

## Executive Decision Report

Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken	Cabinet  Date of decision: 22nd July 2013	 hammersmith & fulham
	Cabinet  Forward Plan ref: 03987/13/K/A  Date of decision: 18 <sup>th</sup> July 2013	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
	Councillor Melvyn Caplan, Cabinet Member for Finance and Customer Services  Councillor Danny Chalkley, Cabinet Member for Children and Young People  Councillor Rachael Robathan, Cabinet Member for Adults and Public Health  Date of decision: 2 <sup>nd</sup> July 2013	 City of Westminster
<b>Report title (decision subject)</b>	<b>TRI-BOROUGH PASSENGER TRANSPORT SERVICE FOR CHILDREN AND ADULTS</b>	
<b>Reporting officer</b>	Andrew Christie, Tri-borough Executive Director of Children's Services	
<b>Key decision</b>	Yes	
<b>Access to information classification</b>	PART A for general release.	

## 1. EXECUTIVE SUMMARY

- 1.1. The London Borough of Hammersmith and Fulham (LBHF), Royal Borough of Kensington and Chelsea (RBKC) and Westminster City Council (WCC) have given Cabinet approval (Tri-Borough Passenger Transport Executive Decision Report – 14 January 2013 for LBHF, 10 January 2013 for RBKC, 19 December 2012 for WCC) to select and appoint contractors to provide the following services on behalf of all three authorities:
  - a. Management of passenger transport operations.
  - b. A framework for the provision of taxi and mini bus services for Children's Services and Adults Services clients (as well as for general staff transport).
- 1.2. The framework agreement and contracts will be let by WCC and it is anticipated that this framework will be operated on behalf of the Tri-borough clients by either the management contractor (as 'a' above) or as part of the responsibilities of the Tri-borough Passenger Transport Strategic Client function based in the Tri-borough Children's Commissioning Directorate.
- 1.3. WCC is acting as the lead authority.
- 1.4. The procurement process is underpinned by the Tri-Borough Procurement Protocol which contains, inter alia, the principles of joint procurement with one borough as the lead as well as the cost sharing arrangements.
- 1.5. Additionally, specific Tri-borough arrangements for Passenger Transport will be covered by an Inter Authority Agreement (IAA) as described in Section 11.5.
- 1.6. The Invitation to Tender (ITT) was divided into the following lots:
  - Lot 1A - Framework agreement for the provision of Passenger Transport Operations using vehicles generally suitable for larger group travel (usually minibuses).
  - Lot 1B - Framework Agreement for the provision of Passenger Transport Operations using vehicles generally suitable for individual and smaller group travel (usually taxis).
  - Lot 2 - Framework Agreement for the Management of Transport Operations.
  - Lot 3 - Framework Agreement for the Provision of both the Transport Operations (using vehicles generally suitable for Large Group Travel) and the Management of Transport Operations (Lots 1A and 2).
- 1.7. Lot 3 was specifically designed to provide the option of having one lead contractor should it provide a significant advantage over separate frameworks of providers

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under Lot 1A (minibuses) and Lot 2 (Transport Management) taking into account the risks associated with awarding to a single contractor under this lot.

- 1.8. It is intended that WCC will award Call-Off Contracts under the framework agreement which the successful tenderers will enter into with the City Council. The scope of these contracts will include service users from across all three boroughs with an intended phased implementation commencing January 2014.

## 2. RECOMMENDATIONS

### WCC

- 2.1. To award the Framework Agreements for Lots 1A and 1B as detailed in Section 6.10 (and **Part B Section 3**) of this report, on behalf of itself, LBHF and RBKC.
- 2.2. To defer a decision regarding Lot 2 pending further consideration of options regarding the provision of Transport Management Services.
- 2.3. To not award Lot 3, this being an option allowing a combined award of Lot 1A and Lot2.
- 2.4. To note that an external audit has been completed on the Invitation to Tender (ITT) evaluation process and framework awards as detailed in Section 6.11.
- 2.5. To note that LBHF and RBKC Cabinets are each being asked to approve access to the Framework Agreements.
- 2.6. To delegate to the Tri-borough Executive Director of Children's Services the approval of Framework Call-Off awards which may, at any one point in time, exceed the usual authorised limit of £1.5 million. This to be in consultation with the Cabinet Member for Finance and Customer Service, and either the Cabinet Member for Adults and Public Health and/or the Cabinet Member for Children & Young People (as appropriate).
- 2.7. To approve the Framework Call-Off process as detailed in Section 7.2.
- 2.8. To note that an Inter Authority Agreement (IAA) will cover specific legal terms pertaining to the operation of this Tri-borough passenger transport solution as described in Section 11.5.
- 2.9. To note that current legal advice is that there are no liabilities on WCC with regard to any employees who may be made redundant by current transport suppliers should TUPE not apply.

### LBHF

- 2.10. To note the recommendation that WCC will award the Framework Agreements as outlined in this report on behalf of itself, LBHF and RBKC.

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- 2.11. To note that an external audit has been completed on the Invitation to Tender (ITT) evaluation process and framework awards as detailed in Section 6.11.
- 2.12. That access to the framework by LBHF be approved.
- 2.13. To note that WCC will award Framework Call-off contracts on a Tri-borough basis.
- 2.14. That access to the Framework Call-Off contracts be delegated jointly to the Tri-borough Executive Director of Children's Services and the Cabinet Member for Community Care and/or Cabinet Member for Children's Services (as appropriate).
- 2.15. To note the Framework Call-Off process as detailed in Section 7.2.
- 2.16. To note that an Inter Authority Agreement (IAA) will cover specific legal terms pertaining to the operation of this Tri-borough passenger transport solution as described in Section 11.5.
- 2.17. To note the potential implications for LBHF staff in terms of TUPE or redundancy as detailed in Section 9.

**RBKC**

- 2.18. To note the recommendation that WCC will award the Framework Agreements as outlined in this report on behalf of itself, LBHF and RBKC.
- 2.19. To note that an external audit has been completed on the Invitation to Tender (ITT) evaluation process and framework awards as detailed in Section 6.11.
- 2.20. To approve access to the framework by RBKC.
- 2.21. To note that WCC will award Framework Call-off contracts on a Tri-borough basis.
- 2.22. To agree to delegate jointly to the Tri-borough Executive Director of Children's Services and the Cabinet Member for Adult Social Care and/or Cabinet Member for Family and Children's Services (as appropriate) access to the Framework Call-Off contracts.
- 2.23. To note the Framework Call-Off process as detailed in Section 7.2.
- 2.24. To note that an Inter Authority Agreement (IAA) will cover specific legal terms pertaining to the operation of this Tri-borough passenger transport solution as described in Section 11.5.
- 2.25. To note the potential implications for RBKC staff in terms of TUPE or redundancy as detailed in Section 9.
- 2.26. To note that current legal advice is that there are no liabilities on RBKC with regard to any employees who may be made redundant by current transport suppliers should TUPE not apply.

### 3. REASONS FOR DECISION

- 3.1. Using the framework to procure passenger transport on a Tri-borough basis will enable a well controlled and consistent level of service quality whilst providing the opportunity to reduce overall costs.
- 3.2. Using the framework enables a more strategic approach to providing transport solutions, better engagement with the market, and the opportunity to deliver procurement in a more consistent, focussed and collaborative way.
- 3.3. The Tri-borough framework is designed to enhance service provision and provide savings. In establishing the framework it is not yet possible to be precise as to the actual level of savings to be achieved which will only be determined once individual awards are made under the Call-Off process.

However, potential indicative savings are provided in Section 5 of the separate report on the exempt agenda.

### 4. BACKGROUND

#### Scope

- 4.1. The scope of the operations considered as part of the procurement comprises the following:
  - Passenger transport for Adult Social Care clients, comprising travel to and from day centres and adult education centres and other locations, shopper services, transport for community groups and ad-hoc journeys to activities and appointments.
  - Home to school (H2S) travel for children with Special Educational Needs (SEN).
  - General transport for Looked After Children and Children in Need for contact visits, activities and appointments.
  - Small volumes of staff taxi transport.

<b><u>REGULAR ACTIVITY</u></b>	<b><u>Destinations</u></b>	<b><u>Service Users</u></b>
<b>ASC</b>		
Minibuses – Day Care Centres	8	452
Minibuses – Community Groups	5	153
Taxis	14	17
<b>CHS</b>		
Minibuses	36	546
Taxis	68	115
<b>TOTAL</b>	<b>131</b>	<b>1283</b>

The combined minibus activity results in some 100 to 120 vehicle runs per day.
There are ad-hoc taxi journeys in addition to the above regular activity.

The latest revenue outturn forecast for those operations in scope is provided in Section 2.1 of the separate report on the exempt agenda.

### **Procurement**

- 4.2. A Restricted Procurement procedure was chosen to secure the best commercial suppliers(s) to deliver high quality cost effective passenger transport framework agreements.
- 4.3. WCC may award Framework Agreements for each Lot for a period of up to four years and will also contractually manage the framework with call-off contracts managed by the Passenger Transport Strategic Client function (based within the Children's Services Commissioning Directorate).

## **5. PROPOSAL AND ISSUES**

- 5.1. The proposal to create a Tri-borough framework is described in previous sections of this report. Key next steps to be navigated in order to ensure a successful framework, whilst avoiding disruption to service users, are highlighted in Section 7.

## **6. OPTIONS AND ANALYSIS**

- 6.1. Following evaluation at the Pre-Qualification Questionnaire (PQQ) stage, 12 organisations were invited to tender for one or more of the specified lots of transport requirements. Returned tenders were evaluated on the basis of the most economically advantageous tender, taking into account cost and quality. Evaluations, undertaken by a team of officers from Children's and Adult Services and specialist advisers, were based on answers to a series of quality criteria questions and pricing submissions.

### **Contract award criteria**

- 6.2. A price/quality ratio of 70/30 was applied to the scoring of returned tenders, but with a minimum quality threshold that had to be achieved before pricing submissions were scored.
- 6.3. The evaluation of quality for each lot was undertaken in two stages:
  - Responses on dealing with a variety of Servicer User issues were marked, with bidders being required to meet a minimum threshold score. Organisations failing to achieve the quality threshold on any criteria, given the sensitivity and profile of this front-line service to vulnerable groups of clients, were eliminated.

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- Responses on the operational proposals of the organisations to deliver the Services were marked. The organisation achieving the highest score was allocated 30 marks and the organisation with the lowest score allocated 0 marks. Marks were allocated on a pro-rata basis to all other organisations.
- 6.4. Only the pricing submissions of those organisations that passed the quality threshold were evaluated for the relevant lot.
  - 6.5. For the scoring of price, organisations were required to submit costs for the provision of the lot for which they had been invited to tender, against a specification detailed in the Invitation to Tender (ITT).
  - 6.6. For each lot, organisations were allocated price marks out of 70, with 70 being awarded to the organisation with the lowest cost and 0 to the organisation with the highest cost. Marks were allocated on a pro-rata basis to organisations with costs between the highest and lowest.
  - 6.7. For each lot, the overall ranking of responses from each organisation was determined by combining the marks out of 30 for capability and marks out of 70 for cost to give total score out of a possible 100.
  - 6.8. For Lots 1A and 1B, up to 4 organisations could be recommended for inclusion on the Framework Agreement
  - 6.9. The overall evaluation process was designed to ensure that only those organisations capable of providing an essential service to vulnerable clients were considered.

### **Successful organisations on each lot**

- 6.10 Details of the successful organisations under each lot are provided in Section 3 of the separate report on the exempt agenda.
- 6.11 The process and outcomes of the ITT evaluation have been audited by RMS Tenon (external auditors). The key findings were as follows:
  - The Tri-borough Passenger Transport tender process followed the ITT guidelines;
  - All bidders at the ITT stage have been awarded correctly.
- 6.12 Westminster City Council's legal advisers, Sharpe Pritchard, have advised that "the ITT provided that the City Council could award either Lot 1A with Lot 2 or Lot 3".
- 6.13 A full analysis of the tender evaluation results can be found in Appendix A of the separate report on the exempt agenda.

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6.14.1 In May 2013 WCC procurement officers received a communication from an individual external to the Councils which indicated that there might be some reason not to have confidence in one of the bidders in relation to vehicle license availability and related issues.

As part of the procurement process a range of activities were undertaken to ensure that appropriate due diligence and assurance of bidders' responses was undertaken.

Activities undertaken were:

- Clarification questions to all bidders
- Clarification meeting with particular bidder in question
- Review of license capacity of all bidders including liaison with the Vehicle and Operator Services Agency (VOSA) for the particular bidder
- Review of an independent audit report by the Freight Transport Association (FTA) for the particular bidder.

As a result of this due diligence officers are confident that all providers recommended for inclusion on the framework meet all legislative requirements and can undertake the transport operations laid out in this report.

Further assurance and due diligence will be undertaken as part of the call off process. This will include the checking of current license capacity for all bidders for each call off. Further detail of other assurance activities is outlined in section 7.2

### **Background to successful organisations**

6.15 A brief profile of all successful bidders can be found in Appendix B of the separate report on the exempt agenda.

## **7. NEXT STEPS**

7.1. Following on from the procurement exercise, the following items should be noted regarding next steps and the operation and management of the contracts:

### **How the framework will operate**

7.2. All Lots awarded will be subject to a mini-competition under the Framework Call-Off process.

The Framework Call-Off Terms were provided to bidders as part of the ITT pack and can be found in Appendix A.

For the initial call-off awards, the mini-competition process will be run by WCC's Corporate Procurement for all three authorities including the use of electronic procurement where appropriate. The process will allow for a phased implementation should this be appropriate whereby different authorities and services can join at different points commencing January 2014.



All Lots awarded will be subject to a mini-competition under the Framework Call-Off process.

The structuring of mini-competitions will be designed to ensure the optimal use of vehicles suitable for large group travel (ITT Lot 1A - nominally minibuses) and those suitable for individual and smaller group travel (ITT Lot 1B – nominally taxis), having taken into account the specific needs and requirements of individual service users.

Consistent with Framework rules, all suppliers on the framework (by Lot) who are capable of providing the service will be given the opportunity to bid in the mini-competition.

#### Lot 1A – ‘Minibuses’

The following principles will be adopted in configuring the mini-competitions:

- Generally only one transport operator (supplier) per destination to ensure optimum utilisation of minibuses and a simplified operation for schools and day care centres;
- Destinations may be let on an individual basis or in small groups in order to enable transport operators to maximise the use of vehicles e.g. a school destination may be combined with an ASC day care centre and a shopping trip as these journeys happen at different times of the day;
- The contract duration for any particular contract awarded under a mini-competitions will typically be one to two years unless there are specific considerations which would determine that a different contract length is more appropriate (e.g. uncertainty over the level of activity, location changes);
- Mechanisms will also be in place for contract variances due to the dynamic nature of the service user profile and numbers.

#### LOT 1B – ‘Taxis’

The following principles will be adopted in configuring the mini-competitions:

- Each individual journey will be a contract though, in the case of ad-hoc journeys, these will be offered to the lowest price Framework provider first;
- Where a journey is to be repeated (e.g. school run, contact visit) there will be a mini-competition for the duration of the arrangement but, for school runs, this will generally be for a school term or school year;
- Specific arrangements will be put into place for short notice ‘out of hours’ journeys (e.g. LAC/CIN) with these generally being awarded to the lowest price Framework provider.

### **Service quality assurance**

The Suppliers selected in the mini competitions will be subject to careful contract management and monitoring. All suppliers appointed under the mini competition will be required to ensure that throughout the service delivery duration they have sufficient, correctly licensed capacity and appropriately trained staff to undertake the Tri-borough transport requirements to an appropriate standard. In particular the following will be considered at appropriate points in the contract period:

- Updated references.
- Scrutiny of the output / reports from any independent auditors/commissions.
- Visits to their current operating bases and review of their processes and procedures.
- Checking of licence position and operational capacity.

Destinations will be competitively tendered through the mini competition process, bundling into separate groups to drive competition and enable Tri-borough Councils to award on the basis of the most economic advantageous tender response and at all times ensuring that suppliers are capable of providing transport services to an appropriate standard.

An assessment of the services awarded under mini-competition will be made to ensure that the framework meets current expectations with regard to robustness and viability. If this proves not to be the case, a proposal for alternative action will be brought for decision.

### **Strategic client function**

- 7.3. There will be a single Tri-borough Passenger Transport Strategic Client function which, through and in support of the various Adult Social Care (ASC) and Children's Services (CHS) departments and teams, will focus on the transport needs of vulnerable residents irrespective of borough or departmental responsibility.

Additionally, the function will oversee corporate staff requirements for 'car' based transport i.e. taxi / mini-cabs under Lot 1B.

It will be the single point of contact and control between 'the Councils' (specifically the various services departments, social workers and care managers) and the Transport Management (TM) function.

The Strategic Client function will ensure that an optimum and cost effective solution is maintained over the life of the framework agreement. This will be achieved through monitoring and advice on the effective routing of vehicles, vehicle utilisation and the mix of vehicle types and capacities.

Key responsibilities will be as follows:

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- Strategic control over the delivery of passenger transport requirements with an understanding of all passenger transport needs across the three boroughs;
- To ensure the on-going delivery of a 'Value for Money' transport solution in line with the agreed service specifications;
- Ensure agreed management information and performance monitoring is reported, and provide the same to internal council departments and other stakeholders as required;
- Work with the relevant finance functions to develop and implement performance and cost improvements;
- Provide financial auditing of expenditure including the validation of invoicing by suppliers;
- Provide overall management of contracts advising on contract performance and variations as and when required;
- Provide management of an in house transport management function or management of an outsourced transport management contract as appropriate.

### **Internal recharging model**

7.4. As the lead procurement authority, WCC will take responsibility for all the contracts with suppliers. and will ensure that the cost of the contracts are appropriately shared between the authorities as set out below and that the invoicing arrangements for all the services provided are the most effective under the terms of these contracts.

7.5. Consequently, an internal re-charge mechanism is required. The key considerations in the development of this mechanism were as follows:

- A number of destinations, and therefore vehicle runs, are common to Service Users from more than one authority;
- No Council or Department should effectively subsidise any other Council or Department;
- The mechanism should be fair and equitable;
- The mechanism should be straightforward.

A number of potential mechanisms were considered and reviewed against the above criteria.

The proposed mechanism takes the actual cost for each individual destination and apportions this cost based on the percentage of seats occupied by Service Users from each Council, taking into account the additional space, and therefore cost,

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associated with Service Users who have wheelchairs and/or individual Passenger Assistants.

Therefore:

A service user without a wheelchair or individual passenger assistant = 1 seat

A service user with a wheelchair = 2 seats

A service user with their own individual Passenger Assistant = 2 seats

A service user in a wheelchair and with their own individual Passenger Assistant = 3 seats

For example:

Cost of a single minibus journey to a destination = £600

12 seats used in total (including wheelchairs and Passenger Assistants) therefore £50 each seat so,

Say 3 service users including one wheelchair user from LBHF = equivalent of 4 seats occupied = a charge of £200

1 wheelchair user with their own Passenger Assistant from RBKC = equivalent of 3 seats occupied = charge of £150

4 service users from WCC, one with their own Passenger Assistant = equivalent of 5 seats occupied = a charge of £250

It is anticipated that the above mechanism would be an aggregated calculation on a monthly basis.

It should be noted that this mechanism is subject to further refinement once supplier charging mechanisms have been determined at the Framework Call-Off stage.

WCC, through the Passenger Transport Strategic Client function, will notify LBHF and RBKC and, in line with the above mechanism, agree their share of the costs enabling internal Purchase Orders and Invoices to be raised. These invoices are to be paid such that funds are available to WCC to allow it to pay supplier invoices in a timely manner.

### **Implementation time table**

7.6. Key implementation dates are as follows:

Aug 2013	Framework Call-Offs commence
Sept 2013	Framework awards commence
Jan 2014	Phased implementation commences

Work is currently being undertaken to determine the most appropriate implementation phasing in order to minimise disruption to clients and transition risks.

## 8. CONSULTATION

- 8.1. Consultation with service users and staff is outlined below. Detailed communication and consultation with individual users will begin once the call off process is complete and contractors for specific destinations are known.

Activity	Consultees
Statutory Duty	<p>Parents / Carers of SEN children</p> <p><i>Parents and carers groups have been involved in shaping the Travel Assistance Policy.</i></p> <p><i>Consultation undertaken with teachers and parents of SEN children regarding changes to service provision including potential outsourcing (LBHF May - July 2010)</i></p> <p><i>Further consultation planned (LBHF/RBKC/WCC) July - September 2013 to inform call offs and mobilisation</i></p> <p><i>Consultation with parents and carers of individual SEN children will begin once contractors are appointed and any potential changes to routes or providers are known.</i></p>
Transport Management Service	<p>Affected employees as TUPE may apply</p> <p><i>Staff have received formal letters and regular verbal updates from management. Trade Unions are kept in touch via the Tri-borough TU/Management Forum which meets approx every 8/10 weeks.</i></p> <p>Service Users - Schools, Day Centres, Activity Centres</p> <p><i>The proposals have been discussed with service user and carer networks – further information will be shared after specific contractors are known.</i></p>
Transport Operator Framework	<p>Affected employees as TUPE may apply</p> <p><i>Staff will shortly be receiving formal letters concerning their transfer and have been receiving regular briefings from management. Trade Unions are kept in touch via the Tri-borough TU/Management Forum which meets approx every 8/10 weeks.</i></p> <p>Service Users - Schools, Day Centres, Activity Centres</p> <p><i>The proposals have been discussed with service user and carer networks – further information will be shared after specific contractors are known.</i></p>
Rationalisation	<p>Schools, Day Centres, Activity Centres</p> <p>Parents, Carers and Service Users (where their individual transport is affected).</p>

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	<p>Affected staff (if rationalisation materially effects their work duties)</p> <p><i>As above. In addition - staff, managers and representatives of service users are involved in planning the new business processes. This will continue on appointment of the contractor.</i></p>
<p>Transport Arrangements for Adult Service Users</p>	<p><i>Service users, carers and interested groups were involved in the development of the Travel Support Strategy for Adults in 2012 which provides the framework for the new transport provision.</i></p> <p><i>The local LINKs (service user representatives) have been involved in evaluating the tenders for the procurement.</i></p>

**9. HR/TUPE**

- 9.1. Current staffing arrangements are mixed across the three boroughs. In Hammersmith and Fulham the service is provided in-house whilst in Westminster and in Kensington and Chelsea it is outsourced.
- 9.2. The following table sets out the current staffing complement and therefore the headcount potentially impacted by TUPE/redundancy.

	<b>Strategic Client</b>	<b>Transport Management</b>	<b>Transport Operations</b>	<b>Redundancy Calculation</b>
LBHF	3 officers		1 x Senior Driver 25 x Driver / Attendants 23 x Escorts	<b>See Part B Section 4.1</b>
RBKC	1 officer			

9.3. Whether TUPE applies will not be known until the actual awards are made following the Framework Call-Off process. This is because if destinations are won by a range of different providers there may not be a single identifiable employer to which to transfer the staff under TUPE. Legal advice will be taken to determine whether TUPE applies to existing staff following the outcome of the procurement process. Should TUPE not apply, then redundancy costs will be incurred as provided in Section 4.1 of the separate report on the exempt agenda.

## 10. EQUALITY IMPLICATIONS

10.1. The new framework and associated contracts do not, and will not, change any of the individual Councils' eligibility policies or criteria for providing transport to vulnerable residents.

Care has been taken throughout to ensure that current and future service users needs have been understood and that users continue to be provided with the transport they need.

Full requirements of current service users were detailed in the data provided to bidders within the ITT. The generic service specifications have not been altered.

User requirements included:

- Details of all mobility aids used by older people
- Details of all wheelchair users
- Individual service user requirements regarding Passenger Assistants / Escorts (including own Passenger Assistant / Parent where this is the case)
- Individual travel times if these were different to the normal timings for schools, colleges and adult day care centres
- Travel by specific vehicle type where required (e.g. taxi versus minibus)
- Need for travel on an individual basis

The evaluation process has included rigorous assessment of tenders to ensure that bidders have the required experience in the field of passenger transport services for vulnerable adults and children. This has included the requirement to satisfy evaluators across a range of service based scenarios. Quality thresholds ensured that the requisite service standards were met before any price comparisons could be undertaken.

Tenders were evaluated by ASC, SEN and LAC professionals and senior safeguarding professionals from both Adult and Children's Services.

Further consultation will take place during the mobilisation phase when actual routes are being planned. Where minibuses are used, and as a result of vehicle routing changes, there may be some changes to pick-up and drop times for individual service users. This already occurs when there are changes in the service user population and demographics.

One of the benefits from a tri-borough transport solution is that it enables some taxis to be replaced by minibuses where children from multiple boroughs travel to the same school. Further consultation will take place when the details of such routes are determined to ensure the impact of any changes is fully understood. Where it is deemed necessary, taxis can continue to be provided if this is justified.

Mobilisation will include the implementation of a detailed communications plan to ensure all stakeholders and individual service users understand any changes.

- 10.2. An Equality Impact Assessment (EIA) has been completed for all three Councils. A copy can be found in Appendix B, available electronically with this report.

## **11. LEGAL IMPLICATIONS**

- 11.1 Each authority has a statutory duty to provide Home to School transport for children with special educational needs and for looked after children in certain circumstances. The passenger transport taxi/bus framework contracts are required to ensure that each council can fulfil this legal obligation.
- 11.2 There is no specific statutory duty to provide transport for adult social care clients, only to meet assessed needs, although this may include transport to day activities etc.
- 11.3 The procurement is being carried out in accordance with the European procurement legislation.
- 11.4 The legal implications with regard to procurement, contractual and TUPE, arrangements are appropriately addressed elsewhere within this report.
- 11.5 An Inter Authority Agreement is required to cover aspects of the contractual and operational requirements not encompassed within the existing Tri-borough Procurement Protocols. The scope of the agreement will be as follows:

- Procurement responsibilities and liabilities
- Internal call-off arrangements
- Framework management
- Internal re-charge mechanism
- Exchange of information
- Freedom of information
- Confidentiality
- Data protection
- Dispute resolution

Legal Services in the three boroughs are currently finalising this agreement.

## **12. FINANCIAL AND RESOURCES IMPLICATIONS**

- 12.1 The recommendation of this report is to appoint a number of contractors on to the Framework Agreement. As such there are no specific implications at this stage, although it is possible to understand the range of savings that could be achieved across both services and, by establishing an equitable recharging mechanism, for



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each of the three authorities should it prove possible to implement the best-case solution.

- 12.2 Further details of the bids received and possible financial savings are provided in Section 5 of the separate report on the exempt agenda.
- 12.3 Tenders were priced based on specific destinations (e.g. school or day care centre). This allowed a complete separation of the bids for Adults and Children's Services given the discrete destinations of the service user groups. In addition, Adult Services' day centres are all borough specific.
- 12.4 For Lot 1A (minibuses), within Children's Services there were 36 specific destinations of which 25 involved children from more than borough. Including children from more than one borough, and also some children who on an individual Borough basis currently travel by taxi, allowed contractors to bid optimising the number of buses. This was reflected in the most competitive bids.
- 12.5 An internal recharging mechanism has been developed as set out in paragraphs 7.4 above.
- 12.6 The total tendered expenditure, of the best-case solution compared to the as-is dataset, and expressed against service and authority, is provided in Section 5 of the separate report on the exempt agenda.
- 12.7 The intention is to run mini-competitions under the Framework Call-Off process to determine the cost of specific destinations (or groups of destinations) for a defined period of time and an identified group of service users. Further details can be found in Section 5 of the separate report on the exempt agenda.
- 12.8 Subject to the constraints imposed within the procurement, advice is being sought as to whether there are any VAT implications that need to be taken into consideration, specifically whether the arrangements have any impact on the way in which the authorities' partial exemption arrangements are managed.
- 12.9 It still needs to be determined whether The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will apply. As previously indicated, there are one-off costs within LBHF, the extent of which will depend on the outcome of TUPE. Consideration will need to be given as to whether these costs are to be borne exclusively by LBHF or if it should be considered as a one-off cost of the tri-borough procurement and attributed across the three boroughs in relation to the anticipated share of savings. Regardless of the outcome, it does not prejudice the recommendation to proceed as the payback is satisfactory for all three boroughs in any case.

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**Andrew Christie**  
**Tri-borough Executive Director of Children's Services**

**Local Government Act 1972 (as amended) – Background papers used in the preparation of this report:**

Tri-borough Procurement Protocol

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## **APPENDIX A – FRAMEWORK CALL-OFF TERMS**

### **(AS PER ITT TRANSPORT FRAMEWORK TERMS - CLAUSE 11)**

#### **1. AWARD OF CALL- OFF CONTRACT**

- 1.1. Call-Off Contracts may be awarded only in accordance with this Clause 11.
- 1.2. Westminster only shall be entitled to procure and enter into a Call-Off Contract.
- 1.3. In the event that Westminster wishes to award a Call-Off Contract it shall do so by holding a mini competition amongst all those Panel Members who are capable of performing the services and shall issue an invitation to tender (a "Call-Off ITT") to each of them in respect of the services.
- 1.4. The Call-Off ITT shall:
  - 1.4.1. Specify;
    - i. the service required; and
    - ii. the duration for which the service is required; and
    - iii. whether any Council Premises are available to for use in the provision of the services and the terms on which such premises are available; and
    - iv. TUPE information relating to any staff who may as a result of the award of the Call-Off Contract transfer to the successful tender in accordance TUPE; and
    - v. the date and time by which tenders are to be received by the Participating Authority that is conducting the mini-competition; and
    - vi. the location at which the tenders are to be received by the relevant Participating Authority.
  - 1.4.2. Include the terms for the Call-Off Contract which shall be based on those set out in Schedule 3 hereto but which shall to the extent lawfully permissible be amended if necessary so as to reflect the Service that is the subject of the Call-Off Contract together with an ancillary matters necessarily arising from that Service.
  - 1.4.3. Require the Contractor to state whether any of the circumstances relating to its economic and financial standing or technical or professional ability as disclose in its responses to its pre-qualification questionnaire have altered and in the event that any such circumstance has deteriorated and disclosed in it remain as disclosed or have improved
- 1.5. Specify the evaluation criteria for the award of the Call-Off Contract which will be
  - 1.5.1. price 100%
  - 1.5.2. Capability which shall be evaluated in accordance with this sub-Clause 11.5.2:
    - i. The Contractor shall provide a written statement as to whether all the statements it made in response to the pre-qualification questionnaire ("its PQQ Responses") at the shortlisting stage would be the same if made at the date of the submission of its tender under the mini competition

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- a. If its' statement is that its PQQ Responses would either be the same or would denote an improved position in relation to any matter the Contractor shall pass this criteria and its price shall be evaluated;
  - b. If it's statement is that any of its' PQQ Responses would be different because its position has worsened in respect of any matter Westminster shall using the shortlisting evaluation criteria used to evaluate the PQQ consider whether contractor remains capable of providing the services, if the result of that evaluation is that the contractor is not so capable it its tender shall be rejected.
- 1.6. Westminster shall be entitled by a mini competition in accordance with this Clause 11 to procure and enter into Call-Off Contracts on behalf of itself and either or both of the other Participating Authorities and in the event that it does so shall be entitled to enter into agreements with each such other Participating Authority under which it will supply the Service it has procured from the successful tenderer under the mini competition to those other Participating Authorities.
- 1.7. The Parties acknowledge and agree that where any of the Participating Authorities suffer any loss or damage as a result of any breach of this Framework Agreement or act or default including negligence by the Contractor or any of its staff or agents the Contractor shall be liable to the relevant Participating Authority as if that Participating Authority had been named a party to this Agreement as well as Westminster and that such loss or damage shall be recoverable by Westminster on behalf of the relevant Participating Authority and accordingly the Contractor shall not be entitled to limit or exclude its liability on the basis that Westminster had not suffered any or the same loss or damage as the relevant Participating Authority.
- 1.8. If it is successful in the mini competition the Contactor shall:
  - 1.8.1. execute the Call-Off Contract promptly and shall not commence the provision of the Service nor be entitled to any remuneration whatsoever until it has so executed the Call-Off Contract.
  - 1.8.2. be liable for any loss or damage incurred by Westminster and /or any Participating Authority if the Service does not commence at the Service Commencement Date as a result of its failure to execute this Call-Off Contract promptly.