

**Forward Plan reference number: FP/893/11/20**

<b>Report title:</b> Education Travel Contract Extensions and Awards 2021	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Councillor Ray Gooding, Cabinet Member for Education and Skills	
<b>Date:</b> 19 January 2021	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

## 1. Purpose of Report

- 1.1 To agree the extension of existing contracts and the procurement of new education transport contracts which along with the provision of travel allowance, hired transport and public transport tickets 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 2021 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 subject to sufficient funding being available.

### 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 travel on transport secured by the Council from commercial operators where the current contracts expire at the end of the 2020 - 21 academic year in July 2021.
- 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 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 157 of the 186 contracts to either extend or re-tender them to ensure that transport is provided for the relevant children from September 2021. These contracts are due to expire in July 2021 covering the full spectrum of primary, secondary and special school transport affecting 5359 pupils. The remaining 29 contracts are longer-term contracts where no action is required.
- 3.5 For the purposes of this paper, the table and commentary below illustrate the estimated current 2020/21 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	£10.941m
Number identified for tender	51	Value of contracts identified for tender	£10.399m
Number of ongoing long term contracts	29	Value of ongoing long term contracts	£6.113m
Number of contracts no longer required	16	Value of contracts no longer required	£0.580m
Number of contracts in total	186	Value based on number of school days travelled	£28.033m

- 3.6. A total of 90 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 90 contracts is recommended are as follows:

- The contract(s) have been tendered in one of the recent tender rounds.
- The daily operating price 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 passenger needs are often 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.

3.6.2 A total of 51 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.
- 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.

3.8 COVID-19 has placed significant pressures on the transport market. During the period that education settings were closed ECC agreed to pay Home to School Operators:

- 80% of their monthly contractual payment less any deductions as recommended by Public Procurement Note 02/20 from April 2020 to July 2020 where schools were closed and
- 100% of the contractual payment where schools were open less any deductions as recommended in PPN 02/20, despite the number of passengers travelling.

3.8.1 In addition to the ECC agreed payment terms, many operators were eligible to furlough their staff. From an ethical and legal perspective, it would be unlawful for operators to receive payment from ECC for services not delivered and also take advantage of the furlough scheme and all operators signed up to binding terms which required them not to furlough staff without our permission and not to profit from the scheme. The Integrated Passenger Transport Unit is working with colleagues in Procurement and Finance to ensure that appropriate checks are being made to ensure that this is not the case. All Operators were advised to inform ECC of any difficulties that may result in them being unable to operate after the lockdown period but, not surprisingly, none of them did so.

3.8.2 Should the County face a further COVID-19 lockdown where schools are advised or required to close, the Cabinet Member for Education and Skills will take a decision with respect to financial support. 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 'snow day' clause within the contract may apply provided operators comply with legal requirements.

3.9 There are a number of different financial models which are available to use in education transport contracts. ECC tender these contracts based on capacity and the Operator is able to make provision to sell any spare capacity. This creates a more sustainable and accessible transport network. It is proposed to tender each contract on the same financial basis as the current contract.

## 4. Options

### 4.1 Option 1: Tender all 141 contracts (not recommended).

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 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.

4.1.3 This option is not recommended for the above reasons.

**4.2 Option 2: Where contractual conditions allow, extend contracts at 0% increase to the current daily rate and tender those this approach cannot be achieved (recommended).**

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. Links to Essex Vision**

5.1 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
- Share prosperity with everyone

5.2 This links to the following strategic aims in the Organisational Plan:

- 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

## **6. Issues for consideration**

### **6.1 Financial implications**

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

6.1.2 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.

6.1.3 The table below summarises the budget envelope for the current financial year for Home to school Transport hired transport, public tickets and travel allowances:

	2020/21 Budget			2021/22 Aspirational Budget			2022/23 Aspirational Budget		
	Mainstream £000	SEND £000	Total £000	Mainstream £000	SEND £000	Total £000	Mainstream £000	SEND £000	Total £000
Hired Transport	10,263	18,730	28,994	10,260	21,183	31,443	10,455	23,942	34,396
Transport Recharge	-	2,405	2,405	-	2,850	2,850	-	2,850	2,850
Public Tickets	2,920	91	3,011	3,007	94	3,101	3,101	97	3,198
Client Travel Allowances	250	345	595	250	345	595	250	345	595
Education Recoupment	-	77	77	-	77	77	-	77	77
Contributions from OLA	-	77	77	-	77	77	-	77	77
Concessionary Fares	316	-	316	316	-	316	316	-	316
<b>Net Budget</b>	<b>13,117</b>	<b>16,762</b>	<b>29,879</b>	<b>13,201</b>	<b>18,772</b>	<b>31,973</b>	<b>13,490</b>	<b>21,533</b>	<b>35,023</b>

6.1.4. It is anticipated that the growth in pupils with SEN experienced in prior years will continue to increase over and above the rate of growth seen in the total number of school children within Essex.

6.1.5 The current estimated value of the contracts that are continuing or are recommended for extension or re-procurement for the 2021/22 financial year is £28.909m. In isolation, this is containable within the £31.4m hired transport gross budget envelope, however this is on the basis that they are re-procured on an exact like for like basis, with all routes running for 196 school days and with no in year cost escalation. 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 2021/22.

6.1.6 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 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
- 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

6.1.7 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:

	2021/22 FY contract cost (£'000)	2021/22 Budget (£'000)	Variance to budget (£'000)
Base case: Re-procured like for like	28,909	31,443	(2,534)
Inflation at CPI (2%) on base case	578	-	578
Replacement of expired 20/21 contracts inflated by CPI (2%)	413	-	413
<b>Scenario modelled cost base at 19/20 pupil numbers</b>	<b>29,900</b>	<b>31,443</b>	<b>(1,543)</b>
Increase of 5% In cost base	31,395	31,443	(48)
Increase of 6% In cost base	31,694	31,443	251
Increase of 7% In cost base	31,993	31,443	550

6.1.8 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/or further contract inflation over 5% would lead to the 2021/22 budget being exceeded.

6.1.9 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 2021/22 and beyond. Funding agreed by the Schools Forum from the Dedicated Schools Grant for 2021/22 and 2022/23 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. This may include seeking to maximise S106 contributions to Home to School Transport.

6.1.10 Any review of transport provision and re-procurement will need to consider the longer-term impact of COVID-19.

## 6.2 Legal implications

6.2.1 Any re-procurement of contracts must be undertaken in accordance with the Public Contracts Regulations 2015 and the Council's own internal procedures. Appropriate and compliant use of a DPS would satisfy these requirements.

6.2.2 This report does not propose the extension of any contract other than in accordance with existing contract terms.

6.2.3 It should be noted that it is unlawful for bus operators to make a profit from the aid they offer.

## **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 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.

## **8. List of appendices**

Appendix 1 – Equality Impact Assessment.

## **9. List of Background papers**

List of home to school transport contracts expiring in July 2021