

Cabinet – 18 March 2009

The Supply of Social Care & Inclusion Adult Transport Contract

Portfolio:	Councillor B, McCracken, Social care, health and housing
Service:	Social Care and Inclusion (including access to taxi provision for Children's Services)
Wards:	All
Key decision:	Yes
Forward plan:	Yes

1. Summary of report

The Social Care and Inclusion (SC&I) Framework Agreement which provides minibus transport services for vulnerable service users to and from day care opportunities comes to an end on 30th September 2009. In addition current interim arrangements for the procurement of *taxis and private hire vehicles need to be made more robust and it will be sensible to time align arrangements with those set in place for minibuses.

This report seeks Cabinet approval for Social Care & Inclusion to organise replacement arrangements for minibus, taxis and private hire arrangements as from 1st October 2009.

*It should be noted that in the case of taxis and private hire provision it is anticipated that Children's services will also utilise the arrangements.

2. Recommendations

- 2.1 The following authority is therefore sought in accordance with Section 10.3 (a), 10.6 and 12.2 of Walsall Council's Financial and Contract Rules:
- 2.2 That Cabinet authorise the competitive tendering of independent sector minibus, taxi and private hire services as outlined in this report.
- 2.3 That Cabinet delegates authority to the Executive Director for Social Care and Inclusion for the award of this contract from 1st October 2009 and any subsequent extension to this contract deemed necessary within the constraints of the contract and in accordance with the Council's Financial and Contract Rules in consultation with the portfolio holder

3. Background information

- 3.1 Social care & Inclusion historically provides transport to and from its care facilities and activities via a mixed economy of provision, i.e. a combination of in-house provision through a fleet of vehicles and drivers alongside externally sourced transport from minibus, taxis and private hire providers.
- 3.2 At its meeting on May 11th 2005, Cabinet gave Social Care & Inclusion authority to enter into a contract with external providers for the supply of transport services by way of a Framework Agreement (Agreement). Furthermore it gave delegated authority to the Executive Director, Social Care and Inclusion to accept tenders and authorise detailed terms in relation to contracts let under the Framework Agreement.
- 3.3 The tender for the Agreement included both minibus provision (principally vehicles offering passenger – lift access) and private hire vehicles and hackney carriages. However the response from private hire and taxi companies proved so poor that the tender for this element was abandoned and the current interim arrangements were retained and have subsequently continued to operate. The interim arrangements as they presently operate are also utilised by Children's Services in support of transport arrangements for corporately parented children's school transportation and contact visits with parents/guardians. The minibus tender proceeded as planned with the Agreement commencing in January 2006.
- 3.4 The Agreement which provides minibus transport comes to an end on 30th September 2009 and a new Agreement needs to be in place from 1st October 2009 in order to remain compliant and in order to avoid any disruption to service users in accessing their day care opportunities. It is proposed that the new arrangements will also include Taxis and Private Hire vehicles; the intention being to replace the current interim Agreement with a more robust arrangement.
- 3.5 Tender preparations in conjunction with Procurement have commenced and are running alongside a separate but linked exercise mapping future transport requirement across Adult Services in the light of the recent introduction of charging and changes in the way transport is to support care delivery within the Learning Disability Service. The exercise will endeavour to establish best value for SC&I in the use of in - house vehicle and driver resources supplemented as now with externally sourced provision as required; though the scale of that provision is yet to be fully determined.
- 3.6 The shape and scale of the in – house operation and the external provision from 1st October onwards as represented in the tender documentation (and subsequently a new Agreement) will be influenced by a range of factors including the geography of service users homes, where care is to be provided, how transport is to operate in support of the care activities within each service area along with the possible TUPE implications that can arise in relation to the workforces of external contractors at the point where commercial agreements end and new ones are set in place and work transfers between different companies and /or the Council.

4. Resource considerations

4.1 Financial:

Until the detailed requirements from the service areas are confirmed it is difficult to anticipate the exact projected value of the Agreement. The minibus expenditure for the current Framework Agreement between January 2006 and September 2008 totalled £917,646 19; and it is anticipated that the cost of the new arrangements will be consistent with this, allowing for inflation. And the cost will be met from SC&I revenue budgets.

The implications of TUPE where the rationalisation exercise identifies that the transfer of current externally provided services can be absorbed in – house with no additional resource requirement will need to be established. Section 4.3 provides more information on TUPE and how it may apply. It is anticipated that if TUPE applies in some instances the costs accruing to the employees involved would be off – set in the first year against the savings from the contract costs; however the saving to SC&I budgets thereafter would be ongoing.

4.2 Legal:

The provision of transport for vulnerable service users receiving care via SC&I through care packages or provision under the departments preventative strategies is not a statutory function; there are therefore no implications or obligations for or on the Council relating to Government or European statute etc.

4.3 Staffing:

There are no anticipated information technology implications arising from this Agreement.

In terms of staffing TUPE may apply. TUPE is a complex area of law with each case needing to be addressed on an individual basis. Dependant upon circumstances and as can be the case with any contractual arrangement (and this can vary between single or multiple employees,) any switching of provision between external contractors at the end of one Agreement and the commencement of another or even the transfer of external provision over to the SC&I's in-house fleet (in order to maximise its use) could carry with it expenditure where the TUPE transfer of an employee from the company losing the work to the one gaining it is deemed applicable for the protection of their accrued employment rights; and potential providers will need to be alerted to this within the tender exercise.

As a consequence should the internal rationalisation exercise mentioned earlier in this report determine that current externally provided services can be absorbed using the present in-house resources (i.e. nil growth) the implication of whether or not the contractor's driver/escort(s) might qualify (are assigned) for the purposes of TUPE and would therefore need to transfer to the Council will need to be established. Should this occur and in - house vacancies exist the arrangement can be relatively easily accommodated; where no vacancies exist however the Council is bound by law to offer the employee transferring in all the usual opportunities to secure a position or receive the appropriate severance

payments (including full redundancy rights) if they are ultimately dismissed due to no post being available.

Two issues therefore need to be addressed and a Barristers opinion is being sought in relation to:

1. The implications of any transfer of current services from external providers to the in-house fleet where the rationalisation exercise identifies this as the best value option for SC&I; and how this can best be managed should individual employees need to transfer across.
2. The establishment of an appropriate TUPE clause in the new Agreement (1st October 2009 onwards) in order to indemnify the Council against the implications of staff transfers between a contractor losing services and the successful contractor assuming that work.

5. Citizen impact

There are no anticipated implications to the general population of the borough as a result of this Agreement. There will be positive benefits to those citizens accessing care facilities and activities as a result of this transport service.

6. Community safety

There are no foreseen implications for community safety.

The contract specifies that all employees of the contractor/s must be evidenced as being CRB checked; and all vehicles will be subject to safety and legal compliance monitoring throughout the life of the Agreement

7. Environmental impact

There are no foreseen environmental implications.

8. Performance and risk management issues

8.1 Risk:

As part of the major project arrangements a risk register relating to the delivery of a tender and subsequent contract will be completed and at this stage it is anticipated that in line with the delivery of the current Framework Agreement identified risks are likely to fall within a manageable range; once detailed information from service areas in relation to who will require transport to and from which locations has been finalised.

8.2 Performance management:

The highest risk to the authority lies in not undertaking a tender exercise in time to achieve contractual arrangements as from 1st October 2009 and Cabinet approval for the tender to proceed is therefore vital.

If a tender and subsequent contractual arrangements are not approved SC&I would be bound to seek ad - hoc transport arrangements from 1st October onwards with no underpinning quality, legal compliance or price criteria / control measures in place as safeguards. Also without the forward planning a tender provides there will be no certainty that suitable provision will be available at the time.

Such a scenario would have a negative impact on service users utilising transport along with anticipated higher costs.

9. Equality implications:

There are no anticipated equality issues as a result of undertaking the tender and letting of subsequent contracts.

10. Consultation

The development of the tender and subsequent execution of contract(s) is being undertaken in conjunction with the Council's Central Procurement Team alongside Legal and Financial Services using the major project arrangements.

Background papers:

Author

Wendy Woodward
Service Manager, Disability Services
☎ 658377
✉ woodwardw@walsall.gov.uk



Signed:
David Martin
Executive Director
2 March 2009



Signed:
Councillor John O'Hare, Leader of the Council
on behalf of
Councillor Mrs Barbara McCracken
Portfolio Holder
9 March 2009