

13 December 2023		ITEM: 11 Decision: 110681
Cabinet		
Children’s Transport Contract Procurement 2024		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor Adam Carter, Cabinet member for Education		
Accountable Assistant Director: Michele Lucas, Assistant Director Education and Skills		
Accountable Director: Sheila Murphy, Corporate Director – Children’s Services		
This report is: Public		

Executive Summary

The contracts for Children’s Transport provision were extended by one year and agreed by Cabinet on 15 March 2023. The extension was agreed from September 2023 to July 2024. The provision of home to school transport is a statutory duty on the Local Authority and we are required to undergo a re-procurement exercise. The value of the contracts requires a Cabinet decision.

This report recommends a full re-procurement of the Childrens home to school 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.

1. Recommendation(s)

- 1.1 Cabinet agree the recommendation for the Council to collaborate with Essex County Council (ECC) on a procurement exercise for a Dynamic Purchasing System (DPS) and to undertake further competition via the DPS to award contracts for Children’s home to school transport as set out in section 3.**
- 1.2 Cabinet agree that the Director of Children’s Services, in consultation with the Education Portfolio Holder is given delegated authority to award contracts following further competitions under the DPS.**

2. Introduction and Background

- 2.1.1 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 2024 (includes the extension period as agreed by cabinet on 15 March 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.
- 2.3 The Council currently has contracts in place for 180 routes covering the full spectrum of primary, secondary and special schools children’s transport provision. We currently transport in the region of 1000 pupils a day. Transport is provided by coach, minibus and taxi. Members should be aware that this is subject to change as this is a demand lead service.
- 2.4 In addition to the current transport contracts, Thurrock also provides transport provision in the form of travel expenses where this represents best value.
- 2.5 The current contract value is approximately £6.1m per annum. This amount fluctuates due to changes in demand where the immediate implementation of additional route contracts is needed arising from factors outlined in 2.8 below resulting in the anticipation that the demand for children’s home to school will increase by 7% per annum. This is based on the historical and forecasted increase in numbers of Education and Health Care Plans included within the Dedicated Schools Grant Management Plan. The potential effect of this (inclusive of a 5% CPI increases) on annual contract value would mean an annual increase of £0.620m. A separate report will be provided in March 2024 to Children’s Overview and Scrutiny as indicated in 2.7 below, this will also provide information on the steps to take be taken to contain budgetary pressures.
- 2.6 There are three distinct areas of children’s 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 and Resource Bases – A statutory duty to offer transport subject to the pupil meeting the agreed criteria.

- Children's Social Care – provision of ad hoc transport service to children and young people for a variety of purposes. Journeys may be one-off or regular scheduled arrangements that include contact visits as well as out of hours emergency journeys.
- 2.7 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 approved Home to School Transport policy and the statutory duties. A separate report will be provided to Children's Overview and Scrutiny in March 2024 and will include an updated Home to School Transport policy following the publication of revised Department for Education statutory guidance on 29th June 2023.
- 2.8 Members should note that there continues to be an increasing demand for Children's Transport due to a rise in the number of children meeting the statutory criteria for home to school transport as set out in the Home to School Transport Policy.
- 2.9 The service continues to encourage independent travel to school where possible. This is not always appropriate where individual pupil needs prevent pupils travelling independently.
- 2.10 Contracts and costs continue to 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 take place and key performance indicators measured in line with contract terms and conditions.
- 2.11 **Market engagement**

A market engagement session was undertaken on 15 May 2023 with Operators on the current Framework to discuss the extension of the current Framework and also our proposals on the re-tendering of the Childrens Transport going forward and to have their initial thoughts on contracting for the service under a DPS system.

A questionnaire was sent out to the operators on the current framework asking what their views were on how the current Framework was operating and what they would propose to the Council to consider going forward. The questionnaire also asked them if they were familiar with a DPS and how they felt it was working. Some of the Operators are already registered under the Essex County Council DPS so are familiar on how this works, however we recognise that some of the operators are not familiar with a DPS.

This engagement exercise has provided the Council with information on: -

- areas for improvement on the current contract which will be fed into the upcoming contract meetings.
- familiarity of suppliers (including local SMEs) with a DPS and potential training required by suppliers to be able to join a DPS.

Further market engagement exercises are planned to ensure full participation of both our current operators and any potential new operators in our re-procurement process.

2.12 The council does not currently have a Passenger Transport Marketing Strategy.

3 Issues, Options and Analysis of Options

The existing framework agreement for Childrens transport is due to end in July 2024. There is a need for the Council to ensure a contracted service is in place from August 2024 onwards. There are currently 4 options for cabinet to consider the continued service provision.

OPTION 1 - Do nothing.

This option would not support the Council in delivering its statutory duties to provide home to school transport. Therefore, this option is discounted.

OPTION 2 - Deliver the service in house.

The costs of setting up an in-house service i.e., vehicle fleet, resources and systems will be significant and are not currently planned or within the department's budget scope. Therefore, this option is discounted.

OPTION 3 – Contract for the service via a Council own framework agreement or Dynamic Purchasing System (DPS)

Both procurement routes have some similarities and differences in summary.

- Both can be put in place with more than one organisation providing the Council access to more sources of supply. However, to note once the framework agreement is in place, no further organisations can be added, whereas on a DPS, organisations can be added at any point (subject to the organisation meeting the selection criteria) during its period of operation.
- Both establishes the terms and conditions on which future contracts will be called off promoting standardisation of contract terms.
- Both simplify and streamline the procurement processes.
- A DPS does not have the option for a direct award. The only award mechanism to call a DPS is via a further competition (also called a mini competition). Whereas on a framework agreement the mechanism to call off a framework agreement is via a direct award or further competition.

The Council currently contracts for the service via a framework agreement. The lack of flexibility to include additional suppliers onto the framework agreement has been one of the challenges experienced by the Council. Where suppliers have handed back routes to the Council due to contract un-affordability, the Council has had to rely on the remaining suppliers for the service provision. This has increased the risk of the remaining organisations on the framework not

having the capacity to deliver the required service in the face of increasing demand on the service.

A DPS would be able to provide the council a route for managing the risk of supply and demand as organisations can be added at any point (subject to the organisation meeting the selection criteria) during its period of operation. However, the setting up of the Council DPS is resource and time intensive. Additional resources would be required to be paid for to support the DPS set up and implementation.

OPTION 4 - Collaborate with Essex County Council (ECC) on a procurement exercise for a DPS. – **This option is recommended.**

In undertaking the market engagement, the Council liaised with other local authorities who had a DPS in place for school transport to find out if there were any opportunities for collaboration. As part of this process, it was found that ECC were looking to retender their Transport DPS on a similar timeframe as the Council. The Council approached ECC about the possibility of both Councils working together to facilitate the DPS (to be tendered for by ECC) being open to use by Thurrock. ECC have agreed to this. ECC intends to go out to tender for the DPS in November / December 2023. The key benefits of this option (in addition to those outlined in option 3 above).

- With the DPS being open to the Council to use, it can call off the DPS once in place by undertaking further competition processes to award contracts for the service provision.
- Reduces duplication of effort with resources and time efficiencies gained. ECC will be undertaking the process to put the DPS in place therefore the Council does not need to duplicate what ECC is doing but work with them to benefit from the process.
- Suppliers of the service will only need to tender to join one DPS and will have access to a wider market of both Councils. This reduces duplication as suppliers do not need to complete a similar process twice.
- ECC have had a DPS in place for many years, which they have continued to refine and improve. The Council will benefit from the experience and support to be provided by ECC during the process.
- Both Councils can work together to schedule calling off the DPS to avoid and reduce both Councils competing against each other in the same market to facilitate achieving the best value from the supply market.

ECC will be setting up the DPS, their e-tendering system will be utilised. Following liaison with Essex County Council (ECC) it has been established that the Council can utilise its own e-tendering system to undertake further competition via the DPS. As the council will look to utilise its own e-tender system this negates the need of the licence cost to utilise ECC e-tendering system.

It is proposed for contracts awarded by Thurrock Council following further competition via the DPS for the provision of the children's home to school transport to be for a four (4) year period with the option to extend for up to 12 months.

To provide price certainty and maintain contract sustainability, during the contract duration it is proposed for prices to be fixed for the first two years and for price increases in subsequent years to be based on the CPI rate prevailing at the time (this will be included as a clause with the contract).

4. Reasons for Recommendation

The preferred and most efficient option is option 4. If approved, option 4 means:

- Reduction / elimination of duplication of effort for the Council and suppliers
- Resources and time efficiencies
- Market management to achieve better value
- A procurement / contracting route to manage the risk of supply and demand faced by the department
- Fosters collaboration along with its associated benefits

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

5.1 The report was presented to Children's Overview and Scrutiny on 16th November 2023. Children's Overview and Scrutiny recommended:

- Cabinet agree the recommendation for the Council to collaborate with Essex County Council (ECC) on a procurement exercise for a Dynamic Purchasing System (DPS) subject to comparative costing with current system and to undertake further competition via the DPS to award contracts for Children's home to school transport as set out in section 3.
- Children's Overview and Scrutiny recommend Cabinet agree that the Director of Children's Services, in consultation with the Education Portfolio Holder is given delegated authority to award contracts following further competitions under the DPS.

On 17th November it was confirmed by to Children's Overview and Scrutiny Committee members the anticipated cost indicated within the Cabinet report was in relation to the cost of licences to utilise Essex County Council's e-tendering system to undertake further competitions under the DPS. Following liaison with Essex County Council (ECC) it has been established that the Council can utilise its own e-tendering system to undertake further competition via the DPS. As the council will now look to utilise its own e-tender system this negates the need of the licence cost to utilise ECC e-tendering system.

5.2 Consultation with current transport operators was undertaken on 15 May 2023 to obtain their views.

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.

The 2023/24 Medium Term Financial Strategy provide growth of £1.243m, recognising significant increases in Special Educational Needs and inflation. The 2023/24 budget is £6.145m.

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 is the potential of a cost pressure risk in 2024/25 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. Following issue by the Council of a s114 notice, the Council must ensure that its resources are not used for non-essential spending. The contracts at issue here are all essential and the provision of them a statutory duty. In procuring the services outlined, the Council must observe the obligations upon it outlined in national legislation and in its internal procurement rules. Officers will need to ensure Legal Services are kept fully informed as they progress through the procurements referred to above to ensure compliance.

7.3 Diversity and Equality

Implications verified by: **Natalie Smith**
Strategic Lead Community Development and Equalities

The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in the Sec 149 Equality Act 2010.

The Council must, in the performance of its functions, therefore, have due regard to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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 must 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 must give due regard to the diverse needs of young people in Thurrock and plan to meet these. Specific 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