

**Report for:** Cabinet, 16<sup>th</sup> June 2020

**Title:** SEND Transport Transformation

**Report**

**authorised by:**



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**Lead Officer:**

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**Ward(s) affected:** All

**Report for Key/**

**Non-Key Decision:** Key Decision

## 1. Describe the issue under consideration

1.1. At the Cabinet meeting of 12<sup>th</sup> November 2019, it was resolved

- To approve the award of a contract for the provision of SEND Transport Transformation Consultancy Services to the successful tenderer in accordance with the Council's Contract Standing Order (CSO) 9.07.1(d), for a period of two (2) years commencing end of October 2019 and at a total value of up to £600,000 over the 2 years period, with a further gainshare reward dependent upon demonstrable value of savings delivered in excess of £635,000 per annum.

1.2. The resolutions of the Cabinet meeting of 12<sup>th</sup> November 2019 were subject to Call-In and referred to the Overview and Scrutiny Committee.

1.3. The outcome of the consideration of the Overview and Scrutiny committee was presented to the Cabinet meeting of 10<sup>th</sup> December 2019, where Cabinet resolved:

- To defer the final decision, Cabinet resolution 75 and exempt resolution 93 as set out in the public and exempt minutes for 12<sup>th</sup> of November 2019.
- That the taking of this decision return to Cabinet at a date during this financial year
- That Officers make further due diligence enquiries in regard to the expected service improvements by the proposed transformation partner

- That Officers use that time to fully explore all options for service transformation.

## **2. Cabinet Member Introduction**

- 2.1 This report sets out the response of the service in regard to the resolutions made at the Cabinet meeting of 10<sup>th</sup> December 2019. This report to Cabinet sets out the final position with regard to the SEND transport transformation, where a new programme of procurement is underway for September 2020 and beyond. I commend this report to Cabinet.

## **3. Recommendations**

- 3.1. This report recommends that:

Cabinet should not proceed with the award of contract for the provision of SEND Transport Transformation Consultancy Services by an external improvement partner and that this procurement process be abandoned.

## **4. Reasons for decision**

- 4.1. Due to the length of time since the tender was completed caused by the call in of the decision, the baseline for the award has significantly changed such that a further scoping review would be necessary to inform any future decision on contract award.
- 4.2. The report presented to Cabinet on 12<sup>th</sup> November 2019 was based upon the recommendations detailed within a scoping review that was undertaken in April / May 2019. The findings of that review are now 12 months old, and the financial baseline has significantly changed.  
The timeline to undertake a further scoping review and conduct a tendering exercise is such that a further recommendation to award could not realistically be submitted to Cabinet for decision before January 2021.
- 4.3. To ensure that the necessary resources are available to secure SEND Transport provision for the new school year commencing September 2020, the Council is already undertaking a procurement without the services of an improvement partner.
- 4.4. A delay in procurement would risk the availability of transport arrangements for children and young people for the first day of term. The delay would also fetter the ability of the Council to secure best value for money as a consequence of coming late to the market where prospective providers may have already secured contracts elsewhere.
- 4.5. The procurement exercise for the September 2020 term will necessitate a review of the exact routes that will be required, as a consequence of new cohorts of

children becoming eligible for SEND Transport and young people who because of their age will no longer require school transport.

- 4.6. The procurement exercise and updated route mapping may change the supplier profile and associated transport costs, and as a consequence impact the financial baseline upon which prospective providers submit their tenders.
- 4.7. Overall the changes in the financial baseline and the circumstances relating the service is such that it is no longer in the public interest to proceed with the award.

## **5. Alternative options considered**

- 5.1. Award of contract in line with the recommendation to Cabinet on 12 November 2019. This option was rejected because:
  - The tender has expired, and a new tender process would be required.
  - The procurement of SEND Transport routes has commenced, which will change the supplier profile and associated transport costs; and
  - a further scoping review would be required to re-baseline any prospective SEND transport tender award.
- 5.2. No other options are being considered.

### **Response to Due Diligence enquires in regard to the expected service improvements by the proposed transformation partner**

- 5.3. The recommendation to award the contract to the nominated SEND Transport transformation partner within the Cabinet Report of 12<sup>th</sup> November and subsequent response to Call-In presented to Cabinet on 10<sup>th</sup> December, was based upon their proven experience in regard to SEND Transport, as evidenced within the Part B report.
- 5.4. The Part B report detailed eight local authorities where the proposed transformation partner had been commissioned to undertake SEND Transport transformation, including a summary of savings identified at review and respective savings delivered. The report also provided further detail in regard to transformation outcomes at two London boroughs.
- 5.5. Following consideration of the report and recommendations from the Overview and Scrutiny Committee, representations from the Chair of the Overview and Scrutiny, Councillors, the deputation from Mrs Marta Garcia de la Vega and the responses by Officers and the Lead Cabinet Member to the issues raised, and on review of its original decision, Cabinet resolved that Officers make further due diligence enquiries in regard to the expected service improvements by the proposed transformation partner.
- 5.6. To address specific issues raised, Officers contacted a key Local Authority identified within the exempt session of the Cabinet meeting to request the necessary assurance but were informed that such assurance would not be publicly available until around June 2020.

- 5.7. As a consequence of this delay, it was agreed by the Director of Children's Services that the re-procurement of all routes would be undertaken to ensure availability of transport at the start of the autumn term and avoid the difficulties faced in autumn 2019 when there was a shortage of available transport.
- 5.8. The outcome of the re-procurement of the routes, including a cost benefit and transport availability assessment cannot be undertaken until July 2020. The results of the assessment will provide supporting evidence for baseline reassessment of transport provision and the planned co-production of the SEND transport policy.

### **Options for SEND Transport Service Transformation**

- 5.9. Subject to the Cabinet agreement to the recommendation not to proceed with the award of contract for the provision of SEND Transport Transformation Consultancy Services by an external improvement partner, then a SEND Transport plan will be developed to address the areas for improvement as identified in the scoping review of April/May 2019.
- 5.10. The SEND Transport plan will be consulted upon with all SEND parents and they will be part of the formulation of the final plan.
- 5.11. Recommendations from the Overview and Scrutiny Committee are subject to further development by Children's Services and will be responded to Scrutiny at a future date.

## **6. Background Information**

- 6.1. At the Cabinet meeting of 12<sup>th</sup> November 2019, it was resolved
  - To approve the award of a contract for the provision of SEND Transport Transformation Consultancy Services to the successful tenderer in accordance with the Council's Contract Standing Order (CSO) 9.07.1(d), for a period of two (2) years commencing end of October 2019 and at a total value of up to £600,000 over the 2 years period, with a further gainshare reward dependent upon demonstrable value of savings delivered in excess of £635,000 per annum;
  - That the date of commencement of the contract will follow immediately after five working days of the publication of the Cabinet decision to approve, plus a further ten working days standstill period as per public procurement contract regulations; and
  - That exploration of a further phase (phase 2) of transformation to insource vehicles and drivers is considered once the transformation of the SEND transport service and the associated savings is secured.
  - To note that details of the successful tenderer is outlined in Part B (exempt information) of the report.

- 6.2. The resolutions of the Cabinet meeting of 12<sup>th</sup> November 2019 were subject to Call-In and referred to the Overview and Scrutiny Committee.
- 6.3. The outcome of the consideration of the Overview and Scrutiny committee was presented to the Cabinet meeting of 10<sup>th</sup> December 2019. The Overview and Scrutiny Committee did not find the decision to be outside the budgetary framework nor the policy framework and continued to refer the decision back to Cabinet for reconsideration along with some clear recommendations on how the work should take place with parents, carers and families.
- 6.4. Following consideration of the report and recommendations from the Overview and Scrutiny Committee, representations from the Chair of the Overview and Scrutiny, Councillors, the deputation from Mrs Marta Garcia de la Vega and the responses by Officers and the Lead Cabinet Member to the issues raised, and on review of its original decision, Cabinet resolved:
- To defer the final decision, Cabinet resolution 75 and exempt resolution 93 as set out in the public and exempt minutes for 12<sup>th</sup> of November 2019.
  - That the taking of this decision return to Cabinet at a date during this financial year
  - That Officers make further due diligence enquiries in regard to the expected service improvements by the proposed transformation partner
  - That Officers use that time to fully explore all options for service transformation.

## **7. Contribution to strategic outcomes**

- 7.1. **Outcome 5:** Happy childhood: all children across the borough will be happy and healthy as they grow up, feeling safe and secure in their family, networks, and communities.
- 7.2. **Outcome 6:** Every young person, whatever their background, has a pathway to success for the future.

## **8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### **8.1. Finance**

- 8.1.1. The SEND transport budget has had significant pressure in the 2019/20 financial year and in previous years. The re-procurement of the routes ahead of the new school year should result in a positive impact on the service budgets for the 2020/21 financial year

- 8.1.2. However, savings agreed by Cabinet in July 2019, continue to be at risk of non-delivery due to the delay in implementing the programme.

## **8.2. Strategic Procurement:**

- 8.2.1. Strategic Procurement note the recommendations of the report not to award the contract approved at the Cabinet meeting of 12th November 2019. The tender documents contain provision that the council retained the right not to award a contract resulting from the tender outcome. A decision not to award a contract would be in accordance with the tender. Furthermore, it is now over six months since the tender was submitted and therefore considered to have expired.
- 8.2.2. A procurement has commenced for the provision of transport for the academic year starting September 2020, the outcome this process will change the baseline against which the tenders were submitted
- 8.2.3. If the Council agrees with the recommendation not to award the contract to the recommended transformation partner and also not to otherwise proceed with the tender, then there were no financial consequences to the Council. However, it should be noted that the Council could not then go back out into the marketplace to tender for the same scope of activity. If the Council were to do so with the same, or largely similar specification, then the recommended transformation partner could seek compensation in regard to their costs in submitting the bid, and a sum reflecting the amount by which the transformation partner would be worse off.
- 8.2.4. Strategic Procurement support the recommendations of the report.

## **8.3. Legal**

- 10.3.1 The Assistant Director of Corporate Governance has been consulted in respect of this report. As stated above, the Invitation to Tender for this procurement set out the Council's right to not award a contract. This is consistent with case law where it has been held that the contracting authorities have a broad discretion to abandon a procurement process. The reasons stated in the report, in particular, at Section 4, for not proceeding with an award of contract are likely to fall within the scope of a contracting authority's discretion.
- 10.3.2 The Council's right to abandon the procurement and the reasons stated is subject to the general EU principles of transparency and equal treatment. These principles are enshrined in Regulation 18(1) of the Public Contracts Regulations 2015 (the "Regulations"). Regulation 18(1) requires contracting authorities to treat economic operators equally and without discrimination and to act in a transparent and proportionate manner. The reasons in the report for not proceeding with the contract award meet the requirements of Regulation 18(1).

- 10.3.2 Further, under Regulation 55(1)(a) when abandoning a procurement process, a contracting authority must as soon as possible inform all tenderers of its decision not to proceed with a contract award including any grounds for its decision. If Cabinet decides not to proceed with the contract award, the Council must as soon as possible inform all the tenderers of its decision.
- 10.3.4 The Assistant Director of Corporate Governance sees no legal reasons preventing Cabinet from approving the recommendations in the report.