



Report to Executive

Meeting Date – 17th September 2024
Key Decision – Yes
Public/Private – Public

Portfolio – Lifelong Learning and Development
Directorate – Children and Family Wellbeing
Lead Officer – Sara McHale, Team Lead, Home to School Transport & Andy Smart, Strategic Advisor, Education, SEND and Inclusion

Title – Permission to establish a Dynamic Purchasing System for procurement of Passenger Transport Services (to be used for Home to School, SEND and Adult Social Care Transport)

Summary:

The paper seeks permission to:

- Establish a Dynamic Purchasing System (DPS) for the procurement of Passenger Transport Services (to be used for procuring Home to School, SEND and Adult Social Care Transport routes). The DPS will be the main mechanism for procuring transport routes until it expires on 28 October 2028. There will be no extension options. The total value of the DPS will not exceed £75m.
- Delegate the appointment of successful operators on the DPS to the Senior Manager responsible for Home to School Transport.
- Procure Mainstream School and SEND transport routes via the DPS from establishment until expiry in October 2028.
- Delegate the award of transport routes to the Senior Manager responsible for Home to School Transport.

Recommendations:

It is recommended that the Executive agrees:

1. To the commencement of a regulated procurement exercise under the Public Contract Regulations (PCR) 2015 to establish a Dynamic Purchasing System (DPS) for Passenger Transport Services.
2. To grant delegated authority to the Senior Manager with responsibility for Home to School Transport to appoint successful operators onto the DPS.
3. To procure Mainstream School and SEND Transport routes via the DPS from its establishment to its expiry.

4. Delegate the award of individual transport routes to the Senior Manager with responsibility for Home to School Transport.

Tracking

Executive:	17 th September 2024
Scrutiny:	
Council:	

1. Background

- 1.1 The Council has a statutory duty to provide home to school transport for those pupils who meet the qualifying criteria under the Council's School Transport Policy and/or the policy for special educational needs and disabilities (SEND). (Please note that the Council also tenders a lesser amount of or discretionary passenger services, includes, but is not limited to, adults attending social care day care facilities)
- 1.2 A Dynamic Purchasing System (DPS) is a procurement mechanism allowed under the PCR 2015. It is used for common purchases that are standard, routine, and that are generally available in the market. The majority of councils, in recent years, have used this mechanism for passenger transport. Cumberland Council (and its predecessor Cumbria County Council) has been using a DPS, successfully, for the last 4 years.
- 1.3 The current DPS for passenger transport services is hosted by Westmorland and Furness Council and it is due to come to a natural end, with no further extension options. All home to school transport contracts in the former Allerdale and Copeland borough Council areas are due to expire in August 2025, as are all of the routes transporting students to James Rennie School in Carlisle. It is, therefore, important that we have a legally compliant route to the market established, with multiple suitable operators, to allow the tendering to commence for the 2025-26 academic year.
- 1.4 Establishing the DPS now will ensure it is fully operational, with multiple operators signed-up prior to the peak of tendering new routes in early 2025. This will allow the Home to School Transport Team, with limited resources, to focus on each task separately (establishing DPS, route planning, processing new applications, route tendering), reducing the risk of error, and allowing time to plan and test the most cost effective routes prior to going to market. Scoping in Adult social care transport to the DPS does not commit them to using it, it just means there is a complaint route to market already established, if Adult Social Care and Housing chose to use it.
- 1.5 Similar to a more traditional framework agreement the DPS ensures that, (a) there are pre-established terms and conditions that operators will work to, and (b) all operators are robustly checked and vetted in accordance with the Council's requirements, prior to

being able to 'bid' for any route. It ensures that any work contracted through the DPS is only given to operators that have agreed to our terms and have demonstrated the necessary skills, experience and safeguarding practices to ensure our clients' needs are fully met, and that the Council can fulfil its statutory duties.

- 1.6 The DPS is flexible and allows for operators to be appointed at regular intervals. This allows for new entrants into the market, and that operators who have spent time upskilling to meet our requirements, can apply when they are able to demonstrate compliance. This supports buoyancy in the market and aids continued competition.
- 1.7 Operators are not guaranteed a contract under the DPS. They must price routes competitively and routes will be awarded in compliance with the 'call off' process, which will be either on price (lowest overall cost to the council) or best value (in terms of price and quality e.g. size of vehicle, vehicle facilities).
- 1.8 The new Procurement Act will come into effect on 28 October 2024 and will supersede the PCR2015 which will no longer be applicable. This legislation aims to establish a unified framework for public procurement across all government sectors, enhancing transparency, efficiency, and fairness in the procurement process. The DPS is a part of PCR2015 and, in the new legislation, will be replaced by a Dynamic Market which currently does not allow any contracts to be let under the threshold which stands at £214,904 (including VAT), therefore will not allow for all routes to be procured through it
- 1.9 From establishment of the DPS to expiry (28 October 2028) the total value of the contracts awarded through it will not exceed £75M. This figure is based on a current annual budget of £6.28M for SEND, £7.47M for Home to School, £0.168M for Children's Social Care (and £1.854M for Adult Social Care Transport). This is not indicative of expected expenditure of £75m over the course of the DPS; rather this amount provides the required headroom to ensure transport services can be procured through the DPS, in line with the Council's statutory duties, without needing renewal before expiry.
- 1.10 It is currently estimated that the total cost of new home to school transport routes to be procured for the 2025-26 academic year will be £9.2M. These routes will cover all of the former Allerdale and Copeland borough council areas and also all routes into James Rennie School in Carlisle.
- 1.11 A review of transport requirements will be undertaken prior to any routes being advertised to ensure routes are fit for purpose and optimised. When undertaking these route optimisation exercises the use of Cumberland Transport Operations Team's (CTOT, the Council's in-house provider) current capacity, routes and ability to take on additional pupils will be considered.

- 1.12 When advertising contract opportunities via the DPS, operators will be encouraged to offer route combinations (where appropriate) to ensure value for money is sought and the skills, expertise and in-depth local knowledge of the operators is fully exploited to drive efficiencies.
- 1.13 The current supply market for transport services is predominantly local SMEs, and they will be encouraged to apply for this DPS. Steps will be taken to ensure the process is as streamlined as possible, keeping burdens on smaller businesses to a minimum. The DPS application process will be similar to that which operators have previously used. Operators will be offered training and support in the use of the Council's DPS where appropriate.

2. Proposals

- 2.1 That the DPS be established as the mechanism for procurement of home to school and other transport until 28 October 2028. It is recommended that permission to establish a DPS in accordance with Regulation 34 of the PCR 2015 on the basis that there is an existing market, the specification can be defined, and the price controlled. Following the Open Procedure to subsequently procure the required passenger transport routes through it from establishment to expiry.
- 2.2 The scope and the specification will be designed by the lead services to ensure services can be delivered compliantly. There are four distinct areas of passenger transport:
- Mainstream settings – where for example distant / safety of a route to school require the Council to provide school transport. In such cases there is a statutory duty to provide school transport.
 - Special schools and resource bases – a statutory duty to offer transport subject to the pupil meeting the eligibility criteria.
 - Children's social care – provision of ad hoc services to children and young people for a variety of purposes. Journeys may be one-off or regular scheduled arrangements that include contact visits as well as out of hours emergency journeys.
 - Adult health and social care – provision of ad hoc services to adults, usually to assist with attending day care services.
- 2.3 The DPS will operate as an 'open system' in that new operators can at any time during its duration apply to join the DPS. The structure of the DPS will be as follows:
- Stage One – Standard Selection Questionnaire (SQ) and Selection questions for entry onto the 'DPS Approved Supplier list'
 - Stage Two – Further Competition under the DPS

2.4 The current proposed timeline is as follows (subject to change)

Market Engagement (online or face to face, 2-3 sessions, as required)	26 th , 27 th and 30 th September 2024 (proposed)
Contract Notice Advertised	4 th October 2024
Tender Closes	18 th November 2024
Evaluation of initial applications to the DPS	19 th November 2024 onwards
DPS establishment date	December 2024
Call offs to commence	From establishment date
DPS opens for new applications	Various dates TBC
DPS expiry	28 October 2028

3. Alternative options considered

3.1

Option 1: To establish a DPS under PCR 2015 (recommended)	A DPS provides a mechanism to award contract routes quickly, with pre-vetted operators. It delivers value for money as there is a competition for each route advertised.
Option 2: To tender transport services via a National Framework	Not possible, no national framework is available for these services to be provided in Cumberland.
Option 3: To Tender through an Open Procedure (PCR 2015)	This has previously been used and, though the process works, it is believed to be less expedient than a DPS for the following reasons: <ul style="list-style-type: none"> • Inflexibility. Routes are ‘fixed’ and, the system cannot react to required changes at short notice. This can result in routes not being awarded, and second or third compliant tender exercises having to be undertaken over a short period. • Multiple route handbacks are possible as operators tend to ‘over-bid’ in multiple procurements to secure routes which they subsequently cannot deliver. • The Council would need to run multiple PCR 2015 compliant tenders over the next 4 years to secure the appropriate transport provision, which is administratively burdensome for both the operators and the Council.

<p>Option 4: To tender through a traditional framework (PCR 2015)</p>	<p>This has previously been trialled with Pupil Referral Unit (PRU) tenders but, once established, there was no mechanism to add new operators. Over time the framework became unworkable, with reduced competition.</p>
<p>Option 5: to tender under the competitive flexible procedure (Procurement Act 2023)</p>	<p>This is a new process which has not yet been tested for the procurement of home to school transport. Adopting it is considered to be a considerable risk to the delivery of the Council's home to school transport duties. Initial reviews of the Procurement Act indicate that there is a substantially greater administrative burden associated with this procedure and it would take time for the team to develop the new ways of working required. Any delay in going to the market with would condense the workload for the team and could jeopardise the provision of school transport for September 2025. Equally, all operators would have to register for the new 'Central Digital Platform' and, if they were not willing to do so could not be awarded a contract. As this platform is not yet up and running, operators cannot be trained on its usage.</p>
<p>Option 6: To establish a Dynamic Market (Procurement Act 2023)</p>	<p>Not considered appropriate. Initial review of the new legislation indicates that only above-threshold contracts can be tendered through a Dynamic Market. This would leave the Council with no mechanism for procuring low value routes, which form a significant portion of the total operation.</p>
<p>Option 5: No procurement mechanism for supply</p>	<p>This is not considered appropriate. It lacks control over expenditure, has no or, at best, inconsistent terms and conditions, and provides for no contract monitoring in a regulated activity.</p>

4. Conclusion and reasons for recommendations

- 4.1 There is a statutory obligation to provide school transport to pupils meeting eligibility criteria. It is essential that these routes are procured in a legally compliant way. Utilising a DPS is considered the most appropriate way to do this insofar as it is tried and tested, is familiar for Council staff and operators and provides – currently – the most expedient method of procuring the required services.
- 4.2 The Procurement Act provides two routes to market both of which are untested by any local authority for passenger transport. Initial reviews deem both unsuitable as described

in 3.1 of this report. However, with the Act coming into effect from xxx October 2024, the Council now needs to set up the DPS at pace.

- 4.3 Following an initial external review of services including the current term and conditions of the DPS, we will be seeking to update the current agreement in performance and contract management, termination, safeguarding and financial transparency. These will all be in line with existing best practice used by local authorities.

Implications:

Approving the recommendations will ensure the council has a legally compliant method of procuring school transport routes and meeting its statutory obligations to ensure eligible pupils are provided with suitable transport to school.

Contribution to the Cumberland Plan Priorities - Sustainability & Local First

The transport routes procured by the council are predominately contracted to local providers; this mechanism will continue to support that.

All routes will be reviewed in terms of logistics prior to tendering, taking into account shortest distances travelled and merging routes where possible to reduce the number of vehicles required.

Relevant Risks –

The transport market is affected by factors outside of the Council's control, such as fuel prices, central government decisions around minimum pay, legislative changes etc. A mechanism for index linked increases to route prices will be included in the DPS terms to reduce the number of 'hand backs' from operators and mitigate this risk.

Consultation / Engagement -

There will be market engagement prior to advertising the DPS.

No public consultation is required as no change to eligibility criteria is being proposed. This is simply a renewal of the procurement mechanism to deliver the Council's duties.

Legal –

The decision to commence a procurement to establish a Dynamic Purchasing System (DPS) for Passenger Transport Services of up to £75m is a proper decision for the Executive under Rule 5.23 of the Contract Procedure Rules (as amended 16 January 2024) (CPRs), Part 3: Section 7 of the Constitution.

Given the value of the DPS, a procurement in accordance with the Public Contracts Regulations 2015 (PCR 2015) is required. Legal Services will prepare the DPS agreement and call-off terms and conditions.

The decision to authorise the procurement of Mainstream School and SEND Transport routes via the DPS from its establishment to its expiry is also a proper decision for the Executive.

The decisions to delegate:

1. authority to the Senior Manager with responsibility for Home to School Transport to appoint successful operators onto the DPS; and
2. the award of individual transport routes to the Senior Manager with responsibility for Home to School Transport.

are proper decisions for the Executive under paragraphs 1.3 of Part 2: Section 6 and 1.4 of Part 3: Section 2 of the Constitution.

Finance –

Home to School and SEND Transport has been an area of significant pressures in recent years with demand increasing inline with that of EHCPs. As part of the budget setting process for 2024/25, £3.5m growth was added to the budget to recognise these demand pressures being seen across the service. Alongside this there is a transformation and savings programme with a target of £1.5m which increases in future years.

As part of the Transformation programme focus has been on ensuring value for money and High-Cost route reviews. The introduction of DPS will assist in the overall Transformation of the service and offset some of the demand pressures by efficiency savings.

Information Governance – N/A

Impact Assessments – N/A

Contact details:

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Appendices attached to report:

- None

Background papers:

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers: