

Forward Plan reference number: FP/543/10/22

<b>Report title: Education Travel Contract Extensions and Awards 2023</b>	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Councillor Lee Scott - Cabinet Member for Highways Maintenance and Sustainable Transport	
<b>Date:</b> 17 January 2023	<b>For:</b> Decision
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<b>County Divisions affected: All Essex</b>	

## 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 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 those education transport contracts which expire in July 2023 as set out in appendix A 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 and in line with the sensitivity analysis set out in table 6.1.6.
- 2.2 Agree that the Director, Highways and Transportation, is authorised to procure new contracts as set out in Appendix A using a single sealed bid via the Council's existing dynamic purchasing system where extension of the current contract is not permitted, where extension is not considered to be in the Council's best interests or where the current operator will not agree to an

extension.

- 2.3 Agree that any new 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 three years.
- 2.4 Agree that new contracts will be awarded on a 90% price, 10% quality basis following a single sealed bid on the dynamic procurement system.
- 2.5 Agree that the quality evaluation will assess each operator's ability to mobilise effectively minimising disruption to users of the service and the quality or management systems in place to ensure compliance with contractual obligations at all times.
- 2.6 Agree that the Director, Highways and Transportation in collaboration with the Director, Procurement will develop a procurement model to be used for future procurements of transport contracts which seeks to reduce carbon emissions 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 2022–23 academic year in July 2023.
- 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 72 contracts to either extend or re-tender them to ensure that transport is provided for the relevant children from September 2023. These contracts are due to expire in July 2023 covering the full spectrum of primary, secondary and special school transport affecting 3851 pupils. The remaining 59 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 2022/23 contract value in financial terms at the time of writing this report:

Number to be offered for 1 year extension at 0% price increase	37	Current annualised value of contracts to be extended for 1 year at 0% price increase	£5,678,461
Number identified for tender	35	Current annualised value of contracts identified for tender	£4,005,544
Number of ongoing long term contracts	56	Current annualised value of ongoing long term contracts	£19,146,046
Number of contracts no longer required	3	Current annualised value of contracts no longer required	£50,092
Number of contracts in total	131	Current annualised value based on number of school days travelled	£28,880,143

3.6 A total of 37 contracts have been identified as suitable for extension for one year as set out in appendix A. 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 or if extension at 0% is not possible, such requirements will be included in the proposed tender process and new contracts awarded.

3.7 The reasons for concluding that extension of the 37 contracts in appendix A 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 or other such initiatives.

- 3.8 A total of 35 contracts listed in Appendix A have been identified as definitely requiring 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.
- 3.9 Where new contracts are to be tendered, the procurement will be undertaken via the Council's existing dynamic purchasing system ("DPS") 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 maximum of 3 years. Contracts will be available for all existing operators on the DPS to bid on, ensuring competition. Contracts will be awarded based on 90% price and 10% quality. Operators must satisfy all mandatory requirements including safeguarding checks and some environmental standards, before being admitted to the DPS.
- 3.10 The price evaluation model will take account of the cost of change, to limit the impact on the budget of amendments to requirements through the life of the contract. The requirements for this transport change regularly as children join or leave schools or move home.
- 3.11 The quality evaluation model will assess each operator's ability to mobilise effectively, minimising disruption to users of the service and the quality or management systems in place to ensure compliance with contractual obligations.
- 3.12 A number of risks have been identified in relation to the stability of the transport market. These will mean that it is possible that price rises will be more than anticipated and, perhaps, that fewer operators will accept a contract extension when offered with no price uplift. These risks include:
- The continuing financial impact of the pandemic and the risk of operators exiting the market
  - A national driver shortage
  - Vehicle availability
  - Inflation and other cost pressures
- 3.13 Following recent market and stakeholder engagement sessions, the following is proposed in relation to the Procurement of Home to School Transport services in 2023:

- 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.
- 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
- the current specification contains requirements for contractors to minimise mileage through efficient routing ensuring carbon emissions through unnecessary road miles are managed.
- to inform the approach to carbon reduction in future procurements a survey related to the bidders current actions to improve their carbon emissions and future opportunities in the sector will be held separate to this procurement exercise.
- contractual requirements to minimise mileage are in place which in turn minimises carbon emissions.
- a ULEZ (Ultra Low Emission Zone) standard vehicle requirement of 70% of a Private Hire Vehicle Operator's fleet used on ECC contracts (not including wheelchair accessible vehicles) will be added to the specification for this tender round to reduce air pollution related to ECC contract activity.
- continuing to encourage registration of these 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 to enable the existing bus network to be used
- creation of 6 new cluster contracts for out of County schools. In 2023/24 this will reduce the number of SEND contracts from 22 to 6 and this approach reduces congestion and enables Operators to maximise vehicle usage.

4.3 This report links to the following strategic priorities in the emerging Organisational Strategy '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 those identified as requiring tender (recommended).**

5.1.1 A total of 37 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 35 contracts must be tendered for the reasons identified in section 3.8 of this report.

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 There is a significant resource implication to tendering all contracts that could not be met by the existing team.

5.2.4 There is an increased risk of poor mobilisation due to the volume of change at a single point in time.

5.2.5 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 approved MTRS budget envelope for the current and future financial years for Home to School Transport hired transport, public tickets and travel allowance:

	2022/23 Approved Budget			2023/24 Aspirational Budget			2024/25 Aspirational Budget		
	Mainstream £000	SEND £000	Total £000	Mainstream £000	SEND £000	Total £000	Mainstream £000	SEND £000	Total £000
Hired Transport	11,682	22,680	34,362	12,616	24,494	37,111	13,626	26,454	40,079
Transport Recharges	0	-3,450	-3,450	0	-3,450	-3,450	0	-3,450	-3,450
Public Tickets	2,824	405	3,228	2,886	414	3,299	2,946	422	3,369
Client Travel Allowances	209	443	652	213	453	666	218	462	680
Education Recoupment	0	81	81	0	82	82	0	84	84
Contributions from OLA	0	-82	-82	0	-85	-85	0	-87	-87
Concessionary Fares	-192	0	-192	-198	0	-198	-205	0	-205
<b>Net Budget</b>	<b>14,523</b>	<b>20,077</b>	<b>34,599</b>	<b>15,517</b>	<b>21,909</b>	<b>37,426</b>	<b>16,585</b>	<b>23,885</b>	<b>40,471</b>

*Note: the budget setting process for 2023/24 is still in progress and it may lead to further changes to the budget envelope from 2023/24.*

6.1.2 The proposed procurement approach to extend 37 contracts by 12 months is likely to deliver the best value in overall cost if a nil percentage 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 35 contacts where a retender is now required, inflation may be as high as 17% and it should be noted that the costs of the contracts will fall across two financial years, as travel arrangements are being sought for the 2023/24 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 2023/24 financial year is £28.88m. In isolation, this is containable within the £37.0m 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. Historically, there has been significant and growing cost pressure in this area, which may continue and detailed below, there are a number of complex risks to consider meaning that the cost pressure is not expected to ease in 2023/24.

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 a like for like basis for the following reasons:

- Changing pupil numbers for the 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 SEND population
- Ongoing industry pressures due to driver shortages causing increased fiscal pressure on contract delivery
- Unable to re-procure and/or extend contracts at 0% inflation given the inflationary environment

6.1.6 Sensitivity analysis has been undertaken to assess the stressors in the assumptions that may mean that the budget envelope may be exceeded. The table below summarises this:

	2023/24 contract cost £000	2023/24 budget (draft) £000	Variance to budget £000
Base case: Existing annual contract spend	28,880	37,111	-8,231
SEN Growth @ 5.4%	600	0	600
Re-tendered contracts: Inflation costs at 17.00%	397	0	397
0% extensions: 50% extended with associated inflation costs at 12.65%	210	0	210
Replacement of expired 22/23 contracts: Inflation cost at 17.00%	5	0	5
<b>Scenario modelled cost base</b>	<b>30,092</b>	<b>37,111</b>	<b>-7,018</b>
Increase of 10% in overall cost base	33,101	37,111	-4,010
Increase of 15% in overall cost base	34,606	37,111	-2,505
Increase of 20% in overall cost base	36,111	37,111	-1,000

*Note: the budget setting process for 2023/24 has not been set and could in theory lead to further changes to the budget envelope from 2023/24.*

## 6.2 Legal implications

6.2.1 The proposals for extending contracts is permitted by an extension clause in the contract. The proposals for procuring new contracts, including the use of quality, is permitted under the rules for the dynamic procurement system that we have procured.

6.2.2 Therefore the actions in this report are in accordance with the Public Contracts Regulations 2015.

## 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:
- 7.2
- (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.
- 7.3 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, 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).
- 7.4 The Equalities Comprehensive 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 – List of Contracts

Appendix B – Equalities comprehensive impact assessemnt

## **9 List of Background papers**

None