

<b>Heading:</b> Special Educational Needs (SEN) procurement	
<b>Ward:</b> Citywide	<b>Cabinet lead:</b> Cllr Claire Hiscott
<b>Author:</b> Paul Jacobs	<b>Job title:</b> Service Director – Education & Skills
<b>City Outcome overview:</b> <ol style="list-style-type: none"> <li>In which everyone benefits from the city's success and no-one is left behind</li> <li>In which services and opportunities are accessible</li> <li>Where life chances and health are not determined by wealth and background</li> </ol> <p>This proposal is key to ensuring suitable education placements for children and young people who have SEND. Establishing a fit for purpose procurement process for securing these placements will ensure effective use of public money so that we can afford good quality education for all children and young people. A high proportion of these children and young people are also children in care.</p>	
<b>Equalities Outcome overview:</b> These are placements for a vulnerable group of children and young people, many of whom have very complex needs and disabilities.	
<b>Impact / Involvement of Partners overview:</b> Neighbouring local authorities are key partners with whom we are working to secure a short term solution while working together to develop a longer term South West resolution. Once fully agreed, market engagement events will be run to ensure provider engagement	

<b>Approx. Revenue Cost: £</b>	Fluctuating annual cost of placements - £5,088,431.00 for academic year 2016/17	<b>Saving</b> <input checked="" type="checkbox"/> <b>Income generation</b> <input type="checkbox"/>
<b>Approx. Capital Cost: £</b>	0	
<b>Budget:</b> Various education budgets: 13280, 13281, 14504		
<b>Finance narrative:</b> There is no financial cost for joining the framework for the next 12 months. Currently BCC fund Gloucestershire to lead on the sub regional framework, which has had its challenges. By joining West Sussex framework, which the DfE have held up as an exemplar, BCC will be able to manage cost and any uplift requests proactively. It will be advisable to have a robust financial appraisal for the long term option and to track any savings.		
<b>Finance Officer:</b> Ken Ashong		

<b>Summary of issue / proposal:</b> A procurement solution must be identified to ensure that independent SEN placements are made in line with procurement regulations, which will also enable us to better manage cost and quality of provision as well as ensuring better outcomes for our most vulnerable and complex SEN children and young people. <p>This proposal does not relate to the number of education placements made, or where placements are made as this is dependent on the emerging needs of children, and the availability of provision to meet these needs. This proposal relates only to the way in which these placements are arranged and purchased in order to ensure that we are legally compliant, achieve best value for money, and ensure suitable quality provision.</p>
<b>Key background points:</b> <ol style="list-style-type: none"> <li>Where a child or young person has a statement of special educational needs or an education, health and care plan and is unable to access a maintained mainstream or special school, a placement in independent, non-maintained provision may be required.</li> <li>The total spend on all independent, non-maintained SEN placements is in the region of £6m per annum.</li> <li>The existing sub-regional framework used for procuring SEN placements expires in June 2017</li> <li>Extending the existing framework is not considered a viable option as it does not meet our needs:             <ul style="list-style-type: none"> <li>the majority of placements have to be purchased off-framework due to an unsuitable list of providers, which does not meet new EU procurement regulations and leaves us open to challenge</li> <li>spot purchasing in this way does not allow us to effectively manage quality or outcomes, or</li> </ul> </li> </ol>

negotiate fees – this is not an effective use of public funds

- the system does not include a formal procurement process to secure placements for 17-25 year olds
- Bristol City Council currently pays Gloucestershire County Council to access this framework

5. In the **short term**, the following options are available to us:

- a. Do nothing and continue to make placements without a procurement system in place, by seeking waivers for each individual placement
- b. Join an existing Dynamic Purchasing System (DPS) led by West Sussex at no cost to Bristol City Council. *This is our preferred option (and the preferred option of our sub-regional partners) - we have assessed the risk of the various options and feel that this option is the least risky.*

6. In the **long term**, we believe that the following options are available to us:

- c. Do nothing and continue to make placements without a procurement system in place, by seeking waivers for each individual placement
- d. Procure a South West sub-regional DPS which could take up to 18 months and would require additional resources, particularly as Bristol City Council would be expected to lead this process.
- e. Join West Sussex when they procure a new DPS in 2017/18 which would enable us to be involved in the development process and ensure that it fully meets our needs. *This is our preferred option (and the preferred option of our sub-regional partners) - we have assessed the risk of the various options and feel that this option is the least risky.*

7. This will ensure that the Council is procuring in a legally compliant way, and that best value for money is achieved. This proposal has been discussed and approved by the Commissioning and Procurement Group to ensure that it will offer us a compliant and legal solution.

It is not considered that this proposal will have any environmental impact, negative or positive. This proposal will not have any impact on the actual number of placements made, or where children are placed – this simply implements more robust procurement processes within which placements are arranged.

#### **Recommendation(s) / steer sought:**

It is recommended that Cabinet approves the identification of a procurement solution to secure independent Special Educational Needs placements which ensures that placements are made in line with procurement regulations as outlined above.

1. In the short term, steer is sought from Cabinet in relation to the options outlined above. Option b. is the preferred option (and the preferred option of our sub-regional partners) - we have assessed the risk of the various options and feel that this option is the least risky.
2. In the long term, steer is sought from Cabinet in relation to the options outlined above. Option e. is the preferred option (and the preferred option of our sub-regional partners) - we have assessed the risk of the various options and feel that this option is the least risky.

**Legal Issues:** The proposed joining of the West Sussex Dynamic Purchasing System by Bristol City Council may not meet the requirements of the Public Contract Regulations. This is because when the DPS was set up WSCC did not make clear in their OJEU notice that other authorities would be able to access it. The risk is that in joining the DPS the Council would not have carried out a compliant procurement process and would be at risk of challenge by a potential provider. However, we are advised that this DPS has already been amended by the accession of Kent County Council, which did not result in any challenge. In addition should any provider wish to join the DPS then, subject to it meeting the criteria laid down by WSCC it will be able to do so and as such will suffer no loss. It is also only proposed that this solution apply until such time as the DPS can be re-let through a process with all relevant authorities as members of the scheme. Therefore the risk of legal challenge would seem to be low although the matter should be kept under review to ensure that the time that membership of this DPS on these terms is kept to a minimum

Commissioning Initiation report approved at CPG on 25<sup>th</sup> January 2017

**Legal Officer: Eric Andrews**

DLT sign-off	SLT sign-off	Cabinet Member sign-off
John Readman 15/02/17	CEO 14/03/17	Claire Hiscott 06/03/17

Appendix A – Further essential background / detail on the proposal	<b>YES</b>
Appendix B – Details of consultation carried out - internal and external	<b>YES</b>
Appendix C – Summary of any engagement with scrutiny	<b>NO</b>
Appendix D – Risk assessment	<b>YES</b>
Appendix E – Equalities screening / impact assessment of proposal	<b>YES</b>
Appendix F – Eco-impact screening/ impact assessment of proposal	<b>NO</b>
Appendix G – Exempt Information	<b>NO</b>