

CABINET

11 JULY 2023

GATEWAY 3 CONTRACT AWARD: SUPPORTED BUS CONTRACTS

Portfolio Holder: Councillor Simon Curry, Portfolio Holder for Climate Change and Strategic Regeneration

Report From: Richard Hicks, Chief Executive

Report Author: Michael Edwards – Head of Transport and Parking

Summary:

This report seeks Cabinet approval for the award of contracts providing subsidised local bus services and the MY school bus services through the mechanism of a Dynamic Purchasing System.

Procurement Overview:

Total Contract Value	£1,993,162 per annum
Proposed Contract Term:	5 years, with the option to extend for 3 further years, via three 1-year extensions.

1. Background Information

1.1. Budget and Policy Framework

1.1.1. The proposal does comply with the Council's policy framework. For years one and two it complies with the Budget Framework, but future years cannot be guaranteed at this point; further details are set out at point 3.2 and 4.1. With additional funding confirmed for 2023/24 the contracts can be let within the approved budget for that year. The additional grant required to cover the full-term of these contracts has not yet been confirmed as such. Cabinet will be asked to instruct officers to take action to contain expenditure within the approved budget for each year of the contracts.

1.1.2. Following the Council meeting in February, a letter was issued by the Department for Transport to Local Transport Authorities (Appendix 2), with the following funding assurances covering 2024/25 having been provided:

- 1.1.3. *We will play our role in supporting bus operators and Local Transport Authorities through this transition. So I am also confirming a long-term approach with an additional £150 million provided between July 2023-April 2024 and another £150 million between April 2024-April 2025. This additional funding will help support and improve bus services for passengers, delivering on our priority to grow the economy.*
- 1.1.4. In light of the confirmation that DfT grant allocations will cover the budget deficit for the first 2 years of the 5-year initial term, subject to DfT confirmation that in-year surplus can be carried forward. The future DfT bus grant allocations being anticipated will cover the remaining 3-year deficit, with a proposed efficiency review of these contracts to be undertaken within the first 2 years, to establish which routes provide value for money. In the unlikely event that further DfT funding is not received beyond the first 2 years of the contract, the efficiency review will establish the changes required to keep within the available budget.
- 1.2. Background Information and Procurement Deliverables
- 1.2.1. The Council subsidises bus services which are not commercially viable but meet a social need for access to key services and amenities, often for more vulnerable members of the community and those without access to private transport. These services also provide opportunities for sustainable travel, and some operate through Air Quality Management Areas. The contracts for operating bus routes subsidised by the Council currently cost a total of £1.32 million per annum.
- 1.2.2. In addition, the Council commissions an operator to provide nine school bus services (the MY buses). The current cost of this contract is £549,000 per annum.
- 1.2.3. Contracts for the provision of subsidised local bus services and the MY school bus services were subject to a procurement process in 2022. The contract costs increased significantly, reflecting inflationary pressures accumulated over the previous eight-year contract term, increases in costs of fuel and wages, and reduced fare income after the pandemic. To allow officers additional time to examine these routes in more detail and consider procurement options that would achieve best value, one-year contracts were awarded on all routes. The current contracts expire on 26 August 2023.

2. Procurement Process

2.1. Project Process Undertaken

- 2.1.1. A Gateway 1 report to procurement board in February 2023 proposed the establishment of a Dynamic Purchasing System (DPS) to ensure the efficient commissioning of bus contracts, including the contracts due to expire in September 2023.
- 2.1.2. The tender process for establishing the DPS was undertaken in March, and required operators to demonstrate that they could provide

appropriate standards of safety and quality. Following an evaluation, five operators gained a place on the DPS.

2.2. Evaluation Criteria Used

2.2.1. In April and May 2023, the DPS was used to procure the Council's subsidised bus routes, and the MY school bus service. The evaluation criteria used was 80% price and 20% quality, which reflected the quality assessment undertaken when establishing the DPS.

2.2.2. Following an evaluation of all bids received, contract awards for the subsidised bus services, and the MY school bus services, are proposed in accordance with details set out in Appendix 1.

2.3. Contract Management

2.3.1. Contract management will be undertaken by the Sustainable Transport Team within the Transport and Parking Service.

2.3.2. All subsidised bus contracts are monitored by the Sustainable Transport team. Monthly returns are provided and deductions are made if supported journeys do not run due to operational issues from the bus company. Performance on all journeys is also maintained by the Traffic Commissioner for England.

2.3.3. A suitable format for "consultative dialogue" with passengers and operators will be explored as part of Medway's Bus Service Improvement Plan (BSIP). All Transport Authorities and operators are establishing Bus Passenger Charters as part of DfT's National Bus Strategy.

3. Risk Management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Service delivery	Poor service delivery due to inexperienced or low-quality operators providing the services.	Officers carried out a thorough evaluation of bus operator quality when establishing the DPS so that only experienced, high-quality operators were invited to bid for these contracts. Officers will also monitor the quality-of-service provision across the life of the contracts.	E3
Budget	Insufficient budget for the service	The current cost of the contracts exceeds the set budget for the service. The deficit for the first year will be covered by grant funding from central government and it is anticipated that similar allocations will be received in 2024/25 that can be used to fund the budget shortfall for that year, however	E2

Risk	Description	Action to avoid or mitigate risk	Risk rating
		<p>this is not certain and there is a risk this grant funding will not be repeated.</p> <p>It is hoped that additional funding will be awarded in 2024/25 which will cover the budget deficit for the remaining contract term. If funding does not materialise it will be necessary to either cease contracts to the value of the shortfall.</p> <p>If contracts to the value of the shortfall are not ceased, the Council would face a budget pressure totalling a minimum of £2.769million.</p>	
Contracts must be cut short	The contracts will include a 90-day termination clause which will enable the Council to bring the contracts to an end should the anticipated grant funding not be forthcoming, and/or the contractor is in default of their contractual obligations.	If the additional grant expected in year 2, or hoped for in later years does not materialise, the Council would need to cease contracts to the value of the budget shortfall and may have to do so after year 1 of a 5–8-year contract, risking complaints, adverse press coverage and reputational damage. Furthermore, if the contractor is in default of their contractual obligations, in line with performance monitoring reviews, the Council may also have reason to enter into the 90-day termination clause.	

For risk rating, please refer to the following table:

Likelihood:	Impact:
A Very high	1 Catastrophic (Showstopper)
B High	2 Critical
C Significant	3 Marginal
D Low	4 Negligible
E Very low	
F Almost impossible	

4. Service Implications

4.1. Financial Implications

4.1.1. The new contract prices continue to reflect an increase in operational costs faced by bus operators, and the recovery of bus patronage following the pandemic. The evaluation included a higher cost

weighting of 80% to ensure the new contracts represent best value. The contract term of 5 years plus 3-year extension also allows operators to offer better pricing with a commitment to invest in and improve services.

4.1.2 The value of the new contracts would exceed the base budgets for subsidised bus services and MY school bus services set by Council in February 2023. However, confirmed grant funding will cover the budget shortfall for the first year of the contract term and is expected to cover the shortfall for year two but is not confirmed. It is hoped that further grant funding will cover the shortfall for the remaining contract term but if this does not materialise the pressure for the life of the contact would be a minimum of £2.769 million, excluding inflationary pressures each year; see point 4.1.3.

4.1.3. The following specific issues are highlighted:

Issue:	Detail:	Mitigation:
Contract cost against budget (supported bus routes)	The total cost of the new contracts is £1.344m per annum, against a revenue budget of £1.016m for the provision of subsidised bus routes.	<p>In May 2023 Government announced Bus Service Improvement Plan plus (BSIP+) grant funding for Local Transport Authorities of £150 million between July 2023 and April 2024, and £150 million between April 2024 and April 2025. This funding is intended to support and improve bus services, enabling Councils to make local decisions on protecting services.</p> <p>Medway's BSIP+ grant allocation is £768,780 for 2023/24. A similar award is anticipated for 2024/25. In addition, Government awarded the Council £108,346 from the Local Transport Fund (LTF) grant in April 2022, which was carried forward to the current financial year, with an indicative allocation of £112,279 for 2024/25. The purpose of LTF funding is to ensure the continued provision of socially necessary subsidised bus services, and to provide Local Authorities with the means to subsidise further services in the event of changes to the commercial network.</p> <p>The current confirmed grant allocations will cover the budget deficit for the first year of the 5-year initial term, subject to confirmation that in-year surplus can be carried forward.</p> <p>It is hoped that future grant allocations will cover the remaining years deficit, although this cannot be confirmed. However, it is</p>

		proposed to undertake an efficiency review of these contracts in the first 2 years to establish which routes provide value for money and which do not, should the anticipated funding not be received, and changes need to be proposed to contain expenditure within the agreed budget envelope.
Contract cost against budget (MY school bus service)	The cost of the proposed contract is £0.649 million, against a revenue budget for 2023/24 of £0.511 million. Taking account of income from ticket sales, a net budget pressure of £0.075 million is forecast for 2023/24. This pressure is forecast to increase to £0.118 million from 2024/25, assuming a full year at the new contract price and no changes to season ticket prices.	Savings in other public transport budgets would allow the MY school bus services to operate for the full contract term, with an option to realign budgets as part of the budget setting process for 2024/25. The current season ticket prices could be subject to a review as part of the setting of fees and charges for 2024/25.
Contract uplift	The previous contracts for subsidised bus services did not include any annual uplift. The new contract prices therefore reflect inflationary and other cost pressures since 2014.	An annual index linked uplift in the contract prices will be established, meaning the cost of the contract will rise in line with inflation (currently 8.7%) each year adding a pressure to the budget. However, this will reduce the impact of price increases should contracts be renewed at the end of the new contract period.
Route viability / value for money	Whilst some subsidised bus services carry a relatively low number of passengers, and the cost per head/journey is thus high, the Council subsidises bus services because they cannot be	As stated, the Council will undertake a thorough efficiency review of these contracts in the first year of their term. This will include monitoring passenger numbers across all subsidised bus services. The Council's Bus Service Improvement Plan will also promote bus services in Medway and consider measures to increase bus patronage.

	provided commercially and meet a social need for access to key services and amenities.	
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4.2. Legal Implications

- 4.2.1. The Council has the power under the Transport Act 1985, Local Government (Contracts) Act 1997 and the Localism Act 2011 to enter into contracts in connection with the performance of its functions.
- 4.2.2. Under the Council's Contract Procedure Rules, the procurement undertaken is a high-risk procurement. The process followed by officers meets the requirements for such procurements. The process also complies with the Public Contracts Regulations 2015 and Medway Council's Contract Procedure Rules.
- 4.2.3. The contracts will include a 90-day termination clause which will enable the Council to bring the contracts to an end should the anticipated grant funding not be forthcoming, and/or the contractor is in default of their contractual obligations.
- 4.2.4. There is a risk of claims being brought by service providers whose routes are terminated if the grant funding to support delivery from year three onward is not forthcoming, this will need to be dealt with in the contract drafting but will remain a risk albeit mitigated so far as we are able.

4.3. TUPE Implications

- 4.3.1. Whilst TUPE does apply to a number of the recommissioned contracts, the contracts in question did not change operator. Therefore, there will be no need to engage in TUPE provisions.

4.4. Procurement Implications

- 4.4.1 This tender was procured in compliance with the Public Contracts Regulations 2015 and there are no implications associated to the award of the bus routes.

4.5. ICT Implications

- 4.5.1. None

5. Social, Economic, and Environmental Considerations

- 5.1. Awarding the contracts would demonstrate a collaborative approach to bus travel and provide local bus and school bus services that are considered socially necessary, as they connect residents, visitors and

businesses with key services and amenities and provide transport for those without access to a private vehicle.

- 5.2. The procurement process required operators to demonstrate how they would work with the Council to deliver the contracts sustainably. Operators demonstrated a commitment to the use of renewable energy sources at their depots, along with employment of Euro V and Euro VI vehicles to deliver low emissions and optimum fuel economies. Proposals included technological solutions to promote fuel efficient driving, and operators demonstrated a willingness to consider future investment in electric and hydrogen-based solutions.

6. Recommendation

- 6.1. It is recommended that Cabinet approves the award of contracts for the provision of local bus services and MY school bus services as detailed in Appendix 1, subject to the continuation of grant funding, as detailed in section 4.1 of the report.
- 6.2. It is recommended that Cabinet instruct officers to review the efficiency and value for money of all subsidised bus contracts within the first two years of the initial five-year contract term, ceasing contracts as required to contain expenditure within the approved budget for each financial year.

7. Suggested Reasons for Decision

- 7.1. The award of the bus contracts, and the MY school bus services, will ensure the continued provision of socially necessary bus services in Medway, facilitating access to key services and providing residents, visitors and businesses with sustainable transport options that support the Council's Climate Change Action Plan.
- 7.2. Existing central government BSIP+ grant funding will offset any overspend during the first two years of the contract, whilst it is expected that future BSIP+ grant funding allocations from central government will address any overspend during contract years 3 to 5 inclusive.
- 7.3. If future BSIP+ funding is not confirmed, an efficiency review of these supported services within the first two years of the contract will ensure that any spend during contract years 3 to 5 remains in line the Council's available budget, ensuring that the Council continue commissioning services which provide best value for money.

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Appendices

Exempt Appendix 1 – Proposed Contract Awards
Appendix 2 – DfT Letter to Local Transport Authorities

Background Papers

None