

WAIVER FORM

PROJECT / CONTRACT TITLE	Children's Travel Service Casual / Agency Transport Guides	
DESCRIPTION OF CONTRACT (GOODS \ SERVICES PROVIDED)	The provision of trained adult guides to escort or accompany children with additional support needs aged 0 – 25 to an agreed education establishment.	
DIRECTORATE	Children's and Families	
SERVICE AREA	Children's Travel Service	
SERVICE LEAD	Sarah Norman	
DIRECTOR / ASSISTANT DIRECTOR	Sue Harrison	
HEAD OF SERVICE	Sarah Norman	
VALUE	£560,139.00	
CONTRACT PERIOD	1st January 2023 to 31st December 2023	
Please indicate the justification for a Waiver to the Procurement and Contract Rules		
i. Efficiency / expediency in relation to process: Following the Rules in whole or part would not add value to the intended outcomes and would not compromise transparency and accountability.		
ii. Increased cost / loss of income: Following the Rules in whole or part would result in increased costs or loss of opportunity.		
iii. Time constraints beyond the control of the Council: Following the Rules in whole or part would create unreasonable time pressures to deliver outcomes required. In such cases this must not be through poor planning or lack of action on the Council to have created the time constraint		
iv. Avoidance of reputational damage: Failure to act promptly would have a serious, damaging and long-term impact on the reputation of the Council, that from a time perspective the Council cannot afford to be mitigated through a formal tendering process		
v. Request for noting for transparency as a formal Breach of the Rules: Seeking to note this breach in line with Waiver Approval procedure.	See comment below*	
<p>*In order to ensure that sufficient guides are available to enable children with SEND to get to school safely the council has temporarily extended an existing contract beyond its agreed contract term. This is a critical service. A further explanation as to why we are in this position, which has been impacted by Covid recovery and resource issues, will be provided in the Cabinet report referred to below.</p>		

Please provide details on reasons for applying for a Waiver

Transport guides form part of the council's HTST accompanying children and young people to and from their education establishments.

For several years BCC has procured guide services via the following routes:

- i. BCC Professional Services - P0188 Agency Framework for schools Lot 2 – Education
- ii. Informal purchasing arrangements with Guide Agencies and Operators

This waiver is applicable for contracts with providers that are not on any current framework arrangement with BCC. The providers in question are as follows:

Agency / Operator	£ Estimated Annual Spend
Green Destinations Limited	£394,725.00
ABC Teachers	£14,820.00
CERT	£150,594.00
Total	£560,139.00
Amount requested under this waiver to allow flexibility of pupil guide volumes	

This is above the £173k per annum threshold that is required for a competitive tender in line with [The Public Contracts Regulations 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)

Green Destinations, CERT & ABC Teachers are not part of the recently expired BCC framework and have no contractual agreement to provide guides. Their aggregated spend for twelve months is estimated at £560,139 which is above the £173,000 per annum required for a competitive tender.

Birmingham City Council are currently in discussions to agree and implement a strategy for the procurement of a framework agreement to help deliver pupil guides. The lack of expert resource available to the HTST service has impacted on the ability to tender for a new contract before the 31 August 2022 deadline, so a waiver was signed for September 2022 to December 2022 to avoid reputational damage to an already strained service. A cabinet report is being put forward for 13th December 2022 that will set out the strategy for the provision of pupil guides moving forward. A new waiver is required for January 2023 until December 2023. The cabinet paper puts forward a recommendation that cabinet approves the procurement of a council framework for a four-year period commencing September 2023 with expiry date of 31st August 2027.

To ensure there is a contract in place and that we can provide a statutory service to the council's most vulnerable children and young people, an interim waiver is required for a maximum period of 12 months to allow enough time for procurement of a BCC owned pupil guides framework agreement. This will be confirmed in the report to Cabinet.


Which part or parts of the Procurement and Contract Rules are being sought to be waived?

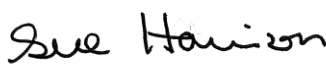

We are seeking a waiver to the Negotiated Procedure clause 4.59, as we require negotiations to take place to secure an immediate solution.

What implications, risk or consequences would apply if a Waiver is not being approved?

The implications of not approving a waiver are as follows:

<ol style="list-style-type: none"> 1. The HTST service would become un-operable from January 2023 as the council heavily relies on guides to escort children and young people to their education establishments. This will affect approximately 950 children of the HTST service including 138 routes. 2. The council will not have a formal contract in place to hold agencies and operators to account for service delivery and performance. 3. After recent public dissatisfaction with the HTST service, the council will likely face significant reputational damage for having insufficient guides to provide a HTST service.
<p>What longer terms plans are in place to ensure compliant contractual arrangements will be established prior to the end of the contract awarded under waiver?</p>
<p>A strategy report is due to go to Cabinet in December that will set out the recommended option to procure a BCC framework agreement and the future operating model for pupil guide services.</p>
<p>Other Comments</p>
<p>A report will be taken to Cabinet in December that will set out the strategy for the provision of pupil guides moving forward.</p> <p>The next accessible Cabinet meeting for sign off is in December 2022, for which a report has been submitted.</p> <p>As the service is required for 1st January 2023, there will be a period of “anticipated breach” from January 2023 to December 2023.</p> <p>The Assistant Director of Procurement has been notified of this breach and has approved this course of action – i.e. the use of a waiver pending a subsequent cabinet report under the council’s new Constitution - Part D - Procurement and Contract Governance Rules. This should lead to the Emergency Process being implemented to continue with guides provision until a future procurement strategy/exercise can be implemented.</p> <p>There is a legal risk that other agencies and/or operators could challenge the council’s waiver and award of interim contracts to guide agencies and operators as they have not been tendered for in line with UK Contract and Procurement Regulations. However, to help mitigate this risk the council should implement the following:</p> <p>A VEAT notice will be published as a way of mitigating the above risk.</p> <ol style="list-style-type: none"> i) Include an exemption period of 12 months. ii) The recommendation to cabinet to go out to full procurement in January/February 2023 for a BCC framework agreement for the provision of pupil guides will ensure a compliant solution is in place before the end of the exemption period. iii) Recruit resource to oversee implementation of the guide solution. iv) Draft appropriate terms and conditions to ensure the operational safety and performance of the guide service. <p>It should also be noted that any future tender for guides represents an opportunity to deliver significant savings against the current structure and rates. Following the recruitment of a responsible resource, this should be presented as part of an outline business case.</p>
<p>DECLARATIONS</p>

I the undersigned declare that I have no conflicts of interest which would otherwise prevent my signature to this Waiver.			
Lead Officer	Mike Smith		
Corporate Procurement Comments			
Name / Title		Date	8/11/22

AUTHORISATIONS			
	DIRECTORATE SIGN OFF	CORPORATE SIGN OFF	Date
Over £5,000 up to £100,000	Assistant Director or Head of Service	Relevant Head of Category (Corporate Procurement Service)	Date
Name / Title			
Over £100,000 to £250,000	Assistant Director	Assistant Director – Procurement	
Name / Title			
Over £250,000 to £500k (revenue) or to £1million (capital)**		Section 151 in conjunction with Cabinet Member (Finance)	
Comment (if required)			
Name / Title	Sue Harrison Director Children & Families  04.11.2022	REBECCA HELLARD STRATEGIC DIRECTOR OF COUNCIL MANAGEMENT 	04.11.2022

**** Above these levels and / or Key Decision and / or where deemed required by the Cabinet Member formal sign off is required at Cabinet.**