

Report to Cabinet

29 May 2024

Subject:	Establishment of a Flexible Purchasing System (FPS) for the provision of SEND Transport Services and closure of Dynamic Purchasing System (SMBC 21005)
Cabinet Member:	Leader – Councillor Kerrie Carmichael
Director:	Interim Director of Children’s Services & Education – Sally Giles Monitoring Officer & Assistant Director – Legal & Assurance – Mike Jones
Key Decision:	Yes - Financial implications greater than £1m
Contact Officer:	Sue Moore, Assistant Director Education Support Services sue_moore@sandwell.gov.uk Mike Lennox, Solicitor – Commercial and Contracts mike_lennox@sandwell.gov.uk

1 Recommendations

For the reasons set out in the report, it is recommended that –

- 1.1 The Director of Children’s Services and Education, in consultation with the Section 151 Officer, the Monitoring Officer / Assistant Director – Legal & Assurance and relevant Cabinet Member, be authorised to:



- 1.1.1 make and conclude arrangements for the closure of the current 'Dynamic Purchasing System for the Provision of Passenger Transport Services' (Contract No. SMBC 21005) (the DPS) for the reasons set out in the report submitted and notify all operators who are on the DPS of the decision to close the contract;
 - 1.1.2 extend any of the existing Call-Off Contracts awarded under the current 'Provision of Passenger Transport Services for Children and Young People with Special Educational Needs and Disabilities' Framework (Contract No. SMBC 22011) with providers for a period of up to 1 year only until 31 August 2025 for continued provision of SEND transport, in accordance with the terms of those contracts, to ensure continuity of service pending the award of new contracts; and
 - 1.1.3 agree any necessary exemptions pursuant to the Council's Procurement & Contract Procedure rules to enable the course of action referred to in 1.1.2 above to proceed.
- 1.2 Subject to the approval of recommendation 1.1 and sub-clauses, the Monitoring Officer / Assistant Director – Legal & Assurance be authorised to agree, enter into and / or execute under seal (if necessary) all requisite contracts and ancillary documentation in relation to the extension of the contracts for the continued provision of Sandwell's SEND transport, whether by way of contract variation or entering into new contracts.
 - 1.3 The Director of Children's Services and Education, in consultation with the Section 151 Officer and the Monitoring Officer / Assistant Director – Legal & Assurance, be authorised to establish a new Flexible Purchasing System (FPS) to award new contracts for SEND Transport work from 1 September 2024.
 - 1.4 Delegated authority be granted to the Director of Children's Services and Education, in consultation with the Section 151 Officer and the Monitoring Officer / Assistant Director – Legal & Assurance to:
 - 1.4.1 approve the admission of providers onto the FPS, provided that they meet the selection criteria for admission as set out in this report;



- 1.4.2 confirm economic operators / providers meet the selection criteria and will be admitted to specific Lots for which they apply through the FPS;
 - 1.4.3 invite tenders for, award (whether directly if permitted by law and the Council's Procurement & Contract Procedure Rules or according to any competitive procedure) and sign off, Call-Off contracts through the FPS;
 - 1.4.4 amend the rules applicable to the FPS, including any specification or terms and conditions of Call-Off contract applicable to the FPS generally; and
 - 1.4.5 agree amendments to, to exercise extension rights under, to terminate in full or part and to grant any waiver, consent or relief (or similar to any of these actions) in connection with any Call-Off contract which the Council awards under the FPS.
- 1.5 Delegated authority be granted to the Director of Children's Services and Education, in consultation with the Section 151 Officer, the Monitoring Officer / Assistant Director – Legal & Assurance and relevant Cabinet Member to approve expenditure of up to £1.89m per annum within the above FPS on the award of individual compliant Call-Off contracts.

2 Reasons for Recommendations

2.1 The reasons for this report are to –





- 2.1.1 close the current Dynamic Purchasing System for SEND transport;
- 2.1.2 extend the existing arrangements for any Call-Off Contract as awarded under the current Framework for SEND Transport to ensure the continued delivery of this essential service;
- 2.1.3 authorise agreement, execution or variation of appropriate contracts or other required documentation to facilitate the respective extension of any Call-Off Contract for with providers for a period of up to 1 year only;
- 2.1.4 establish a new Flexible Purchasing System (FPS) for the award of new contracts for SEND Transport from 1 September 2024



onwards with measures and provisions in place to ensure the needs and priorities of the Council and service users are most appropriately and fully met; and

- 2.1.5 delegate responsibility (where permitted by procurement law and the Council’s Procurement & Contract Procedure Rules or equivalent from time to time) to conduct a mini-competition under the rules of the new FPS and award contracts to all successful bidders.

3 How does this deliver objectives of the Corporate Plan?

	<p>The Best Start in Life for Children and Young People</p> <p>The Council is required to make arrangements for all children who cannot reasonably be expected to travel to school because of their mobility problems or because of associated health and safety issues related to their special educational needs or disability (SEND).</p>
	<p>People Live Well and Age Well</p> <p>The proposals in this report will ensure that young people have appropriate support to attend school, helps improve educational attainment, closing achievement gaps for children and young people vulnerable to poor learning outcomes.</p>
	<p>Strong Resilient Communities</p> <p>The proposals in this report will provide key opportunities for the council to build upon its reputation for ‘getting things done’, where children and young people, their families and the wider economy can prosper from a strong commissioning role, and a service model structured to embrace and deliver for the needs of our most vulnerable children and young people.</p>
	<p>A Strong and Inclusive Economy</p> <p>Using local operators to provide transport enables the local economy to thrive.</p>





A Connected and Accessible Sandwell

The proposals in this report put in place arrangements to ensure that our transport systems keep people safe from harm whilst under our care and protect the most vulnerable. Public transport is an important component of the system for organising travel to school. Travel assistance training is made available to all children and young people who can benefit from independence in their travel to school.

4 Context and Key Issues

Summary

- 4.1 The Local Authority is subject to statutory obligations and has powers to make particular travel arrangements for children with special educational needs and disabilities to facilitate their attendance at an appropriate education provision.
- 4.2 S.509(1) of the Education Act 1996 requires the Council as a local authority to determine whether arrangements are required for the provision of transport for each pupil with an Education, Health and Care Plan (“EHCP”) who has been assessed as eligible.
- 4.3 If a Local Authority determines that transport is necessary, then it must decide what form of travel assistance is suitable and organise it free of charge. Transport is provided for children, to and from school or other educational establishment, or where transport has been authorised on medical grounds / social need both within and outside the borough. The Council has further obligations under the Children Act 1989 (amended in 2004) (including all associated Regulations and Guidance) and the Care Standards Act 2000 to safeguard and promote the welfare of children.

Current position

- 4.4 Cabinet resolved to establish a Framework Agreement (Contract No. SMBC 22011) to award contracts for SEND Transport work from 1 September 2022 to July 2024 (inclusive), and undertake, if necessary, the procurement of any new additional ad-hoc SEND Transport work



arising during this period, not covered by the new contracts awarded under the new Framework using a new DPS Contract No. SMBC 21005.

- 4.5 This Framework has successfully provided sufficient scope to award all new SEND Transport work, including new additional ad-hoc SEND Transport work that has arisen during this period. The Framework Agreement is due to end on 31 August 2024. The DPS has not had to be called upon to provide for any new additional ad-hoc work. Table A provides a comparison to the service provision as reported to Cabinet in January 2022:

Table A

Number of:	January 2022	May 2024
Contracts	122	18
Operators	18	7
Pupils accessing SEND Transport	659	1004
Sandwell Schools	82	44
Out of Borough Schools	47	72

- 4.6 Measures to monitor the performance of operators have continued during the lifetime of the Framework Agreement to ensure acceptable standards and good practice is maintained. A more comprehensive system of Key Performance Indicators that focusses on the key areas of service delivery is however now being developed to measure operators': Compliance, Performance, Customer Satisfaction, Social Value and Sustainability.
- 4.7 The current contracts were awarded pursuant to the Framework Agreement and are due to expire in August 2024. Subject to Cabinet approval, it is possible to extend the existing arrangements for select contracts with operators pursuant to the terms and conditions of the Framework for a further year until the end of the academic year 2024-25.
- 4.8 There are risks and mitigations to be considered by extending any of the existing Call-Off contracts –



	Risk	Mitigation
1	Concerns raised previously regarding the poor business practices of some operators.	Measures that have been put in place for the Framework Agreement and increased monitoring have helped to continue to mitigate this risk since September 2022.
2	Current operators may not want to extend their contract to August 2025, or may have now accepted other work and no longer have capacity.	If this happens the work will be re-awarded using either the existing Framework Agreement or the new FPS.
3	Increased costs from operators.	Continued promotion of alternative offer of travel assistance support. Robust contract management.
4	Risk of potential challenge with regard to the procurement.	The Council is entitled to extend existing contracts under the Framework Agreement and in accordance with the Public Contract Regulations.

4.9 It is legally permissible to extend the contracts issued via the current Framework for a reasonable period, until 31 August 2025, to give the Council opportunity to undertake a new procurement process, considering the Council's priorities and the needs of service users. It is necessary to take this action prior to the expiry of the current contracts, which are due to expire 31 August 2024.

Existing procurement arrangements

4.10 It is recommended that the DPS, Contract No. SMBC 21005, is formally closed as alternative new arrangements to the current Framework are being established. This will ensure clarity and avoid ambiguity for selected suppliers between the DPS and the Framework Agreement

4.11 18 Call-Off contracts have been awarded under the Framework Agreement. As of May 2024, 1004 children and young people were being transported from home to school via those contract arrangements.



- 4.12 In response to budget pressures arising from increased demand for transport for children and young people with SEND, an extensive programme of financial analysis, budget monitoring and control measures were applied. This included the introduction of Council-wide expenditure controls to manage and mitigate the financial impact.
- 4.13 Monitoring of the existing Call-Off Contracts has demonstrated that 10 of these have continued to provide good value for money. The criterion applied for determining value for money is based on the cost per passenger and consistent delivery of service within existing contract parameters, combined with benchmarking of data from other local authorities. These contracts provide for a significant proportion of those journeys (702 passengers), and for reasons of financial and service provision stability, it is recommended that providers be offered the opportunity to extend existing Call-Off Contracts for the period of up to 1 year only whilst the remainder of the SEND Transport work is re-tendered under a FPS (302 passengers).

Proposed Flexible Purchasing System (FPS)

- 4.14 This report then seeks approval to establish a new flexible purchasing system (FPS) framework which will be used for seeking competitive tenders for the transport of children and vulnerable adults.
- 4.15 The new flexible purchasing system framework will commence immediately following the completion of evaluations of the first intake of tenders to the framework, concurrent with the announcement of results – at which point the first Call-Off Contract will be awarded. Given the forecast annual increase in demand in home to school transport (including children with special educational needs and disabilities) the FPS framework allows new suppliers to become member providers on the FPS (and be eligible to participate for the award of Call-Off Contracts under the FPS) during the period for which it is approved.
- 4.16 A FPS differs from a traditional “closed” framework in that it allows suppliers to apply to join on an annual basis (or at specific times as set out in the FPS rules should a change be deemed necessary to facilitate this) over its proposed term, subject to satisfying the Council’s selection criteria, which will set certain entry standards, as set out in the appendices to this report. The selection criteria will include confirmation that the organisation has a valid Operators License, valid insurance, adequate safeguarding policies. As the transport market can change



rapidly, the FPS's 'always open' method is preferable to a traditional 'closed' framework or approved provider list.

- 4.17 When a child or young person requires travel assistance to an education establishment, their journey from home to the establishment and back is added to the FPS in the form of a mini-competition for a route unless a direct award is permitted. These routes are sent to all providers on the relevant Lot of the FPS (other than those who are suspended at the time), with a specified timeframe to submit a bid. Once the bidding window is closed the FPS ranks the submitted bids according to their scores (according to award criteria set at the time) for the Coordination Team to review and appoint the operator who submits the highest scoring tender. The FPS communicates the outcome of this to all bidders once the provider is appointed.
- 4.18 The successful bidder is offered a contract for the route, which is managed and stored in the FPS. A person can be added to an existing contract if the provider is already offering travel for other young people attending the same establishment. The FPS keeps a record of all job requirements and the associated contracts for their transport.
- 4.19 The FPS records the costs for all contracts and raises invoices for each of the providers based on the live contracts they hold with the Council on a monthly basis. Data on journeys undertaken and completed will be monitored and subject to continuous update to maintain data accuracy. The invoice processing functionality significantly reduces administration time and resource and is accurate. Arrangements have been tested and are robust to mitigate any risks of overpayment.
- 4.20 Benefits of the proposed FPS model include:
- 4.20.1 New entrants to the market being able to apply at intervals indicated in the rules (currently once per year).
 - 4.20.2 Simple methodology of approving new service providers means a short timeframe for evaluation and approval onto the FPS.
 - 4.20.3 Containing price pressure through increased competition whilst services are improved through performance measures.
 - 4.20.4 Compliant with the light touch regime of the Public Procurement Regulations 2015 and complies with good procurement practice.



- 4.20.5 Swift processing of supplier invoices via the system leading to quicker payments.
- 4.20.6 Standardising dealings the Council has with operators.
- 4.20.7 Reducing the administrative burden for both the Council and operators in awarding Call-Off contracts.

Consultation on new procurement arrangements

- 4.21 There is no requirement for formal public consultation to take place with regard to the development and implementation of a new procurement model. However, as a matter of good practice, a co-production model, in the form of the current Framework which has operated for nearly 2 years from September 2022, has been used to inform the future model.
- 4.22 Initial market engagement days were held with potential suppliers on 21 and 22 March 2024 to raise awareness with the industry that new arrangements were proposed. These engagement events provided scope as to the quantity of work to be made available, the Council's expectations as to how the service would be delivered and provided a forum for any initial questions to raised.
- 4.23 Subject to Cabinet approval to the report recommendations, a further, more in-depth event to focus on the terms and conditions of the FPS and application process for prospective suppliers through Intend will be arranged. No further consultation has been undertaken as the proposed recommendation to establish a FPS is a direct decision for the council to take in determining its preferred route for procurement.

Procurement Timetable

- 4.24 The tender process will commence in early June. It is expected that the evaluation and award process will be completed to enable contract commencement from September 2024.

4 Alternative Options

- 4.1 The following options were considered and are not recommended:



- 4.1.1 **Retain the current DPS (Contract No. SMBC 21005) and undertake new mini-competitions.** Cabinet previously resolved (Decision No.9/22(1)(a)) to abandon the previous mini-competition conducted under the DPS (Contract No. SMBC 21005). The current Framework was introduced as a replacement means of procurement to address several issues that arose and had been raised during a review of the then procurement exercise. Retaining the current DPS and undertake mini-competition therein is not considered to be the most appropriate approach to provide quality of provision, or deliver the most economic and sustainable solution for the council.
- 4.1.2 **Extend the current Framework (Contract No. SMBC 22011) in full.** Establishment of the Framework Agreement and the appointment of select bidders to undertake mini-competition for SEND Transport work brought a number of significant benefits however by virtue of restricted nature once the Framework had been established it offered no opportunity for new suppliers to apply to join the arrangement: contract periods had to be defined with a termination date: individuals and small size enterprises who had previously provided a good, value for money service to the council chose not to apply to join the Framework, and an element of competition for some contract Lots was lost as a result.
- 4.1.3 **Do nothing.** The Council has a statutory duty to provide home to school travel for eligible children and young people. The internal passenger transport service is unable to assume the current routes procured through the existing Framework Agreement and DPS. Without a framework, DPS or Approved Provider List in place, the Council would need to spot-purchase taxi and passenger transport services. This would not be compliant with the Council's Contract Procedure Rules and would reduce competition between suppliers, which would increase the overall spend.
- 4.1.4 **New Framework Agreement** – A framework agreement is closed for the lifetime of the contract term and over a six-year period there is a high risk of significantly fewer providers remaining, which reduces competition. This is because providers of taxi and passenger transport services enter and



exit the marketplace on a regular basis and cannot be admitted (readmitted) to the framework. Furthermore, separate arrangements for processing invoices and checking supplier credentials would need to be implemented, increasing costs and administration functions for the Council.

- 4.2 A FPS offers a range of benefits including scope for new suppliers to join during the lifetime of the contract arrangement, a more flexible application process to attract small, medium and large-scale enterprises to apply, and introduced a more competitive market that has proved economically advantageous to the contracting authority. This option is recommended.

6 Implications

Resources:	<p>The introduction of a FPS for the supply of services will allow the council to operate on the open market whilst suppliers can join frequently allowing us to expand our network of suppliers and welcome new business that can meet our change in needs. There are no additional resource requirements once the FPS has been introduced.</p> <p>The cost of SEND home to school transport in 2023/24 was £17m, which was significantly higher than the budget available for the service. Although budget growth has been provided in 2024/25 and expenditure is expected to be contained within the available budget envelope, a proportion of the budget provided is being funded by one-off savings across the Council. It is therefore imperative that the Council takes all available steps to reduce the cost of SEND home to school transport in order to ensure that the cost is affordable and sustainable within future financial years.</p> <p>The average cost per head of SEND home to school transport is currently £16,400 per annum, varying subject to numbers of service users and specific travel requirements. It is expected that implementation of the FPS will reduce the average cost through the introduction of greater flexibility and a wider pool of potential providers. A new average cost per head will be calculated once the new model has been launched and the first Lots awarded under the FPS.</p>
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Legal and Governance:

The Council has a duty to make such travel arrangements as they consider necessary to secure suitable home to school transport arrangements are made for eligible children in accordance with s.508B of the Education Act 1996. This relates to children of compulsory school age (5 - 16) and ensures transport is free. S.508C of the 1996 Act gives the Council discretionary powers to make school travel arrangements for other children not covered by s.508B. Such transport does not have to be provided free of charge.

In making those arrangements, regard must be had to the statutory guidance issued by the DfE. The current guidance is in the 2024 "Travel to school for children of compulsory school age". The guidance recognises that it is for the individual local authorities to decide how they apply their discretion, and that each local authority will need to balance the demands for a range of discretionary travel against their budget priorities. There are further provisions in s.509AA and s.509AB for young persons (aged 16 - 18), disabled persons and persons with learning difficulties, those continuing learners who started their programme of learning before their 19th birthday ("persons of sixth form age") and for young people with EHC Plans up to age 25 where they are continuing a course started before their 19th birthday.

Councils are required prepare and publish an annual transport policy statement specifying the arrangements for the provision of transport or otherwise that the authority considers necessary for facilitating the attendance of such persons.

Additionally, the Council has a further statutory duty under s.508F and s.508G to make such arrangements for the provision of transport as they consider necessary in respect of adults aged 19 or over and relevant young adults with an EHC Plan in certain specified circumstances. These arrangements must consider the statutory guidance issued by the DfE "Post-16 transport to education and training" January 2019.

In addition to the duties under the Education Act 1996, the Council has a general duty under the Education and Skills



	<p>Act 2008 to encourage, enable and assist participation of young people with SEND up to the age of 25.</p> <p>The main character of the services which the Council intends to procure under the FPS is 'social services'. The Council may use the light touch regime under the Public Contracts Regulations 2015 to procure such services.</p> <p>The light touch regime gives a contracting authority some discretion regarding the design of a procurement system, as long as the system meets principles of equal treatment and transparency.</p> <p>The proposed FPS meets such principles.</p> <p>A robust transformation programme is in place to review and implement identified and necessary changes to address the increasing cost of travel assistance.</p>
<p>Risk:</p>	<p>A key risk is to ensure that the compliant contract is in place. Procurement will guide the process to ensure risks are minimised by introducing a flexible purchasing system. Not to procure a contract risks the Council having to incur non-compliant spend with hire costs. The introduction of FPS ensures a compliant contract is in place by 1 September 2024.</p> <p>If the Council did not have contract agreements which support the service in the provision of transport, there would be an increased risk of being in breach of statutory responsibilities to provide transport assistance for children and young people with SEND and children who are in the care of the authority.</p> <p>The Council's Corporate Risk Management Strategy (CRMS) has been complied with to identify and assess the significant risks associated with this decision / project. This includes (but is not limited to) political, legislation, financial, environmental and reputation risks. Based on the information provided, it is the officers' opinion that for the significant risks that have been identified, arrangements are in place to manage and mitigate these effectively.</p>



	<p>The risk implications and mitigating measures as a result of extending the existing contracts are set out throughout this report.</p>
<p>Equality:</p>	<p>An Equality Impact Assessment (EIA) screening has been completed. A full EIA is not required for this proposal.</p> <p>Children and young people with special educational needs and disabilities (SEND) have protected characteristics under the Equality Act 2010. The Council as responsible local authority has a duty and has powers to make particular travel arrangements for children with special educational needs and disabilities to facilitate their attendance at an appropriate education provision.</p> <p>Local authorities must publish details of school transport for children and young people with special educational needs and disabilities in their local offer. This is set out in the Special Educational Needs and Disability Regulations 2014 – schedule 2 paragraph 14.</p> <p>Children who cannot reasonably be expected to walk to school because of SEND, disability or mobility difficulty are eligible for transport under s.508B and schedule 35B (2) of the Education Act 1996. The policy should explain how a child with SEND meets the criterion for school transport.</p> <p>The proposed FPS demonstrates the Council’s commitment to the social model of disability, where disability is recognised because of social organisation and infrastructure, rather than as the result of a person’s differences. The FPS plays an important role in removing barriers that would otherwise restrict the life choices of young people with disabilities; and enables them to engage positively with education, maximising their life opportunities.</p>
<p>Health and Wellbeing:</p>	<p>This proposal supports the continuing provision of SEND Home to School transport to meet the council’s statutory duty and ensuring that children and young people can continue to attend school and educational establishments to prepare</p>



	them for adulthood through development of their health and wellbeing.
Social Value:	In accordance with the council's adopted Social Value Policy, contracts awarded under the new Flexible Purchasing System will require suppliers to demonstrate how they will be responsive to Employment, Education, Local Spend and Environmental prospects, and how they will construct and operate their works to deliver a positive impact on the local economic, social and environmental well-being of the local area.
Climate Change:	<p>Suppliers operating via the FPS will be expected to comply with Sandwell's Climate Change objectives and obligations, to minimise the environmental impact of the service. There are no climate change implications from the FPS itself. The ability to flexibly procure transport routes via the FPS helps to reduce the number of overall routes (mainly home to school routes) and therefore reduces the carbon impact.</p> <p>The requirements within the service specification stipulate that suppliers use low emission or electric vehicles as standard. The FPS is dynamic in nature and will support the implementation of any potential changes in legislations in respect of emissions.</p> <p>The FPS will provide for longer contract periods where value for money is provided for the council. With longer contracts Supplier business models will enable greater investment in low emission / electric vehicles in contrast to the current 2-year fixed contract period.</p>
Corporate Parenting:	In meeting the council's statutory duty to provide home to school transport the action supports Corporate Parenting in ensuring that all children and young people are safely and securely transported to and from school and minimises the number of school days lost through non-attendance.



7. **Appendices**

Appendix 1: draft rules of the proposed FPS.

Appendix 2: draft standard Call-Off terms and conditions.

Appendix 3: draft application form.

8. **Background Papers**

None.

