

CABINET

14 FEBRUARY 2012

GATEWAY 4 PROCUREMENT POST PROJECT COMPLETION REVIEW: SEN SCHOOL TRANSPORT CONTRACT RENEWAL SEPTEMBER 2010

Portfolio Holders: Councillor Phil Filmer, Front Line Services
Councillor Les Wicks, Children's Services

Report from: Robin Cooper, Director of Regeneration, Community and
Culture

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Summary

This report reviews the progress of the SEN School Transport Contracts that began in September 2010 with contracts awarded to various contractors as highlighted within 2.1.2 of this report.

This is based upon the procurement process which was undertaken during Summer 2010 via the 2006 Local Transport Framework and which led to an award of a series of contracts on 6 September 2010.

The commencement and delivery of this procurement requirement was approved by Strategic Procurement Board on 5 May 2010 and subsequent approval for contract award was considered by the Strategic Procurement Board 30 June 2010 and approved at Cabinet on 20 July 2010.

Approved Procurement Gateway 1 and 3 Reports relating to this Gateway 4 report are available upon request.

This Procurement Gateway 4 report has been approved for submission to Cabinet after review and discussion at Business Support/Regeneration, Community and Culture Directorate Management Team meeting on 9 January 2012 and Strategic Procurement Board on 18 January 2012.

1. Budget and Policy Framework

1.1 Post Project Appraisal / Contract Management

This procurement post project appraisal and its subsequent review is within the Council's policy and budget framework and ties in with all the identified Core Values, Strategic Priorities, Strategic Council Obligations

and Departmental/Directorate service plans as highlighted within the Procurement Gateway 1 Report.

SEN student transport is a statutory obligation of the authority with a current budget of £3.5m. Award of transport to students is in line with the current SEN transport policy, which sets out the entitlement for the service to SEN students.

The responsibility for SEN transport is held jointly and lies between Children and Adult Services and Regeneration, Community and Culture. The Special Educational Needs team are the client and budget holder, and the Transport Procurement Unit (TPU) deliver the service.

2. Background

2.1 Contract Details

2.1.1 This contract is a Services contract

2.1.2 Supplier Details

This Gateway 4 Report relates to the contracts currently awarded to

BRADFIELDS 1	M&T Travel
BRADFIELDS 2	Strood Cabs
DANECOURT 1	Strood Cabs
DANECOURT 2	Strood Cabs
ALL FAITHS 1	Strood Cabs
ALL FAITHS 2	Strood Cabs
ALL FAITHS 3	Strood Cabs
WYVERN	Rainham Cabs
MID-KENT COLLEGE 1	Strood Cabs
MID-KENT COLLEGE 2	ASD Coaches
GOLDWYN	SAS Exec Travel
ABBAY COURT 1	Strood Cabs
ABBAY COURT 2	Strood Cabs
HUNDRED OF HOO	ASD Coaches
PRESTON SKREENS - DEMELZA HOUSE	SAS Exec Travel

2.1.3 Contract Description

These contracts are to provide both scheduled Home to School and ad hoc respite care transport to students with special educational needs.

2.2 Permissions Required

2.2.1 This report seeks permission to

Continue this termed contract for remainder of the contract duration of 30 months, until July 2014 without any further Gateway 4 or 5 reporting requirements.

This report does not include specifics of operational problems though such can be provided if required. However, the following information will be of assistance during the decision process.

2.2.2 Service Quality

The contracts as awarded continue to provide a good level of service. On a few of the contracts there have been operational difficulties in respect of individual contracted staff and issues in relation to parental preferences for one or other contractor or specific staff member. However, the contractors have, without exception, worked cooperatively with Medway Council officers in satisfactorily overcoming difficulties and resolving issues that have arisen.

Following the end of the 2006 Local Transport Procurement Framework in 2010 under which these contracts were let, subsequent contract awards have been under a substantially re-written set of specific contract terms and conditions. The new terms and conditions place greater responsibilities on the contractor and more specific criteria in which Medway Council Officers can contract manage contracts. However, each of the contractors, providing services in relation to the contracts of this report, has readily agreed to submit to the revised terms and conditions. This demonstrates that the contractors are willing to provide a greater level of cooperation in the operational delivery of the service than is contractually necessary for them provide.

2.2.3 Value for money

The contracts continue to offer good value for money. Medway Council Officers continually re-assess the value provided by contracts in relation to the service provision and the contract terms and conditions with special emphasis on clause 10.1 Termination with 90 days notice. When, as happens frequently, the change in students make the route obsolete or where student changes allow the amalgamation of routes or where the placement of new students onto vehicles with vacant seats is required, this is often achieved at no cost to the Authority via use of the clause at 10.1. This ensures that contracts remain good value for money and appropriate for the service requirement.

Contracts often change throughout the year as students move house or change school or leave the area or come into the area. However the greatest change occurs prior to each new academic year. Some routes become no longer viable and other require larger or additional vehicles. Contractors are cooperative in responding to such change and Medway Council Officers ensure that changes are best value for money via the contract terms and conditions.

2.2.4 Further reporting

This request is on the basis that this contract has fulfilled requirements in accordance with the service specification and associated contract terms and conditions in the first year and because no major issues have been identified which cause concern for further continued contract management reporting to Strategic Procurement Board and Cabinet.

It is acknowledged that if this option is granted, in the event of any major issues arising for the remainder of the contract term, a Gateway 5 will be submitted with immediate effect for review by the Strategic Procurement Board and Cabinet or if so required and instructed for review by the Strategic Procurement Board during the remainder of the contract term

3. Options

In arriving at the preferred option as identified within Section 4.1 'Preferred Option', the following options have been considered with their respective advantages and disadvantages.

3.1 Conclude Current Contract and Provide Action Plan

Option A – The option of concluding the current contract at the end of the contract term on the basis that it is a one-off procurement requirement and providing an action plan for future projects / concluding the contract with immediate effect on the basis that the contract is a termed contract with provisions within the terms and conditions to cancel contractual arrangements for supplier non-performance and providing an action plan for future projects is not a viable option because the contract continues to perform well and the need for the service to be provided to the service users is a continued requirement. It is also relevant that these series of contracts are a regular ongoing procurement need that will need to be procured in future and would also need to be re-procured should the contract be terminated.

Option B – The option of concluding the current contract at the end of the contract term on the basis that it is a one-off procurement requirement and providing an action plan for future projects / concluding the contract with immediate effect on the basis that the contract is a termed contract with provisions within the terms and conditions to cancel contractual arrangements for supplier non-performance, and providing an action plan to retender requirements has been considered and below are the advantages and disadvantages of this option:

Advantages: this would provide the opportunity to re-plan contracts as in this report and amalgamate, where viable, with other contracts which may produce saving.

Disadvantages: considerable disruption to students with special educational needs which will lead to complaints and possible legal challenge from contractors. There would certainly be representation to the Government and Local Government Ombudsman and the risk of reputational harm to the Authority.

There is therefore no benefit in concluding the current contract.

3.2 Continue With Current Contract and Negate Any Further Gateway 4 or Gateway 5 Reporting Requirements

The option of continuing with the current contract for the remainder of the contract term and negating any further Gateway 4 or Gateway 5 requirements has been considered and below are the advantages and disadvantages of this option:

Advantages: the contracts are providing and continue to provide good value for money and a good level of service to the Service User. The contract management approach negates the need for further procedural reporting. The ongoing contract management together with the contract terms and conditions determine that should the contract change / fail / no longer be required then the contract terms and conditions allow for such termination and variation to facilitate the continued good service to the service user. There is therefore no advantage in further reports.

Disadvantages: further reports would require considerable officer time which is better spent on contract management to prevent and manage any operational issues that arrive.

3.3 Continue With Current Contract and Subject Contract to Further Gateway 4 and/or Gateway 5 Reporting Requirements

The option of continuing with the current contract for the remainder of the contract term and subjecting the contract to further Gateway 4 and/or Gateway 5 requirements has been considered and below are the advantages and disadvantages of this option:

Advantages: there is no identified advantage to further procedural reports.

Disadvantages: The series of contracts are in continual flux in terms of the individual service user locations and destinations. Therefore the contracts as routes provide the service as required and can be varied to accommodate changes via the operational management procedures within the officer's activities.

3.4 Other alternative options

No alternative options have been identified.

4. Advice and analysis

4.1 Preferred Option

Further to an extensive review of procurement options as highlighted within Section 3 'Options' above, the following preferred option is recommended to the Cabinet:

Continue With Current Contract and Negate Any Further Gateway 4 or Gateway 5 Reporting Requirements, as set out at 3.2 above.

4.1.1 Procurement Project Outputs / Outcomes

The following procurement outcomes/outputs identified as important at Gateway 1 to the delivery of this procurement requirement and identified as justification for awarding the contract at Gateway 3, have been appraised in the table below to demonstrate how the procurement contract and corresponding supplier has delivered said outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How has procurement contract delivered outputs/outcomes?
Service Quality	Regular service inspections and communication with service users	TPU officer team	Daily and action taken against failure reports	Satisfaction of service users monitored
Service delivery	Minimisation of failed transport arrangements	TPU officer team	Cooperative contract management of contracts and communication with suppliers	
Contractor compliance	Regular service inspections	TPU officer team	Daily action taken against failure reports and regular communication with contractors.	
Cost effective service delivery	Continual assessment of route functionality.	TPU officer team	Termination of redundant routes and amalgamation of routes where possible	Active contract management via good contract terms and conditions
Value for money	Continual assessment of route functionality.	TPU officer and SEN officer	Monthly monitoring is overseen at	Contracts are operated for less cost.

		teams cooperate in regular assessment of cost effectiveness of contracts.	strategic level by senior officers from TPU, SEN and Finance.	
Cost reduction	Continual assessment, Monthly monitoring and end of year budget out turn	officers from TPU, SEN and Finance and potentially cabinet members	Monthly monitoring and end of year budget out turn	Contracts are operated for less cost.

Whilst this template requires the inclusion of the above replicated information from the Gateway 1 and Gateway 3 reports to be included as part of this Gateway 4 report. It is of note that the template for Gateway 1 and Gateway 3 has substantially changed from the Gateway 1 and Gateway 3 templates that were used in the procurement process for the awards of the contracts that this report pertains to. It is therefore relevant that the information that is required for this section was not a requirement of the template as used for this procurement process in 2010. The information can therefore not be replicated from those reports to this report.

4.1.2 Procurement Project Management

No further procurement management resources or skills are required to be deployed on this contract as it is a one-off contract with no additional termed requirements and will therefore no longer be required

These contracts are part of an ongoing cycle of renewal of transport contracts providing transport services to students with Special Educational Need. Whilst the individual contracts will run on a termed though flexible cycle until the student no longer requires the service, other students will require the service in the future and this will give rise to the need for further similar contracts. Contracts that run until the end of their cycle but need to be replaced due to the continued need for the provision will require future procurement. However, the contracts in this report do not require further procurement input.

4.1.3 Post Contract Award Contract Management

The contract management of this procurement contract will continue to be resourced for the remainder of the contract through the following contract management strategy.

Section from Gateway 1 report 5 May 2010

PREPARATION OF THE NEXT STAGE OF PROCUREMENT AND CONTRACT MANAGEMENT

	Have all EU and business implications been factored into the timetable? Please attach the timetable as an appendix and state likely dates for subsequent Gateway stages.	Yes.
	Does the EU procurement regime apply to this procurement? What route is proposed and why? (Open, Restricted, Competitive Dialogue, Negotiated).	This Procurement takes advantage of the existing local transport framework agreement.
	How is the next stage of the project to be resourced?	The process will be led and resourced by the Transport Procurement Team.
	Who will manage the contract?	Gary Lindsey: Transport Procurement Unit Manager
	How will the contract be managed and monitoring take place?	The contract will be managed by TPU staff, including regular inspections of the service and a dedicated contract manager, and within the agreed processes within Medway council.

Section from Gateway 3 report 30 June 2010

PREPARATION FOR CONTRACT MANAGEMENT

	Who is the contract (service) manager responsible for day-to-day supplier relationships?	Gary Lindsey
	Do sufficient resources exist to manage the contract through implementation and throughout its contract term?	Yes: Existing resources within the TPU
	When does the contract start?	September 2010
	When is the contract due for its first formal review at Gateway 4?	September 2011

The contract management process has been continually evolving over the past few years and since the award of these contracts. The inspection regime has been identified as a primary tool for the early identification of contract fault and failure. Early intervention via a holistic

management process has provided satisfactory results in resolving potential issues before problems arise. The dynamics of the TPU team and the individuals involved in the contract management has evolved and continues to change to allow greater pro-active contract management opposed to re-active response management that may have formally predominated. The current environment demands for a more responsive approach from the contractor in terms of active reporting of operational issues and potential faults. These can be remedied prior to complaint from service user parents.

The contractors supplying services under the contracts relevant to this report have all agreed, following discussions, to be contract managed with respect to the more exacting criteria of the 2011 terms and conditions that allow for more stringent contract management. The new terms and conditions places additional reporting duties on the contractor. These new terms and conditions also allow for easy fault resolution in respect of default.

4.1.4 Other Issues

There are no other issues that could potentially impact the remainder of this contract term

4.1.5 TUPE Issues

Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it was identified at Gateway 1 that as this is a Services related procurement contract, TUPE did apply to this procurement process.

The recommended contract award at Gateway 3 did not result in any employees being affected by TUPE as a result of the incumbent provider being successful as part of this procurement tender process and therefore there are no further TUPE issues to consider at this stage.

5. Risk Management

5.1 Risk Categorisation

The following risk categories have been identified as having a linkage to this procurement contract at this Gateway 4 Stage:

Procurement process	<input type="checkbox"/>	Equalities	<input type="checkbox"/>
Contractual delivery	<input type="checkbox"/>	Sustainability / Environmental	<input type="checkbox"/>
Service delivery	<input type="checkbox"/>	Legal	x
Reputation / political	x	Financial	x
Health & Safety	<input type="checkbox"/>	Other/ICT*	<input type="checkbox"/>

For each of the risks identified above, further information has been provided below:

Financial risk:

Since the award of these contracts the available budget is now reduced and there is a continued risk of overspend across the whole of the budget from which these contracts are serviced. In order to reduce this risk it is identified that some of these contracts together with earlier and later awarded contracts may need to be terminated early in order to amalgamate routes and present a lower cost alternative to the provision need. This in turn is likely to result in the following

- Service user complaints and progression to Local Government Ombudsman
- Contractor complaint and potential litigation

These might in turn lead to reputational harm if not pro-actively dealt with from the outset. It is the view of officers that both likelihoods can be appropriately managed and the furtherance of complaints significantly reduced if the process is managed correctly via an open dialogue with both service users and contractors.

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
a) Procurement process	N/A			
b) Contractual delivery	N/A			
c) Service delivery	N/A			
d) Reputation / political	If contracts are terminated early	Low	Marginal	Active and cooperative management of future process and complaints handling with SEN and TPU officers

e) Health & Safety	N/A			
f) Equalities	N/A			
g) Sustainability / Environmental	N/A			
h) Legal	If contracts are terminated early	Significant	Marginal	Active communication and use of existing contract terms and conditions and partnership approach
i) Financial	If replanning of routes does not take place	Very high	Critical	Immediately begin replanning of most expensive contracts and those most likely to provide saving
j) Other/ICT*	N/A			

6. Consultation

6.1 Internal (Medway) Stakeholder Consultation

As part of this ongoing procurement contract management, the following mandatory internal stakeholder consultation is required: TPU officers work closely with the budget holder for this service and take relevant advice from Finance, Legal, HR, Health and Safety.

Stakeholder engagement together with regular and frequent communication with the budget holder is an integral aspect of the contract management procedure. However, consultation with Finance, Legal, HR and Health and Safety is on an as and when basis.

6.2 External Stakeholder Consultation

As part of this ongoing procurement contract management, the following mandatory external stakeholder consultation is required: TPU officers work closely with Service Users and contractors as well as schools and other Authorities.

Stakeholder engagement together with regular and frequent communication with the service users and the contractors is an integral aspect of the contract management procedure.

7. Strategic Procurement Board

7.1 The Strategic Procurement Board considered this report on 18 January 2012 and supported the recommendation set out in paragraph 9 of this report.

8. Financial and legal implications

8.1 Financial Implications

8.1.1 This procurement contract and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, continues to be funded from the directorate's SEN transport budgets, which is currently projecting an overspend.

8.1.2 Detailed finance and whole-life costing information is contained within **Section 2.1 Finance and Whole-Life Costing of the Exempt Appendix** accompanying this report.

8.2 Legal Implications

8.2.1 This procurement contract and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following legal implications which the Cabinet must consider –

The contract is being performed in accordance with the terms and condition as agreed at Gateway 2 and as such there are no legal issues.

8.3 Procurement Implications

8.3.1 This procurement contract and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following procurement implications which the Cabinet must consider –

The contract has generally performed well and any issues/problems identified have subsequently been rectified as part of the contract management strategy.

While this review has identified some important lessons to be learnt particularly a requirement for the close monitoring of the service provision under the contracts, it is clear that on the whole the contracts continue to deliver high quality services that also provides value for money to the Council.

The lessons learnt thus far should be logged and reviewed on an ongoing basis including how issues have arisen and been overcome with regards to concerns of parents. These are key to informing and directing the future specification and route planning.

There are some clear lessons to be taken forward in respects to output deliverables and effective contract management.

8.4 ICT Implications

8.4.1 This procurement requirement does not have any ICT implications.

9. Recommendations

9.1 The Cabinet is requested to approve the preferred option highlighted at Section 4.1 'Preferred Option' (continuing with the current contracts as set out in section 2.1 of the report, for the remainder of the contract term and negating any further Gateway 4 or Gateway 5 requirements).

10. Suggested reasons for decision(s)

10.1 The recommendation contained within Section 9 'Recommendations' above are provided on the basis of

- The contracts awarded are running successfully; with all operators meeting the required level of service and carrying out their routes in line with the necessary specification. This has allowed Medway Council to maintain its statutory duty of providing free home to school transport to those passengers who have qualified for the service.
- The contracts having been awarded as a result of a competitive tender process, having ascertained the most economically advantageous operator, the contracts still represent best value.

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Background papers

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

Description of document:	Location:	Date:
Gateway 1 Report	Transport Procurement Unit	5 May 2010
Gateway 3 Contract Award: Special Educational Needs Transport Contract Renewals 2010	http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=2102&Ver=4	20 July 2010