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Report title: Extension of Contracts for Local Bus Services	
Report to: Cabinet	
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Date: 15 September 2020	For: Decision
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County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 This report relates to contracts for 80 local bus services which ECC subsidises. One of these contracts is due to expire in March 2021 with the remaining 79 contracts expiring in July 2021.
- 1.2 This report asks the Cabinet Member for a decision to extend these 80 local bus contracts at the current rate until July 2022.

2. Recommendations

- 2.1 Agree that, subject to agreement with the operator, the Council will extend the 80 contracts set out in Appendix A until July 2022 with the current operator at current prices, at an annual cost of £7,475,201.85.
- 2.2 Agree that, where extension of services cannot be agreed with an operator, to go out to the market to procure a contract for the services for the period to July 2022 on terms and conditions to be agreed by the Cabinet Member for Education and Skills

3. Summary of issue

- 3.1 ECC has 93 bus service contracts that are due to expire before 2022 and a review of the contract and a public consultation on the services was planned to take place in 2020 to inform future service provision. Unfortunately, due to the Coronavirus outbreak and resulting lockdown impacting upon passenger numbers on local bus services, this has not been possible. It is therefore proposed that ECC extend the bus service contracts in order for a meaningful public consultation to be carried out. All services proposed for extension are set out in Appendix A.
- 3.2 Whilst the bus service contract terms allow for such an extension at existing contractual rates, extension can only take place by mutual agreement. Where

possible, ECC will agree extensions to service provision and any contract extensions awarded will align contract length to July 2022 allowing ECC the necessary time to undertake a review and consultation exercise. We will procure replacement services on the same basis as the current services were procured. If necessary, replacement Services will be procured using the Proactis Purchasing System (PPS) which is an OJEU compliant procurement route.

- 3.3 During the next 12 months, ECC propose to commence a public consultation on the future of the bus services included in this paper. This consultation will explore the options for re-shaping the local bus network and investigate how bus services are run and commissioned and consider how ECC could devolve more of that activity to communities and their representatives. The consultation will also seek to identify the journeys that people feel are the most important to them. It is proposed to delegate to the Cabinet Member for Education and Skills to agree the scope of the consultation and to authorise that ECC can go out to public consultation.
- 3.4 ECC will also consider how to procure future services beyond 2022 as flexibly as possible to meet demand and to ensure that in the longer term ECC continues to achieve the value for money policy threshold of £5 per passenger journey. This includes seeking ways of operating services in different ways where appropriate. This might include demand responsive services or the use of accessible minibuses rather than full size traditional buses. The outcome of this work will be subject to further governance in due course. It should be noted that the current pandemic means that capacity on all buses is severely restricted and it is not currently possible to assess the cost per passenger journey in the way intended. It is therefore proposed to extend all services on current basis until July 2022.
- 3.5 It is necessary to undertake contract extensions or re-procurement as soon as possible in order to resolve services before the consultation is commenced. Where new providers are procured, they need to register new services with the Traffic Commissioner before they can commence.

4. Options

- 4.1 **Option 1 – Do Nothing** – all contracts would end as they reach the date of expiry on each of the existing contracts, (all listed in appendix A). This option would result in many communities having vastly reduced bus services to key services. **(Not recommended).**
- 4.1.2 **Benefits:** By not extending or re-procuring these contracts expenditure of £5,032,618 would not be incurred in 2021/22 (representing approximately 8 months of the annualised expenditure on 79 contracts and a full year saving on 1 contract). The annualised expenditure for these contracts in 2021/22 is £7,475,202.
- 4.1.3 **Potential Issues:**
- If these local bus services cease to operate in July 2021, communities will be left without services.

- In February it was agreed that ECC would seek to grow services – in particular those above the cost per passenger threshold to increase passenger transport use. Subsequently a Department for Transport (DfT) bid was secured:
 - To improve current local bus services
 - To restore lost bus routes where most needed
 - To support new services or extensions to services
- The funding awarded by DfT of £964,000 cannot be used for its intended purpose if the extensions are not agreed since the Council will not be operating local bus services.
- ECC have not consulted on any potential withdrawal of these services and therefore it does not meet the objectives of the current ECC Passenger Transport Strategy and there is a risk of legal challenge.

4.2 Option 2 – Extend all contracts listed in appendix A (or retender if extension cannot be agreed) – This approach would maintain services as they currently operate and ECC will tender and award any contracts where extension is declined by the current operators. **(Recommended)**

4.2.1 Benefits:

- Where an offer of contract extension is accepted by the operator, the service continues under the existing contracted terms and there is no exposure to price increases for the period of extension.
- Communities would retain access to all current services, maintaining existing links to key services at the times and locations they serve.
- These extensions will allow the team to review current services and identify those that could be provided in a different way. In addition, timetable requirements that were set in 2016 may not meet current passenger travel patterns, and a full 12 week public consultation would enable current demand to be identified.
- By reviewing services, it would allow opportunities to reduce future costs and use the DfT grant to grow bus use:
 - To improve current local bus services
 - To restore lost bus routes where most needed
 - To support new services or extensions to services

4.2.2 Potential Issue

- The contracts were last procured in 2016 and there is no allowance for inflationary uplifts within the existing contracts. Therefore, if demand has changed, some contracts may not reflect current market value and operators may decline to extend at current rates on that basis. This is thought to be unlikely and negotiation takes place to reduce this risk, however if ECC need to re-procure those contracts there may be an increase to current cost, creating a revenue pressure which cannot be managed within the existing budget.

Option 2 is the recommended approach as this allows time for ECC to design future service provision to reflect the weight of actual journeys undertaken on each route.

5. Other Implications

5.1 Financial implications

5.1.1. The existing budget provision included in the Medium Term Resource Strategy (MTRS) for local bus is set out in the table below:

Local Bus	2020/21 £m	2021/22 £m	2022/23 £m
Annual Contracted expenditure	9.794	9.194	8.194
Annual Non Contracted expenditure	0.077	0.077	0.077
Annual Income	-2.050	-1.294	-1.134
Controllable Net Budget	7.821	7.977	7.137

5.1.2 The total annual cost for the contracts listed in appendix A proposed for extension is £7,475,202 which is funded from part of the overall local bus budget in 2020/21.

5.1.3 Whilst the current cost of these contracts is contained within the 2020/21 budgetary envelope for expenditure, income from local bus is likely to be affected by the implications arising from Covid. Currently the decrease in fare revenue for supported services as a result of Covid is compensated for through the Local Authority Covid Bus Service Support Grant (CBSSG). This covered an initial period of 12 weeks from 17 March to 8 June 2020 and will partially offset some of the pressure arising. A further CBSSG Restart grant has been confirmed by the DFT, however there remains a risk that central Government funding will cease before passenger numbers have fully recovered on local bus routes creating a continued risk to revenue in 2020/21 and beyond. Any review of services will also need to consider the longer term impact of Covid on services and passenger numbers. This will be done as part of the review and consultation.

5.1.4 Extending contracts beyond their original term may further give rise to an unfunded revenue pressure should the contracts not be able to be extended at zero increase.

5.1.5 Additionally, where a procurement exercise becomes necessary should the operators choose to allow the existing contracts to expire, a revenue pressure may also arise if services are unable to be procured within existing budgetary limits. Should a cost pressure arise this will be expected to be contained by the service identifying appropriate mitigations.

5.1.6 The table below contains scenario analysis detailing the potential financial implications should the 80 contracts not be able to be extended or re-procured at a zero increase in cost:

	Total annualised contract cost	Total annualised cost pressure	Estimated pressure on MTRS in 2021/22
	£m	£m	£m
Zero contract cost increase	7.475	0	0
25% contracts re-tendered at 5% increase	7.569	0.093	0.062
50% contracts re-tendered at 5% increase	7.662	0.187	0.125
75% contracts re-tendered at 5% increase	7.756	0.280	0.187
All contracts re-tendered at 2.5% increase	7.662	0.187	0.125
All contracts re-tendered at 5% increase	7.849	0.374	0.249
All contracts re-tendered at 7.5% increase	8.036	0.561	0.374

5.1.7 There is the risk that contracts that are extended may not deliver best value for money for the Council in the short term if the cost exceeds £5 per passenger journey which represents the current policy threshold for intervention. However, an extension conversely allows for appropriate consultation and analysis to be undertaken ensuring that the value for money criteria that the Council must consider will be met beyond the initial contract extension term whilst providing continuity of the existing service to communities in the intervening period.

5.1.8 Additionally, extension allows for the opportunity for ECC to make effective use of the £964,000 DfT grant to:

- improve current local bus services
- restore lost bus routes where most needed
- support new services or extensions to services

5.2 Legal implications

5.2.1 ECC is under a statutory duty in accordance with the Transport Act 1985 to secure the provision of such passenger services as ECC considers it appropriate to meet any public transport requirements within its area which would not in its view be met otherwise.

5.2.2 There is a statutory duty for providers to register services with the Traffic Commissioner which takes 70 days. If this decision is not made at September Cabinet the delay will affect the consultation which could then affect the registration process which is set by the Traffic Commissioner and takes 70 days.

- 5.2.3 Existing contracts contain extension provisions. Where the providers choose not to extend the current contracts, ECC will undertake a procurement exercise in accordance with the provisions set out within the Public Contract Regulations 2015 and ECC's procurement policy and procedures.
- 5.2.4. ECC has not consulted on withdrawing these services, therefore extension is required to avoid the services ceasing and the risk of legal challenge if ECC allowed them to cease operating.

6. Equality and Diversity implications

- 6.1 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.
- 6.2 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).
- 6.3 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.

List of appendices

Appendix A - List of contracts expiring in 2021
Appendix B- EQIA