

CABINET

17 DECEMBER 2013

GATEWAY 3 SPECIAL EDUCATIONAL NEEDS HOME TO SCHOOL TRANSPORT 2014

Portfolio Holders: Councillor Mike O'Brien, Children's Services (Lead Member)
Councillor Phil Filmer, Front Line Services

Report from: Barbara Peacock, Director of Children and Adults Services
Robin Cooper, Director of Regeneration, Community and Culture

Author: David Tappenden, Transport Change Manager
Jill Price, Category Specialist

Summary

This report details the results of the tender for SEN home to school transport, and seeks permission to make arrangements for transport provision for the following three schools (Warren Wood School, Brompton Academy and Rivermead School) and the provision of respite and "Write Trak" transport.

1. Budget and Policy Framework

- 1.1 This procurement is within Budget and is consistent with the Policy Framework. The proposals support the Council's priorities as set out within the Medway Council Plan, specifically by supporting the improvement of quality of life for Medway residents. The service will assist individuals maintain their health and independence by helping them travel more easily and safely. The service will also support the individual to maintain their schooling in Medway by providing reliable transport to and from their chosen institution.

2. Background

- 2.1 The tender comprised the following four contracts for home to school transport.

LOT 1 - Contract 1 – Provision of home to school transport for all eligible pupils attending Warren Wood School by a single transport operator.

Contract 2 – Provision of home to school transport for all eligible pupils attending Brompton Academy by a single transport operator.

Contract 3 – Provision of home to school transport for all eligible pupils attending Rivermead School by a single transport operator.

LOT 2 - Contract 4 – Provision of respite transport and “Write Trak” (home tutoring transport) for all eligible pupils by a single transport operator.

2.2 These contracts were tendered as two Lots (Lot 1 – Contract 1, 2 and 3, Lot 2 – Contract 4). For Lot 1, operators that achieved the required level of quality would be invited on to a School Sites Framework, with their quotes then considered for Contracts 1, 2, and 3.

2.3 Regarding price, operators were required to tender an annual cost for Contracts 1, 2, and 3. This contract price will be set for the year, with the operator required to accommodate changes in passenger numbers (to a 25% tolerance, increase or decrease) within this agreed annual cost. Applicants were also asked to plan and price their routes in two formats, via door-to-door transport and via pick-up points along a set route, to ascertain whether there would be any cost savings by the latter approach. Applicants were then asked to provide pricing on the basis of one, two, three and four year contract terms. For Contract 4, applicants were asked to complete a cost matrix with set prices for specific vehicle use, staff use, and mileage.

2.4 This method of tendering SEN home to school transport is a significant change to the previous procurement method whereby single routes/contracts were tendered during the summer school term and holidays. Officers anticipate that offering all transport requirements for a school site to a single operator will achieve cost efficiencies from operators, as previously, operators were only able to tender for select routes to schools. It is also anticipated that this approach will improve the relationship between schools and their dedicated operator, as well as allowing the operator to become more familiar with the specific needs of pupils attending the schools they serve

2.5 **Contract Duration**

Operators were invited to tender prices for these contracts on the basis of a one, two, three and four year contract terms. The four-year contract option yielded more cost effective quotes. The duration of the proposed contracts is therefore four years commencing in April 2014.

2.6 **Contract Value**

The values for the proposed lots are set out in the exempt appendix.

Only one operator tendered pricing for Contract 4. This operator subsequently failed to achieve the required level of quality for their pricing to be considered.

2.7 **Procurement Tendering Process**

This procurement was subjected to a formal tender process in line with the EU Procurement Open Process due to the total value of these contracts being above the EU Procurement Threshold for Services of £173,934.00. The

OJEU notice was placed within the Official Journal of the European Union on 13 September 2013. The opportunity was also advertised and made available electronically on the South East Business Portal and the Kent Business Portal. An open tender process was undertaken in order to generate more interest in SEN transport provision from a wider market, and achieve more competition in pricing by allowing a wider range of operators to submit tenders. Procurement Board approved this approach at Gateway 1 stage and Cabinet approval was given on 11 June 2013.

A total of 12 expressions of interest were received. Subsequently, 8 companies returned the required documentation within the prescribed deadline for completed submissions of 12:00 on 4 November 2013. The evaluation criteria was Most Economically Advantageous Tender (MEAT) based upon a composite mixture of quality and price, 60% for quality and 40% price. Operators were required to achieve a minimum quality score in order to have their pricing evaluated. They would also need to achieve this level of quality to be awarded a place on the School Sites Framework in order to tender for further school sites if this approach is carried forward.

After a pre-qualification compliance check of the eight submissions received, seven compliant submissions were evaluated. The results of this evaluation process are set out in the Exempt Appendix.

2.8 Other Information

To allow officers to carry out this procurement process, those routes / contracts that were ending in July 2013 were extended to July 2015. Operators were approached with the offer of an extended contract on the proviso of a price adjustment; this achieved overall reductions between 1% and 3% on the route daily rates. However, as in previous years these reductions were offset by new passenger requirements and changes required over the summer period for the start of the new school year. Transport officers did receive positive feedback from parents of passengers whose transport operator may have changed if these routes were tendered rather than extended, stating that the continuity of transport staff and arrangements was appreciated. Operators also confirmed that they were better placed to accommodate new passengers and carry out required staff introductions in good time for the start of the new school year without having to go through a summer tender process.

2.9 Urgency of Report

This Procurement Gateway 3 Report and the associated decision is a matter of urgency due the required time required to successfully mobilise these contracts in time for the required commencement date of April 2014.

3. Procurement Process

3.1 Procurement Process Undertaken

This procurement tendering process has resulted in the following procurement options:

3.2 Do not award any contract and cancel procurement process

The option of not awarding any contract and cancelling the procurement process has been considered. Whilst it would be viable to extend the current routes / contracts that are serving the three school sites, and the respite and "Write Trak" arrangements if this process is cancelled, it would provide better value and an opportunity for service quality improvements to arrange for the service to be delivered by Company J as proposed in the Exempt appendix.

3.3 Preferred option as highlighted within the Exempt Appendix

The preferred option will achieve a saving of approximately 20% on the current annual spend to the three school sites.

Within the tender document each contract had a set annual budget. This figure was calculated in July 2013 when the tender document was drafted on the basis of the current annual cost of all routes to the three school sites. Applicants were encouraged to submit their quotes by using price caps for each contract under the budgets amounts in order to maximise the savings achieved. The tenders have annual costs below these set budgets. The tender advised operators that the number of passengers may alter slightly prior to contract commencement in April 2014, and tendered costs needed to take into account these changes.

These services are set to commence after the April school holidays, which will allow the successful operators to take over the operation of transport at a time when the passenger requirements are more stable. The preferred operator will have a three month lead in period in order to successfully mobilise and work with the Council and their school site to accommodate this change in transport provision.

With regard to the pricing differential between operating the transport via pick-up points or door-to-door, due to savings achievable by operating routes via pick-up points being minimal it will not offset the additional resources and management required to change the service to a pick-up point approach. It is therefore proposed to continue to operate the service on the basis of door-to-door transport, with a caveat that the successful operator will look to move towards pick-up point transport where it presents the opportunity for transport enablement improvements for the individual passengers.

Regarding contract term, all operators offered more cost effective quotes on the four-year contract term option

3.4 Other alternative option – Retender of Contract 4: Respite and "Write Trak" Transport

Only one operator submitted pricing for Contract 4, and this operator did not achieve the necessary quality score to have their pricing considered.

3.5 Other alternative option – Company J Proposal

Company J has provided a proposal (as set out in the Exempt Appendix) regarding the possibility of carrying out SEN home to school transport. Company J did not take part in the tender process.

Company J has been provided with details as to the current SEN transport requirements across the whole service, and for the four contracts tendered here. Company J is a Teckal company, see paragraph 7.2.4 below. Company J have confirmed that they are able to carry out transport to the three school sites to the budgets set out in the tender documentation, using a new fleet of buses, with an additional saving offered under current profit share arrangements with the company (though it should be noted that this will be a corporate saving and not specifically contribute to any savings on the SEN transport budget).

Company J has agreed to undertake Lot 2, respite and “Write Trak” transport. Due diligence discussions will take place to agree mobilisation plans with Company J.

3.6 Other Information

Only four operators achieved a high enough quality score in the tender process to be placed on the proposed School Sites Framework. It may not be viable to tender the remaining school sites in Medway as single contracts to just these four operators. These four operators may not have the capacity to tender for the remaining sites, and any savings achieved by competitively tendering the sites would be limited by the small number of operators quoting. As a comparison, the current Framework utilised for tendering new SEN transport routes has sixteen operators on it.

3.7 Evaluation Criteria & Preferred option

Further to an extensive review of the options as highlighted above, the preferred option “3.5 Company J Proposal” is recommended (see table in paragraph 3.1 of the Exempt Appendix which compares the savings achieved by the options available).

Both the tender award option and Company J proposal option offer the following benefits: -

Arranging transport for these three schools for a set annual cost will remove any fluctuations in cost across the year where passenger numbers and need change. This will allow officers to set the budget for transport to these schools in advance with assurance that the cost will not change during the year, within a 25% passenger number tolerance.

Having a sole operator provide all transport to a single school will allow the operator to achieve a better understanding of the needs of the passengers attending the school.

The school sites currently contend with a number of different operators transporting to their school site. Having a single operator will significantly improve the relationship between the school and their dedicated operator, resulting in better service delivery for the passenger and less intervention required from the Council.

The single operator for each school will be obliged to incorporate new passengers into their existing transport arrangements. This removes the needs for Transport Officers to make new arrangements during the year for new passengers, something which is becoming increasingly difficult and inefficient due to lack of responses from the current Framework operators.

Parents and service users will have better continuity of operator and staff, something which parents and passengers have stated is a very important aspect to home to school transport.

The recommended option of the Company J proposal achieves a greater saving via the profit share corporate arrangement that is in place, than the option to award the contracts to those operators who were successful in the tender process.

4. Business Case

4.1 Delivery of Procurement Project Outputs / Outcomes

The following procurement outcomes/outputs identified as important at Gateway 1 to the delivery of this procurement requirement have been appraised in the table below to demonstrate how the recommended procurement contract award will deliver said outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended option deliver outputs/outcomes?
1. Operator ability to successfully accommodate passenger fluctuations within set annual cost	From commencement in April 2014 officers will monitor the operators ability to add new passengers to planned routes within the agreed annual cost	Transport Team & Category Management	Summer 2014	A 25% tolerance has been set based on historical children on these routes any change within the tolerance will mean no changes to the annual cost.
2. Improved working relationship between operators and schools	Close monitoring of operators ability to liaise with the school regarding day-to-day transport issues	Transport Team	Summer 2014	One operator as point of contact for any issues that arise aiding the relationship between operator and school.
3. Improved budget monitoring on contracts awarded	The monitoring of impact on the set annual budget for SEN transport by the proposed awards	Transport Team & Category Management	Quarterly budget monitoring	Capped the budget and added the 25% tolerance.
4. Improved service delivery by successful operators	Ongoing consultation with stakeholders	Transport Team	Summer 2014	Increased economies of scale and increased efficiencies. Monitoring of these arrangements will become more efficient.
5. Reduced requirement for officer input on operation of transport to school sites	Ongoing monitoring of issues dealt with by the Transport Team for the three school sites	Transport Team	Summer 2014	Reduction for input on a day to day basis due to only one operator per school.

5. Risk Management

The following risks have been identified for the proposed arrangement, with plans to mitigate these risks also set out below.

Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
Procurement process / Legal	Legal challenge from operator	D	III	The tender included a robust evaluation process, and included the necessary condition stating that Medway Council are not bound to award any contracts as a result of the tender process.
Political / Reputational	Concerns from local taxi / minibus operators that the tender process ended without a contract award	B	III	The council will continue to proactively engage with the local taxi and minibus market.
Service delivery	Inadequate service delivery from operator	D	III	Company J have undergone a significant process of due diligence checks prior to the Council entering into the current partnership arrangement, which included checks as to their viability concerning service delivery.
Service delivery	Negative impact on existing contracts from unsuccessful / local operators	B	II	As stated, Company J overall service delivery ability has been assessed prior to the Council entering into the current partnership. Due diligence discussions with Company J will provide further specifics of how they intend to deliver SEN transport.
Financial	Inability of operator to carry out service to agreed budget	D	II	Officers will work closely with Company J in order that they fully understand the specific service delivery requirements for this service, including the transportation of passengers to the set budget

6. Procurement Board

- 6.1 The Procurement Board considered this report on 4 December 2013 and supported the recommendations set out in paragraph 8 below.

7. Service Comments

7.1 Financial Comments

- 7.1.1 The procurement requirement and its associated delivery will be funded from existing revenue budgets. The current SEN transport budget is significantly overspent; however, this procurement requirement and its associated delivery will contribute towards bringing overall expenditure back within budget.
- 7.1.2 Further detail is contained within the Financial Analysis as set out in the **Exempt Appendix**.
- 7.1.3 The recommendation represents a 20% cost saving on the cost of the current contracts / routes that are operating to the three school sites. An additional saving is proposed by Company J via the profit sharing arrangement, though this will not be counted as a saving against the SEN transport budget specifically.
- 7.1.4 The proposal to move to a set annual cost for this service will allow for much more certainty in budget setting. This is something that would be beneficial for SEN transport contracts, if this approach can be successfully implemented across all SEN transport.

7.2 Legal Comments

- 7.2.1 The Council has undertaken an EU procurement process because the value of this contract is in excess of the EU public procurement threshold for services contracts of £173,934 and is therefore subject to the full EU procurement regime.
- 7.2.2 This report recommends to Cabinet that the EU procurement process is terminated without a contract being awarded to any of the persons who submitted tenders. It recommends instead that the Council should explore making alternative provision for the delivery of the services.
- 7.2.3 A direct award of a contract for services that is subject to the EU procurement regime could be challengeable in the courts. If legal proceedings were issued against the Council for a breach of the procurement rules, the contract award would be suspended until the proceedings were resolved. Under the Public Contracts Regulations 2006, if the court concludes that a procurement process was flawed, it can also declare a contract ineffective after it has been awarded, and award financial penalties against the Council.
- 7.2.4 There is an exception to the EU procurement regime known as the *Teckal* exemption which may apply in this case. This means that in certain circumstances, a contract let by a public body such as the Council will not

be deemed to be a contract for the purposes of the EU procurement regime. The relevant circumstances are that:

- a) The service provider carries out the principal part of its activities with the Council; and
- b) The Council exercises the same kind of control over the service provider as it does over its own departments. The Council must have a power of "decisive influence over both strategic objectives and significant decisions" for the exemption to apply; and
- c) There must be no private sector ownership of the service provider or any intention that there should be any. Even a minority shareholding by a private company in the service provider would prevent the exemption applying.

7.2.5 Provided that all these criteria are met in the case of Company J the Council will be treated for the purposes of the procurement rules as if it were providing the services in-house, and not contracting with an external entity. There would therefore be no "contract" to which the procurement rules would apply.

7.3 TUPE Comments

7.3.1 Further to guidance from Legal Services and Human Resources, it has been identified that TUPE does not apply to this procurement process.

7.4 Procurement Comments

7.4.1 The opportunity has been presented by Company J to deliver the contract on Medway Council's behalf. This is the most economic and advantageous proposal by Company J who will be able to use the management information they collect from TPU on the contract and they will be able to wholly take over SEN School Transport for the above sites.

7.5 ICT Comments

7.5.1 ICT does not apply to this procurement.

8. Recommendation

8.1 That Cabinet approve Company J making arrangements for the requirements set out in lots 1 and 2 of the original procurement.

9. Suggested reasons for decision

9.1 Whilst the result of the tender exercise achieves a saving on the current spend on transport to the three school sites, the recommended option of accepting Company J's proposal achieves a greater saving through the profit sharing arrangement in place.

- 9.2 The recommended option also allows for greater certainty in budget setting by contracting this service for a set annual cost (a 25% change in passenger numbers built into the annual cost).
- 9.3 The single operator per school approach also allows for service quality improvements and consistency of operator and transport staff for the passengers, which have both been highlighted as important to parents and passengers who receive SEN transport.

Lead officer contact:

Name	David Tappenden	Title	Transport Change Manager
Department	Integrated Transport Team	Directorate	Regeneration, Community & Culture
Extension	4316	Email	david.tappenden@medway.gov.uk

Background papers

The following documents have been relied upon in the preparation of this report:

Description of Document	Location	Date
Gateway 1 Cabinet Report	http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=10536	June 2013