

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Leader of the Council – Cllr Stephen Cowan

Date: 20 August 2022

Subject: Emergency Direct Award for Minibus Travel Care and Support Services

Report of: Cllr Sanderson, Cabinet Member for Children and Education

Report author: Joe Gunning, Programme Lead, Children's Commissioning

Responsible Director: Jacqui McShannon, Strategic Director of Children's Services

Report signed on 20 August 2022 by Cllr Andrew Jones, Cabinet Member for the Economy, deputising for the Leader and Deputy Leader in their absence, following authorisation given by the Leader on 19/08/22.

SUMMARY

HCT Group (formerly CT Plus) holds the contract for home to school transport for eligible children with special education and complex needs and adults attending day centre provision in the borough. On 4 August 2022, HCT Group informed the Council that it will be unable to fulfil the contract with effect from 26 August 2022 owing to financial difficulties being experienced by Group. In order to ensure that this vital service maintained, this paper seeks to terminate the existing contract in mutual agreement with HCT Group and direct award to a new provider.

An urgent decision is required due to the mobilisation time required by the recommended supplier. This mobilisation time will ensure the provider has time to transfer the leases of vehicles, make the appropriate TUPE arrangements and mobilise provision in preparation for the commencement of the service on 27 of August 2022. It also ensures that the Council fulfils its statutory duty. Robust measures will continue to be in place to ensure the best possible quality of service is maintained, with council officers closely monitoring the contract, consulting regularly with service users, parents, carers, stakeholders, and key partners.

RECOMMENDATIONS

The Leader of the Council approves:

1. That Appendix 1 and Appendix 2 to this report are exempt from disclosure on the grounds that they contain information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under Paragraph 5 of Schedule 12A of the Local Government Act 1972.
2. A termination of the existing contract with HCT Group effective from 26 August 2022 as they have notified the Council that they will cease services from this date.

3. A contract direct award to HATS Group Ltd from the 27 August 2022 to 31 July 2024 for the provision of minibus transport services at an annual cost of £2.301m.
4. The use of the policy contingency for 2022/23 (in consultation with and approval of the Cabinet Member for Finance and Reform) to fund £102,000 (including the one-off mobilisation payment of £75,385 to HATS Group Ltd). Future costs of £46,000 will be provisionally included in the base budget for 2023/24 subject to approval by Full Council in February 2023.

Wards Affected: All

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	Employment of local residents on essential frontline services.
Creating a compassionate council	Procuring services that have care at the forefront of delivery for some of the most vulnerable residents in the borough. TUPE and vehicle transfer arrangements will ensure service users have continuity of service and experience.
Doing things with local residents, not to them	Maintaining high standards of existing contracts. The current specification was co-designed and is continually improved in partnership with service users, parents, carers, stakeholders, and key partners
Being ruthlessly financially efficient	Contracts that are appropriately structured and weighted to meet demand as well as need.
Taking pride in H&F	A high-quality service supporting some of our most vulnerable residents to access education and social care provision.
Rising to the challenge of the climate and ecological emergency	The contractors must comply with the requirements specified by Transport for London for the London Emission Zone (LEZ) including any current or future legislative requirements including Ultra Low Emission Zone (ULEZ).

Financial Impact

See exempt Appendix 2 which includes the total contract price and one-off mobilisation costs.

Legal Implications

1. The Local Authority has a statutory duty to provide home to school transport provisions as per the Education Act 1996 and for Adults, the Care Act 2014 stipulates a duty to Local Authorities to meet assessed needs.
2. The direct award to HATS Group Ltd at a total cost of £2,301,626.47 would be above EU thresholds in relation to services contracts and so the Public Contracts Regulations 2015 (PCRs) would apply.
3. Under the PCRs a direct award can be made under Regulation 32(2)(c) *'insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with'*. This is a case of extreme urgency brought about by events unforeseeable by the Council and so this Regulation would apply.
4. This would be a High Value Contract under the Council's Contract Standing Orders (CSOs). The following CSOs cannot be complied with due to the urgency: CSO 17 (Preparing for High Value Contracts – Service Review Team); CSO 18 (Procurement Strategy Approval Process for High Value Contracts); CSO 19 (Advertising Process for High Value Contracts); CSO 20 (Tender Process); and CSO 21.7 & 21.8 (Call-in period and Standstill Period). A waiver was approved by the s151 Officer on 17th August 2022 requested from these requirements under CSO 22.3.2 on the grounds of extreme urgency that could not reasonably have been foreseen.
5. All contract awards over £100,000 must be submitted to the Contracts Assurance Board (CSO 21.5)
6. Contract award approval is by the relevant Cabinet Member (CSO 21.1)
7. Where the value of the contract is £100,000 or more, the Assistant Director, Legal Services will arrange for the Contract to be sealed on behalf of the Council.
8. An electronic copy of the completed (dated) Contract must be uploaded to the Contracts Register along with a copy of the award report (CSO 21.10).

Implications completed by: Joginder Bola, Senior Solicitor (Contracts & Procurement), 16 August 2022

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

Proposals and Analysis of Options

1. Travel Care and Support is a critical service provided to some of the most vulnerable members of our community. The children, young people and adults who receive the service often have complex needs and typically a high level of dependency.
2. The specification stipulates greater emphasis on the quality of service and on the individual needs of individuals using travel care and support. The vision includes the delivery of a high quality, transparent Travel Care and Support Service, which is first and foremost about caring for, and understanding the travel and mobility needs of those accessing the services. The service was co-designed and is continually improved in partnership with service users, parents, carers, stakeholders, and key partners, ensuring a high-quality service. Several neighbouring boroughs now operate on similar specifications which has helped to develop the market to operating at this standard.
3. In November 2016, Cabinet approved the Procurement Strategy for Travel Care and Support Services. On the 31 March 2017, the Leader of the Council approved the award of a call off contract to HCT Group for the provision of minibus transport services in the borough.
4. The current arrangements see approximately 200 children and young people in Hammersmith & Fulham transported to 12 different schools and colleges both in and out of borough. Approximately 65 vulnerable adult residents in Hammersmith and Fulham are also supported by the current transport arrangements to activities at day centres and other locations.
5. HCT Group informed the Council on the 4 August 2022 that it will be unable to continue to fulfil their contracts with effect from the 26 August 2022 owing to financial difficulties being experienced by Group. This was confirmed in writing on Monday 8 August 2022.
6. Officers immediately established an urgent programme management group including key stakeholders to progress emergency arrangements to ensure the continuity of provision for this statutory service.

Consideration of options

7. The Council is required to secure alternative provision. Not doing so, would result in failure to deliver statutory services.
8. Officers considered delivering provision as an in-house service, however there are significant challenges in relation to this. The Council does not have the expertise or capacity to manage a complex operational service at this scale and there is insufficient time to develop this capacity safely to ensure that these statutory services are delivered at the quality our residents expect by September 2022. The Council would assume responsibility for these services including the staff (circa 70 staff positions); vehicle fleet (circa 30 minibuses); and logistical and operational frontline delivery. All of which pose a significant risk to the disruption of services.

9. Officers therefore considered the most appropriate procurement options. A contract for a period of two years will result in the least disruption to residents; enabling sufficient time to embed service provision, whilst reducing additional expenditure in relation to the leasing of vehicles. A contract of this length will also allow time for appropriate market engagement and for a robust consultation and coproduction process to be completed with service users, parents/carers, and key stakeholders across the borough, to ensure the service retains the quality focused and person-centred ethos.
10. Legal Services have advised that a novation is not possible because this is a contract regulated by the Public Contracts Regulations 2015 and regulation 72 prohibits novations other than to companies within the same group. Similarly, given the timeframe it would not be practical or efficient to undertake an open tender process.
11. A direct award for two years is therefore considered to be the best and only route for securing services in the current timeframe. Officers have progressed on this basis.

Procurement of a Direct Award

12. There are a limited number of suitable providers in the market who would have the sufficient capacity, experience and knowledge to take forward a contract of this scale, undertake the TUPE transfer and ensure vehicles and services are mobilised in sufficient time; whilst ensuring the safeguarding of vulnerable residents in the borough. Two of these providers were successful in being awarded to the Council's current Home to School Taxi Framework in June 2021 and undertake a number of routes via this Framework which operates under the same specification as the minibus provision. It was therefore prudent to progress direct conversations with these providers with a view to securing an Emergency Direct Award.
13. Whilst there is no requirement to undertake an evaluation of bids as part of a Direct Award, an emergency Travel Care Direct Award Evaluation Board was established for the purpose of evaluating the providers submissions to ensure the same level of rigour as with an open tender and to support the consideration of value for money in recommending a preferred provider.
14. The eight members of the Board with representatives across Children's Services, Legal and Procurement were provided with an overview reporting the key factors and met on 15 August 2022 to consider the available information. The Board was chaired by the Assistant Director for Procurement and Commercial and the proposed recommendation was agreed.
15. The Board considered the providers against the following criteria, reflecting the key factors for mobilising a contract of such a scale in a short period of time. The assessment was weighted by 60% quality and 40% for price in line with the Council's Contract Standing Orders. The scores of these are documented in the exempt Appendix 1.

Quality assessment factors (60%):

- Agreement to provide against the Council's specification for the delivery of travel care services.
- Evidence of track record to undertake a contact of this scale.
- Vehicle leasing - the bidder is able to transfer the existing leases of the vehicles or obtain suitable vehicles for the provision of services.
- Licensing - in order to deliver services, providers are required to have sufficient Public Service Vehicle (PSV) Operator Licenses. These are issued by the Traffic Commissioner to ensure the safe and proper use of PSVs. The provider has or is able to obtain sufficient licenses to undertake this work by the 27 August 2022.
- Using CreditSafe, an independent third party, to obtain financial reports and accounts for bidders to verify fulfilment of minimum standards for economic and financial standing.

Financial standing factors (40%):

- Assessment as to the most economically advantageous bid.

16. The outcome of this evaluation is summarised below.

Evaluation of Direct Award providers

Assessment Criteria (Quality) - 60%	HATS Group Ltd (Provider 1)	Provider 2
Agreement to work against the Council's specification for the delivery of travel care services	The provider has confirmed they will operate against the Council's specification in which they have been operating under for some time in relation to their delivery on the Council's Taxi framework.	The provider has confirmed they will operate against the Council's specification in which they have been operating under for some time in relation to their delivery on the Council's Taxi framework.
Technical and professional ability to undertake a contact of this scale	Provider 1 is an experienced healthcare and transport service provider and contacted the Council to offer their support. The Council has a positive relationship with the provider via the Taxi framework. The Council is aware that this provider has contracts of a similar scale.	Provider 2 is an experienced passenger transport provider and has a positive relationship with the Local Authority via the Taxi framework. The Council is aware this provider undertakes contracts of this nature but is unclear as to the scale.
Financial standing – using CreditSafe, an independent third party, to obtain financial reports and accounts for bidders to verify fulfilment of minimum standards for economic and financial standing.	Using the CreditSafe system this provider's risk has been assessed as 'very low' with a score of 86.	Using the CreditSafe system this provider's risk has been assessed as 'low' with a score of 61.

Assessment Criteria (Quality) - 60%	HATS Group Ltd (Provider 1)	Provider 2
Licensing – in order to deliver services, providers are required to have sufficient Public Service Vehicle (PSV) Operator Licenses. These are issued by the Traffic Commissioner to ensure the safe and proper use of PSVs. It is typically a 3-month process to obtain new licenses.	The provider has sufficient PSV licenses to be able to accommodate this work and has confirmed this in writing.	The provider does not currently have sufficient spare PSV licences and would therefore need to undertake an application to the Traffic Commissioner. Whilst this is typically a three-month process, it may be possible to expedite given that a number of other London authorities find themselves in a similar position, however this poses a significant risk to mobilising services in sufficient time.
Vehicle leasing – the bidder is able to transfer the existing leases of the vehicles or obtain suitable vehicles for the provision of services.	The current leasing provider has confirmed they would be happy to transfer the current leased vehicles to this provider. The provider is also holding back vehicles as part of their regular fleet churn.	The provider has raised that the current vehicle leasing provider may not be willing to transfer vehicles directly to them. Officers have been informed however that the Lease provider would consider a direct leasing arrangement with Hammersmith & Fulham with a sub-leasing clause in which the Council could let these vehicles to this provider. The provider could also pull vehicles back from its sale element of the business.

Assessment Criteria (Price) - 40%	HATS Group Ltd (Provider 1)	Provider 2
Assessment as to the most economically advantageous bid.	The indicative contract value reflects the most economically advantageous bid. This is a negotiated price and not a cost-plus contract. This gives clear financial certainty for this provision over the term of the contract.	The indicative contract value is not the most economically advantageous bid. The provider did not complete the Council's pricing template, instead requesting that a set profit margin be underwritten on a cost-plus contract. Officers requested from HCT Group the profit and loss accounts for this contract, however this was not received from them.

Assessment Criteria (Price) - 40%	HATS Group Ltd (Provider 1)	Provider 2
		Therefore, there is significant uncertainty in relation to the financial implications for the Council in regard to this option.

Conclusion

17. HATS Group Ltd score higher in quality and financial standing. It is therefore recommended that a direct award be issued to HATS Group Ltd for a period of two years from the 27 August 2022 to 31 July 2024.

Managing the change

18. Urgent and immediate stakeholder meetings were established to manage the transfer of provision. This has included briefings with the SEND Information and Advice Service (SENDIAS) and written communication to all parents and carers who access the service, as well as the Parent/Carer Forum (ParentsActive) and Headteachers to inform them of the actions being taken to secure the continuity of provision. Adults and families utilising the three adult Day Services impacted have been notified of the changes, and where services are in house, Day Services Managers are first points of contact for any queries and concerns.
19. Officers will continue to be available throughout the process and thereafter to ensure the smooth transition. Sessions are being scheduled with Special School Headteachers, SENDIAS and Parents Active to offer support during this time.
20. The successful provider will allocate a senior single point of contact for the mobilisation of provision and ongoing contract management. A robust mobilisation plan will be coproduced over the coming weeks. The successful provider will operate out of the council's Bagleys Lane Depot as the specified Operating Centre.
21. The Travel Care and Support Teams (TCST) role includes contract and performance management of suppliers to ensure a high level of quality; relationship management of parents, carers, schools, day services and residents to ensure operational efficiency; and acting as the first point of contact for all issues relating to passenger transport.
22. The Travel Care and Support Team will continue to manage all communication directly with all stakeholders and to offer support to families during this transition. Robust Travel Care Plans are in place for each service user which will be shared with the new provider to ensure the care and support needs for each passenger continue to be met. These are reviewed regularly and coproduced with residents and families. Wherever possible staff and vehicles will remain the same to protect the continuity in provision under TUPE regulations, in line with the normal level of change at the start of term.

23. Officers will undertake a provider audit within the first 12 weeks of provision commencing to ensure the continued delivery of high-quality services. Similarly, Officers will undertake routine monitoring and be present at schools across the borough during the launch of services to ensure a smooth transition. There is a strong performance management framework in which performance information is provided in 'real time', as well as retrospective audit information. There will also be regular engagement with key stakeholders as part of ongoing contract monitoring including parents and carers.
24. The providers Contract Manager will be responsible for providing oversight of all aspects of operational delivery and performance, to strengthen operational arrangements in order to meet performance standards and contractual specifications to the satisfaction of the Council and its stakeholders. This will be monitored by Council Officers via initial daily operational meetings, moving to weekly and then fortnightly over the first term.

Reasons for Decision

25. The Local Authority has a statutory duty to provide home to school transport provisions as per the Education Act 1996. The Council has a Travel Assistance Policy which clearly sets out these duties, together with further information via the Local Offer.
26. For Adults, the Care Act 2014 stipulates a duty to Local Authorities to meet assessed needs, and while transport is not prescribed provision, it may be one way of meeting people's assessed needs and preferences relating to their personal outcomes towards independence and engagement with the community.
27. The current provider will cease providing services from 26 August 2022. There is therefore an urgent requirement to award a contract to a new provider to ensure the continued delivery of services.

Equality Implications

28. The recommendations in this paper secure continuity of provision supporting vulnerable adults, children, young people and their families, therefore there are no negative equality implications for groups with protected characteristics under the Equality Act 2010 arising from the approval of these proposals.

Risk Management Implications

29. The report sets out the statutory duties the Council has to provide home to school transport provisions and to meet assessed needs of vulnerable adults. The direct award of the contract has been undertaken to ensure the continuity and standard of the service deliverable to the client continues to be of a high quality to ensure it meets their needs and expectations. Due to the short notice

given by the current provider, it is imperative that the service is able to continue and that the direct award of a contract to a new provider is required. The report identifies a number of risks which the proposed provider has agreed to deal with during the mobilisation of the new contract.

30. Given the vulnerability of many of the users and higher duty it places upon the Council it will be important to seek and retain evidence of roadworthiness of vehicles, general compliance with operator H&S requirements, vetting and driver's licence checks for operatives and that adequate insurance is being maintained. The proposed provider will undertake the appropriate checks as part of the mobilisation process and officers will work with the provider to ensure that appropriate assurances are in place regarding all requirements.
31. There is a robust training matrix that sets the minimum standards expected for staff working on this service as part of the contract specification which the provider has agreed to deliver against. Compliance will be monitored by officers as part of the contract management cycle.
32. Officers have consulted the Council's Insurance Service who are satisfied the proposed provider has the necessary insurance policies in place and they contain appropriate levels of cover relating to this service.

Implications verified by David Hughes, Director of Audit, Fraud, Risk and Insurance, 16 August 2022

Climate and Ecological Emergency Implications

33. The Council is committed to delivering a net zero carbon borough by 2030, including transport used locally, and expects all fleets used within its contracts to be zero carbon before this date. The use of a diesel fleet for this contract is associated with 94.85 tons of CO₂e emissions per year: 1.2% of the organisation's core scopes 1-3 footprint, excluding housing.
34. However, the market for specialist electric minibuses with sufficient seating capacity and access equipment remains underdeveloped at this moment in time. Officers have taken steps to support the climate emergency via maximum age and mileage requirements for vehicles within the service specification. Children's commissioning and climate unit officers will collaborate, and work with partners elsewhere, to explore opportunities to support switching fleets to greener energy sources during the future recommissioning of this service.

Implications verified by Jim Cunningham, Climate Policy & Strategy Lead, 16 August 2022

Local Economy and Social Value

35. It is a requirement that all contracts let by the council with a value above £100,000 provide social value commitments that are additional to the core

services required under the contract. In addition, the evaluation of social value should account for a weighting of a minimum of 10% of the overall score.

36. Officers have confirmed that they have met with the contractors and confirmed their commitment to deliver a minimum of 10% Social Value in line with the Social Value list of themes, outcomes and measures (“TOMS”).
37. Given the urgency of the decision, officers will work with the contractors during the mobilisation of services to agree the delivery plan. To this end, it is recommended that HATS Group works directly with the Social Value Officer to agree social value measures that will be delivered over the duration of this contract to the proxy value of at least 10% and agree a method statement for each measure proposed and that this plan is agreed with the council before the end of September 2022. The Social Value Officer can help HATS Group create this delivery plan.
38. It is recommended that the procuring officer works with the Legal Team to agree financial remedies for the non-delivery of Social Value measures.

Implications verified by: Paul Clarke, Economic Development Officer, 16 August 2022

Consultation

39. The current minibus travel care provision was designed with extensive consultation and engagement with stakeholder including children, parents, schools, adult service users, day centres and parent / service user representative groups.
40. Whilst it has not been possible to undertake consultation due to the urgency of the decision, key stakeholder and forums have been engaged throughout the change. Parents and carers were actively informed of the current position at the earliest opportunity and offered direct conversations with officers. The Parent/Carer Forum Coordinator (ParentsActive) has also been briefed and offered to support as required. A Headteacher briefing session is also scheduled to ensure key stakeholders collaborate during the mobilisation to ensure the smooth transfer and launch of services. Residents accessing Day Services will be kept informed on a daily basis as they are accessing services and support over the Summer. In line with the Council’s Vision for Independent Living, Adult Social Care will be reviewing current transport arrangements and working with residents, aligning this work to the wider modernisation of the Service to look to a more personalised and efficient service which enables more residents to access services and support in a timely manner.
41. The Council has notified the Communications Team who have developed a response should the Council receive public queries regarding this development. Similarly, a response was compiled for Travel Care Service should they receive calls or queries from concerned parents.

LIST OF APPENDICES

Exempt Appendix 1 – Evaluation of Direct Award submissions

Exempt Appendix 2 – Financial Implications