

Report to: Cabinet Member for Education and Skills

March 2021

Procurement of a Pseudo-Dynamic Purchasing System for Independent Alternative Provision for children with SEND

Report by: Director of Education and Skills

Electoral divisions: All

Summary

The County Council has a statutory obligation to provide suitable education for all learners including those who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; this is termed Alternative Provision.

Currently the requirement for Independent Alternative Provision (IAP) is predominately for children with Special Educational Needs and Disabilities (SEND) and is commissioned on a case by case basis with Individual Placement Agreements (IPAs) ensuring that the provision meets the needs of the child/young person for each placement.

Whilst the County Council's ambition is to reduce dependence on the external market, and provides some of these services, the demand is such that a significant amount of provision has to be purchased from the external market and evaluation shows this is a trend expected to continue. In order to meet this demand, it is proposed to set up a Pseudo-Dynamic Purchasing System (P-DPS) to enable the efficient sourcing of Independent Alternative Provision services from qualified providers.

The P-DPS will ensure a consistent yet flexible approach to purchasing the variety of Alternative Provision education 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; West Sussex schools will also access this P-DPS.

The P-DPS itself has no actual contract value as it makes no guarantee of business for any provider. However, the 2019/20 spend by the County Council was £1.1m per annum. Based on a calculation using known hours that schools have commissioned over a set period the West Sussex schools spend has been estimated as £1.5m per annum.

Recommendations

The Cabinet Member for Education and Skills is asked to approve:

- (1) The commencement of a procurement process for a new Pseudo Dynamic Purchasing System (P-DPS) in Spring 2021 which will facilitate the purchasing of Independent Alternative Provision (IAP) to support the educational requirements of individual children. The term of the P-DPS will be 4 years and 9 months years in total, starting on 1 June 2021 and concluding on 31 January 2026;
- (2) The delegation of authority to the Director of Education and Skills to implement the P-DPS for the supply of Independent Alternative Provision for the initial period 1 June 2021 to end February 2024 and further extension periods as necessary.

Proposal

1 Background and context

- 1.1 Independent Alternative Provision ensures the provision of a suitable education for all learners who because of exclusion, illness or other reasons, would not otherwise be able to attend school. Educating learners via IAP also avoids breakdown of placements in maintained schools and the potential need to place these children in more costly Independent and Non-Maintained Schools.
- 1.2 Currently 90% of the IAP requirement is for children and young people who have an Education Health and Care Plan (EHCP). Of this, 85% of the provision is tutoring in various settings.
- 1.3 Spend on IAP directly commissioned by the County Council was £1.1 million in 2019-20 which was 40% higher than the previous Financial Year. A snapshot in May 2020:
 - 88 SEND learners were receiving some form of IAP directly commissioned by the County Council
 - an estimated 115 learners (SEND and other) were receiving IAP commissioned by schools in West Sussex
- 1.4 Currently the County Council commission IAP using Individual Placement Agreements.
- 1.5 It is recognised that whilst the County Council's ambition is to reduce dependence on the external market, and provides some IAP services, demand is rising and evaluation indicates this will continue. Therefore provision will still need to be purchased from the external market and a solution is required to ensure efficient future sourcing of IAP.

2 Proposal details

- 2.1 It is proposed to launch a procurement to establish a P-DPS which will facilitate the purchasing of Independent Alternative Provision (IAP) to support the educational requirements of individual children.
- 2.2 A P-DPS is essentially a list of providers who meet pre-set criteria and standards defined by the County Council; the P-DPS remains continually open to new joiners throughout the term of operation thus making it agile and able to respond to changing demand.

- 2.3 The procurement opportunity to participate will be advertised in Spring 2021 with an initial closing date allowing bidders sufficient time to respond. Once the procurement process has concluded, the P-DPS will re-open to enable new service providers to join throughout the term of operation.
- 2.4 The maximum term of the P-DPS will be 4 years and 9 months years in total starting on 1 June 2021 with an initial term of 2 years and 9 months concluding at the end February 2024 with an option to extend by up to 2 years.
- 2.5 It is proposed to seek authority from the Cabinet Member to delegate authority to the Director of Education and Skills to implement the P-DPS which will be the subject of a further key decision as appropriate.
- 2.6 The fact that all placements will be procured through the P-DPS will help shape the market to meet the needs and demands of the County Council and maximise the potential to encourage competitive pricing for individual placements.
- 2.7 The proposal also aligns with the DfE 2013 statutory guidance regarding Alternative Provision and the action plan contained in the more recent DfE 2018 publication entitled [‘Creating opportunity for all - Our vision for alternative provision’](#).

3 Other options considered (and reasons for not proposing)

- To procure services using another Local Authority P-DPS - research shows that there is nothing locally available
- Add the provision of IAP services as a category to an existing P-DPS the County Council has in operation- as an unregulated service, IAP will have different entry requirements
- Do nothing - high risk due to the rising level of spend meaning non-compliance with County Council standing orders and less robust monitoring of providers.
- Stop using alternative provision - high risk of the County Council not meeting it’s statutory obligations relating to providing suitable education for all.

4 Consultation, engagement and advice

- 4.1 The Cabinet Member for Children and Young People has been consulted on this decision.
- 4.2 Service providers and other Local Authorities have provided comments and feedback which have been incorporated when developing the specification.
- 4.3 Provider forums have been held to raise awareness about the potential procurement and answer questions about the P-DPS.
- 4.4 Internal services contributors to the specification are: Special Educational Needs Assessment Team (SENAT); Fair Access Team; Virtual School; Intensive Planning Team.

- 4.5 Representatives from Procurement, Finance and Legal Services are part of the project team and have been closely involved in the development of this proposal.
- 4.6 The Health and Safety team have input to the qualification process.

5 Finance

5.1 Revenue consequences

	Year 1 2021/22 £m	Year 2 2022/23 £m	Year 3 2023/24 £m
Revenue budget – based on inflated 19/20 expenditure	£1.40	£1.56	£1.73
Change from Proposal	N/A	N/A	N/A
Remaining budget	N/A	N/A	N/A

This proposal will have no direct impact on the overall IAP budget, but will encourage more competitive pricing for individual placements.

The figures shown in the table are based on the 2019/20 expenditure on IAP directly commissioned by the County Council including an allowance for inflation in each year and future growth at the same rate as the rate of increase in EHCP's in 2019/20. It is probable that there will also be additional growth in this budget, however, we do not currently separately record data for IAP pupils and therefore it is difficult to make a reliable projection.

In addition to the County Council's spend set out above, individual schools also incur IAP expenditure. Information on this expenditure is held at an individual school and not centrally by the County Council.

5.2 The effect of the proposal:

- (a) **How the cost represents good value** - IAP is an avoidance of more costly Independent and Non-Maintained Schools. Having a better understanding of provider costs will assist in more accurate budgeting and future projections on spend
- (b) **Future savings/efficiencies being delivered** - None
- (c) **Human Resources, IT and Assets Impact** - None

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
Providers dis-engage	Provider Forums have been ongoing, Bidders Briefing planned, larger organisations have already experienced similar qualification process set by other Local Authorities
Internal resistance to process/cultural change	The introduction of a WSCC IAP has instigated process and practice change. Training for placement teams ongoing.
The DfE and Ofsted are consulting on all Alternative Provision – legislation may change	The specification development has been informed by the latest DfE guidance and consultation papers. If necessary, the Agreement can be updated to reflect any legislation changes if they arise.

7 Policy alignment and compliance

7.1 Legal implications

- 7.1.1 This P-DPS will allow the Council to discharge statutory duties described in Alternative Provision, Statutory guidance for Local Authorities, January 2013.
- 7.1.2 The value of this procurement is considered a Key Decision as it will result in the Council incurring expenditure which is significant as decided by the Council.
- 7.1.3 The Council is a Contracting Authority as defined in the Public Contract Regulations 2015 ("PCR") and as such is governed by those regulations. The value of the proposed contract is anticipated to be £12.35m over the maximum period (including extensions) of 4 years and 9 months
- 7.1.4 The value of the proposed contract is therefore above the relevant UK Thresholds as referred to in the PCR of £663,540.00 for Social and other specific Services ("Light Touch Services").
- 7.1.5 As such the Council will competitively tender these services in accordance with the procedures set out in the PCR "Light Touch Regime" and will utilise the flexibilities afforded by this regime under Regulations 74 to 76 of the Public Contracts Regulations 2015 (as amended), including the ability for service providers to join the P – DPS Agreement throughout the Agreement Term.
- 7.1.6 The Council will enter into a services contract using terms and conditions, approved by Commercial Legal Services and compliant with section 10 of the Council's Standing Orders on Procurement and Contracts.
- 7.1.7 The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") are unlikely to apply to these services on the commencement of the contract. No Council staff are in scope.
- 7.1.8 There is no risk that this contract will be considered illegal state subsidy within the subsidy control requirements because the contract will be subject to a competitive tender thereby ensuring that the Council is not selectively granting an advantage to one particular economic operator over another.

7.2 Equality duty and Human Rights assessment : -

- 7.2.1 The service supports the Council's duty under the Equality Act to give due regard to the need to:

- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

7.2.2 This proposal will ensure that children with protected characteristics have the same opportunity as those without such characteristics to access IAP appropriate to their needs.

7.3 **Climate change** –Not applicable to the DPS Agreement as the services and potential providers are too diverse. However as part of the response to the opportunity, providers will be asked to describe their policy or approach to sustainability which can then be monitored as part of the Contract Management process.

7.4 **Crime and Disorder** – This service supports the Council’s aim to improve community safety and to prevent crime and disorder.

7.4.1 The service will provide opportunities to divert individuals away from behaviour which may have anti-social implications.

7.5 **Public Health** – Not applicable

7.6 **Social Value** –Not applicable to the DPS Agreement as the services and potential providers are too diverse. However as part of the response to the opportunity, providers will be asked to describe their policy or approach to sustainability which can then be monitored as part of the Contract Management process.

Paul Wagstaff

Director of Education and Skills

Contact Officer: Helen Johns, Assistant Director Inclusion and SEND,
helen.johns@westsussex.gov.uk

Background papers - None