

Cabinet

9 April 2024

Gateway 1 Procurement Commencement: SEND Transport DPS

Portfolio Holder: Councillor Tracy Coombs, Portfolio Holder for Education

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Procurement Overview

Total Contract Value (estimated): £73,433,678 (£9,517,543.65 per annum with 10% annual growth x 6)

Regulated Procurement: Yes

Proposed Contract Term: 48 months with the option to extend for a further 24

Summary

This report seeks permission to commence the procurement of the Special Educational Needs and Disabilities (SEND) Transport Dynamic Purchasing System (DPS) Contract.

1. Recommendation

1.1. The Cabinet is recommended to approve commencement of the procurement of the SEND Transport contract as per the preferred Option 3b – Dynamic Purchasing System (DPS) Process, as identified in paragraph 5.3. of the report.

2. Suggested reasons for decision

2.1. A Dynamic Purchasing System (DPS) will remove the entry barrier for new suppliers, which has the potential to encourage competition and offer cost savings, as well as address the capacity concerns that have been experienced during the last two years of the previous contract.

3. Budget and Policy Framework

- 3.1. All local authorities have a statutory duty to put in place arrangements for the provision of home to school travel assistance and transport for children and young people with Special Educational Needs and Disabilities (SEND) who meet the published eligibility criteria. Section 508B and 508C of the Education act 1996 (as amended) set out the local authority's duties and powers respectively, to make such suitable travel arrangements as the local authority considers necessary, to facilitate a child's attendance at school. This applies to home to school travel arrangements and vice versa but it does not relate to travel between educational institutions during the school day or after school clubs.
- 3.2. It is imperative that SEN Transport remains in place for eligible pupils, and is available for newly eligible pupils, for the new academic year in September 2024.

3.3. Background Information and Procurement Deliverables

- 3.3.1. Provision of safe, quality SEND transport and home to school transport for eligible pupils. The existing SEN Transport contracts end in July 2024, and it is imperative that the service continues for eligible pupils.
- 3.3.2. There has been year on year growth in the number of those eligible for assistance, and an increase in the level of need. We must therefore ensure that there is sufficient, high-quality provision to meet this ongoing, increasing call on our service.
- 3.3.3. Non-transport forms of assistance (bus, rail, fuel allowance and PTBS) cost an additional £40,937 per academic year.

3.4. Parent Company Guarantee/Performance Bond Required

PCG/Bond will not be asked for at this stage, and Procurement Board waived the requirement to seek a PCG/Bond at call off (mini competition) stage also due to the inability of most current market providers being able to obtain one, and/or the cost associated in doing so. The remedial action of supplier failing to deliver would be the routes being readvertised.

4. Procurement Dependencies and Obligations

4.1. Project Dependency

- 4.1.1. It is imperative that SEN Transport remains in place for eligible pupils, and is available for newly eligible pupils, for the new academic year in September 2024.
- 4.1.2. The SEN Transport DPS procurement will interface closely with:
 - Services for children with disabilities or special educational needs

- Education services and schools including the virtual school
- The Climate Change team to best work on initiatives to reduce harmful emissions for the benefit of the health of the local population
- The licensing team

4.2. Statutory/Legal Obligations

4.2.1. The Council has a statutory duty to offer transport to and from school for all eligible pupils who are identified as having a Special Educational Need through assessment. Every child or young person with an EHCP (Education, Health and Care Plan) can apply for SEND support.

4.2.2. **The legislative framework**

- The Education Act 1996
- The Equalities Act 2010
- The Children and Families Act 2014
- The SEN Code of Practice 2014
- Children's Act 1989

4.2.3. Schools and colleges are required to follow these Acts and Codes, and failure so to do can make schools and further educational colleges liable to legal challenge.

4.2.4. The Equalities Act, in particular, is anticipatory- it requires schools and colleges to consider in advance what a particular child or young person may need in respect of reasonable adaptations (to buildings, to the curriculum, to teaching styles and support). (Code of Practice, 6.9)

4.2.5. **The Local Offer**

The Children & Families Act requires all local authorities to publish a "local offer", that is, a directory of policies and services (including those in schools and colleges) available to families, children and young people with SEND with their home council area.

Medway Council's local offer can be found at

<https://www.medway.gov.uk/localoffer>

4.3. Procurement Project Management

4.3.1. The management of this procurement process will be the responsibility of the Category Management team.

4.4. Post Procurement Contract Management

4.4.1. The management of any subsequent contract will be the responsibility of the School Transport and Contracts Lead or subsequently designated officer.

4.4.2. To ensure the needs of the requirement are met and continuously fulfilled post award, the following KPIs will be included in the tender and will form part of any subsequent contract.

Title	Short Description	%/measurement criteria
Timely transportation of pupils	That the providers maintain delivery in line with accepted timeframes spent travelling	Monitor the quantity of late journeys, taking feedback from parents and schools
Customer service	Ensuring that the drivers and passenger assistants maintain a professional demeanour in their work and in their daily encounters with parents and pupils	Number of complaints received from parents/public
Safeguarding	All staff to be DBS checked and trained appropriately to meet the needs of the pupils and to ensure safe transportation to and from school	Number of incidence reports and monitoring of DBS checks and the level and quantity of training undertaken
Health and Safety	To ensure that the vehicles are suitable and fit for purpose and that all maintenance is up to date to reduce the risk of incidences during journeys.	Regular quality assurance with the contractors

5. Market Conditions and Procurement Approach

5.1. Market Conditions

School Transport provision is a highly competitive market, and there are a large number of contractors providing these services nationally and locally. From the existing framework activity, we have established that there are a large number of local operators. We envisage the majority of providers will be local.

5.2. Procurement Options

5.2.1. The following is a detailed list of options considered and analysed for this report:

5.2.1.1. **Option 1 – Do nothing:** The current overarching framework expired in August 2023 with all associated mini competitions ending August 2024, and as this is a statutory service, doing nothing is not an option.

5.2.1.2. **Option 2 – Extend the current contract:** There's no provision within the existing arrangement to extend.

5.2.1.3. **Option 3 – Establish a framework:**

Option 3a – Framework Process

Advantages	Disadvantages
Follows the same model in situ	Competition may stagnate.
The documentation and literature will largely remain the same	A framework, once established, doesn't permit entry for new applicants.
The model used as Medway for the past 8 years, which has provided good results.	Contractor resources may not allow for a bid to be made in time and therefore Council doesn't benefit from this added competition.
Many lessons learnt which will easily be incorporated into the new service provision	Without changing the approach, the Council runs the risk of not fully adapting the service.
It is the model most widely used to engage the market to deliver this service	Complex award criteria may dilute the efficiencies possible.
Resource friendly as only one set of evaluations need to be undertaken at the inception stage.	
Allows for direct awards, mini competitions, and e-auctions as part of the award process.	
Public Contract Regulations compliant process	

Synopsis: A compliant framework provision gives contractors only one opportunity to be part of a 4-year arrangement.

Option 3b – Dynamic Purchasing System (DPS) Process

Advantages	Disadvantages
Very similar to a framework approach but the doors remain open for contractor entry. This might address the capacity issues that have been experienced in the last 2 years of the current arrangement.	Slightly more resource dependent due to ongoing evaluations during the term of the arrangement – mitigated by streamlining the entry requirements.
Should generate greater levels of competition than a framework.	Direct awards are not a permitted principle under this process and therefore all requirements will have to be contracted through a mini competition – note that a direct award was not used in the 4 year term of the current arrangement.
Public Contract Regulations compliant process.	

Advantages	Disadvantages
The documentation and literature will largely remain the same.	
Many lessons learnt which will easily be incorporated into this service provision.	

Synopsis: Whilst a DPS removes the entry barrier, it does not permit direct awards, although new routes are commissioned by mini competition, and therefore this is not a concern. It has the potential to address the capacity concerns that have been experienced during the last two years of the previous contract.

5.2.1.4. Option 4 – Total Transport Model

Advantages	Disadvantages
Enrols most transport requirements under one umbrella.	Currently conceptualised and no fully working model is known.
Can create cost savings through better vehicle utilisation.	Large resource requirement required to fully adopt.
Reduce emissions due to vehicle rationalisation.	May be a costly and resource intense process for little benefit.
Greater assurances in terms of transport operations.	Cannot benchmark current arrangements fully as full scope isn't known.
Increased relationship management with contractors.	

Synopsis: The total transport model is theoretically fine and has previously been explored. Implementing such a practice will require far more resource than is available at present. An element of ongoing and ad hoc taxi and specialist transport will also always be required.

5.2.1.5. Option 5 – In-House Delivery

Advantages	Disadvantages
Retain full ownership of services.	Very large up front capital expenditure.
Reduce compliance issues as licencing, insurances etc. will be undertaken centrally.	TUPE costs may not relate to what the Council would be willing to pay, therefore higher cost of service.
Pool of available staff as current operators with PAYE staff will be subject to TUPE.	Logistics is not a core competency of the Council therefore for the service delivery to not suffer, may require further investment.
Less reliance on external contractors, although an element of taxi and specialist transport will always be required.	May not be able to source required vehicles. Contractors may be less willing to work on the programme when larger contracts are not available

Consolidated management of services will result in lower overheads.	Long term negative effects on capacity within the market should the model not work.
Greater utilisation of vehicles.	Cost of sub-contracting may be excessive due to unwillingness to cooperate with Council.
Granular detail in terms of operations resulting in better decision making.	
Increased school relations and reputational ability due to undertaking a one operator approach for all transport.	

Synopsis: In-house service delivery would take a significant amount of coordination and would result in a change in transport provision for all end users. Should this route be further explored, there would be a resource pressure that would need to be offset, most likely by interim staff or the business change team.

- 5.2.1.6. **Option 6 – Open market procurement:** An open procedure in compliance with the Public Contracts Regulations 2015 would not deliver efficiencies or savings as each route, or batch of routes, would need to be advertised for a period of 30 days. This would also put a resource pressure on potential bidders and with time act as a deterrent, diminishing the supplier pool.

5.3. Advice and analysis

- 5.3.1. Option 3b, the DPS, is the preferred method as it removes the entry barrier in the current framework process, which may stimulate competition and deliver cost savings. It does not permit direct awards, but new routes are commissioned by mini competition, and therefore this is not a concern. This process may also address the capacity issues that have been experienced in the last two years of the current contract.

- 5.3.2. It is recommended that the contract length be a 48-month term with the option to extend for 24 months by mutual agreement.

5.4. Evaluation Criteria

- 5.4.1. Suppliers are admitted onto a DPS on the basis of pre-qualification quality grounds only, including but not limited to: ascertaining the ability for providers to deliver the required services, holding a valid operator's licences, insurances, health and safety.
- 5.4.2. Once admitted onto the DPS and a further (mini) competition is conducted, bidders will be asked to provide written statements clarifying how they intend to serve the contract as well as a price for doing so. It is therefore expected that when at that stage and as quality of service is very important due to the vulnerability of the

recipients of the service, the proposal is to apply a 40% quality, 60% price split.

5.4.3. In addition to this split, additional clauses will be added to the quality questions. All contractors must score at least an acceptable score as per the tender scoring methodology to be eligible for contract award. This ensures that in all areas the contractor will at least meet the Council's minimum requirements.

5.4.4. By operating under a 40/60 quality to price split, the council will realise the most cost-effective transport solutions and at the same time maintain management oversight through KPI's, monitoring of service and quality assurance to ensure appropriate safe transport is delivered.

5.4.5. Each mini competition must meet the needs of the pupils being transported, and therefore whilst not limited to the below, officers propose to evaluate bidders against the following quality criteria within the mini competitions:

#	Question	Purpose
1.	Please provide details how you will ensure the safeguarding of pupils on the transport, including the training regime and customer service competency.	To demonstrate that the provider understands and has an appropriate strategy for ensuring the safety of all pupils in their care for the duration of their transportation is observed.
2.	Please demonstrate how your commitment to the climate change agenda will be reflected in your delivery of home to school transport for the duration of the contract	Will highlight their commitment to the green agenda, which during the course of this contract will become more high profile and will reflect upon the council as a deliverer of its services.
3.	Please provide an action plan to indicate how you will ensure that a high level of customer service is implemented and maintained	It is important that parents feel comfortable in passing their children into the care of others before and after school, and so maintaining good relationships with parents is imperative. This includes good and regular communications, 'meet and greets' at the start of the contract and at any stage where a change is made and acting immediately and appropriately to any issues that arise. It is also important that schools have confidence in the transport contractors and that a relationship is developed
4.	Demonstrate the level of appropriate training of all transport staff	The children transported will experience differing types and levels of needs and demands, and the staff must be appropriately trained to ensure each pupils needs are met for the duration of the journeys so that the transport experience forms part of the wider learning journey for

		the pupils and does not impact negatively upon their ability to learn in school.
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6. Risk Management

6.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Using the following table this section should therefore consider any significant risks arising from your report.

Risk	Description	Action to avoid or mitigate risk	Risk rating
No overarching provision	<p>Not having a DPS or similar provision in place to draw down the required services, we would be unable to fulfil our statutory duty to make suitable transport arrangements for eligible children and young people.</p> <p>Journeys for SEN pupils are often complex and families rely on this assistance to support their attendance at school. Without this attendance and participation would fall considerably.</p>	Establish a DPS or similar provision to ensure that transport is available for current and new eligible young people.	Ai
Financial	<p>Not being able to afford or the cost of service disproportionately escalating.</p> <p>Not all families would be able to drive their young people to school, and without</p>	Establish a DPS or similar provision to drive up competition and keep costs in check. This will also allow more accurate forecasting of growth and costs	Bii

Risk	Description	Action to avoid or mitigate risk	Risk rating
	suitable alternatives, we may be forced to fund more expensive, less high-quality alternatives.		
Reputational	Being unable to fulfil our statutory duty to make suitable transport arrangements for eligible children and young people would result in loss of reputation and likely sanctions. The duration of transport taking longer than the maximum allowed durations.	Ensure sufficient vehicle and staff resources are available, via a DPS or similar provision, to transport children and young people efficiently	Bii

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

7. Consultation

7.1. Whilst there is no requirement to consult, it is best practice to consider the views of stakeholders. We will discuss this process with schools and the Medway Parent Carer Forum, and as end users their views will be considered as part of the process.

8. Service Implications

8.1. Financial Implications

8.1.1. The procurement requirement and its associated delivery as per the recommendations will be funded from the existing general revenue budget. Robust and frequent monitoring of the costs of transport will be undertaken to maintain an oversight of the financial situation and

enable appropriate and timely action to be taken to maintain control of the budget.

8.1.2. The 6-year cost is an initial estimate based upon the forecast increase in pupils and inflation. A figure of £12.3m has been requested by finance colleagues as the budget for 2024-25 financial year which aligns with the expected average annual cost as set out in this report.

8.1.3. Options regarding routing software, alternative funding measures such as providing bus passes for parents as well as children, 4-way fuel allowances and travel training will be implemented over the course of the current academic year to be in place for September 2024, which may reduce the spend.

8.2. Legal Implications

8.2.1. Medway Council has a statutory duty to provide SEN Transport as set out in the main body of the report. The Council has the power under the Local Government (Contracts) Act 1997 and the Localism Act 2011 to enter into contracts in connection with the performance of its functions. From the information provided, it appears that the process to be followed is appropriate as the value of this contract is significantly over the threshold value for contracts for services,

8.2.2. This procurement is considered high risk. Level 4 (High Risk) Procurement Processes are prescribed by the Monitoring Officer, in consultation with the Procurement Board with recommendations for the decision-making associated with the initial Gateway 1 Report and subsequent Gateway 3, 4 and 5 Reports being made to the Cabinet.

8.3. TUPE Implications

8.3.1. TUPE does not apply for the preferred option.

8.4. Procurement Implications

8.4.1. The contents of this reports and the recommendations comply with the provisions set within the Public Contracts Regulations and build upon the learning and development of the service during the term of the current arrangement.

8.4.2. Whilst not part of the recommendation, the proposal within paragraph 5.2.1.5 can be considered in tandem to explore any further efficiencies for a more sustainable transport solution.

8.5. ICT Implications

8.5.1. There are no ICT implications.

8.6. Climate Change implications

- Promotion of and increased use of sustainable travel modes, resulting in environmental and health benefits for all;
- Increased public transport patronage, benefitting local transport operators and the environment.

9. Social, Economic & Environmental Considerations

9.1. This contract has the potential to contribute to the following areas:

- Economic benefits of more people in employment or education – both parents of young people with SEN and also the young people themselves as they develop their independence.
- Promotion of and increased use of sustainable travel modes, resulting in environmental and health benefits for all;
- Greater diversity of people accessing the community, which should serve to reduce prejudice; and
- Increased public transport patronage, benefitting local transport operators and the environment.

9.2. These social, economic and environmental considerations will be fleshed out and captured within the mini competitions.

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Appendices

None

Background Papers

None