

TITLE OF REPORT: SEND Independent and Non-Maintained Special Schools Procurement

BUSINESS CASE

Key Decision No: CE S020

CABINET PROCUREMENT & INSOURCING COMMITTEE MEETING DATE: 4th October 2021	CLASSIFICATION: Open If exempt, the reason will be listed in the main body of this report.
WARD(S) AFFECTED All	
CABINET MEMBER Cllr Caroline Woodley, Cabinet Member for Families, Early Years, Parks and Play.	
KEY DECISION Yes - This report seeks approval for expenditure in excess of £1mil.	
GROUP DIRECTOR Jacquie Burke, Group Director Children and Education	

1. CABINET MEMBER'S INTRODUCTION

- 1.1. Hackney Education is ambitious about improving outcomes for children and young people with Special Educational Needs and Disabilities (SEND) and is taking a whole system approach to achieve the step change needed. This requires key stakeholders and partner agencies working together with children, young people and their families or carers, to meet needs and ensure that they are educated closer to home with the right support which would enable them to live, learn and grow up locally where they benefit from education, skills and employment opportunities that help them to succeed in life. Hackney Council and its partners work within the statutory requirements of Part 3 of the Children and Families Act 2014 and have regard to the guidance within the SEND Code of Practice 2015.
- 1.2 This paper is seeking approval to establish a compliant route to market through a procurement exercise as a single authority procurement (Hackney Council only). This approach was endorsed by Hackney Education Senior Leadership Team (SLT) following an Options Appraisal and approved at the Children & Young People Scrutiny Commission. The procurement exercise will be done through a Pseudo Dynamic Purchasing System (PDPS) that allows providers to join on an ongoing basis. A PDPS is an electronic purchasing mechanism that is used in Procurement for the selection of suppliers that allows service user choice to be incorporated. Therefore, this formalised approach to the market will increase choice, responsiveness and quality of service for children and young people with an EHCP placed in INMSS.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 Approximately 4,873 Hackney children and young people are placed within the council's mainstream schools with SEN support, according to the 2021 School Census. However, there is a small percentage of children and young people with SEND whose individual specialist needs cannot be met within Hackney mainstream or funded special schools.
- 2.2 SEN2 Returns reported that there are 2,645 Hackney children and young people with an Education, Health and Care Plan (EHCP) as of January 2021. The number of children and young people in Hackney with EHCPs has been increasing since 2014/15.
- 2.3 There is a significant increase of children and young people with Autistic Spectrum Disorder (ASD) in Hackney and these numbers are projected to increase for primary school aged children and 0 to 5 year olds. Further primary need growth in secondary and post 16 education phases is Social, Emotional and Mental Health Needs (SEMH),

Speech Language and Communication Needs (SLCN) and Moderate Learning Difficulties (MLD).

- 2.4 As a result, there is a need for Hackney Council to procure a compliant route to market to secure INMSS and out of borough school placements to ensure that the correct Due Diligence checks are carried out prior to the placement commencing and Value for Money is achieved in a manner that supports the service users choice.

3. RECOMMENDATION(S)

Cabinet Procurement and Insourcing Committee (CIPC) is recommended:

- 3.1 **To seek approval to establish a three year Pseudo Dynamic Purchasing System (PDPS) in compliance with the Light Touch Regime outlined in the Public Contracts Regulations 2015. The total estimated value of the PDPS across the 3 year period is £4.5m.**

4. RELATED DECISIONS

- 4.1 Hackney Education Senior Leadership Team 11 June 2021
- 4.2 Children & Young People Scrutiny Commission 12 July 2021

5. OPTIONS APPRAISAL AND BUSINESS CASE (REASONS FOR DECISION)

- 5.1.1 Children and young people have special educational needs if they find it significantly more difficult to learn, or if they have a disability where the educational facilities used by others of their age are not equally accessible to them. They often face multiple barriers which make it more difficult for them to reach their full potential. Early identification and support is crucial in improving outcomes and reducing inequalities.
- 5.1.2 If it is felt that a child may have special educational needs and may need extra support, they are assessed to find out what their needs are. The school then arranges appropriate support for the child, known as SEN Support. Often the school or setting will be able to meet these needs and offer them a broad, balanced and relevant curriculum throughout their education, including additional support or learning in different ways to other children of their age.
- 5.1.3 The majority of Hackney children and young people with SEND are placed within the council's mainstream schools with SEN support (4,873 according to the January 2021 School Census).

- 5.1.4 If a child has special educational needs that are not being met by SEN Support, or their needs are so substantial that a mainstream setting can't meet them, then they will be assessed to see if they need an EHCP. This is a legal document that identifies the Educational, Health and Social Care needs of the child and sets out the additional support to meet those needs. EHCPs follow a child throughout their time in education, potentially up to the age of 25.
- 5.1.5 All children and young people requiring SEND specialist INMSS placements have an EHCP. The EHCP describes the child or young person's specific education, health and care needs and the support they require to achieve and fully meet their needs. SEN2 Data Returns reported that there were 2,249 Hackney children and young people with an EHCP as of January 2020 and 2,645 as of January 2021. This increase is in part due to the increased age threshold for children and young people with SEND from 18 years old to 25 years old.
- 5.1.6 According to January 2021 School Census data there are 1543 Hackney learners with EHCPs placed in Hackney mainstream schools. There are 373 learners with EHCPs placed at Hackney special schools. However, there is a percentage of children and young people with SEN whose individual specialist needs cannot be met within Hackney mainstream or funded special schools, primarily due to complexity or lack of local specialist placements. In these circumstances, places are purchased from SEND INMSS Providers in or out of the borough or Out of Borough maintained special school provision.
- 5.1.7 Children and young people with SEND who are over 16 continue their education in a range of settings. The number of post 16 children and young people with EHCPs is 266 as at March 2021. Post 16s attend a range of settings including mainstream school sixth form courses, college courses, supported internships and traineeships.
- 5.1.8 Hackney Council aims to commission suitable high quality INMSS placements through effective commissioning, quality assurance processes and partnership working with key stakeholders such as service users, practitioners, other local authorities and the provider market. This is currently being achieved through due diligence checks and the implementation of the National Schools and Colleges Contract for existing providers. Officers have developed a rigorous accreditation process that all current providers are in the process of completing prior to signing up to the National Schools and Colleges Contract from the 1st October 2021. The criteria on the accreditation process includes the requirement for schools to confirm whether they recognise trade unions and if they are adhering to the Statutory School Teachers' Pay and Conditions Document (STPCD) to determine their teachers' pay

and conditions, in addition to insurance checks, financial viability checks among other criteria.

- 5.1.9 The accreditation process will be transposed into an online form for any new INMSS providers commissioned in the future to complete via the London Tenders Portal. This will result in the provider becoming part of the Hackney Council INMSS PDPS and each individual placement will subsequently be called off against the PDPS and National Schools Contract terms and conditions.
- 5.1.10 The PDPS will be inclusive of the existing and future providers, and will be awarded for a period of 3 years from 1st October 2021 until 30th September 2024. The contractual period will provide proof of concept to future procurement exercises with this market.
- 5.1.11 Since the total contract value exceeds the £2m threshold the department is seeking approval to implement this process from Cabinet Procurement and Insourcing Committee, following approval from the Hackney Education Senior Leadership Team on 11 June 2021 and the Children & Young People Scrutiny Commission on 12 July 2021.

BENEFITS REALISATION / LESSONS LEARNED

- 5.1.12 To date, INMSS placements have not been contracted or purchased through a planned commissioned process, but have developed over time with statutory requirements being met through spot purchasing arrangements. This means that overarching formal contracts, with clear and consistent monitoring arrangements were not previously in place, and Hackney Council was not able to make the most of economic controls. To mitigate this, due diligence checks on incumbent providers and the issuance of the National Schools Contract was implemented.
- 5.1.13 Demand for INMSS is projected to increase, whilst the budget available will not. A formalised procurement process will increase choice, responsiveness and quality of service for children and young people with an EHCP placed in INMSS. The current commissioning approach brings the ability to manage financial pressures through robust contract monitoring.

5.2 Strategic Context

- 5.2.1 Evidence suggests that Hackney Council utilises independent provision as a last resort for secondary phase SEMH places due to a gap in provision locally. Hackney Council has an Education Estates Strategy in place and in addition there are joint strategic demand management actions aimed at reducing demand by providing earlier intervention

through a graduated response, more joined up services with Health and other partners, maximising utilisation and expansion of local maintained provision and reducing reliance on INMSS spend on out of area placements.

5.2.2 The Procurement of the PDPS for SEND INMSS placements will further strengthen the Council's position and will be completed in line with the following policies:

- [Hackney Special Educational Needs and Disability \(SEND\) Strategy \(0-25\) 2017-2020](#);
- [Hackney Education School Accessibility Strategy](#);
- [Hackney Education Specialist Equipment Policy](#) ;
- [Hackney Special Educational Needs & Disabilities \(SEND\) Post 16 Strategy 2017-2020](#);
- [Hackney Child Wellbeing Framework](#);
- [Disabled Children's Needs Assessment for the London Borough of Hackney and the City of London](#).

5.2.3 Independent cost centre expenditure is one of the highest in the SEND division. It has previously been overspending against the budget despite budget increases and management actions to reduce spend. Finance supports the PDPS to ensure that correct procurement procedures are followed. This will result in value for money being delivered through a contractual structure that underpins the financial strategy to achieve transparency of costs.

5.2.4 The PDPS will require additional dedicated resources to ensure its success in terms of the contract management roles, responsibilities and procedures. The resource implications will be closely monitored to ensure they are contained within budget.

5.2.5 It should be noted that there are potential opportunities to deliver efficiencies through the PDPS however, this will need to be balanced in light of any future requests for fee increases from the market.

5.3 Preferred Option

5.3.1 The preferred option is for Hackney Education to procure a PDPS for a period of 3 years (commencing from 1st October 2021) to test the success of the proposed model which we may be able to open up to other LA's, and offer a range of INMSS placements that meet the wide range of pupil needs, and deliver transparency, flexibility and responsiveness necessary to ensure that Hackney Council continues to meet its statutory requirements in full.

5.3.2 The Proposed PDPS structure offers the Council a good degree of flexibility, and does not commit the Council to provide a guaranteed volume of activity to any one provider.

5.3.3 This approach ensures that the commissioned resources available will be applied to improving education and EHCP outcomes in the most efficient, effective, equitable and sustainable way.

5.4 ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

5.4.1 Option 1: Do nothing - This is not an option, if Hackney Council does not provide these services it would be in breach of statutory duties. With demand for SEND school placements exceeding available placements in maintained provision, there would still be a need to source a small number of external placements from INMSS in order for the council to meet its statutory duties.

5.4.2 Option 2: In-Sourcing - Although Hackney Council is ambitious in its plans for extending high quality SEND provision within the borough through 84 additional place expansion at The Garden School, Queensbridge Primary School, Gainsborough Primary School and Ickburgh Special School, it is recognised that the capacity is such that there would still be a continued need to use INMSS placements for a small number of children and young people with EHCPs who require specialist provision.

It should be noted that the proposed external PDPS approach is not incompatible with further development of our in-house provision. For a majority of the children and young people with EHCPs in Independent Placements the intention would be for short term specialist placements with a view to reintegration into maintained/ in-house provision in the long term. There is also no guarantee of placements for providers under the PDPS model, therefore in-house provision will still be the preferred route where capacity and specialisms exist.

5.4.3 Option 3: Join an established consortium - Joining an existing consortium of other local authorities would offer the opportunity for collective influence, to drive improved quality/ cost and gain improved levels of intelligence and influence to undertake effective market development. There are a number of consortia available, which could not meet Hackney Council's requirements. All the consortia assessed had unsuccessful DPV/DPS for purchasing INMSS placements using the traditional model due to a lack of engagement from the market (please refer to the risk table in section 5.6 for details about how we intend to mitigate this risk), and what they are all currently offering is already in progress as part of Hackney Council's existing accreditation process. The four consortia assessed were follows:

- **South London Commissioning Programme (SLCP)** was established in 2013 and has a total membership of 10 South London local authorities and is hosted by Croydon Council. The partner local authorities agreed to procure a Dynamic Purchasing System (DPS), to standardise the processes across the commissioning of new placements. This was in place until 2020, due to partner local authorities not fully utilising the DPS, a decision was made to focus on fee negotiation, quality framework, and contract work. The partner local authorities continue to use their own existing processes to secure placements mostly done through spot purchasing. SLCP coordinates the Quality Framework model for 40 INMSS providers. This involves partner local authority visits with follow-up action plans. It is a partnership model which supports quality assurance and partnership development with the providers. SLCP manages inflationary fee negotiations for partner local authorities. The cost of membership is £20,000 per annum.
- **Commissioning Alliance (CA)** formerly known as the West London Alliance (WLA) has a total membership of 13 local authorities, 12 London Boroughs and 1 County Council. Of these, six have signed up to Commissioning Alliance's centralised brokerage on Care Place (Ealing, Hounslow, Redbridge, Wandsworth, Southwark and Buckinghamshire). CA operated a DPV for INMSS placements, hosted by Ealing Council and it went live in October 2018 but was unsuccessful and stopped due to the market not being ready. CA now offer three services namely; a centralised brokerage team Care Place - an electronic referral platform contract management, fee negotiation and commissioning support. The cost of membership for an estimated 47 new placements (10% of 474 INMSS placements) would be £41,725 per annum.
- **West Sussex DPS** was developed in 2018 and has a total membership of 7 local authorities - 3 county councils and 4 local authorities. The DPS went live on 1st of March 2019 and will expire on 28th of February 2026. There is no joining fee to this consortium. However, West Sussex DPS is no longer taking on new local authorities. 27 INMSS providers with a total of 63 schools are signed up to it. All the partner local authorities use a combination of National School Contracts, CCRAAG for fee negotiation and quality assurance visits in addition to the DPS. West Sussex advised that the DPS had not stopped spot purchasing of placements.

5.5 Success Criteria/Key Drivers/Indicators

5.5.1 Through robust contract management and monitoring Hackney Council will utilise the PDPS to improve outcomes, delivery of value for money and quality of provision. Officers will continue to check Ofsted ratings as well as outcomes of the Independent Schools Inspectorate (ISI) inspections.

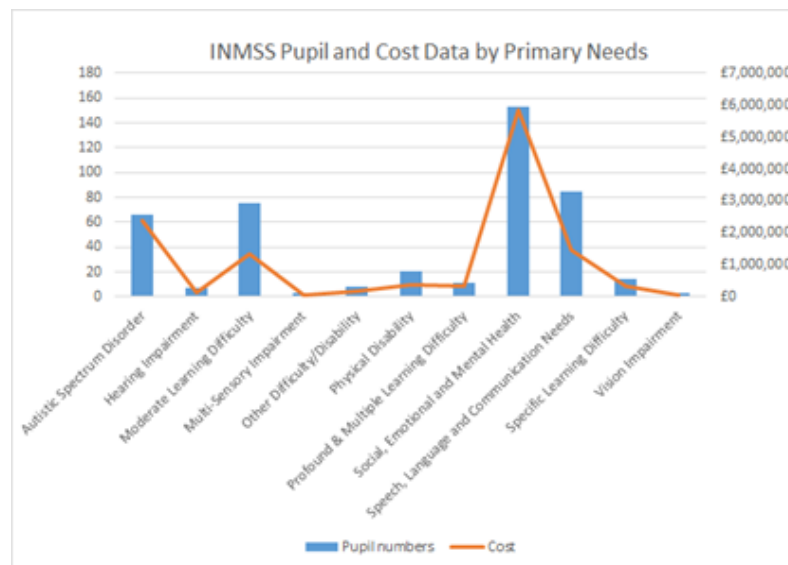
5.5.2 The Independent Schools Standards also provide clear criteria to be considered in line with the Education (Independent Schools) Regulation 2014. The standards cover:

- Quality of education provided
- Spiritual, moral, social and cultural development of pupils
- Welfare, health and safety of pupils
- Suitability of Staff, Supply Staff and Proprietors
- Premises of and Accommodation at schools
- Provision of information
- Manner in which complaints are handled
- Quality of leadership in and management of schools

5.6 Whole Life Costing/Budgets

5.6.1 The graph below is taken from a recent analysis of primary needs and shows the numbers of learners and total cost for each primary need group placed within Independent and Non-Maintained Special Schools in 2020/21.

INMSS Pupil Numbers vs Cost Data by Primary Needs Graph



5.6.2 A third of SEND Budget is spent on Independent and Non-Maintained Special Schools placements for Social, Emotional and Mental Health (SEMH) placements in secondary and post 16 education phases. Analysis indicates that Hackney has an overreliance on INMSS when compared to other local authorities, due in part to historic

under-capacity in Hackney’s locally maintained specialist provision particularly for SEMH.

- 5.6.3 The 2020/21 total annual expenditure on placements in independent schools was £13.8m. Independent Special Schools and Non-Maintained Special Schools (specialist settings only) had an average unit cost of £43,672 (not including average travel cost of around £7,800) for 166 learners in 2020/21. However, the remaining 308 learners were placed in Independent Schools (that are not specifically specialist such as residential homes with onsite education including Section 41 schools of the Children and Families Act 2014) and this includes 256 learners placed within 23 Orthodox Jewish independent schools.
- 5.6.4 Hackney’s 3 Maintained Specialist schools’ total spend for 2020/21 was £12.2m with an average cost of £32,700 for 373 learners. This is still considerably lower than an Independent Special School or Non-Maintained Special School.
- 5.6.7 INMSS placement costs are significantly more expensive compared to an average placement in a Hackney Maintained mainstream provision of approximately £9,100 with a total spend of £8m on 873 learners. This includes 7 Maintained mainstream schools that have ARP/SEND units attached to them, offering 77 specialist primary places. An additional 84 maintained specialist places (50 places in secondary and 34 places in primary) in Hackney will commence in September 2021.
- 5.6.8 The table below shows the actual budget spent on the total number of learners and the average unit cost of placing within Independent and Non-Maintained Special Schools each financial year over a period of 5 years.

Table 1 - Financial Data 2016 to 2021

Financial Year	Total Actuals	Pupil Numbers	Average Unit Cost
2016/17	£8,178,710	272	£30,069
2017/18	£8,671,229	282	£30,749
2018/19	£9,895,271	328	£30,169
2019/20	£11,094,920	376	£29,508
2020/21	£13,800,000**	474**	£29,100**

***2020/21 based on budget forecasts as at end of May 2021 (Source: Hackney Education SEND Finance Data 2020/21)*

5.6.9 Based on the above Table, the past 4 years' trends data shows a total of 202 new placements ranging from 10 to 98 placements per year and presenting roughly 11% of the 2020/21 INMSS cohort. This is in line with the national picture showing that 10 to 14% of the INMSS cohort represents new placements each academic year. Therefore, the estimated average new placements made each year is 51 placements at an average unit cost of £29,100. Giving an estimated total annual value of the contract for the Pseudo DPS to be approximately £1.5m per annum. The year on year review of increase in actual spend for the past 4 years confirms an average increase of £1.5m per annum. Further financial analysis would be done through the development of the PDPS business case.

5.6.10 The Finance Team will raise annual purchase orders for Providers approved on the PDPS, as this will enable the department to closely track contracts with individual suppliers exceeding £1m. Regular reporting will be completed via SLT.

5.7 Policy Context

5.7.1 Hackney Council and its partners work within the statutory requirements of Part 3 of the Children and Families Act 2014 and have regard to the guidance within the SEND Code of Practice 2015.

5.7.2 Providers must meet all statutory requirements and legislation relevant to the setting including, but not limited to:

- The Non-Maintained Special Schools (England) Regulations 2015; The Independent Schools Standards 2019;
- Keeping Children Safe in Education;
- Working Together to Safeguard Children;
- School Premises Regulations 2012;
- Part 5 of The Education (Independent School Standards) Regulations 2014;
- Equality Act 2010;
- Teachers' Standards;
- Fire safety in new and existing school buildings;
- Disqualification under the childcare Act 2006;
- SEND code of practice 0-25;
- National minimum standards for residential special schools;
- Children's homes regulations (DfE guidance);
- Prevent duty guidance;
- Children Act 1989;
- Children Act 2004;
- Education Act 1996;
- Counter Terrorism and Security Act 2015.

5.8 Consultation/Stakeholders

- 5.8.1 Consultation has been led by a specialist consultant with the existing INMSS Providers, other local authorities and procurement consortia, the Head of High Needs and School Places, the Head of SEND, the Director of Education, Hackney Education Senior Leadership Team and Overview & Scrutiny Panel.
- 5.8.2 To date, 14 provider meetings have been held, alongside 2 provider market engagement events and a local authority benchmarking exercise. In addition, Service Leads were consulted as they routinely collate feedback from children and their families through the annual review process. Work is ongoing as Hackney Council seeks to build and maintain mutually beneficial strategic relationships with incumbent INMSS in the market that meet Hackney's existing requirements. Discussions are being held with providers to negotiate discounts such as early payment, volume discount for new placements and enforcement of identified ceiling rates.
- 5.8.3 Consultation to date has been 'non statutory'. Consultation with the wider community is not necessary as a key objective of this procurement exercise is to maintain the status quo for current placements and ensure that service user choice can be maximised.

5.9 Risk Assessment/Management:

The RAT defines this procurement as medium risk:

Risk	Likelihood	Impact	Overall	Action to avoid or mitigate risk
	L – Low; M – Medium; H - High			
The number of new SEND Independent School placements required each year has been estimated at 51. It is likely that this number will fall due to the 84 new in-house school places becoming available from September 2021.	Medium	Medium	Medium	To complete detailed data modelling with SEND service to inform the forecasting of future placements taking into account placement exits, placement breakdowns and key phase transfers.

<p>SEND Independent School Placements will still be spot purchased off PDPS where EHCP needs cannot be met by accredited providers, This risk will be compounded if incumbent spot purchase providers do not join the Pseudo DPS.</p>	<p>Medium</p>	<p>High</p>	<p>High</p>	<p>Regular market engagement with new and existing INMSS providers would be required. The intention will be to expand the capacity of the Pseudo DPS by first targeting the top 20 highest spend providers to join the Pseudo DPS as they represent over 50% of expenditure. All spot purchased placements will concurrently go through due diligence checks and enter into price negotiations through contract monitoring.</p>
<p>Sufficient resourcing to complete a market engagement exercise in order to expand the capacity of the Pseudo DPS may be limited.</p>	<p>Medium</p>	<p>Medium</p>	<p>Medium</p>	<p>The SEND Service, supported by the Procurement team will work with accredited providers to ensure tracking of new schools joining the Pseudo DPS and undertake market engagement and support this where possible especially with the engagement of existing INMSS providers.</p>

<p>Market response to the PDPS given that other local authorities have had unsuccessful DPV/DPS in addition to the market being resistant to change around due diligence checks and issuance of National Schools Contract. Lack of bids could mean that Hackney Council is unable to award the contract.</p>	<p>Medium</p>	<p>High</p>	<p>High</p>	<p>A PDPS is an accreditation procedure that will require providers to evidence their ability to deliver the services to the required standard. Early market engagement will be key to generate and measure market interest. It is also recommended that the process to apply is easy to complete and available online via the Hackney Education website.</p>
<p>There is a risk of insufficient resources to manage the accreditation and call-off process. If there is a need for additional resources it will be offset against savings made.</p>	<p>High</p>	<p>High</p>	<p>High</p>	<p>The SEND Contracts Officer post is a fixed term position for 2 years. It is recommended that resources are reviewed to ensure that the objectives of this report can be achieved.</p>

5.10 Market Testing (Lessons Learnt/Benchmarking):

- 5.10.1 Nationally, there is an identified increase in complexity of need and number of learners with an EHCP that require specialist provisions in INMSS settings. As the demand for SEND placements in Hackney and neighbouring London authorities increases and exceeds supply in both maintained provision and INMSS, competition for available places also increases, meaning local authorities have to widen their search to find appropriate placements. This increase in demand also has an impact on the costs with local authorities experiencing a rise in the prices they are paying for placements. At the same time, councils are facing pressure to make efficiencies on placement cost and to manage demand for this market.
- 5.10.2 Due to this demand and supply imbalance, INMSS providers have a strong position and control in the market. Any market engagement of the SEND Independent and Non-Maintained Special Schools would need to be planned and considered, as the experience to date has been that providers are very resistant to change.
- 5.10.3 Hackney's INMSS supply map is unique as it has roughly 23 Independent Orthodox Jewish schools offering approximately 256

placements to Hackney learners with an EHCP in 2020/21. This is primarily based on parental preference on religious grounds. Through working in collaboration with such providers and the wider market, Hackney Council will seek to:

- ensure there is capacity in the local market to provide appropriate placements to meet the needs of its children and young people with an EHCP who require an INMSS placement.
- deliver better terms and consistent prices from high cost and volume providers, through improved relationships, strong negotiation and the enforcement of identified ceiling rates.

5.11 Savings

5.11.1 Opportunities to deliver savings have been identified however, this will only be quantified once we are aware of the call off contracts in place. The Education Senior Leadership Team has approved the opportunity areas to be pursued for future savings.

6. SUSTAINABILITY ISSUES

6.1 Procuring Green: Schools will be encouraged to operate in line with relevant environmental policy and procedure, namely the use of renewable resources, adhering to the principles of reduce, reuse and recycle and sourcing low carbon and green energy, where possible. Premises documents will be requested as part of the accreditation process. In addition to this, reducing the number of out of borough placements reduces Co2 emissions by reducing the need for SEND Transportation services, and offers additional jobs to the local community.

6.2 Procuring for a Better Society: The INMSS placements may be in or out of the borough. There are too many placements and types for this service to be delivered by a single supplier. Therefore; the PDPS will be broken down into lots. We are supporting local providers and the wider market to ensure they can complete the accreditation process through provider engagement events, a dedicated webpage with useful information and documents on the Services for Schools website and simplified documents for completion. An additional benefit of this procurement exercise is that it aims to facilitate pupils to grow closer to their existing support networks and encourages independence. Support from a variety of agencies can be facilitated due to the networking opportunities presented.

6.3 Procuring Fair Delivery: Schools to confirm whether they recognise trade unions, if they are adhering to the Statutory School Teachers' Pay and Conditions Document and details of any investigations regarding fraud or financial irregularity and complaints will be provided.

This service is low risk in relation to Modern Slavery due to higher paid specialist staff within a sector regulated by the DfE, Ofsted and the ISI.

6.4 Equality Impact Assessment and Equality Issues

An EIA is not required for this procurement as there are no changes to the current service delivery. The PDPS intends to maintain the status quo of the service being provided to pupils.

7. PROPOSED PROCUREMENT ARRANGEMENTS

7.1 Procurement Route and EU Implications:

- 7.1.1 This procurement is subject to the Light Touch Regime (LTR) which is a specific set of rules for certain social, health and education services. The regulations make specific provisions for contracting authorities to take into account any relevant considerations when awarding contracts, including the specific needs alongside the involvement and empowerment of the end service users.
- 7.1.2 As a result a PDPS can be used by authorities, where there are a number of providers capable of delivering the services needed and where an element of user choice at the call-off stage is necessary. As there are no specific procedural rules in the LTR that cover the awarding of call-offs from a PDPS there is a great deal of flexibility in awarding such call-off contracts. If providers are treated equally, there is minimal basis a provider would have grounds for a grievance.
- 7.1.3 A standard DPS also offers a similar level of flexibility; however a PDPS has been chosen in favour of a traditional DPS model in this instance. Based on consultation with the consortiums outlined in 5.4.3 above, all the consortia assessed had unsuccessful DPSs using the traditional model due to a lack of engagement from the market. A PDPS will allow a more straightforward approach for suppliers to join that remains fair and transparent, but enables the call off procedure to be influenced by end user choice. Any lack of provider engagement throughout the process will be managed by the Contracts Officer and SEND Team. A standard DPS employs the Restricted Procedure with 30 days for a Supplier to respond to the call for competition and is open through the year, with 10 days for the Authority to evaluate submissions. The PDPS will offer greater flexibility than this, in a manner that is compliant with the Public Contracts Regulations 2015.
- 7.1.4 Existing Providers have been asked to complete the accreditation form in a word document in the first instance. It is anticipated that the accreditation form will be transposed into an online form to be completed by new providers via the London Tenders Portal. Full guidance will be provided on how to complete the online form on the

Hackney Education website in an attempt to prevent any barriers to completion. The accreditation form has been designed to be straightforward as possible for Providers to complete, whilst ensuring the necessary Due Diligence will be obtained to ensure a positive response.

- 7.1.5 Individual specialist placements with INMSS providers average at a cost of £44k per annum. This may result in the cumulative spend under a particular call off contract, where the Provider has a high number of students placed with them, totaling in excess of £1mil per annum. The Finance Department has implemented systems to monitor cumulative spend.
- 7.1.6 A Contract Award report will be brought to CPIC once the PDPS is established, seeking approval to award call off contracts via this process and agree to any future reporting of contract activity.

7.2 Resources, Project Management and Key Milestones

Key Milestones	
Accreditation form & contract released to existing providers	Tuesday 6th July 2021
Deadline for response from existing providers	Tuesday 20th July 2021
Provider responses reviewed & contracts awarded to existing providers	August 2021
Contracts signed and returned for existing providers	September 2021
Approval Report to CPIC	Monday 4th October 2021
Hackney Education Webpage Updated with PDPS details	October 2021
Internal process change communicated to SEND Team	October 2021
FTS Advert placed on London Tenders	Tuesday 5th October 2021
Online Accreditation Form published on London Tenders for new providers	Thursday 7th September 2021
Approval to Award Report to CPIC	Monday 17th January 2021

PDPS Start Date & contract start date for existing providers	Tuesday 18th January 2021
Ongoing evaluation of new provider responses	As required
Ongoing update of FTS Notice	Monthly throughout the life of the PDPS
Ongoing call offs agreed by SEND Department	As required

7.3 Contract Documents: Anticipated contract type

7.3.1 The National Schools and Colleges Contract is a rolling contract with break clauses and a Schedule 2 Individual Placement Agreement for each Hackney learner. The nature of this contract will enable rigorous dual contract management of the school performance as an organisation focusing on value for money and quality and at an individual learner level focusing on monitoring individual outcomes.

7.3.2 Individual Placement Agreements (Schedule 2) will be issued for each Hackney learner placed in INMSS placements detailing fees and services provided. This is aligned to Annual Reviews of each individual learner's EHCP outcomes.

7.4 Sub-division of contracts into Lots

7.4.1 The PDPS will be divided into the lots outlined in the table below. This lot structure will support reintegration into mainstream education, where suitable for learners and in line with their EHCP and Annual Review outcomes:

Lot	Description
1	Independent Registered School Setting (Primary)
2	Independent Registered School Setting (Secondary)
3	Non-Maintained Special Schools (Primary)
4	Non-Maintained Special Schools (Secondary)
5	16 to 19 Special Post 16 Institution
6	Alternative Provision (One-to-one or small group provision at home and in the community)

7.5 Contract Management:

- 7.5.1 Hackney Education has a dedicated Senior Contracts Officer who will manage the PDPS and provide oversight on the fee uplift process, ensuring that providers submit business cases for review and decision-making by senior managers. In order to future proof this, the due diligence accreditation checks, the contract terms, fee uplift process and contract monitoring templates will be made publicly available to providers on the Hackney Education webpage, along with a link to the online form to be completed on the London Tenders portal.
- 7.5.2 Through contract monitoring processes, a best value ranking list will be developed ranking all providers on the PDPS on contract performance, quality, outcomes and price. The best value ranking list will not be used for call-off decision-making, rather it will be used to drive continuous improvements in terms of quality, outcomes and value for money.
- 7.5.3 In addition to this, Hackney Council has expanded its membership with the Children's Cross Regional Arrangements Group (CCRAG) which is a partnership consisting of 34 Local Authorities from the East, South East and South West Regions of England hosted by Hertfordshire Council, who are committed to working together to support the sourcing, contracting, monitoring and annual fee negotiations for children's placements in Independent and Non-Maintained Special Schools as well as children's residential care homes. The CCRAG database offers up to date placement vacancies in the market and this information is useful when sourcing placements. CCRAG offers all its partner local authorities shared quality assurance and fee negotiations as well as provision of up-to-date information on service providers. It also offers a reduction in duplication of tasks and sharing of information securely in one place where all its partner local authorities can easily access it. Hackney Council already used CCRAG services for its children's residential placements and this has now been expanded to cover Hackney's INMSS placements at the existing cost of £4,000 per annum for both departments.
- 7.5.4 By working collaboratively with other local authorities, Hackney Council will gain improved market intelligence regarding capacity in the market to undertake collective strategic market management and shaping as well as achieve greater collective leverage and influence over fee negotiations and pricing, variation of contracts and outcomes expected to be delivered.
- 7.5.5 Contract monitoring arrangements have been introduced and monitoring templates have been adopted from CCRAG in the interim whilst Officers develop Hackney's own templates and processes that seeks to monitor quality of teaching, quality of learning, safeguarding, EHCP outcomes, progress and attainment as well as wider outcomes in addition to Children's Homes quality standards for residential

settings. Quality Assurance visits will also take into account feedback from children and young people on their experiences.

7.6 Key Performance Indicators

7.6.1 The contract will be monitored and managed in respect of the following key performance indicators:

- Percentage of learners on track to meet expected standard / attainment / EHCP targets
- Percentage of learners on track to exceed expected standard / attainment / EHCP targets
- Number of learners not on track to meet expected standard / attainment / EHCP target
- Wider individual EHCP outcomes as identified at Annual Reviews
- Provider's most recent Ofsted grade
- Staff turnover over the previous year
- Number of pupils on roll and associated context, covering whether the number is increasing or decreasing over the next 3 years
- Overall absence and persistent absence data
- Performance measurement of INMSS providers based on CCRAG quality assurance monitoring on the following;
 - Staffing Levels - 90% capacity or above
 - Staff Qualifications - 100% up to date
 - DBS Checks Complete - 100% up to date
 - Insurance cover - 100% up to date
 - Incidents and Notifications - 100% managed accordingly

7.6.2 If providers fail to deliver on KPIs, a remedial action plan will be put in place and regularly reviewed.

8. COMMENTS OF THE GROUP DIRECTOR FINANCE & CORPORATE RESOURCES

8.1 There is an identified budget for the procurement activity. Finance will be working closely with the relevant teams to ensure savings are identified and provide financial advice.

9. VAT Implications on Land & Property Transactions

Not Applicable

10. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES

10.1 Paragraph 2.7.7 of Contract Standing Orders states that all procurements with a risk assessment of "Medium Risk" will be

overseen by the Hackney Procurement Board at the Business Case stage. However CSO 2.7.11 gives discretion to the Chair of Hackney Procurement Board to refer any Business Case to Cabinet Procurement & Insourcing Committee for a decision. The Chair of Hackney Procurement Board has confirmed that he is exercising such discretion in respect of this Report and therefore it is being presented to the Cabinet Procurement & Insourcing Committee for approval.

- 10.2 The services to be procured in this Report are classified as Social and other Specific Services under Schedule 3 of the Public Contracts Regulations 2015 and are of an estimated value above the threshold of £663,540 for such services. Therefore it will be necessary to publish a Find a Tender notice in respect of the procurement of the services. However as these are Schedule 3 (light touch) services the Council will then be subject to a smaller number of procedural rules in regard to how it procures such services.
- 10.3 It is proposed to establish a 'Pseudo' Dynamic Purchasing System (PDPS) in respect of the services in this Report. A PDPS is very similar to a Dynamic Purchasing System (DPS) as permitted under Regulation 34 of the Public Contracts Regulations 2015. Under a PDPS the Council will be able to appoint providers to perform services in accordance with its requirements but there should be a more flexible approach in its establishment and operation that would be the case with a full DPS which is subject to the Regulations.
- 10.4 It is acknowledged in Crown Commercial Service guidance that where necessary for the delivery of certain services it may be possible to incorporate an element of user choice at the call-off stage. For example an authority might consider that more than one of the providers could deliver a satisfactory, value for money service to the end-user, and proffer options to the user. Under such circumstances it would be necessary to consider if the possibility of allowing users to choose the provider gives rise to a problem with the requirements around transparency and treating suppliers equally. However, assuming all the providers were treated equally, e.g. by ensuring that all end-users were offered the same rights to influence the choice of final provider, and that this mechanism for end-user choice was made clear to providers transparently from the outset, the likelihood of any objections should be minimised.

11. COMMENTS OF THE PROCUREMENT CATEGORY LEAD

- 11.1 This paper sets out proposals to rationalise and regulate expenditure on education placements with SEND Independent and Non-Maintained Schools, in accordance with Hackney Contract Standing Orders and the Public Contracts Regulations (PCR) 2015.

- 11.2 The value of the service is above the relevant UK public procurement threshold, and future procurement must be conducted in compliance with the requirements of the PCR2015 for Social and Other Specific Services (“light touch” regime).
- 11.3 Internally, the procurement must follow the Hackney Procurement Framework for contracts above £100k. The Business Case is classified as medium risk. The Business Case report is presented to CPIC at the request of the Head of Procurement due to the significance of this project.
- 11.4 The value of the service is above the relevant UK public procurement threshold, and future procurement must be conducted in compliance with the requirements of the PCR 2015 for Social and Other Specific Services (“light touch” regime). Internally, the procurement must follow the Hackney Procurement Framework for contracts above £100k.
- 11.5 The short term actions to implement national schools contracts and carry out due diligence assessments on providers are welcomed as an interim measure. This work provides valuable visibility and assurance in relation to this expenditure, and will highlight any specific risks to be managed.
- 11.6 Detailed research has been undertaken on the available future procurement options and the outline approach of establishing a Pseudo Dynamic Purchasing System (PDPS), to complement the developing in-house provision, is an appropriate route in compliance with the above regulations and associated Crown Commercial Service guidance. A number of benefits are outlined including increasing opportunities for local providers, benefits for young people and their families deriving from delivering more of this provision in-Borough and financial savings for the Council.
- 11.7 A PDPS requires ongoing resources for accreditation of new providers and managing the call-off process. The service area is strongly advised to review and ensure suitable resourcing during the life of the PDPS to maximise successful delivery of outcomes.

APPENDICES

- The Children's Cross Regional Arrangements Group information can be viewed here:
<https://www.ccrag.org.uk/kb5/ccrag/landing/home.page>.
- The Independent Schools Standards can be viewed here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/798511/Independent_School_Standards-_Guidance.pdf

- The Education (Independent School Standards) Regulations 2014 can be viewed here
<https://www.legislation.gov.uk/ukxi/2014/3283/schedule/made>
- Cordis Bright 2019 report slide 27 which shows that Hackney was an outlier for percentage of children and young people with an EHCP in INMSS can be viewed here:
<https://www.cordisbright.co.uk/admin/resources/cordis-bright-sen-stress-test-2019-23-oct-19.pdf> and Cordis Bright 2020 report slide 32 shows that Hackney has dropped to second position.
- Guidance on the Light Touch Regime issued by Crown Commercial Services can be viewed here: LTR Guidance. This document makes particular reference to the use of a PDPS on pages 9 - 10 in response to the question “can user/carer/parent choice be used as award criteria when evaluating tenders?”

EXEMPT

N/A

CONFIDENTIAL

N/A

BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

Description of document (or None)

None

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