

PASSENGER TRANSPORT PROCUREMENT

STRATEGIC PLANNING & TRANSPORT (COUNCILLOR CARO WILD)

AGENDA ITEM: 11

REPORT OF DIRECTOR CITY OPERATIONS

Reason for this Report

1. To recommend to Cabinet a strategy to tender new contracts estimated with a total value of £49M over 7 years relating to Passenger Transport Services that the Council provides via a Dynamic Purchasing System (DPS).

Background

Proposed New DPS Arrangements

2. Passenger Transport in City Operations provides a transport service for a number of service areas in the Council including Education, Adult Services and Children Services. The range of service includes buses transporting large numbers of school children through to individual taxis with escorts that transport children and adults with Additional Learning Needs and require additional transport requirements.
3. The Council has a statutory duty to provide services that include but are not limited to Home to School Transport, Dedicated School Bus Services and Additional Learning Needs Transport. Additionally, the Passenger Transport team provide transport for Children & Adult Services and other Services, of the Council as required such as ad hoc taxis, coach/minibus hire for schools.
4. The allocation of Passenger Transport contracts is currently via a DPS Framework arrangement with approximately 30 external providers operating approximately 600 routes daily. The existing DPS Framework arrangement and agreements in place with providers will expire on 31st August 2018 and has run for the maximum period of 4 years from the start date 1st September 2014.
5. Legislation surrounding Framework agreements has subsequently changed and there are now no limits on the length of time a Framework can be set up for. As a result the new Framework length will be 7 years in-order to align with commercial financing arrangements which will assist contractors to

invest in newer vehicles. Minibus and larger bus/coach contracts will be 5 years with the option to extend for a further 2 years, Taxi contracts will be for 3 initially and then re advertised within this framework for a further 3 years. New Cabinet authorisation will be sought in the 6th year for future transport requirements, which can then be phased in as the requested framework expires.

6. Consideration of different tender systems have taken place and found that from an operational and service delivery perspective using a DPS is the most competitive, effective and flexible approach to allocating individual contracts.
7. DPS is a completely electronic tendering process for the selection of suppliers that comply with Council set minimum service requirements. A DPS must be set up as an electronic system. DPS documentation will be made available to contractors by electronic means via the Councils e-Procurement System PROACTIS.
8. The existing DPS arrangement commenced in place in September 2014 and successfully achieved savings of £588,000 in 2014/15 (Savings were broken down as follows Lot 1 mainstream large bus contracts £225,000, Lot 2 ALN/SEN Taxi £163,000, Lot 3 Minibus/Wheelchair accessible vehicles £200,000).
9. The average costs for taxi provision is as follows:
 - The cost of a taxi with a regular driver but without an escort/passenger assistant is £42 for 2 trips of 4 miles.
 - A taxi with a regular driver and an escort/passenger assistant is currently £62 per day for 2 trips of 4 miles. The additional £20 per day covers the costs for the escort/passenger assistant and the additional mileage and time involved picking up and dropping off the passenger assistant.
10. The service pays approximately £14 per day premium to have a regular dedicated trained driver compared to the price of a standard taxi with variable driver. This premium helps children and adults with Additional Learning Needs who require additional transport requirements to have a consistent experience of service, additional waiting time and personal care support.
11. Example of additional issues Drivers may have to wait for children and families to be ready in the morning, they have to wait at the school for the school to open to receive the children as the journey time varies each day, and in the afternoon they have to wait for the school to release the pupils at the end of the school day, and then sometimes for parents to arrive home before they can release the children from their care. The drivers also need to occupy the children whilst they are waiting in their vehicles, and therefore regular drivers are essential for the care of the pupils they are transporting.

12. A DPS Framework arrangement provides the flexibility to alter arrangements relating to requirements, changes in pupil numbers, pupil schools and policy; as well as facilitating any changes to the specification of vehicle utilised from different size vehicles to low or ultra-low emission vehicles. The notice period for ending agreements with supplier is one month but the Passenger Transport team ensure indication of changes to suppliers at the earliest opportunity to limit disruption to suppliers and their drivers.
13. The Council will offer unrestricted, direct and full access to the specifications and to any additional documents by electronic means (via PROACTIS) from the date of publication of the contract notice for the duration of the DPS.
14. The Council will set out the circumstances upon which a contractor will be removed from the DPS; this would include continued poor performance on contracts.
15. Advertising of the new DPS for all services will commence in March 2018 so all interested suppliers will be able to see the programme of delivery for all of the different services supplied as shown below:
 - i. Lot 1: Buses 17 seats or larger
 - ii. Lot 2: Minibuses (8 to 16 seats)
 - iii. Lot 3: Taxi with regular driver (and escort where required)
 - iv. Lot 4: Wheelchair accessible vehicles
 - v. Lot 5: Ad Hoc Taxis
 - vi. Lot 6: Children/Adult Services
 - vii. Lot 7: Miscellaneous requests
16. Due to the value of the contracts being awarded under the new DPS arrangement being approximately £7M per annum for 7 years (total £49M over 7 years) the Council will need to advertise its intention using an Official Journal of the European Union (OJEU) Contract Notice to establish a new DPS arrangement.

Proposed DPS Transition Period

17. As stated, although the existing DPS Framework arrangement and agreements in place with providers will expire on 31st August 2018 Passenger Transport are proposing to phase in the provision of these contracts for some of the more extremely sensitive ALN services from this date to January 2019.
18. The extension of the existing contracts is sought as a short-term arrangement pending the award of the long-term contracts. The value of the extension will be a low percentage of the budgeted spend and, with the Public Contract Regulations 2015 (CPR 15) permitting a longer term DPS, represent a low risk.
19. The value of the extension of these contracts would be £600,000 over the 18-week period.

20. An Equality Impact Assessment has been undertaken with respect to the procurement and provision of transport services that the Council has a statutory duty to provide. Appendix 1. This assessment has clearly demonstrated that the Council has a duty of care to mitigate impacts of the new contract allocation on pupils and adults with complex additional educational needs and the transition period effectively achieves this requirement as far as is reasonably practical.

There are a number of reasons for this proposed transition period:

21. Firstly, the preparatory work to ensure any impact on ALN children and adults is extremely resource intensive and is further compromised within the timeframes available due to the school summer holidays. The work required includes: the process of route planning and optimisation, school engagement, checking detailed company Health & Safety requirements, contract administration, vehicle checks, driver and escort/passenger assistant checks, driver and escort/passenger assistant training, parent engagement, and child or adult familiarisation; this is extremely time consuming work but is vital to limit any ongoing concerns with the service provided. This process from start to finish for the numbers of individuals concerned can take several months.

22. However, the detailed information on the transport requirements for individual ALN pupils is only available from April of each year and additional individual transport requests continue to be received until the middle of September. Therefore, completing the process including the award of contracts and managing the change of transport provider with each family is technically difficult to ensure before schools return in September.

23. More specifically in this regard, the award of contracts needs to be undertaken when school staff are available at their individual educational setting so that all the appropriate people can be involved in managing and mitigating the change of arrangements. This means it is not feasible for the agreement of all of these contracts to take place during the school summer break. The Council has a duty of care to ensure that the transport arrangements are suitable and do not cause unnecessary stress or duress to the children that we are required to provide transport for, and therefore appropriate change management is essential.

24. To award the contracts without undertaking the appropriate due diligence checks and consultation, transport arrangements could be completed by 31st August 2018. However the risks to the individual pupils wellbeing would be significant and will increase costs in the long term as more individual transport arrangements will be required, along with significant Officer and Member time involvement. The Councils reputation would be severely tarnished by putting vulnerable children and adults at risk.

25. In view of the above reasons, the options available to Passenger Transport are to extend the existing DPS agreement and re-tender the transport service or to end the DPS agreement and formally extend the agreements directly with the existing suppliers.

26. The extension of the existing DPS agreement does not mitigate any potential problems for an adult or child with Additional Learning Needs as with the provision of new transport arrangements individuals can have severe reactions to any changes to their routine and these can cause disruptions at school and to families.
27. The extension of the existing agreements directly with the existing suppliers will mitigate any potential problems relating to change whilst allowing more time to deal with the process of providing transport provision for individuals with complex needs.

Issues

28. There are a number of issues that relate to this proposed transitional arrangement. Firstly, a major review of Schools Passenger Transport is currently underway assessing in detail all aspects of the service. However, it is important to highlight that this DPS contract will not impact on this major review or any of the policy issues and arrangements that it is likely to consider.
29. Secondly, the proposed transitional extension of contracts relating to the provision of transport services for children and adults with Additional Learning Needs will sit outside of both the existing and proposed DPS arrangements. This presents a potential risk in terms of the legal status of this position.
30. In this regard, the risks associated with challenge on the extension of contracts is mitigated by the duty of care that the Authority has with the need to prioritise the best interest of the children and adults with Additional Learning Needs in terms of service provision.
31. Furthermore, the risks associated with challenge on the extension of contracts is mitigated by ensuring that the duration of the transition is short-term and limited solely to the duration of the required works. Also, the advertising timetable for the new DPS agreement clearly identifying the programme for the new contracts prior to the extension of the existing contracts. Potential contractors will be able to see clearly when contracts will be available and advertised.
32. Proposed timetable for procurement process.

Key Milestones	Target Date
Document Completion	31 st January 2018
Place OJEU Contract Notice	1 st March 2018
Request to Participate Returned (phase one)	15 th April 2018
Suppliers Promoted on to the DPS	20 th May 2018
Reverse e – Auctions conducted for Lot 1 mainstream bus contracts, and Individual Route Bids invited for Lot 3 contracts for ALN and mainstream pupils taxis	June 2018
Request to Participate Returned (phase	23 rd June 2018

two)	
Reverse E-Auctions conducted Lot 2, 4, 5 & 6	1 st July 2018
Suppliers Promoted on to the DPS	15 th July 2018
Lot 1,2,3,4,5, & 6 contracts start	1 st September 2018
Director approval to Award contracts proceed	July 2018
Reverse E-Auctions conducted Lot 2 & 4 ALN Minibus and Wheelchair Accessible Minibuses	1 st October 2018
Director approval to Award contracts	15 th October 2018

33. The Council has a statutory requirement to provide Home to School Transport as per the Learner Travel (Wales) Measure 2008 and failure to put in place appropriate arrangements will mean the Council is unable to meet its statutory obligation.

Reasons for Recommendations

34. To secure approval to establish a Dynamic Purchasing System (DPS) for Passenger Transport provision of up to £49 million for 7 years of service to enable the Council to be fully compliant and ensure contracts are allocated efficiently and as cost effectively as possible.

35. The DPS arrangement will allow new entrants onto the DPS ensuring that contract rates are competitive and ensure the meeting of any changing service requirements.

36. The extension of contracts relating to the provision of transport services for children and adults with Additional Learning Needs prioritises the best interest of these children and adults, and enables the Council to mitigate and reduce the impact of any change of contract arrangements will have on vulnerable pupils and adults with ALN.

Financial Implications

37. The Directorate intend to continue with the DPS-Framework approach for the procurement of Passenger Transport services as they consider this approach enhances competition between suppliers and consequently provides the Council with value for money. The financial implications facing the council will be clearer once the procurement exercise has been completed. Given the existing pressures on medium term council budgets it is essential that such arrangements continue to provide value for money and deliver cost efficiencies over the term of the proposed contract(s).

Legal Implications

38. Procurement law - In this case it is proposed to set up a new Dynamic Purchasing System arrangement ('DPS') to secure the services required. A DPS is a procurement procedure that may be used for contracts for works, services and goods commonly available on the market. The DPS must be a

fully electronic system, meaning only electronic means can be used to establish the system and to award contracts under it. The DPS is a two-stage process.

First – In the initial setup stage, all suppliers who meet the selection criteria and are not excluded must be admitted to the DPS. The Council cannot impose any limit on the number of suppliers that may apply to join the DPS. It is noted that unlike framework agreements, suppliers can also apply to join the DPS at any point during its lifetime.

Second – Individual contracts are awarded during the second stage. In this second stage, the authority invites all suppliers on the DPS (or the relevant category within the DPS) to bid for the specific contract.

39. In setting up and administering the new DPS, the procedure and requirements prescribed in the Public Contracts Regulations 2015 ('Regulations') must be followed. It is understood that such will be the case. As such, the recommendations relating to the establishment of a new DPS should be achievable within procurement law requirements. Legal Advice should be obtained throughout the process of setting up the DPS and on the proposed contract terms and conditions.
40. The exempt part of this advice addresses that part of the proposal, which relates to extending certain contracts awarded under the Council's existing DPS that expires on 31.8.18.
41. Employment - Consideration is required as to whether the proposed procurement (setting up the replacement DPS) raises any employment law issues. In particular as regards the Transfer of Undertakings Protection of Employment Regulations (TUPE).
42. In considering this matter generally and in setting the requirements of the services to be delivered, the decision maker should have regard to the Council's wider obligations under the Social Services and Well-Being (Wales) Act 2014 (in particular, the duty to promote the well being of people who need care and support and careers who need care and support) and The Well-Being of Future Generations (Wales) Act 2015.
43. Equality duty - In considering this matter the decision maker must also have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment, (c) Sex, (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and

civil partnership, (h) Sexual orientation and (i) Religion or belief – including lack of belief.

44. Appendix 2 contains exempt legal implications.

Procurement Implications

45. The DPS to date has been a success and Commissioning and Procurement (C&P) recommend continuing with the approach for procuring any future passenger transport requirements

46. The estimated value of the DPS for Passenger Transport Provision over its lifetime of 7 years is £49 million. Therefore, the procurement and award of the DPS is subject to both European Procurements regulations and the Council's Contract Standing Rules and Procedures and financial regulations. The DPS tender process will be completely electronic and the documentation will be made available via the Council's e – Procurement system PROACTIS. A Restricted procedure will be used and adverts will be placed on the Official Journal of the European Union and on Sell 2 Wales in line with OJEU (Official Journal of the European Union) guidelines. C&P will work with the service area and Business Wales to ensure supplier engagement and ensure effective communication with the broad supplier community in understanding the Councils approach and look to create familiarity with the Councils e-Procurement system PROACTIS.

47. C&P will be working with the Service Area to develop refine requirements and specifications, we will provide advice to ensure any process is undertaken compliantly throughout the tender process itself to establish the Dynamic Purchasing System. As this is the first renewal of the DPS and we are slightly behind schedule in terms of timescales, the service area will need to ensure that processes are robust and monitored closely to safeguard against routes not being placed and further slippage in target dates.

48. If the new procurement process is not authorised the Council will be outside its scope of the current DPS arrangement, both in terms of exceeding the value of spend and the time period for which the existing contracts can be allocated. This would leave the Council unable to provide its statutory duty leaving the Council open to legal challenges and increased costs.

Recommendations

Cabinet is recommend to

1. Authorise the proposed overarching strategy to procure Passenger Transport Contracts for 7 years valued at £49M via a Dynamic Purchasing System.
2. Delegate authority to the Director Planning, Transport and Environment in consultation with the Cabinet Member for Strategic Planning and Transport, the Section 151 Officer and the Director of Law and Governance to carry out all aspects of the procurement, without limitation to include:

- i. approving the establishment of a new Dynamic Purchasing System (DPS)
- ii. approve the tender evaluation criteria to establish the new DPS
- iii. appointing new providers to the newly established DPS subsequent to them meeting the selection criteria as stated by the Council
- iv. further delegate authority to award contracts that are required during the life of the newly established DPS, such further delegations to be in accordance with the Council's Scheme of Delegations
- v. to deal with all associated matters which pertain to the making of any short term extensions of individual contracts that may be required until new contracts are procured under the newly established DPS

The recommended delegation sought is wide and includes, but is not limited to, the following aspects of the procurement process:

- (a) Approving commencement of a new DPS using the rules of a Modified Restricted Tendering Procedure.
- (b) Agree the use of a combination of mileage based and reverse e-auctions to allocate specific routes to the most competitive price offered through the DPS.
- (c) Appoint new service providers onto the DPS, subsequent to them meeting the selection criteria as stated by the Council in the tender documentation, as and when required.
- (d) Thereafter, for the Director to further delegate the authority to award contracts that are required during the life of the DPS, such further delegations to be in accordance in the Council's Scheme of Delegation.
- (e) If, for any technical reason, it is not possible to use a fully electronic system (DPS), to carry out the procurement by any other means (non E-procurement approach) and manage the contractual arrangements put in place.

Andrew Gregory
Director of City Operations
9 February 2018

The following appendices are attached:

Appendix 1 – Equality Impact Assessment
Confidential Appendix 2 – Exempt legal implications