

# Brighton & Hove City Council

Policy and Resources Committee

Item: 122

**Subject:** Home to School Transport for Pupils with Special Needs and Other Social Care Transport Contract

**Date of meeting:** 24 March 2022

**Report of:** Executive Director of Families, Children and Learning

**Contact Officer:** Mia Bryden

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**Ward(s) affected:** All

**For general release**

## 1. Purpose of the report and policy context

- 1.1 This report seeks approval for the re-procurement of a Dynamic Purchasing System to provide home to school transport (HTST) to pupils with special educational needs, and other hired transport for vulnerable children and adults on behalf of social care teams.

## 2. Recommendations

*That the Children & Young Persons Committee:*

- 2.1 recommends to Policy & Resources Committee that it approves the procurement of a Dynamic Purchasing System for home to school transport for a term of four years from 1 September 2023 to 31 August 2027;
- 2.2 recommends to Policy & Resources Committee that grants delegated authority to the Executive Director of Families, Children & Learning to tender routes using the Dynamic Purchasing System;
- 2.4 recommends to Policy & Resources Committee that it agrees that operators should be required to pay their directly employed staff the living wage

*That the Policy & Resources Committee:*

- 2.1 approves the procurement of a Dynamic Purchasing System for home to school transport for a term of four years from 1 September 2023 to 31 August 2027;
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- 2.4 agrees that operators should be required to pay their directly employed staff the living wage.

### **3. Context and background information**

- 3.1 The 2019 introduction of a new HTST Dynamic Purchasing System (DPS), based on a reverse auction bidding process, resulted in significant loss of trust and confidence in the service and the Council from families, transport operators and schools. The service was subject to internal and external reviews and was placed on the corporate risk register. As a result, routine progress reports have been tabled for CYPS committee scrutiny.
- 3.2 The current DPS comes to an end in August 2023 and the Council has to make a decision about onward procurement of this essential statutory service in good time to allow for effective and efficient implementation.
- 3.3 A public consultation for all stakeholders on re-procurement options concluded in November 2021. Full feedback is detailed in appendix 4 in the Options Appraisal.
- 3.4 A Procurement Project Board has been meeting since April 2021. It is chaired by the Assistant Director of Education and Skills and includes representation from schools and from the Parent and Carers Council (PaCC). The board is advised by the Head of Procurement and a lawyer from the Council's Legal Team. There is also representation from licensing colleagues. The guiding principle has been to ensure that the safety and wellbeing of children and young people is at the forefront of decision making.
- 3.5 Re-procurement options have been explored by the Procurement Board, and the advantages and disadvantages of each option have been carefully considered.
- 3.6 If the recommendations are approved at Policy & Resources Committee in March 2022 this will allow four school terms to procure the DPS and the required routes.
- 3.7 The HTST Members Policy Panel in 2020 cautioned against adopting a procurement model that focused on e-auctions designed in such a way as to either give routes to the lowest bidder or accept unnecessarily high service costs on routes receiving only one bid. It is not proposed to use 'reverse auction bidding' again.
- 3.8 The HTST Members Policy Panel requested the service ascertain the benefits of cross-county collaboration in terms of procurement, provision and/or standard setting. Detailed talks have been held with both East and West Sussex, but both operate home to school transport very differently (to one another, and to Brighton & Hove) making collaboration and standardisation challenging.
- 3.9 The Panel also requested that a 'One Contract One School' approach at selected sites be considered. Only two of the nine transport operators

supported this proposal. This was initially suggested to support traffic management at Hill Park and Downsview Schools, but work carried out in partnership between operators, schools and the home to school transport team appears to have largely alleviated these issues.

- 3.10 The Panel considered the performance of the current contract and concluded that there were no substantial issues with the quality of service, as suggested by the positive feedback from the operator consultation session on 25 October 2021.
- 3.11 The Members Policy Panel Final Report of November 2020 recommended that 'Supporting young people with independent travel training should be an essential consideration and resourced where appropriate'. HTST aims to maximize independence for all its young people, and to enable that independence as early as possible. By teaching young people with SEND to travel independently we aim to increase confidence, independence and choices for young people. A new Independent Travel Training (ITT) service is being set up and will be managed by the Head of Service - HTST. Pump-priming funding has been agreed. This service aims to offer ITT to every HTST student, of any age, who is willing and able to be trained for a greater degree of independent travel. The ITT service aims to become self-funding from the savings to the HTST budget.
- 3.12 As per the Members Policy Panel recommendation, the service is also exploring an offer to parents to pay them a personal travel budget in place of the standard service, if parents are able to find alternative means of getting their child to school. This will be voluntary.

### **The Preferred Option**

- 3.13 The preferred option is an 'open bid' Dynamic Purchasing System model of procurement, with a new contract and service specification in line with key responses to the consultation. This option was endorsed unanimously by the Members' Procurement Advisory Board which met this month on 10.1.2022.
- 3.14 An 'open bid' model allows new suppliers to apply to join at any time, in contrast to a 'closed' Framework. This reduces the risk of the Council being left with too few suppliers if other suppliers drop out. This addresses some of the problems associated with the Council's previous experience using a Framework from 2015-19.
- 3.15 A DPS procurement model is common for Home to School Transport and many other services and is encouraged by the Local Government Association.
- 3.16 In the *Association of Transport Coordinating Officers* Local Authority Passenger Transport Survey 2020, the method used to procure mainstream education transport services varied between authorities. Methods or processes used to procure SEND transport services included dynamic purchasing (33); open tenders which were moving to DPS (2); framework agreements (7); DPS and frameworks (3).

- 3.18 A DPS is currently used in Adults Services for Home Care; homeless services and commissioning of services for people with learning disabilities. In West Sussex it is used by the Children's Disability Commissioning Team for special school placements for non-maintained schools
- 3.19 The DPS procurement model was not responsible for the concerns and problems that arose in 2019. It was not identified in the LGA's Independent Review: Home to School Transport Feedback Report, January 2020 as a cause of the problems which arose. The LGA found (among other things) that the procurement and implementation of the new system was rushed and that concerns which were raised were ignored.
- 3.21 A DPS is more likely than other routes to market to control costs. The service is currently running within budget despite 10% extra pupils on transport from this September 2021, but there are very limited opportunities to control demand, which has more than doubled since 2015, and continues to rise with increasing numbers of children and young people on Education and Health Care plans becoming eligible for free transport.
- 3.22 A full list of advantages and disadvantages of different procurement methods is set out on pages 6 and 7 of the options appraisal.

### **Specific considerations**

- 3.23 Routes are currently tendered individually. The Procurement Board feel this is a good configuration for the service, which most importantly can deliver continuity for children and parents, by firms with local knowledge operating within a competitive market.
- 3.24 It is proposed that the re-procurement process should include a clause in the contract that operators, where they directly employ staff, should pay and verify that they pay the Voluntary Living Wage<sup>1</sup> (VLW). This is in line with the Corporate Cleaning, Corporate Security and School Meals contracts. This will increase the costs to the Council. Without knowing the numbers of employed staff, and the rates of pay, it's difficult to say exactly what the impact on the Council's budget might be.

## **4. Analysis and consideration of alternative options**

- 4.1 Two alternative options have been explored.
- 4.1.1 Revert to a Framework. The key risk with a closed Framework and a limited number of suppliers is that the market in which transport operators are working is volatile, with an emerging shortage of drivers and Vehicle Passenger Assistants (VPAs), plus rises in the Living Wage and fuel prices. In these conditions relying on a small number of firms is a risk to the

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<sup>1</sup> The Voluntary Living Wage rate, £9.90 from April 2022, is set by the Resolution Foundation and this rate covers the whole country outside London. The National Living Wage is the term given to the statutory National Minimum Wage for people over 23. It will be £9.50 from April 2022.

sustainability of the service and cost control. A full list of advantages and disadvantages is set out on pages 7 and 8 of the options appraisal.

- 4.1.2 Bring the service in house. A fully in-house service covering all routes would cost in the region of £1.2m more than the current contracts based on part-time staff costs.
- 4.2 A smaller in-house service, covering only the ten most expensive contracted out routes would cost around £144,000 more than those 10 contracted out routes.
- 4.3 A 'hybrid' in-house and outsourced service was explored around five years ago – this was in the context of a review of the small Adult Social Care (ASC) fleet, alongside a Needs Assessment of the transport needs of all vulnerable people in the city. The outcome was that an Integrated Transport Unit manager was appointed to explore the potential for a city-wide transport service covering patient transport, community and voluntary sector, social care and Home to School/education. However, the project folded and the ASC fleet was sold. A full list of advantages and disadvantages is set out on pages 8 and 9 of the options appraisal.

## **5. Community engagement and consultation**

For a description of extensive engagement, see attached options appraisal and business case at appendix 4.

## **6. Conclusion**

It is necessary to re-tender this framework agreement which expires at the end of August 2023. 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 2023, as well as providing other social care transport, whilst achieving value for money savings through a revised contractual specification.

## **7. Financial implications**

The method of procurement of services does not have a financial value in itself and so there are no direct financial implications from the recommendations of this report. The process must be fair, transparent and provide the best value for money for the Council. The financial demands on the service have intensified in recent years with increasing numbers of children being eligible for home to school transport and appropriate, constructive procurement is a vital factor in effective budgetary control.

The financial implications of the alternative options explored are highlighted in the main body of the report and in the options appraisal.

Name of finance officer consulted: David Ellis Date consulted (11/02/22):

## **8. Legal implications**

A DPS is similar to an electronic framework agreement, but new suppliers can join it at any time. The DPS involves a two-stage process. First, in the initial setup stage, all suppliers who meet the selection criteria and are not excluded must be admitted to the DPS. Contracting authorities must not impose any limit on the number of suppliers that may join a DPS. Unlike framework agreements, suppliers can also apply to join the DPS at any point during its lifetime. Individual contracts are awarded during the second stage. In this stage, the authority invites all suppliers on the DPS (or the relevant category within the DPS) to bid for the specific contract. The DPS should be set up and run in accordance with the PCR as well as the Council's Contract Standing Orders.

Name of lawyer consulted: David Fairfield Date consulted: 14/02/2022

## **9. Equalities implications**

The statutory duty on the Council to provide free Home to School Transport for children and young people with complex special educational needs and disabilities (SEND) is aimed at ensuring their access to schooling is assured, especially given mobility issues and the fact that the nearest suitable school may be further than for children without SEND. In arranging transport, the Council must comply with the Equalities Act of 2010 which requires that children and young people with SEND are not treated 'less favourably' than their peers and that there is no indirect discrimination against their parents and carers by requiring of them more than would reasonably be required of other parents. An Equalities Impact Assessment is available in the options appraisal.

## **10. Sustainability implications**

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.

The Home to School Transport Service is responsible for around 780+ vehicle movements at peak times across the city, it is important that transport providers invest in newer more environmentally sustainable vehicles.

The service is consulting on a draft sustainability plan, outlining its part in helping to meet the Council's target of zero carbon emissions by 2030.

It is also important that the best and most efficient route planning minimises the numbers of vehicles needed by using the most suitable vehicles for each shared journey.

## **11. Other Implications**

### **Social Value and procurement implications**

The Home to School Transport Service provides significant funding in the order of £3m per annum to the local economy through its contracts to the taxi and private hire trade and public service vehicle companies. The contract could require employers delivering services on the Council's behalf to pay their employees the Living Wage, and this will be monitored through the contract management process. The procurement process will ask suppliers how they intend to deliver social value to support the objectives in the City Plan, and social value will form a significant percentage of the tender evaluation process.

Keeping business local - One potential consequence of either a DPS or a closed Framework arrangement is that operators can potentially join from any part of the country. Tendering individual routes, and using a DPS, both encourage smaller local providers to bid. Few providers from outside the city can be competitive if their base is some distance outside of the city. In order to establish a DPS the procurement will follow the restricted procedure. A restricted procedure utilises a Selection Questionnaire (SQ) prior to full tender. How these questions are answered will determine which suppliers will be entitled to bid. One advantage of using a DPS is that all operators who satisfy the selection criteria will be admitted to the DPS. This should result in operators from Sussex or the Greater Brighton area being admitted to the DPS and for journeys to schools and colleges outside the city, this can potentially provide shorter journey times at lower cost, as happens now with a small number of routes.

The criteria for admission to the Framework/DPS will specify that operators must follow specified provisions in the Brighton & Hove 'Blue Book' of local Licensing regulations. This will eliminate the advantage that operators based in more lightly regulated authorities and help to ensure fairness to local operators.

### **Risk and Opportunity Management Implications**

Potential risks arise for pupils and service users if suitable contractual arrangements are not made 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 pupils with special educational needs. The greatest risk for students is that in the absence of transport they could not attend school.

Any overspending on home to school transport and social care transport will likely impact upon other service provision within the Council and services to children and families in particular. It is considered that the procurement of a DPS, and the subsequent implementation of call-off arrangements, will achieve the greatest value for money for the Council.

A full risk register is detailed in the options appraisal.

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 DPS in advance of the formal tender will be undertaken to endeavour to mitigate this risk.

## **Supporting Documentation**

### **Appendices**

1. Options Appraisal and Business Case