

<b>15 March 2023</b>		<b>ITEM: 16</b> <b>Decision: 110648</b>
<b>Cabinet</b>		
<b>Children’s Transport – One Year Extension to the Current Framework 2023/2024</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key	
<b>Report of:</b> Councillor Barry Johnson, Cabinet Member for Education		
<b>Accountable Assistant Director:</b> Michele Lucas, Assistant Director Education and Skills		
<b>Accountable Director:</b> Sheila Murphy, Corporate Director – Children’s Services		
<b>This report is:</b> Public		

## **Executive Summary**

The contracts for Children’s Transport provision, including home to school transport, are due to expire in July 2023 and therefore due to be renewed for the start of the academic year, September 2023. The continued provision of this transport is required as a part of the Council’s statutory requirements. The value of the contracts means that Cabinet approval to proceed is required.

This report proposes that all of the current contracts procured under the framework are extended for one year to allow time for the service to review options for a full re-procurement of the Childrens Transport for the start of the academic year 2024/2025 to ensure best value is achieved and allows for new transport operators to join during the contract period.

Members have the option to extend the contracts in compliance with Section 14 of the Council’s Contract Procedure Rules. 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. Recommendation(s)**

**1.1 Cabinet agree that the Director of Children’s Services, in consultation with the Education Portfolio Holder is authorised to extend any transport contracts procured under the current framework, which expire in July 2023 for a one-year period.**

### **2. Introduction and Background**

- 2.1 The provision of home to school transport is governed by the Education Act 1996 and the Transport Act 1985. In addition, the provision of transport, in exceptional circumstances for children who are subject to Child in Need or Child Protection procedures is supported by the Children Act 1989, as amended by the Childcare Act 2004. This legislation is clear that other than in exceptional circumstances, parents are responsible for getting their children to school.
- 2.2 The current framework agreement (“the Framework Agreement”) originally awarded in 2019 is due to end in July 2023. All contracts procured under the framework agreement cover home to school transport and children’s social care transport. A framework is an overarching agreement between the council and transport operators and outlines the principles under which contracts can be placed. The framework is used to procure transport operators under individual routes and is a closed procurement whereby once awarded onto the framework no other operators can apply to join and can only be for a maximum period of four years with no option to extend other than under exceptional circumstances. This type of framework does not allow for new transport operators to join the framework during its lifecycle. When this framework was last procured in September 2019, there were set transport routes that were published and awarded to operators for a fixed price and over a period of four years, which was not sustainable for the operators given the price rises in fuel costs and cost of living. However, by extending for one year only, will give us the time needed to explore the best options for the re-procurement so that the new contracts would allow new operators to join at any point over the contract period increasing operator availability which is an issue under the current framework.
- 2.3 Current transport operators have been finding delivering routes sometimes difficult due to driver shortages and difficulties recruiting drivers. At the end of December 2022, two transport operators delivering school transport gave notice to the council to cease delivering those routes, which then had to be re-tendered and costs for the transport increased.
- 2.4 Due to the current value of this contract and in line with the Council’s Contract Procedure Rules, this report seeks Cabinet approval for the extension of the current framework.
- 2.5 The Council currently has contracts in place for a total of 140 routes covering the full spectrum of primary, secondary, and special Children’s Transport provision. This currently affects 1000 pupils. Transport is provided by coach, minibus, and taxi. Members should note that this is subject to change depending on demand.
- 2.6 In addition to the current transport contracts, Thurrock also provides transport provision in the form of travelling expenses where this represents best value.

- 2.7 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.

At the time of writing this report expenditure on these contracts under the current four-year framework agreement from September 2019 to date is £15,497,408 broken down as follows:

<b>Contract Period</b>	<b>Cost £</b>
September 2019 – August 2020	4,199,928.66
September 2020 – August 2021	4,631,607.48
September 2021 – August 2022	5,246,242.88
September 2022 – December 2022	1,419,630.77

- 2.8 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.

- 2.9 There continues to be an ongoing transport review looking at a number of areas to ensure best value is achieved wherever possible in line with the adopted Home to School Transport policy and the statutory duties:

- Service transformation whereby school admissions and transport are in the process of being integrated to provide a better overview and ensure pupils are offered places at a more local school, therefore reducing transport costs
- Continual review of routes to ensure efficiencies realised, such as amalgamating SEN and mainstream students where possible
- Providing a fuel reimbursement to parents in the first instance as this is more cost effective and allows parents, should they wish to transport their student. This option also allows for a more comforting journey for the young person.
- Review of the Post 16 statement to make easier reading and understanding for parents.
- To continue 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 and commission transport requirements in a cost-effective way.

- 2.10 Officers have taken a phased approach to the review in order to minimise disruption caused by any changes, however, the following work has been undertaken to date:

- A review of the current policy was completed and approved by Cabinet in 2021 and published in advance of September 2021.
- A route optimisation exercise continues to be undertaken to ensure that the Council is obtaining good value from each route.
- A rolling, school by school programme to review the type of transport offered is in place, this will move to more cost effective public transport options where possible. These changes will, where appropriate, support children to develop independence through, for example, the increased use of Travel Training or through the implementation of central pick-up points in a local area.
- A review of transport currently provided due to 'unsafe routes' is reviewed each year to ensure these are still relevant so that where possible parents are able to make their own arrangements for their children's transport to school. The significant development of the Borough in recent years has meant that many roads and pavements have been developed and may now be safe.
- Improvements to how we offer Children's Social Care transport are in place and it is proposed that any planned procurement is suitably flexible to incorporate social care requirements.

- 2.11 Members should note that there continues to be an increasing demand for Children's Transport particularly home to school transport due to unplaced pupils or children with special educational needs and /or disability being transported to out of borough placements. The current arrangements are being reviewed to ensure that all awards are in line with the current policy and that these are reviewed regularly to support independent travel where possible.
- 2.12 Members are asked to note that the rolling programme of service review will continue. This will ensure that the most effective and cost-efficient method of providing transport that is required within the current statutory duties is implemented.
- 2.13 The continual review will also ensure that the service adapts to meet changing needs to improve services and to encourage independent travel to school where possible.
- 2.14 Contracts and costs will be managed within the service along with a monthly review of budgets and forecast expenditure for the financial year. As part of the contract management process, termly meetings with transport operators will take place and key performance indicators measured in line with contract terms and conditions.
- 2.15 A further report will be presented in the autumn term 2023 to Children's Overview and Scrutiny and to Cabinet for the decision on the re-procurement of the Children's Transport provision after full options analysis has taken place.
- 2.16 An annual update report will be presented to Children's Overview and Scrutiny and Cabinet.

### **3. Issues, Options and Analysis of Options**

3.1 The current fixed framework does not allow new transport operators to join during the framework period, therefore restricting the flexibility and availability to provide transport for required routes. This option may have a longer-term financial impact due Consumer Price Inflation which was 10.1% in January 2023, if inflation does not return to previous lower levels before contracts are awarded. Negotiation will take place with transport operators to seek to agree to use Consumer Price Inflation as of 1<sup>st</sup> September 2023 (Inflationary rises will be written in the new re-procured contract to allow for these rising costs).

#### **3.2 Option 1: Undertake a new fixed four-year framework tender to include 140 existing transport routes**

The council has a statutory duty to provide transport for eligible pupils. By undertaking a new procurement exercise this will fix prices for a four-year period. However, due to the lack of drivers, transport operators have been left with no choice but to hand back routes where they are unable to continue to deliver transport due to staff shortages and recruitment issues. We have also seen an increase in route costs where new routes are tendered within the academic year, therefore, this option is not recommended for the new contract. We need to look at other procurement options that allows for new operators to join over the contract period which will increase choice and potentially make savings.

#### **3.3 Option 2: Recommended option – extend all of the current contracts procured under the Framework Agreement for one year**

This option will ensure that the council continues to meet its statutory duty to provide transport for the academic year 2023/24 by extending the current framework whilst ensuring dedicated time is given to reviewing options to undertake a full re-procurement for Children's Transport.

### **4. Reasons for Recommendation**

4.1 The recommendation to extend the current framework to procure the Children's Transport will ensure sufficient service and procurement resources are available to undertake a full re-procurement. The current contracts for home to school transport expire in July 2023 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. This will also ensure:

- The Council meets its statutory duties with regards to children's transport.
- That the Councils Contract Procedure Rules are met
- That best value in providing the services is obtained

- 4.2 Extending all contracts procured under the Framework Agreement which commenced in 2019 will need to meet Public Contract Regulation 72 – Contract Modification for Contracts and Framework Agreements and 14.2 of the council’s contract procedure rules.

The relevant clause which the Council proposes to rely upon is Public Contracts Regulation 72(C) – where all of the following conditions will need to be fulfilled:

1. The need for modification has been brought about by circumstances which a diligent contract Authority could not have foreseen
2. The modification does not alter the overall nature of the contract
3. Any increase in price does not exceed 50% of the value of the original contract framework agreement

The above conditions apply in this situation for the following reasons:

1. There has been a major change in service responsibilities and contract management which previously sat within the department of Passenger Transport but has recently moved to Childrens Services. Therefore, a new service review is necessary which is likely to result in material changes to how the service is currently delivered, and which has delayed the re-procurement that was unforeseen.
2. The extension of the said contracts does not change the nature of the current framework agreement and the modification is to extend existing routes and allocate new routes as they required.
3. The spend per annum is around £4.5Million and we anticipate this to increase by 10% on most routes if we applied the current Consumer Price Index (CPI) rate. This would increase the annual spend by an additional £450,000, therefore, the extension value will be around £5Million, which is less than 50% of the total value of the contract. The original contract value was £20Million over the four years of the current framework. Each of the contracts extended will therefore have an increased spend no greater than 50% of its original contract value.

Under the Councils Contract Procedure Rules Section 14.2 any extension must be shown to be of exceptional need. These are:

1. Home to school transport is a statutory service and therefore the requirements thereof have to be considered
2. The S114 notice requires improved value for money to deliver the statutory function
3. The council has additional governance procedures following the issue of the S114 notice which have complicated the landscape for re-procurement within the very tight timescales the Council is now operating under.

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

5.1 This report will be considered by Children’s Overview and Scrutiny Committee on 14<sup>th</sup> March 2023.

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

6.1 This report impacts on the following corporate priorities:

- People: a place where people of all ages are proud to work and play, live and stay;
- Place: a heritage rich Borough which is ambitious for its future;
- Prosperity: a Borough which enables everyone to achieve their aspirations.

## 7. Implications

### 7.1 Financial

Implications verified by: **David May**  
**Strategic Lead Finance**

The provision of Home to School Transport is a statutory duty on the Local Authority, for those considered eligible, to facilitate their attendance at the relevant education establishment.

Children’s transport costs have a significant impact on Council Budgets. A one-year extension to the existing framework will provide time and capacity to determine the most efficient and effective long term way forward. This will support the S114 notice by securing improved value for money in expenditure required to deliver a statutory function.

The current financial year continues to see an increase in demand for transport, predominantly for children with Special Educational Needs. Consequently, cost pressures are being realised in the current financial year and are anticipated to continue across the medium term. The table below summarises the 2022/23 budget and projected outturn alongside the 2023/24 budget:

<b>Home to School Transport</b>	<b>Budget 2022/23 (£'000)</b>	<b>Outturn 2022/23 (£'000)</b>	<b>Budget 2023/24 (£'000)</b>
Hired Transport	4,479	4,950	5,708
Public Tickets	48	48	53
Personal Travel Budgets	167	168	176
<b>Budget / Outturn</b>	<b>4,695</b>	<b>5,166</b>	<b>5,938</b>
Dedicated Schools Grant	(1,600)	(1,600)	(1,600)
<b>Net Budget / Outturn</b>	<b>3,095</b>	<b>3,566</b>	<b>4,338</b>

The 2023/24 Medium Term Financial Strategy provides growth of £1.243m, recognising significant increases in Special Educational Needs and inflation.

There is significant risk when awarding the contract extensions as Consumer Price Inflation was 10.1% in January 2023. However, it also provides an opportunity to allow inflation to reduce over the 12-month period. The option to extend for 1 year should be agreed with providers at the CPI – September 2023 rate. This would ensure reductions in 2023 are reflected in the inflation rate to be applied.

Sensitivity analysis has been undertaken to assess the stressors in the assumptions that may mean that the budget envelope may be exceeded (£5.9m).

The table below summarises this:

<b>Home to School Transport Sensitivity Analysis 2023/24</b>	<b>Contract cost (£'000)</b>	<b>2023/24 Budget (£'000)</b>	<b>Variance to budget (£'000)</b>
Outturn 2022/23	5,166	5,938	(772)
Inflation at CPI (10.1%) - Applied from Sept-23	304	0	304
<b>Cost base at 2022/23 pupil numbers</b>	<b>5,470</b>	<b>5,938</b>	<b>(468)</b>
Increase Demand 5% and CPI Sept-23	5,744	5,938	(194)
Increase Demand 7.5% and CPI Sept-23	5,881	5,938	(57)
Increase Demand 10% and CPI Sept-23	6,017	5,938	79

The analysis has built in an assumption that there will be a 10.1% uplift in cost base due to general inflation (CPI September 2022). Anything over a combined further increase in cost due to pupil numbers 10% and further contract inflation over 10.1% would lead to the 2023/24 budget being exceeded.

In order to contain cost pressures whilst ensuring that Thurrock fulfils its statutory duty, the most economical and suitable method of transport should be selected, which includes travel allowances, use of the commercial bus network and hired transport. There does, however, remain a cost pressure risk in 2023/24 and beyond. Alternative funding opportunities and mitigations to the pressure may have to be sought by the service to contain it within the budget envelope should this risk materialise.

## 7.2 Legal

Implications verified by: **Kevin Molloy**  
**Principal Solicitor**

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. Section 444 of the Education Act 1996 expressly states that the child shall not be taken to have failed to attend regularly at the school if the parent proves that the local authority fails to make appropriate transport arrangements to and from school under Section 508, however parents are responsible for their child's attendance at school and local authorities are under a duty to provide home to school transport, where necessary, to enable them to enforce attendance.

The above duties must be viewed against the backdrop of The Council's Chief Financial Officer having issued a section 114 Notice. The Council will need to review **its spending under the Framework Agreement contracts together with any proposed extensions thereof** to ensure that the Council is proactive in ensuring that its **expenditure** supports the financial recovery of the Council.

Members will need to consider carefully having weighed the arguments outlined in paragraph 4.2 above whether the extensions referred to have complied with the requirements of regulation 72 and clause 14.2 of the Council's procurement rules referred to above, as if a Court considers in the event of a challenge that these requirements have not been met then the Council may be judged by the Court to have extended unlawfully, and provide a range of remedies to the successful litigant at the Council's expense. Such an award may be significant in value depending upon the value of the contract(s) challenged.

### 7.3 Diversity and Equality

Implications verified by: **Roxanne Scanlon**

**Community Engagement and Project  
Monitoring Officer**

The Council has a 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 tendering process will be designed with these duties in mind.

We will ensure the partner meets the statutory duties of a local authority in the provision of home to school transport, and also in its HR policies. The authority should note that where an external supplier carries out a function, the Council remains responsible for meeting the statutory duty set out in the Equality Act 2010. The authority should give due regard to ensuring that all services are delivered in a way which is non-discriminatory and promotes equality of opportunity for staff and service users. The services provided will cater for the needs of all users and identifying the needs of particularly vulnerable groups will be a key aspect of the tender process. Prospective contractors should give due regard to the diverse needs of young people in Thurrock and plan to meet these accordingly. The equality requirements will be identified in the service specification and pre-qualification questions.

**7.4 Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

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**

None.

**Report Author**

Sarah Williams

Children's Services