

<b>Subject:</b>	<b>Use of Urgency Powers in Relation to Transport services for Vulnerable Children and Adults</b>	
<b>Date of Meeting:</b>	<b>11 July 2019</b>	
<b>Report of:</b>	<b>Executive Director for Families, Children &amp; Learning</b>	
<b>Contact Officer:</b>		
	<b>Name:</b>	<b>Richard Barker, Head of School Organisation</b>
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<b>Ward(s) affected:</b>	<b>(All Wards);</b>	

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1. This report provides information about the procurement of a new Dynamic Purchasing System (DPS) for the provision of transport for vulnerable children and adults. Committee is requested to note that, due to urgent circumstances, the procurement and award of the DPS was authorised by the Executive Director Families, Children and Learning using his Chief Officer urgency powers.

**2. RECOMMENDATIONS:**

That Policy, Resources & Growth Committee:

- 2.1 Notes that the decision has been taken by the Executive Director Families, Children & Learning to procure and award a Dynamic Purchasing System (DPS) and call off contracts for the provision of transport services for vulnerable children and adults with a term of up to four years.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 A draft report on the provision of transport for vulnerable children and adults was discussed at the Procurement Advisory Board (PAB) on 25 June 2018. At that time officers were still considering the benefits and complexities of introducing a DPS which are in operation in East Sussex and Surrey County Councils.
- 3.2 The members of PAB expressed a preference for the procurement of a DPS and a desire for the involvement of community businesses such as Community Transport.

- 3.3 The report which went to PR&G committee in October 2018 recommended the procurement and award of a framework agreement (and not a DPS) to provide for arrangements similar to the existing arrangements whereby a framework agreement would be put in place and individual routes 'called off'.
- 3.4 The report explained that, after further consideration, the DPS option would not be suitable at that time for the following reasons:
- not having the additional administrative tasks detailed in current job roles
  - limited market engagement and
  - soft market testing not indicating a positive appetite for change.
- 3.5 At that time, officers were considering amalgamating the existing combination of school routes to be 'called off' in such a way as to bring a reduction in costs.
- 3.6 On 11 October 2018 PR&G committee approved the procurement of a contract for home to school transport for pupils with special educational needs and other transport for vulnerable children and adults on behalf of social care teams, for a term of four years, from 1 September 2019 to 31 August 2023 and delegated authority to the Executive Director Families Children & Learning to procure and award a 4 year framework agreement.
- 3.7 Following the PR&G committee decision, the significance of the home to school transport budget overspend in 2018/19 and the initial forecast for the next financial year in relation to client transport led officers to recruit an independent consultancy, Edge Public Solutions ('Edge'), to review all of the council's arrangements for client transport.
- 3.8 Edge were tasked with producing a savings implementation plan in relation to the transportation of vulnerable children and adults. Their work started in January 2019 and early consideration was given to the proposals to re-tender the transport arrangements. It was identified that the proposed new framework agreement would not enable the council to realise any significant change to the forecast overspend because of the market share of current providers and a lack of control over routing.
- 3.9 On 26 March 2019, as part of its presentation on the proposed savings implementation plan, Edge identified the introduction of a DPS as one measure to assist the council in achieving savings on its wider transport spend. It would assist the drive for efficiency and quality improvements by:
- Broadening the supplier base whilst maintaining quality and safeguarding
  - Ensuring a competitive tendering environment
  - Introducing a greater number of more suitable larger capacity vehicles.
  - Having the ability to respond effectively to changes in demand and futureproofing against rising demand.
- 3.10 This review went beyond the current provision of transport under the current framework agreement and incorporated areas not previously considered by the report produced for the PR&G committee in October 2018.

- 3.11 The Policy, Resources & Growth committee had last met on 21 March 2019. The Children, Young People and Skills (CYP&S) Committee had last met on 4 March 2019. The council entered the purdah period on Friday 22 March 2019 and at the time it was expected to last until the conclusion of the local elections on 2 May 2019.
- 3.12 Compelling evidence produced by Edge and due diligence with other local authorities, where the introduction of a DPS had been initiated, meant a decision was taken to introduce a DPS rather than a framework agreement.
- 3.13 A briefing was provided to the Leadership Board on 8 April 2019 where satisfaction with the process was expressed. Prior to this briefing the Chair of the CYP&S committee and Leader of the Council had been kept informed of the work being undertaken, initially the awarding of a contract with Edge and subsequently the procurement process.
- 3.14 As a result of the urgent need to procure a replacement for the existing framework agreement, a desire to minimise any disruption to children's transport in the academic year and the budget pressure identified in 2019/20, the Executive Director Families Children & Learning used his urgency powers under Part 6.2 Part A 7(2) of the council's Constitution and, following consultation with the Chair of the CYP&S committee, approved the procurement and award a DPS for transport for vulnerable children and adults with a term of four years. The DPS itself is an umbrella arrangement which does not require the council to call off any contracts. The approximate value of all of the call offs from the DPS over a four year period is £12m.
- 3.15 The procurement process for the new DPS was undertaken between March and April 2019 and successful providers have been awarded a place on the DPS. Once DPS agreements are entered into with the successful providers, call off contracts can be tendered and awarded for routes with a planned commencement in September 2019.
- 3.16 In line with recommendations the Executive Director Families, Children & Learning plans to procure and award contracts through the DPS. The plan is for the initial call off contracts to be procured and awarded through the DPS during late June and early July 2019 ready to commence in September 2019, at the conclusion of the electronic tendering process which is expected to have started in late June and concluded by mid-July.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 Without a change in approach the Home to School Transport budget was forecast to be overspent in 2019/20 by £346k and it finished the previous financial year overspent by £210k.
- 4.2 The work in collaboration with Edge identified that it was appropriate to procure a DPS rather than another framework agreement. No alternative approach to procurement was recommended to assist in addressing the forecast overspend. In conjunction with other initiatives, utilising a DPS enables much improved market engagement ultimately creating a broader and improved market environment.

## **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 The council took advice from its appointed advisers who have a demonstrable track record in delivering financial savings within this area of council responsibility.
- 5.2 The council undertook provider information events during the period of registration for the DPS to inform prospective providers of the proposal to change the arrangements to a DPS. This was an opportunity for potential providers to ask for clarifications and for the council to reflect on any observations made by potential providers as part of the process and a record of the discussion and responses to questions posed was made available to all potential bidders.
- 5.3 Headteachers of the city's special educational needs schools and the Parent and Carer Council were informed of the proposals with respect to the DPS.

## **6. CONCLUSION**

- 6.1 In March 2019 it became apparent that there was an urgent need to address a growing budget overspend. Officers consulted with Edge who advised that a DPS would be the most suitable option for the provision of transport for vulnerable children and adults in order to reduce the forecast overspend.
- 6.2 The need to procure the DPS was urgent and officers did not have time to bring a further report to committee. Therefore, the Executive Director Families Children & Learning used his urgency powers under Part 6.2 Part A 7(2) of the council's Constitution to carry out the procurement and award of the DPS following consultation with the Chair of the CYP&S committee.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 The emerging budget pressure on transport and particularly the home to school transport contract required urgent remedial action. Following the decision to engage consultants to address the problem, potential savings have been identified of which the tendering and management of the contract via DPS is a significant element. Any delay or failure in this process could jeopardise the delivery of the savings required.

*Finance Officer Consulted: David Ellis*

*Date: 26/06/19*

### Legal Implications:

- 7.2 The council has a statutory duty to provide home to school transport for certain pupils attending schools in the Brighton & Hove area under the Education Act 1996 (as amended).
- 7.3 In cases of urgency, Chief Officers may exercise any of the functions within their service area where it is not reasonably practicable to obtain prior approval of a

Committee. Before doing so they need to consult with the Chair of the relevant Committee. The action taken must be reported to the Committee.

- 7.4 It is appropriate for the Executive Director, Families Children and Learning to consult with the Chair of the relevant committee and to report this action to PRG as the decision to procure and award the DPS and call off contracts should (in cases where there is no urgency) be taken by that Committee.

*Lawyer Consulted: Isabella Sidoli*

*Date: 27/06/19*

Equalities Implications:

- 7.5 As stated in the original report to the PR&G Committee, the council has a responsibility to promote access to appropriate educational provision for all in accordance with legislation including the Equality Act 2010. It must balance that responsibility against any change in transport provision, to ensure that it is not compromising access by vulnerable individuals.
- 7.6 It is not necessary to carry out an equalities impact assessment on this occasion as the criteria for accessing transport services are not changing as a result of this new procurement.
- 7.7 All potential providers have had the opportunity to receive and discuss the implications of re-tendering including TUPE considerations for people currently employed in the transportation of vulnerable adults and children on behalf of the council.

Sustainability Implications:

- 7.8 As stated in the original report to the PR&G committee, the Education Act 2006 (as amended) places a general duty on the council to promote the use of sustainable travel and transport. The duty applies to children and young people of compulsory school age and sixth-form age who travel to receive education or training in the council's area.
- 7.9 It is accepted that hired transport contributes to traffic levels in the city. However, this is offset by the council's contractual requirement on providers to maximise the use of all spaces on vehicles (except where, through health or safety considerations, children must travel alone).

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Corporate / Citywide Implications

Corporate / Citywide Implications:

- 1.1 The Council wishes to appoint Operators to provide the transportation of vulnerable Children and Adults (Service Users). This includes transporting children with special needs and disabilities between their home and establishment and transporting adults and children supported by Social Care teams.
- 1.2 The Council wishes to work in partnership with Operators to deliver a high quality, safe and efficient transport service for vulnerable children and adults in Brighton & Hove.
- 1.3 Key service objectives are:
  - Quality – A client-centred service delivered in a safe, professional and effective manner by trained staff in clean, comfortable vehicles. Ensuring promptness of pick up and drop off is a high priority
- 1.4 The Specification sets out how Operators will be required to deliver the service to achieve the Council's objectives which include ensuring:
  - A good life: ensuring a city for all ages, inclusive of everyone and protecting the most vulnerable.
  - A well-run city: keeping the city safe, clean, moving and connected
- 1.5 In recent years, the Passenger Services budget has been significantly overspent and this needs to be rectified to ensure council funding can be utilised in line with priorities identified in the budget planning process rather than being re-directed to address budget pressures. The council believes that through the creation of this DPS (which will allow entry of new Operators throughout the lifetime of the DPS) it will have the opportunity to improve competition whilst retaining quality of services and still allow our valued Operators to make a reasonable return for their businesses.
- 1.6 It is hoped that introducing a DPS system will stimulate the local market and provide more opportunities for small and medium sized local enterprises that are able to deliver a high quality and reliable service supporting the retention of income in the local and regional economy.
- 1.7 It is also hoped that it will facilitate the greater involvement of community businesses as encouraged by the PAB.