

# Birmingham City Council

## Report to Cabinet

13<sup>th</sup> December 2022



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**Subject:** CHILDREN'S TRAVEL SERVICE CASUAL / AGENCY  
TRANSPORT GUIDES PROCUREMENT STRATEGY

**Report of:** Sue Harrison - Strategic Director for Children and  
Families

**Relevant Cabinet  
Member:** Cllr Karen McCarthy - Children Young People &  
Families  
Cllr Yvonne Mosquito - Finance & Resources

**Relevant O &S Chair(s):** Cllr Kerry Jenkins - Education and Children Social  
Care  
Cllr Akhlaq Ahmed - 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: 010734/2022		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential: N/A		

## **1 Executive Summary**

- 1.1 This report provides an overview of the current contractual arrangements and recommendations for the procurement of casual / agency travel guides used to support the front-line Birmingham City Council ("BCC") Children's Travel Service.
- 1.2 The report details the options explored and the recommendations to meet the key imperatives which will be to establish a sustainable mechanism for the ongoing, compliant procurement of casual / agency guides, with the required number of providers to meet the demands of the service, in the most cost-effective manner.
- 1.3 These recommendations support what is a critical front-line service. Consistency, compliance and safeguarding are key factors in its development alongside driving increased value for money to help move the service towards a balanced budget. The plan is suitably flexible to recognise other transformation projects underway, notably the project in relation to the future target operating model for the delivery of guides.

## **2 Recommendations**

That Cabinet; -

- 2.1 Approves the procurement of a Council framework for a four-year period commencing 1<sup>st</sup> June 2023 (prior to the start of the 2023/24 academic year) with expiry date of 31<sup>st</sup> May 2027.
- 2.2 Approves the use of the Crown Commercial Services RM6238 framework as an interim arrangement to award contracts to 5 of the current 8 providers for a 12-month period while a compliant Council framework is procured.
- 2.3 Approves a waiver of the procurement and governance rules (as per the attached waiver at Appendix 1) to the value £560,139.00 to enable guide contracts to be awarded to the remaining 3 current providers as an interim arrangement for a 12-month period while the Council procures a compliant framework.
- 2.4 NOTES: That these interim arrangements (2.2 and 2.3 above) are to avoid any disruption to service provision while procurement activities are undertaken, maximising continuity for children with SEND.
- 2.5 Authorises the Director for Children and Families (or their delegate), in conjunction with the Strategic Director of Council Management (or their delegate) and the City Solicitor & Monitoring Officer (or their delegate) to:
  - 2.5.1 Approve the procurement strategy report prior to publication of the opportunity for a Council framework;
  - 2.5.2 Approve the award of contract to providers to be admitted to the Council framework; and
  - 2.5.3 Approve any call off contract relating to the Council framework.

### **3 Background**

- 3.1 Local authorities must meet the statutory requirements relating to home to school transport and sustainable travel. The Birmingham City Council (“BCC”) Children’s Travel Service is the biggest service of its kind in the country providing transport services to support over 4,500 children and young people with Special Educational Needs and Disabilities (“SEND”). There are over 1,200 transport routes operated each day and approximately, as at early September 2022, 920 of these routes require guides to support the needs of these children.
- 3.2 BCC has its own in-house team of guides, which currently numbers 402 FTE of permanent and fixed term contract employees. The remaining requirement is met through commissioning guides (alongside transport) from a number of approved transport providers; a pool of relief/casual guides centrally managed by BCC; members of school staff who occasionally act as guides; and through accessing casual/agency guides from a number of providers.
- 3.3 The latter category, of accessing casual/agency guides from a number of providers, is the focus of this report. As of September 2022, BCC utilised 8 (eight) of these providers to provide 138 casual guides on 138 routes supporting approximately 950 children with SEND. These guides are accessed where the other sources are unavailable e.g., when all in-house guides (less those not available due to long term sickness, maternity leave etc.) have already been allocated to routes. Whilst work is underway to reduce the number of casual guides required through work around maximising the utilisation of the in-house team of guides and through route optimisation; assuming a continued level of demand, and assuming continued prices, expenditure with these providers is forecast to be in the region of £1.573m per year.
- 3.4 For several years BCC has procured agency guides via a BCC agency framework P0188 (“Supply staff to schools agency contract”) alongside informal purchasing arrangements to ensure service continuity. The expiry of the BCC agency framework on 31<sup>st</sup> August 2022 and the recognition of these informal purchasing arrangements led to a final call-off from the framework together with a waiver being issued by the Head of Service authorised by the Director of Children’s Services in September 2022. This permitted arrangements to continue on a temporary basis until 31 December 2022 to enable children with SEND to get to school safely at the start of this academic year 2022/2023.

- 3.5 The below table identifies the five suppliers that were on the expired framework P0188 and to which we are currently seeking approval to use the CCS framework to award them. The other three suppliers have never been on a framework and are subject to waiver approval.

<b>Agency / Operator</b>	<b>Part of BCC P0188 Framework</b>
Aspire	Yes
Balfor	Yes
Connaught	Yes
eYears	Yes
Teacher Active	Yes
ABC Teachers	No
CERT	No
Green Destinations	No

- 3.6 As per paragraph 3.4 above, in September 2022 final call-offs were made with the 5 (five) providers on the (now expired) BCC P0188 agency framework. In the same month the internal waiver approval process was utilised for the 3 (three) providers who were not on this framework.
- 3.7 As part of the BCC Children's Travel Service Improvement Programme, work is underway to determine the future target operating model for guides. This project will undertake a detailed analysis of the options, their benefits and their various costs. The recommendations contained within this Cabinet Report reflect the need for a continued supply of agency staff while this project takes place to ensure continued and consistent service delivery. The recommendations of this report also offer a suitably flexible solution which can "flex" to any agreed outcome of the future target operating model for guides. Officers involved in the future target operating model for guides project are supportive of this report's recommendations.
- 3.8 It is clear, that due to the expiry of the BCC P0188 agency framework and the informal purchasing arrangements that a formalised, compliant procurement solution is required. The current value of this procurement is anticipated to be in the region of £1.573m per year and therefore, in addition to the importance of these guides to the safe and secure delivery of the service, there is a requirement to ensure that the solution is compliant with procurement rules pertaining to a contract of this value.
- 3.9 Significant work has gone into establishing an operationally robust Children's Travel Service for this academic year (2022/23). Agency guides have had to be procured in order to ensure the safe transportation of approximately 950 children on (at September 2022) 138 routes. These agency guides have undergone additional checks through the BCC Compliance process to check their DBS status and obtain a badge to confirm they are visibly approved to be on home to school transport prior to their allocation to a route. Relationships are already

being built with the children and their parents/carers for this academic year. Therefore, maintaining consistency for this academic year while the procurement process is undertaken (for the longer term) is a key outcome of these recommendations. Allowing the time in this academic year to implement the longer-term solution will also allow the transition to any new arrangements to be effectively communicated with parents/carers and children.

- 3.10 This report recommends a plan which will establish a sustainable mechanism for the ongoing procurement of agency guides in the most cost-effective manner beyond 31 December 2022. The recommended plan has two parts. The first part contains short term arrangements for a maximum period of one year which permits the time to develop and undertake the second part of the plan which is to establish a dedicated and robust BCC framework for the procurement of casual/agency travel guides. Through this proposed framework it is anticipated that BCC will establish a clear and consistent specification that, through market engagement, will include a larger than present cohort of providers, thereby increasing competition; and having absolute cost transparency. Robust procedures for accessing this framework will also be established.
- 3.11 These recommendations support what is a critical front-line service. Consistency, compliance and safeguarding are key factors in its development alongside driving increased value for money to help move the service towards a balanced budget. The plan is suitably flexible to recognise other transformation projects underway, notably the project in relation to the future target operating model for the delivery of guides.

## **4 Options Considered and Recommended Proposal**

### **4.1 Option 1 – Do Nothing.**

- 4.1.1 Due to the expiry of the BCC P0188 agency framework together with the informal purchasing arrangements, it is clear, that a formalised, compliant procurement solution is required. At present the temporary extension of these arrangements runs until 31 December 2022 and cannot be extended further (see option 4). Should nothing be done, then BCC would be operating in a legally non-compliant way running the risk of provider legal challenge and the risk of non-continuation of casual guide provision which is integral to successful service delivery and BCC fulfilling its legal obligations to provide suitable travel arrangements to facilitate eligible children's attendance at school. Option 1 therefore is not viable.

### **4.2 Option 2 – Establish a new, legally compliant, framework, commencing the tender process as soon as possible without any short term, interim arrangements during the procurement process.**

- 4.2.1 The temporary extension of the current arrangements runs until 31 December 2022. There is insufficient time to undertake a robust and compliant tender process between the date of this report and the end of December 2022. This option therefore would produce the risk of there being a "gap" between the end

of the current extension and the commencement of any new procurement solution. During this period BCC would be operating in a legally non-compliant way running the risk of provider legal challenge and the risk of non-continuation of casual guide provision which is integral to successful service delivery and BCC fulfilling its legal obligations to provide suitable travel arrangements to facilitate eligible children's attendance at school. Option 2 therefore is not viable.

4.3 Option 3 - Establish a new legally compliant framework for BCC, commencing the tender process as soon as possible together with short term, interim arrangements to ensure continuity of service while the procurement process takes place.

- 4.3.1 The current value of this procurement is anticipated to be in the region of £1.573m per year and therefore, in addition to the importance of these guides to the safe and secure delivery of the service, there is a requirement to ensure that the solution is compliant with procurement rules pertaining to a contract of this value. It has been explored with wider Council stakeholders that there are no current plans to re-establish the BCC P0188 agency framework which not only provided transport guides but a wider offer of supply staff to schools.
- 4.3.2 This option recommends a procurement that is 100% focused on transport guides and tailored to the needs of the service; highlighting the importance of this provision to the service and the specific requirements that need to be met in terms of training and safeguarding. In order to permit the appropriate time to undertake this procurement process, ensuring robust input from internal and external stakeholders, the design of a comprehensive specification and generating interest from the marketplace to create increased competition, interim arrangements need to be put in place.
- 4.3.3 It has been identified that 5 (five) of the current guide providers are on the Crown Commercial Service Framework RM6238, which is compliant with the Department for Education (DfE) Keeping Children Safe in Education standards. This framework expires on 4 July 2025 therefore this provides an immediate solution to the continuation of service for 47% of those that require casual/agency guides (65 routes and approximately 447 children based on the 3 months leading up to September 2022). Exploratory meetings have taken place between BCC Corporate Procurement and the Crown Commercial Service and it has been clarified that BCC can undertake direct awards to the current 5 (five) existing providers who are on the Framework. There also exists the option to access all other providers on the Framework through further mini competition. There will be the ability to draw financial comparisons between the rates currently being paid by BCC to these providers and these providers' submitted Framework prices. Should their Framework prices be less than those currently charged, then BCC shall, as a minimum, utilise these cheaper prices. Should the current rates being paid by BCC be less than the Framework prices, then these can be the starting point for discussions around direct award. Therefore, by accessing this Framework it may give BCC the opportunity to reduce their cost base in the short

term. These arrangements will stay in place until 31 December 2023 to allow for any delays in the procurement timetable of the establishment of the dedicated four-year framework.

- 4.3.4 For the other 3 (three) current guide providers who are not on the Crown Commercial Service Framework RM6238, in order to continue to access their services, thereby ensuring consistency of service for the children with SEND during this academic year, a waiver/breach to the procurement and contract rules is requested so that BCC can continue to access the required services from these providers. Again, these arrangements will stay in place until 31 December 2023 to allow for any delays in the procurement timetable of the establishment of the dedicated four-year framework.
- 4.3.5 With this short-term plan in place (4.3.3 and 4.3.4 above), BCC shall work to establish their own dedicated four-year framework which will be ready for use at the very latest by 31 December 2023 (the end of the short-term arrangements). It is recommended however that this new framework will be in place prior to the start of the new academic year, 2023/24, that is to say prior to 1 September 2023. Delegated authority will be given to officers to appoint providers to this framework and also to undertake call-offs from this framework up to a maximum value of £1.8m per year. Whilst the current annual value of the requirement is in the region of £1.573m, and work is underway to reduce the requirement, it is recommended that this increased level of expenditure is permitted to provide sufficient flexibility over the course of the next 4 years. This will also allow sufficient flexibility to manage seasonal pressures which may result in increased levels of sickness within the cohort of in-house, BCC guides.
- 4.3.6 Consideration was given as to whether a framework or a dynamic purchasing system (DPS) was the preferred procurement mechanism. Discussions with the Service identified the need for service call-offs to be undertaken at pace; it often being the scenario that a member of staff has called in sick early in the morning and therefore an agency guide is required to be in position very quickly, often within a few hours. It was therefore identified that there was insufficient time to fulfil the requirements of a DPS; that is to say to undertake mini-competition, whereas the framework would provide the mechanism for direct awards. It was also viewed that sufficient interest in the market could be generated to ensure that the 4-year framework would have sufficient providers to meet the needs of the service. As part of the initial consultation (see para 5.2) 25 current and potential providers were identified and contacted; the majority of whom demonstrated significant interest in the framework opportunity.
- 4.3.7 The benefits for BCC of establishing their own dedicated framework, during the course of next year, are multiple, as it will allow BCC to tailor its requirements to the market through the production of a comprehensive specification ensuring robust input from internal and external stakeholders and generating further interest from the marketplace to create increased competition. During the course of next year, the Guides Target Operating Model project will have been

implemented and a clearer indication of the requirement can be provided to the market. These recommended short-term arrangements will also provide as much consistency as possible to the children with SEND and their parents/carers during this academic year. The current value of this procurement is anticipated to be in the region of £1.573m per year and therefore, in addition to the importance of these guides to the safe and secure delivery of the service, there is a requirement to ensure that the solution is compliant with procurement rules pertaining to a contract of this value.

4.3.8 This Option, Option 3, is the recommended option.

4.4 Option 4 – Extend the current “extension” arrangements to permit time to undertake a full and proper procurement process

4.4.1 This option can most easily be explained as an extension to the current extension arrangements. That is to say, a further contract extension to those providers on the expired BCC P0188 Framework together with a further waiver being required for those other providers not on the framework.

4.4.2 Whilst considered, this option is not a viable one because a contract call off from a framework cannot be extended where the framework has expired. Whilst a call off contract can exceed the framework validity period there is no mechanism in the relevant call off contract for its extension.

4.4.3 This option therefore is not a viable one.

4.5 Option 5 – Fully utilise an existing legally compliant framework of providers

4.5.1 It has been identified that 5 (five) of the current guide providers are on the Crown Commercial Service Framework RM6238 which is compliant with the Department for Education (DfE) Keeping Children Safe in Education standards. This framework expires on 4 July 2025 therefore this provides an immediate solution to the continuation of service for 47% (65 routes and approximately 447 children) of those that require casual/agency guides (based on the 3 months leading up to September 2022). There therefore exists the opportunity to use this Framework to meet the partial needs of the service until its expiry.

4.5.2 However, 3 (three) other current providers who (based on the 3 months leading up to September 2022) provide 53% (73 routes and approximately 503 Children) of the service for those that require casual/agency guides are not on this Framework. Therefore, for more than half of the children and their families/carers who require casual/agency guides, a move to this Framework would mean a change of provider and therefore travel guide just 3 months into their academic year. The importance of consistency cannot be over-estimated and significant work has gone into the Service undertaking additional checks on the current casual staff cohort; and relationships are being built with the children and their parents/carers for this academic year. Maintaining consistency of service for this academic year is a desired key outcome which would not be met by this option.



- 4.5.3 Moreover, the Crown Commercial Service Framework is one which is not tailored to the travel guide market but rather provides a wide range of temporary workers, including but not limited to teachers, educational support staff such as teaching assistants and cover supervisors, headteachers and senior leaders, admin, clerical, finance, IT, maintenance, caterers, cleaners and drivers. This option therefore is less beneficial than those that recommend a tailored procurement process solely focused specifically on the needs of transport guides for BCC.
- 4.5.4 For the reasons set out in 4.5.2 and 4.5.3 above this option is sub-optimal in comparison to Option 3 and is therefore not recommended.
- 4.6 Option 6 – meet the requirements in different ways / alternative provision
- 4.6.1 It was explored whether the requirement of casual guides, currently 138 guides with a contractual annual value of £1.573m, could be met through alternative provision. As set out in the Background section to this report, the alternative options may include meeting this requirement through commissioning guides (alongside transport) from a number of approved transport providers; a small pool of relief/casual guides centrally managed by BCC; and/or members of school staff who occasionally act as guides.
- 4.6.2 The Target Operating Model project currently underway will fully explore these alternatives, comparing their respective financial costs and their benefits. This work has not yet been completed and therefore for this Cabinet Report to recommend an option which precedes the outcome of this project would be unwise. However, any recommended Option should be suitably flexible to “flex” around the outcomes of this Target Operating Model project. This has been reflected through the desire in many of the above options to establish a framework or utilise an existing framework, thereby not committing BCC to any fixed expenditure or demand. So should the outcome of the project be either to expand the in-house guide capacity or move towards increased outsourcing (or anything in between), a framework option would provide the required flexibility.
- 4.6.3 This Option is not viable as it does not provide a solution to the requirement within the available timescales.
- 4.7 Recommended Proposal
- 4.7.1 Option 3 is the recommended Option.
- 4.7.2 It provides consistency to children with SEND and their families and carers during this academic year by permitting BCC to utilise the same current providers. Work that has gone into training the existing Guides and ensuring their compliance (DBS checks etc) at the start of this academic year will not be wasted.
- 4.7.3 The use of the Crown Commercial Service Framework RM6238 provides the opportunity to market test the prices of 5 (five) of the current providers and thereby possibly reduce operating costs. Through obtaining visibility of these Framework costs pressure can also be brought onto those providers not on the

Framework to more closely align their prices (should the Framework prices be cheaper).

- 4.7.4 The Option provides the time for BCC to establish its own Framework, compliant with Public Contracts Regulations 2015, tailored to the requirements of SEND Guide provision. It will also allow new providers entry to provide increased competition. There will be consistent pre-negotiated terms and conditions and transparency of costs.
- 4.7.5 This Option permits the establishment of a new Framework by 1<sup>st</sup> June 2023. We will work with schools and the Parent Carer Forum to establish an implementation and communication plan which will see changes made and communicated over the Summer, prior to the start of the new academic year 2023/24.
- 4.7.6 Through the proposed Option, clear call-off procedures will be established thereby providing a fully auditable and transparent approach to future expenditure. The Option permits, through delegated authority, the Service to call-off up to a maximum value of £1.8m per year providing sufficient flexibility over the course of the next 4 years for any changing demand requirements.
- 4.7.7 The Option provides all flexibility to reflect any outcome of the Guide Target Operating Model project.

## **5 Consultation**

- 5.1 Officers have taken feedback from the Birmingham Parent Carer Forum (“PCF”) who recognised the need for this procurement and were supportive of the recommended option. The PCF were grateful to hear about the focus on consistency of guide provision and the recognition as to how this strategy would work in parallel with the larger piece of work to review the Target Operating Model for the guide service. It was agreed that, once the recommendations of this report are approved, to undertake further consultation with parents, carers and service users to help develop the specification and also a communication plan to help manage the transition to new arrangements.
- 5.2 During the course of the development of this report, providers have been consulted (both BCC providers and outside). Many of whom have already confirmed their interest in tendering for the opportunity should this recommendation be approved. Once the recommendations of this report are approved, we will undertake further market engagement as part of generating interest in the framework opportunity and shaping the specification. This will be undertaken either via meeting or publication of a PIN notice prior to tender publication.

## **6 Risk Management**

- 6.1 The provision of guides is an integral part of service delivery for the Children’s Travel Service. Changes to personnel can lead to some children having greater difficulties accessing transport services. Many children struggle to adapt with change and therefore unnecessary or frequent changes are often detrimental to an individual’s mental wellbeing and ability to learn. Aligning and controlling any

change to travel arrangements is a key function of the service when handling new academic year travel arrangements which typically would include any necessary planned guide changes. The recommended option therefore attempts to make all efforts to ensure service continuity.

- 6.2 Reputational risk is a significant issue for the service and therefore the recommended option seeks to build on the sustainable building blocks that have been put in place for this academic year, 2022/23.
- 6.3 Should this report not be accepted by cabinet, then, from 1 January 2023, BCC would be operating in a legally non-compliant way. This would therefore run the risk of provider legal challenge and the risk of non-continuation of casual guide provision which is integral to successful service delivery and BCC fulfilling its legal obligations to provide suitable travel arrangements to facilitate eligible children's attendance at school.
- 6.4 Through the work that has been undertaken at 5.2 above, the provider market has been appraised of the plans for a full procurement for a casual / agency pupil guides framework agreement around January/February 2023. This has been positively received by the majority of providers, thereby reducing the risk of provider challenge in the short term.

## **7 Compliance Issues:**

### **7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

- 7.1.1 The recommended decision supports the delivery of Birmingham as an aspirational city to grow up in as this will aim to continue to support the SEND offer to Birmingham's children and families; modernising, safeguarding and improving outcomes for children.

### **7.2 Legal Implications**

- 7.2.1 Sections 508B and 508C of the Education Act 1996 make provision for local authorities to ensure that suitable travel arrangements are made, where necessary, to facilitate a child's attendance at school. Suitable travel arrangements may include the provision of guides to support eligible children to get to school.

### **7.3 Financial Implications**

- 7.3.1 The allocated budget for the Children's Travel Service in 22/23 is £35.7m. The service is forecast to overspend significantly against this allocated budget. The current year overspend projection includes £1.6m to be spent on 138 casual agency guides, this report is targeted at reducing the cost of agency guides through efficient re-procurement. The cost savings following this re-procurement of guides will reduce the projected overspend for the service.

## **7.4 Procurement Implications**

- 7.4.1 The recommended option to go out to procurement is compliant and in line with the Public Contracts Regulations 2015 as is the use of the Crown Commercial Services Framework (CCS) as an interim measure. The use of those organisations that are not on the CCS Framework could potentially be subject to challenge from other providers not included as part of the interim measures. The risk of challenge is considered low, given the fact that this is only a temporary measure while a more strategic and compliant approach is implemented. To further mitigate this risk, a Voluntary Ex-Ante Transparency Notice (VEAT) will be issued notifying the market of our intention to award these contracts. The procurement process and route to market for the council Framework will be fully detailed in the strategy report.

## **7.5 Human Resources Implications**

- 7.5.1 The HR implications for this project are modest. First and foremost, this report is about maximising the use of agency workers and ensuring proper due diligence is undertaken in terms of the contract award. HR welcome this.
- 7.5.2 The report does not affect BCC staff except that the work detailed herein is likely to allow BCC to better utilise its own staff and deliver the service more efficiently and effectively.
- 7.5.3 An outcome of the project will likely be fewer agency workers acting as Pupil Guides. As part of a redesign of the service, it may be possible for agency workers will be placed on BCC contracts, following a short process in line with BCC recruitment policy, to reduce agency reliance and cost.
- 7.5.4 Where possible, we will also endeavour to create and offer early career roles such as Apprenticeships linked to this work in the service, if this is possible. This will create employment, training, and development opportunities for young people in the city who are under-represented in the Council's workforce.
- 7.5.5 We will ensure that any residual recruitment required by BCC will be conducted in line with the council's recruitment and retention policy and Equalities Strategy and provides equity for all candidates.

## **7.6 Public Sector Equality Duty**

- 7.6.1 An Equality Impact Assessment has been undertaken, has been reviewed for quality assurance and is signed off. There are no negative implications associated with these recommendations.

## **7.7 Environmental and Sustainability Implications**

- 7.7.1 An Environmental and Sustainability Assessment has been completed. There are no environmental or sustainability implications with these recommendations.

## **8 Appendices**

- 8.1 Appendix 1 - Waiver for January 2023 to December 2023.
- 8.2 Appendix 2 - ESA Guidance.
- 8.3 Appendix 3 - Equality Assessment.

## **9 Background Documents**

- 9.1 Waiver for September 2022 to December 2022.