

10 January 2018		ITEM: 13 Decision 0110455
Cabinet		
Extension of Home to School Transport Contracts (2018-2019)		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor Halden, Portfolio Holder for Education and Health		
Accountable Assistant Director: Sue Green, Strategic Lead Children's Commissioning and Service Transformation		
Accountable Director: Rory Patterson, Corporate Director of Children's Services		
This report is: Public		

Executive Summary

A review of transport services provided across the Council is underway to ensure that the Council is meeting the needs of residents whilst achieving value for money.

All current home to school transport contracts expire in July 2018 and would usually be re-procured to ensure that the current and new contracts run concurrently.

Should the home to school transport contracts be re-procured now, any benefits arising from the transport service review would either not be realised for a number of years, or require quick succession of another procurement process, causing substantial disruption to the service and duplication of costs. It is, therefore, recommended that the existing contracts are extended for one year.

Members have the option to extend the contracts in compliance with Section 14 of the Council's Contract Procedure Rules. To do this, members need to waive the requirement for a competitive tender and invoke the provisions of Section 13 on Waivers of the Council's Contract Procedure Rules and agree to the extension of the current contracts. This must meet the conditions set out in Regulation 72 of the Public Contracts Regulations 2015. This paper sets out how these will be met.

1. Recommendations that Cabinet:

1.1 Agree to extend the current home to school contacts for one year from July 2018 as provided by section 14 of the Councils Contract Procedure

Rules pending the outcome of the current service review.

- 1.2 Agree to waive the requirement to complete a competitive tender as provided by section 13 of the Council's Contract Procedure Rules for one year.**
- 1.3 Approve the continuation of the current arrangements for delegated authority for the Corporate Director of Children's Services in consultation with the relevant portfolio holder to approve the award of these contracts for the period of the extension requested.**
- 1.4 That a further paper outlining the service changes and seeking approval to enter into a competitive tender process in line with the Council's Contract Procedure Rules is presented to Cabinet in November 2018.**

2. Introduction and Background

- 2.1 The provision of home to school transport is governed by statute, the Education Act 1996 and the Transport Act 1985 and is a statutory duty of the Council.
- 2.2 The letting of the home to school transport contracts is a key decision due to the total value.
- 2.3 The Council, through previous procurement exercises agreed by Cabinet, currently has approximately 142 home to school transport routes, provided by 31 bus, coach, minibus and taxi providers.
- 2.4 There are two distinct areas of home to school transport:
 - **Mainstream schools** - where for example distance / safety of a route to school require the Council to provide school transport. In such cases there is a statutory duty to offer transport.
 - **Special schools** – A statutory duty to offer transport subject to the pupil meeting the relevant criteria.
- 2.5 The current contract value is approximately £4.5m per annum. This amount fluctuates due to changes in demand where the immediate implementation of additional route contracts is needed.
- 2.6 As part of the Council's Service Review Programme, a review of transport services provided across the Council is underway to ensure it is meeting the needs of residents whilst achieving good value for money.
- 2.7 The current home to school transport contracts expire in July 2018, however, the transport services review will impact how home to school transport is commissioned in the future.

3. Issues, Options and Analysis of Options

3.1 The transport service review mentioned in 2.6 has the following scope:

- To review the current strategy and policy
- To better understand demand and support future planning
- To review the assessment of transport awards and where this could be better joined up across services and directorates
- To identify opportunities to better meet transport requirements in a cost effective way
- To identify opportunities to better commission transport

3.2 The review presents the Council with the potential to improve its transport offer for eligible pupils and achieve better value for money for the Council whilst ensuring the policy is clear for parents and applied effectively.

3.3 All current home to school transport contracts expire in July 2018 and would usually be re-procured to ensure that the current and new contracts run concurrently. The current service review means should this be done, any benefits of revised ways of operating, such as improved route planning or synergy of resources, would not be realised. It is, therefore, recommended that the existing contracts are extended for one year.

3.4 Members have the option to extend the current contracts in compliance with Section 14 of the Councils Contract Procedure Rules. To do this, members need to waive the requirement for a competitive tender and invoke the provisions of Section 13 on waivers of the Councils Contract Procedure Rules and agree to the extension of the current contracts. The extension must also meet the conditions set out in Regulation 72 of the Public Contracts Regulations 2015 (PCRs 2015).

3.5 Regulation 72 of the Public Contract Regulations 2015 gives provision to modify contracts during their term subject to the fulfilment of certain conditions for example where services provided by the original contractor have become necessary, and even though not included in the initial procurement, a change of Contractor cannot be made for economic or technical reasons or will cause significant inconvenience or duplication of costs for the Council provided that any increase in price does not exceed 50% of the value of the original contract. Additionally, if the need for modification has been brought about by circumstances which a diligent contracting authority could have not have foreseen and the modification does not alter the overall nature of the contract; and, any increase in price does not exceed 50% of the value of the original contract or framework agreement then there is also provision to modify contracts.

- 3.6 The current contract value is approximately £4.5m per annum with the overall contract value £12.839m. Therefore, if approved, a one year extension would not exceed 50% of the original contract value.
- 3.7 If the current contracts were to be re-procured now, the procurement exercise would likely need to be repeated at the end of the review which would be a duplication of costs to the Council, and would cause substantial disruption for children, particularly those with SEND.
- 3.8 Many of the changes needed for the home to school transport contracts are the result of increasing demand that has been difficult to predict, and, if extended, the overall nature of the current contracts would not change as they would operate within the existing arrangements.
- 3.9 The ongoing changing nature of these contracts means that it is recommended that authority to award contracts continues to be delegated to the Corporate Director for Children's Services, reporting back to the Portfolio Holder. This is in line with the Council's Constitution. The report back to the Portfolio Holder will detail the selection procedure, the results of the process, and evidence of compliance with the Public Contract Regulations and the Council's Contract Procedure Rules.
- 3.10 On completion of the current transport review, any revisions to the current policy and process will be made. As this may require consultation with existing users it is recommended that a further report is presented to Cabinet in November 2018 to refresh the policy and seek permission to enter into a procurement exercise to ensure contracts are in place at the end of the extension period in 2019. It is important to stress that there will be no in-year changes to offers that have already been made. The review of transport is part of wider recovery plan for the Dedicated Schools Grant, which is currently overspent. The detail of this will be presented to Children's Overview and Scrutiny Committee.

4. Reasons for Recommendation

- 4.1 The current contracts for home to school transport expire in July 2018 and the ongoing service review is likely to include recommendations that will make material changes to the way the current routes and contracts are designed and provided. In order to adapt the home to school transport offer in the light of the review findings it is recommended that the current contracts be extended for one year. To enable this, a waiver of the requirement to enter into a competitive tender is required along with agreement to extend the current contracts.
- 4.2 The recommendation for continued delegated authority to approve contracts is made to provide the flexibility to meet the numerous changes required throughout the contract period to meet the needs of individual children and facilitate the smooth day-to-day operation.

4.3 In reporting any changes to the current policy alongside the request to enter into a competitive tender process in November 2018 members will have the opportunity to have an overview of the implementation of changes to the delivery of home to school transport and ensure that a robust offer is in place.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 This is a request to extend current activities and, therefore, there has been no consultation. However, the report to Cabinet due November 2018 will include any recommendations from Children's Overview and Scrutiny.

6. Impact on corporate policies, priorities, performance and community impact

6.1 This report impacts on the following corporate priorities:

- Create a place for learning and opportunity
- Improve health and wellbeing
- Promote and protect our clean and green environment

7. Implications

7.1 Financial

Implications verified by: **Nilufa Begum**
Management Accountant

Home to school transport costs have a significant impact on Council budgets. By extending the current contracts we can ensure that the recommendations from the review are implemented providing greater efficiencies in terms of service delivery.

7.2 Legal

Implications verified by: **Courage Emovon**
Contracts Lawyer

There is a legal requirement to re-tender the home to school transport Contracts as the value of these means they must be compliant with European procurement rules. However, members have the option to extend the current contracts as provided by Section 14 of the Councils Contract Procedure Rules. To do this, members need to waive the requirement for a competitive tender as provided by Section 13 of the Council's Contract Procedure rules and agree to the extension of the current contracts. This must meet the condition set out in Regulation 72 of the Public Contracts Regulations 2015.

Regulation 72 of the Public Contracts Regulations 2015 provides for modification of contracts during their term subject to the fulfilment of certain conditions and provided that any increase in price does not exceed 50% of

the value of the original contract. Where for example, the value for the extension exceeds 50% of the original contract value, that would be a breach of the provisions of Regulation 72 and potentially leave the Council open to a challenge. However in this instance, the current contract value for a one year extension does not exceed 50% of the original contract value and therefore meets the requirements of Regulation 72 of the Public Contracts Regulation 2015.

Section 508B of the Education Act 1996 which was inserted by Part 6 of the Education and Inspections Act 2006 sets out the general duties placed on local authorities to make school travel arrangements as they consider necessary for “eligible children” within their area, to facilitate their attendance at the relevant educational establishment. Such arrangements must be provided free of charge.

Section 508A places a duty on local authorities in England to assess the school travel needs of all children and persons of sixth form age in their area and to assess and promote the use of sustainable modes of transport.

Section 508C of the Act provides local authorities with discretionary powers to make school travel arrangements for other children not covered by section 508B, but the transport does not have to be free and the local authority is entitled to charge for this.

Section 508D of the Act places a duty on the Secretary of State to issue guidance to which local authorities have to have regard to in the performance of their functions under Section 508B (Travel arrangements for other children). The Secretary of State may revise the guidance from time to time.

As the service sought to be extended is a statutory duty, the Council can extend the contract to meet its statutory obligation subject to compliance with its Contract Procedure Rules and the Public Contracts Regulations 2015.

7.3 Diversity and Equality

Implications verified by: **Rebecca Price**
Community Development Officer

The Council has a statutory duty under the Equality Act 2010 to promote equality of opportunity in the provision of services and employment. This means that the Council must ensure that all policies and local strategies promote the inclusion of all groups and equality of opportunity. Any future tendering process will be designed with these duties in mind.

The option to extend the current arrangements for one year will ensure that the disruption to pupils will be minimised whilst the outcome of the service review is being finalised.

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- None

9. **Appendices to the report**

- Appendix 1 - Stage One Procurement Form

Report Author:

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Strategic Lead Children's Commissioning and Service Transformation