

<b>Item No.</b> 15.	<b>Classification:</b> Open	<b>Date:</b> 10 July 2023	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		GW1 SEND Buses Procurement Strategy	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Jasmine Ali, Deputy Leader and Cabinet Member for Children, Education and Refugees	

## **FOREWORD – COUNCILLOR JASMINE ALI, DEPUTY LEADER AND CABINET MEMBER FOR CHILDREN, EDUCATION AND REFUGEES**

We have many reasons to be proud of the quality of our services and the educational outcomes for our children and young people with special educational needs and or disabilities in Southwark.

Our Special Educational Needs and/or Disabilities (SEND) school bus service is an important part of our offer for children and young people who struggle to walk or travel by public transport to school.

### **The Gateway 1 SEND Buses Procurement Strategy**

This GW1 report seeks approval from cabinet for the procurement strategy for the SEND bus contract via a single supplier negotiation, with Healthcare and Transport Service (HATS) for 24 months with the option for an additional 12 month extension. The value of the contract is £6.2m with a lifetime value of £9.3m if the 12 month extension is agreed.

The council has a statutory duty to provide travel assistance for children of statutory school age and young people up to 25 years who are eligible to receive travel support, to and from school or other educational establishment as set out in The Education Act 1996 and Education Inspection Act 2006. This is something that the council whole heartedly supports.

### **Children and young people benefit**

As of May 2023 a total of 762 children receive a range of travel assistance that is geared to meeting their individual needs including - independent travel training, a direct payment to the family to support their journeys or, travel in a vehicle procured via the council's taxi framework/Special Educational Needs and or Disabilities (SEND) bus service.

This report is requesting approval to enter in single supplier negotiation for a new contract with the incumbent provider for the SEND bus service. The team has carried out the necessary market testing so that more providers could be considered. I can report that only one other provider responded to say they would

be interested in bidding for this service if it was brought to market but they currently do not have a local depot to be able to operate this service from in the short term.

A quality service with a high level of satisfaction rates

HATS is currently meeting the needs of our children and young people well. They have a history of working flexibly to meet the needs of our children and families. Working closely with council officers to adjust its operations. An recent example of this was during the Covid-19 Pandemic, where the company went the extra mile to make sure children and young people were kept safe through the implementation of 'bubbles', enhanced cleaning measures. They also delivered education materials from schools to children around the borough to support their home learning

Added social value

It is also good to see that HATS employs local Southwark residents to deliver the service, works with Social Enterprise UK and supports local employment opportunities, apprenticeships and charitable causes.

Parental surveys show that 100% of parents and carers were satisfied with the service. A sentiment repeated in the report to the Corporate Contract Review Board in May 2021, which confirmed HATs as being 'consistently good quality'. Single supplier negotiation for this contract is therefore both necessary and viable.

## **RECOMMENDATIONS**

1. That the cabinet approve the procurement strategy for the SEND bus contract via a single supplier negotiation, with Healthcare and Transport Services for 24 months with an optional 12 month extension.
2. That the cabinet note the estimated value of this contract is £6.2m with a lifetime value of £9.3m if the 12 month option is agreed.
3. That the cabinet delegate the decision to award the contract to the Strategic Director, Children and Adult Services in consultation with the Deputy Leader and Cabinet Member for Children, Education and Refugees for reasons noted in paragraph 21 of the report.
4. That the cabinet note that a longer-term strategic approach will be explored in a planned Gateway 0 report (Strategic Options Assessment).

## **BACKGROUND INFORMATION**

5. The council has a statutory duty to provide travel assistance to and from educational establishments for eligible children and young people, in line with the Southwark Travel Assistance Policy.
6. As of May 2023, the council provide 762 children and young people a range of travel assistance as appropriate to meet their needs. This includes

provision of independent travel training, direct payments, or transport in a vehicle procured via the council's taxi framework/ SEND bus service.

7. 413 children and young people currently travel on the SEND bus service. This includes some of Southwark's most vulnerable children and young people, who have Education, Health and Care Plans (EHCPs). The number of children using the bus service has increased each year since 2016-17.
8. All passengers who use the bus service are Southwark residents.
9. The needs of children and young people who use the bus service may include:
  - Physical disabilities
  - Additional learning needs
  - Autism
  - A range of communication, emotional, behavioural challenges
  - Visual or hearing impairment.
10. The council awarded the current SEND bus service contract to Healthcare and Transport Services (HATS) in January 2015 for an initial period of five years and eight months to 31 August 2020, with two x 12 month extension periods. The estimated lifetime value of the current contract is £14.5m. This was extended further in as noted in paragraph 19.
11. The SEND bus service contract requires the provider to ensure:
  - That it has access to sufficient, safe and secure premises, which includes a depot with office and restroom facilities
  - That it can operate a fleet of specialist vehicles, including vehicles that are fully wheelchair accessible
  - That it employs sufficient and suitable qualified drivers, passenger assistants, and operational staff to manage the service logistics.
12. The bus service operates for 38 weeks each year during the school terms.
13. The service delivers a core offer and a facility for 'Special Rounds' which provide transport for children with an extremely high levels of medical needs and/or special needs.
14. The SEND bus service, excluding additional passenger assistant costs, operates on a fixed cost basis within set ranges of passenger numbers, irrespective of how many vehicles HATS may require to transport service users. This is achieved through fixed passenger numbers (with tolerances built in to allow adjustments during the school year) rather than pricing for individual bus rounds/routes or for individual service users. This has worked well and allowed the stated contract price to remain stable over the years without the levels of price creep that can occur through other travel models e.g., being charged by each route.
15. The contract operated within three bands up until January 2019, when the limits in band three were exceeded due to the increasing demand for the

service, which mirrored the increase in the number of children in the borough with an EHCP. In 2019 the Strategic Director, Children and Adults Services approved the extension of passenger numbers and pricing ‘bands’ for the SEND bus contract.

16. The nine pricing bands, ranging from a minimum of 338 to a maximum of 438 passengers on the SEND bus contract are set out in the table below. The current service levels sit within Band 7.

Previous bands		New bands	
Low	338 to 347 passengers	Band 4	379 to 388 passengers
Middle	348 to 368 passengers	Band 5	389 to 398 passengers
Highest	369 to 378 passengers	Band 6	399 to 408 passengers
		Band 7	409 to 418 passengers
		Band 8	419 to 428 passengers
		Band 9	429 to 438 passengers

17. Travel assistance officers monitor punctuality and performance daily. Prior to the pandemic monitoring had shown that the provider met all key performance indicators (KPIs) as set out in the specification and contract. Due to the swift changes to service delivery during the pandemic the monitoring of KPIs was relaxed as they were not always applicable due to changing routes and service delivery. Monitoring of these KPIs have been re-introduced and will continue to be monitored should this new contract be awarded.
18. Generally the service has performed well against KPIs, responded well to the COVID pandemic, and when surveyed, parents/carers are happy with it as evidenced in satisfaction surveys.

### **Summary of the business case/justification for the procurement**

19. The current contract started on the 1 April 2015 for a period of five years and eight months and had the option for extension by a further two years.
20. The Strategic Director, Children and Adults Services approved a one-year extension in July 2020. A subsequent 24 month extension was approved in 2021, of which 12 months was included within the existing contract and an additional 12 month period was requested as a variation to the current contract.
21. The previous 24 month extension was required due to the delays that have been experienced in commencing the re-procurement of the contract due to the COVID-19 pandemic and to allow continuity of this statutory service. Due to capacity issues within the commissioning department, which have since been resolved, this has meant we have not had sufficient time to

complete the necessary market engagement to let a longer term contract at this time.

22. Given that there have been extensions and variations applied to the current contract as described in paragraphs 19-22 it is not permissible to vary the current contract again. Completing a single supplier negotiation, and award of a new contract as reflecting the outcome of negotiations, for an interim period will ensure service continuity and will allow sufficient time for a new procurement exercise to be completed. By requesting that cabinet delegates the decision to award the contract to the Strategic Director, Children and Adult Services in consultation with the Deputy Leader and Cabinet Member for Children, Education and Refugees this will allow sufficient time for the contract to be awarded before the current service ends on 31 August 2023.
23. With the current financial climate there is a risk if we go out to market that no providers will be willing to bid for these services without having to increase their contract price significantly. Increases of costs in areas such as fuel have had a huge impact on these types of services. The council are mitigating potential risks by proposing negotiating with the existing provider for a two year contract term rather than going to open market.
24. Pre-negotiation dialogue has taken place with the current provider to continue delivering the service with some minor changes to service delivery and performance indicators. This has allowed some flexibility for the provider without us having to change our charging structure which would result in an increase in contract costs over and above what is already agreed.

### **Market considerations**

25. The market for SEND transport in the London area is limited. HATS are the largest provider across the majority of London boroughs so the risk of challenge to the procurement and award of this new contract is low.
26. In 2022 the Council published a Prior Information Notice (PIN) to explore if there were any providers, other than the incumbent, who would be interested in delivering the SEND Buses service in Southwark. The reason this was done was to see if there was any competition within this market, or if we would want to explore a single supplier negotiation with the current provider for a longer time period. Apart from the incumbent provider there was only one alternative response to the PIN, and they did not have a depot within, or close to, the borough (as is deemed to be essential for the delivery of this service). This supplier indicated that they would be interested in potentially bidding for the service in Southwark but they would not have sufficient time to source a depot close enough to the borough to be able to deliver the service in 2023.
27. There was interest from more than one provider so it is now proposed that, as the council are unable to vary and extend the current contract, it enters into a single supplier negotiation with the incumbent provider, to allow sufficient time to complete further market research and draft a Strategic Options Assessment (Gateway 0) which will explore many options including

working with the commissioning alliance and will result in a new procurement strategy report (Gateway 1) being completed. This will allow time to look at any other contractual solutions also.

28. During the term of this proposed new contract officers will complete further benchmarking, exploring alternative bus transport models as well analysing any changes which may impact on the SEND transport sector resulting from issues such as COVID, Brexit and environmental factors affecting passenger transport.
29. Officers will complete market engagement and testing in early 2024 to evaluate the robustness of the provider market further and to explore if there are any other potential providers that may be interested in delivering this service from 2025 onwards.

## KEY ISSUES FOR CONSIDERATION

### Options for procurement route including procurement approach

30. The following options have been considered in relation to the procurement.

No.	Option	Impact
1.	Do nothing	<ul style="list-style-type: none"> <li>• When the current contract expires on 31 August 2023 there would be no SEND bus service provision for children and young people.</li> <li>• Children and young people would have no transportation to enable them to access their educational settings. Emergency/business continuity arrangements have been considered but they would not be suitable to introduce as an alternative to this contract extension.</li> <li>• The council would be at risk of not meeting its statutory duty as set out in the Education Act 1996 and Education Inspection Act 2006.</li> </ul>
2.	Commission a new service through a competitive procurement	<ul style="list-style-type: none"> <li>• SEND transport organisations have been under particular financial pressure in 2022/23 and if we were to go out market to procure a new service in 2023 this would mean it is likely that potential new providers would not be able to deliver the quality services we require within current budgets.</li> </ul>
3.	Provide the service in-house	<ul style="list-style-type: none"> <li>• This would require additional investment, with potential TUPE implications and recruitment of a full complement of skilled staff to provide the service.</li> <li>• The council does not have a fleet to operate the service with, an appropriate depot facility would also have to be sourced and managed. This could not be implemented within the time frame available.</li> </ul>

<b>Table 1: Procurement options</b>		
<b>No.</b>	<b>Option</b>	<b>Impact</b>
4.	Call off from a framework	<ul style="list-style-type: none"> <li>• A framework would need to be developed, there is insufficient time to consider this option.</li> <li>• There are very few SEND School Bus frameworks, if any, currently available and none identified that would be able to meet the council's specific requirements.</li> </ul>
5.	Commence single supplier negotiations with current provider for a longer time period of more than three years	<ul style="list-style-type: none"> <li>• A Prior Information Notice was published in October 2022 to gauge interest in the market for this type of service and we had interest from more than one potential provider (including the incumbent provider) so there is evidence that there is competition in this market.</li> <li>• Seeking a new two year contract is less likely to be challenged by other providers as the council are planning on exploring procurement options for these services, including market engagement, and have a new contract in place when the proposed extension is complete.</li> </ul>
6.	Award a new contract to the current provider through a single supplier negotiation for a shorter time period	<ul style="list-style-type: none"> <li>• This is a generally good performing, well-respected service.</li> <li>• Officers have negotiated with the current provider to make some changes to performance indicators that are in the current contract. These will still be achievable but the council will still be able to hold the provider to account if there are any issues with under-performance.</li> <li>• The original intention was to exercise the option to extend the contract if service continued to be of good quality and value, but these extension options have already been utilised and this is no longer a viable option.</li> <li>• If the two year contract is approved (with an optional up to 12 month extension period) this will allow sufficient time for a full service review to be completed with the hope that interest rates will decrease and when potential providers look to bid for this contract with the view that the contract start date will be in September 2025 they will be able to be more confident on what is affordable and we can attract bids from more than one provider.</li> </ul>

## Proposed procurement route

31. The recommended procurement option is to award a new contract to the current provider through a single supplier negotiation for a shorter time period.

## Identified risks for the procurement

32. The following risks have been identified for this service:

<b>No.</b>	<b>Risk</b>	<b>Risk Level</b>	<b>Mitigating Action</b>
1.	The impact of COVID 19, Brexit and the Cost of Living crisis on the economy with risks of having a negative effect on the economic viability of the provider	Low	<ul style="list-style-type: none"> <li>The Council will monitor the financial stability of the provider closely over the period of the new contract.</li> <li>This is a well-established business with whom no previous financial concerns have been raised.</li> </ul>
2.	Legal challenge from other providers or provider withdrawal	Low	<ul style="list-style-type: none"> <li>Mitigation for the recommended option is contained within concurrents provided by Assistant Chief Executive – Governance &amp; Assurance and Head of Procurement.</li> <li>The proposed two year contract period (with an optional up to 12 month extension period) will allow sufficient time for the council to stimulate the market in preparation for the tender and new contract. There is a new SEND-specific role within commissioning that has recently been recruited to which will help ensure this project stays on track and new contractual arrangements will be in place before the proposed new contract term ends.</li> <li>The relationship between the provider and the council is good and well established.</li> <li>During the pandemic the provider adopted a flexible approach to support the council and its service users' needs outside of its contractual obligations. Due to this, it provides the council with the confidence there will be a continuity of service during the proposed contract period.</li> </ul>



## Key / Non Key decisions

33. This report deals with a key decision.

## Policy Framework Implications

34. This contract will enable the council to fulfil its statutory duty to provide transport services to eligible children and young people as set out in the Education Act 1996 and in the Education and Inspection Act 2006 and will support delivery of the Southwark school travel assistance policy.

35. The contract assists the council in meeting its statutory public sector equality duty (PSED) under 149 of the Equality Act 2010 and supports the council's published approach to equalities.

36. The service supports the council's Fairer Future commitments including ensuring the 'Best Start in Life' for its residents and the values of treating every resident as if they were a valued member of our own family; and spending money as if it were from our own pocket.

## Procurement Project Plan (Key Decisions)

Activity	Complete by:
Enter Gateway 1 decision on the Forward Plan	02/06/2023
DCRB Review Gateway 1	24/05/2023
CCRB Review Gateway 1	01/06/2023
Brief relevant cabinet member (over £100k)	06/06/2023
Notification of forthcoming decision - Cabinet	30/06/2023
Approval of Gateway 1: Procurement strategy report	10/07/2023
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	19/07/2023
Single Supplier Negotiations Conclude	19/07/2023
Forward Plan Gateway 2	10/05/2023
DCRB Review Gateway 2	28/07/2023
CCRB Review Gateway 2	03/08/2023
Notification of forthcoming decision	04/08/2023
Approval of Gateway 2: Contract Award Report	14/08/2023
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision*	22/08/2023
Contract award*	23/08/2023
Add to Contract Register	24/08/2023
Place award notice on Find a Tender Service	24/08/2023
Place award notice on Contracts Finder	24/08/2023
Contract start	01/09/2023

<b>Activity</b>	<b>Complete by:</b>
Initial contract completion date	31/08/2025
Contract completion date – (if extension(s) exercised)	31/08/2026

\*estimated dates

### **TUPE/Pensions implications**

37. TUPE does not apply.

### **Development of the single supplier negotiation documentation**

38. Initial discussions with the incumbent provider have been based on minimal changes to the existing service specification and contract terms and conditions, and negotiations will be predicated on this basis.

### **Advertising the contract**

39. This is not applicable due to a proposed single supplier negotiation.

### **Single Supplier Negotiation Response Evaluation**

40. As referenced in preceding paragraph 30, officers have evaluated the current service provision, and will conduct negotiations in the expectation of minimal alteration to existing contractual parameters and standards. Potential areas to amend are performance indicators in relation to timeliness, to ensure targets are met and any under performance is dealt with accordingly. Other areas not in current service to be negotiated is clarifying the process of potential movement of people between the buses and taxi contracts, all to be agreed in advance and on a case by case basis. Other potential changes to the current contract will be explored seeking to improve existing performance where needed.

### **Community, equalities (including socio-economic) and health impacts**

#### **Community impact statement**

41. The council is mindful of the need to have due regard to the Public Sector Equality Duty imposed under Section 149 of the Equality Act 2010. The service is a specialist service for children and young people with special educational needs and/or physical disabilities. Service users represent a wide range of communities living in Southwark.

42. A full, equality impact analysis will be undertaken as part of the future procurement exercise. If this procurement strategy is approved once the new contract commences a Strategic Options Assessment (Gateway 0) for the SEND buses service will be completed which will include a full equality impact assessment. This is currently scheduled to be completed by November 2023.

43. As this service is used by some of the most vulnerable members of the community, it is essential that the service is of a high standard and can meet

the needs of all passengers. This transport service supports this cohort of students to attend their educational establishment which in turn ensures that they are able to achieve their full academic potential.

44. During the duration of this proposed new contract, officers will continue to have due regard to the needs of those individuals and groups having a protected characteristic under the Equality Act 2010, including but not limited to age, disability, sex and race.

### **Equalities (including socio-economic) impact statement**

45. This proposal to start a new contract fully complies with the requirements of the Equality Act 2010, including the Public Sector Equality duty (PSED), as travel assistance service is accessible to all eligible users based on need and ability to travel independently, as opposed to any of the protected characteristics specified in the 2010 Act.
46. This is a specialist service that is delivered to over 400 children and young people with SEND annually. Passengers represent a wide range of communities, including families and individuals with English as an additional language. This transport service supports this cohort of students to attend and achieve at school.

### **Health impact statement**

47. A range of sustainable travel support is considered for each child/young person at the point of assessment. Of all of the children that receive travel assistance more than half are supported by this SEND Buses contract. This service enables students to attend the school/education facility that is able to meet their health and educational needs - particularly, when the school is several miles from home.

### **Climate change implications**

48. HATS have committed to delivering a service with a clear environmental focus in its original bid for the existing contract. The key aspects being the use of fuel efficient vehicles (lower emissions), having a depot in the Borough (low lead mileage), and operating efficient fleet (optimised use of vehicles). If the proposed procurement approach is approved it is recommended that this commitment will continue in the contract. If this short term contract is approved this will give us sufficient time to give more consideration to having electric fleets and plan to move away from petrol and diesel buses as part of the strategic needs assessment which is due to be completed by November 2023. During the term of the proposed two year contract we will work with the provider to look at green alternatives and do more analysis of other areas that utilise green fleets. As part of the monitoring of the contract we will aim to reduce any unnecessary journeys to reduce the climate change impacts of the service.

### **Social Value considerations**

49. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social,

economic and environmental benefits that may improve the wellbeing of the local area can be secured.

50. The social value considerations included in the tender (as outlined in the previous Gateway 1 report) included that the provider will support the local community by providing free transport to enable children to attend Christmas events every year, arrange an awards ceremony for HATS and council staff and hold annual events for staff and family, including Southwark staff. If the proposed procurement approach is approved it is recommended that this commitment will continue in the contract.

### **Economic considerations**

51. HATS advertises any vacant roles locally to ensure they can employ local Southwark residents to deliver the service, works with Social Enterprise UK and supports local employment opportunities, apprenticeships and charitable causes. In doing so, it aligns to the council's Fairer Future Commitments, Theme three, 'a green and inclusive economy and Theme seven 'a great start in life'. This is because young people who are able to attend school are able to work towards a qualification and increase their life chances/and ability to gain long-term employment if they are able to do so.

### **Social considerations**

52. The provider employs local Southwark residents, actively recruits locally and pays the London Living Wage.
53. Under the Social Value Act (2012), the provider supports the local community in relation to health and well-being (Fairer Futures Procurement Framework (FFPF)), as described in paragraph 45.

### **Environmental/Sustainability considerations**

54. The provider complies with all environmental legislation this aligns to the council's Fairer Future Commitment, Theme three 'a green and inclusive economy'.
55. All vehicles maintained by the provider must adhere to a standard that meets or exceeds the Driver Vehicle Standard Agency (DVSA) requirements, for example MOT and vehicle Service History and the Ultra-Low Emission Zone (ULEZ) requirements.
56. Within the recommissioning of the contract, the council will explore available options for electric vehicles and other green solutions.

### **Plans for the monitoring and management of the contract**

57. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The appropriate details of this contract will be updated on the contract register via the eProcurement System. Contract Standing Orders dictate requirement for submission of annual performance reviews.

58. Day to day monitoring of the contract will be reported through monthly review meetings between the Travel Assistance Manager and the provider. Spot checks on transport rounds will be undertaken by the council, producing highlight reports on performance. In addition to regular monitoring arrangements, quarterly performance and service improvement planning meetings will be held.
59. HATS Annual Performance Report will continue to be presented in line with the Contract Standing Orders (CSO's). Travel Assistance officers will continue to monitor punctuality and performance of the service on a day-to-day basis to include:
- Compliance with the specification and contract terms and conditions
  - Contractor performance
  - Cost
  - User satisfaction/complaints
  - Risk management
  - Key performance indicators
  - Social Value
  - Compliance with the requirements of the Fairer Future Procurement Framework.
60. The travel assistance team also receives tracking reports weekly from HATS. Individual risk assessments are carried out annually on rounds and updated, if required, when a new child accesses the service. Any additional adaptations are carried out promptly to support passenger safety and comfort. The council has spot checks carried out annually by an independent Risk Assessor to check for compliance with all passenger travel, health and safety requirements.
61. If negotiations are approved to be undertaken with the current provider in principle an agreement will be sought to make some changes including minor changes to some of their Key Performance Indicators. (KPIs)

### **Staffing/procurement implications**

62. There are no staffing implications.

### **Financial implications**

63. The contract has an estimated value of £6.2m for the two year period. Up to £9.3m if the optional extension period is approved for a further 12 months.
64. The budget for the service has a large overspend, and comes from the general fund. The annual cost of the service will depend on variances caused by the number of children and young people using the service throughout the year, which will be monitored and reviewed within the Education department's financial management arrangements. The contract also contains a CPI linked inflation each September.

65. This service does not attract VAT. The proposed contract value is estimated at:

	Cost for proposed two years	Cost including optional one year extension
Original total cost	£6.2m	£6.2m
Total value of any previous variations	n/a	n/a
Value of proposed variation	£6.2m	£3.1m
Revised total cost	£6.2m	£9.3m

### **Investment implications**

66. Investment implications do not apply.

### **Legal implications**

67. Please see concurrent from the Assistant Chief Executive – Governance and Assurance.

### **Consultation**

68. During the last Operational Performance ‘Annual Parents Survey/feedback’ carried out in 2019 parents completed seven questions. Parents/Guardians made comments relating to their experiences and suggestions on ways that HATS could improve the service. The vast majority of feedback from the survey was extremely positive with the staff being recognised for their polite and friendly service.

### **Other implications or issues**

69. Not applicable.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance REF: [CAS23/21]**

70. The Strategic Director of Finance notes the report to approve single supplier negotiation with Healthcare and Transport Services for period of two years. The service needs to ensure robust monitoring is in place to minimise financial risk to the council.

## Head of Procurement

71. This report seeks approval of the procurement strategy for the Special Educational Needs and Disabilities Bus contract via single supplier negotiation with Healthcare and Transport Services, (HATS) for a period of two years effective from 01 September 2023 with estimated annual value of £3.1m, and cumulative lifetime value of £6.2m (over the proposed two year period). NB. In the event that the optional contingency (up to 12 month extension) period is approved, the cumulative lifetime value of the contract may increase to a sum totalling up to £9.3m.
72. The value of the contract dictates that it is subject to full application of the Public Contracts Regulations (PCR) 2015, including the requirement for a publicly advertised competitive tendering process. However, Regulation 32(2)(b) permits use of the negotiated procedure without prior publication where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
- (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
  - (ii) competition is absent for technical reasons,
  - (iii) the protection of exclusive rights, including intellectual property rights.
- but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.
73. The recent publication of a Prior Indicative Notice, (PIN) as detailed at paragraph 26, and analysis of relative capability and capacity vis a vis responses obtained, allied to stated intention to conduct a future procurement, with award coterminous with the end date of the requested contract duration period contained in this report, indicate that the council has a requisite degree of assurance in relation to the possibility of successful challenge to any subsequent direct award achieved through single supplier negotiations.
74. The report also confirms that the requested contractual period will enable the council to review its service requirements in order to enable development of future commissioning intentions for the service from 2025/26 onwards, noting that the approval decision for this report is expressly reserved to the Cabinet under the council's Contract Standing Orders.
75. Headline options and risks associated with the proposed extension are contained in paragraphs 30 and 32.
76. Alignment with the Fairer Future Procurement Framework (FFPF) is evidenced, specifically via confirmation of London Living Wage (LLW) payment, and the statements contained within paragraphs 41 - 56 more generally.

77. Proposed methodology for performance/contract monitoring is detailed within paragraphs 57 – 61. The report also confirms that an annual performance review will be provided to the council's DCRB and CCRB in alignment with council CSOs.
78. The Community, Equalities and Health Impact Statements are set out in paragraphs 41 – 47.
79. The Climate Change, Social Value, Economic and Environmental / Sustainability statements are set out in paragraphs 48 – 56.

### **Assistant Chief Executive – Governance and Assurance**

80. This report seeks approval of the procurement strategy for the Special Educational Needs and Disabilities Bus contract via a single supplier negotiation with Healthcare and Transport Services (HATS), for a period of two years from 1 September 2023 at an estimated annual value of £3.1m, making an estimated total contract value of £6.2m. If the optional extension period is approved for a further 12 months this will make an estimated contract value of up to £9.3m. At this value the approval decision is expressly reserved to the Cabinet under the council's Contract Standing Orders.
81. The nature and value of this service means that its procurement is subject to the full application of the Public Contracts Regulations (PCR) 2015, including the requirement for a publicly advertised competitive tendering process, advertised through a contract notice on the UK Find a Tender portal. However, PCR 32 permits contracting authorities to award a contract by a negotiated procedure without prior publication of a notice in certain limited cases, including where the services can be supplied only by a particular economic operator, and where competition is absent for technical reasons. The use of this ground is subject to the proviso that no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement. Paragraphs 25 to 29 of this report confirm the nature of the provider market and note the measures that will be taken to explore and test the market for the purposes of a future procurement exercise.
82. Cabinet's attention is drawn to the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010, and when making decisions to have regard to the need to (a) eliminate discrimination, harassment, victimisation or other prohibited conduct, (b) advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion, religion or belief, sex and sexual orientation, The duty also applies to marriage and civil partnership but only in relation to (a). Cabinet is specifically referred to the community and equalities impact statements at paragraphs 40 to 45 which set out the consideration that has been given to equalities issues, both in relation to the proposed contract and a future procurement exercise, in order to demonstrate and maintain compliance with the PSED.



83. Cabinet is also referred to paragraph 68 which notes the consultation that has taken place. Cabinet should take into account the outcome of that consultation when approving this procurement strategy.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Gateway 1 – Procurement Strategy Approval – Special Educational Needs and/or Disabilities (SEND) School Bus Transport	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4554&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4554&amp;Ver=4</a>		
Gateway 2 – Contract Award Approval – Special Educational Needs and/or Disabilities (SEND) School Bus Transport	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s50473/Report%20Gateway%20%20SEND%20Buses.pdf">http://moderngov.southwark.gov.uk/documents/s50473/Report%20Gateway%20%20SEND%20Buses.pdf</a>		
Gateway 3 – Contract Variation Extension Approval – Special Educational Needs and/or Disabilities (SEND) School Bus Transport - 2020	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="http://moderngov.southwark.gov.uk/mglIssueHistoryHome.aspx?Id=50022812&amp;Opt=0">http://moderngov.southwark.gov.uk/mglIssueHistoryHome.aspx?Id=50022812&amp;Opt=0</a>		
Gateway 3 – Contract Variation Extension Approval – Special Educational Needs and/or Disabilities (SEND) School Bus Transport - 2021	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="https://moderngov.southwark.gov.uk/documents/s99911/Report%20GW3%20SEND%20Bus%20Contract.pdf">https://moderngov.southwark.gov.uk/documents/s99911/Report%20GW3%20SEND%20Bus%20Contract.pdf</a>		
Education Act 1996	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000

Background Papers	Held At	Contact
<b>Link (please copy and paste into browser):</b> <a href="https://www.legislation.gov.uk/ukpga/1996/56/contents">https://www.legislation.gov.uk/ukpga/1996/56/contents</a>		
Education Inspection Act 2006	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="https://www.legislation.gov.uk/ukpga/2006/40/contents">https://www.legislation.gov.uk/ukpga/2006/40/contents</a>		
Equality Act 2010 (Section 149)	Children and Adults Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="https://www.legislation.gov.uk/ukpga/2010/15/section/149">https://www.legislation.gov.uk/ukpga/2010/15/section/149</a>		
Southwark's Fairer Future Commitments	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="https://www.southwark.gov.uk/council-and-democracy/fairer-future/fairer-future-commitments">https://www.southwark.gov.uk/council-and-democracy/fairer-future/fairer-future-commitments</a>		
Public Contract Regulations 2015 (Regulation 72)	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="https://www.legislation.gov.uk/uksi/2015/102/regulation/72/made">https://www.legislation.gov.uk/uksi/2015/102/regulation/72/made</a>		
Public Services (Social Value) Act 2012	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000
<b>Link (please copy and paste into browser):</b> <a href="https://www.legislation.gov.uk/ukpga/2012/3/enacted">https://www.legislation.gov.uk/ukpga/2012/3/enacted</a>		
Southwark's Travel Assistance Policy	Children and Adult Services, Commissioning Directorate, 160 Tooley Street, London SE1 2QH	Neil Colquhoun 0207 525 5000

Background Papers	Held At	Contact
Link (please copy and paste into browser): <a href="https://proceduresonline.com/trixcms/media/7493/travel-assistance-policy-2022.pdf">https://proceduresonline.com/trixcms/media/7493/travel-assistance-policy-2022.pdf</a>		

## APPENDICES

No	Title
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Jasmine Ali, Deputy Leader and Cabinet Member for Children,-Education and Refugees	
<b>Lead Officer</b>	David Quirke-Thornton Strategic Director of Children and Adult Services	
<b>Report Author</b>	Neil Colquhoun, Strategic Commissioning Manager – All Age Disabilities	
<b>Version</b>	Final	
<b>Dated</b>	27 June 2023	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		27 June 2023