

Forward Plan reference number: FP/579/12/19

| | |
|--|----------------------|
| Report title: Education Travel Contract Extensions and Awards 2020 | |
| Report to: Cllr Ray Gooding, Cabinet Member for Education and Skills | |
| Report author: Andrew Cook, Director, Highways and Transportation | |
| Date: 25 February 2020 | For: Decision |
| Enquiries to: Karen Saunders (karen.saunders@essex.gov.uk) or Helen Morris, Head of Integrated Public Transport Unit (helen.morris@essex.gov.uk) | |
| County Divisions affected: 'All Essex' | |

1 Purpose of Report

- 1.1 To agree the extension of existing contracts and the procurement of new education transport contracts including the provision of travel allowance, hired transport and public transport tickets to enable the Council to fulfil its statutory and policy-based obligations to provide transport to school for children meeting the eligibility criteria.

2 Recommendations

- 2.1 Agree that the Director, Highways and Transportation, is authorised to extend any education transport contracts which expire in July 2020 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 via the Council's existing dynamic purchasing system where extension 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 the Director, Highways and Transportation, is authorised to approve the entering into of such contracts following completion of the procurement process.

3 Summary of issue

- 3.1 The Council has a statutory and policy-based responsibility under the terms of the Education Act 1996 (as amended) 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 are transported on transport secured by the Council from commercial operators where the current contracts expire at the end of the 2019 - 20 academic year in July 2020.

- 3.3 The Council also arranges for a travel allowance for eligible pupils, where this represents better value for money. Where this is the case, travel allowance as whole is reviewed periodically to ensure it represents value of money and a procurement exercise may be necessary where this is not the case. This process will continue.
- 3.4 152 of the 182 education transport contracts that are in place are due to expire in July 2020 covering the full spectrum of primary, secondary and special school transport affecting 8,875 pupils. 23 of these are no longer required. In order to meet our continuing requirement to provide transport, action must be taken in respect of all of these contracts to either extend or re-tender them to ensure that transport is provided for the relevant children from September 2020.
- 3.5 For the purposes of this paper, the table and commentary below illustrate the current contract value in financial terms at the time of this report:

| | | | |
|--|------------|---|----------------|
| Number to be offered for 1 year extension at 0% price increase | 90 | Value of contracts to be extended for 1 year at 0% price increase | £12.78m |
| Number identified for tender | 39 | Value of contracts identified for tender | £4.34m |
| Number of ongoing long term contracts | 30 | Value of ongoing long term contracts | £8.96m |
| Number of contracts no longer required | 23 | Value of contracts no longer required | £0.53m |
| Number of contracts in total | 182 | Value based on number of school days travelled | £26.61m |

- 3.6 In addition to the contracts detailed above, ECC also provides transport provision in the form of travelling expenses where this represents best value.
- 3.6.1 A total of 90 contracts have been identified as suitable for extension (see 3.8 below) for one year based upon a 0% price increase. 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 negotiation at 0% is not possible, such requirements will be included in the proposed tender process and new contracts entered into.
- 3.6.2 The reasons for concluding that extension of the 90 contracts is recommended are as follows:
- Requirements have not materially changed since the original tender/contract award with little or no increase to the average cost per passenger.
 - The contract(s) have been tendered in one of the most recent tender rounds.

- The daily operating price is considered to represent efficient value based on the nature and complexity of the contracts.
- There is opportunity to renegotiate the operating price of some of the contracts based upon reduced pupil numbers.
- It would not benefit pupils or the Council in the short term to change the contractor for a number of special needs contracts, whereas an extension would provide greater flexibility for the Council to consider more efficient and effective models of delivery in the medium to longer term.
- The contracts were awarded on terms which permit them to be extended on this occasion.

3.6.3 A total of 39 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.
- Change of transport requirement due to impact of policy changes e.g. phasing out of faith school transport and effect of the new 'nearest school only' transport policy.
- 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 impact of 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"). 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 open up competition. Contracts will be awarded based on price only however all bidders on the DPS will have met all mandatory requirements such as safeguarding checks.

4 Options for Consideration

4.1 Option 1: Tender all 129 contracts.

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

4.1.2 To tender all contracts is likely to increase costs to the Council and cause unnecessary disruption to service users. 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 through negotiation.

4.1.3 This option is not recommended for the above reasons.

4.2 Option 2 – Recommended Option: Where conditions allow, extend contracts at 0% increase and tender those where a 0% increase cannot be achieved.

4.2.1 A total of 90 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.

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

4.2.3 All contracts will be procured in such a way so as to comply with the law.

4.2.4 Option 2 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.

5.0 Issues for consideration

5.1 Financial implications

5.1.1 The proposed procurement approach of extending contracts by 12 months is likely to deliver the best value in overall cost if a nil % 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.

5.1.2 For those 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 2020/21 academic year. Once evaluated, service orders will be raised in each financial year accordingly.

5.1.3 The table below summarises the budget envelope for the two financial years the 2020 academic year crosses for hired transport, public tickets and travel allowances:

| | 2020/2021 Budget (£'000) | | | 2021/2022 Budget (£'000) | | |
|----------------------------|--------------------------|---------------|---------------|--------------------------|---------------|---------------|
| | Mainstream | SEN | Total | Mainstream | SEN | Total |
| Hired Transport | 10,263 | 18,730 | 28,994 | 10,260 | 21,183 | 31,443 |
| Hired Transport DSG | - | (2,405) | (2,405) | 0 | (2,850) | (2,850) |
| Hired Transport Net | 10,263 | 16,326 | 26,589 | 10,260 | 18,333 | 28,593 |
| Public Tickets | 2,920 | 91 | 3,011 | 3,007 | 94 | 3,101 |
| Client Travel Allowances | 250 | 345 | 595 | 250 | 345 | 595 |
| Education Recoupment | - | 77 | 77 | - | 77 | 77 |
| Contributions from OLA | - | (77) | (77) | - | (77) | (77) |
| Concessionary Fares | (316) | 0 | (316) | (316) | - | (316) |
| Net Budget | 13,117 | 16,762 | 29,879 | 13,201 | 18,772 | 31,973 |

5.1.4 The current academic year continues to see an increase in demand for transport, predominantly for children with Special Educational Needs. It is anticipated that the growth in SEN will continue to increase over and above the rate of growth seen in the total number of school children within Essex. Consequently, cost pressures are being realised in the current financial year across both mainstream and SEN which is anticipated to continue across the medium term.

5.1.5 The value of the contracts that are continuing or are recommended for extension or re-procurement for the 2020/21 **academic** year is £26.1m. The equivalent total, on a like for like basis for the 2020/21 **financial** year is £26.3m. In isolation, this is contained within the £29.0m hired transport gross budget envelope, however this is on the basis that they are re-procured on an exact like for like basis. There has been significant and growing cost pressure in this area for some time and due to the risks set out below, this is not expected to reverse in 2020/21.

5.1.6 There is therefore significant risk when awarding the contract extensions and re-procurements as 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 existing transport
- New transport requirements for new pupils within the system
- The current trend of increasing complexity of need within the SEN population
- Unable to re-procure contracts at 0% inflation

5.1.7 Sensitivity analysis has been undertaken to assess the stressors in the assumptions that may mean that the budget envelope may be exceeded (£29.0m). The table below summarises this:

| | 2020/21 FY contract cost (£'000) | 2020/21 Budget (£'000) | Variance to budget (£'000) |
|--|--|---------------------------|-------------------------------|
| Base case: Re-procured like for like | 26,283 | 28,994 | (2,711) |
| Inflation at CPI (2%) on base case | 526 | - | 526 |
| Replacement of expired 19/20 contracts inflated by CPI (2%) | 536 | - | 536 |
| Scenario modelled cost base at 19/20 pupil numbers | 27,344 | 28,994 | (1,650) |
| Increase of 5% combined pupil numbers / cost base | 28,712 | 28,994 | (282) |
| Increase of 6% combined pupil numbers / cost base | 28,985 | 28,994 | (9) |
| Increase of 7% combined pupil numbers / cost base | 29,258 | 28,994 | 264 |

5.1.8 The analysis has built in an assumption that there will be a 2% uplift in cost base due to general inflation. Anything over a combined further increase in cost due to pupil numbers and further contract inflation over 6% would lead to the 2020/21 budget being exceeded.

5.1.9 For comparison, based on the actual costs incurred in the period November 2018 to November 2019, the % increase in average cost per pupil was 16% which far exceeds the break even increase of 6% calculated in the above analysis. If an equivalent 16% increase was applied to the budget scenario modelled for 2020/21, there would be a potential cost pressure of £2.7m.

5.1.10 In order to contain cost pressures whilst ensuring that ECC fulfils its statutory duty, the most economical and suitable method of transport should be selected, which includes travel allowances, use of the commercial bus network and hired transport. There does, however, remain a cost pressure risk in 2020/21 and beyond. Increased funding agreed by the Schools Forum from the Dedicated Schools Grant for 2020/21 and 2021/22 may not sufficiently close the deficit, so alternative funding opportunities and mitigations to the pressure may have to be sought by the service to contain it within the budget envelope should this risk crystallise.

5.2 Legal implications

5.2.1 Contracts will only be extended where it is lawful to do so because they were awarded on terms which permit this extension. Where new contracts are to be procured, they will use the Council's dynamic purchasing system which was awarded in accordance with the Public Contracts Regulations 2015.

5.2.2 The Council has a legal duty to provide education transport in certain circumstances and provides transport to some children over and above statutory requirements in accordance with its Education Transport Policy.

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 could have a potential impact on people with a protected characteristic. To mitigate this impact, should it arise, ECC will work with schools and providers to minimise the effect of any change. Additionally, ECC's contract terms and conditions for this service require action from the provider to manage the change directly with passengers and families.

7. List of appendices

- 7.1 Appendix 1 – Equality Impact Assessment.

8. List of Background papers

- 8.1 List of home to school transport contracts expiring in July 2020.