

Decision maker:	Cabinet member transport and roads
Decision date:	9 August 2017
Title of report:	Retendering and award of passenger transport contracts due to commence in September 2017
Report by:	Passenger transport manager

Classification

Open

Key Decision

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012

Wards affected

Countywide

Purpose

To secure approval to retender contracts for the provision of passenger transport services, ensuring continuity of services, in line with statutory duties relating to eligible school transport and maintaining the bus network in accordance with adopted policies.

Recommendation(s)

THAT:-

- (a) **the following public transport contracts be awarded with effect from 3rd September 2017 as follows:**
- **route 292 to Sargeants for a maximum period of seven years with break points at 3 and 5 years at a contract value of £1,362,900**
 - **route 293 to First for a maximum period of seven years with break points at 3 and 5 years at a contract value of £1,597,200**
 - **route 299 to Lugg Valley for a maximum period of a year at a contract value of £10,916**

- (b) the procurement of passenger transport school contracts as set out in appendix 1 be approved;
- (c) the assistant director environment and place be authorised to take all operational decisions necessary to award school transport contracts within approved budgets, following implementation of recommendation b above;
- (d) the assistant director environment and place be authorised to take all operational decisions necessary to undertake future school transport route reviews and subsequent procurement in accordance with council policies, contract procedure rules and approved budgets;
- (e) the director for economy, communities and corporate be authorised to award contracts for future passenger transport services tendered in accordance with agreed policies and approved budgets.

Alternative options

- 1 Not to proceed with re-tendering or the award of contracts. This is not recommended as this is likely to result in services being withdrawn and could mean that the council breaches its statutory responsibilities relating to school transport and is in conflict with its adopted policies relating to the support for the bus network which defines a Core Bus Network.

Reasons for recommendations

- 2 To ensure that the council manages its passenger transport services effectively and within budgetary constraints whilst also meeting its statutory duties. To ensure the core bus network is maintained and children are transported to school in line with eligibility.

Key considerations

- 3 A review of the public transport network was undertaken in 2014 and cabinet approved the priorities for subsidy and defined a core bus network for the county. A number of route contracts are approaching their termination date and have been retendered in accordance with the adopted passenger transport strategy and the passenger framework agreement, including the core network and policy (PT1 of the local transport plan). Approval is now sought to award contracts to the providers in recommendation a above, for the following routes to the highest scoring bidder (a summary tender evaluation report is contained in appendix 2):
 - 292 – Llandrindod to Hereford with an annual value of £194,700 and total value of £1.37M with an end date of September 2024 (the contract has a break points at 2020, 2022)
 - 293 – Various Ledbury area bus services with an annual value of £234K and a total value of £1.59M with an end date of September 2024 (the contract has a break points at 2020, 2022) Due to the service 405 element of this package exceeding the adopted £4/ passenger subsidy level the service will be withdrawn after year 1. The contract cost in years 2-7 will be reduced to an annual cost of £227K. During the period it operates officers will engage in community liaison and support to explore options for continuation of services with local funding.
 - 299 – Bucknell to Hereford with an annual value of £11K. This contract will operate for a year only as it is above the adopted £4/passenger subsidy level. During the

period it operates officers will be engage in community liaison and support to explore options for continuation of services with local funding.

Retendering of School Transport Contracts

4 There are 12 contracts which are due for renewal in September. A schedule of the contracts and their current values (per annum) is included at appendix 1 In summary, these contracts relate to mainstream schools and special educational needs (SEN).Contracts for Mainstream/SEN are not for a specified term but can be terminated after 6 weeks notice to the operator. The reasons for seeking to retender these contracts for September 2017 are:

- Changes in the school population
- Vehicle optimisation
- Continuity of service to effectively transport eligible children to school
- To replace short term contracts which were necessary due to an operator ceasing trading

Future Retendering of School Transport Contracts

5 It is necessary to retender a number of school transport contracts at least annually to reflect changes in the school population. Approval is sought to authorise the assistant director environment and place to determine the appropriate routes necessary to ensure the continued provision of transport to meet the needs of children eligible for school transport/SEN and procure a suitable contractor in accordance with council transport policy, contract procedure rules and within agreed budgets, with the director awarding the contract(s) .based on the recommendations. These contracts currently have a total annual value of circa £4M.

6 The retendering of all contracts in recommendation a and b has been undertaken using the adopted Passenger Transport Framework. This is a herefordshire council framework agreement that was procured in 2014 in accordance with the council's contract procedure rules and is in place until 2018. It provides a framework from which contracts can be called off to provide services. . Contracts are selected on the basis of lowest price providing the quality standards are met and comply with specification and will be awarded in line with the requirements of the constitution. The regular retendering of services is part of good contract management to ensure value for money is being achieved. In accordance with the council's contract procedure rules and budget, delegated authority is therefore sought for the Director of ECC to award the above contracts and those arising from future tender rounds, subject to the receipt of compliant tenders.

Community impact

7 Should the decision not be agreed there will be an impact on eligible pupils not being provided transport to school and the council will be in breach of its statutory duty. Additionally some communities may be disadvantaged by bus services being withdrawn if contracts are not renewed.

Equality duty

8 The provision of accessible transport and specially adapted transport in compliance

Further information on the subject of this report is available from
Alan Lewis on Tel (01432) 261518

with appropriate regulations and acts is provided for within the contracting process and specifications for contracts ensuring that the council is able to comply with its equality duties in respect of contracted transport.

Financial implications

- 9 The total cost of the contracts being recommended for retendering is £306K per annum which equates to around 6% of the total spend on contracted transport services per annum. Whilst the budget implications of the tendering process cannot at this stage be predicted but will be set out in the officer decision record, retendering of services is good practice as it allows for revisions to specifications of work in line with changes in services demands and policy changes. In relation to school transport services this should include downward pressure on the overall budget as demand for free transport reduces following the change in school transport policy.
- 10 The financial implications in awarding these tenders will incur an annual increase to the Bus Route Subsidy budget of £36K or 9%. As these contracts commence in September this will be an additional cost of £21K for the current financial year 2017/18. Although this can be absorbed by efficiencies elsewhere, for subsequent years an inflation increase should be considered to minimise any budget pressures. Subject to the outcome of future public transport tender rounds, if contract inflation or efficiencies are not applied, there would be a need to reduce service levels in other public transport contracts being retendered in future years to remain within the overall budget.

Legal implications

- 11 Section 63 of the Transport Act 1985 sets out the council's duties to secure provision of such public passenger transport services as considered appropriate to meet requirements within the county which would not otherwise be met. This duty must be carried out while having regard to the council's duties to provide home to school transport.
- 12 The council's statutory duty to provide home to school transport is set out in Section 508B of the Education Act 1996 and the DFE statutory guidance for local authorities on home to school travel and transport issued in July 2014 (and updated in December 2016). This duty requires the council must make such travel arrangements as considered necessary to facilitate attendance at school for eligible children (as defined in Schedule 35B of the Act). The council's home to school transport policy (revised in June 2017) sets out details of provision and eligibility for children of compulsory school age in Herefordshire.
- 13 The provisions set out in this report will ensure that the council is able to meet its statutory duties and comply with adopted policies to provide both passenger and home to school transport.
- 14 The retendering of the contracts in recommendations a and b above requires EU compliant procurement due to their value. The herefordshire council passenger framework agreement can be used as it is a compliantly let umbrella agreement as required under the contract procedure rules. The framework has three categories of services, two of the frameworks has more than one supplier which is compliant with the council contract procedure rules. However one framework (No 3 in Dec 15) has only one supplier which under the contract procedure rules adopted in 2017 would not be permitted, however as this framework is one that the council itself has procured, the 2014 procurement exercise evidences that best value can be achieved

and an exemption to the contract procedure rules has been granted.

- 15 When the framework was advertised in 2014 via an OJEU notice the estimated value of the services to be provided under the contract was £4m. This has been exceeded and with the inclusion of these recommendations will have an estimated value of £7m. The estimate of the value of the contract included in the OJEU notice does not provide a strict cap that cannot be exceeded. The question that the council needs to consider is whether the actual amount of spending constitutes a material change to the contract that was awarded. If it is material then any contract which pays additional sums for services would then risk being declared a new contract awarded directly to contractor which would provide grounds for challenge given the value of the contracts.
- 16 There is a risk that the change is material because a provider who elected not to submit a tender or expression of interest could have been interested in this procurement had the increased valuation been made from the start and the outcome of the procurement process might have been different if the council had envisaged this level of spending.
- 17 To utilise the framework agreement the procedure set out for mini competitions must be complied with and has been in these cases. The terms of the framework enable passenger and school transport contracts to be let within certain conditions which include operator compliance.
- 18 As the contracts in recommendation a and b are within the scope of the current framework terms and conditions which will be renewed by July 2018 these contracts can be called off the framework and let with a small risk of challenge that these are new contracts that have not be lawfully procured.
- 19 The delegation of the future procurement and award of contracts to an officer is permissible and must only be carried out in accordance with the council's constitution and contract procedure rules.

Risk management

- 20 The process for retendering follows best practice by allowing only contractors who are part of the Passenger Transport Framework to be able to tender. This framework opens up opportunities for all taxi, bus, and coach operators who have relevant compliance to bid for any tenders issued. This minimises risk to the council of using unauthorised contractors who have not passed the relevant qualifying checks on the Framework. The Framework is due to be refreshed over the next 12 months to put in place a dynamic purchasing system to further improve and widen competition.
- 21 By having multiple contractors on the framework it also provides more competitive tendering costs and reduces the risk of there being no bids received for certain contracts. Operators also have the opportunity to bid in some cases for a combined contract which reduces costs over individual contracts prices.

Consultees

- 22 All Members and a range of stakeholders were consulted on the review of the bus network carried out in 2014 which identified the core network which is the subject of the procurement exercise outlined in this report. Members were also consulted during the Passenger Transport Review reported to Cabinet in April 2017 which set out the approach to the provision of services for public, education and special needs

transport. Additionally all political groups have been asked for comment. Comments were only received from the Green Group which in addition to a number of specific questions which are being responded to direct regard service provision, stated that, “the Green Group are keen to see any and all avenues explore to keep sustainable and viable public transport in place across the county . If there are new opportunities available we would like to see them incorporated into the new contracts in order to fully achieve the proposal set out in both the adopted LTP Strategy and Policy documents.”

Appendices

Appendix 1 List showing details of school contracts for retendering

Appendix 2 Summary Tender Evaluation Report

Background papers

- None identified