

Subject:	Residential Child Care, Foster Care and SEN Education Placements		
Date of Meeting:	8 December 2016		
Report of:	Executive Director for Families, Children & Learning		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report seeks approval for the procurement of a Dynamic Purchasing System, framework agreement or individual contracts and the award of individual placement agreements for placements in independent residential children's homes, independent foster care and independent non-maintained special schools.
- 1.2 The report is a follow up to the report to the Procurement Advisory Board of 23 May 2016 and the Policy, Resources & Growth Committee of 14 July 2016. The reason for bringing the report back to committee is that two local authorities have withdrawn from the partnership and if any further local authorities do then we may need to work with a different configuration of local authorities to get best value in our future procurement of placements. In addition, the final business case has changed substantially from the last draft presented to committee.

2. RECOMMENDATIONS:

That Policy, Resources & Growth Committee:

- 2.1 Grants delegated authority to the Executive Director of Families, Children & Learning to conclude negotiations with West Sussex County Council on the terms of access and agreement to participate in a regional Dynamic Purchasing System (DPS) for the provision of placements in independent residential children's homes, independent foster care and independent non-maintained special schools (INMSS).
- 2.2 Approves the procurement of a DPS, framework agreement or individual contracts, either led by West Sussex County Council (WSSCC) as the contracting authority or procured with one or more other regional partners or procured by Brighton & Hove City Council for its sole use (depending on the outcome of 2.1

above), for the provision of placements in independent residential children's homes, independent foster care and INMSS.

- 2.3 Grants delegated authority to the Executive Director of Families, Children & Learning to: (i) carry out the procurement of the DPS, framework agreement or individual contracts referred to in 2.2 above; (ii) agree the term of the DPS, framework agreement or individual contracts; (iii) award and let the DPS, framework agreement or individual contracts and; (iv) award and let placement agreements under the DPS, framework agreement or individual contracts.

3. CONTEXT/ BACKGROUND INFORMATION

Summary of the current service provision

- 3.1 Legislation requires local authorities to secure sufficient accommodation for Looked After Children (LAC), that meets their needs, and is within the local area wherever this is reasonably practicable. The council acts as the corporate parent and safeguarding and has strong controls to manage the welfare of vulnerable children. The current number of placements in the independent sector and those directly controlled by the council are shown below:

Figures as at May 2016

Independent Sector Placements		Council Placements	
Independent Fostering Agencies	154	In-house Foster Care	154
Residential Children's Homes (Social Care)	33		
Joint Residential Children's Homes and SEN Education	11		
SEN Education in INMSS (including Post 19)	90	SEN Education in Council Maintained Special Schools	429

The above table excludes children with statements or Education, Health and Care Plans (EHCP) in mainstream schools. It also excludes children in special schools where the parents pay the costs in full.

- 3.2 The council's budgets for 2016-17 for external placements are:
- a) Independent Foster Agency £5.178m
 - b) Children's Homes £5.763m
 - c) Education Agency £4.240m

Current procurement arrangements

- 3.3 The Council has a joint framework agreement with WSCC for the provision of independent residential child care and foster care placements which was due to run until 31 October 2016 with an optional extension of up to 2 years. WSCC have reported that they are in the process of issuing an extension of up to a year. Joint arrangements with WSCC have been running since 2008 and have contributed to the management of costs in these service areas.

- 3.4 The Council's SEN team spot purchases SEN Educational placements using national contracts. The number of placements is proportionately much lower than our partner authorities. External SEN education placements are usually the result of parental choice and tribunal decisions although a few are due to the specialist nature of the provision that cannot be met within Brighton & Hove.

Department for Education (DfE) Innovation Programme

- 3.5 WSCC received project funding from the DfE Innovation Programme. The aim of the project is to establish whether procurement of placements can be jointly commissioned across a region and if a model to do this could be used by other regions across the country. The project also includes developing a new Outcomes Framework and reviewing the national contracts.
- 3.6 The Outcomes Framework was developed by the New Economic Foundation and drafted through co-production with local authorities, providers, parent/carer representatives and children in care council representatives. This document has now been issued and is attached at Appendix 1. It is being incorporated into the proposed new contracts which are currently in draft form.
- 3.7 The local authority partners within the region that worked on Phase 1 of this project up to March 2016 were West Sussex County Council, East Sussex County Council, Kent County Council, Surrey County Council, Brighton & Hove City Council and the South London SEN Consortium (10 London Boroughs led by LB Croydon). The South London SEN Consortium had a separate DfE funding bid that required the establishment of a DPS by April 2016 so they are not currently part of Phase 2 of the project. However Essex County Council and Medway Council have joined the project as new members. The group is collectively known as South East Together (SET).
- 3.8 Phase 2 of the project has focussed on developing a full business case to consider joint commissioning of placements. The final version of the business case is attached at Appendix 2.

Tender process for new Dynamic Purchasing System (DPS), framework agreement or individual contracts

- 3.9 In order to comply with the Public Contracts Regulations 2015 and the council's internal Contract Standing Orders, a formal tendering process must take place to procure the new Dynamic Purchasing System, framework agreement or individual contracts.
- 3.10 Using a DPS or framework agreement has a number of benefits as the council has the ability to 'call-off' contracts at short notice without the need to undertake a time-consuming comprehensive contract award process, which therefore reduces administrative effort and costs. It also allows the council the flexibility to determine specific requirements at the 'call off' stage. A DPS differs from a framework agreement in that it remains open for the duration of the agreement and allows new providers to join if they meet the required quality standards.
- 3.11 In order to meet the deadline for contract commencement on the cessation of the current framework agreement, a procurement timetable will be drawn up. A

comprehensive specification will be drafted to accompany the Invitation to Tender (ITT). A different procurement route may be taken for each of the three categories depending on the assessment of outcomes for service users and value for money for each option.

- 3.12 SET partners are currently reviewing the business case and going through their governance procedures to determine whether or not to jointly tender. It is not anticipated that all of the partners will jointly tender. Therefore smaller partnership opportunities may develop at short notice and delegated authority will be required to consider these in the timeframes.

eSourcing

- 3.13 The SET business case proposal is for WSCC to be the lead contracting authority responsible for setting up the DPS. Each SET partner will be responsible for calling-off against the DPS and entering into Individual Placement Agreements.
- 3.14 There are a number of options for managing the micro-commissioning process of call-offs. The council has a licence for software from the supplier 'adam' that can be used for this process, or alternatively it could use another system if this offers better value for money. 'adam' is software currently in operation in the council's Learning Disability Service for Adult Services to manage placements.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 An alternative to a regional DPS would be for the council to procure some or all of these services on its own or to partner with other regional authorities, some of whom may opt not to tender under SET for financial and/or strategic reasons. Tendering solely reduces the potential for sharing costs and exercising leverage and influence in the provider market. This alternative would only offer value for money if the cost of accessing a partnership DPS or framework agreement, offset by anticipated savings, were greater than the cost of running and the ongoing management of a separate procurement.
- 4.2 Joining a local authority partnership outside of the south east region would not likely achieve the same level of benefits as the contract management and quality assurance function would not operate as efficiently.
- 4.3 Managing demand for LAC placements has the greatest impact on value for money but this needs to be managed safely through care planning. Early Help interventions and planned step down arrangements contribute to these plans.
- 4.4 Increasing the proportion of in-house foster care placements will lead to better value for money and strategies are in place to increase the number of directly engaged foster carers.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The Outcomes Framework was developed through co-production as outlined in 3.6 above.
- 5.2 Parents will continue to be able to express choice in the selection of SEN education placements for their child/children.

6. CONCLUSION

- 6.1 It is necessary to re-tender these services as the framework agreement with WSCC for residential children's homes and foster care placements will be due to expire in October 2017 if part of the optional extension period is activated and there is no current compliant process for purchasing SEN education placements. In order to benefit from collaborative working with regional partners and to build in sufficient time to carry out a fair and transparent procurement process, the process must commence as soon as possible.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The award of a DPS or framework itself has no financial value; however the total current value of the contracts that would be called off under a DPS or framework is approximately £15.181 million per year.
- 7.2 There are a number of options being considered. The cost of developing a new DPS is not yet fully known. The costs of ongoing contract management would be subject to negotiations with any partners or sufficient resources identified to be able to maintain a robust procurement system in-house. All options will need to be fully costed to ensure affordability within current available budgets and value for money for the local authority.
- 7.3 It is important throughout the procurement process that the council achieves value for money as well as having secure arrangements in place for those children requiring placements. A sound, robust purchasing and contract management system would enable the council to pro-actively manage the market and ensure best value for money is achieved.

Finance Officer Consulted: David Ellis

Date: 23/11/16

Legal Implications:

- 7.4 As described in the body of this report the council has a statutory duty to provide accommodation for Looked After Children. It also has a duty to meet the needs of pupils with Special Educational Needs where those needs require a residential placement.
- 7.5 The Policy, Resources & Growth Committee is the appropriate decision-making body in respect of the recommendations at paragraph 2 above, given that the

value of the contracts which may be entered into are likely to have corporate financial implications.

- 7.6 The aim of the DPS, framework agreement or individual contracts is to enable the council to provide sufficient and appropriate placements in independent residential children's homes, independent foster care and independent non-maintained special schools (INMSS) to discharge its legal obligations. The procurement and award of a DPS, framework agreement or individual contracts must be conducted in accordance with the Council's Contract Standing Orders and The Public Contracts Regulations 2015.

Lawyer Consulted: Isabella Sidoli

Date: 15/11/16

Equalities Implications:

- 7.7 The council has a responsibility to promote access to appropriate educational provision for all in accordance with legislation including the Equality Act 2010.
- 7.8 It is not necessary to carry out an equalities impact assessment on this occasion as there are no council policy changes associated with this procurement.

Sustainability Implications:

- 7.9 The Public Services (Social Value) Act 2012 requires that public bodies tendering for services above the threshold to consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area.
- 7.10 Placements for Looked After Children will be made as closely to networks of family and friends and the child's current school, where this is safe to do so and in the child's best interests.

Any Other Significant Implications:

- 7.11 Local authorities typically first attempt to make foster care placements in-house, provided the needs of the child can be met, prior to seeking a placement with an independent provider. A Judicial Review brought by the Nationwide Association of Fostering Providers in December 2015 sought to argue that the defendant local authorities had failed to comply with the duty set out in Section 22C(5) in the Children's Act to place the child in the most appropriate placement available (i.e. they were not considering independent foster care placements at the same time as in-house foster care placements). The judge found that the duty did not involve any requirement to make a particular kind of search of any one of the placements identified in section 22C(6) of the Act and that local authorities are not required to contact all providers of potentially appropriate placements at the same time for every Looked After Child.
- 7.12 The representative bodies Independent Children's Homes Association (ICHA), Nationwide Association of Fostering Providers (NAFP) and National Association of Independent Schools and Non-Maintained Special Schools (NASS), along with their members, were offered the opportunity to participate in the development of the Outcomes Framework. They will also be consulted on the new draft

contracts. ICHA does not currently support the work of South East Together however the relationship with the other professional bodies remains good and constructive.

SUPPORTING DOCUMENTATION

Appendices:

1. Outcomes Framework
2. Business Case

Documents in Members' Rooms

None

Background Documents

1. Department for Education (DfE) 'Financial stability, cost charge and value for money in the children's residential care market' Research report June 2015
2. Institute of Public Care(IPC)/Oxford Brookes University 'The efficacy and sustainability of consortia commissioning of looked after children's services' Research report July 2015

Crime & Disorder Implications:

- 1.1 The Outcomes Framework has a number of measures under basic needs (safety and health), functioning (control, relationships and achievement), personal resources (resilience, self-esteem and emotional intelligence) and preparation for adulthood (participation, independence, inclusion and wellbeing) that contribute to the prevention of crime and disorder.

Risk and Opportunity Management Implications:

- 1.2 There has been a consolidation of providers in the residential child care provision market with private equity playing an increasingly significant role. Alternative market management strategies may need to be considered if the market consolidates further, develops oligopolistic behaviours and the few remaining suppliers greatly influence price.

Public Health Implications:

- 1.3 Improving health and wellbeing are two of the key objectives within the Outcomes Framework.

Corporate / Citywide Implications:

- 1.4 The effective commissioning of placements will contribute to the council's priorities on the economy, jobs & homes, children & young people, health & wellbeing and community safety & resilience through the Outcomes Framework.

