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Report title: Education Travel Contract Extensions and Awards 2022	
Report to: Cabinet	
Report author: Councillor Lee Scott - Cabinet Member for Highways Maintenance and Sustainable Transport	
Date: 18 January 2022	For: Decision
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County Divisions affected: All Essex	

This report includes a confidential appendix which is not for publication by virtue of paragraph 3 of Schedule 12A to the Local Government Act 1972.

1. Everyone's Essex

- 1.1 Everyone's Essex sets out our strategy for a strong, inclusive and sustainable economy; a high-quality environment; health, wellbeing and independence for all; and for making Essex a good place for children and families to grow. A strong bus network is a key enabler for all these strategic aims. It helps people access education, jobs, services and shops, supporting our schools, colleges, high streets and local employment. It gives people an alternative to car travel, helping to reduce congestion and carbon emissions, and so contributing to our net zero carbon goals. It enables people to live independently and to access friends and family, supporting their health and wellbeing.
- 1.2 Our overall strategy for improving the bus network, linked to the national "Bus Back Better" strategy has been published in previous Cabinet reports as the Essex Bus Service Improvement Plan. This report is to agree the extension of existing contracts and the procurement of new education transport contracts. The extension or renewal of these contracts will ensure that we continue to meet our statutory obligations to enable children and students to access education. This will help to achieve our priorities in Everyone's Essex by supporting access to education. It will also reduce congestion, air pollution and carbon emissions that result from a high number of car journeys to and from schools.

2 Recommendations

- 2.1 Agree that the Director, Highways and Transportation, is authorised to extend any education transport contracts which expire in July 2022 for a one year period where extension is permitted under the terms of the contract and where he considers this to be in the Council's best interests.

- 2.2 Agree that the Director, Highways and Transportation, is authorised to procure new contracts as set out in Appendix C using a single sealed bid via the Council's existing dynamic purchasing system where extension of the current contract is not permitted or where extension is not considered to be in the Council's best interests. Any new such contract is to be for a period determined by the Director, Highways and Transportation initially for a maximum of three years and on terms which give the Council the right to extend for up to a further 3 years.
- 2.3 Agree that new contracts will be awarded on a 100% price basis following a single sealed bid on the dynamic procurement system.
- 2.4 Agree that the Director, Highways and Transportation may determine how the price evaluation model takes account of the cost of changing contracts to meet customer demand after consulting the Director, Procurement.
- 2.5 Agree that the Director, Procurement will develop a procurement model to be used for future procurements of transport contracts which seeks to reduce carbon emissions and improve quality and social value, but note that this model will not be available for the procurements in this report.

3 Background and Proposal

- 3.1 The Council has a statutory responsibility under education law and its Education Transport Policy to provide home to school transport to pupils who meet the eligibility criteria.
- 3.2 This report relates to transport arrangements for pupils who travel on transport secured by the Council from commercial operators where the current contracts expire at the end of the 2021 - 22 academic year in July 2022.
- 3.3 The Council also arranges for a travel allowance for eligible pupils to arrange their own travel, where this represents better value for money. Where this is the case, travel allowance as a whole is reviewed periodically to ensure it represents value for money and a procurement exercise may be necessary where this is not the case. This process will continue.
- 3.4 In order to meet our continuing requirement to provide transport, action must be taken in respect of 107 contracts to either extend or re-tender them to ensure that transport is provided for the relevant children from September 2022. These contracts are due to expire in July 2022 covering the full spectrum of primary, secondary and special school transport affecting 1922 pupils. The remaining 55 contracts are either longer-term contracts where no action is required or no longer required.
- 3.5 For the purposes of this paper, the table and commentary below illustrate the estimated current 2021/22 contract value in financial terms at the time of this report:

Number to be offered for 1 year extension at 0% price increase	54	Current annualised value of contracts to be extended for 1 year at 0% price increase	£5,215,752.70
Number identified for tender	53	Current annualised value of contracts identified for tender	£10,534,164.30
Number of ongoing long term contracts	40	Current annualised value of ongoing long term contracts	£13,195,946.50
Number of contracts no longer required	17	Current annualised value of contracts no longer required	£601,363.30
Number of contracts non applicable	1	Current annualised value of contracts non applicable	£106,344.90
Number of contracts in total	165	Current annualised value based on number of school days travelled	£29,653,571.70

3.6. A total of 54 contracts have been identified as suitable for extension for one year. The conditions of these contracts allow for such an extension. This would mean that the contracts in question would continue to be operated by the current contractor (subject to agreement) at the existing operating price. If the requirements have materially changed, and extension at 0% is not possible, such requirements will be included in the proposed tender process and new contracts awarded.

3.6.1 The reasons for concluding that extension of the 54 contracts is recommended are as follows:

- The contract(s) have been tendered in one of the recent tender rounds.
- The cost of that contract is considered to be appropriate based on the nature and complexity of the contract and passengers and the potential impact of any change to that both financially and reputationally.
- There is opportunity to renegotiate the operating price of some of the contracts based upon reduced pupil numbers.
- It would not benefit pupils, schools or the Council in the short term to change the contractor for a number of special needs contracts currently operating where many passenger needs are complex. There are a number of reasons for this including the investment an Operator needs to commit to at the start of a contract, stability for the school and the reputational impact on the Council of further change. An extension would provide greater flexibility for the Council to consider more efficient and effective models of delivery in the medium to longer term such as combining passengers or routes.
- The contracts were awarded on terms which permit them to be extended on this occasion.
- Contracts are not suitable for clustering etc.

3.6.2 A total of 53 contracts have been identified as likely to require a new tender for some or all of the following reasons:

- The maximum term of the contract duration, including any extension clauses, has been reached.
- Material change of requirements due to natural variation in pupil numbers due to age or entitlement.
- A review of the current contract suggests that better value could be achieved by retendering, based on comparing the contract price with the current and historical data.
- The services in a contract could benefit from an integrated approach such as cluster contracts, use of existing public transport and shared transport across passenger groups.

3.7 Where requirements need tendering, the procurement will be undertaken via the Council's existing dynamic purchasing system ("DPS") but using a single sealed bid process. Contracts will be awarded for a period of up to a maximum of three years with the option to extend for a further 3 years. Routes being tendered will be tendered to all existing operators on the DPS and therefore opened up to competition. Contracts will be awarded based on price only. Operators will already have met all mandatory requirements such as safeguarding checks etc and meeting some environmental standards, before being admitted to the DPS. The price evaluation model will take account of the cost of change since the requirements for this transport change regularly as children join or leave schools, or move home. There is also a contractual requirement to minimise mileage which also reduces carbon emissions

3.8 COVID-19 has placed significant pressures on the transport market and during previous lockdowns, ECC agreed payment terms in line with relevant central government Public Procurement Notes when schools were closed. Should the County face further lockdowns where schools are advised or required to close the contract will seek to minimise the contractual requirement to pay, but the Cabinet Member is likely to need to take a decision with respect to financial support for the industry. In doing so he will want to consider advice from the Department for Transport, Department for Education and Crown Commercial Services as well as taking his own legal advice. In the event schools close on an individual basis for short periods of time due to a Covid outbreak, the temporary closure clause (sometimes called the 'snow day' clause) within the contract may apply provided operators comply with the contract.

3.9 A number of risks have been identified in relation to the stability of the transport market and the Procurement of Home to School services. These include:

- The financial impact of Covid-19 and the risk of Operators exiting the market
- A national driver shortage
- Vehicle availability as a result of both Covid-19 and Brexit

- Further information on the risks and the proposed mitigations against these risks is outlined within the Confidential Appendix.

3.10 Following recent market and stakeholder engagement sessions, the following is proposed in relation to the Procurement of Home to School Transport services in 2022:

- We will speak to the operators about how to procure in a way which ensures that the cost of changing routes results in a fair alteration to the contract price.
- More detailed information will be issued alongside the service specification for SEN contracts as to how each contract is currently being delivered which will reduce the impact of change for our vulnerable passengers.
- Bids will be accepted via a sealed bid process using the dynamic procurement system.

3.11 ECC tender these contracts based on capacity and the Operator is able to make provision to sell any spare capacity or use existing public transport routes. This creates a more sustainable and accessible transport network.

4 Links to our Strategic Ambitions

4.1 This report links to the following aims in the Essex Vision

- Provide an equal foundation for every child
- Strengthen communities through participation
- Develop our County sustainably
- Connect us to each other and the world

4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:

- enable ECC contracts to continue to specify bus provision at mainstream schools where these are currently specified, rather than multiple smaller vehicles to reduce volume and congestion
- continuing to encourage registration of services with the Traffic Commissioner will enable the wider community to access services
- for mainstream services, ECC will accept a daily rate or ticket agreement price which will continue enable the existing bus network to be used
- creating cluster contracts for out of County schools will enable vehicle efficiencies across 40 SEND schools in 2022/23 and more in future years

4.3 This report links to the following strategic priorities in 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- A high quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow

5 Options

5.1 Option 1: Where contractual conditions allow, extend contracts at 0% increase to the current daily rate, tender those where this approach cannot be achieved and tender those identified as requiring tender (recommended).

5.1.1 A total of 54 contracts have been identified as suitable for extension – the conditions of these contracts allow for such an extension. The contracts in question will continue to be operated by the current contractor (subject to agreement) at the existing contract cost, unless requirements materially changed.

5.1.2 A total of 53 tenders have been identified a requiring to be tendered where extension is not permitted or where extension is not considered to be in the Council's best interests

5.1.3 Where a tender process is necessary; the procurement will be undertaken via the Council's dynamic purchasing system using a single sealed bid. Contracts will be awarded for a period of up to a maximum of three years, with the option to extend for up to a further three years.

5.1.4 Option 1 is the recommended option because it minimises disruption for service users, is permitted under the terms of the existing contract and is the preferable value for money solution.

5.2 Option 2: Tender all contracts (not recommended).

5.2.1 The Council has statutory and policy-based obligations to provide transport for pupils meeting the eligibility criteria.

5.2.2 To tender all contracts is likely to increase costs to the Council and cause unnecessary disruption to service users and schools. Contracts were previously awarded through a competitive tender process with the option to extend. An extension for a year is based upon a 0% price increase to the current daily rate.

5.2.3 This option is not recommended for the above reasons.

6 Issues for consideration

6.1 Financial implications

6.1.1 The table below summarises the budget envelope for the current and future financial years for Home to School Transport hired transport, public tickets and travel allowances:

	2021/22 Approved Budget			2022/23 Aspirational Budget			2023/24 Aspirational Budget		
	Mainstream £000	SEND £000	Total £000	Mainstream £000	SEND £000	Total £000	Mainstream £000	SEND £000	Total £000
Hired Transport	21,000	10,817	31,816	11,682	22,680	34,362	12,616	24,494	37,111
Transport Recharge	-	3,450	3,450	-	3,450	3,450	-	3,450	3,450
Public Tickets	2,759	398	3,157	2,824	405	3,228	2,899	418	3,316
Client Travel Allowances	203	431	634	209	443	652	213	453	666
Education Recoupment	-	79	79	-	81	81	-	82	82
Contributions from OLA	-	79	79	-	82	82	-	85	85
Concessionary Fares	184	-	184	192	-	192	198	-	198
Net Budget	23,778	8,195	31,973	14,523	20,077	34,599	15,530	21,912	37,443

- 6.1.2 The proposed procurement approach to extend 54 contracts by 12 months is likely to deliver the best value in overall cost if a nil percentage price increase can be negotiated with operators. As well as securing continued service delivery relatively quickly, the Authority has an opportunity to remain with existing contractors on existing terms and conditions.
- 6.1.3 For the 53 contracts where a retender is now required, it should be noted that the costs of the contracts will fall across two financial years, as travel arrangements are being sought for the 2022/23 academic year. Once evaluated, service orders will be raised in each financial year accordingly.
- 6.1.4 The current estimated value of the contracts that are continuing or are recommended for extension or re-procurement for the 2022/23 financial year is £29.65m. In isolation, this is containable within the £34.4m hired transport gross budget envelope. However, this is on the basis that they continue to operate or are re-procured on an exact like for like basis, with all routes running for 190 school days and with no in year cost escalation. There is significant and growing cost pressure in this area and detailed below, there are a number of complex risks to consider meaning that the cost pressure is not expected to ease in 2022/23.
- 6.1.5 There is significant risk that, when awarding the contract extensions and re-procurements, it will certainly not be able to happen on an exact like for like basis for the following reasons:
- Changing pupil numbers for the new academic year for mainstream and SEN population
 - New transport requirements for new pupils within the system
 - The current trend of increasing complexity of need within the SEN population
 - Ongoing industry pressures due to COVID-19 including driver shortages causing increased fiscal pressure on contract delivery
 - Unable to re-procure and/or extend contracts at 0% inflation
 - Impact of COVID-19 on current passenger needs resulting in more complex travel requirements
 - Increasing eligibility due to the impacts of COVID-19 on the economy

6.2 Legal implications

- 6.2.1 The proposals set out are permitted within the DPS and are compliant with the Public Contracts Regulations 2015. The proposals are designed to support the Council in delivering value for money.

6.2.2 This report does not make any proposal that payments should be made for services that are not being delivered, but it refers to the fact that if there is a lockdown the Council may need to consider making such a payment. If this is being considered the Council must consider any subsidy control implications, which will be dependent upon the specific circumstances applicable at the time. Guidance cannot supersede subsidy control rules. Breach of the subsidy control rules can have serious legal and financial implications for ECC and for the recipient.

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.

8 List of Appendices

Appendix A - Confidential Appendix

Appendix B - Equality Impact Assessment

Appendix C – List of contracts

9 List of Background papers

None