

**Forward Plan reference number:** FP/497/08/19

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| <b>Report title:</b> Passenger Transport Dynamic Purchasing Framework Agreement                                                                                                                        |                      |
| <b>Report to:</b> Cabinet                                                                                                                                                                              |                      |
| <b>Report author:</b> Andrew Cook, Director, Highways and Transportation                                                                                                                               |                      |
| <b>Date:</b> 22 October 2019                                                                                                                                                                           | <b>For:</b> Decision |
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| <b>County Divisions affected:</b> All Essex                                                                                                                                                            |                      |

## **1. Purpose of Report**

- 1.1 Essex County Council (ECC) has to provide transport services for a variety of reasons. In order to do this, we have to purchase transport services in the open market. In recent years we have bought many services via a dynamic purchasing system (DPS) under which transport operators join a framework agreement and can submit bids for particular work. This enables us to buy quickly and flexibly at competitive prices in a way which complies with the law.
- 1.2 The current arrangement expires on 21 January 2020 and this report considers the future and asks the Cabinet to agree to create a replacement framework.

## **2. Recommendations**

- 2.1. Agree to procure a Passenger Transport Dynamic Purchasing Framework for the lots set out in paragraph 3.5 for a period of two years with the option to extend on a yearly basis up to a maximum of two further years (4 years maximum).
- 2.2. Agree that the Director, Highways and Transportation may appoint operators to the DPF that meet the required standards that are set out in the DPS accreditation and enrolment process.
- 2.3. Agree that any contract for transport requirements which can be met via the DPS may be procured using the DPS in a way which complies with the DPS.
- 2.4. Agree that the decision to procure and award individual contracts for transport services will be subject to approval in the usual way in accordance with the constitution.

### **3. Summary of issue**

- 3.1 ECC has a number of legal obligations to provide transport services for children and vulnerable adults attending school or to receive care services.
- 3.2 In addition the Transport Act 1985 places ECC under a statutory duty to provide bus services which are not provided by the market where it considers that such services ought to be provided.
- 3.3 At present, contracts for the provision of transport are awarded following a competitive tender process through a Dynamic Purchasing System (DPS) which was set up by asking transport companies to join the framework. The current framework expires on 21 January 2020. When the framework expires ECC will have no lawful way of awarding new transport contracts other than by individual tenders, although contracts which have been awarded before expiry will continue to operate.
- 3.4 Based on this review it is recommended that a new DPS be procured. ECC have the resource internally to procure a DPS without external support. Whilst there is no guaranteed volume of work to be let to contractors under the DPS, the estimated total pipeline for the 4 years is £160-£200 million.
- 3.5 It is proposed that the Framework Agreement under which the DPS will operate will have multiple lots to cover all aspects of passenger transport requirements and the ability to include combinations of requirements. The four proposed lots are:
  - Home to School - estimated £46m for the 4 years,
  - Social Care - estimated £17m for the 4 years,
  - Local Bus services - estimated £34m for the 4 years,
  - Special Educational Needs - estimated £65m for the 4 years.
- 3.6 The opportunity to join the framework will be advertised through OJEU and a standard Selection Questionnaire (SQ), enrolment and accreditation stage will be required. This enrolment and accreditation stage will require operators to meet the required legal (to include licences and insurances), safeguarding, financial standing standards giving the Council, and passengers assurance to the suitability of the operator. Only operators that meet or exceed these standards will be appointed to the DPS. It is proposed that operators may apply to join the DPS at any time and the number of suppliers accredited will not be limited. The current system has over 100 operators.
- 3.7 Under the current system, contracts are awarded to the lowest price bid which meets the Council's requirements. This is considered to have generally worked well in practice and it is proposed that this continues.

- 3.8 Within the DPS / Framework Agreement mini competitions will be published for operators to submit bids. This will be done as an e-auction in most instances. In an e-auction operators can see their ranking compared with other bids and can amend their bids. Although savings cannot be attributed specifically to the operation of a DPS as the packages tendered will vary from year to year, the current DPS has been successful in that it is easy to use and there has been an increased number of bids per contract, averaging 4 to 5 which in turn promotes greater competition, and the ability for bidders to revise their price can only help with competition. We do not generally use e-auctions for local bus services as combination bids are permitted which means that the cost of bids cannot be automatically assessed.
- 3.10 Each annual tender round is subject to its own decision-making process, whereby a decision is made about which transport should be bought, procured and awarded, and the framework is purely the mechanism to go to market to procure these contracts.

#### **4. Options**

- 4.1 Option 1 - Do nothing. This option would mean reverting to the standard OJEU procurement process, undertaking a stand-alone tender each year. Operators would be required to submit their compliance responses each year along with their bids. All compliance information would have to be evaluated each year. This would result in:
- Increased time for suppliers to submit tenders
  - Increased time for ECC to assess bids
  - Longer procurement timescales
  - Increased time to procure adhoc transport
  - More resource intensity of process leading to increased cost
  - Reduced market engagement and participation
- 4.2 Option 2 - Re-procure a DPS framework (recommended option)
- Simpler procurement process
  - Ease of use for suppliers
  - Less resource for ECC
  - Shorter procurement timescales
  - Less time to procure ad-hoc transport
  - Cheaper process than full OJEU for annual tender round
  - Increased market engagement, participation and competitive tension to achieve best value
  - New suppliers can accredit throughout the life of the framework
- 4.3 Option 3 Use another framework procured by another authority. This would avoid the need for us to set up a framework, but we have not been able to identify a suitable framework which includes the major Essex operators.

- There may be limited frameworks available that are open to ECC
- Transport requires a local supply chain to prevent 'dead' mileage and increased cost
- Does not support local small/medium enterprises or reflect the fact that there are many operators who do not operate outside Essex and who are unlikely to be on other authorities' frameworks
- May reduce the local market and sustainability of the supply base
- May be more resource intensive to issue call offs dependent upon the framework mechanism e.g. if not a DPS

## **5. Financial implications**

- 5.1 This report seeks approval to re-procure the Passenger Transport Dynamic Purchasing Framework. The framework itself does not commit ECC to any expenditure, it brings together a pre-approved register of commercial operators that ECC can award contracts to, through a competitive mini tender or e-auction, for the provision of transport for children, vulnerable adults and discretionary local bus services.
- 5.2 Each mini-competition or e-auction contract will be subject to its own governance which will confirm individual contract costs and any corresponding budget implications.
- 5.3 The ability to ensure ongoing value for money for the Council will be enabled through the originating framework tender where the Selection Questionnaire will test, among legal, safeguarding standards, vehicle standards, the financial standing of each operator appointed to the DPS, to meet a minimum standard requirement. In addition, each individual contract awarded through the framework will be assessed 100% on price. However, the minimum standards ensure that all bids meet minimum safety and operating requirements.
- 5.4 The proposal to continue a managed framework approach to delivery will allow ECC to continue to deliver projects with minimal procurement costs compared to running a full procurement and to ensure maximum market engagement and participation to enable the best price to be secured which would not be the case in the Do Nothing option.
- 5.5 The ability to secure the best price possible is particularly important regarding Home to School transport where across the country SEN pupils are increasing year on year. The number of children in receipt of EHCPs nationally in the period 2015-2018 saw a 47% increase whereas in the period 2010 – 2014 the increase was only 4%. In Essex there was a 22% increase in volumes between 2015-2018; of this increase around 33% of all EHCP eligible children receive transportation. This increasing demographic is bringing increased budgetary challenges to the authority.

## Re-procurement of Passenger Transport Dynamic Purchasing Framework Agreement

The table below represents the current 3-year budgets for transport which are procured through the DPS.

| <b>Service Area</b>               | <b>2019/20 actual realigned budget £m</b> | <b>2020/21 £m</b> | <b>2021/22 £m</b> | <b>2022/23 £m</b> | <b>Total £m</b> |
|-----------------------------------|-------------------------------------------|-------------------|-------------------|-------------------|-----------------|
| <b>H2S Transport – SEN</b>        | 14,011                                    | 15,270            | 16,802            | 18,994,           | 65,077          |
| <b>H2S Transport - Mainstream</b> | 10,844                                    | 11,604            | 11,527            | 11,487            | 45,461          |
| <b>Local Bus</b>                  | 8,354                                     | 8,317             | 8,475             | 8,636             | 33,781          |
| <b>ASC</b>                        | 3,625                                     | 4,523             | 4,524             | 4,525             | 17,197          |

## 6 Legal implications

- 6.1 The restricted procurement process to establish a dynamic purchasing system will need to be run in compliance using the restricted procedure in the Public Contracts Regulations 2015. Competitions using the DPS must be carried out in accordance with Regulation 34 and the rules established when the DPS is set up.

## 7 Equality and Diversity implications

- 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.

**8 List of appendices**

Appendix 1 – Equality impact assessment

**9 List of Background papers**

None

## Appendix 1

### Equality Impact Assessment

**Reference: EQIA120468880**

#### Executive summary

Title of policy or decision: Re-procurement of Passenger Transport Dynamic Purchasing Framework Agreement

Describe the main aims, objectives and purpose of the policy (or decision):  
Passenger Transport is commissioned to procure its statutory transport obligations for children, young people and Adults in Essex and also to secure its discretionary obligations in respect of local bus services. The current Dynamic Purchasing Framework Agreement (DPS) expires in January 2020 and we are now looking re-procure for the replacement DPS.

What outcome(s) are you hoping to achieve: Enable inclusive economic growth, Help people get the best start and age well, Help create great places to grow up, live and work, Transform the council to achieve more with less

Which strategic priorities does this support? - Enable inclusive economic growth: Help people in Essex prosper by increasing their skills, Target economic development to areas of opportunity

Which strategic priorities does this support? - Help people get the best start and age well: Help keep vulnerable children safer and enable them to fulfil their potential, Enable more vulnerable adults to live independent of social care, Improve the health of people in Essex

Which strategic priorities does this support? - Help create great places to grow up, live and work: Help to secure stronger, safer and more neighbourly communities, Help secure sustainable development and protect the environment, Facilitate growing communities and new homes

Which strategic priorities does this support? - Transform the council to achieve more with less: Limit cost and drive growth in revenue, Develop the capability, performance and engagement of our people

Is this a new policy (or decision) or a change to an existing policy, practice or project: a change to an existing policy, practice or project

Please provide a link to the document / website / resource to which this EqIA relates: this is work in progress

## Re-procurement of Passenger Transport Dynamic Purchasing Framework Agreement

Please upload any documents which relate to this EqIA, for example decision documents: this is work in progress

### Assessing the equality impact

Use this section to record how you have assessed any potential impact on the communities likely to be affected by the policy (or decision): Service Users and Communities will not be directly affected by the new passenger transport purchasing system. Separate assessments and EQUIA's are undertaken each year in relation to the specific services that are subject to tender.

Does or will the policy or decision affect:

Service users: No

Employees: No

The wider community or groups of people, particularly where there are areas of known inequalities: No

Which geographical areas of Essex does or will the policy or decision affect: All Essex?

Will the policy or decision influence how organizations operate: No

Will the policy or decision involve substantial changes in resources: No

Is this policy or decision associated with any of the Council's other policies: No

### Description of impact

Description of Impact. If there is an impact on a specific protected group tick box, otherwise leave blank.:

No impact on any of the above groups

### Action plan to address and monitor adverse impacts

Does your EqIA indicate that the policy or decision would have a medium or high adverse impact on one or more equality groups: No

### Details of person completing the form

I confirm that this has been completed based on the best information available and in following ECC guidance: I confirm that this has been completed based on the best information available and in following ECC guidance

Date EqIA completed: 23/05/2019

Name of person completing the EqIA: Nick Blackall



## Re-procurement of Passenger Transport Dynamic Purchasing Framework Agreement

Email address of person completing the EqIA: Nick.Blackall@essex.gov.uk

Your function: Corporate and Customer Services

Your service area: Procurement Services

Your team: Category and Contract Management

Are you submitting this EqIA on behalf of another function, service area or team: No

Email address of Head of Service: Laura.Lee@essex.gov.uk