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PASSENGER TRANSPORT PROCUREMENT

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**Appendix A1 is not for publication as it contains exempt information of the description in paragraph(s) 14, 21 of Part(s) 4 and 5 of Schedule 12A of the Local Government Act 1972**

**Appendix A2 is not for publication as it contains exempt information of the description in paragraph 16 of Schedule 12A of the Local Government Act 1972**

**Purpose of Report**

1. To provide Members with the opportunity to consider the proposed Passenger Transport Procurement framework which outlines the process in relation to tendering and procuring a range of transport requirements for the Council including school transport needs, and seeks agreement to increase the value of the delegated authority in relation to contracts allocated via the Dynamic Procurement System (DPS) from £49m to £139m from 2018 – 2029, i.e., the contract period owing to a number of identified pressures.
2. The report also notes that all expenditure will continue to be within the agreed budgetary framework.

**Structure of the Report**

3. Attached to this report are:
  - **Appendix A** - Cabinet Report
    - Appendix A1 – EXEMPT financial information.
    - Appendix A2 – EXEMPT legal advice.

## **Background & Policy Context (Points 2 – 8)**

4. The Council has a statutory duty, Learner Travel (Wales) Measure 2008, to provide transport to school for primary school children who live 2 miles or more away from their school and for secondary school children if they live 3 miles away or further from the school.
5. In addition to this Section 2 of the 2008 Measure states we must also take into account a number of factors when assessing the need for transport and these included any disability, learning difficulty, looked after children, their age and the route to be travelled.
6. The current Dynamic Procurement System (DPS) allows flexible service delivery within the current delegated authority and has produced savings over the previous five years. However, the current delegated authority is not sufficient to safeguard continued service delivery.
7. The report is requesting a renewal and increase of the delegation to allow further activity using the current agreed process and system to meet statutory requirements.

## **Issues (Points 9 – 36)**

8. The issues raised in the Cabinet report fall under the following headings:
  - Dynamic Procurement System (DPS) (points 9 – 21)
  - Supplier Base (point 22 – 26)
  - A whole System Review (points 27 – 32)
  - Procurement Implications (points 33 – 36)
9. The DPS is a list of 'approved' suppliers that is permanently open for new operators/contractors to join, and is the best way to access the 'market' and makes sure the best is made of competition in terms of value for money.
10. It provides transport solutions to the Council as a whole but predominantly Education, Adult and Children's Services and Planning Transport & Environment and also 'taxi' accounts for various teams.
11. Contracts are tendered and awarded for specific groups/lots of services for 5-year periods, and at present circa 800 daily routes are provided by about 38 approved suppliers.

12. The delegated powers at present are not sufficient to cover the estimate value of contracts over the 5-year period to 2028/29. The report and appendix 1 outline a number of reasons for the projected increase in the costs of the contracts which include inflationary increases in transport in general and growing numbers of students requiring transport.
13. The report also notes the potential impact of the Welsh Government withdrawal of the Bus Emergency Scheme fund and the effect this may have on supported socially necessary bus services. Currently there are no further details from Welsh Government.
14. Automatic annual inflation increases are not given automatically, each supplier needs to apply for this each year, and Retail Price Indexes and Consumer Price Indexes are used to calculate any growth.
15. **Point 20** states explicitly that no additional funding is being requested and notes that if contracts go beyond current allocations reports will be submitted as required by budget setting and governance frameworks as appropriate.
16. It is also noted in **point 21** that the contract for the DPS runs out on 31<sup>st</sup> August 2025 and therefore an extension will be sought in good time to ensure continuity of service for contracts.
17. Point 22 highlights the unpredictability of the market currently due to higher costs lower passenger number.
18. Officers are working closely with the market to get a better understanding of the situation and are working to grow the supplier base.
19. Officers also work closely with colleagues in Commissioning and Procurement to look at alternative tender options, and at the moment the advice is that the DPS provides that best solution. It is also noted the other Councils are looking to establish similar systems.
20. **Point 26** notes the Councils duties in relation to the Equalities Act while making travel arrangements for adults and children with Additional Learning Needs or transport provisions.
21. **Points 27 – 32** describe the 'Whole System Review' process that is being undertaken as the level of spend and change being requested is significant.

22. These points also explore potential alternative solutions which include partnering with Community Transport Associations, development of an 'in-house' solution and more use of season tickets to support the bus network.
23. In terms of securing passenger transport services, the Dynamic Procurement System has been successful, and the Commissioning & Procurement team support is continued use, and will work collaboratively to ensure that all tendering process and documents are undertaken electronically via PROACTIS the Councils e-procurement system.
24. The Commissioning & Procurement Team will also work with service areas to create and improve service specifications.
25. The tight timescales around awarding impending contracts, that will commence in September 2023, is noted and the need for further delegation of the additional £89.8m to allow the Council to meet its statutory duty.

#### **Local Member Consultation**

26. Point 37 notes that Member Consultation is not applicable in this instance

#### **Financial Implications**

27. **Points 41 - 45** sets out the approval that the report is requesting, i.e., raising the value of the contracts that are able to be awarded through the DPS framework from £49m to a total £138.8m, subject to available budgets.
28. Also noted are the pressures facing services which will impact on the cost of contracts however, the Directorate will continue to look for cost efficiencies/savings that can be made up until the current expiry of the DPS on 31<sup>st</sup> August 2025.
29. The report notes that Directorate wish to continue with the DPS methodology and during 2024 will submit the necessary reports to ensure continuity of service provision and awarding of contract before the authority on the current framework ends.

#### **HR Implications**

30. No HR implications are noted in **point 46**.

## Legal Implications

31. **Points 47 - 58** set out the legal requirements in relation to the that that council needs to take into consideration which include:
- **Public Contract Regulations 2015**, under which the DPS was established in 2018, however the financial cap previously agreed by Cabinet is approaching its maximum.
  - **Well- Being of Future Generations (Wales) Act 2015** and in particular **Part 2** – Improved Well-being, **Section 5** – the sustainable development principle i.e. ensuring have a negative long term impact.
  - And in general duties with regard to the **Equality Act 2010**, the, **Welsh Language Measure (Wales) 2011** and Welsh Language Standards.

## Property Implications

32. No property implications are noted in **point 94**

## RECOMMENDATIONS TO CABINET

33. Cabinet is recommended to:
- i. Approve subject to the future budget allocation an increase of the value of contracts to be allocated via the DPS from £49 million to a total value of £138.8 million. This revised amount will cover the value of all new contracts allocated until the expiry date of the contracts up to 31st August 2029.
  - ii. Delegate authorisation to the Director of Planning Transport and Environment in consultation with the Cabinet Portfolio Members and Directorate budget holders for Education, Childrens and Adults Service, to procure and deliver contracts subject to budget being available.
  - iii. Delegate authorisation to the Director of Planning Transport and Environment in consultation with the Cabinet Portfolio Members and Directorate Budget holders for Education, Childrens and Adults Service, to award single tender spot contracts outside of the Passenger Transport DPS up to £30m subject to budget being available for upcoming statutory Taxi Contracts. This amount covers the period that the contracts are potentially in place until 31st August 2029.

- iv. Note that if the budget requirement exceeds the current allocation available having considered the availability of external funding or in year efficiencies then this will need to be brought back to Cabinet for approval as part of the budget setting process.
- v. Note a further report will be brought to Cabinet once further changes take place in the wider funding context such as changes to BES etc. are understood.

## **WAY FORWARD**

- 34. Cllr Dan De'Ath, Cabinet Member for Transport & Strategic Planning and Andrew Gregory, Director of Planning Transport & Environment have been invited to make a statement and answer Member's questions. They have been asked to make a brief presentation followed by Member's questions.

## **Legal Implications**

The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

## **Financial Implications**

The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

## **RECOMMENDATION**

The Committee is recommended to:

- i. Consider the information in this report, and the presentation and any further information presented at the meeting; and
- ii. Determine whether they would like to make any comments, observations or recommendations on this matter to Cabinet.

**DAVINA FIORE**

**Director of Governance & Legal Services**

**4<sup>th</sup> May 2023**