is in future commissioned by H&F to undertake public work on the Council's behalf, for example management of schools capital projects, it will need to ensure compliance with relevant statutory provisions of the Equality Act 2010. The public sector equality duty ('PSED') is non-delegable and a continuing duty, and the Council will need to give the regard that is appropriate as projects emerge and are developed. The ELM will need to take into account its duties as a service provider.

### **11. LEGAL IMPLICATIONS**

11.1 As a Children's Services Authority, the Council has duties pursuant to the Education Acts 1996, 2002 and 2005 and the School Standards and Framework Act 1998 in connection with the provision of schools and the

collation and reporting of information on education provision within its area.

- 11.2 The Council has the power to enter into contracts pursuant to s.1(1) of the Local Government Contracts Act 1997.
- 11.3 The Council needs to avoid the granting of unlawful State aid. This should not be an issue given that the 3BM will be charged at market rates for any services and premises that it chooses to obtain from the Council.
- 11.4 The legal implications with regard to procurement, contractual, TUPE, pensions and other transitional arrangements are appropriately addressed elsewhere within this report.
- 11.5 Implications completed by:  
Catherine Irvine, Principal Contracts Lawyer, telephone 020 8753 2774, in conjunction with Trowers and Hamlins LLP, the Council's external legal advisers.

## **12. FINANCIAL AND RESOURCES IMPLICATIONS**

- 12.1 The major recommendation of the report is to appoint an independent sector partner (ISP) to help establish and support an Employee-Led Mutual (ELM) to provide services to schools and local authorities.
- 12.2 The new entity (3BM) will be awarded a contract to offer support and strategic advice to the Local Authority in relation to schools resources, such as strategic financial advice and development of the capital programme to maintain the asset base, and advise on Schools Place planning. The scope of services to both sets of clients are described above in paragraphs 4.5-4.7 of the report.
- 12.3 The payment mechanism for the contract between H&F and 3BM has been developed to ensure:
  - that the mechanism allows the Authority to withhold payment for failed performance;
  - that the mechanism is straightforward and simply to apply;
  - that the audit trail is clear and unambiguous, with every failed performance standard easily identified in a transparent invoicing procedure;
  - that the ELM has the right incentives to perform effectively;
  - that the management and administrative burden placed on the ELM, Authority and service users is minimised;
  - the ELM will be paid for core services based on their delivery in accordance with the specification requirements and shall be subject to deductions payments if services are not delivered accordingly;

- the ELM shall have a financial incentive to deliver services which meet the performance standards identified, with deductions made for failure to do so;
  - that if performance standards which are the responsibility of the ELM directly, then financial deductions or delays in payment will be made to incentivise the ELM to correct the situation at an early stage.
- 12.4 The Director of Finance and Resources for Tri-borough Children's Services confirms the Council will retain the ability to commission services, which meet both local and national priorities. In addition, in awarding any contract the Council will ensure it retains the ability to respond to future funding pressures and priorities and minimise the potential of financial risk.
- 12.5 In order to ensure the ELM's viability and deliverability, external independent advice was sought to ensure due diligence was undertaken on all aspects of the business plan.
- 12.6 Efficiencies identified as part of the reducing contract price to the 3BM for the Core Services will form part of the business planning process within Children's Services to achieve the identified savings targets for 2013/14 and beyond. As part of the contractual relationship, further savings will be identified in future years to address future funding reductions and service priorities, if required.
- 12.7 The financial standing of the company Prospects Services Limited has been examined by making use of CreditSafe, a credit rating company. The Council has been advised that in light of the information available on 16<sup>th</sup> January 2013, the overall financial performance of Prospects is considered to be sound.
- 12.8 Robust client-side monitoring arrangements will be in place and the Council client-side Responsible Officer within Tri-borough Children's Services will use the payment mechanism to check 3BM is delivering the services to the required high standard, with financial deductions from the contract price if services are not delivered accordingly. 3BM have a financial incentive to deliver services, which meet the performance standards identified in the specification.
- 12.9 Whilst the intention is that the role of Strategic Schools Resourcing, including finance and Place Funding, is outsourced to the Mutual, it is important to stress that all major decisions will be taken by the Council or Schools Forum. Ultimate responsibility for monitoring and service delivery will still sit with the Director of Finance and Resources for Tri-Borough Children's Services, and they will need to develop such client-side processes as are deemed necessary.
- 12.10 Implications completed by:  
Dave McNamara, Director of Finance & Resources for Tri-borough Children's Services 0208-753-3404.



## **13. RISK MANAGEMENT**

- 13.1 The Council's approach to risk management is one that supports enterprise and innovation. It manages a balance of risks portfolio of opportunity and threat. The creation of the ELM is an opportunity for the Council, but also carries an expected measure of risk with it. The body of the report describes some of these strategic risks and their mitigating actions, with others being managed at their operational source and leading to the launch of the ELM in April 2013.
- 13.2 The robustness of the ELM's business case and strategy for growth was assessed by Grant Thornton prior to the Council commencing the procurement, and was analysed by all short-listed bidders to help inform their decision on whether to invest resources both in the procurement process and in the ELM when established. As part of their final tender, Prospects are willing to work non-contractually with the ELM at their own risk on a number of areas before 3BM goes live, including business development activities and marketing.
- 13.3 On launch of the ELM they will acquire a commercial footing and the risks of operating in a commercial environment. They will be responsible and accountable for the risks, benefits and freedoms of trading. To that extent, and to ensure the ELM is successful, its governance and indemnities need to be robust. The Partnership with Prospects would enable the ELM to build a business owned, in part, through its own employees. This incentivises the mutualised staff to be a part of its own success and to benefit from any future expansion of the business. A degree of the future sustainability risk of the ELM would be dependent on its sales and marketing. The opportunities exist in the market place to expand the business horizon beyond the current service provision and geographical boundaries of the three boroughs. The Partnership with Prospects would assist in the development of a secure sustainable future of the ELM.

Implications completed by:

Mike Sloniowski, Head of Risk Management, Resilience Services Section,  
Internal Audit H&F 020-8753-2587

## **14. PROCUREMENT, IT AND HR IMPLICATIONS**

### **Procurement**

- 14.1. The procurement has been conducted in accordance with the Public Contracts Regulations 2006 (as amended) ("the Regulations"), and resulted in a positive outcome, with benefits to schools and the Council.
- 14.2. The Regulations currently apply as the 3BM will be external to, and not controlled by, the Council. This may change for future mutualisations as the UK Government is lobbying for changes to EU procurement law.
- 14.3. Whilst only one final tender was returned at the very end of the process, the competition to find the right partner for the ELM has been fair, transparent, and robust – and has secured a good commercial deal for the

transferring Council employees. The corporate Procurement team has been actively involved in the project since its inception; in the selection of short-listed bidders, and in the subsequent competitive dialogue with them; and in the drafting of this report. To preserve probity, and maintain the integrity of the procurement process, the Council's procurement team has been kept separate from the employees of the future ELM. The Director for H&F Procurement & IT Strategy supports the report's recommendations.

- 14.4. Implications completed by:  
John Francis, Principal Consultant, H&F Corporate Procurement  
020-8753-2582

**ICT**

- 14.5. Effective and efficient ICT will be central to the future viability and business success of the ELM. The report identifies a number of ICT issues regarding hardware, software, licences, and data information sharing, security, protection and governance that will need to be carefully managed both during and beyond the ELM's departure from the Council. A Transition Working Group with active H&F ICT input has been established to ensure this is managed properly and the Council protected. The Director for Procurement and IT strategy supports the report's recommendations.,

- 14.6. Implications completed by:  
Jackie Hudson, Director for Procurement and IT strategy, H&F, and Tri-borough lead advisor for ICT Finance and Corporate Services, 020-8753-2946.

**HR**

- 14.6 The transfer of staff to the ELM is being carried out in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended). Consultation has been carried out in respect of the transfer with staff and trade union representatives. The Bi Borough Director of Human Resources supports the report's recommendations.
- 14.7 Implications completed by:  
John O' Rourke, Head of Human Resources (LBH&F) 020-8753-1700.

-----

**LOCAL GOVERNMENT ACT 2000**  
**LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
	None		