

Report to: Paul Wagstaff Director for Education and Skills

August 2021

Award of a Pseudo-Dynamic Purchasing System for Independent Alternative Provision for children with Special Educational Needs and Disabilities

Report by: Helen Johns Assistant Director of Inclusion and SEND

Electoral divisions: All

Summary

Independent Alternative Provision (IAP) 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.

In March 2021 the Cabinet Member for Education and Skills approved the commencement of a procurement process for a new Pseudo Dynamic Purchasing System (P-DPS) to facilitate the purchasing of IAP to support the educational requirements of individual children (decision [ES16 \(20/21\)](#) refers). A competitive procurement exercise has been undertaken and the County Council is now in a position to award places on to the P-DPS to the successful providers.

Recommendation

- (1) The Director of Education and Skills is asked to approve the appointment to the Pseudo Dynamic Purchasing System (P-DPS) for Independent Alternative Provision the providers listed in paragraph 2.1, that have met the criteria and standards required, for an initial period of 2 years and 6 months starting on 1st of September 2021 There is an option to extend the P-DPS by up to 2 years should the delivery and performance of the P-DPS be satisfactory.
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Proposal

1 Background and context

- 1.1 Currently the requirement for 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.
- 1.2 Whilst the County Council's ambition is to reduce dependence on the external market, and it 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 setting up a P-DPS will enable the efficient sourcing of Independent Alternative Provision services from qualified providers.

- 1.3 The decision to commence a procurement process was taken by the Cabinet Member for Education and Skills in March 2021 ([ES16 20/21](#)). As part of the decision the Cabinet Member delegated authority to the Director of Education and Skills to implement the P-DPS for the initial period and any further extension periods as necessary.
- 1.4 Following this decision, a tender utilising the Open Procedure was advertised in May 2021 via the County Council's South East (SE) Shared Services Tendering Portal, [Contracts Finder](#) and UK Find a Tender Service.
- 1.5 The P-DPS consists of five categories: Early Intervention and Prevention; Vocational Opportunities (including post 16 provision); Interim face to face tutoring for learners awaiting an education placement or who have been excluded; Online Tutoring (also known as blended package); and Complex Learners. Providers could apply to be on either one or all categories.
- 1.6 WSCC held Provider Forums in 2020-2021 and invited any providers that WSCC were already commissioning or that the team became aware of through the market engagement. This provided opportunities to discuss local needs and discuss the County Council's commissioning strategy.
- 1.7 Following the invitation to tender being issued a Bidders' Briefing was held on the 5th of May 2021 and all Providers were invited to join. The aim of the Bidders' Briefing was primarily to provide support to all providers including small and medium enterprises on how to use the SE Shared Services Tendering Portal and tender pack.
- 1.8 The technical element of the procurement process required responses to thirteen method statement questions (of which six applied to all categories) in order to determine the ability of the bidders to deliver the required services. Minimum score requirements ensured a minimum acceptable standard response. Providers that successfully passed all elements of the pass/fail criteria, have been successful in gaining a place on the P-DPS. Financial / commercial information was provided for information only.

2 Proposal details

- 2.1 It is proposed that the named providers in the table below are awarded places on the Independent Alternative Provision for children with SEND P-DPS in the Categories stated:

| Category | Providers |
|--|---|
| Category 1 - Early Intervention and Prevention | <ul style="list-style-type: none"> • Angling 4 Education Ltd • Asphaleia Ltd • BrightTeach Ltd • Chichester Forest Schools CIC • Crimsham Farm CIC • EAQ Grass Roots Ltd • Fresh Start in Education Ltd • Learn Solutions Ltd • Lorica Trust Ltd |

| | |
|---|--|
| | <ul style="list-style-type: none"> • Nisai Virtual Academy Ltd • Nudge Education Ltd • SENse Learning Ltd • Targeted Provision Ltd • Teaching Personnel Ltd |
| Category 2 – Vocational Opportunities (including post 16 provision) | <ul style="list-style-type: none"> • Angling 4 Education Ltd • Chichester Forest Schools CIC • Crimsham Farm CIC • EAQ Grass Roots Ltd • Lorica Trust Ltd • Red Balloon of the Air • SENse Learning Ltd |
| Category 3 - Interim face to face tutoring for learners awaiting an education placement or who have been excluded | <ul style="list-style-type: none"> • Asphaleia Ltd • BrightTeach Ltd • Fresh Start in Education Ltd • National Teaching and Advisory Service (NTAS) Ltd • Nudge Education Ltd • Red Balloon of the Air • SENse Learning Ltd • Targeted Provision Ltd • Teaching Personnel Ltd |
| Category 4 - Online Tutoring (also known as a blended package) | <ul style="list-style-type: none"> • At School Online Ltd • BrightTeach Ltd • Five Rivers Child Care Ltd • Fresh Start in Education Ltd • Learn Solutions Ltd • Nisai Virtual Academy Ltd • Red Balloon in the Air |
| Category 5 – Complex Learners | <ul style="list-style-type: none"> • Angling 4 Education Ltd • EAQ Grass Roots Ltd • Lorica Trust Ltd • National Teaching Association Service (NTAS) Ltd • SENse Learning Ltd • Targeted Provision Ltd • Teaching Personnel Ltd |

2.2 The P-DPS will commence on the 1st of September 2021 for an initial period of 2 years and 6 months with an option to extend by up to 2 years.

2.3 The P-DPS will be continuously open so that new service providers can join at any time throughout the Agreement Term. All providers, whenever they join, will go through the same evaluation process as the initial appointments to the P-DPS listed at paragraph 2.1 to assess their suitability for admission to the P-DPS. New providers awarded places on the P-DPS after it has commenced in September

2021, will be approved under the Director of Education and Skills' onward scheme of delegation

- 2.4 When a service for a child or young person is required, a suitable provider will be selected through the process of running a mini-competition in accordance with the terms of the P-DPS.
- 2.5 In terms of individual placement agreements, this will mean the issue of an invitation to tender to all qualified providers in the relevant category, to which providers will respond with a proposal for services and a pricing schedule (with rates not exceeding the rates submitted by the provider in achieving its appointment to the P-DPS). The best overall offer, assessed by reference to the Best Offer Criteria (as set out in the P-DPS), will determine the successful provider.
- 2.6 In terms of block contracts, qualified providers in the relevant category will receive an invitation to tender to which they will respond with a quality submission and a pricing schedule (with rates not exceeding the rates submitted by the provider in achieving its appointment to the P-DPS). The quality submission will be assessed by reference to the Block Contract Award Criteria (as set out in the P-DPS) and the pricing will be assessed on the basis of lowest price. The winning provider will be selected on the basis of the most economically advantageous tender.
- 2.7 The competitive processes and award of contract described in paragraphs 2.5 and 2.6 will be approved under the Director of Education and Skills' onward scheme of delegation.

3 Other options considered (and reasons for not proposing)

- 3.1 Alternative options were considered as part of Decision Report ref [ES16 20/21](#).

4 Consultation, engagement and advice

- 4.1 Consultation was undertaken as detailed in the Decision Report ref [ES16 20/21](#). In addition a bidder's briefing was held as outlined in paragraph 1.7.

5 Finance

- 5.1 Revenue consequences - The level of expenditure that will be incurred under the new P-DPS cannot be specified with certainty as a P-DPS does not provide a guaranteed level of spend. However, this proposal will have no direct impact on the overall IAP budget but will encourage more competitive pricing for individual placements.
- 5.2 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 Education, Health and Care Plans in 2019/20. It is probable that there will also be additional growth in this budget, however, data for IAP pupils is not currently record separately, and therefore it is difficult to make a reliable projection.

| | Year 1 2021/22 £m | Year 2 2022/23 £m | Year 3 2023/24 £m |
|--|-------------------------|-------------------------|-------------------------|
| Revenue budget – based on inflated 19/20 expenditure | 1.400 | 1.560 | 1.730 |
| Change from Proposal | N/A | N/A | N/A |
| Remaining budget | N/A | N/A | N/A |

- 5.3 In addition to the County Council's spend as set out above, individual schools also incur IAP expenditure. Information regarding this expenditure is held by the individual schools and not centrally by the County Council. 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.

The effect of the proposal:

- (a) **How the cost represents good value** - IAP is an avoidance of using 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) |
|---|--|
| Risk of Service Provider failure | As part of the tender process, financial standing checks have been undertaken by the County Council's Commercial Finance Department. All Service Providers passed the relevant checks. |
| Risk of Service Provider failure impacting on services available to customers | A Senior Contracts Officer will ensure appropriate levels of contract management, performance monitoring and quality assurance. Monitoring of financial due diligence of Service Providers with high risk or high impact of Service Provider failure. |
| Risk of procurement challenge | Engagement and consultation with the market (including in-house providers) took place to ensure that they understand the purpose of the procurement exercise to secure appropriate sourcing of external support, to supplement and complement existing in-house provision. |

7 Policy alignment and compliance

Legal implications

- 7.1 This P-DPS will allow the Council to discharge the statutory duties described in "[Alternative Provision - Statutory guidance for Local Authorities, January 2013](#)" as updated from time to time.
- 7.2 The value of this procurement is such that it is considered a Key Decision - it will result in the Council incurring expenditure above the £500,000 threshold which is identified by regulation as significant.
- 7.3 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 6 months.
- 7.4 The value of the proposed contract is therefore above the relevant value threshold identified in the PCR (£663,540) as applicable to specific types of social, health and education services of lower interest to cross border competition (known as the "Light Touch Services").
- 7.5 The Council has therefore competitively tendered these services in accordance with the procedures set out in the PCR "Light Touch Regime" and utilised 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.
- 7.6 The P-DPS adopts standard terms and conditions, approved by Commercial Legal Services and compliant with section 10 of the Council's Standing Orders on Procurement and Contracts.
- 7.7 The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") are unlikely to apply to these services on the commencement of the P-DPS. No Council staff are in scope.
- 7.8 This P-DPS should not be considered illegal state subsidy within the subsidy control requirements because the P-DPS has been subject to a competitive tender, ensuring that the Council is not selectively granting an advantage to one particular economic operator over another.

Equality duty and Human Rights assessment

- 7.9 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.
 - 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.

Climate change

7.10 Not applicable to the P-DPS Agreement as the services and potential providers are too diverse. However, as part of the Contract Management process providers will be asked to describe their policy or approach to sustainability which can then be monitored at the Strategic Termly reviews.

Crime and Disorder

7.11 This service supports the Council's aim to improve community safety and to prevent crime and disorder.

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

7.13 **Public Health** – Not applicable

7.14 **Social Value** – Not applicable to the P-DPS Agreement as the services and potential providers are too diverse. However, as part of the Contract Management process providers will be asked to describe their policy or approach to social value which can then be monitored at the Strategic Termly reviews.

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Background papers - None