
Meeting	Cabinet Resources Committee
Date	25 February 2013
Subject	Passenger Transport – SEN Framework Contract Extension
Report of	Cabinet Member for Environment
Summary	This report seeks (1) approval to extend the SEN Framework Contract expiring on 28 February 2013 for a period of seven weeks to allow adequate time for mobilisation of the new jointly procured passenger transport framework contract with Harrow Council; and (2) a waiver of the Contract Procedure Rules.

Officer Contributors	Kate Kennally – Director for People Declan Hoare, Assistant Director Highways and Transport Environment, Planning and Regeneration Directorate Bernard McGreevy – Environment Service Manager, Environment, Planning and Regeneration Directorate Tahir Mahmood – Project Manager, Chief Executive’s Service
Status (public or exempt)	Public
Wards affected	None
Key decision	No
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in	Not applicable

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- 1.1 That the Committee approve an extension to the SEN Framework Contract for passenger transport, expiring on 28 February 2013, for a third term for a period of seven weeks to allow the passenger transport team to mobilise and implement the newly procured framework contract jointly with Harrow to mitigate against the risk of disruption to the service. The current contract is valued at £3.03m and an extension would require up to a maximum value of £370,000.
- 1.2 That the Contract Procedure Rules relating to acceptance parameter for contract extensions be waived to allow for the further extension to the SEN Framework Contract for passenger transport.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet, 29 November 2010 (Decision item 9) – authorised the Commercial Director to commence the procurement process to identify a strategic partner for the delivery of the Passenger Transport Services and to extend the current SEN framework contract by 6 months to February 2012 to allow adequate time to procure the most suitable provider for a new service.
- 2.2 Business Management Overview & Scrutiny Sub-Committee, 16 December 2010 (Decision item 6), the report was discussed and Councillors were assured that they would see evidence of our work with other boroughs on passenger transport.
- 2.3 Cabinet Resources Committee, 27 September 2011 (Decision item 16), the committee approved the recommendation to become full members of the West London Alliance (WLA) Transport Efficiency Programme to participate in the procurement of a framework contract led by London Borough of Brent to replace our current framework.
- 2.4 Cabinet Resources Committee, 16 January 2012 (Decision item 9), the committee resolved that the SEN Framework Contract for passenger transport, expiring on 29 February 2012, be extended for a second term for a period of 12 months and up to a maximum value of £3.042m to allow adequate time for the West London Alliance (WLA) to procure a region-wide collaborative framework contract for the most suitable provider(s) for the service to benefit both the customer and the Council.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The three priority outcomes set out in the Corporate Plan are: –
 - Better services with less money
 - Sharing opportunities, sharing responsibilities
 - A successful London suburb
- 3.2 The One Barnet programme has three overarching aims: –
 - A new relationship with citizens
 - A one public sector approach
 - A relentless drive for efficiency

- 3.3 The overarching aim of the One Barnet Programme is to create a new citizen centred council through delivering a new relationship with citizens and, by improving their experience of the passenger transport service this will contribute to the council in achieving this aim.
- 3.4 The aim of this project is to deliver passenger transport services in collaboration with another member borough of the West London Alliance (Harrow Council) by jointly procuring centralised framework contract where possible to reduce the overall cost of the transport provision whilst working in collaboration with other partners to deliver region-wide services and fits within the One Barnet objectives of “a relentless drive for efficiency” and “a one public sector approach”.

4. RISK MANAGEMENT ISSUES

- 4.1 Risks associated with the delivery of the projects are managed and reported in accordance with corporate risk and project management processes and will also be reported through existing democratic processes.
- 4.2 The existing contract is expiring on 28 February 2013 and the new jointly procured contract with Harrow was planned to in place by 25 February. Due to delays in the tender and evaluation process of the new framework contract, there is a significant risk that the new contract will not be ready which could make the service non-compliant with the Contract Procedure Rules.
- 4.3 In order to begin the process of achieving potential cost savings from the new framework contract the award is planned to take place by April 2013 for the new providers to commence service delivery from start of the 2013/14 summer term. Failure to allow this extension would result in the need for the spot hire of vehicles. The cost of the spot hire would exceed the European tendering threshold for these services and therefore contravene procurement regulations.
- 4.4 If this proposed extension of the current SEN transport framework agreement is not approved, the Council will be required to source the SEN Passenger Transport provision for the interim period between the current SEN Transport Framework agreement expiring on 28 February 2013 and the commencement date of the new Harrow-led Passenger Transport Framework Agreement, planned for 15 April 2013. As such, the council could be exposed to higher market rates and be required to undertake a mini tender process to cover this gap between the council's and the Harrow-led contract periods.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The Council and all other organisations exercising public functions on its behalf must have due regard for the need to; (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.2 The project team have considered the Council's equality and diversity policies and have concluded that the extension of the current framework contract for a further seven weeks does not give rise to any equalities implications for staff or the residents of Barnet.

Further, the original contract was procured using the OJEU procurement process and a full equality assessment was carried as part of the tender evaluation process.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The SEN transport framework agreement contract extension will require the existing seven approved passenger transport contractors (Brent Couriers, Cavendish Cars, Chequers, Elite Broadway, Metro Cars, Ladyfare Ltd and Starcars Ltd) to be requested to continue to provide passenger transport under existing contract terms and financial rates for the seven weeks term.
- 6.2 The projected council spend under the contract (Home to School contract no. 9501) is £3.03m as of November 2012 spend. The projected spend for the seven elapsed weeks contract extension, which equates to four weeks and four academic days required for transport, is estimated to be up to maximum to £370,000 from 25 February 2013 to 14 April 2013.
- 6.3 The council's Medium Term Financial Strategy contains a £1m Transport saving which will be achieved through efficiencies in improved contracting and demand management within children in care and children with Special Educational Needs. The decision sought within this report will not affect the saving.
- 6.4 If the framework agreement contract extension is not granted then there is the risk that the council will be in breach of relevant EU or other procurement rules as it will be required to spot-hire the required service from the market until the new framework is in place. The current monthly expenditure is over £250k per month.
- 6.5 Children Services and Adult Social Care and Health transport budgets will fund their respective transport provision from with existing budgets.
- 6.6 There are no staffing implications as part of these proposals.
- 6.7 There are no redundancy implications as part of these proposals.
- 6.8 No additional office space will be required.

7. LEGAL ISSUES

- 7.1 A Framework is an agreement between a client and contractor or contractors or consultant or consultants (depending upon the nature of the framework), the purpose of which is to establish the terms governing particular call-off contracts that may be awarded during the term of the framework, in particular with regard to price and quantity. The advantage of establishing framework agreements is that as long as the original framework agreement has been advertised and let in accordance with the EU procurement rules, there is no requirement to advertise any subsequent call-off contracts let under the framework agreement even where those call-off contracts exceed the stipulated financial threshold for works and for services.
- 7.2 The Public Contracts Regulations 2006 provides that the term of a framework must not exceed four years, except in exceptional circumstances relating to the subject of the framework. The purpose of this limitation is to mitigate the potentially collusive nature of frameworks and minimise their impact on the 'open-market' objective of the public

procurement regulations. However, this limitation is subject to an exception which allows contracting authorities to enter into frameworks for a duration that exceeds four years, so long as the reason for doing so is 'exceptional' and justified. The circumstances relied on for such justification must be set out in the contract notice and it is likely that these will be closely scrutinised by the EU Commission. It should be noted that call-off contracts pursuant to the framework agreement can continue beyond the four-year period, provided that these contracts are not used in a way that circumvents the public procurement regulations or 'prevents, restricts or distorts' competition..

- 7.3 There is a risk that the extension of the framework agreement could be viewed as circumventing the public procurement regulations or 'preventing, restricting or distorting' competition. The risk is being mitigated by the fact that the extension is to enable the Council and suppliers in the new framework agreement to mobilise the new agreement.

8. CONSTITUTIONAL POWERS

- 8.1 Council Constitution, Part 3, Responsibility for Functions, paragraph 3.6 states the terms of reference of the Cabinet Resources Committee including "approval of schemes not in performance management plans but not outside the council's budget or policy framework".

- 8.2 Contract extensions are permitted, subject to compliance with the provisions of Council Constitution, Contract Procedure Rule 5.6.1 - The Acceptance thresholds for contract additions, extensions and variations, provide that:

5.6.1 In the case of an extension to a contract:

5.6.1.1 The initial contract was based on a competitive tender or quotations;

5.6.1.2 The initial contract has not been extended before; and

5.6.1.3 The value of the extension is less than half the cost of the existing contract without the extension and has a budget allocation.

- 8.3 As the SEN Transport Framework contracts have previously been extended, any further extension requires a waiver of Contract Procedure Rule 5.6.1.2.

- 8.4 The request to waive Contract Procedure Rule 5.6.1.2 is within the terms of reference of the Cabinet Resources Committee as stated in paragraph 5.8 of the Contract Procedure Rules which state that:

5.8 Except in situations of urgency or emergency the Contract Procedure Rules may only be waived on the decision of Cabinet Resource Committee and only where that Committee is satisfied, after considering a written report by the appropriate officer, that the waiver is justified because:

5.8.4 There are other circumstances which are genuinely exceptional.

- 8.5 The circumstances for seeking extension of the framework agreement are outlined at paragraph 9 of the report.

9. BACKGROUND INFORMATION

- 9.1 In September, 2011, the West London Alliance (WLA) Transport Efficiency Programme commenced the procurement of a new region-wide framework contract for passenger transport for the participating boroughs with significant opportunity for financial savings along with service improvement by ensuring maximum utilisation of resources, economies of scale, increased buying power and shared costs. A framework contract was procured by the WLA led by Brent which, after evaluation of the bids, did not offer the expected savings for Barnet.
- 9.2 In January 2012, Barnet was invited to participate in the Harrow-led tender which utilised the e-auction process to mitigate the risk of increased costs and reduced savings from the WLA Brent-led contract. The Harrow-led procurement process concluded in December 2012 which approved sixteen suppliers to provide services to Barnet's Passenger Transport Service. The contract evaluation and award has taken longer than planned for the two contracting authorities (Harrow and Barnet). The new providers will require a lead time in order to mobilise contract resources and procedures. Consequently, the planned start date of 25 February 2013 will not be met and it is essential to provide continuity of this high profile service to SEN children and vulnerable adults. The next opportunity to implement the contract is 15 April 2013 when the school transport recommences for the summer term following the Easter holiday break.

10. LIST OF BACKGROUND PAPERS

- 10.1 None

Cleared by Finance (Officer's initials)	JH/MGC
Cleared by Legal (Officer's initials)	PJ