

<b>Cabinet</b>  31 October 2017	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe - Acting Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Passenger Transport Contract Extension</b>	

<b>Lead Member</b>	<b>Councillor Amina Ali Cabinet Member for Environment</b>
<b>Originating Officer(s)</b>	Bola Akinfolarin, Interim Head of Development, Compliance and Commissioning
<b>Wards affected</b>	All wards
<b>Key Decision</b>	Yes
<b>Community Plan Theme</b>	<b>A Healthy Supportive Community</b>

### Executive Summary

- 1.1 The current Passenger Services provision for external routes is provided via a framework contract agreement which was entered into in January 2012. This provision is not part of the core business offered by the Council's in-house provision, but forms part of additional demand led services. As the services are demand led it is more cost effective to have these delivered by an external provider, which reduces down-time on vehicles, and costs associated with staff and vehicle purchase.
- 1.2 The original framework comprised Children's Services, Adult Social Care and Facilities Management.
- 1.3 The previous framework ran for 4 years January 2012 – December 2016, but in January 2017 the current Framework expired. On 4th October 2016 as part of the contact forward plan Q3 financial year 16/17, Cabinet approved an interim contract. This was to maintain essential passenger transport services pending the start of the new Framework in June 2017.
- 1.4 Going forward the new contract will be contract managed and procured through Public Realm, who manage the Transport Service Unit and use the framework for adult service users. They will also manage the contract on behalf of Children's and Adult Services going forward via a service level agreement (the facilities management element of the framework has now been removed and will be dealt with as a separate contract). This was a recommendation in a recent operational review of the Council's travel arrangements. It is felt that this arrangement will help to ensure that robust governance of the contract is in place

1.5 This report seeks cabinet approval to continue to operate within the existing framework in order to ensure that statutory and non-statutory frontline service provision is continued.

## **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Give authority for the Council to continue to operate within the existing Passenger Transport Contact Framework for a period of 1 year and 6 months to ensure continuity of service.
2. Authorise the Corporate Director of Place (or in the Corporate Director's absence the Divisional Director) after consultation with the Corporate Director and Monitoring Officer, Governance, to agree the final terms and conditions of any agreement to implement this decision; and
3. Authorise the Corporate Director and Monitoring Officer, Governance, to execute all necessary contract documents to implement this decision.
4. To amend the estimated value of contract spend for the procurement of the Passenger Transport Framework shown on the contracts forward plan and presented to the Mayor in Cabinet on the 26<sup>th</sup> July 2016 to read £10.8 million

## **1. REASONS FOR THE DECISIONS**

- 1.1 To ensure that the Council upholds its statutory responsibility for assisting with transport arrangements for children with special educational needs and adults with care plans under the Care Act 2014, in the borough.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The only option is to allow the framework to expire which means that the Council would not be able to legally provide the transport. This would therefore mean that the Council would be in breach of its statutory duty to provide the transport to children who require it as their means of accessing education.

## **3. DETAILS OF REPORT**

- 3.1 The Council is statutorily responsible for providing transport arrangements for various people for example, children with special educational needs and adults with various care and support needs.

- 3.2 Transport is delivered in house (through the Transport Services Unit in the Place Directorate) and externally commissioned from a range of providers. The service combines bus and taxi services with drivers and escorts. These are demand led services with budgetary provision held within the budgets of Children's and Adult Social Care,
- 3.3 The current Passenger Services provision for external routes is provided via a framework which was entered into in January 2012.
- 3.4 The original framework comprised Children Services, Adult Social Care, and Facilities Management.
- 3.5 The framework ran for 4 years January – December. In January 2017 the current framework expired.
- 3.6 Cabinet approved continued use of the framework during the time within which it was necessary to undertake a new Procurement. However there have been significant delays in undertaking the new procurement and the extension to the original framework is due to expire before a new framework may be awarded.
- 3.7 Going forward the new contract will be managed and is being procured through Public Realm, who manage the Transport Service Unit and use the framework for adult service users. They will manage the contract on behalf of Children's and Adult Social Care going forward (the facilities management element of the framework has now been removed and will be dealt with as a separate contract). This was a recommendation in a recent operational review of the Council's travel arrangements. It is felt that this arrangement will help to ensure that robust governance of the contract is in place.

### **3.8 Risks of discontinuing the current Framework**

- 3.9 If the current framework is allowed to expire this would deny the Council access to the appropriate modes of transport until such time as the new framework has been procured and awarded. This would mean that the Council would be significantly in breach of its statutory duty to provide this transport for a considerable period of time. There would also be a significantly detrimental impact on the lives of the service users who ordinarily would benefit from this transport as no reasonable short to medium term alternative could be found. In particular, such users would not be able to access educational facilities and the care and support services to which they have a right and on which they rely.
- 3.10 Approximately 220 regular journeys are now undertaken by SEN children using externally provided taxis or mini buses with the current annual value of the contact being approximately £1.6 million. Similarly in Adult Social Care, 91 regular journeys are now undertaken by externally provided taxis or mini buses costing approximately £0.480m.

### 3.11 Risks of continuing with the current Framework

- 3.12 Extension of the existing Framework means that the Council could be challenged by the EU or Chambers of Commerce as the required level of competition will not be met. A framework should be for a period of no more than 4 years. However, the reason for this rule is that framework agreements should not be used in order to avoid subjecting spend to regular competition.
- 3.13 In mitigation of this, a tender process is underway and therefore, it is clear that the Council must undertake this extension out of necessity rather than with the intent of distorting competition albeit that completion of the new procurement will take a further six to nine months. Therefore, whilst the risk of challenge is appreciated it is generally considered to be quite low
- 3.14 Although both options present a level of risk, the risk of harm to and the obvious detrimental effect on service users caused by a cessation of the provision of transport represents a much clearer and greater risk of challenge to the Council.
- 3.15 On the 26<sup>th</sup> July 2016 Cabinet approved the reprocurement of this framework and the total contract value was recorded as £2 million. The re-procurement process for the framework is underway and the contract values have now been clarified as £8 million for Children’s Services and £2.8 million Adult Services over the 4 years. The planned timeline is outlined below, and has been provided by procurement:

EVENT	CALENDAR DAYS of EVENT	CUMULATIVE DAYS	COMMENTS
Commence tender process	0	0	Assume all approvals secured and all remaining tender questions have been answered
Publish OJEU Notice	2	2	Allow 2 days to publish after sending
EOI	30	32	Legal minimum
Submission deadline	1	33	Allow day to release submissions from system
Evaluate EOIs	21	54	Includes compliance checks and financial assessments
Moderate and agree tender list	1	55	
Issue ITT	1	56	Assumes all latest routes entered in tender documentation
Tender Submission Period	35	91	25 days is legal minimum but a lot of information is required from bidders
Deadline for submission	1	92	Allow day to release submissions from system

Evaluation Period	7	99	May be more than is required as evaluation is only to ensure eligibility for Framework
Moderation	1	100	Panel to confirm outcome
Issue standstill letters	3	103	Assume prepared apart from final details
Standstill period	12	115	Allow for weekend and any simple queries. Major issue may delay end of standstill
Standstill ends – issue LOAs	1	116	Allow 1 day for receipt and acknowledgments. Who is to sign the letters? Are they in?
Contracts set up for Framework	14	130	Not complex but allows for delays with legal
Call-off commences	1	131	Discussions with Framework members to commission winning providers route by route
Call-of Agreements/SLA signing	2	2	May take longer – depends on how many there are
Lead-in period	TBC	TBC	Not known
Start of service	TBC	TBC	Not known – may vary from route to route

**In addition:**

Tollgate 2	21		<p>CPF and CB take a minimum of 3 weeks overall. Further delay may be incurred by missing the preferred Board. The impact on time cannot be predicted as it depends on when Day 0 (above) actually occurs. This, in turn, will depend on:</p> <ul style="list-style-type: none"> <li>• Cabinet approval</li> <li>• Finalisation of tender material</li> <li>• Project Team agreeing the final documentation</li> </ul>
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**4. COMMENTS OF THE CHIEF FINANCE OFFICER**

4.1 The report seeks the approval of Cabinet to extend the existing Passenger Transport Contract Framework for a further 18 month period. This will ensure no immediate disruption in the service for external routes as the current contract arrangement expired at the end of December 2016. The Council has a statutory responsibility to provide the passenger transport service for both vulnerable children and adults. Approval is therefore sought to continue using the framework contract to provide sufficient time for the procurement process to be undertaken.

4.2 Children's Services has historically had pressures on both the Internal and external SEN Transport budget. In 2016/17 the outturn on external SEN Transport services was £1.578m against a budget of £1.174m, an over spend of £0.404m. In 2017/18 the forecast is £1.782m against a budget of £1.182m, an over spend of £0.600m. The trend is that activity has been increasing year on year, with no additional provision identified or the potential to identify savings with the current commissioning process that is in place.

- 4.3 This is a demand led service that continues to add pressure to already overstretched Children's Services budgets.
- 4.4 There is sufficient budget provision within Health, Adults and Community Service to meet the identified annual value of £0.48m to provide for the current commitments for passenger transport utilising the framework.
- 4.5 At the Cabinet meeting on the 26<sup>th</sup> July 2016 the reprocurement of the framework contract was agreed and will commence in 2018/19. The costs of the 4 year contract value for Children's Service are expected to be up to £8m and for Health, Adults and Community Service up to be £2.8m. This will ensure that there is sufficient capacity within the contract to manage future levels of demand.
- 4.6 Given the financial constraints faced by the Council it is imperative that resource funding levels to support this demand led service are considered fully as part of the Council's Outcomes Based Budgeting approach for 2017 - 2020. This will need to include the identification of any complementary funding requirements and consideration of the most effective way to manage and deliver Council's statutory responsibilities alongside its other competing priorities.

## **5. LEGAL COMMENTS**

- 5.1 This report concerns the proposal to directly award a contract for Passenger Transport Services (the Services) via the Passenger Transport Contact Framework (the Framework). Under sections 508 and 509 of the Education Act 1996 the Council has a duty to make transport available to both eligible children and post 16 adult learners. Under section 8 and 18 of the Care Act 2014, the Council has a duty to meet the eligible needs of an adult in need of care and support, which may include services such as transport. Extending the contract will allow the Council to meet its statutory obligations.
- 5.2 The Framework has expired and the Council intend to continue operating within the existing Framework by extending the framework for 18 (eighteen) months to allow the Council time for the re-procurement of the Services.
- 5.3 The Council has power to enter into a contract for a third party to deliver the Services which arises by virtue of section 111 of the Local Government Act 1972, providing the power enabling the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Under section 1 of the Localism Act 2011, the Council has the power 'to do anything that an individual may do' 'for the benefit of the authority, its area or persons resident or present in its area'. The Council may be satisfied that it has the enabling power(s) to enter into a contract for the Services.

- 5.4 The subject matter of the Services falls within the description of Part 2 of the Public Contracts Regulations 2015 (Regulations) and the estimated value of the contract exceeds the relevant threshold contained in the Regulations. In view of this the Council would ordinarily be required to fully comply with the Regulations and to subject the Services to a new competition. In particular, under Regulation 33 a framework agreement should not exceed 4 years in length unless the subject matter of the framework requires a longer term. However, a new competition in itself must also comply with the requirements and timescales set out in the regulations which will take some considerable time to complete especially as the routes will need to be reallocated subject to a further mini-competition
- 5.5 Also the Council cannot allow the service users to be without these services for any length of time as not only would it be in breach of its own statutory obligations it would also be of considerable detriment to the Service Users who would have to forgo the assistance afforded by these services. Therefore, the most expedient approach is to issue framework contracts on the same basis as the original for such a period as is only necessary to allow for the completion of the new procurement.
- 5.6 It is notable that guidance provided by the European Commission explains that regulation 33 has as its basis the desire to ensure that frameworks are presented to the market on a regular basis to ensure sufficient exposure to competition. It is notable also that the Council's need to issue new short term framework contracts is born out of the Council's need to fulfil its statutory duty to the Service Users rather than to unnecessarily avoid competition.
- 5.7 It is notable also that the spend in respect of each route shall be subject to an element of competition within the framework itself ensuring that the Council will be able to demonstrate that the individual prices paid in respect of each route provide Best Value for the purposes of Section 3 of the Local Government Act 1999.
- 5.8 The direct award of the framework contracts must also comply with the Council's Procurement Procedures. The Council should be satisfied that one of the grounds under section 12 of the Procedures is fulfilled. The ground which could be relied upon is 12.1(a) of the Procedures which states that a waiver is permissible where "the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and has demonstrated that only a single source of supply is available, or it is otherwise clearly in the Council's interest to do so". This is because it is clearly in the Council's interest that it does not fail to comply with its statutory care and education duties.
- 5.8 When considering its approach to contracting, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). Officers are expected to

continuously consider, at every stage, the way in which procurements conducted and contracts awarded satisfy the requirements of the public sector equality duty. This includes, where appropriate, completing an equality impact assessment which should be proportionate to the function in question and its potential impacts. It should be noted that should the Council decide not to proceed with the award of the short term frameworks then the Council must consider alternative approaches to ensure that persons with a protected characteristic who would be affected by the loss of the transport are provided with other opportunities similar to those that they had when the transport was provided.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

6.1 Please see attached equality checklist.

## **7. BEST VALUE (BV) IMPLICATIONS**

7.1 This proposal seeks to put in place interim measures which will allow the Council to continue to provide statutory services, in order to regularise Best Value by conducting a fully compliant procurement process, which aims to deliver Best Value.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

8.1 As this is a request for the extension of an existing framework contract, the proposal does not address sustainable environmental issues. However the purpose of this proposal is to allow for a fully compliant procurement process to take place during which sustainable environmental issues will be addressed.

## **9. RISK MANAGEMENT IMPLICATIONS**

9.1 Ending the current framework would mean the suspension of the Children's Services statutory service, which would constitute a breach of the Council's statutory undertaking.

9.2 In addition suspension of the contact would leave vulnerable children and adults with no access to schools or centres.

9.3 Continued operations within the existing Framework means that the Council could be challenged by the EU or Chambers of Commerce as the required level of competition will not be met.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 N/A

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 Existing safeguarding arrangements are already in place as part of the existing framework contract. Arrangements will be confirmed if this approach is agreed.
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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- NONE.

#### **Appendices**

- Appendix 1: Equality Impact Assessment.

#### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- NONE

#### **Officer contact details for documents:**

N/A