

Cabinet Member for Children and Young People and Cabinet Member for Education and Skills (and Deputy Leader)	Ref No: CYP03(18/19)
July 2018	Key Decision: Yes
Procurement of a Dynamic Purchasing System (DPS) for Children's Placements and Other Accommodation and Support Services (SEND and Children's Social Care)	Part I
Report by Director of Children and Family Services and Director of Education and Skills	Electoral Divisions: All

Summary

The County Council has a statutory responsibility to ensure the sufficiency of a variety of accommodation based services for children, young people and young adults. This responsibility extends beyond Children who are Looked After (CLA) and those with Special Educational Needs and Disabilities (SEND) and includes care leavers, those on the edge of care, Unaccompanied Asylum Seekers (UASC) and those at risk of homelessness.

Whilst the County Council provides some of these services, the demand is such that a significant number of placements are purchased from the external market and evaluation shows this trend is expected to continue.

The County Council currently has a number of contractual arrangements for purchasing external placements for children. Amongst the largest is a framework for purchasing fostering and residential care home social care placements for Children Looked After (CLA) and a Dynamic Purchasing System (DPS) for educational day and residential placements for children with SEND. Both of these contracts are used by other local and neighbouring authorities.

As these two arrangements are coming to the end of their permitted term the County Council is seeking to commission one DPS to facilitate the purchase of all external accommodation based placements including those for children who are CLA or who have SEND. The DPS will ensure a consistent yet flexible approach to purchasing the variety of accommodation based products and services required for children and young people and will help facilitate and manage the market to meet the anticipated demand, both in terms of the volumes and complexity of children and young people requiring support. It will also maximise the potential to encourage competitive pricing.

Whilst the County Council ambition is to reduce dependence on the external market, it is recognised that there is a residual need for placements which are either highly specialist, low incidence or responsive to changing need and demography.

The DPS itself has no actual contract value as it makes no guarantee of business for any provider. However the potential spend by the County Council through the combined framework is £45.2m per annum (SEND £23.2m and Social Care

£22m).

Recommendations

That the Cabinet Member for Children and Young People and the Cabinet Member for Education and Skills agree:

- (1) To approve the procurement of a Dynamic Purchasing System (DPS), which will facilitate the purchasing of placements for individual children from providers of accommodation based services including independent foster and residential care and independent and non-maintained special schools, as and when they are required. The term of the DPS will be 7 years in total, starting on 1 February 2019 and concluding on 31 January 2026 as detailed in paragraph 2.5.
- (2) To delegate authority to the Director of Children and Family Services to implement the DPS for the period 1 February 2019 to 31 January 2026 for the supply of all Children's Placements and Other Support Services.

Proposal and options considered

1. Background and Context

- 1.1 The County Council has a current Dynamic Purchasing System (SEND DPS) which facilitates the identification and securing of placements within independent and non-maintained special schools for children with Special Educational Needs. The County Council uses the DPS when all other options have been exhausted and/or where parents take their preference for their child to be educated in a particular school to Tribunal and there is agreement that a highly specialist placement is required.
- 1.2 A DPS is essentially a list of providers who meet pre-set criteria and standards defined by the County Council; the DPS remains continually open to new joiners throughout the term of operation thus making it agile and able to respond to changing demand.
- 1.3 All providers listed on the DPS have sight of all the business opportunities (relevant to the customer group each is aimed at and that are within scope) that the Authority has available. The providers have an opportunity to express an interest for this business and be considered through the prescribed contractual process, termed "call-off". The call-off process is described in more detail in paragraph 2.13.
- 1.4 The existing SEND DPS has a potential 7 year term; however the maximum permitted term expires on 28 February 2019. There are 5 local authority partners, subject to a partnership agreement, who also use the DPS at a local level.
- 1.5 The County Council also has a shared framework with Brighton and Hove City Council which similarly facilitates the identification and securing of placements with independent children's homes providers and independent fostering agencies for Children Looked After (CLA). As with the SEND DPS, all in-house options will have previously been explored before any decision to

seek a placement in the independent sector is sought. The framework has a potential 7 year term and the maximum permitted term expires in October 2019.

- 1.6 Approval to extend the SEND DPS and CLA Framework was sought, and given, on the basis that the extension period provided sufficient time to undertake a new procurement that would bring both arrangements under the one new DPS. This is considered the most efficient and effective use of resources, whilst introducing the likelihood to secure good and better outcomes for children and identify opportunities to improve value for money spent.

2. **Proposal**

- 2.1 The County Council is proposing to procure a DPS that will enable the efficient identification of potential educational placements for children with SEND and social care placements for CLA.
- 2.2 This DPS will ensure that the County Council purchases these placement services in compliance with EU/UK procurement law (The Public Contract Regulations 2015) and the County Council's Standing Orders on Procurement and Contracts. These state that contracting authorities shall undertake competitive tendering of services contracts and treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner, to provide a consistent approach to purchasing placements.
- 2.3 The DPS itself has no actual contract value; it makes no guarantee of business for any provider. The potential spend by the County Council through the DPS is anticipated to be £45.2m per annum; with a 7 year term the total potential value of spend by the County Council through the DPS will be £316.4m.
- 2.4 The fact that all placements will be procured through the DPS will help shape the market to meet the needs and demands of the County Council and maximise the potential to encourage competitive pricing. It will also enable the Council to introduce a range of purchasing options not currently utilised, including the use of block contract purchasing and agreed volume discount purchasing. This means buying a pre-agreed amount (beds or provision) from a supplier to fill with the most appropriate children and young people to ensure their outcomes are achieved. Buying in this way will potentially mean the rates will be at a lower cost to the County Council.
- 2.5 The DPS will be procured for a potential 7 year term:
- Substantive period of 3 years, 1 February 2019 – 31 January 2022
 - Option to extend for a further 2 years, 1 February 2022 – 31 January 2024
 - Option for final extension period of 2 years, 1 February 2024 – 31 January 2026.
- 2.6 The Cabinet Members will be asked to delegate authority to the Director of Children and Family Services to implement the DPS. Should this meet the

requirements for an Officer Key Decision it will be subject to the necessary Key Decision process.

- 2.7 The Director of Children and Family Services will delegate authority to award contracts to successful applicants to join the DPS to the Head of Market Development (CAFHE).
- 2.8 Delegation to award contracts for individual placements made by calling-off from the DPS will be given to the respective budget holders for SEND and Children's Social Care.
- 2.9 Use of the DPS at a local level by other local authority partners will continue to be allowed and will be subject to a Partnership Agreement drawn up by Legal Services.
- 2.10 The formal notice that is published to advertise this contract opportunity to interested parties (OJEU notice) will make it explicit that other local authority partners will be able to use the DPS and the value of potential business noted accordingly.
- 2.11 The DPS will use an outcomes-based approach. This means that the service specification that any successful contractor would have to work to sets out the underpinning principles for how the service should be delivered and confirms that the safety of the child/young person is paramount and takes precedence in all circumstances. In using an outcomes-based commissioning approach the County Council will focus on the long-term changes that the services provided will contribute towards.
- 2.12 The Department for Education provided funding for the County Council to commission and work in partnership with the New Economics Foundation to develop a common outcomes framework and monitoring approach which can be applied to placements procured through the DPS to ensure they are meeting need and planned outcomes. This will enable more robust monitoring of individual placements and the expectation is that this common outcomes framework will be applied more widely to the development of Education, Health and Care Plans (EHCPs) for children with SEND.
- 2.13 When a placement is required it will be sought through a call-off process. This means that providers will be asked to respond to the referral with an Expression of Interest (EoI) clearly setting out how they can meet the needs of the child, deliver the intended outcomes and propose a price (which cannot exceed the price stated in the application to join the DPS). Robust evaluation of EoIs and subsequent award will ensure that a best price-v-quality ratio is applied.

3. Resources

- 3.1 Staff resource to undertake the procurement exercise and manage the DPS has been identified and secured from within business-as-usual functions and includes Legal Services, Procurement, Finance and Contracts and Commissioning Officers. Therefore no additional staff resource is sought.
- 3.2 Value for money is demonstrated through:

- The emphasis on high quality provision for service users which will be delivered by the outcomes-based approach and a clear focus on the long-term changes that the services provided will contribute towards.
- The improvement in the ability to introduce effective contract management and quality assurance activity by introducing a new contract that is fit for and enables this purpose.
- Identifying opportunities to optimise the benefits of a combined working relationship through sharing data and intelligence with other local authority partners.
- An improved specification that enables more robust setting and monitoring of outcomes achieved in the placement.
- Building a sound, robust and effective provider base, and therefore identifying opportunities to reshape the market to respond to local need and to ensure agility, availability and affordability of provision.
- Maintaining and building on the competitive element of responsible pricing that the existing SEND DPS and CLA framework have benefited from.
- Combining SEND and social care (for CLA) under the one umbrella DPS will lead to more efficient use of staff resources involved with the procurement activity. In addition one DPS will reduce time spent on seeking potential placements as all options can be explored through the same route at the same time.

- 3.3 Whilst no cashable savings have been attributed to the mobilisation of the DPS, it is expected that it will be the vehicle to manage unit cost prices of placements, retain value for money and identify potential savings where available. The DPS is one of a package of delivery models that will be introduced following the development and implementation of the Commissioning Strategy for Children and Young People with Complex Needs 2017-2021 which is intended to improve outcomes, manage placements more effectively, and engage with the market more effectively to secure improved value for money in the future.
- 3.4 The new contract places a high priority and importance on effective monitoring and management arrangements; these enable early identification of opportunities to reduce high levels of support to the child when appropriate to do so, thus reducing fees accordingly.
- 3.5 An additional feature of the contract is that any extra support or service that a child is to receive will be recorded with a start, review and end date for payment thus providing a timely prompt to officers to reconsider the necessity and continued value of that support or service.
- 3.6 It is intended that the robust application of these arrangements by those with operational responsibility will enable a contribution to be made towards planned savings for the Local Authority budget and within the Dedicated Schools Grant.

Factors taken into account

4. Consultation

4.1 Consultation with service users, the market and wider internal and external stakeholders will be ongoing throughout the procurement process; to date the following consultation has taken place.

4.2 Members

The proposal was considered by the Children and Young People's Services Select Committee at the meeting on 20 June 2018. The Select Committee was pleased with the direction of travel and endorsed the Cabinet Members' decision to approve progress with the procurement, requesting that an update on progress be provided to the Committee during the early part of 2019.

4.3 External

Consultation with the market sectors' representative bodies, National Association of Non-Maintained and Independent Special Schools (NASS), Nationwide Association of Foster Providers (NAFP) and the Independent Children's Homes Association (ICHA) has been undertaken. This has included involvement in workshops, task and finish groups and round-table discussions and has led to a more collaborative approach in developing the new DPS that has taken account of the knowledge and views of providers. Additionally, Ofsted and the Department for Education have contributed to discussions and provided a steer to the project team.

4.4 Public

Using a co-production method parent representatives from the West Sussex Parent Carer Forum have been consulted and involved in workshop events to develop the outcomes-based approach the new DPS incorporates.

Young people (representatives from the Children in Care Council) took part in a consultative exercise with regards to the development of a Common Outcomes Framework, focusing in particular on what matters most to them. Involvement of both groups directly influenced the Common Outcomes Framework and the drafting of the new contract documents.

4.5 Internal

Representatives from Procurement, Finance and Legal Services are part of the project team and have been closely involved in the development of this proposal. Colleagues in IT have also confirmed that the existing eSourcing portal currently used by the County Council will meet the requirements to support a DPS.

Other County Council colleagues who have made significant contribution include the Head of Children's Social Care and Head of Inclusion (SEND).

4.6 The existing and potential supplier market

The County Council continues to engage with existing and emerging suppliers across all the accommodation based sectors through market engagement events, supplier monitoring visits and individual placement negotiations. This

ongoing consultation will inform the specifications for the service and signal the County Council's intentions of cost and quality to the individual sectors.

5. Risk Management Implications

- 5.1 Identified risks, along with associated mitigations, have been considered and are set out in Appendix 1.

6. Other Options Considered

- 6.1 The following options were considered in developing the proposal:-

6.1.1 Jointly procure a South East region DPS with neighbouring authorities with the County Council hosting a central management team

This option was fully explored with other authorities over an 18 month period; the conclusion was that each authority wished to retain tighter control at a local level and it would not prove possible to harness and extract maximum financial benefits unless a centralised team was established; there was little appetite from partner authorities to contribute to a central team. This option was therefore discounted.

6.1.2 Extend the existing arrangements for the maximum term to 31 March 2019 (SEND DPS) and 31 October 2019 (CLA Framework)

Both arrangements currently use historical versions of a national contract that do not fully protect the County Council from identified risks nor afford the ability to monitor and manage the contract effectively. In conjunction with Legal Services a revised contract will be developed which can be introduced in a timelier manner by February 2019.

6.1.3 Procure separate DPS arrangements for SEND and CLA

This is not the best use of staff resource and cannot demonstrate value for money; two procurement exercises would be undertaken with each requiring the same staff resource and cost implications. Additionally, by bringing the requirements for SEND and CLA children under the same purchasing umbrella, it provides greater opportunity to secure innovative solutions for individual children as a wider market can be approached at the same time.

6.1.4 Join an alternative framework led by another authority

Several 'placement' frameworks exist across the country led by host authorities on behalf of a number of other authorities. A number of these frameworks have been explored and primarily discounted based on their product and service specifications or approach to cost or quality. Developing a bespoke DPS for the County Council enables the outcomes based model to be embedded, the introduction of a range of alternative purchasing approaches, and widens the ability to source alternative accommodation based services. It does not preclude the County Council from joining additional frameworks should it wish to do so.

7. Equality Duty

- 7.1 The children placed through the DPS will have a wide range of needs, and therefore any proposal needs to consider the potential impact on them in

terms of their sex, age, disability, race, religion, cultural identity, or sexual orientation.

- 7.2 The services to be provided are education and care, using an outcomes based approach to the identification of the placement most able to meet the individual child's needs. This will ensure that the proposed arrangements meet all the equality obligations of the County Council. It is therefore not envisaged that there will be any negative impact for the children. Rather, the proposed arrangements will enable a greater focus on their individual needs.
- 7.3 Services to be delivered through this DPS are to be child centred and outcome focused. The key outcomes for the individual child will relate to
 - Safety
 - Health
 - Resilience
 - Self-esteem
 - Control
 - Relationships
 - Achievement
 - Participation
 - Independence
 - Inclusion
 - Well-being

Through the sharing of referral information during the call-off process, the proposal will help to develop the market, so that it is responsive to the identified needs of children. Improved relationships between the County Council and providers will assist in ensuring that the appropriate services are being developed.

- 7.4 The service specifications will require all providers to deliver in relation to the equality agenda of the County Council. They will be required to respect and value difference, and ensure that the social, cultural and religious needs of the children are acknowledged and supported.
- 7.5 In addition to the outcomes sought for individual children, there will also be community level outcomes which will further enhance the children's lives:
 - Strong local economy – e.g. providing employment opportunities
 - An inclusive and supportive community
 - A safe and healthy environment.

- 7.6 The providers will be required to work in partnership with the County Council in developing their services. Providers will be required to take positive action to address any discrimination which affects a child, and develop their own practice, including provision of adequate training for their staff, to ensure that equality is always a primary concern.

This will mean that providers and their staff who may be meeting the needs of children in relation to some specific characteristics are also learning to recognise that children are not defined by a single characteristic.

7.7 Service providers will be required to implement effective quality assurance processes which will be subject to contract monitoring and compliance checking on a regular basis. This will ensure the impact of service delivery is measured and evaluated. The outcomes for individual children will be monitored through the care planning process, and/or annual reviews of the Education, Health and Care Plan.

8. **Social Value**

8.1 Embedded within the new contract is a requirement for the provider to consider social value in all aspects of the business and provide evidence that it has considered and/or implemented actions flowing from the Public Services (Social Value) Act 2012. This may include, but will not be limited to:

- Supporting local economic development;
- Providing training and employment opportunities, including supporting local colleges and schools with work placements or traineeships, internships and apprenticeship schemes;
- Supporting and working with the local community; and
- Reducing environmental impact.

8.2 This requirement will be subject to monitoring as part of the contract management arrangements and providers will need to include detailed information in their annual monitoring report.

9. **Crime and Disorder Act Implications**

None.

10. **Human Rights Implications**

None.

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Appendices:

Appendix 1 – Risk Management Table

Background Papers: None

Risk Management

In developing the proposal a number of risks have been identified. These are set out in the table below along with mitigation measures.

Risk No.	Risk	Mitigation
RISK 1	Supplier disengagement: For the DPS to work effectively suppliers must be engaged to participate. If only a handful opt to join (or are accepted onto) the system, its ability to reduce spend and improve quality standards is diminished. A critical mass of accredited suppliers is therefore required.	Market engagement indicates that all providers currently enrolled on the SEND DPS and CLA Framework will expect to join the new DPS. In addition extensive market engagement will take place throughout the procurement period to ensure proactive engagement of existing and additional suppliers.
RISK 2	The unit costs for each type of placement increase from the currently agreed framework prices and purchasing rates set in 2012. These unit costs are reflective of the intensity of the package of support agreed for the individual child.	<p>SEND Placements – The County Council currently purchases at agreed rates and negotiates annually an increase in fees which usually takes the form of an inflationary uplift. In order to manage budgetary pressures no inflationary uplifts have been agreed for existing placements during the financial year 2018/19. Whilst we would wish to continue this approach within the new framework there remains the risk that new placement prices could be significantly higher than at present. To mitigate this risk, the procurement exercise will include a number of budgetary management measures, including discretionary but not compulsory uplifts specified within the terms and conditions of the contract. In addition the County Council will be actively seeking favourable block contract unit cost prices and volume discounts.</p> <p>IFA & Residential Placements – The current unit costs of placements, although set by the County Council in 2012, reflect unit costs originally set in 2008. No inflationary uplifts have been applied throughout the duration of the framework. As such there is a significant risk that suppliers will take the opportunity to increase unit costs for each type of placement. This inflation of prices will also be influenced by wider market forces. The market is</p>

		aware that there remains undiminished demand for residential placements. Many neighbouring authorities, faced with a supply deficit place significant numbers of children within West Sussex and to discharge their statutory duty are willing to pay higher unit costs than currently paid by the County Council. To mitigate this the County Council continues to engage with existing and emerging suppliers and intends to explore the use of capital and assets to offset the revenue budgetary pressures this may pose. Current market intelligence suggests that this is of interest to suppliers and this approach will continue to be tested as part of the ongoing market engagement and procurement process.
RISK 3	The DPS needs to be electronic to meet requirements set out in the Public Contracts Regulations 2015 and commissioners will therefore need to engage effectively with their market and operational teams to ensure readiness to use the eSourcing portal.	Providers and operational teams currently working through a variety of paper and electronic methods will see efficiencies in using one single point of referral and response. Training will be provided to suppliers to familiarise them with the eSourcing portal.
RISK 4	Cultural change: The transition away from a continued reliance on spot purchase of placements that have not been procured via the existing contract arrangements (despite the current SEND DPS and CLA Framework) will require a culture shift driven by County Council senior management. Adequate training and engagement would also need to be provided to operational teams using the DPS to promote consistent evaluation of outcome based referral responses.	Led by the Head of Market Engagement, potential suppliers will be actively encouraged to consider the alternative arrangements and opportunities the DPS will provide, for example block purchasing arrangements or volume discounts. In addition workshops will be arranged to deliver training to all staff using the DPS to familiarise them with these principles.
RISK 5	Challenge from providers if spot purchasing is identified.	Renewed and robust drive to ensure that operational staff are compliant with the published purchasing protocols and that adherence to these is maintained, alongside confirmation of exceptional circumstances being evidenced.
RISK 6	On its own the DPS will not revolutionise the local market and guarantee improvement.	It will provide a transparent and equitable method for accredited providers to express their interest in business opportunities and allow both

		parties a platform upon which to introduce alternative delivery models which are responsive to the increasing complexity of children placed. The County Council intends to utilise the DPS to embed a more proactive, supportive and proportionate relationship with suppliers to assure the market's capacity and capability.
RISK 7	External factors: new legislation which the government may introduce and market activity around consolidation or acquisition of services (by existing or new providers) will not be addressed by a DPS.	The partnership approach (with providers) combined with a procurement tool open to the entire market makes it easier for us to manage these impacts, and in some instances may allow us to influence them.