
Southend-on-Sea Borough Council

**Report of the Deputy Chief Executive (People)
To
Cabinet
On
12th March 2019**

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Passenger Transport - Operating Model and Procurement Process

**Scrutiny Committee(s): People (including Health), Place and
Policy and Resources
Cabinet Member(s): Cllr Helen Boyd, Cllr Tony Cox and
Cllr Andrew Moring**

A Part 1 Public Agenda item save for Appendix 2
which is not for publication by virtue of paragraph 3
of Part 1 of Schedule 12 A to the Local Government Act 1972

1. Purpose of Report

- 1.1 The purpose of this report is to update Members on the procurement for the preferred bidder to create a Joint Venture Partnership (JV) to deliver the Council's Passenger Transport Service.
- 1.2 Part 2 of this report details the procurement process that was undertaken through a Public Contracts Regulations 2015 compliant competitive dialogue procedure and the outcome of this procurement which has resulted in identifying the preferred bidder.
- 1.3 Part 2 of this report also seeks Members approval on other provisions required as part of the partnership proposal.

2. Recommendations

- 2.1 That Cabinet confirms the selection of the preferred bidder as detailed in the Part 2 report attached and that a Joint Venture Partnership (JV) is established with the preferred bidder for a period of 10 years with an option to extend for a further 5 years.
- 2.2 That Cabinet approves the Council's annual contribution to the JV of £1.8M.

- 2.3 That Cabinet approves the proposed additional community benefits as detailed within the Part 2 report.
- 2.4 That Cabinet agrees the additional financial arrangements as set out in the Part 2 report.
- 2.5 That the Strategic Director, Transformation (in consultation with the Deputy Chief Executive of People and the Strategic Director of Finance and Resources) shall be authorised, to:
- 2.5.1 Negotiate and settle the final details of the contractual obligations and responsibilities of each party which will be formalised and documented within a Partnership Agreement and further legal documents that are ancillary to this;
- 2.5.2 Take decisions associated with the creation of the JV (including organisational structure, Council representation and the appointment of directors) to ensure agile and timely decision making keeping the implementation of the JV to timetable and protecting the Council's position;
- 2.5.3 Finalise and complete any ancillary agreements or documents necessary to give effect to the constitution, implementation and functioning of the JV company in accordance with this Report and its appendices;
- 2.5.4 That the terms of reference of the Council's Shareholder Board be amended to include this JV.

3 Background

- 3.1 The Council currently provides passenger transport to adults and children across various service areas (as outlined in Appendix A). This is currently provided through a mixture of in house and contracted services.
- 3.2 The total cost for this provision is now in the region of £2.2M per annum (although the actual budget provision is circa £1.8M) which is split between nine external contractors and the services/resources provided in-house as follows:

Transport Service Routes	Contract/ In-house	2018/19 Budget £*	2018/19 Forecast Spend £*
Home to School (SEND)	Contract	1,180,000	1,400,000
Children's (Supervised Contact)	Contract	130,000	180,000
Respite Care for Disabled Children	Contract	10,000	20,000
Dial-a-Ride	In-house	100,000	100,000
Adults with Learning Disabilities	Contract and In-House Provision	340,000	520,000
TOTAL		1,760,000	2,220,000

*rounded to the nearest £10,000

- 3.3 Contracts with the Council's current Passenger Transport providers across the service areas will now expire in July 2019 and there is no option to extend within the current contracts. However, all external contracts and the in-house provision will now be extended in the interim period for a maximum period of 9 months to allow the creation of the JV and provide adequate mobilisation time to confirming licencing, staff DBS and licencing checks, setting up premises and stakeholder and

incumbent provider engagement as outlined in 8.1 below. As the Council will have completed the procurement process and agreed the extension before the current contract period has expired - this is permissible within the procurement regulations to allow the Council to continue its statutory services.

3.4 Procurement

3.4.1 The procurement was undertaken via the Competitive Dialogue procedure as previously agreed by Cabinet in January 2018 (see Appendix B).

3.4.2 Details of the procurement process is outlined in the Part 2 report.

3.5 The Joint Venture Partnership Proposal

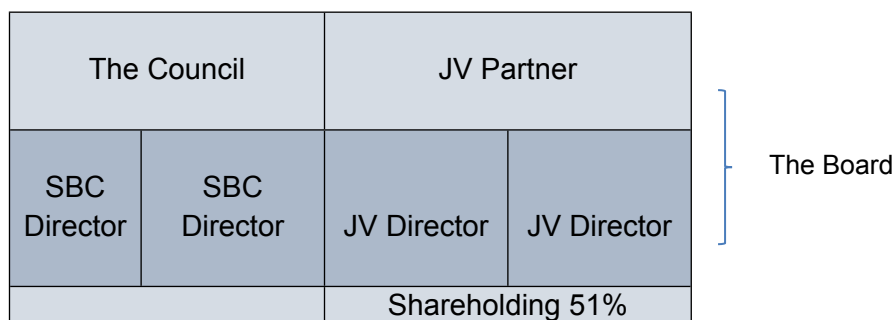
3.5.1 As previously reported in Appendix C of the January 2018 Cabinet report, the proposals from market engagement indicated that the JV partner is likely to be the majority shareholder if the JV partner was committing substantial investment as this places the JV partner at a much higher commercial risk than the Council. The details of the JV proposal is outlined in the Part 2 report.

3.5.2 The JV will be governed by a Board comprising of two directors appointed by each organisation in a company limited by shares . The JV is proposed to be owned 49% by the Council and 51% by the JV partner. The JV partner needs to be the majority shareholder in order to be able to:

- Establish and incorporate the new JV under the JV partnership on behalf of the shareholders;
- Manage all of the back office financial, Human Resources and commercial functions for the JV;
- Establish and publish the monthly Financial (operational) Accounts and the Annual Accounts;
- Provide a set of independently audited accounts to the Board and shareholders annually.

3.5.3 However, the accepted proposal from the preferred JV partner is that the profit realised through the new working model would be split equally 50:50 for core services (as outlined in Appendix A) and 15:85 Council:JV Partner for additional business/non-core services. Details of the approach are shown in Diagram 1 below.

Diagram 1. The diagram below illustrates the structure of the JV



Shareholding 49%	
Profit Share 50% (Core Services)	Profit Share 50% (Core Services)
Profit Share 15% (Additional Business/ Non Core Services)	Profit Share 85% (Additional Business/ Non Core Services)

3.5.4 As referred in the Cabinet report of 9th January 2018, inevitably there will be a small degree of financial risk to the Council in setting up a JV with a third party. However, given the nature of the proposed JV this risk is not considered high. It is unlikely that the creation of the JV would cause any financial risk to the authority other than the loss of one-off set up costs should the company fail at an early stage. There will be no transfer or joint ownership of assets planned and costs for the service will be invoiced to the Council through the JV whereby the JV Partner will be leasing (or will own) the purchased vehicles including other overheads/supporting costs to deliver the passenger transport services.

4. Next Steps

4.1 To confirm the two directors that will be representing the Council in the JV, as outlined in 3.5.2 above. It should also be noted that the nominated directors will need to receive the appropriate training before they agree to sign acceptance of their directorship.

4.2 To proceed with the creation and setting up of the JV as a limited company with the preferred bidder as identified in the Part 2 report.

4.3 In addition to 4.1 and 4.2 above, to also proceed with the following:

- Formalising services/partnering agreements including the shareholders agreement and articles of association
- Application for a full operating licence
- Appointment and mobilise a project team for a 9 month implementation as outlined in 8.1 below.

5. Other Options

5.1 Do Nothing. This option has been rejected because there is an ongoing, statutory need for this service. To allow existing arrangements to continue without an agreed contract established would place the Council in a non-compliant position, and the continuation of an 'in house' service would require significant capital investment in our fleet.

5.2 It should also be noted that there are no options to extend current contracts as the options to extend have already been utilised and are being extended again prior to the award of this proposal.

5.3 In November 2017, a report on Passenger Transport – ‘Operating Model and Procurement Process’ was presented to Cabinet which had outlined the various options that were explored as part of the Transport Review and that the Joint Venture approach was identified as the recommended operating model for the provision of passenger transport (see Appendix C).

6. Not used

7. Reasons for Recommendations

7.1 Cabinet (*Minute 448*) of the November 2017 report approved the recommendation that a JV approach is the best delivery model to achieve sustainable transport provision for the Council. This model offers transparency of costs, visibility of profits and the ability for the Council to have joint control in the delivery of the service.

7.2 The proposed partnership provides the platform to deliver the Council’s aims and objectives as follows:

- To deliver and operate the whole of its passenger transport services while delivering efficiencies and savings in the delivery of such core services; and
- To act as a joint venture strategic partner in relation to the delivery and future development of the core services and to offer a platform to develop and deliver income-generating opportunities for the Council;
- Promoting independence and life skills through more independent travel training;
- The ability to encourage and promote the use of the Dial-a-Ride service to make it more accessible (enhanced service) for new and existing members to enable more Southend residents to be independent and get out and about within the borough of Southend.

7.3 More details on the benefits of the preferred JV partner’s proposal are outlined in the Part 2 report.

7.4 The Council has a statutory duty to provide the passenger transport services (with the exception of the dial-a-ride) so there is an ongoing requirement for the provision of an integrated passenger transport service and to allow existing arrangements to continue without an agreed contract established would place the Council in a non-compliant position. There is also the added risk by not proceeding with this proposal is that the Council will end up paying much more for these services and it would undermine its decision to resolve the current issues in regards service improvement or efficiency as also reported in the November 2017 Cabinet report.

8. Timescales – Implementation and Mobilisation of Services

8.1 Below is the revised indicative timescale to conclude the procurement and implement the services:

Date	Activity
19 February 2019	EB update

12 March 2019	Cabinet – Members update and approval to proceed with the procurement
8 April 2019	Place Scrutiny
9 April 2019	People Scrutiny
10 April 2019	Policy Scrutiny
18 April 2019	Full Council
28 April 2019	Award Contract
April-December 2019	<ul style="list-style-type: none"> ▪ Implementation and mobilisation ▪ Licencing confirmed ▪ Staff licencing and DBS checks completed ▪ Setting up JV incl premises ▪ Stakeholder and incumbent provider engagement
1 August 2019	Non-home to school services including meet and greet introductions for Adults with Learning Disabilities commence via extended contracts
1 August 2019	Meet and Greet Introductions for Home to School Provision commence via extended contracts
1 September 2019	Home to School Services commence via extended contracts
1 January 2020	<p>JV go Live:</p> <ul style="list-style-type: none"> ▪ Management of the sub-contracted Home to School (SEND) transfers to the JV ▪ Delivery of the Kingsdown School commences with the JV ▪ Delivery of the Adults with Learning Disabilities provision commences with the JV ▪ Delivery of the Dial-a-Ride provision commences with the JV ▪ Management of the sub-contracted Children Social Care Transport transfers to the JV

8.2 As per 3.3 above, all existing arrangements will continue in the interim period for a maximum of 9 months to minimise the risks to the service provision during the transitional period. This approach also allows existing services (such as the home to school transport) to continue without causing any disruption to the transport services or its users.

8.3 The above revised timetable also allows the transfer and delivery of the services via the partnership in a planned implementation that includes adequate time to undertake stakeholder engagement.

8.4 As reported in the November 2017 Cabinet report, it is best practice to implement changes to the home to school transport during a school closure period, to ensure adequate implementation timescales, and reduce the risk of any disruptions in service and negative impact on service users. Therefore, the Council is proposing to transition the Kingsdown School Provision in December 2019 as part of the following two-phased implementation approach:

- Phase 1 - all home to school services (including Kingsdown School) will continue under the extended current provision but work will take place over

this period in terms of engagement with service users, their parents/carers and other key stakeholders.

- Phase 2 - Kingsdown School will transfer to the new service that will be delivered by the preferred bidder in January 2020

8.5 The above phased implementation approach allows continuity of service and a planned timetable to undertake the necessary stakeholder communications well in advance of December 2019 to introduce the new Kingsdown Home to School service that will be delivered on larger buses as from January 2020. The other passenger transport service will then be delivered as per the time table in 8.1. above and this phased approach will minimise disruption to all services as this is a continuation of existing arrangements.

8.6 The rationale as to why the preferred bidder has chosen Kingsdown School as the school which they will deliver in the first year is outlined as part of their commercial bid and detailed in the part 2 report.

9. Corporate Implications

9.1 Contribution to the Southend 2050 Road Map

This project will contribute towards the Council Ambitions for its 2050 Vision as outlined in the Part 2 report as it is part of the preferred bidder innovation around their proposed operating model and commercial element of their bid.

9.2 Financial Implications

The full financial implications of this proposal are detailed in the Part 2 report, but it should be noted, that the core annual commitment of the Council's contribution to this partnership is £1.8M as referenced in previous cabinet reports.

9.3 Legal Implications

9.3.1 Section 1 of the Localism Act 2011 is a broad based power which allows local authorities to do anything that an individual may do subject to certain statutory restrictions.

9.3.2 Section 4 of the Localism Act 2011 provides that if an authority is exercising the general power for a commercial purpose then the local authority must do it through a company. The Council has a power to create joint venture companies under the Localism Act 2011 Section 3.

9.3.3 The JV will need to supervise and monitor drivers in accordance with the Driver and Vehicle Standards Agency (DVSA) and the Driver and Vehicle Licencing Agency (DVLA) licensing and permit requirements and also the holding of insurance.

9.3.4 Details of the arrangements between the two parties forming the JV will be documented within 'Articles of Association' that contain the purpose of the company as well as the duties and responsibilities of its shareholders and directors. Contractual obligations and responsibilities of each party will be formalised and

documented within a 'Partnership Agreement' and any further legal documents that are ancillary to this.

- 9.3.5 The JV board will consist of 4 directors; two appointed by the preferred bidder and two appointed by the Council. Their duty will be to the JV and to act in the best interests of the JV. The Council representatives must declare their interest as a director and consider any potential conflict that arises in their position as part of the JV board.

9.4 People Implications

- 9.4.1 As per the 9th January 2018 Cabinet report, a full consultation will be required with staff that will be transferred to the JV as well as those where TUPE applies to the external contracts. This consultation will need to include Trade Unions in keeping with prevailing Council policy.
- 9.4.2 The Council's prescribed TUPE process and timescale for TUPE transfer will then also need to be followed.
- 9.4.3 The JV partner would be expected to provide their expertise on TUPE to actively support the Council's HR Team with all aspects of TUPE.

9.5 Property Implications

The preferred bidder has identified potential premises and the cost is included in the £1.8M per annum.

9.6 Consultation

- 9.6.1 As per the 9th January 2018 Cabinet report, consultations will need to be held with staff that are currently involved in the in-house services and there will be a need to consult with operators delivering the external contracts.
- 9.6.2 The preferred bidder will in liaison with the Council also undertake the necessary communications to introduce the new contract. The preferred bidder will conduct the 'meet and greet' introductory meetings with the new service users and parent/carers in relation to the home to school (SEND) Kingdown School and adults with learning disabilities passenger transport provision.
- 9.6.3 See also the Part 2 report.

9.7 Equalities and Diversity Implications

As per the 9th January 2018 Cabinet report, the JV proposal involves a re-modelling of service delivery therefore there will be a requirement for the procurement and service area leads to conduct an Equality Analysis. An Equality Analysis has already been completed in respect of rolling out the policies for travel assistance and is available on request. In respect of the remodelled service an Equality Analysis will need to be undertaken by the JV prior to commencement of delivery of the new service.

9.8 Risk Assessment

- 9.8.1 As per the 9th January 2018 Cabinet report, inevitably there will be a small degree of risk in setting up a Joint Venture partnership with a third party. However, given the nature of the proposed JV this risk is not considered high. It is unlikely that the creation of the JV would cause any financial risk to the Council other than the loss of one-off set up/investment costs (as outlined in the Part 2 report) should the company fail at an early stage.
- 9.8.2 As also noted in the 9th January 2018 Cabinet report, there is the potential for risk to reputation through negative media campaigns and adverse criticism from incumbent suppliers or users, e.g. parents who prefer to retain existing transport arrangements. A stakeholder engagement plan has been developed by the preferred bidder and in liaison with the Council a communications plan in relation to communicating details of the new contract and the 'meet and greet' introductory sessions should mitigate this risk.
- 9.8.3 A Risk Register will be established by the new Board of Directors and all risks will be actively reviewed on a regular basis. Mitigation strategies will be agreed with the Council.
- 9.8.4 It should be noted any other potential risks identified during the procurement process are outlined in the Part 2 report.

9.9 Value for Money

- 9.9.1 As previously reported in the January 2018 Cabinet report, this proposal aims to enhance value for money through streamlining service delivery and reducing the number of current external contracts and in-house services.
- 9.9.2 The JV model also offers an improvement in quality and ultimately the potential for income generation and profits to be split between shareholders.

9.10 Community Safety Implications

Details are outlined in the Part 2 report.

9.11 Environmental Impact

As per the January 2018 Cabinet report, improved route planning and the reduction in need for transport across the borough would lead to a reduction in traffic and travel which will lower the environmental impacts generated by the current arrangements.

10. Background Papers

None.

11. Appendices

- 11.1 Appendix A – Passenger Transport (Core Service)
- 11.2 Appendix B - January Cabinet Report (9th January 2018) - Passenger Transport - Operating Model and Procurement Process (including Appendices)
- 11.3 November Cabinet Report (7th November 2017) - Operating Model Options and Procurement Process (including Appendices) appended to 11.2.