

Appendix 1: Options Appraisal

Changes in Procurement Regulations

The **Procurement Act 2023 (PA23)** introduces significant changes to public procurement and is a departure from **Public Contract Regulations 2015 (PCR 2015)**. A key change is the move away from Most Economically Advantageous Tender to Most Advantageous Tender, in a bid to enable wider considerations in tender evaluations. There is also the requirement under the new act for an additional number of transparency notices throughout the life of a contract, including contract management, performance related and contract end notices.

In terms of routes to market new options have been introduced, such as Dynamic Markets and Open Frameworks. These are considered the most similar to the previous Dynamic Purchasing System (DPS) used by Kent County Council in the Independent and Non-Maintained Special Schools (INMSS) Sector. However, we are able to design comparable alternatives under the Light Touch Regime but CPD are exploring the extent of flexibility available as part of this (see Light Touch Regime section).

Additional Considerations under Procurement Act 23

Spot-Purchasing Rules: The Procurement Act 2023 provides additional transparency over spot-purchased spend and is designed to minimise it where possible.

Central Digital Platform: The Central Digital Platform is an online system established under the Procurement Act 2023. Suppliers will be required to register for this to access opportunities within the public sector. It serves as a central hub for UK public procurement, facilitating the publication of required notices and documents. The platform enhances the existing Find a Tender service, making it easier for suppliers to find and bid for contracts, and for buyers to meet their transparency commitments (detailed below).

Transparency Notices: Under the Procurement Act 2023, transparency notices are mandatory publications that ensure openness and accountability throughout the procurement lifecycle. These notices include various stages such as pre-procurement, tendering, and contract management. A significant aspect of these notices is the obligation to publish Key Performance Indicator (KPI) returns and other contract management details. Contracting authorities must regularly update and publish KPI returns to provide insights into the performance and management of contracts. This requirement aims to enhance transparency, allowing stakeholders to monitor contract execution and ensure compliance with agreed terms.

Enabling SME Opportunities:

There is also a duty for Purchasing Organisations to have regard to, and where appropriate, remove barriers to Small, Medium Enterprises (SMEs) and new providers. Based on this and our experiences with market engagement additional considerations might need to be given (where possible) to the following:

- **Accessibility:** Ensure procurement opportunities are widely advertised and accessible to SMEs.
- **Financial Considerations:** Reduce financial thresholds for participation and offer flexible payment terms.
- **Support and Guidance:** Provide clear guidance and support to SMEs on how to participate in procurement processes.

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- **Division of Contracts:** Divide larger contracts into smaller lots to make them more accessible to SMEs.
- **Proportionate Requirements:** Set proportionate selection criteria that do not unnecessarily exclude SMEs.

The act also introduces a debarment list and authorities are obligated to monitor this list and their contracts over their lifespan to potentially remove suppliers who are added to the list.

Light Touch Regime: Commercial and Procurement, with legal support, would need to explore the potential to create a mechanism under the Light Touch Regime that allows for the assessment of only new bids without reconsidering older bids, streamlining the process and reducing the evaluation burden. Furthermore, we are exploring the possibility of Pseudo-Dynamic Markets or an Open Framework under the Light Touch Regime to work similarly to a DPS. This would enable us to award below-threshold work packages in the same way that we currently operate for the NMISS DPS.

Evaluation Options: Under the Procurement Act 2023, we have additional evaluation options available and it allows greater flexibility for procurements to be designed around the needs of service users and the market. This could include additional possibilities such as site visits, audits and negotiations. Authorities are encouraged to use market engagement sessions to select and shape these processes. In these instances, additional consideration must be given to resource allocation, as evaluators and commercial officers may need to conduct site visits, which could impact overall resource availability. Therefore, we need to think about the implications of this for SEND, Commissioning and Commercial.

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Routes to market for INMSS

Commissioning did explore the option of utilising the remaining two one-year extension clauses to prolong the existing DPS. However, this approach was discounted as it would not enable the Council to address the limitations of the current contract, nor offer the flexibility required to respond to the evolving education and SEND landscape across Kent.

Therefore, for the routes to market for the INMSS procurement we identified the following options:

Aspect	Do Nothing	Direct Award	Open Framework	Dynamic Markets
Description	Allow the DPS to terminate without replacement	Direct contract award without competition, permitted under specific conditions (e.g. Light Touch Regime, extreme urgency (e.g. urgent placements) or when only one supplier is capable of providing).	Allows for the periodic admission of new suppliers throughout their term, maintaining competitiveness and adaptability. Reopening an open framework effectively constitutes retendering, thereby demonstrating ongoing market testing and competition.	Allows for the continuous admission of suppliers, providing a flexible and open system for a wide range of goods, services, and works.
Benefits	<ul style="list-style-type: none">- No cost of procurement- No contract management costs incurred for implementation of the service	<ul style="list-style-type: none">- Fast and efficient- Low administrative burden- Enables continuity of service	<ul style="list-style-type: none">- Reduced administrative burden by utilising consistent terms and conditions across the Framework- Ability to adapt to changing market conditions through periodic refresh of providers and allow us to amend thresholds in line with the wider system changes- Enable periodic improvements to be made to T&Cs over lifetime of contract- A structured Framework	<ul style="list-style-type: none">- Increased flexibility- Broader supplier base- Continuous competition driving better value for money- Consistent terms and conditions- Highest access opportunity for new Providers – particularly for SMEs

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			<p>improves the contract management tools and KPI consistency</p> <ul style="list-style-type: none"> - More tools available to KCC for market management and encouragement of early engagement for any new or potential providers 	
Risks	<ul style="list-style-type: none"> - Spot purchasing arrangements will likely be required - Non-compliance with Procurement Act 23 and Spending Council's Money - Lack of value for money with no competitive procedure - Reputational risks for non-compliance - Terms and conditions of placements will be varied - Reduced opportunity for new providers 	<ul style="list-style-type: none"> - Legal challenge risk if not compliant award - May reduce transparency and competition - Lack of or limited responsiveness/ less adaptable 	<ul style="list-style-type: none"> - Managing the periodic admission process could be resource intensive - Ensuring all suppliers meet the required standards consistently through Contract Management - Could 'lock' the market during the framework period which could be problematic if we do not receive sufficient bids that meet our requirements this means that more placements will be made on spot purchased arrangements and associated risks - Suppliers may choose to reapply, which could increase resource and capacity requirements - New schools are unable to apply during any periods the Framework is 'locked' - Where parents want to place in a non-contracted school, there is a risk that they go 	<ul style="list-style-type: none"> - Potential complexity in managing a larger pool of suppliers - Ensuring compliance with ongoing transparency requirements and notices - Uncertainty regarding the extent to which the Light Touch Regime permits modification of the Call-Off process to enable Direct Awards.- Does not allow us to address the risks associated with the current contract model - Allowing schools to apply or reapply with a quick turnaround provides limited assurance that feedback and learning related to quality have been effectively embedded.

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			through other channels to place CYP, such as tribunal appeals	
Strengths	<ul style="list-style-type: none"> - Speed (Remove one step in placement process) - No resource implications for CPD or Commissioning 	<ul style="list-style-type: none"> - Speed - Simplicity - Useful for urgent or specialist needs 	<ul style="list-style-type: none"> - Flexibility in this approach, to adapt the Terms and Conditions based on National Legislation and local need - Can include multiple lots to ensure competitiveness - Clearly defined bidding periods which help resource planning and time management - Allows Direct Award for individual CYP placements 	<ul style="list-style-type: none"> - Open all of the time for continuous supplier addition - Can include multiple lots to ensure competitiveness
Weaknesses	<ul style="list-style-type: none"> - Not suitable for strategic, long-term procurement - Supplier management will be complicated and resource intensive - The Council will have a lack of power - Lack of value for money with no competitive procedure, potential cost implications - No quality assurance of provision 	<ul style="list-style-type: none"> - Limited to specific circumstances - Not suitable for strategic, long-term procurement - Managing multiple direct awards will be resource intensive 	<ul style="list-style-type: none"> - Resource-intensive to reopen and evaluate the Framework - Providers can rebid on an open framework which could increase resource requirements 	<ul style="list-style-type: none"> - Resource-intensive to monitor costs of placements made to ensure compliance with PA23 thresholds - More complex to manage due to its unpredictability in applications - Currently, there is no direct provision for awarding below-threshold contracts. This could affect any placements where the aggregate spend is below the relevant threshold, £663,540 for Light Touch contracts or £213,477 for standard services contracts (including VAT).

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Outcome	Dismissed – This option would not comply with SCM or the Procurement Act 2023 and does not align with the Council's strategic objectives.	Dismissed – This option does not support the Council's strategic aims, is limited to only specific circumstances which do not apply in this situation and this approach would be resource-intensive to manage.	Recommended – This is a compliant route under PA23 and SCM, supports quality assurance, aligns with strategic goals, market management, incorporates learning from current DPS to contract management and offers flexibility through lotting arrangements.	Dismissed – Without provision for awarding below-threshold contracts, this model is unsuitable. The model also presents challenges around compliance, complexity in supplier management, and limited assurance that quality improvements are embedded. These factors make it unsuitable for the Council's strategic and operational needs.
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Summary of recommendation:

- An **Open Framework** is recommended as the preferred procurement route. This approach is fully compliant with the Procurement Act 2023 and aligns with the Council's Spending the Council's Money (SCM) policy. It also supports key strategic aims including quality assurance, flexibility, and adaptability particularly through the use of lotting arrangements.
- The Open Framework model offers a balanced approach between competition and control, enabling periodic supplier admission and consistent terms. It avoids the rigidity of traditional frameworks and mitigates the risks of non-compliance and limited transparency associated with other options.
- Other options (Do Nothing, Direct Award, Dynamic Markets) were dismissed due to legal non-compliance, lack of strategic alignment, or operational impracticalities, such as the inability to award below-threshold contracts or manage long-term supplier relationships effectively.

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Lotting

Aspect	Description	Benefits	Risks
No Grouping	A single framework without dividing into groups, covering all geographical areas, need types, and quality levels.	<ul style="list-style-type: none"> • Simplified procurement process • Easier contract management 	<ul style="list-style-type: none"> • May not address specific needs of different areas or types • Risk of excluding specialised providers • Potential lack of flexibility and adaptability
Group by Geographical Area (Recommended to include as soft-lotting)	Divide the framework into groups based on geographical regions.	<ul style="list-style-type: none"> • Allows for targeted service delivery in specific areas • Encourages local providers participation • Facilitates better alignment to regional needs. • Best fit for what we know of Local Government Reorganisation (LGR) 	<ul style="list-style-type: none"> • Potential quality variation across regions • Potentially higher administrative burden to manage multiple regions. • Risk of regional disparities in service provision.
Group by Need Type (Recommended to include as soft-lotting)	Divide the contract into groups based on SEND needs categories.	<ul style="list-style-type: none"> • Supports specialised service delivery • Encourages providers with specific expertise to participate. • Facilitates better matching of services to individual requirements. 	<ul style="list-style-type: none"> • Complex contract management • Potentially higher administrative burden to ensure consistency across groups. • Risk of fragmentation in service provision.
Group by Quality (Two Tiers) (Recommended for Lotting)	Divide the contract into two tiers based on quality thresholds: Strategic Partners and Approved Providers	<ul style="list-style-type: none"> • Prioritises high quality provision . • Allows for onboarding of providers that need development to meet demand on capacity • Facilitates quality improvement over time. • Reduce off-contract spend. • Peer support for approved providers delivered by Strategic partners. • Familiarity for the market. 	<ul style="list-style-type: none"> • More complexity managing different quality levels. • Potentially higher administrative burden to monitor quality standards. • Risk of low quality provision in the Approved provider Lot.

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Aspect	Description	Benefits	Risks
Group by Quality (Three Tiers)	Divide the contract into three tiers based on quality thresholds: Strategic partners, Emerging partners and Development partners. The low threshold is for onboarding providers who do not yet meet requirements but require development. Clear exit or improvement criteria must be established for Tier C providers.	<ul style="list-style-type: none">• Ensures high-quality providers are prioritised.• Supports market development and inclusion of SMEs.• Facilitates a structured approach to quality improvement through peer support and targeted contract management• Reduce the likelihood of off-contract spend.	<ul style="list-style-type: none">• Greater complexity in managing different quality levels.• Higher administrative burden to monitor quality standards.• Risk of substandard provision within the lowest tier during the contract management and quality review cycle. Potential reputational risk if standards are not upheld – particularly against those that KCC continues to use and do not join the framework

General Considerations

Strategic Fit: Lotting by Need Type and Quality aligns with KCC's SEND service goals, promoting specialisation and continuous improvement.

Operational Delivery: Lotting by Geographical Area may be beneficial for localised delivery but requires robust oversight to ensure consistency.

Risk Management: Introducing quality thresholds helps mitigate off-contract spend and supports provider development, but demands strong governance

Additional lots: Another option to think about is using '*soft lotting*'. In addition to dividing the contract into lots, as above, we could keep it as a single framework but still apply some internal structure when it comes to how you actually use it. For example, we could group providers by region or specialism, this can support placements with higher quality provision. This gives the flexibility to respond to different needs and can complement the construction of more formalised lots.

The current DPS operates using lotting by quality (with two thresholds) and applies *soft lotting* by recording the primary need types supported and the geographical areas covered by each provider. Our placement model then interacts with these soft lots through a preference-based approach, prioritising suppliers on the higher quality threshold who can meet the identified needs and are located within a specified radius.

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Lotting Recommendation: Lot by Quality (Two Tiers) with soft-lotting (Geographic location and Need type)

Adopting a Group by **Quality (Two Tiers)** approach offers a balanced and strategic framework that supports both quality assurance and market development. This model divides providers into *Strategic Partners* and *Approved Providers*, based on quality thresholds, and is already familiar to the market, making it more likely to encourage engagement and ensure sufficient supplier coverage on the Open Framework.

This approach prioritises high-quality provision while also enabling the onboarding of providers who may not yet meet the highest standards but show potential for development. Strategic Partners will be expected to support Approved Providers through peer-led improvement mechanisms, helping to raise overall standards across the framework. This not only strengthens the quality of provision but also reduces reliance on off-contract spend, ensuring more placements are made under agreeable terms to KCC.

To support placement decisions, we will work with Legal to explore the feasibility of using **soft-lotting** to collect information during the application process. Providers will be asked to specify:

- The need types they support
- The geographical locations of their schools

This mirrors Kent County Council's current approach under the DPS model and will feel familiar to existing providers. It will also ensure that children are placed in geographically appropriate settings where their specific needs can be met. Placement decisions will be guided by:

- The provider's declared capability and location
- Their quality tier, with priority given to those with stronger quality assurance

By maintaining this structure, we can ensure that:

- Strategic Partners are leveraged to support improvement across the market
- Approved Providers are given a pathway to develop and contribute meaningfully
- Children and young people are placed in suitable, high-quality settings close to home