

## CABINET

21 January 2020

<b>Title:</b> Procurement of Private Hire Vehicle Services for Children and Young People with Special Educational Needs and/or Disabilities	
<b>Report of the Cabinet Member for Educational Attainment and School Improvement and Cabinet Member for Social Care and Health Integration</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> No
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<b>Accountable Director:</b> Chris Bush, Commissioning Director of Children's care and Support	
<b>Accountable Strategic Leadership Director:</b> Elaine Allegretti, Director of People and Resilience	
<b>Summary:</b>  <p>The Council has a legal duty to ensure travel assistance for "eligible children" as they consider necessary to facilitate their attendance at school (s508B Education Act 1996 (EA 1996)). The term "eligible children" is defined at Schedule 35B of the Education Act 1996. Children and young people with special educational needs and/or disabilities may be considered as "eligible".</p> <p>The DfE has just launch a review into "Home to school travel and transport guidance: Statutory guidance for local authorities". The consultation has just closed (October 31st), so there could be changes to the current policy.</p> <p>The Council has a further statutory duty to provide social care support under the Care Act 2014, to vulnerable adults who qualify for support under the national eligibility criteria, both for those who cannot fund their care but also for those who can.</p> <p>This report requests authorisation for the Council to lead on a procurement exercise for the provision of private hire vehicle transport services (with and without Passenger Assistants) for children and young people with special educational needs and/or disabilities (SEND) and vulnerable adults. The other local authority requesting to be named on the framework contract is the London Borough of Redbridge.</p> <p>This exercise will culminate in the creation of a framework of suitably qualified and experienced providers for the provision of the services outlined above. This framework will also be accessible to eligible families opting to receive a Direct Payment to make their own travel arrangements, securing them the peace of mind that a rigorously vetted framework of this nature offers.</p> <p>The contracts awarded will be for a period of four years commencing 1st September 2020</p>	

and are likely to be awarded to multiple providers. Forecasts indicate that total expenditure in this area over the four-year period will be approximately £5m.

### **Recommendation(s)**

The Cabinet is recommended to:

- (i) Agree that the Council acts as the lead borough for the procurement of a four-year framework contract ,on behalf of itself and the London Borough of Redbridge, for the provision of private hire transport services (with and without passenger assistants) for children and young people with special educational needs and/or disabilities (SEND) and vulnerable adults in accordance with strategy set out in the report; and
- (ii) Delegate authority to the Director of People and Resilience, in consultation with the Cabinet Member for Educational Attainment and School Improvement, the Chief Operating Officer and the Director of Law and Governance, to award and enter into the contract and access agreements.

### **Reason(s)**

1. To provide an appropriate, best-value service that delivers excellent outcomes for children and young people, and vulnerable adults;
2. The Framework will reduce cost pressures through increased joint working, economies of scale and by use of shared services where possible; and
3. To help meet key savings targets, through the promotion of more cost-effective means to support families of vulnerable children, young people and adults with their home-to-school travel.
4. To continue to provide a mixed market of travel assistance, enabling the Council to promote independent travel as far as possible and help keep children safe, gain independence and support resilient families.

## **1. Introduction and Background**

- 1.1 The purpose of this paper is to explain the reasons for establishing a joint Framework Contract for Private Hire transport provision and seek approval to proceed further. This is underpinned by the overall vision: to create a framework of competent companies capable of providing a managed service of transport for children and young people with special needs and/or disabilities and vulnerable adults, where the service is provided on behalf of the Council, or is funded by the Council through a Direct Payment<sup>1</sup>.
- 1.2 The Council has a legal duty to ensure travel assistance for “eligible children” as they consider necessary to facilitate their attendance at school (s508B Education Act 1996 (EA 1996). The term “eligible children” is defined at Schedule 35B of the

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<sup>1</sup> A Direct Payment is a payment made to the family to enable them to source a personal travel solution for their child. This offers a flexible solution for families when arranging travel support for a child.

Education Act 1996. Children and young people with special educational needs and/or disabilities may be considered as “eligible”.

- 1.3 The Council has a further statutory duty to provide assistance for vulnerable adults in line with the Care Act 2014, to residents who qualify for support under the national eligibility criteria, both for those who cannot fund their care but also for those who can. Their eligible needs are those that are determined after an adult care assessment. As part of the assessment it may be deemed that a person requires transportation as part of a holistic package to meet a need. A personal budget will be issued to an individual so there is flexibility choice and control over the service which can be purchased.
- 1.4 The Council’s approach to determining the eligibility and provision of home-to-school transport is governed by the “*London Borough of Barking and Dagenham Transport Policy Statement*”. In July 2015 the Department for Education (DfE) published the document “*Home to school travel and transport guidance: Statutory guidance for local authorities*”, requiring the Council to review the existing policy on the provision of home-to-school transport assistance. It is important to note that there has been no substantive change to school transport legislation and the associated duties continue to rest with local authorities. This is being reviewed and the consultation closes on the 31<sup>st</sup> October 2019. We have given comments on how this will impact our services.
- 1.5 Currently, the Council provides home-to-school travel assistance to approximately 543 children and young people with SEND. The form that this travel assistance takes can be seen in the table below:

Travel Assistance Type	No. of CYP	2018/19 Budget	2019/20Forecast	Budget Pressure
Private Hire Vehicles (Taxis)	189	£1,233,073.78	£1,417,542.90	£200,000
<b>Totals</b>		<b>£</b>	<b>£</b>	<b>£</b>

(**Note:** The figures above are not static and are subject to change at any given time. At present we currently have 1668 EHC plans this is the highest figure we have had at any given time. The pressure on transport is growing every year. We cannot foresee how many SEND children will be moved into the borough, as of October 2019 there are limited special school placements within the borough, this will make more children eligible for travel support.

- 1.6 As the Council pursues an agenda of personalization and aims to help children to gain greater independence, it is anticipated that the proportion of children and young people being transported in private hire vehicles arranged directly by the authority will reduce. It is highly unlikely, however, that a position will be arrived at where this figure reaches zero as no family can be legally compelled to accept a Direct Payment in lieu of direct provision. Furthermore if, as is hoped, an increasing number of families *do* choose a Direct Payment so that they may make their own arrangements for home-to-school travel, they will need access to providers who are suitably qualified and experienced to meet the needs of their child. This framework would offer families a significant degree of reassurance in this respect.

- 1.7 This formalised approach will continue to drive savings through joint working with neighboring Councils (and the associated economies of scale and market management of this approach) and by use of shared services where possible. It will also enable financial transactions to be based on contracted prices, helping continue to contain costs and accurately forecast expenditure.
- 1.8 The proposed procurement strategy will ensure that local companies are able to tender for the provision of private hire, coach and special vehicle provision, all with qualified and trained drivers. All providers must be capable of ensuring continuity of supply, including tight management of safety, vehicle and driver provision to ensure minimum disruption of supply to vulnerable members of the community. Separate lots will ensure provision of special needs transport with appropriately qualified, vetted and trained passenger assistants.

## **2. Proposed Procurement Strategy**

### **2.1 Outline specification of the works, goods or services being procured**

- 2.1.1 The council, on behalf of itself and the London Borough of Redbridge will invite expressions of interest from suitably qualified and experienced private hire providers interested in joining a Framework Agreement to provide transport for children and young people with SEND via private hire vehicles (with and without Passenger Assistants).
- 2.1.2 The framework will be accessible to the London Borough of Redbridge who has provided a formal expression of interest to be named in the development of this Framework.
- 2.1.3 The maximum number of participating firms will be 40 (this does not limit the number of providers that apply to be on the framework) and the Framework Agreement will run for 48 months from the anticipated commencement of 1<sup>st</sup> September 2020. The framework will comprise 8 lots as follows:

- Lot 1: Saloon Cars
- Lot 2: Saloon Cars with Passenger Assistants
- Lot 3: Multi Person Vehicles (MPV) up to 8 seats
- Lot 4: MPV with Passenger Assistants
- Lot 5: Mini-bus (12 seats and above)
- Lot 6: Mini-bus with Passenger Assistants
- Lot 7: Accessible vehicles (12 seats and above)
- Lot 8: Accessible vehicle with Passenger Assistants

*The rationale for having a maximum of 40 providers on the framework is to ensure that the performance of each provider can be monitored within the resources of the transport commissioning office.*

- 2.1.4 There are a number of accepted advantages to agreeing a contractual framework over spot-purchasing.

- quality assurance monitoring can take place across the participating authorities both with regard to statistical returns, as well as regular meetings with providers;

- good practice and training opportunities can be shared amongst providers and forums held with local partners;
- good quality services should lead to more consistent, needs-focused, transport for children, young people and adults, allowing them to live more normal lives;
- a pre-agreed pricing structure that commits the providers to maintain their base prices across the term of the contract; and
- Guaranteed pricing structure for local residents and those in receipt of direct payments.

2.1.5 The contractual method recommended to Cabinet, is a Framework Agreement, as it would have additional advantages. It would not oblige the local authority to purchase any particular volume from a provider. As the tender would be issued on behalf of participating authorities the quality assurance requirements would be identical, leading to efficiencies on the local authorities' side in their respective commissioning and procurement services.

## 2.2 **Estimated Contract Value, including the value of any uplift or extension period**

2.2.1 The contract will be a Framework Contract that will have no minimum value, nor will any commitment to expenditure by the Council be stipulated within the contract itself. Expenditure will only be incurred when referrals are made. The estimated contract for each authority is as follows:

- London Borough of Barking and Dagenham: circa. £1.25m per annum
- London Borough of Redbridge: circa, £600k per annum

The total estimated value of the contract would, therefore, be circa. £7.4m, over the duration of the framework agreement.

## 2.3 **Duration of the contract, including any options for extension**

2.3.1 The framework contract will be for 4 years, with no option to extend.

## 2.4 **Is the contract subject to (a) the (EU) Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?**

2.4.1 This contract is subject to the (EU) Public Contracts Regulations 2015 and is not subject to the light touch regime.

## 2.5 **Recommended procurement procedure and reasons for the recommendation**

2.5.1 The tender process will be conducted in compliance with any European Union rules and principles in addition to the Council's Contract Rules. The tendering of this service will be advertised on all participating Council's websites and on Contracts Finder to ensure transparency.

2.5.2 There is a requirement for the tender to be advertised in the OJEU as it is subject to the Regulations. The Council's own Contract Rules require a formal tender process to be followed and the EU Treaty principles of transparency, non-discrimination and

equality of treatment do apply. The route of a tender process has previously worked well: providers engaged with and had no issues with the way in which the procurement process was run. Interested parties will be invited to tender on the basis of a compliant tender process.

2.5.3 All providers who express an interest in the tender will be issued with a tender pack which will give clear details on the price/quality criteria and weightings. The weighting will be 60% price and 40% quality. This will be a single stage tender using the Open Process, this will offer the opportunity and support to less experienced providers to submit a tender for this framework contract.

2.5.4 The weightings are expected to be as follows (this is an overview; tenderers will be made aware of any sub criteria in the tender documents):

2.5.5 This is a single stage tender process

- Base rate prices 60%
- Quality 40%
  - Licences & Insurances
  - Safeguarding Children & Adults
  - Data Protection

*If there are any revisions to the weightings during the tender exercise all providers who have requested a tender pack will be informed immediately.*

2.5.6 Providers will be only be submitted on the framework if they achieve 30% of the quality score from their tender submission.

### **Expected Tender Outline**

Procurement Board	18 November 2019
Portfolio	10 December 2019
CSG	19 December 2019
Cabinet approval	21 January 2020
Hold provider events	January/February 2020
Advertise and send out tender application packs	February/March 2020
Tender submissions to be returned	May 2020
Tender evaluations and interview	June 2020
Approval and award of contract	July 2020
Start of contract delivery	1 September 2020

2.5.7 Following the evaluation of the tenders, providers will be advised if they have been successful in being awarded a framework contract for participating authorities.

2.5.8 Each academic year, successful providers will be requested to submit best and final offers for all available routes available for the academic year. This process will be carried out by individual authorities accessing the framework.

## 2.6 **The contract delivery methodology and documentation to be adopted**

2.6.1 Service to be delivered by external providers. Documentation to be adopted will be the Council's standard terms and conditions.

## 2.7 **Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract**

2.7.1 Having Redbridge named on the framework will give more options for shared routes and economies of scale and could increase potential savings.

2.7.2 To provide a safe and reliable service for vulnerable children and young people who are unable to access public transport.

2.7.3 To ensure providers are vetted and that base prices are available for local residents and those in receipt of Direct Payments.

2.7.4 From the perspective of the five Every Child Matters outcomes, transport impacts on 'staying safe' in its broader interpretation, as well as outcomes under the heading 'enjoy and achieve' in terms of access to education and other opportunities (such as sports provision), and 'making a positive contribution' in terms of work.

## 2.7.5 **Charges to Redbridge for services provided by LBBD:**

Procurement of contract £2000

Legal Services: £2000

## 2.8 **Criteria against which the tenderers are to be selected and contract is to be awarded**

2.8.1 The price quality ratio upon which contracts will be awarded will be 60% price/40% quality. Providers will be ranked per Lot that they can provide based on their tender submission.

2.8.2 Each academic year all providers on the framework contract will have the opportunity to submit: Best and Final Offers (BAFO) for all regular routes. All routes are subject to change over the academic year and allocation of a route can be changed based on the needs of the service.

2.8.3 Each participating authority will carry out their own yearly commissioning of regular routes.

*NB: the previous framework contract required e-auctions to be undertaken in preparation for each academic year. In the majority of cases the routes awarded at auction did not achieved best value. For example, a route that was awarded at auction was awarded at £135 per trip, however based on the distance and vehicle type this route should have been costed at approximately £79 per trip. There are many examples where awarded routes are not cost effective. The providers also found the e-auction process challenging, and after several years of participating in auctions still find the process very difficult to understand. Travel support changes on a daily basis and therefore the routes that are auctioned in preparation for the academic year change regularly throughout the course of the academic year.*

## 2.9 **How the procurement will address and implement the Council's Social Value policies**

2.9.1 The Council's Social Value policies and the Social Value Act 2012 are broadly aligned, and thus, these contracts will address and implement the aims by:

- **Promote employment and economic sustainability** – tackle unemployment and facilitate the development of skills
- **Build the capacity and sustainability of the voluntary and community sector** – enabling groups to provide the service and encourage volunteering and employment of local residents
- **Creating opportunities for SME's and social enterprises** – Enabling the development of local businesses in the provision of this service.

2.10 **Contract Management methodology to be adopted** - The contract will be monitored by the Commissioner for the service. Due to the requirements of service delivery this contract will require daily liaison with the provider to ensure that transport routes are fit for purpose, and the provider is delivering to the requisite standards.

## 3. **Options Appraisal**

### 3.1 **Option 1: Do nothing**

The current contract will expire. The Council could purchase this service from their current suppliers without having contractual cover in place. This option would fail to be compliant with EU procurement legislation as well as the Council's own policies. There would also be a high degree of risk associated with this option, exposing the Council to potential price increases and deficit budgetary positions. Without contracts in place we cannot enforce DBS (Disclosure and Barring Service) checks being mandatory, and that taxi companies hold appropriate licences. This is critical as the taxi companies will be transporting vulnerable children which will put the council in a position of needing to sport purchase from providers which will have an impact on the cost of the services required and could have an impact on the safety and quality of service that is delivered to the most vulnerable young people who access this support.

### 3.2 **Option 2: Independent Procurement**

The Council may choose to initiate an independently run Council procurement process (not in conjunction with other local authorities). If the Council was to act independently to create its own Framework Agreement, it would achieve many of the intended objectives of a joint-procurement exercise, but may risk not realising potential economies of scale, and would increase the overall cost of the procurement (as the charges levied against Redbridge would not be collected as income).



### **3.3 Option 3: Joint Procurement**

The Council may choose to initiate, and lead, a joint procurement exercise (in conjunction with the LB Redbridge. If this course of action were chosen many the intended objectives realised through an independent tender exercise would be achieved, with the additional benefit of levying procurement and contract management charges against the participating authorities as income.

### **3.4 Option 4: Join an existing framework**

There is no suitable existing framework in place across the boroughs that that have expressed an interest in participating.

## **4. Waiver**

4.1 Not Applicable

## **5. Consultation**

5.1 The proposals in this report were endorsed by the Procurement Board on 18 November 2019 and the Corporate Strategy Group on 19 December 2019. Consultation with the Just Say Parents Forum on transport provision is ongoing and parents will be involved in the tender evaluation process where possible.

## **6. Corporate Procurement**

Implications completed by Francis Parker – Senior Procurement Manager

6.1 The procurement strategy is suitable for this service

6.2 The strategy is compliant with the Councils contract rules and the PCR2015

6.3 The Price quality split is suitable for this contract and is likely to ensure quality provision and the best value for money.

## **7. Financial Implications**

Implications completed by: Florence Fadahunsi, Finance Business Partner

7.1 This report seeks Cabinet approval for LBBD to enter into a joint procurement arrangement with the London Borough of Redbridge for private hire vehicles to transport children and young people with Special Education Needs and Disabilities and vulnerable adults, mainly from home to school. This is a statutory duty which the council must provide to these cohort of clients.

7.2 This arrangement provides an opportunity for cost savings due to economies of scale. The contract is intended to commence 1st September 2020 for a four-year period, with an estimated contract value of £5m.

7.3 The cost of this contract will be met from the existing Special School's transport budget.

## **8. Legal Implications**

Implications completed by: Kayleigh Eaton, Senior Contracts and Procurement Solicitor, Law & Governance

- 8.1 This report is seeking approval to tender a four-year framework for the provision of Private Hire Vehicles for children and young people with special educational needs and/or disabilities and vulnerable adults from 1<sup>st</sup> September 2020 on behalf of itself and the London Borough of Redbridge
- 8.2 It is anticipated that the estimated value of the new framework agreement will be in excess of the threshold for services (currently set at £189,330) under the Public Contracts Regulations 2015 (the Regulations) and therefore a competitive tendering process will be required, which will be subject to the full application of the Regulations. The anticipated spend over the life of the framework for both the Council and London Borough of Redbridge should be set out in the requisite notice.
- 8.3 As it is the intention to procure on behalf of another local authority the OJEU Contract Notice must specify this in order to be compliant with the Regulations.
- 8.4 Contract Rule 28.8 of the Council's Contract Rules requires that all procurements of contracts above £500,000 in value must be submitted to Cabinet for approval.
- 8.5 In line with Contract Rule 50.15, Cabinet can indicate whether it is content for the Chief Officer to award the contract following the procurement process with the approval of Corporate Finance.
- 8.6 The procurement procedure anticipated by this report would appear to be following a compliant tender exercise and Legal Services will be available to assist and advise upon further instruction.

## **9. Other Implications**

### **9.1 Risk and Risk Management**

- 9.1.1 As a Framework Agreement there is no specific guarantee to any provider of a level of service and, by extension, expenditure. A Framework on behalf of all participating boroughs is likely to attract a higher level of interest from potential providers than one borough alone, so encouraging more competitive pricing and minimising the risk from default by any individual provider.
- 9.1.2 Given the statutory duty upon the Council, a suitable and safe provision for children, young people and adults with special educational needs and/or disabilities could be considered as risk mitigation. This framework would tie providers into contractual obligations that would better ensure continuity of provision, as well as service quality for service users. The key elements of this can be summarised as follows:
  - vehicles will carry a first aid kit, at least one appropriate fire extinguisher, a kit adequate to deal with any spillages (including bodily fluids), safely and without hazard to the driver, or other passengers;
  - contractors will provide Passenger Assistants as required by each Authority;

- contractors must arrive at the specified collection and drop-off points by the times stated in the Schedule of Journeys; and
- all taxi drivers as governed by their PCO licence, passenger assistants will hold a valid DBS check that is no more than 3 years. A DBS must also be obtained for all other staff that may be used as part of this contract.

9.1.3 All providers will be expected to ensure that all passengers provided with transport by the Council be allocated an appropriate seat including the provision of any harnesses, standard booster seats or child seats (appropriate to the age, height and weight and mobility needs of the child) or secured wheelchair space. There is to be no standing at any time. The vehicle shall be so equipped as to enable passengers to be transported comfortably and should be heated when necessary. Passengers are not to be conveyed in any sideways facing seat.

9.1.4 All named authorities will need to sign an access agreement to be able to call off the framework contract.

9.2 **TUPE, other staffing and trade union implications** - Not Applicable

9.3 **Corporate Policy and Equality Impact**

9.3.1 Wellbeing of children in the borough: and ensuring that potentially vulnerable children and young people are safely transported and, where appropriate, escorted, is a fundamental responsibility for the Council, staff and Members. Indeed, this is a responsibility for all Members as corporate parents.

9.3.2 Integrated service provision: the ability for children and young people to be safeguarded while transported to school allows them to experience services within the community in a safe way, thereby, contributing to positive life chances, educational and social development.

9.4 **Safeguarding Adults and Children** - Staff working with the young people will be expected to have a current Disclosure and Barring Service (DBS) check. In addition, as a part of the tender exercise any potential providers will be thoroughly assessed on child protection and safeguarding methods that they employ and policies that they have in place.

9.5 **Health Issues** - A Framework Agreement will ensure that the health needs of vulnerable members of society are better supported, particularly with regard to mobility and where passengers have complex physical, psychological and/or sensory needs.

**Public Background Papers Used in the Preparation of the Report:** None

**List of appendices:** None