

CABINET

22 January 2013

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| Title: Contract for Provision of Taxi Services for Children with Special Educational and Complex Needs | |
| Report of the Cabinet Member for Children's Services | |
| Open Report | For Decision |
| Wards Affected: All | Key Decision: Yes |
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| Accountable Divisional Director: Meena Kishinani; Divisional Director Strategic Commissioning and Safeguarding | |
| Accountable Director: Helen Jenner; Corporate Director of Children's Services | |
| Summary: <p>This report seeks authority from Cabinet to commence a procurement exercise to appoint providers to a Framework Agreement for the provision of taxi services for children with special educational and complex needs.</p> <p>The contracts awarded will be for a period of four years 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 £4.5m.</p> <p>There is no financial commitment involved with this proposed arrangements.</p> <p>The current contractual arrangements in place for this provision expire on the 31 December 2013. A waiver has been secured for the period 1 January 2013 to 30 April 2013 to allow a full and formal procurement exercise to be completed.</p> <p>The need for this action has arisen as a result of the decision to withdraw from the London Borough of Newham led procurement exercise following a second unsuccessful procurement.</p> | |
| Recommendation(s) <p>The Cabinet is recommended to :</p> <ul style="list-style-type: none">(i) Approve the procurement of a four year Framework Agreement for the provision of taxi services for children with special educational and complex needs, as detailed in this report;(ii) Agree that a further report be presented on the outcome of the procurement exercise in order for the Cabinet to appoint the successful tenderer(s) to the Framework Agreement. | |

Reason(s)

To support the Council's key theme of "Better Health & Well-being" and helping to deliver the following Children and Young People Plan strategic priorities (2011-16):

- Priority 1: Ensure children and young people in our borough are safe
- Priority 4: Improve support and fully integrate services for vulnerable children, young people and families (particularly children in care and children with disabilities)

1. Introduction and Background

1.1 The Council has a duty to provide reasonable assistance in transporting children with special educational and complex needs. Children may require transport for a number of reasons, including but not limited to:

- transportation to their appropriate schools,
- attending family contact with birth families, and
- facilitating other activities that have been identified as important and necessary to the child's well being.

1.2 The initial procurement exercise for the provision of a Supplementary Passenger Support (Taxis) Framework Contract, led through East London Solutions (ELS) by London Borough of Newham (LBN), was originally initiated in July 2009. This procurement exercise was on behalf of the London Boroughs of Barking and Dagenham, Havering, Newham and Redbridge. This procurement exercise was unsuccessful.

1.3 In June 2012, it was agreed to restart the procurement exercise within the existing arrangements; a cross-borough exercise lead by LBN, who provided assurance that the process would be completed by 31 December 2012, with an operational Framework Contract in place for 4 January 2013.

1.4 LBBD subsequently secured a waiver, for the maximum allowable amount, to ensure contracts were in place underpinning existing arrangements. These contracts were arranged to run concurrently with the above procurement exercise, expiring as they do on 31 December 2012.

1.5 The tender evaluation element of that process was completed in late October 2012 and presented a significant problem. Only one organisation passed all the stipulated tender evaluation criteria. This would have meant that continuing with the procurement process in the current format would have been unsustainable, as this organisation would not have sufficient capacity to meet the needs of all boroughs concerned.

1.6 There were 4 options available to LBBD as a result of the tender submission evaluations.

- 1) Continue with the existing process and create a framework with a single provider;
- 2) Alter the originally specified evaluation criteria, allowing more organisations to 'qualify';

- 3) Treat the procurement process as unsuccessful and re-tender as a collective under a new OJEU notice; and
- 4) Treat the procurement process as failed with each borough making its own future arrangements. If this option is accepted due to the EU regulations a new OJEU procurement exercise would be required. In the meantime LBBB would need to secure a waiver to ensure contracts are in place for this service. These contracts will be arranged to run concurrently with the new procurement exercise, expiring 30 April 2013.

- 1.7 Option 1 was, clearly not viable. Legal advice from LBN suggests that option 2 would be sustainable, but would pose a risk. Legal advice from LBBB also identified this as a risk, and further stated that it was not a risk that it would be recommended for LBBB to take (particularly as one of the proposed revisions to the criteria was to remove financial checks). Options 3 and 4 were agreed by legal departments from both authorities to be legally compliant.
- 1.8 With option 1 unfeasible and legal advice suggesting that option 2 presented a risk that would not be recommended, the available alternatives were limited and hinged, largely, upon whether a decision was taken to commit once more to the LBN lead exercise, or to make alternative arrangements that would culminate in a single-borough procurement exercise for LBBB.
- 1.9 It was unlikely that there would be an operational Framework Agreement in place for 4 January 2013 and therefore LBBB must ensure that arrangements are made for the continuation of the existing provision for a period beyond this date. This is the reason for the waiver that has been secured.
- 1.10 Following discussions with the Corporate Director of Children's Services, Elevate procurement colleagues; Legal Services and the lead member for Children's Services, option 4 was considered the most favourable and therefore notice to withdraw from the LBN lead joint-procurement exercise was given. This report is, therefore, seeking approval to commence a procurement exercise to appoint providers to a Framework Agreement for the provision of taxi services for children with special educational and complex needs.

2. Proposal and Issues

- 2.1 It is proposed that Cabinet agrees to the commencement of a procurement exercise to appoint providers to a Framework Agreement for the provision of taxi services for children with special educational and complex needs.
- 2.2 The contracts awarded will be for a period of four years 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 £4.5m.
- 2.3 There is no financial commitment involved with this proposed arrangement as the nature of a Framework Agreement is such that it does not oblige the local authority to purchase any particular volume from any provider.
- 2.4 The single tender action will be managed by Elevate East London. The principle stakeholder is Children's Complex Needs and Social Care, who will assume the responsibility for contract managing the service if approval is granted.

- 2.5 The contract terms and conditions which would be used would be the London Borough of Barking and Dagenham standard short terms and conditions. In the event that any variations are recommended, the Councils Legal Department will be required to approve prior to issue to the supplier.

3. Options Appraisal

- 3.1 **Operate this service without a contract:** London Borough of Barking and Dagenham 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. This exposes the Council to potential price increases and deficit budgetary positions. Without contracts in place we cannot enforce CRB checks being mandatory, and that taxi companies hold appropriate licences, this is critical as the taxi companies will be transporting vulnerable children.
- 3.2 **Proceed with a single action tender:** This is the recommended option for the reasons outlined in the 'Reasons' section and discussed throughout this report.

4. Consultation

- 4.1 This report has been circulated to key stakeholders whose comments have been incorporated within the report.

5. Financial Implications

Implications completed by: Dawn Calvert, Group Manager (Finance)

- 5.1 There is no financial commitment involved with this proposed arrangements, though the tendering arrangements must not preclude any future efficiency arrangements.
- 5.2 There would, however, be a significant degree of risk associated with operating these services without contractual arrangements in place. This would expose the Council to potential price increases and potential deficit budgetary positions.

6. Legal Implications

Implications completed by: Daniel Toohey, Senior Lawyer

- 6.1 The provision of transport services is a Part A service under the Public Contracts Regulations 2006, and therefore the full requirements of the EU procurement regulations will apply, and contracts will need to be procured by a competitive tendering process, or via a framework agreement. The procedure set out in section 7.2 of the report by the Council's procurement adviser is a procedure that is compliant with the requirements of the regulations; Legal Services and procurement officers will provide advice and assistance during the course of the process.
- 6.2 The report author has stated that a waiver has been granted for short term contracts of no longer than three months; Legal are advised that the value of these are within the threshold of the scheme of delegation for the relevant Director to sign

off, and are below the threshold to which the EU regulations will apply, such that the requirement of competitive tendering may be waived.

7. Other Implications

7.1 **Risk Management** - There are no inherent risks with regard to this contract as it commits the Council to no expenditure with any particular provider. There are, however, risks of operating these services with no contractual arrangements in place, as follows:

- Purchasing these services outside of contract would result in non-contracted spend, potentially non-licensed taxis providing a service to vulnerable children and young people;
- Absence of contractual arrangements would make it difficult to mandate that transport providers have valid insurances in place;
- Similarly, it would be difficult to enforce mandatory Criminal Records Bureau (CRB) checks upon providers;
- Cost of services would be much more likely to suffer from fluctuation in the absence of contracted rates.

A suitable and safe taxi service provision for children, young people and adults with special needs would, however, mitigate these risks. Formal contractual arrangements would tie providers into contractual obligations that would better ensure continuity of provision, as well as service quality for young people:

- 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 the Council
- contractors must arrive at the specified collection and drop-off points by the times stated in the Schedule of Journeys
- all taxi drivers and passenger assistants will be CRB checked (for work with adults and children)

7.2 **Contractual Issues** - The current contracts which were secured through approval of a waiver will run concurrently with the new procurement exercise, expiring 30 April 2013. The new procurement exercise will be an OJEU Open ITT process, commencing 1 February 2013. LBBD will commence the new framework with the successful suppliers on 1 May 2013.

The contract will be awarded for the maximum duration of a framework agreement (4 years). Given the nature of the service it is classified as a "Part A" service under the Public Contract Regulations 2006.

The opportunity to tender for this contract will be advertised on the Council Website and Contract Finder (a government portal aimed at small businesses and the voluntary and community sector groups). In addition officers will proactively target known providers of this service to alert them to the contract opportunity.

Tenders will be evaluated against a set criteria comprising of 50% for quality (20% mandatory and 30% technical questions) and 50% for price. Once providers have

been appointed to the framework calling off from this framework will take the form of a mini-competition each time a provision is required.

LBBD must ensure all taxi suppliers are signed up to and adhere to;

- the required level of insurances,
- the appropriate level of CRB checks,
- the required licences,
- all suppliers must be VAT registered.

The procurement will be overseen by the Elevate East London Procurement Team.

7.3 **Safeguarding Children**

Wellbeing of children in the borough – 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.

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.

Background Papers Used in the Preparation of the Report: None

List of appendices: None