

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

5129

Author:

Claire Moores

Department:

People

Contact:

Claire Moores

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Subject:

Transportation of Passenger Transport Services and School Trips, and school meals transport

Key Decision (decision valued at more than £1million):

Yes

Total Value:

£3,000,000 (Type: Revenue)

Decision Being Taken:

To approve the use of £3m from an already approved budget, including Passenger Transport, Whynott Transport, and School Swimming, to support a 6-month extension of the existing contracting arrangements alongside procurement procedures and other direct awards that are in place, until the new Dynamic Purchasing System (DPS) goes live May 2024 and is completed September 2024 as per the Commissioning and Procurement Executive Committee (CPEC) approval in March 2023. The exemption Spend Control Board ID number 279 is for the period April 24 to the end of October 24 and /or DPS implementation. Monthly Spend Control Board submissions are also in place. To note that an exemption from Contract Procedure Rules for the extension period has been requested via an e-form exemption submitted 19 April 2024 (ID 279) with the decision will allow the continuation exemption from the 'No PO No PAY' for services until the DPS is fully transitioned too for the financial compliance.

Reasons for the Decision(s) The need for an exemption has arisen due to the delay in the final draft of the new DPS for all city wide passenger transport and commissioned transport across the council. This is a new DPS that will be replacing an older version that has unfortunately expired due to the delays, a Commissioning and Procurement Executive Committee decision for the DPS was granted in March 2023. In the interim, without a DPS, the ability to tender effectively and with compliance in the short term is not possible. The service has explored all options available with procurement colleagues, including CPA (Contract Purchasing Agreements) approvals. However, due to the overall financial amounts of contracts awarded, the temporary interim period until the period of the DPS being live, procurement has advised that any CPA was not able to commence due to the need of further authorisation for compliance with financial regulations in the interim. The transport services are under current contractual agreements that were arranged during the live period of the older DPS, and therefore service obligations must continue to operate as agreed. These contractual agreements provide for the statutory obligation for travel that the Council provides which is for travel assistance for vulnerable adults and children, and other associated transport needs. Failure to approve would lead to legal action from contractors and a failure of our statutory obligations potentially placing the needs of vulnerable citizens and children at risk. The estimated expenditure for passenger and commissioned transport for the 2024-25 financial year is £6m, made up of £5.2m for SEND and Social Care, £0.2m for traded transport and £0.1m for council transport plus an anticipated inflationary increase, therefore the 6 month approval amount of this decision is set at £3m to provide sufficient budget approval to meet these costs.

Briefing notes documents: Printed minutes 14032023 1000 Commissioning and Procurement Executive Committee.pdf

Other Options Considered: There is a need for statutory compliance therefore not operating services is not an option.

Background Papers: None.

Published Works: Commission and Procurement Executive Committee report and minutes - 14 March 2023

Affected Wards: Citywide

Colleague / Councillor Interests: None.

Consultations: Those not consulted are not directly affected by the decision.

Crime and Disorder Implications: None arising from the decision to be taken.

Equality:	EIA not required. Reasons: The decision does not include new or changing policies.
Decision Type:	Leader's Key Decision
Subject to Call In:	<p>No</p> <p>The call-in procedure does not apply to the proposed decision because the delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The Chair of the Overview and Scrutiny Committee (or Vice-Chair) in his/her absence has been consulted and agreed both that the decision proposed is reasonable in all circumstances and that it should be treated as a matter of urgency.</p>
	Person Consulted: Councillor Ayoola - Chair of Scrutiny
	Consultation Date: 24/04/2024
	To enable continuation of service beyond 1 May 2024 until DPS (Dynamic Purchasing System) is in place.
Advice Sought:	Legal, Finance, Procurement
Commissioner Comments:	Commissioners, whilst understanding the necessity to approve this decision, ask that work is undertaken in a timely way to ensure there are no further requirements for such extensions. (30/05/24)

Legal Advice:

The report author seeks approval to use £3 Million from an already approved budget for Passenger Transport, Whynott Transport and School Swimming budget to support a 6-month extension of a series of existing Transport contract arrangement with the current providers, and to extend those contractual arrangement for the same period, to allow for the new, but delayed, Dynamic Purchasing System (DPS) to be put in place and enable the Council to continue to fulfil its statutory duties in the context of the transport arrangement in question.

It is understood that the proposed transport service requirements are necessary to meet statutory obligations on the Council. If the Council does not extend the existing arrangements for the interim period, then the Council risks breaching its statutory duty owed to its citizens.

The report author has confirmed that while the aggregate value of the contractual arrangements exceeds the PCR 2015 regulation 5 threshold, the individual contracts themselves do not and are not therefore individually regarded as public service contracts within the scope of the PCR. Notwithstanding that the contracts are not within scope, the core principles of treating operators equally, without discrimination and in a transparent and proportionate manner should be adhered to. Complying with the principles set out in the grounds under regulation 72 (Modification of Contracts during their term), is also advised so that the council can ensure that it is acting proportionately and transparently, thereby minimising the risk of challenge from other economic operators in the transport market during the short extension period proposed.

It is understood that the need for the short extension has been brought about by the circumstance relating to the complexities of the newly proposed DPS system and lots to be provided for, that could not have been reasonably foreseen and, that the extensions will not alter the overall nature of the services provided under contract presently. It is also understood that there would not be any material increase in the cost of the contracts over the period on an individual basis. Provided the key principles outlined are complied with, then a pragmatic extension involves less risk to the Council than failing to meet its statutory obligations.

The proposal otherwise raises no significant legal concerns.

Advice provided by Vendie Charles (Contracts & Commercial Solicitor) on 16/05/2024 & 30/05/24.

Finance Advice:

As outlined above, this report seeks approval to use of £3m from an already approved budget to support a 6-month extension of the existing contract until the new Dynamic Purchasing System (DPS) goes live. This is a council wide spend across Transport Contracts. Social Care Transportation (including SEND Home-to-School Taxi) actual spend was £5.2m pa in FY23/24, out of which taxi transport spend is recharged to the spending department from the Passenger transport front desk. Passenger transport gets a £1m allocation from Direct School Grant to offset some of the spend. The traded services budget is full cost recovery. Whynott has a 12% booking fee to cover their cost of invoices. School Trips Transport(traded services) actual spend for FY23/24 was £0.2m pa. Council Staff Transportation spend for FY23/24 £0.1m pa. The 6 months projection of £3m comes from a projected spends of CPA agreements.

Advice provided by Abiola Yusuff (Commercial Finance business partner) on 30/04/2024.

Procurement Advice:

This report seeks the approval to extend current contractual arrangements with providers of transport services whilst the dynamic purchasing system (DPS) for future contractual arrangements is established. The DPS should be established from July for future contractual arrangements to be put in place.

The extension requests all fall within the criteria of Regulation 72, part 1 (c) and (e).

The initial contract arrangements were awarded following an Invitation to Tender exercise, future best value will be evidenced once new request for quote exercises are completed.

Advice provided by Holly Fisher (Lead Procurement Officer (Products)) on 07/05/2024.

Signatures:

Neghat Khan (Leader / Exec member, Strategic Regeneration)
SIGNED and Dated: 07/06/2024
Catherine Underwood (Corporate Director for People)
SIGNED and Dated: 30/05/2024