

<b>Item No.</b> 14.	<b>Classification:</b> Open	<b>Date:</b> 28 January 2014	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Gateway 1 - Procurement Strategy Approval: Special Educational Needs and/or Disability (SEND) School Bus Transport	
<b>Ward(s) or groups affected:</b>		All wards	
<b>Cabinet Member:</b>		Councillor Dora Dixon-Fyle, Children's Services	

## **FOREWORD – COUNCILLOR DORA DIXON-FYLE, CABINET MEMBER FOR CHILDREN'S SERVICES**

Establishing a safe, reliable and efficient special needs and disability bus transport service is important to help us ensure that we are able to meet our statutory duty in the provision of travel support to our most vulnerable children and young people. The costs associated with providing the SEND bus service is commensurate with the need to secure a high quality, specialist service, we do however also need to achieve good value for money. The strategy contained in this report provides the framework to reach these objectives.

### **RECOMMENDATION**

1. The Cabinet approves the procurement strategy outlined in this report for the SEND school bus transport service which is to undertake a competitive tender process to appoint a contractor to provide these services (for a period of five years and eight months) with a commencement of 1 January 2015 and ending on 31 August 2020 with an estimated annual value of £1.95m. The contract will have an extension provision for a further two periods of twelve months making an estimated total contract value of £15.9m.

### **BACKGROUND INFORMATION**

2. In September 2006 the council awarded contracts for the provision of a SEND school bus transport to Ruskin Private Hire Ltd and Olympic South Ltd now trading as Healthcare and Transport Services Ltd (HATS) for a period of five years, with the option to extend for two further periods of twelve months. The contracts were due to expire in August 2011 but they were extended by the two extension periods up until 31 August 2013.
3. In July 2013 an interim arrangement was put in place to award SEND school bus transport contracts to the existing transport providers commencing in September 2013 for a period of 16 months, allowing time to procure a new SEND school bus transport service.
4. The current SEND school bus service provides the council with vehicles, drivers, (temporary cover) passenger assistants (PA) as required and depot facilities in the borough and is contracted to two external transport providers. The SEND school bus contracts operate alongside SEND taxi transport contracts and other non vehicular travel assistance to provide a full school transport service.

5. PAs carry out an important, challenging and sensitive role within the SEND school bus service, supporting children on their journeys to and from school. 69 of these PA staff are employed directly by the council and provision has been built into the current contracts with external transport providers for supply of any additional PA staff required to cover sickness absence or additional travel support. In addition there are around 17 PA staff, who are employed by schools and combine their PA role with a teaching assistant at one of Southwark's special schools.
6. Around 400 children and young people receive specialised travel assistance from the council of which 336 use the SEND school bus transport. The service currently provides 50 buses which operate predominantly within the borough transporting children to and from our special schools.
7. The school bus transport service that Southwark had in place between September 2006 and August 2013 comprised of in-house and externalised components. Vehicles, drivers and depots were provided through contracts and monitored by the council, whilst a large number of passenger assistant staff are Southwark council employees. This is a very unique operating model. Whilst some complexities arose with this arrangement e.g. a variety of employment terms and conditions, particularly across PA staff, reporting lines and staff management arrangements for transport staff, officers were of the view that through adoption of a partnering arrangement, this model could still provide the best solution for Southwark's school bus transport service.
8. A comprehensive school transport service review was carried out in 2011/12 and highlighted the following service improvements:
  - Introduction of a more unified approach to day to day organisation, training and staff development.
  - Streamlined customer communication, complaints processes and contact points.
  - Joined-up supervision/coordination of staff working on transport rounds including in-house passenger assistants.
9. A partnering approach was developed between the council and incumbent external bus transport providers which commenced in September 2013. This alternative way of working was designed to address some of the points highlighted in paragraph 8 above.
10. Initial assessment of this trial arrangement has been used to inform this procurement strategy for a new bus contract from 1 January 2015. Transport providers arrange training session for all drivers and passenger assistant staff working on their routes which improves service delivery. This arrangement also allows greater coordination of staff allocated to rounds and the provider then can take the lead on any queries or complaints raised by parents/carers. Regular meetings between external transport providers delivering the service and officers of the transport team are held to review the effectiveness of each of these operational changes all of which have so far been positive.

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

11. Local authorities have a statutory duty to provide appropriate travel assistance to enable eligible children to get to and from school. The cost of delivering this

specialist service is high; the number of eligible children has also been increasing year on year. The council needs to continue to have an effective contract in place to help contain spend within budget.

12. The new contract for SEND school bus transport will be based on the successful elements of the operational model currently in place to provide a comprehensive service that:
  - is able to deliver the council's statutory transport duties and be fully compliant with all necessary transport operational requirements
  - will provide the entire SEND school bus service
  - has fit for purpose staff training and development arrangements
  - is able to deliver an excellent customer experience and communication.

### **Market considerations**

13. The market for the provision of school buses is mature and competitive and it is expected that a sufficient number of quality responses will be received. The market is made up mainly of private sector companies with regional and national reach. Other local authorities in London also provide this service as a trading service to other local authorities.

### **KEY ISSUES FOR CONSIDERATION**

#### **Options for procurement route including procurement approach**

14. A project board has been in operation to oversee development of the SEND buses procurement. The project board considered the following options to ensure that market challenge and competition could be demonstrated in the procurement of the SEND school bus transport service:
  - Option 1: Do nothing – as the council has a statutory duty to provide travel assistance for eligible pupils this is not a viable option.
  - Option 2: Continue with existing arrangements – this is not a viable option as the current interim contracts do not have provision for extensions and there is a continuing need for this service. This service is subject to tender requirements.
  - Option 3: Use a SEND school bus transport service of a neighbouring borough – whilst there are SEND bus services in surrounding boroughs they may be difficult to access due to existing contractual arrangements of those authorities with their providers. This option was therefore not considered viable for the main service at this time.
  - Option 4: Bring the service in-house - currently there is no expertise or staff within the council to provide this service in-house and additionally the council would take on the associated TUPE liabilities of the existing providers' staff delivering this service.
  - Option 5: Carry out a competitive procurement process – there are a number of providers who could deliver this service and it is felt that this option will deliver best value for the council.

## Proposed procurement route

15. Under the Public Contracts Regulations 2006, the services are Part A services that are in excess of the relevant European Union thresholds. The council proposes to adopt the restricted procedure for the purposes of this procurement. The evaluation stages of that procedure are detailed further in paragraphs 32 - 33 of this report.
16. CSO 5.4 requires that the council take all reasonable steps to obtain at least 5 tenders following a publicly advertised competitive tendering process.
17. Appropriate logistical arrangements will need to be in place to facilitate council employed passenger assistants working on the service. This will include a Southwark based meeting point to enable them to board vehicles and also, for supervisors to coordinate and arrange staff cover when needed will be required. This is an essential requirement and will enable the service to run effectively. Tenderers will be required to demonstrate how they propose to deliver the service to meet this requirement and comply with all relevant transport operator regulations.

## Identified risks for the procurement

18. A risk register has been produced and will be monitored by the project manager. Updates and alerts will be escalated to the project board. The table below summaries the main risks.

No.	Risk	Likelihood	Risk Control
1	Lack of market interest due to operational set up (mix of internal and external elements).	Low	New partnering arrangements providing new flexibility to jointly manage the service that has been successful and tested by the LA.
2	Not enough council resources to deliver this procurement process as there are two tendering processes (SEND taxis and SEND school bus transport) taking place at the same time and there may be a large number of responses.	Low	Additional resources have been identified to support the process. The two procurement processes have also been staggered to ensure the availability of sufficient resources at key points during each procurement process.
3	Not achieving best value by having one provider in a long term arrangements.	Low	Arrangements will build in mechanism to deal with necessary changes to routes, fuel prices and insurance costs.
4	Having a sole provider results in lack of service in the event that provider is lost e.g. through poor performance, insolvency, etc.	Low	<ul style="list-style-type: none"> <li>•Rigorous assessment of tenders.</li> <li>•Contract fit for purpose.</li> <li>•Comprehensive monitoring and management of the service through the life of the contract.</li> <li>•Close working relations between the council and contractor.</li> <li>•Temporary use of neighbouring boroughs transport service in an</li> </ul>

No.	Risk	Likelihood	Risk Control
			emergency.

**Key /Non Key decisions**

19. This report relates to a key decision.

**Policy Implications**

20. 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 Sthwark School Travel Assistance Policy.

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

**Procurement Project Plan (Key Decisions)**

22. The procurement plan is outlined below and the project board will keep these dates under constant review.

<b>Activity</b>	<b>Complete by:</b>
Placement of GW1 report on Forward Plan	22/10/2013
DCRB Review Gateway 1	11/12/2013
CCRB Review Gateway 1	19/12/2013
Notification of forthcoming decision – despatch of Cabinet agenda papers	16/01/2014
Approval of Gateway 1: Procurement strategy report	28/01/2014
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	05/02/2014
Completion of tender documentation	05/02/2014
Advertise the contract	12/02/2014
Closing date for expressions of interest	17/03/2014
Completion of short-listing of applicants	13/04/2014
Invitation to tender	15/04/2014
Closing date for return of tenders	30/05/2014
Completion of any clarification meetings/presentations/evaluation interviews	31/07/2014
Completion of evaluation of tenders	31/07/2014
Forward Plan	29/07/2014
DCRB Review Gateway 2	06/08/2014
CCRB Review Gateway 2	14/08/2014
Notification of forthcoming decision – despatch of Cabinet agenda papers	Sept 2014
Approval of Gateway 2: Contract Award Report	Sept 2014
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	Sept 2014
Alcatel Standstill Period	Oct 2014
Contract award	Oct 2014
TUPE Consultation period ends	31/12/2014
Contract start	01/01/2015
Contract completion date	31/08/2020
Contract completion date – (if extension(s) exercised)	31/08/2022

### **TUPE/Pensions implications**

23. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) as well as the European Acquired Rights Directive 2001/23/EC of 12 March 2001 are likely to apply to this contract. The appointment of a new contractor for the existing services in this proposed retender is likely to amount to a Service Provision Change under TUPE.
24. There should be no TUPE nor pensions implications for the council as an employer because the services being retendered are not delivered by the council

directly. The council intends to retain the same level of in house provision of Passenger Assistants as it currently provides. TUPE is therefore only likely to apply in relation to any incumbent and new provider of the same service and this may result in the transfer of staff from one to the other.

25. There may be pensions implications for the council if there is a transfer from any incumbent provider of any staff who were originally employed by the council to deliver the service/s.
26. However until due diligence is carried out the full TUPE and pensions implications cannot be determined. Current service providers will therefore be requested to provide the details of terms and conditions (including pay and pension information) of their employees engaged on the services they provide. This information will be included in the ITT packs for other tenderers to prepare their bids.
27. TUPE liabilities will therefore be identified to potential tenderers so these can be costed into any bid by them. It will also be made clear to tenderers that the responsibility to seek legal advice to take a view regarding TUPE will rest with them and that they should obtain independent advice before submitting a tender.

#### **Development of the tender documentation**

28. The tender documentation will be developed by the project team which includes officers from the council's legal, finance and corporate procurement teams.
29. The project board will oversee all elements of the procurement process and sign off all the relevant tender documentation ((Official Journal of the European Union (OJEU) notice, pre qualification questionnaire (PQQ), invitation to tender (ITT), service specification and the quality and price evaluation methodologies).
30. Key service improvements identified through the school transport service review will be incorporated into the new school bus transport specification and contract documentation as summarised in paragraph 9 above.

#### **Advertising the contract**

31. The tender will be advertised in a number of ways:
  - Notice in OJEU
  - Public advertisements in trade journals
  - Advertisement published on the council's website
  - Existing and other SEND school bus transport providers known to the council will also be alerted to the advert placed on the council's website.

#### **Evaluation**

32. Due to the sensitive nature of the SEND bus service which provides transport for some of the most vulnerable children and young people in the borough. High expectations will be placed on companies tendering for the service in terms of their ability to implement safeguarding protocols, recruit good quality staff and their ability to adopt a partnering approach to working with the council. With this in mind, officers intend to adopt a 60:40 (price/quality) weighted model with more emphasis on quality rather than the council's standard approach 70:30. The

contract will be awarded on the basis of MEAT (most economically advantageous tender) following a Part A EU restricted procedure consisting of two stages – pre qualification questionnaire (PQQ) and invitation to tender (ITT).

- Stage One – PQQ - the purpose of the PQQ is to create a short list of organisations who have demonstrated that they have sufficient financial and economic standing, and technical capacity and ability to be invited to tender for this contract. PQQs will be evaluated in accordance with requirements of the Public Contract Regulation 2006. The final PQQ evaluation methodology will be signed off by the project board and advised to those expressing interest. Only those tenderers who attain the minimum technical score and pass all other sections will be invited to tender.
  - Stage Two – ITT - method statements will be used to evaluate tenders against key quality criteria such as quality of resources, approach to service delivery, management of information and approach to service improvement. To pass, tenderers will have to achieve a minimum score on selected method statements. Tenderers will be asked to complete a pricing schedule which will require them to cost the various aspects of the service. An evaluation matrix has been developed with finance colleagues which will result in all bids being ranked. The quality and price scores will be added together to give final ranking.
33. It is envisaged that in the event of any minor changes to a round during an academic year e.g. change in the number of passengers/pick ups the price will stay the same within an agreed range. Therefore tolerances for change will be included and these will be agreed as part of the tender documentation.

### **Community impact statement**

34. This 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, children and young people and their families/carers with English as an additional language. This transport service supports this cohort to attend school.
35. Comprehensive consultations were carried out and informed the way forward for the future SEND transport policies including service users' and their carers' involvement in the design of the eligibility criteria. The consultation process referred to in paragraphs 55-56 confirmed that the SEND school bus transport a service valued by children and young people and their parents/carers and it meets their needs.
36. All potential providers will be required to demonstrate their commitment to diversity and equal opportunities. It will be highlighted within the service specification that all contracted arrangements will need to meet specific cultural and language needs where applicable. It is crucial that services that the council provides for children and young people are accessible and support their needs by promoting equality and responding to diversity – including issues with respect to age, disability, faith, gender, ethnicity and sexual orientation.

### **Economic considerations**

37. The Public Services (Social Value) Act 2012 requires the council to consider a number of issues, including how what is proposed to be procured may improve



the economic, social and environmental well-being of the local area. These issues are considered in paragraphs 38-40.

38. The tender will be widely advertised and it is anticipated that this will attract the interest of local, regional and national providers and afford them the opportunity to register their interest in competing for the work.

### **Social considerations**

39. All potential SEND school bus transport providers will be expected to meet the London Living Wage (LLW) requirements. For this service it is considered that best value will be achieved by including this requirement as it will enable providers to employ suitably qualified professional drivers and additional passenger assistants required on this contract who are able to provide a high quality service.

### **Environmental considerations**

40. Transport providers are expected to comply with all environmental legislation and use and source green, environmentally friendly vehicles whenever it is possible to do so. They will be asked to demonstrate their compliance with these factors at appropriate stages of the procurement process.

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

41. Day to day monitoring of the contract will be reported through monthly review meetings between officers and the transport 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. These meetings will be led by the Director of Education and attended by the Director/owner of the successful transport provider.
42. The tender specification will describe the council's desire to establish close partnering arrangements in order to deliver a joined up service through external and in-house transport staff. The contract will be monitored and managed on a day to day basis by the home school transport team in respect of:
  - compliance with the specification and contract terms and conditions
  - the performance of the contractor
  - cost
  - user satisfaction
  - risk management and
  - key performance indicators

### **Staffing/procurement implications**

43. There is a cross departmental project team tasked with delivering this procurement. There are governance arrangements in place to oversee the progress of the procurement and to make necessary decisions during the process.

44. The project board meets on a fortnightly or if needed more frequent basis to drive forward this procurement and procurement of SEND taxis for children, young people and vulnerable adults.
45. The staffing resource required to deliver this procurement is to be funded through existing staff budgets.

**Financial implications CS0279**

46. The home to school transport budget has consistently experienced over spends for the past three financial years, with an overspend of £559k forecast for the provision of transport in 2013/14:

**Direct Transport Costs**

Year	Budget £000's	Actual £000's	Variance £000's	Variance from budget %
2011/12	2,478	3,075	598	24
2012/13	2,489	3,288	799	32
2013/14 forecast	2,921	3,480	559	19

47. £1.95m of £3.48m of the direct transport costs outturn is forecast to be bus transport contract expenditure for 2013/14.
48. The service as a whole has seen a steady rise in the number of children with special educational needs and/or disabilities transported each year and is subject to additional costs due to 'in-year' increases of children with SEND provided with a service. Models of prior years have seen bus contract rounds increase over initial September estimates, as new children with SEND require transport services and cannot be accommodated within existing arrangements. In 2012/13 an 8% increase in children was experienced between September 2012 to July 2013.
49. The inclusion of tolerances within the new bus contract should allow for these predictable fluctuations and may enable a stabilisation of contract costs with the onus on suppliers to provide a service within a given range.
50. The current year forecast show an increase in bus usage as former mini bus rounds in the taxi contract move into the main bus provision:

Type	2011/12		2012/13		2013/14	
	No	%	No	%	No	%
<b>Taxi</b>	87	23	128	32	67	17
<b>Buses</b>	295	77	266	68	336	83
<b>Total Children Transported</b>	<b>382</b>	<b>100</b>	<b>394</b>	<b>100</b>	<b>403</b>	<b>100</b>

51. However there is an expectation that the new bus contract will not experience an increase in costs on the current outturn of £1.95m, as officers take the opportunity to reconfigure the service with providers and secure efficiencies where possible. Taking this into account the cost of the new bus contract is not projected to exceed £15.9m over the life of the contract.

52. The contractors tenders will need to take account of the TUPE implications in their pricing; this cost has been estimated within the contract value. The existing cost of the TUPE arrangements are £123k per annum which are decreasing as staff members leave.
53. The contract will be funded from the SEND transport allocated budgets for the respective years.

### **Legal implications**

54. Legal implications are included in the advice from the Director of Legal Services.

### **Consultation**

55. This procurement strategy has been developed to deliver part of the Southwark School Travel Assistance Policy.
56. An in-depth review of the home to school transport service took place in 2011/12 and resulted in a number of operational changes, including the transfer of more out of borough work to the SEND taxi contract. This move helped the council to achieve significant savings and improved end user service satisfaction. The council has also improved the assessment process of the travel assistance and has started to negotiate and offer a wider range of travel solution options. For example, access to independent travel training and direct payment to families, is beginning to help to reduce home to school transport costs.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Head of Procurement**

57. This report is seeking approval to procure a SEND school bus contract.
58. The report confirms that the council has a statutory duty to provide appropriate travel assistance to enable children to get to and from school. This duty presents an ongoing need for transport services which are delivered in a variety of ways through a number of contracts. This report covers the provision of bus services only. The proposed contract will provide a borough wide service transporting children to schools in and outside of Southwark.
59. The report confirms that a service review has been undertaken which has helped inform decisions regarding specification and type of contract to be procured. Southwark operates a service model that has a combination of in - house and external elements. It is proposed that this model continues to be adopted going forward however the need for improved operational arrangements has been highlighted. It is therefore proposed that partnering elements be inserted into the new contract to enable shared service responsibilities to be better developed.
60. The procurement options considered and discounted are outlined in paragraph 14.
61. The procurement project plan is achievable, provided the appropriate resources are allocated to deliver the project. The report confirms that a project board is in operation to oversee the procurement and monitor the progress of the project. It is envisaged that the project board will sign off key stages of the project and the production of key tender documentation.

62. Paragraph 32 describes the approach to evaluation. A weighted model for evaluation (60:40) in favour of price is proposed. Whilst this is not in line with the council's current recommended weighting, the report provides some justification for this approach. A cross departmental project team has been established to work on this transport procurement. Evaluation of submissions will be undertaken by officers with expertise in transport services including home to school transport.
63. Paragraphs 41 - 42 outline the monitoring and management arrangements for the new contract and services delivered through it.

### **Director of Legal Services**

64. This report seeks the approval of the procurement strategy for the SEND school bus transport service as further detailed in paragraph 1. At an estimated value exceeding £4m, this is a Strategic Procurement under contract standing orders (CSOs), and approval is therefore reserved to the Cabinet.
65. The Cabinet is advised that the relevant law relating to the council's duty to make arrangements for transporting children and young people with SEN to school is found under the Education Act 1996, and in particular Part IV and schedules 27 and 35. Under s.508B local authorities must make travel arrangements for eligible children to facilitate attendance at school and those arrangements must be free of charge. There are supplementary provisions under the Education and Inspections Act 2006.
66. The bus service is a 'part A' service under the Public Contract Regulations 2006, and is therefore subject to the full application of those tendering requirements. As noted in paragraph 15 the council intends to undertake a competitive process which accords with the EU requirements, and which will be advertised in OJEU.
67. The Cabinet will be aware of the Public Sector Equality Duty in section 149 of the Equality Act 2010. In exercising its functions (and in its decision making processes) the council must have due regard to the need to:
  - (a) eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
68. The relevant protected characteristics are age, disability, gender reassignment, marriage/civil partnership pregnancy/maternity, race, religion/belief, sex, sexual orientation.
69. The Cabinet is referred to paragraphs 34-36 of this report which note the community impact statement, and they should consider the equalities impact and issues when approving the procurement strategy, and at each stage of the process.

### **Strategic Director of Finance and Corporate Services (FC13/086)**

70. This report seeks cabinet approval to the procurement strategy for the SEND school bus transport service. Financial implications are outlined in paragraphs 46 and 53 and show an expected annual cost of no more than £1.95m.
71. The strategic director of finance and corporate services notes that funding is currently identified in the draft 2014/15 budget, which is subject to approval by Council Assembly on 26 February 2014. A budget for this contract will need to be identified in future years to ensure the continuation of this service.
72. Prior to contract award a full financial appraisal will be completed, including TUPE implications and ensuring the council's commitment to London Living Wage is met. Staffing and any other costs connected with this contract will be contained within existing departmental budgets.

### **BACKGROUND DOCUMENTS**

<b>Background Documents</b>	<b>Held At</b>	<b>Contact</b>
None		

### **APPENDICES**

<b>No</b>	<b>Title</b>
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Dora Dixon-Fyle, Cabinet Member for Children's Services	
<b>Lead Officer</b>	Romi Bowen, Strategic Director Children's and Adults' Services	
<b>Report Author</b>	Glenn Garcia, Head of Pupil Access	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Head of Procurement	Yes	Yes
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	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
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