

Birmingham City Council

Report to Cabinet

15th July 2019



Subject: HOME TO SCHOOL TRANSPORT – CONTRACT AWARD REPORT

Report of: Director of Education and Skills

Relevant Cabinet Member: Cllr Kate Booth- Children`s Wellbeing
Cllr Jayne Francis – Education, Skills and Culture
Cllr Paulette Hamilton – Health and Social Care
Cllr Tristan Chatfield – Finance and Resources

Relevant O &S Chair(s): Cllr Kath Scott – Education and Children`s Social Care
Cllr Rob Pocock - Health and Social Care
Cllr Sir Albert Bore - Resources

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 006641/2019		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential: Appendix 4– Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information)		

1 Executive Summary

- 1.1 The purpose of this report is to seek permission to award a contract for the provision of Home to School Transport for a two year period from no later than 1 September 2019 to no later than 31 August 2021.
- 1.2 The report provides details of the outcome of the Single Contractor Negotiations (SCN) and the proposal of the contract award for the statutory services for education transport provision.
- 1.3 Private Appendix 4 contains further information relating to the negotiations and the proposed contract award.

2 Recommendations

That Cabinet:

- 2.1 Approves the award of contract as set out in paragraph 2.1 of Private Appendix 4, and agrees to underwrite through the Budget Delivery Policy Contingency, an amount up to £2.897m in the event that the additional cost of the contract and savings targeted on Travel Assist in 2019/20 cannot be accommodated with the existing resources of the Education & Skills Directorate.
- 2.2 Approves the extension of the Temporary Transition Services Agreement (TTSA) for a sum of up to £500,000 for a maximum period of five weeks, which represents the usual costs for the original ATG Contract.
- 2.3 Authorises the City Solicitor to execute, seal and complete all necessary agreements and documentation to give effect to the above recommendations.
- 2.4 Notes that as per the Constitution (Section 3: Meetings Administration, paragraph 3.7, Immediate Decision Implementation) for the reasons stated in paragraph 5.10 of this report, the interests of the Council will be jeopardised unless an executive decision is implemented immediately on this matter. The Chief Executive, in consultation with the Leader, has designated the executive decisions in this report as so urgent that their implementation cannot wait until the expiry of the call-in period.

3 Background

- 3.1 ATG was a major provider of statutory home to school transport services to the Council, Transport for West Midlands (West Midlands Combined Authority) and other neighbouring Local Authorities and charities. ATG was made up of Accessible Transport Group Limited (parent company), Accessible Transport Group Contract Services Limited (ATGCSL - subsidiary), Ring and Ride West Midlands Limited (subsidiary) and WMSNT (dormant subsidiary company).
- 3.2 ATG subcontracted service delivery of home to school service provision for the Council to Accessible Transport Group Contract Services Limited (ATGCSL). Pursuant to the contract with the Council, ATG was the largest provider with 210 routes, transporting approximately 2,100 children per day and valued at c. £5.00m per annum. In addition, ATG transported approximately 100 adults per day, on 6 routes, valued at a total of c. £0.336k.
- 3.3 On 15 March 2019, the Council was informed that ATGCSL was insolvent. Subsequently the entire ATG Group went into administration. Officers immediately considered contingency measures and 15 routes were reallocated to existing providers within the T023 framework, the value of this was c. £0.460m per annum. However, there were no other available providers to which the remaining routes could be transferred. Accordingly, the appointed Administrator for the ATG Group, agreed to continue to trade ATGCSL in administration until sale of the ATG Group or alternative service provision is put in place by the Council. Paramount importance has been placed on maintaining statutory service delivery, therefore the Council entered into the TTSA to secure service continuity (to expire on 31 May 2019); this is documented in a report to Cabinet on 28 March 2019.
- 3.4 A provider on the T023 framework gave 30 days' notice on all of its 11 routes with a value of c. £0.100m per annum. Due to the amount, the mobilisation time required and the ongoing successful running of the TTSA, these routes were transferred to ATG on 1 May. This brings the current total number of routes to 206, with a value of £4.64m per annum, plus 6 adult routes with a value of £0.336m per annum, giving a total of £4.976m per annum.
- 3.5 On 22 May 2019, Cabinet authorised an extension of the TTSA for a maximum period of eight weeks. The TTSA was subsequently extended the TTSA until 26

July 2019 (utilising the full eight week extension provision) to allow for a sufficient period for officers to prepare contractual terms and conditions and complete negotiations with the potential provider. The TTSA was extended on the existing terms and conditions meaning that the TTSA can be terminated with five days' notice by either party. This is well documented in a report to Cabinet on the 22 May 2019. The administrator has indicated that to allow an orderly transfer of services to a new provider and to enable service continuity for adult transport services, it is willing to extend the TTSA to 31 August 2019 but not any further.

- 3.6 As set out in the Cabinet Report on 22 May 2019, there were three potential bidders of ATG. It was envisaged that the Council would be able to complete a due-diligence exercise with all three bidders and provide a recommendation to the Administrator. However, during the course of the process, two bidders discontinued with the process, leaving only a single interested party.
- 3.7 The structure of the transaction is a sale and purchase agreement ("SPA") to acquire certain business and assets of the three entities of ATG. The sale process is currently underway and will be completed following approval of the proposed contract award.
- 3.8 The sale of ATG has been further complicated as ATG operated using Section 19 Permits rather than a Public Service Vehicle (PSV) operator's licence. Section 19 of Transport Act 1985 allow organisations that operate in Great Britain without a view to profit to have a permit which exempts them from the need to hold a PSV operator's licence when providing transport for a charge. The Council has been informed that ATG is the largest user of these permits in the UK and as such an insolvency of this scale is unprecedented from the Traffic Commissioner's perspective. This causes transactional and mobilisation complexities for the proposed provider, as it would need to be able to operate under full PSV licences, at significant additional cost. Additionally, there is a proposed exemption from Clean Air Zone (CAZ) charging for "vans and mini buses registered as providing essential community and school transport services classified as section 19 and section 22 operators, registered for operation in Birmingham" (See Cabinet report from 25 June 2019, Clean Air Zone: Charging Order and Indicative Allocation of Net Proceeds). Moving away from Section 19

licences would mean that the majority of vehicles will have to be upgraded to ensure CAZ compliance.

3.9 The proposed provider was issued a due diligence questionnaire to ensure the Council is able to better understand the offer from the proposed provider, including with regards the social value to be delivered; confirmation that the exclusionary grounds under Public Contract Regulations 2015 (PCR) do not apply; and to inspect key policies and procedures, particularly around safeguarding and health and safety. The full requirements of the Due Diligence Questionnaire is included in Appendix 3. The proposed provider returned a satisfactory response.

3.10 A Dynamic Purchasing System (DPS) is currently used by the surrounding Local Authorities in West Midlands to procure their education-related transport needs and it is the intention that the Council implement a DPS from 1 November 2019 for the c. 60% of the transport routes not covered by this contract. A DPS allows the Council to procure services that are available in the market quickly and efficiently. Unlike a framework agreement (which is currently in place until 31 October 2019), a DPS remains open to new suppliers, giving the Council access to large pool of providers. From previous market engagement the planned DPS (which will contain all other routes apart from those provided by ATG) would need to run for a minimum of four years in length due to the level of investment required from potential providers in conjunction with the Clean Air Zone. The DPS will only contain routes that would not be covered by the direct award to the purchaser of ATG.

4 Options considered and recommended proposal

4.1 An appraisal of the options considered was set out and accepted by Cabinet in the report of 22 May, Cabinet Report on Home to School Transport – Medium-Term Service Provision Arrangements. No new alternatives to the proposed approach have been identified in the intervening period. Therefore, it is recommended to progress with the approach to Single Contractor Negotiations as set out in this report.

5 Outcome of Single Contractor Negotiations

- 5.1 After formal negotiations with the proposed provider and dialogue with Corporate Procurement, Finance and Legal, this report seeks approval to award a contract. The Council is unable to name this provider at this point, as the process required to complete the Sale and Purchase Agreement to acquire certain business and assets of the three entities of ATG is not yet complete. The contract between the Council and the proposed provider is required to be completed first, before the SPA can be completed. This process is expected to be completed and the provider named publicly within two days of the approval of the contract.
- 5.2 Despite compressed timescales, these negotiations have been delivered in a highly productive manner, a positive relationship has been built with the proposed provider, who should be commended for their commitment to an open book, partnership approach. The outcomes of the negotiations are given in the remainder of section 5 below.
- 5.3 **Service Continuity:** Service commencement will take place no later than 1 September 2019. Officers' priority is to ensure that the statutory service transfers with minimal disruption to vulnerable service users. To that end, the officers and the proposed provider have collaboratively created a robust mobilisation plan to ensure service continuity for children and young people. A Mobilisation Board will be in place to oversee delivery of the plan.
- 5.4 **Cost:** There is a significant increase in annual cost when compared to the previous ATG contract price, however, comparisons with this price are not recommended as it is now clear that the ATG operating costs for this service were unsustainable and service standards were not being met. It has been confirmed by the Administrators that ATG was operating with a recurrent operating deficit. There is also an indication that the service was being 'subsidised' by other ATG operational services. It should be noted that the final price payable is subject to minor change due to normal variations in changes in demand due to the new school year. The draft contract has been constructed with the ability to flex price following service change and efficiency.
- 5.5 **Risk Mitigation:** Due to the level of risk, uncertainty and possible issues facing the proposed provider purchasing ATG, officers have negotiated a month six (1 March 2020) service review. This is to ensure that the contract continues to meet

the needs of the service. The routes that will be delivered via this contract are not subject to exclusivity and therefore in the event of a major performance or safety related issue the Council has the right to remove routes from the proposed provider and tender this through the DPS once awarded.

- 5.6 **Continuous Improvement:** The service will be monitored by a new set of performance indicators to drive continuous improvement. This will include the introduction of a satisfaction survey as part of the contract monitoring process. The surveys will be issued and collected on a termly basis in order to receive feedback from service-users, parent / carers and schools. Outcomes of surveys will be shared with the provider to ensure continuous improvements to the service are made.
- 5.7 **Mobilisation Cost:** There are additional one off mobilisation costs to the Council associated with training, licensing and project management and other costs which are outlined in the exempt appendix 4.
- 5.8 While the increase in contract price will result in an additional budgetary pressure, the overall spend on this service should be managed by managing demand, rather than solely squeezing contract prices to unsustainable levels. This includes consistent application of the Council's Travel Assistance Policy for 0-25 Year Olds in Education and travel service optimisation. Re-freshed medium to long term education sufficiency planning will also assist with improved demand management. After a joint inspection by Ofsted and CQC there are major improvements to be made across the system in supporting children and young people with SEND. As a result a written statement of action has been produced; this has outlined a range of improvements that need to be made across the City over the next two to four years, which include a focus on independence and transitions, and which will positively affect the range of transport options available to families. This work will in turn lead to lower demand for services and future savings.
- 5.9 **Benchmarking:** The cost of this contract is still below the England average of £4,200 per child (source: DfE). For that unit cost, the Council can be assured that it is running a service for vulnerable users that is of the highest possible quality and safety standards. In turn this service will assist the Council in meeting its

objective of becoming a child friendly city and becoming a beacon of excellence in innovation.

- 5.10 **Mobilisation issues:** It is imperative to be able to communicate with ATG staff, schools, service users and their parents before the end of the schools' summer term on 19 July 2019. Without the ability to communicate publicly regarding the changes, the proposed provider will be unable to mobilise the service before 1 September 2019. This will leave the Council unable to fulfil its statutory duty to provide transport services to vulnerable service users. Therefore The Chief Executive, in consultation with the Leader, has designated the executive decisions in this report as so urgent that their implementation cannot wait until the expiry of the call-in period.
- 5.11 **Service Continuity.** The current TTSA will automatically terminate (unless extended in writing) on the 26th July 2019. The contract will commence no later than 1 September 2019. Whilst there are no services for children in August during the summer break, there are six routes transporting adults that need to operate during August. If necessary, to support continued service delivery over the summer period and assist with mobilisation of the new provider, the Administrator has indicated that it is willing to extend the TTSA for a short period until no later than 31 August 2019. Overall services have been successfully delivered by the Administrators under the TTSA and therefore authority is sought for this short extension. Whilst operating risk would continue to sit with the Council during this period (see Cabinet report of 28 March 2019 and option 6 of appendix 1), failure to extend the TTSA could result in immediate cessation of service provision without alternative service delivery arrangements being in place (new provider may not be mobilised in time). The cost of this extension will be a sum of up to £500k for a maximum period of five weeks, which represents the usual costs for the original ATG Contract for continuation of transport services in August.

6 Consultation

- 6.1 Due to the urgency of this matter it has not been possible to consult with service users in relation to this matter, or their potential changes in transport. However, the service is intended to be mobilised with minimal initial changes to the service delivery model, so service users are unlikely to see significant changes from 1

September. Any further changes will be consulted upon during the normal course of service delivery.

- 6.2 Consultation with the Traffic Commissioner, Transport for West Midlands and the Administrator of ATG has taken place in the production of this report.

7 Risk Management

- 7.1 Appendix 2 seeks to provide some mitigating suggestions to how officers propose to manage the risk of mobilisation of the contract.

8 Compliance Issues:

- 8.1 The recommended option is consistent with the Council policies, plans and strategies.
- 8.2 The Council has a statutory duty to make transport arrangements for eligible children including those with SEND and to provide free transport to eligible children based on distance, safe walking routes and low income.
- 8.3 The Council also has a statutory duty to make transport arrangements that it considers necessary to facilitate the attendance of young people of sixth form age and some young adults at their educational establishments. Some children and adults have needs that require specialist vehicles and guides; this can be provided under the proposed contract.
- 8.4 Failure to provide this transport could mean a significant number of children with SEND are unable to access their educational provision and the Council would be in breach of its statutory duties.
- 8.5 Supporting educational attainment and independence helps to tackle the causes of deprivation and inequality through improving educational performance and confidence and therefore contributing towards the Council Priority to ensure that Birmingham is an aspirational city to grow up in.
- 8.6 **Legal implications**
- 8.6.1 The Council has a duty under Section 508A of the Education Act 1996 to promote sustainable modes of travel.
- 8.6.2 The Council has a duty under Section 508B of the Education Act 1996 to make suitable home to school travel arrangements for eligible children.

- 8.6.3 The Council has a duty under section 509AA of the Education Act 1996 to provide young people of sixth-form age with the transport or otherwise that the Council considers necessary to facilitate their attendance at their place of education or training.
- 8.6.4 The Council has a duty under section 508F of the Education Act 1996 to make such arrangements for the provision of transport and otherwise as it considers necessary for facilitating the attendance of young adults at their place of further or higher education.
- 8.6.5 Legal implications regarding the proposed direct award are dealt with at paragraph 8.8 of this report (Procurement Implications).

8.7 Financial implications

- 8.7.1 The cost of the current contract is £4.976m per annum (based on previous spend minus routes that have since been reallocated).
- 8.7.2 The cost of the new contract will be funded from the approved budget for Travel Assist in 2019/20 of £20.757m within Education and Skills Directorate, and £0.336m budget from the Adults Directorate. The Travel Assist budget is currently under pressure, therefore it is proposed that there will be an additional allocation of up to £2.897m from the Budget Delivery Policy Contingency to ensure that the service remains within its approved budget. The service will seek to mitigate the cost as far as possible, through the development of a Financial Recovery plan.

8.8 Procurement Implications

- 8.8.1 The estimated value of the proposed direct award is over the OJEU threshold pursuant to the Public Contract Regulations 2015 (as amended) ("PCR 2015").
- 8.8.2 Regulation 32 (2) (c) of the Public Contract Regulations 2015 ("PCR 2015") permits the direct award of a contract, 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 with negotiation cannot be complied with.
- 8.8.3 It is submitted that the requirements of Regulation 32 (c) are met as the administration of the ATG group of companies was not foreseen and there is now

insufficient time to run a procurement exercise (as set out in section 4 above). . The Administrator has confirmed that as it has an identified purchaser of certain business and ATG assets, it is not willing to extend the TTSA any further than 31 August 2019. A new provider cannot be procured and mobilised in this timescale. Accordingly, failure to direct award will result in cessation of an important statutory service which would have a detrimental impact on a vulnerable children and young people. A direct award of the contract to the acquirer of ATG group is the only way the Council can maintain service provision of a vital statutory service.

8.8.4 The direct award of a contract for a period of up to two years is considered to be proportionate, transparent and a fair response to the collapse of the ATG Group:

- (a) Home to school transport is a vital and statutory service that provides transport to some of the most vulnerable children and young people in the City.
- (b) A full service review is required to ensure the correct provision is put in place for service users going forwards. As identified the report to Cabinet on 22 May 2019, a joint inspection by Ofsted and CQC identified major improvements to be made across the system in supporting children and young people with SEND. As a result a written statement of action has been produced and this has outlined a range of improvements that need to be made across the City in the coming years.
- (c) A contract for a period of up to two years is considered a proportionate response to the Section 19 permit issue given the risk, resource and time required to resolve the issue.
- (d) In the absence of availability of short term service provision and the risk of fragmentation of the service, a direct award of up to two years is the only possible response to the unforeseen and immediate requirement to maintain and stabilise service delivery for vulnerable users.

8.6 Human Resources Implications

8.6.1 The Council will continue to work with the Administrator to ensure the full understanding of any TUPE considerations.

9 Public Sector Equality Duty

- 9.1 The requirements of the Council's Equality Policy and the Equality Act 2010 will be specifically included as part of any implementation of any decision.
- 9.2 Many of the service users have a disability, and could be adversely affected by any changes to the service. The aim will be to minimise disruption as much as possible, and to improve the services received where possible.
- 9.3 An Equality Impact Assessment has been prepared and is attached in Appendix 1 to this report.

10 Appendices

- 10.1 Appendix 1 – Equality Impact Assessment
- 10.2 Appendix 2 – Risk Assessment
- 10.3 Appendix 3 - Due Diligence Process: Travel Assist – ATG Replacement Questionnaire
- 10.4 Appendix 4 – Exempt Information

11 Background Documents

Cabinet Report on Home to School Transport – Interim Service Provision, 28 03 2019

Cabinet Report on Home to School Transport – Medium-Term Service Provision Arrangements, 22 05 2019