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|--------------------------|--|--|--------------------|
| <b>Subject:</b>          | <b>Home to School Transport for Pupils with Special Needs and Other Social Care Transport Contract</b> |  |                    |
| <b>Date of Meeting:</b>  | <b>11 October 2018</b>   |  |                    |
| <b>Report of:</b>        | <b>Executive Director of Families, Children and Learning</b>   |  |                    |
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| <b>Ward(s) affected:</b> | <b>All</b>   |  |                    |

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report seeks approval for the procurement of a contract to provide for home to school transport to pupils with special educational needs, and other hired transport for vulnerable children and adults on behalf of social care teams.
- 1.2 There has been no change to the responsibilities placed upon the Council under Section 508B of the Education Act 1996 as described in more detail in Paragraph 3.6. Neither has the Council varied the home to school transport policy which is described in more detail in Paragraph 3.7 and can be found at: [https://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/Brighton%20Hove%20Home%20to%20School%20Transport%20Policy%20270315%20FINAL\\_0.pdf](https://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/Brighton%20Hove%20Home%20to%20School%20Transport%20Policy%20270315%20FINAL_0.pdf)

**2. RECOMMENDATIONS**

That Policy and Resources Committee:

- 2.1 Approves the procurement of a contract for home to school transport for pupils with special educational needs and other transport for vulnerable children and adults on behalf of social care teams, for a term of four years from 1 September 2019 to 31 August 2023.
- 2.2 Grants delegated authority to the Executive Director of Families, Children & Learning to carry out the procurement and award of the contract referred to in Paragraph 2.1 above including the award and letting of the framework agreement.

### 3. CONTEXT/ BACKGROUND INFORMATION

#### Summary of the current service provision

- 3.1 Currently there are approximately 370 pupils who require home to school transport under the existing framework agreement. This number does vary during the academic year but has remained fairly constant during the period of the current framework agreement. Pupils are currently transported to 78 different education settings. There are four transport providers who transport these pupils under the framework arrangement and two other providers who have been used for one-off arrangements.
- 3.2 In the main, transport for pupils aged 16 years and over is managed as a separate lot under the same framework agreement. The increase in the Council's responsibility for children and young people with Education, Health and Care Plans up to the age of 25 years has seen this cohort of travellers increase in the last couple of years and it can be expected to rise further through the term of this agreement.
- 3.3 Currently there are approximately 75 pupils aged 16 years or over who require transport from home to school/college. Pupils are transported to 15 different education settings. There are two transport providers who transport these pupils under the existing framework arrangement and one other provider who has been used for one-off arrangements.
- 3.4 There is no duty to provide transport for children attending early year's settings. Section 509A of the Education Act 1996 ('EA') instead gives Local Authorities (LAs) a discretionary power to provide assistance with travel to 'relevant early years education'. The LA is able to charge for the provision of transport.
- 3.5 Brighton & Hove City Council (BHCC) does not normally provide transport to pupils attending early year's settings. Children who are starting the Reception Year but are not yet of compulsory school age are considered in the same way as pupils who are of compulsory school age.
- 3.6 Section 508B of the EA places a duty on Local Authorities to make such travel arrangements as they consider necessary to facilitate attendance of pupils of Compulsory School Age (CSA) at school for 'eligible children'. Schedule 35B defines eligible children as including:
  - Children with Special Educational Needs (SEN), a disability or mobility problem who cannot reasonably be expected to walk to school because of their mobility problems or because of associated health and safety issues related to their SEN or disability.
  - Children who cannot reasonably be expected to walk to school because of the nature of the route (accompanied as necessary).
  - Children living outside the statutory walking distance, where no suitable alternative arrangements have been made by the Local Authority.
  - Children entitled to free school meals, and/ or whose family is in receipt of the maximum level of Working Tax Credit.

3.7 At present there are no active plans to review the existing Home to School Transport Policy which was last reviewed in April 2015. It states that those entitled to receive assistance with travel are:

- Aged under 8 and live more than 2 miles from nearest suitable school
- Aged 8 – 16 and live more than 3 miles from nearest suitable school
- If qualifying for Free School Meals or maximum Working Tax Credit it is:
  - Over 8 and under 11 2 miles to the nearest suitable school
  - Aged 11-16 between 2-6 miles and there are one of 3 nearest schools
  - Aged 11-16 and between 2 -15 miles and is nearest school preferred on grounds of religion or belief

The Council will not provide help if the school chosen is further away from the nearest suitable school. 'Nearest suitable school' in relation to primary education is considered to be the closest maintained school to the child's permanent home address that is suitable to age, educational needs and has a place available. In relation to secondary education it means the catchment area school (or schools in a dual catchment area) for those able to attend a mainstream school, except for children whose family meets the criteria for low income, where the suitable school may be one of the three closest schools.

3.8 BHCC also provides short term assistance in exceptional circumstances if a parent of a primary school child is unable to take them to school for medical reasons and child is attending nearest suitable school. This is discretionary.

3.9 In relation to this entitlement, Section 508B of the Education Act 1996 provides that a LA must make 'in the case of an eligible child in the authority's area....such travel arrangements as they consider necessary in order to secure that suitable home to school travel arrangements...are made and provided free of charge to the child'.

3.10 The concept of 'travel arrangements' is a wide one; they are defined in subsection (4) as being arrangements of 'any description.' Sub section 4 (b) sets out three matters which are considered to be travel arrangements if those arrangements are made with the consent of the parents:

- the provision of an escort
- arrangements for the payment of any person's reasonable travel expenses
- arrangements for the payment of allowances in respect of the use of particular modes of travel

3.11 The general expectation is that the child will be accompanied by a parent where necessary, unless there is a good reason why it is not reasonable to expect the parent to do so. Department for Education (DfE) guidance states that when considering the reasonableness of a child's parent being expected to accompany the child, a range of factors that may need to be taken into account including whether one would ordinarily expect a child of that age to be accompanied.

3.12 If a Mobility car has been provided for the benefit of the child consideration will be given as to whether, if parents/carers agree, this should be used to take the

child to school. In such cases the agreed mileage rate will be paid. Currently 18 families receive a mileage rate.

- 3.13 Normally travel assistance will not be provided to and from after school clubs unless this can be done at no additional cost and with no unreasonable disruption to the travel of any other children sharing transport.
- 3.14 If a child attends a residential school on a weekly, half termly or termly basis the request for transport will be individually assessed.
- 3.15 DfE guidance recommends that all children should be able to reach their school within 45 minutes for primary age children, 75 minutes for secondary aged children. As the city has undergone various traffic enhancements this has been a challenge to comply with for the providers on the current framework agreement.
- 3.16 There is no duty to provide free transport to students over the age of 16 who are continuing in full time education at school or college. However section 509AA of the EA requires LAs to specify in an annual transport policy statement the transport and financial support they consider is necessary to 'facilitate the attendance of sixth form pupils receiving education or training'. A sixth form pupil is defined as a person over CSA but under the age of 19, or a person who has begun a particular course of education or training before reaching the age of 19 and who continues to attend that course.
- 3.17 The 16-18 transport duty also applies to young people of sixth form age with learning difficulties and/or disabilities aged up to 19 (and beyond 19 if they are continuing on a course started before the age of 19) (section 509AB).
- 3.18 The LA must exercise its discretion to provide transport or financial support reasonably, taking into account all relevant matters. Regard must be had to the following:
- The needs of those who could not access education and training provision if no arrangements were made-the needs of young people with learning difficulties and/or disabilities must be specifically considered
  - The need to ensure that young people have reasonable opportunities to choose between different establishments
  - Journey times
  - Distance from home
  - Cost of transport
  - Alternative means of facilitating attendance
- 3.19 The LA has the discretion to determine what transport and financial support are necessary to facilitate young people's attendance. A failure to make arrangements would amount to a failure to meet the duty.
- 3.20 At present BHCC is not actively seeking to implement a requirement for families to contribute towards transport costs but if it did so it must ensure that (i) it is affordable, (ii) arrangements are in place to support low income families, and (iii) it takes into account the likely duration of the course and the impact that this might have on particular groups e.g. young people with learning difficulties and/or disabilities.

- 3.21 Section 149 of the Equality Act 2010 requires LAs to advance equality of opportunities between disabled and non-disabled people. LAs must consider what adjustments should be made available for a disabled person to ensure that they are not disadvantaged as compared to a non-disabled person. The duty could be of particular relevance to pupils between 16 and 18 where there is no legal obligation to make free transport available. However the fact that the BHCC policy statement provides that the needs of young people with learning difficulties and/or disabilities should be specifically considered is considered sufficient to discharge this duty.
- 3.22 The BHCC transport policy statement covers students aged 16-18, continuing students aged 19 and over and 19-24 year old students with learning difficulties or disabilities.
- 3.23 BHCC expects that where possible parents/carers should be responsible for making travel arrangements for students.
- 3.24 The Council will consider offering some additional direct financial help towards travel costs for young people with low incomes in exceptional circumstances. However students are encouraged to discuss eligibility with transport costs under the 16-19 bursary fund.
- 3.25 The Council looks to assess whether the student could reasonably be expected to attend college with the support of parents/carers including broader family networks and having considered the length and complexity of the journey. Factors to consider would be taking other primary aged or younger children to a different school, fixed employment patterns, a disability or medical condition themselves.
- 3.26 Young persons who are over CSA but under the age of 19 are treated differently from those in the post 19 group. For the latter, a local authority duty to provide education and training is limited to those for whom an EHCP is maintained (section 15ZA EA). This post 19 group, 'adult learners', are also treated differently in respect of transport to and from their institution or place of education.
- 3.27 The Council's duty in respect of adult learners is covered by s.508F of the Education Act 1996, as amended by the Children and Families Act 2014. Section 508F requires LA's to make such arrangements for the provision of transport assistance as they consider necessary to facilitate the attendance of adults aged 19-25 with learning difficulties and/or disabilities or SEN attending a specialist college or training provider.
- 3.28 If a young person is over 19 years old, has an EHC Plan and attends a qualifying institution, the flow of section 508F is as follows:
- The LA must make arrangements for transport if they consider it necessary and the young person falls within either subsection (1) or (2) (facilitation of attendance at institution providing education)
  - If the YP falls within either subsection the LA must consider whether they should make arrangements for the young person. They must have regard,

among other things, to the age of the adult and the nature of the route or alternative routes which the adult could reasonably be expected to take.

- If they decide that it is necessary to make arrangements, the transport must be free
- Even if they do not consider it necessary, the LA has a residual discretion to pay some or all of the reasonable costs of transport if no other arrangement has been arranged

3.29 Transport for pupils who are in post 19 education was considered in an Upper Tribunal (UT) decision, *Staffordshire County Council v JM* [2016]. One of the issues before the Tribunal was whether a LA has any duty under section 508F to pay the costs of transport to facilitate attendance at an FE institution of a 21 year old adult learner with an EHCP. The LA argued that section 508F did not impose an absolute duty on the LA to pay for her travel to and from college. The UT agreed. The Tribunal concluded that section 508F is a general duty and as such is weak in terms of specific duties owed to an individual. It does not create a free standing rule that transport for those with exceptional needs must be included in an EHC Plan. Councils are only obliged to make such arrangements for transport “as they consider necessary to facilitate the attendance of adults receiving education”.

3.30 In addition to home to school transport as described in Paragraph 3.1, other transport is arranged by the Home to School Transport team on behalf of child and adult social care teams in order to secure best value and manage social care transport requirements in one place. This work is commissioned by social care teams and is re-charged to them. The majority of work is commissioned on a one-off basis, although there is some recurring business. Transport is provided for vulnerable children and adults, including children in care, adults with learning difficulties and older clients. Clients are transported to a variety of destinations including contact meetings (children in care), hospital appointments and day centres.

3.31 On average 50 clients are transported each week utilising approximately 40 vehicles. As well as the three drivers employed directly by BHCC, there are two providers who transport these clients under the existing framework arrangement and one other provider who has been used for one-off arrangements.

#### Previous framework agreement

3.32 In 2015, a four year framework agreement was established to cover a number of schools and the provision of transport for adults and children in social care. The current framework agreement is due to expire on 31 August 2019. A number of individual ‘call-off’ contracts have been awarded under the framework

3.33 A Framework is a list of pre-qualified suppliers that can bid for work around a specific group of goods, services or works because they have all signed the Framework Agreement. Buyers then award individual contracts (call-off) throughout the lifetime of the framework.

3.34 It is in the Council’s interest that there is market interest in the services and that there is open and fair competition. The previous tender was constructed to

balance different types of provider and reduce the risk of only one type of provider bidding.

- 3.35 The previous framework agreement was arranged when the Council was actively considering a centralised transport function and therefore call-off contracts for a year at a time with annual optional extensions for up to three years were used, to provide the flexibility to incorporate the provision of home to school transport should it be established. A centralised transport function is no longer under active consideration.
- 3.36 At the time of the previous agreement the local market situation made it difficult to achieve financial benefits. There were not as many transport providers who expressed an interest in the contract as anticipated and the combination of schools within packages created difficulties for companies to provide the transport necessary for all the pupils attending those schools.
- 3.37 As can be expected, currently no coaches are used for the transportation of pupils with special needs. Predominantly taxi cars, larger people carriers and mini buses are used.
- 3.38 What eventually occurred was an agreement to award the remaining two years of call off contracts to allow the providers to have sufficient certainty about volumes of work to inform capital investment decisions about the vehicle fleet.
- 3.39 Under a framework agreement, there is no guarantee of work and therefore no contract value in its own right. The expenditure under the contracts let under the current framework is £2.45m per year. Of this total amount approximately £2m is in relation to home to school transport and £0.45m is in relation to vulnerable children and adults.

#### Best practice and consultancy opinion

- 3.40 The Department for Transport (DfT) published '*Tendering Road Passenger Transport Contracts – Best Practice Guidance*' in October 2013 and it still remains relevant. This included recommendations for making the tendering process easier and more relevant. However what is now less relevant to Brighton and Hove is the strong recommendation that LAs consider establishing an Integrated Transport Unit (ITU) to manage all their transport planning and organisation. This recommendation was previously explored by the Council until December 2015 when, following changes to a wide range of council services, this method of delivery was no longer considered relevant.
- 3.41 The guidance also states that competition is likely to be best served if invitations to tender are for the smallest sensible level of operation. The purpose of this is to allow small operators the opportunity to bid for work. Clearly there is a balance to be struck and splitting 'natural' operational areas artificially is less likely to lead to a good quality of operation.
- 3.42 The previous framework incorporated the possibility that this project may result in the transport management for this service changing, the framework agreement allowed for a more flexible implementation of any call-off contracts awarded under it. There was the possibility of awarding from year to year during the

framework period to allow quicker implementation of any recommendations arising from the transport review.

- 3.43 The previous tender process confirmed that there was currently no effective market for this work in Brighton & Hove. Consolidation of providers had taken place. In the previous tender process, only one package of work resulted in a financial saving and this was for the former Hillside School which had never previously been subject to market competition.
- 3.44 Consideration is needed for changes in the nature of work that taxi drivers are willing to undertake.
- 3.45 As with the previous tender exercise there may continue to be a conflict with the council's licensing rules and the Council getting best value on client transport services. The requirement, by the 1 September 2018, for Euro 4 (petrol) and 6 (diesel) compliant engines will have an impact on the likely tender responses received because of the implication of taxi drivers replacing their existing vehicles. Requirements on seating configurations are another factor that impact on achieving best value.
- 3.46 Where alternative strategies were suggested in order to establish best value such as increased independent travel training, direct payments to parents/carers, review of eligibility criteria, delegated budgets to schools and in-house service provision did not deliver significant changes during the current framework agreement. The Client Transport VfM workstream which had previously been referenced was closed down in December 2015.
- 3.47 During the timeframe of this proposed framework there will be on-going changes to the provision of special educational needs education in Brighton and Hove, including the development of three 'hubs' which will have an impact on the provision of transport including destinations and timings of journeys.
- 3.48 There will also be the tendering of a specific route for the post 19 provision which is currently being delivered by the Down View Life Skills College based at Patcham House.

#### Tender process for new framework agreement

- 3.49 In order to comply with the UK Public Contracts Regulations and the Council's internal Contract Standing Orders, a formal tendering process must take place to procure the new framework agreement.
- 3.48 Using a framework agreement has a number of benefits as the Council has the ability to 'call-off' contracts at short notice without the need to undertake a time-consuming comprehensive contract award process, which therefore reduces administrative effort and costs. It also allows the Council the flexibility to determine specific requirements at the 'call off' stage.
- 3.49 In order to meet the deadline for contract commencement on 1 September 2019, a procurement timetable has been drawn up which proposes that the Invitation to Tender (ITT) will be published in October 2018 to ensure selection of a preferred bidder and contract award by February 2019. A comprehensive specification will

be drafted to accompany the ITT. The tender will be split into separate lots which may be based on individual schools or groups of schools or on geographical areas. These two options should result in a reduction in the number of overall call-off contracts under the new framework agreement.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 An alternative would be to establish a Dynamic Purchasing System (DPS). A DPS is an electronic system for purchasing commonly used goods and services. It remains open throughout its duration for the admission of providers that satisfy the selection criteria and submit an indicative tender that complies with the service specification.
- 4.2 A DPS arrangement is an open ended system which provides for a more fluid contract whereby individual routes are offered as a mini competition between providers. With such a system there are both positive and negative effects including providing stimulation of a more competitive market and an opportunity for new suppliers to gain a foothold. However it requires additional administration from Council staff which is not currently factored in to roles and responsibilities and initial soft market testing did not produce significant savings on potential journeys that would be awarded under a DPS.
- 4.3 When it met in June 2018 and considered the draft report for committee and the information officers were able to provide at that time, the Member's Procurement Advisory Board expressed a view that an option that brought more business in the market should be sought. Its preference was for a DPS and a desire for the involvement of community businesses such as Community Transport.
- 4.4 It is not anticipated that there is a possibility of providing some or all of this contract in house or by schools, with a fleet management approach. This would require detailed mapping of the use of the fleet and much more day to day management.
- 4.5 The alternative options are not recommended, subject to gaining any relevant approvals.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 Current providers, and other providers not currently on the framework agreement but who have expressed an interest in providing the service, will be contacted in advance of the tender to seek opinion on the specification and contract terms to ensure that they are suitable and relevant. This will ensure a balance between achieving value for money and that the service is appropriately specified.
- 5.2 All current contractors will be invited to apply to tender for this work, as well as other transport providers.
- 5.3 It is anticipated that schools and parents of pupils using the service will be consulted on their experience of home to school transport provision to better inform the requirements for the new arrangements.

## 6. FINANCIAL & OTHER IMPLICATIONS

### Financial Implications:

- 6.1 The award of the framework itself has no financial value; however the total current value of the contracts called off under the framework is approximately £2.45 million per year.
- 6.2 It is important throughout the procurement process that the council achieves value for money and the principles of value for money are upheld as well as having secure arrangements in place for those pupils with special educational needs.
- 6.3 There are financial risks associated with the provision of home to school transport. These will arise from a number of factors, such as the number of pupils qualifying for assistance and the effect that has on unit cost, the changing costs of transport provision including fuel that affect annual price reviews, and the degree of individual pupil need which can result in costly individual transport arrangements. It is important that any price mechanism agreed is sound and realistic.
- 6.4 The current financial position reported on this budget is an overspend of £89k and it is important that the financial position is reviewed regularly in line with the Targeted Budget Management Timetable (TBM).

*Finance Officer Consulted: David Ellis*

*Date: 25/9/18*

### Legal Implications:

- 6.5 The Council has a statutory duty to provide home to school transport for certain pupils attending schools in the Brighton & Hove area under the Education Act 1996 (as amended).
- 6.6 The Policy, Resources & Growth Committee is the appropriate decision-making body in respect of the recommendations at paragraph 2 above, given that the value of the contract which is the subject of the proposed tendering exercise is likely to have corporate financial implications.
- 6.7 Further, the Council's Contract Standing Orders require that authority to enter into a contract valued at £500,000 or more be obtained from the relevant committee, which in this instance is the Policy, Resources & Growth Committee.
- 6.8 The procurement of the new contract must comply with all relevant European and UK public procurement legislation as well as the Council's Contract Standing Orders. The opportunity will need to be advertised in the Official Journal of the European Union. Tenders will be scored on the criteria of quality and price as part of the evaluation process.

*Lawyer Consulted:*

David Fairfield

*Date:* 17/09/18

Equalities Implications:

- 6.10 The Council has a responsibility to promote access to appropriate educational provision for all in accordance with legislation including the Equality Act 2010. It must balance that responsibility against any change in transport provision, to ensure that it is not compromising access by vulnerable individuals.
- 6.11 It is not necessary to carry out an equalities impact assessment on this occasion as the criteria for accessing transport services are not changing as a result of this new procurement.

Sustainability Implications:

- 6.12 The Education Act 2006 (as amended) places a general duty on the Council to promote the use of sustainable travel and transport. The duty applies to children and young people of compulsory school age and sixth-form age who travel to receive education or training in the Council's area.
- 6.13 It is accepted that hired transport contributes to traffic levels in the city. However, this is offset by the Council's contractual requirement to maximise the use of all spaces on vehicles (except where, through health or safety considerations, children must travel alone).

Any Other Significant Implications:

- 6.14 Potential risks arise for pupils and service users if suitable contractual arrangements are not made by 1 September 2019, and any failure to do so would mean that the Council would not comply with its statutory duty to provide home to school transport to entitled pupils with special educational needs. The greatest risk for students is that in the absence of transport they could not attend school. Not only would this impact on the pupils, but also on their families.
- 6.15 Any overspending on home to school transport and social care transport is at the opportunity cost of other service provision within the Council and services to children in particular. It is considered that the procurement of a framework agreement, and the subsequent implementation of call-off arrangements, will achieve the greatest value for money for the Council, particularly if the contract specification is carefully drafted to ensure the most cost-effective and efficient transport provision.
- 6.16 Specific safeguarding guidance for transport services is not currently in place, although it is a requirement that all personnel involved in providing transport for children have a current Disclosure and Barring Service (DBS) check. It is considered that this is essential to the safe provision of the service and therefore guidance is currently being drafted which shall form part of the tender documents.

### Risk and Opportunity Management Implications:

- 6.17 There has been a consolidation of providers in the local taxi market since 2011. The specification for the service and the contract terms must limit the possibility for unexpected additional costs whilst attracting sufficient interest from providers to achieve value for money. Consultation with current providers and careful drafting of the specification and framework agreement in advance of the formal tender will be undertaken to endeavour to mitigate this risk.

## **7. CONCLUSION**

- 7.1 It is necessary to re-tender this framework agreement which expires at the end of August 2019. In order to build in sufficient time to carry out a fair and transparent procurement process, the process must commence now. It will enable the Council to comply with its duty to provide home to school transport for all eligible pupils in the city from 1 September 2019, as well as providing other social care transport, whilst achieving value for money savings through a revised contractual specification.
- 7.2 Whilst it will remain under review, the indications are that a Dynamic Purchasing System will not generate significant financial savings and the work to ensure a fair competition will be an additional pressure on the work undertaken by officers. Therefore it is expected that the Executive Director of Families, Children & Learning will be awarding and letting a framework agreement.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. None

### **Documents in Members' Rooms**

1. None

### **Background Documents**

1. None