

	<p style="text-align: center;">Executive 23 May 2011</p> <p style="text-align: center;">Report from the Director of Environment and Neighbourhood Services</p>
For Action	Wards Affected: ALL
<p>Authority to award the contract for the provision of a managed service for the supply of staff services for Brent Transport Services (BTS)</p>	

Appendix 2 – Not for Publication as it falls under paragraph 2 of the Local Government Act 1972, Schedule 12A as - information relating to the financial or business affairs of any particular person (other than the authority).

1.0 Summary

- 1.1 This report seeks authority in accordance with Contract Standing Orders 88 to award a contract for the provision of a managed service for the supply of personnel for Brent Transport Services. The report summarises the tender process undertaken by officers and following evaluations of tenders, recommends the tenderer that should be awarded the contract.

2.0 Recommendations

- 2.1 That the Executive agrees the award of the contract to Drake International for an initial period of three (3) years with an option to extend for a further one (1) year, with an estimated contract value over the four (4) year period of £7.6 million pounds.
- 2.2 That the Executive agrees that the BTS staff requirement be delivered through the contract described in paragraph 2.1 and is therefore a departure from the standard Council procedure for the procurement of temporary staff.

3.0 Detail

Background

- 3.1 Brent Transport Services (BTS) provides passenger transport services for children and young people with Special Educational Needs (SEN) and for vulnerable adults on behalf of the Council. BTS currently operate approximately 92 daily routes with a mixed workforce of drivers and passenger attendants, mostly provided by 4 employment agencies, who operate as crews in BTS-provided vehicles.
- 3.2 Staff generally work on a 'split shift' basis to provide the flexibility for BTS to meet the daily (morning and afternoon), and seasonal (term time), requirements of its clients at optimum cost. Staff are provided on a continuous basis, as far as can reasonably be expected, in the interests of continuity for vulnerable clients. It is critical that the staff provision has the ability to meet the particular requirements of BTS in terms of operational flexibility and with appropriate qualifications and experience.
- 3.3 In 2010/11, BTS spend with current suppliers for driver and passenger attendants was £1.91 million which, exceeds EU thresholds for services thereby being subject to competition. In addition, there are no formal written contracts with any of the four current suppliers for their services.
- 3.4 The Agency Workers Directive (AWD) is to be enforced in October 2011. The main purpose of the AWD is to ensure the appropriate protection of temporary agency workers through the application of the principle of equal treatment and to address unnecessary restrictions and prohibitions on the use of agency work. The total number of driver and passenger attendants currently working for BTS are 103 and 141 respectively, only 8 and 11 (respectively) are employees of the Council. Further, with the introduction of the AWD in October 2011, the estimated financial effect on the Council shows an increase in excess of £600,000 in operational costs to BTS.
- 3.5 BTS is not able to make use of the corporate contract for the supply of temporary staff via Comensura as this contract will be subject to AWD and will not protect the Council from the additional costs.

Tender Requirements

- 3.5 Tender documents were prepared by the Council's consultants Northgate Public Services (NPS) and BTS in conjunction with the Council's Legal and Procurement departments to take account of the requirements described above.
- 3.6 Specification. A detailed Specification was prepared taking into account the extensive operating knowledge of BTS drivers, passenger attendants and the broader experience contributed by NPS. Wherever possible the Specification was not prescriptive so as to enable and encourage tenderers to offer optimal

best-value solutions. Other requirements such as the need to demonstrate how their method for providing the service will mitigate the Council's exposure to the AWD were deemed necessary.

3.6.1 Further, the Specification required the contractor to adhere to service levels contained in a schedule of Key Performance Indicators to be agreed at the pre-contract stage.

3.7 Staff Continuity. The Specification stressed the importance of high staff continuity as familiar crewing is important for vulnerable service users and those with special needs. Therefore, the Service Provider is required to minimise changes in crews provided in so far as is practicable and changes in crewing are to be agreed by the Council as and when necessary.

3.8 Staff Requirements/ Checks & Compliance. The service provider was required to ensure that the staff provided to BTS meet certain requirements which were outlined, including UK National Insurance Number, satisfactory references covering five years and B, D and D1 valid driver's licences (where appropriate). The Specification and Evaluation Document also made it clear that the Service Provider must ensure that enhanced level criminal records checks are carried out on all staff and any replacements, before they are employed on this Contract. All staff must have a current (no more than 3 months old) enhanced CRB check which includes POVA /POCA checks.

3.9 Pricing. The current provision of BTS drivers, passenger attendants, and the current profile of hours worked, was supplied as an appendix to the Specification as an example to current requirements. However it was stressed that this was not an indication of on-going requirements.

Tenderers were required to complete the following pricing requirement for the three driver classifications (B, D, D1) and Passenger Attendants, separated into 'Monday to Friday' and 'Saturday, Sunday and Public Holidays' :

1. Hourly rate charged to the Council (£)
2. Hourly rate paid to employee
3. Percentage Mark up for staff under TUPE transfer

The third criterion, 'Percentage Mark up for staff under TUPE transfer', was added into the price evaluation as a clarification after the issue of the tender because the incumbent current suppliers were unwilling to provide the Transfer of Undertakings (Protection of Employment) ("TUPE") information to the tenderers during the tender process. This information is still not available to date; however the council, acting as facilitator with respect to gathering TUPE information, will be legally entitled to the information no less than two (2) weeks prior to the contract start date. Although the exact number of employees who will TUPE cannot be determined, it has been estimated that the net effect on the total cost of the contract is minimal and therefore, as described in 3.13, only a 5% weight was attributed.

The tender process

- 3.10 The tender was advertised as a three (3) year contract with an option to extend for a further one (1) year. The anticipated commencement date was 1st April 2011 however the start date has been pushed back. The tender was carried out using a two-stage restricted tendering process in accordance with the provisions of the Council's Contract Standing orders, Financial Regulations, and the provisions of the Public Contract Regulations 2006.
- 3.11 Advertisements were placed in the Official Journal of the European Community (OJEU) in August 2010, the trade press and the local paper shortly afterwards to seek initial expressions of interest. Pre-Qualification Questionnaires (PQQ), and an information pack containing the outline specifications and tender approach were sent out and eleven companies returned completed PQQs.
- 3.12 Short-listing was carried out on the basis of:
- Business Probity
 - Economic and Financial Standing
 - Ability and Technical Capacity including:
 - Staff and Training
 - Health and Safety
 - Quality Assurance
 - Relevant Experience and References
 - Equal Opportunities
 - Environment and Sustainability
- Four (4) companies were shortlisted in January 2011 and were invited to submit bids at the Invitations To Tender (ITT) stage. The seven (7) companies that were not short-listed to tender failed for a variety of reasons, five (5) failed both Finance and Health & Safety requirements whilst the other two (2) companies failed either Finance or Health and Safety requirements.
- 3.13 The tendering instructions stated that the contract would be awarded on the basis of the most economically advantageous offer to the Council and that, in evaluating tenders, the Council would have regard to the following:
- Price - weighting 60%
 - Quality - weighting 40%

3.13.1 These criteria were further sub-divided as follows:

Price: Two aspects of price from the Pricing Schedule were evaluated: hourly charges and the percentage 'mark-up' to be applied to staff transferred from existing agency providers under the TUPE obligations. This is a slight change to the weightings agreed in the Authority to Tender report as initially it was anticipated that the incumbent agencies would supply details of staff liable for TUPE in advance of tender submissions, however three of the four agencies refused to do this and were within their legal rights to do so. Therefore 5% of the original 60% weighting for Price was attributed to 'mark up' of staff transferred to the preferred bidder under TUPE to give the final weighting for Price as:

- Hourly Charges - 55%
- 'Mark-Up' - 5%

TUPE may apply to one or two individuals per incumbent based on if a supervisory role is performed, however until such time as the contract is awarded and implementation is within four weeks, the incumbents are not obliged to supply information to the council.

3.13.2 Hourly charges were evaluated separately for each of the four (4) Job Categories with the weighting corresponding to the anticipated demand, that is to say that Passenger Attendants make up half the total deployed hours across the service, therefore half the available weighting, or 27.5% was attributable to this price. The hourly charges were therefore subdivided as follows:

- Driver D - 5.5%
- Driver D1 - 19%
- Driver B - 3%
- Passenger Attendant - 27.5%

3.13.3 The **Quality evaluation** requested Method Statements and proposals to cover the areas detailed below; the proportional weighting was also provided.

- | | |
|--|-------|
| 1. Account Management | - 4% |
| 2. Operational Management | - 10% |
| 3. Staff Provision, | - 4% |
| 4. Staff Management, | - 6% |
| 5. Staff Competence, | - 8% |
| 6. Risk Management, | - 4% |
| 7. Timesheets/Invoicing. | - 2% |
| 8. Complaints Handling & Continuous Improvement, | - 2% |

Evaluation process

3.14 The tender evaluation was carried out by a panel of officers from the Council with representatives from Finance, Legal and Procurement as well as BTS and NPS.

- 3.15 All tenders had to be submitted no later than 15 February 2011. Tenders were opened on the same day and 4 valid tenders were received. Copies of the tender submission were made available to each member of the evaluation panel. Each member of the panel evaluated the qualitative aspect of the tenders in isolation using evaluation sheets (Appendix 1) to assess how well each of the award criteria was addressed.
- 3.16 Quality. The panel met on 24 February 2011 to review their individual scores and an average mark for each submission was provided by the whole panel against the Quality criteria using the table shown at Appendix 1.
- 3.17 Drakes scored highly on all aspects on the Quality detailed in 3.13.3 which involved providing method statements in relation to eight different aspects of the service provision. Drakes provided an indemnity to the council with regard to AWD later being applicable to the service during the life of the contract, in addition their contract management proposals offered a greater deployment of personnel on site as well as clear communication levels and regular management meetings. The competence and provision of staff response detailed an initial skills gap analysis and a variety of proposed training methods, their proposals for CRB checks, driving licence verification and right to work references were also robust and offered a greater degree of certainty. The overall consensus of the panel was that whilst all the bidders would be capable of providing the service, Drakes proposals offered added value.
- 3.17 Prices. The price evaluation was carried out by one member of the Evaluation Panel and the scores were verified by a member of the Finance Team. The hourly charges scores for each of the driver and passenger criteria submitted by the tenderers were added together according to the pre agreed weighting. The percentage mark-up score for each of the four criteria was added to the hour charge score, also according to the pre agreed weightings, to complete the Price Evaluation.
- 3.18 Scores. The final scores received by the tenderers are tabulated below

Supplier	TOTAL SCORE	POSITION
1	89.14	SECOND
2	98.79	FIRST
3	83.80	THIRD
4	75.63	FOURTH

- 3.19 The Executive is requested to approve the award of the BTS Managed Service for the supply of staff to Supplier 2, Drake International.
- 3.20 It is anticipated that the contract will commence on 1 September 2011 subject to the Council's observation of the requirements of the mandatory standstill period.

- 3.21 When requesting TUPE information, as detailed in 3.13.3, it also arose from more than one of the incumbents that a finder's fee would be expected upon cancellation of the current contracts and this issue is addressed within the Financial Implications of the report.

4.0 Financial Implications

- 4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval of the award of the contract.

- 4.2 The estimated value of this contract is £7.6 million over the four year period (3 years with an option to extend up to a further year)

- 4.3 A representative of Brent Financial Services evaluated the financial section of the tenders.

- 4.4 Finder's Fees The financial implication of the current provider seeking finder's fees is difficult to quantify as there are no formal terms and conditions for the provision of service from the four incumbents. In the event that TUPE does apply, it may be the case that the current providers who "lose" their staff to the successful bidder via TUPE then assert that they are owed a finder's fee from either the Council or the successful tenderer. It may also be the case that agencies whose staff choose to leave them and work for the successful tenderer then attempt to enforce a finder's fee. With hourly rates ranging from minimum wage up to £8 per hour and with up to 180 staff potentially switching to the new supplier, the total liability for finder's fees could approach £300,000.

- 4.4.1 Drake International, the preferred bidder, is the largest of the current providers with 52% of total BTS spend on Drivers and Passenger Attendants. As preferred bidder, if they were to be awarded the contract, finder's fees for this proportion of the current staff, would not apply (approximately £150,000). Another existing provider's (11.5% of total spend) terms and conditions have been reviewed; they do not comply with the Conduct of Employment Agencies Regulations, and it is the Council's position that a finder's fee would not be owed if sought after either.

- 4.4.2 The remaining two suppliers may consider they have a claim, but any such claim would be strongly resisted. .

- 4.5 The introduction of the Agency Workers Regulation in October 2011 indicates that BTS would be exposed to an estimated £600,000 of increased operational costs per year. Drake International has evidenced that moving to a Managed Service provider will not only bring BTS in line with OJEU regulations, but will avoid these increased charges.

- 4.6 Furthermore, Drake International has offered the Council an indemnity against the Agency Worker Directive being applied.

5.0 Legal Implications

- 5.1 The estimated value of the proposed managed service contract for the supply of personnel will, over its lifetime, exceed the EU threshold for Services. However such a service is categorised as a Part B service under the Public Contract Regulations 2006 (“the EU Regulations”) and as such the application of the EU Regulations to this procurement is limited. However as the Council chose to issue a voluntary contract notice in the OJEU, Part 6 of the Council’s Constitution – Financial Regulations – Paragraph 8.1.2 states that regard must be had to the Council’s Contract Procurement and Management Guidelines (the “Blue Book”). Paragraph 7.3.4 of the Blue Book states that once a voluntary choice has been made to advertise in the OJEU then the EU Regulations (as enacted in the Public Contracts Regulations 2006 [as amended]) must be followed in their entirety. The award of contract is subject to the EU Regulations and the Council’s Contract Standing Orders and Financial Regulations in respect of High Value contracts.
- 5.2 The revision to the original award criteria approved by the Executive on 26 July 2010 in relation to the price criterion sub-criteria and weightings relating to the TUPE percentage mark for transferred staff was communicated to all tenderers that were invited to tender and they were given sufficient time to submit their tender proposals.
- 5.3 The Council must observe the EU Regulations with respect to the observation of a mandatory minimum 10 calendar days standstill period **before** the contract can be awarded. Therefore once the Executive has determined which tenderer should be awarded the contract, all tenderers will be issued with detailed written notification of the contract award decision. The 10 day standstill period will begin the day after all tenderers are sent notification of the award decision – and additional debrief information will be provided to unsuccessful tenderers in accordance with the EU Regulations.
- 5.4 The standstill period provides unsuccessful tenderers with an opportunity to challenge the Council’s award decision if such challenge is justifiable. However, if no challenge or successful challenge is brought during the period, at the end of the standstill period the Council may issue a letter of acceptance to the successful tenderer and the contract may commence. Further in accordance with the EU Regulations the Council must submit a Contract Award Notice to the Office of Publication of the OJEU which serves as notification to the public of the award of contract to the successful tenderer.
- 5.5 In order for TUPE to apply, the outgoing agencies would have to show that their staff was engaged as employees, rather than as work-finders, or other such terms. The TUPE information would only be discoverable two weeks before the transfer. The terms for one of the existing agencies state quite clearly that their workers are not employees, so no transfer could take place from their employees. The status of any other employees would have to be determined on a case by case basis, looking at whether they are actual employees of the outgoing agency, and whether the majority of their contractual obligations lay with the work for the council (i.e. whether that was over half of their work through the agency). If both

of those criteria were satisfied, then those staff members may transfer to the new supplier via TUPE. The employees will not become the responsibility of the council, but of the new supplier. The new supplier will be given as much information as possible concerning this, to facilitate the transfer.

6.0 Diversity Implications

- 6.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

7.0 Staff Implications

- 7.1 For the current Council employees, TUPE will not apply as they will remain directly employed by the council and will not transfer to the new supplier.
- 7.2 The four current providers were advised that they should consider whether TUPE will apply in respect of the staff supplied exclusively or mainly for BTS work and that, if they determine that it does, they will be required to supply the necessary employment information to the Council's preferred bidder no later than 4 weeks prior to the commencement of the contract.

8.0 Background Papers

- 8.1 Executive Report 26 July 2010: Authority to Invite Tenders for a Managed Service for the Supply of Staff Services for Brent Transport Services

Contact Officers

David Furse
Senior Category Manager

Michael Read
Assistant Director (Policy & Regulation) Environment and Neighbourhood Services

David Shelley
Head of Brent Transport Services

Sue Harper
Director of Environment and Neighbourhood Services

QUALITY EVALUATION

Scores were awarded against each criterion using the following general marking regime and taking into account the considerations described in the commentary for each criterion:

Assessment	Score	Interpretation
Unacceptable	0	Fails to meet requirement - major omissions/weaknesses
Weak	1	Limited evidence of ability to meet requirement - omissions/weaknesses in key areas
Adequate	2	Meets requirement but with some minor omissions/weaknesses
Good	3	Fully meets requirement
Excellent	4	Fully meets requirement demonstrating added value in proposals for delivery of service

	Criterion	Evaluation	Score	Weighting	Weighted Score
1	Account Management	Compliance with all aspects of the Specification with regard to account management, contract management and performance management as evidenced in Method Statement 01.		10	
2	Operational Management	Compliance with all aspects of the Specification with regard to operational management arrangements as evidenced in Method Statement 02.		25	
3	Staff Provision	Compliance with all aspects of the Specification with regard to staff provision arrangements as evidenced in Method Statement 03.		10	
4	Staff Management	Compliance with all aspects of the Specification with regard to staff management arrangements as evidenced in Method Statement 04.		15	
5	Staff Competence	Compliance with all aspects of the Specification with regard to staff competence as evidenced in Method Statement 05.		20	
6	Risk Management	Compliance with all aspects of the Specification with regard to risk management as evidenced in Method Statement 06.		10	
7	Timesheets/Invoicing	Compliance with all aspects of the Specification with regard to accounting as evidenced in Method Statement 07.		5	
8	Complaints Handling/Continuous Improvement	Compliance with all aspects of the Specification with regard to complaints handling and continuous improvement as evidenced in Method Statement 08.		5	