

Forward Plan reference number: FP/150/09/21

Report title: Procurement of Essex ENCTS Administrative Contracts for Concessionary Bus Passes 2022	
Report to: Councillor Lee Scott; Cabinet Member for Highways, Maintenance and Sustainable Transport	
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Date: 02 February 2022	For: Decision
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County Divisions affected: All Essex.	

Confidential Appendix

This report has a confidential appendix (**Appendix A**) which is not for publication as it includes exempt information falling within paragraph XX of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

[Democratic Services staff will insert the relevant category in this section]

1. Everyone's Essex

1.1 Everyone's Essex sets out the following strategic priorities for Essex County Council (ECC):

- Strong, inclusive and sustainable economy
- High-quality environment
- Health, wellbeing and independence for all ages
- Good place for children and families to grow

1.2 An accessible and well used bus network supports all of these strategic aims; it helps older people and people with disabilities live independently, those without other means of travel access work, health and shopping and by substituting for car journeys helps improve air quality, lowers carbon emissions and congestion. Using your local bus service therefore helps support everyone in Essex. The concessionary fares scheme is a key part of the operation of the bus network, as ECC makes it easier for older people and those with disabilities to make use of buses without having to worry about the cost of travel.

1.3 Managing the scheme is a large scale and technical process, catering to more than 270,000 pass holders across Essex. ECC employs external contractors to manage the application, assessment, data management, card production, customer contact, operator reimbursement and specialist consultant functions for the scheme.

- 1.4 Approving this decision will allow ECC to effectively implement the concessionary fares scheme and to continue providing accessible transport to elderly and disabled passengers.

2 Recommendations

- 2.1 Agree to award a contract to Euclid Ltd through the West Midlands Combined Authority (WMCA) National Framework to deliver the English National Concessionary Travel Scheme (ENCTS) in Essex for a period of 4 years commencing on 1st April 2022 at a value as set out in the Confidential Appendix.
- 2.2 Agree to delegate the decision to enter into a Call-off contract to Director of Highways and Transportation.

3 Background

- 3.1 As a Transport Concession Authority (TCA), ECC has a statutory duty to provide qualifying residents with free bus passes under the ENCTS, as set out in the Transport Act 2000 and as amended by the Concessionary Bus Travel Act 2007.
- 3.2 As TCA, ECC must offer qualifying residents a bus pass allowing them to travel free of charge on registered local bus services, valid for travel anywhere within England and make arrangements to reimburse bus operators in Essex with the intention of leaving them no better and no worse off than if the scheme did not exist.
- 3.3 For the purposes of the ENCTS qualifying residents are those persons who have either reached pensionable age or have a disability which qualifies them under legislation. ECC also offer companion passes, available to passengers who are unable to travel by themselves, that allow one additional person to travel free of charge when in the company of the pass holder.
- 3.4 Currently, bus pass services are provided by two suppliers under two separate contracts which were awarded for five years in 2015 and were extended for a further two years in 2020. However, the contracts cannot be extended further and will expire on 31 March 2022.
- 3.5 MCL Limited provide consultancy services covering operator reimbursement calculations, data analysis, technical advice, support in negotiations with bus operators and bus surveys.
- 3.6 Euclid Limited provide all services relating to the application process, including managing online and printed applications, assessment of entitlement, the entry and management of data, customer contact and customer enquiries (through a dedicated call centre). Euclid also have a separate contract covering the production of bus passes, including printing, fulfilment, renewals and replacement.

- 3.7 Currently the contracts set out in 3.5 and 3.6 provide services to ECC, Southend on Sea Borough Council (SBC) and Thurrock Council (TC), with each authority paying their own share of the costs for the elements of the contracts that they use. Under the new WMCA framework agreement, ECC, SBC and TC will each award their own contracts under the framework.

Approach to re-procurement

- 3.8 A review of the approaches available for procuring the provision of ENCTS administration and consultancy services was undertaken to determine whether to continue to procure the services or bring the services in-house. Following this review, it was decided that all services should be combined into one contract and a contractor procured to deliver them. It is possible to source the services required from a Framework and the West Midlands Combined Authority National Framework contains the services that ECC Requires. It is proposed that ECC direct award a contract to Euclid Limited under the terms of the West Midlands Combined Authority (WMCA) National Framework
- 3.9 The proposed contract will include;
- 3.9.1 all services relating to the application process, including managing online and printed applications, assessment of entitlement, the entry and management of data, customer contact and customer enquiries (through a dedicated call centre)
 - 3.9.2 all services covering the production of bus passes, including printing, fulfilment, renewals and replacement; and
 - 3.9.3 consultancy services.
- 3.10 The WMCA framework is the result of a fully compliant open tender competition carried out by WMCA that appointed one supplier to provide the whole range of required ENCTS services. The WMCA framework offers the most efficient procurement approach as it allows award to a single managed supplier using established systems already integrated with one another rather than separate suppliers using different systems requiring some integration. Based on comparison between the estimated costs of the WMCA framework and current contract prices there is an anticipated saving as set out in 6.1.3. Further, awarding through the WMCA framework minimises the potential risk of data loss (across 270,000 records) and removes concerns over potential system compatibility issues as Euclid Limited is the sole supplier under the framework and already provide some of the current services to ECC. It is therefore proposed that ECC should proceed with the WMCA Framework and direct award to Euclid Limited.
- 3.12 The call-off process involves ECC identifying the services that it wishes to purchase and incorporating them into an order form that includes any additional terms and conditions ECC requires. If the recommended approach is approved then ECC will sign the framework access agreement and follow the call off

process to award the contract to Euclid Limited. ECC will enter a contract with Euclid Limited on the call-off terms and conditions and the order form for the required services

4.0 Links to our Strategic Ambitions

4.1 This report links to the following aims in the Essex Vision. Bus passes are available to people above retirement age and who have disabilities. As such they allow people to access services and amenities that they might not otherwise be able to live independently, support local their local economies. and by substituting for car journeys thereby reduce emissions. As such they underlie all our Strategic Ambitions set out below:

- Enjoy life into old age
- Provide an equal foundation for every child
- Strengthen communities through participation
- Develop our County sustainably
- Connect us to each other and the world
- Share prosperity with everyone

5.0 Options

5.1 Option 1 – Provide the service in-house (Not recommended)

This option would require significant investment in IT hardware and software, staff and training, as well needing to develop a Portal. Further a significant transfer (of over 270,000 records) between data management systems would be required with the risk of data loss. Having considered these factors and the complexity of the services and systems involved, it is recommended that this approach is not adopted.

5.2 Option 2 - Procure through the WMCA national procurement framework as set out in 3.11 above - (Recommended)

This option will allow ECC to direct award contracts necessary to undertake its' statutory duties for the provision of ENCTS bus passes through the West Midlands Combined Authority National Framework number 2014/S 033-053901 by direct awarding to Euclid Limited in line with the cost estimates set out in **Confidential Appendix A**. This will reduce the costs of the procurement process in comparison to the current contracts and is competitive with costs provided by other frameworks. Further this option would reduce system incompatibility and data loss risks.

This is the recommended option.

5.3 Option 3 – Undertake a full procurement in accordance with the Public Contracts Regulations 2015 (Not recommended)

This option would allow ECC to meet its statutory requirement to provide the ENCTS bus pass to qualifying residents but would incur additional potential risks (compared to Option 2 above), in regard to cost, timescales, compatibility and potential data transfer issues.

5.4 Option 4 – Do Nothing (Not recommended)

Doing nothing is not a realistic option as ECC has a statutory obligation to provide the services and there is no provision to extend the current agreements.

5.5 In reaching the recommended option 2, due diligence was undertaken on the options available which range from bringing the services in-house, re-procuring or using an existing framework and direct awarding under it.

5.5.1 Provide the service in-house. Providing the services in-house has the **advantage** of direct control of the service and potentially being able to affect changes more easily. This approach has been used historically by district councils (prior to 2011), however the application processes were largely handled in-house with significant outsourced IT support. There would be a requirement for specialist software and data backup systems, IT hardware, developing an online portal, specialist smart card printers, and a data management system with off-site back up. There would have to be a significant data transfer for over 270,000 records between data management systems with the concomitant risk of data loss. Having considered these factors and the complexity of the services and systems involved, it was decided not to use this approach.

5.5.2 Use a National Tender Framework for the provision of concessionary fare services. Due to the technical requirements and complexity of the ENCTS production process, several organisations have set up tender frameworks that evaluate and appoint suppliers for these functions. Being competitively tendered and having met national procurement regulations, frameworks offer benefits including significant internal resource savings and reductions in procurement costs, whilst still allowing market testing. They also offer economies of scale due to multiple local authorities procuring the same set of services.

5.5.3 Carry out a full tender process in accordance with the “Public Contracts Regulations 2015”. This approach was adopted for 2011 and 2015. While this has some advantages, i.e. it tests the price and quality of the service through market testing and allows the tendering body to specify its own requirements directly, the process is complex to design and expensive to run. In addition, in both 2011 and 2015 the tender process did not return the expected number of bids and interest (for some elements only a single bidder responded). It also requires a significant officer resource commitment by ECC at a time when there is a need to respond to other significant transport projects.

5.6 Having carefully considered all options, and having consulted with both SBC and TC, and confirming that using the approach was permissible under ECC's financial regulations and procurement policies, it is recommended that direct

awarding under a framework is adopted as this offers the optimum way of procuring the required services.

5.7 As part of the framework approach, ECC considered three major ENCTS administration service framework agreements. These were:

- a) Nottinghamshire County Council's Smart Ticketing Platform Framework, set up and managed by NCC.
- b) SAM (Smart Application Management) Framework Agreement. SAM is a not for profit, membership organisation set up to assist local councils, commercial bus operators and other public sector bodies access ENCTS services and systems.
- c) The West Midlands Combined Authority National Framework. This is a 10 year Framework and was created by the WMCA (formerly Centro) to supply services to both themselves and to other local authorities for services related to the provision of the ENCTS.

5.8 Comparisons were made between the above frameworks and the WMCA framework was deemed most suitable for ECC requirements, being more cost effective than the current contract arrangements and is also competitive with the other national frameworks. Option 2 is therefore the preferred option.

6.0 Issues for consideration

6.1 Financial implications

6.1.1 The Medium Term Resource Strategy (MTRS) annual draft budget for concessionary fares for 2022/23, 2023/24 and 2024/25 is £17.949m. The negotiated fixed pot arrangement accounts for the majority of spend annually, but indicatively, expenditure in relation to the administration contracts is budgeted at £300,000 per annum.

Financial implications arising from option 1 (not recommended)

6.1.2 Due to the intensive resource and technology investment that would be required to bring ENCTS administration services back in house, it is not considered to be financially viable or value for money and has therefore been discounted.

Financial implications arising from option 2 (recommended)

6.1.3 Confidential appendix A includes an analysis of expected pricing based on forecast usage requirements of the framework over the next 4 years. The forecast cost is averaged over 4 years to calculate a cost per annum as levels of passenger production fluctuates with the number of renewals, applications and customer transactions in any given year. Based on the expected passenger requirements placed on the framework, an average annual cost of £262,000 is forecast representing an overall saving of £38,000 per annum over the next 4 financial years, 2022/23 to 2025/26. Note that just as the cost will vary year on

year dependent on the usage of the framework, the saving will also necessarily vary.

- 6.1.4 Sensitivity analysis has been undertaken to assess the impact of the variation of customer transactions and pass requirements on the framework. The table below shows the expected average annual framework cost as a result of increased demands on the framework on a percentage basis from the base case;

	Estimated cost over 4 years £'000	Estimated average annual cost £'000	Draft annual budget 2022/23 onwards £'000	Estimated average annual saving £'000
Framework passenger demand: Base case	1,047	262	300	(38)
Increased passenger demand: 5% on base case	1,082	271	300	(30)
Increased passenger demand: 10% on base case	1,109	277	300	(23)
Increased passenger demand: 20% on base case	1,161	290	300	(10)

- 6.1.5 Expenditure under the framework is containable within the existing MTRS on an overall average basis over the 4 year period. As shown within the analysis above, there is also headroom within the budget to enable fluctuation due to annual customer demand to be absorbed. If, due to a peak in the number of customer transactions or pass requirements in any given year, expenditure exceeds the available budget, mitigations will be required to be sought from within the wider IPTU budget.

Financial implications arising from option 3 (not recommended)

- 6.1.6 Based on the same profile of customer transactions and pass requirements forecast in order to assess the financial implications under option 2, the comparable existing current contract pricing averages £294,000 per annum over a 4 year period. This represents an 11% increased cost over the same period when compared with the framework put forward in option 2.
- 6.1.7 The contracts have not been tendered since 2015. While there is some provision within the existing contracts for price increases in line with cost inflation (postage, for example), it can reasonably be expected that a new procurement may return costings that include up to 7 years of inflation in some areas which would further erode value for money in comparison to the framework pricing in option 2.
- 6.1.8 In conjunction with the operational challenges posed by this option outlined in paragraph 3.10.2, it is not considered to be best value for money to proceed with a full re-procurement per option 3 in this instance.

6.1 Legal implications

- 6.2 ECC as TCA has a statutory duty to provide these services and failure to do so will be a breach of those duties.
- 6.3 ECC intends to call off from the WMCA Framework and direct award to Euclid Limited and must ensure it complies with the call off processes under the Framework Agreement.
- 6.4 The WMCA Framework is for a period of 10 years which is in excess of the usual term of 4 years. Frameworks can exceed 4 years in length in exceptional circumstances where it can be justified (e.g. level of investment involved). (Public Contracts Regulations 2015 regulation 32(3)).
- 6.5 The justification for the WMCA Framework term was published in the original procurement documents (OJEU ref 2013/5117-199987). The reasons were: the substantial financial investment that was needed in order to deliver the services and a longer Framework duration was needed in order to recover the financial investment.
- 6.6 The time limit for challenge to the establishment of the framework has passed. However, there may be some residual risk of challenge as the awarded contract will be a new contract.
- 6.7 SBC and TC will be calling off from the WMCA Framework in their own right and as a result, ECC will not be liable for any contractual breach by either Council.

7 Equality and Diversity Considerations

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.
- 7.4 The protected groups affected in this case are older people and people with visual, audio and a range of physical disabilities, people with learning difficulties and people with some mental health conditions to travel for free on registered local bus services in Essex and across England.

8 List of Appendices

Appendix A: Confidential appendix for prices of services

Appendix B: EqIA

9 List of Background papers

None

The 'sign off' boxes below are deleted for cabinet reports but not for CMAs.

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Lee Scott, Cabinet Member for Highways, Transportation and Sustainable Travel	15/02/21

In consultation with:

Role	Date
Andrew Cook, Director of Highways and Transportation	11/02/22
Executive Director, Corporate Services (S151 Officer) .	10/02/222
Stephanie Mitchener	
[of behalf of] Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	10.02.2022
Laura Edwards on behalf of Paul Turner	