

**THIS REPORT MUST BE ACCOMPANIED BY THE
REPORT AUTHORISATION FORM 4.C.214**

**CARDIFF COUNCIL
CYNGOR CAERDYDD**

CABINET MEETING:

18th May 2023

PASSENGER TRANSPORT PROCUREMENT

**REPORT OF DIRECTOR (PLANNING, TRANSPORT AND
ENVIRONMENT)**

AGENDA ITEM:

PORTFOLIO: PLANNING, TRANSPORT AND ENVIRONMENT

1 Reason for this Report

1. The reason for the report is to seek agreement to increase the value of delegation of the level of contracts to be allocated via the Dynamic Procurement System (DPS) from £49 million to a total value of £138.8 million for the full contract period from 2018-2029. An increase required as a result of a range of existing and new service pressures set out in the report. It is important to underline that all expenditure will remain within the agreed Council budgetary framework.

Background

2. Delivering an effective schools and passenger transport system is not just of crucial importance to some of the most disadvantaged in the community it is also a statutory duty.
3. In the current context of delivering an effective schools and wider corporate transport system the DPS approach to contract procurement has been a success. Over the five-year period, of these existing delegated powers it has both delivered significant savings but also more flexibility in terms of service delivery. Nonetheless, the current delegation has been fully utilised and as a result, a new delegation is urgently required to enable this continuity of service provision. It is important to highlight that this current report is seeking a renewal of the procurement delegation but is not requesting authority to spend outside existing budgets.
4. In this regard, this report is purely seeking an increase in the delegation of authority to enable the Council to undertake further procurement activity using the existing Passenger Transport DPS process that is already in place. Without this additional delegation authority, the Council will not be

able to procure replacement contracts required to meet our statutory obligations.

Policy Context

5. 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.
6. Under section 3 of the Learner Travel (Wales) Measure 2008, Local Authorities in Wales must make transport arrangements (defined as the provision of transport or the payment of the whole, but not part, of a child's transport expenses) to facilitate the school attendance of children of compulsory school age who are ordinarily resident in the local authority's area. Free transport is to be provided to pupils who reside over the statutory walking distances from their nearest suitable school (2 miles for a primary school pupil and 3 miles for a secondary school pupil in Years 7 -11).
7. Further, section 2 of the 2008 Measure places a duty on Local Authorities to assess the learner travel needs of their area for the following academic year. In making an assessment a Local Authority must have regard to:
 - (a) the needs of learners who are disabled persons,
 - (b) the needs of learners with learning difficulties,
 - (c) the needs of learners who are children looked after, or formerly looked after, by a local authority,
 - (d) the age of learners, and
 - (e) the nature of the routes which learners could reasonably be expected to take to the relevant places where they receive education or training.
8. In addition, to the above we would need any decision to be made in the context of the Council's public sector equality duties under the Equality Act 2010 (including specific Welsh public sector duties). 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 based on protected characteristics. The protected characteristics are age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion, or belief – including lack of belief.

Issues:

Dynamic Procurement System (DPS)

9. Overall, the DPS is an approved list of suppliers that is constantly open to the market for new operators/contractors throughout the life of the DPS

framework. Contracts are tendered to the approved operators/contactors for each specific lot.

10. Passenger Transport contracts covering Council wide requirements are allocated via a DPS arrangement with approximately 38 external approved providers contracted to provide approximately 800 routes daily. The DPS enables new contractors to access the approved list of suppliers during the period that the DPS is in place, which allows the Council to ensure that the supplier base is as strong as possible and contracts rates are as competitive as possible and achieve best value.
11. The DPS covers all passenger transport contractual requirements across the whole Council. The main areas are Education, Adult and Children Services, and Planning Transport and Environment supported bus services. Contracts are also managed and procured for school trip transport, event park & ride, ad hoc transport requirement by various service areas, along with ad hoc taxi accounts for teams and schools across the whole Council.
12. The current DPS enables the Council to secure best value and is still the most effective route to market as it enables a competitive supplier base, even in these challenging times, as new contractors are able to enter the DPS at any time which ensures competition is maximised throughout the life of the DPS.
13. The estimated value of contracts for the life of the contracts required to be issued from the DPS is detailed in the table in Appendix 1
14. During the current 5-year period of delegated powers the average annual spend on passenger services has increased to approximately £15m per annum. In the coming, 5-yr period to 2029 the expectation is that there will be a rise in the level of spend, due to inflationary increases in transport generally, and all the changing and increased needs to educational users. In this period the current projection is that the estimated average spend will rise to £15.8m approximately.
15. A detailed breakdown of the estimated expenditure is included in Appendix 1.
16. As a result of this increase the scale of delegation will need to increase in line with these estimated projections. Authority is therefore being sought to increase the delegated authority by £89.8m during this period. Nonetheless, all spending will only occur within the agreed budgetary framework.
17. Included in the estimated £89.8m total are additional transport requirements that maybe required relating to the expansion of Additional Learning Needs (ALN) provision planned for 2024/25. Current indications are that an additional 200 ALN pupils may require transport which is estimated will cost an additional £1m per annum. The budget for this expansion in ALN transport has not been agreed and will form part of the annual budget setting process for the financial year 2024/25.

18. Also included in the estimated £89.8m are possible different transport delivery requirements depending on the different fallout implications of Welsh Governments withdrawal of the Emergency Bus Funding Scheme (BES). It is estimated that mainstream statutory school transports costs may increase by £500,000 per annum, but these costs are not known with any certainty at present. In addition, there may also be an increased required for more supported socially necessary public bus services, although it is anticipated that these services will be externally funded by Welsh Government. At present there are no details available around the amount of funding available or the process to apply for this funding.
19. The £89.8m figure also includes estimated costs for annual inflation increases on contracts, these increases are not automatically awarded, and suppliers have to apply for them on the anniversary of the individual contracts. Retail Price Indexes and Consumer Price Indexes are used to calculate the annual inflation rate increases that are paid on the anniversary of contracts. Each contractor has to apply annually for an increase, the increases are not normally awarded automatically unless in exceptional circumstances such as the Pandemic and Cost of Living crisis where contractors were on the brink of collapse. As part of the annual budget setting process additional budget requirements are requested to take into account of anticipated contracts inflation increase rate budget requirements.
20. This report is not asking for additional budget requirements and is purely seeking authority to enable the Council to go to market for the Passenger Transport contracts required over the next 2 years. If costs of these contracts exceed current budget allocations separate reports will be submitted in line with the Councils budget setting framework and governance process.
21. In addition, officers will apply separately for an extension to the existing DPS in 2024 so that a contract allocation process and the appropriate authority is in place before the existing DPS expires as at 31st August 2025.

Supplier Base Issues

22. The current supplier base remains volatile due to the increases in operating costs along with challenging shortages of drivers and reduced passenger numbers using Private Hire coaches, reduced passenger numbers on public transport and reduced numbers of passengers using taxis.
23. Market sampling is also being undertaken to understand supply capacity and availability, along with market testing of contract rates to try to get a steer where contract rates are at currently (contractors attending the forums have been asked to provide quotes and availability/capacity on some average contract routes).
24. Officers are also currently undertaking market promotion events to try to attract more suppliers onto the existing DPS to increase the supplier base and competition. All companies within a 15mile radius of Cardiff are being contacted and invited to an operator forum to advise them of the contracts

that are available, what they need to do to become an approved supplier and where they can receive free support and advice to access the contracts.

25. Officers continually work with colleagues in procurement to review and consider different tender options. However, advice at present is that the current DPS contract allocation remains the best route to market as it continues to deliver the most competitive, effective and flexible approach for allocating individual contracts. Procurement Officers have confirmed that other Councils are moving to set up their own DPS systems as it's recognised as the most effective contract allocation process and system.
26. The procurement of these Passenger Transport services via the DPS will enable the Council to fulfil its general duties in respect of the Equalities Act, when making transport arrangements for children and adults with Additional Learning Needs or additional transport requirements.

A Whole System Review

27. Given, the scale of the budgetary expenditure, delegations being sought, and cost increases, it is reasonable to be concerned about the efficiency and effectiveness of service delivery. In this regard, a major review of the system is being developed between Education (as lead client), PTE and Finance directorates. In addition to the review of funding delegations, this will involve a fundamental assessment of transport systems and service use, particular relating to the use of ALN.
28. Improved governance arrangements have already been put in place with the creation of The Education Transport Operational Group, which meets weekly and includes officers from the relevant service areas including Planning Transport & Environment, Education, Finance and Procurement. Children and Adult Services officers will be invited to the group on a monthly basis, to discuss and cover issues relating to their service areas. The group covers all operational issues, new contract awards, individual contract rate increases/decreases, contract closures, planned new provision proposals and general day to day issues (safeguarding, training proposals, walking route network changes implications etc). Contract rates and requirements are challenged at these meetings before being agreed or rejected.
29. In addition to these weekly operational meetings there are also monthly Strategic Education Transport Group meetings involving the Directors, Senior Directorate Officers, Senior Finance and Procurement Officers. These meetings look at long term provision requirements, strategies to reduce spending and opportunities to improve the quality of service and make it more efficient.
30. Officers are also exploring alternative delivery options if the current supplier base are unable to cover all the Council statutory contractual requirements. These include working with partner agencies such as the Community Transport Association to see if they can undertake some contracts, working with schools to see if they are interested in undertaking school contracts

utilising their own vehicles, or the Council providing vehicles for them and utilising their staff to undertake the contracts. Officers are also looking into setting up an internal fleet of vehicles and staff to undertake contracts as well as working with colleagues in neighbouring authorities on sharing resources to cover contracts. This option may increase costs due to cover staff required for sickness and holidays, along with replacement vehicles to cover breakdowns and maintenance requirements.

31. Officers continue to promote and target as many ALN pupils as possible who are suitable to undertake Independent Travel Training so that they are provided with a bus pass or train pass to travel to school rather than be transported to school via taxi or minibus. The scheme has been promoted in all schools to ensure staff are aware of the benefits of this training and the support available. However, the BES withdrawal may impact the number of pupils that will be able to be trained if bus service levels are reduced or withdrawn from areas of the city.
32. Officers are also exploring longer term options of moving more pupils onto season tickets rather than contracted vehicles which will help support the commercial bus service network across the City.

Procurement Implications

33. The DPS to date has been successful and Commissioning and Procurement (C&P) recommend continuing with the approach for procuring any future passenger transport requirements.
34. The estimated value of the DPS for Passenger Transport Provision over its remaining lifetime including the further delegated spend of an additional £89.8 million would be £138.8 million. Therefore, the variation of the DPS value and award of subsequent call-off contracts under the DPS are subject to the terms laid down in the DPS and both the Public Contract Regulations 2015 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. All contracts awarded via the DPS will be in line with the DPS procedures including adverts being placed on the Council's e-Procurement system PROACTIS inviting all contractors appointed to the DPS under the relevant lots. 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 Council's approach and look to create familiarity with the Council's e-Procurement system PROACTIS.
35. 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 when awarding contracts via the DPS. Due to time pressures in awarding the upcoming contracts, in addition to procurement support the service area will need to ensure that processes are robust and monitored closely to safeguard against routes not being placed and slippage in target dates.

36. If the further delegation of spend for an additional £89.8 million is not authorised allowing the Council to continue the procurement process via the DPS the Council will be outside its scope of the current DPS arrangement, in terms of exceeding the value of spend allowable under the original DPS award. This would leave the Council unable to provide its statutory duty leaving the Council open to legal challenges and increased costs.

Local Member Consultation

37. Not applicable

Reasons for Recommendations

38. To secure approval to delegate authority for the additional contract value against the Passenger Transport DPS for a further £89.8 million, to enable the Council to be fully compliant re. contract regulations and delegated authority. This will enable contracts to be allocated efficiently and as cost effectively as possible.
39. To enable the Council to implement replacement contracts to fulfil our statutory home to school transport obligations, in time for contracts to start in September 2023.
40. As the Director of Planning Transport & Environment is not the budget holder for the areas of contract spend that relate to Education, Children or Adult Services, they will also be consulted with along with the Directors and Cabinet Members for these Service areas for any contract spend relating to their areas.

Financial Implications

41. This report seeks approval, subject to available budgets, for an increase in the value of contracts to be allocated via the DPS Framework from £49 million to a total value of £138.8 million and to approve the delegation to the Director of Planning, Transport and Environment in consultation with service area leads and Cabinet Portfolio members to award contracts within this revised total contract framework value. This approval would relate to all new contracts allocated during the remaining period of the existing Passenger Transport DPS Framework which expires on 31st August 2025.
42. The report sets out a number of pressures impacting on the Passenger Transport service including service expansion needs, inflationary and other cost increases, driver shortages and reduced passenger numbers. Decision makers should note that the amounts detailed within the report in terms of the overall forecast contract values are in excess of the available budget. It is essential that the Directorate continues to seek to deliver cost efficiencies over the remaining term of the current framework and to ensure that spend can be maintained within available budgets for Passenger Transport across the authority in these and any future contract arrangements.

43. Any financial and budgetary implications that arise as contracts are retendered and awarded must be clearly identified and form part of future budget setting processes as appropriate. The Directorate only have authority to spend when available budget is identified and confirmed.
44. 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.
45. It is intended that officers will apply separately for an extension to the existing Passenger Transport DPS Framework during 2024 so that a contract allocation process and the appropriate authority is in place before the existing framework expires.

Human Resource Implications

46. No implications.

Legal Implications

47. The Dynamic Purchasing System arrangement ('DPS') to secure the services required was set up in 2018.
48. A DPS is a procurement procedure that may be used for contracts for works, services and goods commonly available on the market. A 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.
- I. 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.
 - II. 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.
49. In setting up and administering the DPS, the procedure and requirements prescribed in the Public Contracts Regulations 2015 ('Regulations') must be followed. Legal Services are instructed that this was and is the case but that the financial cap previously approved by Cabinet for awarding contracts under the DPS is nearing its limit.
50. Cabinet must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to the Council.

General Legal Advice

Equalities

51. The decision about these recommendations has to be made in the context of the Council's public sector equality duties. The Council also has to satisfy its public sector duties under the Equality Act 2010 (including specific Welsh public sector duties). 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. The Protected characteristics are: age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief.

52. Social Services and Well Being (Wales) Act 2014 In considering this matter, the decision maker must have regard to the Council's duties pursuant to the Social Services and Well Being Act 2014. In brief the Act provides the legal framework for improving the well-being of people who need care and support and carers who need support and for transforming social services in Wales.

The Well-Being of Future Generations (Wales) Act 2015

53. The Well-Being of Future Generations (Wales) Act 2015 ("the Act") places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales – a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

54. In discharging its duties under the Act, the Council has set and published wellbeing objectives designed to maximise its contribution to achieving the national wellbeing goals. The wellbeing objectives are set out in Cardiff's Corporate Plan 2022-25

55. The wellbeing duty also requires the Council to act in accordance with 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without comprising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- I. Look to the long term.
- II. Focus on prevention by understanding the root causes of problems.
- III. Deliver an integrates approach to achieving the 7 national well-being goals.
- IV. Work in collaboration with others to find shared sustainable solutions
- V. Involve people from all sections of the community in the decisions which affect them.

56. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link

below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

57. The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language, the report and Equality Impact Assessment deals with all these obligations. The Council has to consider the Well-being of Future Generations (Wales) Act 2015 and how this strategy may improve the social, economic, environmental and cultural well-being of Wales.
58. All decisions taken by or on behalf 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 of behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Council 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

Recommendations

59. 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.**

Andrew Gregory
Director Planning Transport and Environment
26th April 2023

The following appendices are attached:

Appendix 1 Additional confidential financial information
Appendix 2 Exempt Legal Implications