

**Decision Maker:** Executive

**Date:** 18<sup>th</sup> May 2016

**Decision Type:** Non-Urgent Executive Non-Key

**Title:** **AUTHORISATION TO PROCURE SPECIAL EDUCATIONAL NEEDS PLACEMENTS THROUGH A DYNAMIC PURCHASING SYSTEM**

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**Ward:** All Wards

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1. Reason for report

- 1.1 Working in partnership with nine other South London Local Authorities, a Dynamic Purchasing System (DPS) has been set up to procure Special Educational Needs (SEN) placements from Independent Specialist Providers (ISP), with Croydon Council acting as the host for the DPS.
- 1.2 Authorisation is sought from Executive to enter into the DPS, via an Operating Agreement with the host Authority, for a four year period. Each individual placement will be procured from the DPS through a 'mini-competition; and will still be subject to authorisation as per the current delegated authority arrangements. The DPS is not an exclusive arrangement – placements can still continue to be purchased outside the DPS as required.
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2. **RECOMMENDATIONS**

**Executive is recommended to:**

- 2.1 **authorise entering into an Operating Agreement (subject to review and approval by the Director of Corporate Services) with Croydon Local Authority as the host authority for participation in the DPS for a four year period;**
- 2.2 **grant delegated authority to the Director of Education, in consultation with the Portfolio Holder for Education, the Director of Corporate Services and the Director of Finance, to renew participation in the DPS after the initial four year period.**

## Corporate Policy

1. Policy Status: Existing Policy: Further Details; Special Educational Needs Code of Practice; Duty to Secure Suitable Education for Bromley Children & Young People.
  2. BBB Priority: Children and Young People :
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## Financial

1. Cost of proposal: Estimated Cost : Participation in the DPS is at no cost to Bromley Council. The cost of placements procured through the DPS is dependent upon the volume and type. The current budget for purchase of SEN ISP placements is £8.77m and therefore there is a notional cost of £43.85m over a four year plus one year extension period.
  2. Ongoing costs: Recurring Cost :
  3. Budget head/performance centre: 136598 SEN Recoupment & Outborough Fees
  4. Total current budget for this head: £8.77m
  5. Source of funding: Dedicated Schools Grant
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## Staff

1. Number of staff (current and additional): N/A
  2. If from existing staff resources, number of staff hours: N/A
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## Legal

1. Legal Requirement: Statutory Requirement : Further Details: Requirement to provide suitable education for children and young people.
  2. Call-in: Applicable
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## Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Approximately 200 young people are in a placement at an Independent Specialist Providers.
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## Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

- 3.1 Children with assessed Special Educational Needs (SEN) supported by an Education, Health and Care Plan, are placed by Bromley Council in a suitable education setting. Where possible, this will be in a maintained school, maintained special school or academy, both in and out of borough, funded through national and local formula funded arrangements for maintained schools and academies. Where needs cannot be met through local or out of borough specialist or mainstream schools, placements are also purchased, via direct contracts, from Independent Specialist Providers (ISP).
- 3.2 Currently, all ISP placements are spot purchased for each individual pupil. A budget, funded through the Dedicated Schools Grant (DSG) High Needs Block, of £8.77m is available for the spot purchase of SEN placements from ISPs. Spot purchasing is currently based upon identifying potential providers from a Department of Education list (this is not a formally tendered approved list) that meet a child's needs and approaching them to discuss availability and price. As a result, it is a provider led process, as opposed to normal competitive tendering arrangement where the Council's requirements are published and providers bid to deliver the service. This also has to be managed within a narrow statutory timeframe.
- 3.3 Similar arrangements for the spot purchasing of ISP placements are in place for most other Local Authorities with no co-ordination between authorities. This has led to unnecessary competition with costs for similar placements varying significantly from local authority to local authority, dependent upon their individual negotiations for each placement and differing price policies (e.g. for inflation). It was recognised that the purchase of ISP placements would be more efficient and effective if Local Authorities co-ordinated efforts in the procurement of ISP placements and reduced spot purchasing arrangements in favour of more formal procurement processes.
- 3.4 To support this aim, the South London Consortium was established in September 2013 comprised of ten South London Local Authorities, including Bromley. The purpose of this partnership arrangement is to improve the effectiveness and value for money of the commissioning of good quality SEN ISP placements, achieving the best outcomes for children and securing efficiencies in new and existing placements. The cost of participation in the South London Consortium is £15k per annum per borough, funded through the existing SEN Operational budget.
- 3.5 Across the South London Consortium, over 2000 children are placed in day and residential ISPs with over 250 providers. The number of children with SEN has increased in recent years and this trend is forecast to continue. Over the same period, funding has reduced in real terms leading to increased pressure on the DSG High Needs Block for all Local Authorities. The cost of a placement with an ISP can range from £18,000 to £300,000 per year with the average placement cost being £40,000 per year for an average contract length of 3 years.
- 3.6 Working in partnership, the South London Consortium has improved co-ordination between all participating authorities. This includes the sharing of data on the provider market and the cost of placements, as well as agreeing the use of common contract arrangements and pricing policies. The work of the South London Consortium has been recognised nationally when it won both the National Government Opportunities Excellence in Public Procurement Award 2015/16 and, more recently, the 2016 Local Government Chronicle (LGC) award for Efficiency.
- 3.7 In April 2015 the South London Consortium made a successful bid for Department for Communities and Local Government (DCLG) Transformational Challenge Funds. The Challenge Fund has been used to support the development of an integrated commissioning solution for the purchase of ISP placements across the Consortium. The aim is to reduce the

spot purchasing of placement to a more planned, consistent and cost efficient means of procuring placements when needed.

- 3.8 The solution developed by the Consortium is to implement a Dynamic Purchasing System (DPS) for the procurement of SEN placements with ISPs. The DPS will act as a flexible framework contract, with providers invited to register on the framework via a rolling advertisement in the Official Journal of the European Union (OJEU), with applications received and evaluated on a rolling basis. Providers who wish to be accepted on to the framework will need to successfully submit pre-qualification information (on a pass/fail basis) and quality information which will be evaluated and will count towards their price/quality score in subsequent call-offs from the framework.
- 3.9 The South London Consortium has engaged with current service providers through newsletters and provider events to inform them of the intent to develop a DPS for future procurement of SEN ISP placements. An engagement strategy has been developed with further events and the provision of support functions to assist with the Stage 1 enrolment process to the DPS being conducted via the host authority.
- 3.10 Once the DPS is fully established, participating Local Authorities will manage their procurement of ISP placements through mini-competitions called off from the framework, in line with the Public Contracts Regulations 2015. For each placement, the individual Local Authority will publish their requirements and seek initial bids from approved providers on the DPS. The DPS will generate a shortlist of providers (based on price and quality), which will be evaluated by the Local Authority to establish the most economically advantageous tender, based on price, standard quality criteria across the Consortium (e.g. OfSTED rating) and evaluation of the proposed provider solution for the specific placement needs and outcomes. The DPS is flexible enough to allow other providers to be added to the shortlist as necessary (for example, when a parent has expressed a preference for a provider which needs to be taken into account).
- 3.11 The default Price: Quality ratio for evaluation of bids through the DPS is 40:60, as decided by the majority of the Consortium. However, the Price: Quality ratio can be adjusted for each requirement published through the DPS and Bromley Council has confirmed to the Consortium that it will be applying a 60:40 Price: Quality ratio as standard for all its requirements.
- 3.12 Individual contracts (using a common contract template across the Consortium based on the national contract developed by Local Authorities for SEN placements) procured through the DPS will be held between the relevant individual Local Authority and the provider and will still be subject to the current authorisation and monitoring arrangements within that Local Authority. Use of the DPS ensures transparency in both procurement and price and also that the Local Authority is working with providers that have met the agreed minimum quality requirements for inclusion in the DPS. However, use of the DPS will not be exclusive – participating Local Authorities can still spot purchase provision from outside the DPS as required (where the needs of the young person cannot be met by providers participating in the DPS, for example).
- 3.13 The expected benefits of using a DPS are identified as:
- An outcomes focused commissioning approach with expected improved outcomes for children and young people with SEN as a result;
  - Improved engagement between commissioners and the SEN independent and non-maintained sector providers;
  - Improved consultation and evaluation capability with service users over their service provision preferences;

- Increased competition between providers with increased offers of placements for children and young people with SEN;
  - Improved information and market intelligence for partner boroughs in the Programme and the independent and non-maintained providers;
  - A formal procurement process for ISP placements in line with the Public Contracts Regulations 2015, replacing the majority of spot purchasing activity and improving value for money;
- 3.14 In November 2015, Croydon Council, acting as the lead authority on behalf of the Consortium, concluded a mini-competition tendering exercise via a DPS framework hosted by the Yorkshire Purchasing Organisation for the purchase of a web based DPS matrix. The contract was awarded to Matrix SPS Ltd, trading as 'adam' (Bromley Council currently contract with the same provider for a DPS for Education Consultants) for a four year period, with the option to extend by a further year. The contract is held by Croydon Council acting as the lead authority on behalf of the Consortium.
- 3.15 Invitations to providers to enrol on the DPS were issued in April 2016 via public advertisement in the OJEU and the London Portal, with the DPS planned to go live for use by participating authorities on May 26<sup>th</sup> 2016. The advert will continue to be live throughout the lifetime of the DPS and applicants can enrol on to the DPS on a rolling basis. Initial evaluation of all applicants will be undertaken by nominated officers from each participating authority, with a fixed ten day turnaround evaluation of applicants.
- 3.16 Participation in the DPS for authorities within the South London Consortium will be via an Operating Agreement with Croydon Council. This document is being prepared and will be available in late April/early May 2016. The Operating Agreement, once received, will be reviewed by Bromley Legal Services for comment and action as necessary, prior to signing off the document (this should be completed prior to Executive decision, but may not have been completed by the deadline of completion of this report).
- 3.17 In line with Bromley Council's Contract Procedure Rules which requires appropriate authorisation at the appropriate threshold to enter into a framework arrangement, Executive is asked to authorise the Director of Education to enter in to an Operating Agreement with Croydon Council to access the DPs hosted by Croydon, such authorisation being subject to review and finalisation of the Operating Agreement by Bromley Legal Services.
- 3.18 Executive authorisation is required as the overall potential value of placements procured through the framework will be in excess of £1m over its lifetime. However, each individual placement procured through the framework will still be subject to individual authorisation by the Budget Holder or Director of Education, as per the current authorisation arrangements.
- 3.19 Executive are also asked to grant delegated authority to the Director of Education, in consultation with the Portfolio for Education, the Director of Corporate Resources and the Finance Director, to extend the Operating Agreement with Croydon Council for a further period of one year, following the initial four year period of the Agreement.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 The development, implementation and maintenance of the DPS has been fully funded by central government grant from the Department for Communities and Local Government (DCLG) and so there is no cost implication to Bromley Local Authority for accessing the DPS. Participation in the

South London Consortium is funded by each participating authority at £15k per annum, funded through the existing SEN Operational budget.

- 4.2 The current annual budget for ISP placements is £8.77m. Therefore the potential value of placements procured through the DPS for the proposed four years duration plus one year's extension of the Operating Agreement is £43.85m. However, each placement will continue to be procured individually through the DPS and will still be subject to the existing Bromley Council authorisation procedures for SEN placements.
- 4.3 Sign up to the DPS is not exclusive. Bromley Council can still continue to spot purchase ISP placements as necessary, for example where the needs of an individual learner cannot be met by providers participating in the DPS.
- 4.4 SEN placements are funded from the High Needs Block of the Dedicated Schools Grant (DSG). Therefore there are no financial implications for the Council's General Fund.
- 4.5 The South London Consortium estimates that use of the DPS will generate savings of between 5% and 8% in the cost of purchasing ISP placements – these assumptions will need to be tested. If realised, savings will mitigate pressure on the DSG High Needs Block due to the ongoing trend of increasing demand for specialist placements. Once use of the DPS system is embedded, the SEN service will be expected to review their staffing structures as part of ongoing service review to establish whether use of the DPS can also support staffing efficiencies.

## **5. LEGAL IMPLICATIONS**

- 5.1 This report requests Executive to approve entering into an Operating Agreement with the London Borough of Croydon for participation in a DPS for a four year period.
- 5.2 It is envisaged that a number of contracts will be entered into using the DPS and the total value of the contracts will be in excess of £43m over the lifetime of the DPS. Therefore the Public Contracts Regulations 2015 apply.
- 5.3 In accordance with contract procedure rule 13.1, where the value of the contracts exceed £1,000,000, approval to award the contracts is required by:
  - the Chief Officer in agreement with the Director of Resources and Finance Director; and
  - the Executive.
- 5.4 The Operating Agreement between Croydon Council and the participating authorities has not been finalised at the point of completion of this report. Executive approval to enter the DPS will be subject to successful review of the Operating Agreement by Bromley Legal Services and resolution of any issues.

## **6. PERSONNEL IMPLICATIONS**

- 6.1 Use of the DPs will be incorporated into existing business processes and resources currently in place for the spot purchasing of placements. No personnel implications are expected although this will be reviewed as part of ongoing service review and monitoring. Once use of the DPS system is embedded, the SEN service will be expected to review their staffing structures as part of ongoing service review to establish whether use of the DPS can also support staffing efficiencies.
- 6.2 Arrangements for training of relevant staff in the use of the DPS are in place, with training taking place in May 2016.

<b>Non-Applicable Sections:</b>	Policy Implications
Background Documents: (Access via Contact Officer)	N/A