



**Executive**  
14 December 2009

**Report from the Director of  
Children and Families**

Wards Affected:  
All

**Future acquisition strategy for Brent Transport Fleet and authority  
to tender for provision of a leased maintained vehicle fleet**

Forward Plan Ref: C&F-09/10-005

**1.0 Summary**

- 1.1 Brent Council has an ageing fleet of 143 Brent Transport Services (BTS) vehicles, almost two-thirds of which must be replaced within the next four years.
- 1.2 This report seeks Executive approval for the acquisition and maintenance strategy for new vehicles – namely outsourced leasing with maintenance – and requests approval to invite tenders accordingly. Approval is also being sought for an outsourcing of maintenance arrangements for existing vehicles. In both cases the proposal is to set up a framework agreement that can be used by other members of the West London Alliance.

**2.0 Recommendations**

- 2.1 The Executive to give approval to adopt a new model of vehicle fleet acquisition through leasing with maintenance from a single supplier.
- 2.2 The Executive to give approval to the outsourcing of the current vehicle maintenance arrangements.
- 2.3 The Executive to give approval to procure a 4-year Vehicle Supply and Maintenance Framework Agreement split into two lots with Lot 1 consisting of the supply and maintenance of new vehicles and Lot 2 the maintenance of the Council's current vehicle fleet.

- 2.4 The Executive to give approval to the pre-tender considerations and the criteria to be used to evaluate tenders for Lots 1 and 2 of a Vehicle Supply and Maintenance Framework as set out in paragraph 4.0 of this report.
- 2.5 The Executive to give approval to officers to invite tenders and evaluate them in accordance with the approved evaluation criteria referred to in paragraph 2.4 above.

### **3.0 Detail**

#### ***Background***

- 3.1 Procurement of Brent Transport Service's (BTS) vehicles has traditionally been the responsibility of the Council's Finance and Corporate Resources (FCR) department which has sourced vehicles from a variety of vehicle providers on behalf of BTS, with BTS management responsible for all vehicle procurement decisions. Prior to 2005/6 vehicle purchases were financed through third-party operating leases or alternatively through internal leasing arranged by FCR where the Council owned the vehicles. After 2005/2006, vehicles were purchased using a combination of BTS budget funding and, where insufficient resources were available, Council prudential borrowing. Repayment charges and interest, routinely covering a leasing/loan period of seven years, were recovered through annual BTS customer pricing. After seven years, BTS would be free either to retain the vehicles - most were retained for another three years, some for longer - or to dispose of them, accruing residual sale value, where possible. All outstanding finance charges would be paid before disposal.
- 3.2 BTS has had overall management responsibility for a fleet of 165 vehicles (including 2 x 53 seat coaches whose future will be considered separately and which are excluded from further consideration in this report). A total of 41 either were "owned" by other LBB departments or operated by them under BTS leaseback arrangements. BTS undertook maintenance of all of the fleet. The fleet comprised a wide range of vehicle types including:
- Mid-sized passenger transport buses (mainly Mercedes Sprinters) many of which were fitted with specialist adaptations for transporting disabled passengers
  - Light commercial vans, pick-ups and tippers of varying size and configuration (including one Gulley clearing vehicle)
  - Standard cars and smaller passenger vehicles (minibuses, etc)

After July 2009, following termination of a school meals delivery contract for another borough and disposal of surplus vehicles, the fleet has reduced to a total of 143 vehicles, 104 of which are passenger fleet vehicles. The vehicles disposed of were the oldest in the fleet and accordingly the residual values were low.

- 3.3 The fleet has been managed, operated and maintained by a headquarters team of directly-employed BTS staff providing general management, workshop, repair and stores services. All maintenance of BTS vehicles - including those loaned/leased to other Council departments (Parks, Highways, Buildings, etc) has been carried out by a team of four BTS Fitters, overseen by a BTS Workshop Manager (currently there are only three fitters employed, one vacancy being unfilled). The workshop has also outsourced to commercial garages work which it could not cover within its own resources (during 2006 to 2009 a total of 188 individual tasks - notably major engine and gearbox defects - were outsourced at an average annual cost of £36,770).
- 3.4 The maintenance workshop is located within a building known as Hirst Hall. Hirst Hall is situated on the North Wembley industrial estate and is tenanted by organisations other than the Council. As well as occupying the maintenance facility, the Council also rents office space there for BTS use. In addition there is an open parking area leased by BTS for overnight parking etc.
- 3.5 To date, BTS has conducted its core business satisfactorily, delivering a high-quality, reliable service which annual customer surveys indicate has met well the needs of Adult Social Care (ASC) and Children and Families (C&F), its main clients. However, the Council's Social Care Modernization programme, changing environmental pressures and central government's direction to local authorities to drive efficiencies across all service areas, will present significant future operational challenges which, in order to remain effective and competitive, BTS cannot afford to ignore. Key factors include:
- **Vehicle Replacement Programme.** The previous unstructured approach to BTS vehicle procurement - simply purchasing five Mercedes Sprinter buses annually - did not reflect the need to examine critically future fleet replacement requirements. In a 165-vehicle fleet with a given ten-year service life, a programme reflecting a purchasing policy of 16+ vehicles per annum should have been established and implemented. Accordingly, restricted investment, exacerbated by a lack of effective forward planning on vehicle procurement, have resulted in an urgent need to review the existing vehicle replacement programme. The 'do nothing' option is not sustainable if the BTS service is to continue, given that over 66% of the fleet will reach or exceed 10 years of age within the next four years.

- **Maintenance.** Lack of appropriate directed investment in vehicle procurement has produced a legacy ageing fleet which, in turn, has resulted in a gradual increase in annual maintenance charges. The ageing fleet incurs more frequent and costly maintenance work to be undertaken. In instances where multiple breakdowns have occurred, especially in older buses, pressure of work to return vehicles to service has overwhelmed the limited BTS workshop capability, resulting in considerable overtime to be worked by the fitter staff and the outsourcing of other tasks to external suppliers at higher cost (see paragraph 3.3 above)
- **Operations.** As vehicles have become older, they have become less reliable and more prone to breakdown. Additionally, as their condition has deteriorated, they have become shabby in appearance. Older vehicles also are less efficient and produce higher levels of harmful emissions than newer models. Vehicle unreliability has generated a need for additional vehicles to be spot hired - at considerable extra cost - to cover downtime. Increasing unreliability would adversely affect efficient operational service delivery. Poor service delivery would adversely impact on BTS clients (disappointed at being ill-supported by an inefficient service) and the morale of BTS staff charged with its professional delivery (who would face clients' complaints).
- **New Emissions Control requirements** A total of 51 BTS vehicles – mainly Mercedes Sprinter coaches but also including a Land Rover and two Ford Ranger 4x4 vehicles –have to be replaced or converted by 4 Oct 2010 as they would then become non-compliant with existing emissions control regulations. Making these vehicles compliant would be costly (approximately £3,500-£4,000 per Mercedes Sprinter). Each vehicle would also have to be removed from service for conversion and testing, requiring the temporary hiring of replacement vehicles. This assumes that sufficient conversion kits would be available to complete the work in time (there are many thousands of ageing, non-compliant Mercedes Sprinters currently in UK service). This strengthens the argument for having a larger replacement programme to avoid the cost of conversions on old vehicles. The remainder of the fleet would not have to be replaced as they are already compliant with current regulations.
- **Flexibility.** Notwithstanding the need to both procure appropriate new vehicles urgently and to establish a robust annual replacement programme more closely matching future fleet requirements, there is also a need to build flexibility into the fleet's service delivery capability. Whilst the LBB's Social Care Modernization plan is in its infancy, it is difficult to forecast

accurately how changes in the pattern of care provision and hence passenger usage would affect BTS service provision. However, there remains the possibility that greater independence in service choice, made available through allocation of clients' Personal Budgets, could significantly change BTS' future fleet configuration. The fleet's 16-24 seat vehicles could see a reduction in utilisation, resulting in less income but a continuing expenditure commitment. Reduced income could make these vehicles no longer viable for their roles

- 3.6 Failure to address these issues urgently will hinder BTS in delivering an efficient, reliable service. BTS customers across the Council would suffer a direct, tangible adverse impact on core services, as vehicles either were unable to deliver services to the appropriate standard or were unavailable due to breakdown; the most dramatic impact would be felt by the Council's most vulnerable residents. Accordingly, a procurement programme to resolve immediate fleet serviceability issues (i.e. replacing two-thirds of BTS vehicles within the next four years) needs to be established. Furthermore, the agreed programme must support BTS' long-term strategic requirements.
- 3.7 Northgate Kendric Ash (NKA) were appointed in July 2008 to assist in a review of BTS. The phase one report undertaken by NKA in 2008 highlighted the need for a structured and informed vehicle replacement strategy, adopting strategic sourcing methodology to ensure value for money. The report recommended that a full options appraisal for the future provision and maintenance of the fleet be undertaken. This Options Appraisal was completed in June 2009 and looks at a 10 year programme for replacing vehicles. It incorporates benchmarking figures obtained from two national fleet and maintenance suppliers, who were asked to provide quotes based on the Council's current fleet profile. Figures obtained were then compared to the cost of outright purchase funded through Prudential borrowing (figures supplied by Corporate Finance) and the cost of maintaining these vehicles using the current internal maintenance provision. The Options Appraisal also looked at likely maintenance costs in the private sector (£40 per hour) and compared this with the £60.80 per hour charged by BTS.
- 3.8 Consequently, the recommendation of the June 2009 report prepared by NKA is that the Council source a single supplier which will both supply new vehicles on a leased basis with maintenance, and also maintain the legacy fleet. Research into the market has shown that there are vehicles suppliers who can both supply vehicles on a leased basis and also deliver a maintenance service. Accordingly the Executive are being asked to authorise commencement of a tender process to identify a commercial partner able to provide all BTS fleet requirements on a Leasing With Maintenance basis. The advantages of this approach are that it will:

- Deliver a higher-quality vehicle fleet, giving improved services to the people of Brent
- Generate potential costs savings of **£1.18M – £1.5M** in the first four years of a ten-year programme
- Provide a fit-for-purpose, cost-effective maintenance regime via the partner, with associated transfer of future operational risk. Examples of risk that would be transferred include changes to legislation regarding emissions resulting in high vehicle conversion costs and capital investment in workshop equipment.
- Permit flexibility in daily operations to meet LBB's future changing transport requirements, as necessary. Leasing will provide greater flexibility in that vehicles will on average be leased for a period of 4 years with the potential to return vehicles early without incurring early penalty charges if requirements change prior to this time and vehicles are no longer required. In contrast, were the Council to pursue the option of outright purchase – holding many of the larger vehicles for a period of 7 years or more – and then subsequently decide to dispose of certain vehicles after 4 years due to a change in requirements, then the Council would face a disproportionate share of the depreciation costs at this stage.

It should be noted however that the original premise of the NKA report of setting up a 7-year contract is no longer pursued, as explained below.

- 3.9 All figures shown within the options appraisal have been agreed with the Council's FCR department (see tables in section 5). In addition, the Modernization of Transport in Brent project's Strategic Steering Group have agreed the Lease with Maintenance and outsourced Maintenance option.
- 3.10 Following the NKA report, consideration was given to a further option for the procurement and ongoing maintenance of the fleet. This option was for the leasing of vehicles from one or a number of suppliers with maintenance contracted separately from a single supplier. This option was not included within the final Fleet Options Appraisal presented to the Strategic Steering Group, as it was initially dismissed on the grounds that it would not provide value for money for the Council. The reason for this is that the hourly rate offered as part of a separate maintenance contract would not be competitive when compared to the hourly rate offered by a supplier who was also providing the vehicles (see figures at paragraph 3.7 above). A successful tenderer for a maintenance-only contract would have to cover the cost of TUPE (and required investment in the workshop facilities if Hirst Hall was the preferred location) within the hourly rate offered, without the

opportunity to spread their costs that a combined supplier and maintenance contractor would have. In addition, if the Council were to use a multi-provider framework agreement set up by a third party e.g. the Eastern Shires Purchasing Organisation, the cost of vehicles may be no cheaper than the Council will obtain from its own contract, because there are only indicative prices within these multi-provider frameworks and a mini-competition needs to be run for each call-off.

- 3.11 In evaluating the options for procuring the supplier for vehicle leasing and fleet maintenance, consideration has also been given to ways in which the arrangements could be made available to other councils within the West London Alliance. The context for this discussion is the identification of the sharing of transport services as a specific strand of future work by the WLA boroughs, with the Council's Director of Housing and Community Care taking the lead for this. However this WLA work is not a WLA priority at present, and one difficulty that has been identified is the very different ways that the WLA boroughs structure their transport services at present. It should be noted that the differences between the boroughs is not just in respect of vehicle supply and maintenance but also in the core role of passenger transport itself. Rather than Brent hold up its own urgent need to replace ageing vehicles, the basis of the recommendations in this report is that Brent presses ahead with its procurement but makes the contractual relationship as flexible as possible so that the other WLA boroughs can use what Brent has set up if it suits their own needs. Therefore at this very early stage of joint discussions it is proposed that what is set up is available for WLA members to benefit from these arrangements whilst ensuring that a single provider can both supply and maintain the vehicles for Brent and hence meet the Council's requirements. Whilst WLA co-operation may provide some limited opportunity for savings through improved buying power, the main purpose of pursuing an option that is open to other WLA members is to enable greater co-operation and co-ordination between authorities' transport services with a view to potential shared delivery in the future. As much flexibility as possible will be built into the arrangements to allow closer working in the future e.g. Brent will give no guarantee of volumes of new vehicles to its potential providers.
- 3.12 A meeting was attended on 27<sup>th</sup> November with other WLA members to discuss options for future collaboration on transport. The general consensus appeared to be that this is a worthwhile but longer-term goal. Of the other authorities present only one – Hillingdon – has expressed an interest in accessing a vehicle supply framework with Brent in the near future. Further discussions will take place with Hillingdon to enable them to participate in the Framework from its commencement, whilst other authorities will still be able to access the framework as required in the future.
- 3.13 Discussions have been held between NKA and the Council's procurement and legal services about the nature of the contractual

relationship that will be set up with the proposed single supplier. The three options are (a) a combined contract for supply and maintenance of vehicles, or (b) a separate Brent framework agreement for supply running alongside a maintenance contract for the leased and legacy vehicles, or (c) a single framework agreement split into two lots, one for supply and maintenance of new vehicles and one for maintenance of the legacy fleet. These options permit potential collaboration with other WLA members in different ways; for example all of the options could be run as a joint procurement with one or more other borough; alternatively where a framework is set up then other boroughs can call-off from these frameworks in the same way as Brent.

- 3.14 The essence of a contract (as opposed to a framework agreement) is that it gives certainty, but if a contract were to be awarded that included the supply element, the Council would have to commit to what it wanted supplied at the time of tendering, which would create difficulty for the Council in adapting to changing customer need. This made option (a) less attractive for the supply of new vehicles. With option (b), there were technical problems in that it would not be possible to include within one OJEU notice both a contract and a framework agreement; if there were two OJEU notices then the appointment of a single supplier could not be guaranteed. [By contrast the essence of a framework agreement is that it offers flexibility]. The cost disadvantages set out in paragraph 3.10 would also apply to option (b). For option (c), Lot 1 for the supply and maintenance of new vehicles is set up as an umbrella agreement that sets out the terms upon which individual orders for new vehicles plus maintenance will be called off over the period of the framework. What to include in each call off can be based on a review of needs and technical innovation at the time. For Lot 2, Brent will make a call-off of one service contract at the start of the framework. In relation to potential collaboration, both lots for option (c) will also allow for other boroughs to make call offs, whether for purchase of vehicles or for a main maintenance contract. The main disadvantage of a framework agreement is that where the EU public procurement regime applies, framework agreements cannot be for longer than 4 years, although any maintenance or leasing contract called off from the framework can be for longer than this, within reasonable limits.
- 3.15 In order to allow maximum flexibility to match future requirements with demand, and also allow use of Brent's arrangements by other WLA boroughs, but also to retain the single supplier model, contractual structure (c) as outlined in paragraph 3.12 is proposed. This will mean losing the advantage of a 7-year contract as set out in the Options Appraisal. However informal discussions have taken place with potential suppliers regarding the impact on the prices indicated in the Fleet Options Appraisal of using a 4-year Framework rather than a 7-year Service Contract for the supply of new vehicles (i.e. without guaranteed volumes and with a shorter contract length); initial feedback is that there is unlikely to be any adverse impact on the prices already indicated of procuring a Framework as opposed to a



Service Contract. The reason for there being no adverse impact on price through shortening the contract length is that the key determinant is the length of the lease agreement for each individual vehicle which, it should be noted, is different to the contract period. For example, the Council may take out a 4-year lease on a vehicle during the fourth year of the framework; this lease will continue after the expiry of the framework, even in the event that a new supplier is chosen for subsequent vehicle replacement, and the original provider will still be required to meet the service levels agreed contractually. The option has been considered of requiring the vehicle provider to terminate and/or transfer to a new provider any leases outstanding at the end of the 4 year framework, however this will have a detrimental impact upon the prices of the vehicles as a result of shortening the potential term.

- 3.16 As part of the tender process, tenderers will be required to identify the optimum lease periods for each vehicle that minimise the cost to the Council. Whilst longer periods may result in higher costs as a result of the number of years' maintenance that will be required (particularly following the expiry of the warranty period), shorter periods will also result in higher annual charges due to providers spreading the cost of their investment and depreciation of the vehicles over a lesser number of years. Experience in the market shows that the optimum period is in the region of 4 years for most vehicles, although this can be longer in the case of larger and more specialist vehicles.
- 3.17 In specifying proposed lease terms, the Council must provide tenderers with certain parameters to ensure that the leases are treated as operating leases (and hence funded from revenue) as opposed to finance leases (which would have implications for the Council's capital programme due to treatment of the vehicle assets as balance sheet items) in accordance with the draft CIPFA Code of Guidance and International Financial Reporting Standards. To ensure that the leases are treated as operating leases then the following parameters are required:
- The lease term must be less than the economic life of the vehicle
  - The total payments under the lease must be less than the fair value of the vehicle at the inception of the lease
  - No risks or benefits associated with the ownership of the vehicle are transferred to the Council (for example the option to purchase leased vehicles at a discounted price or to extend the original lease at a discounted rate)

#### **4.0 Pre-Tender and Procurement Considerations**

- 4.1 In accordance with Contract Standing Orders 88 and 89, pre-tender and procurement considerations are set out below for the approval of the Executive:

<b>Ref.</b>	<b>Requirement</b>	<b>Response</b>
(i)	The nature of the service.	Supply of leased vehicles incorporating maintenance; maintenance of all leased and owned fleet. To be procured through a single framework agreement split into two lots. It is proposed that tenderers will have the option of using the Council's existing site for maintenance, or using a site of their own.
(ii)	The estimated value.	Estimated contract value for both contracts £4.2 million over the 4 year period (including any ongoing lease costs over years 5 – 7 from vehicles leased in years 1 - 4).
(iii)	The contract term.	Likely commencement date July 2010
(iv)	The tender procedure to be adopted.	Formal tendering (including advertising) with a two stage (restricted) tendering procedure will be followed in accordance with Contract Standing Order 95 and the Public Contracts Regulations 2006: The first stage: expressions of interest invited with short-listing of interested organisations based on an evaluation of the pre-qualification questionnaire they submit. The second stage: invitation to tender will be issued to short-listed organisations.
(v)	The procurement timetable.	See Appendix D. It is proposed to adopt the restricted (two-stage) procedure.

(vi)	The evaluation criteria and process.	<p>A shortlist will be drawn up in accordance with the Council's Contract Management and Procurement Guidelines, using a pre-qualification questionnaire and thereby meeting the Council's financial standing requirements, technical capacity and technical expertise. The panel will evaluate the tenders against the following criteria:</p> <ul style="list-style-type: none"> <li>• Tendered prices ( 60% weighting)</li> <li>• Quality assessment (40 % weighting) (see Appendix B for further breakdown)</li> </ul>
(vii)	Any business risks associated with entering the contract.	<p>The following business risks are considered to be associated with entering into the proposed contract:</p> <p>Financial – A risk that interest rates may increase which may increase leasing costs</p> <p>Operational – The potential partner fails to meet the requirements of the contract. However, this risk is significantly reduced by the stringent procurement process.</p>
(viii)	The Council's Best Value duties.	The competition provided by the 2-stage tendering exercise will assist the Council in achieving best value for this service.
(ix)	Staffing implications including TUPE & pensions	See section 8.0. It will also be necessary to consider the impact of the Code of Practice on Workforce Matters and its requirement that those recruited to work alongside staff transferring from local authorities on the local government contract should be offered comparable terms and conditions to those transferring staff.
(x)	The relevant financial, legal and other considerations	This report has been reviewed by Legal, Finance and Procurement and any comments/additions incorporated. See also section 5 and 6.

4.2 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 88.

## 5.0 Financial Implications

5.1 Vehicle prices for the current fleet configuration and for alternative cheaper vehicles were reviewed to forecast costs for both Outright Purchase and Outsourced Leasing options, spread across a ten year

period. These prices were for benchmark purposes only. Future tenders would be likely to offer lower figures

- 5.2 During the key first four years, for the full vehicle fleet, Outsourced Leasing With Maintenance would offer savings of **£1.18M** over LBB Outright Purchasing. All leased vehicles would be replaced after four years. Outright Purchased vehicles would have to be replaced after seven years in order to avoid repeating the current precarious situation. Should alternative marques of vehicles be procured instead of the current Mercedes/Ford Transit fleet (a consideration if vehicles are only to remain on the fleet for four years), further savings of approximately **£300K** could be achieved, thereby raising projected savings to approximately **£1.5M** over 4 years. In addition, Outsourced Leasing With Maintenance would allow BTS to cut its full fleet annual budget maintenance provision of **£393,644** making a further saving against current baselined budget forecasts. LBB Officers have assessed the accounting treatment of these leases which they considered to be operating leases. As such, the associated vehicles would not be required to be identified as assets of the authority in the Balance Sheet and payments under the leases would solely be charged to revenue
- 5.3 Interest rates - especially in recent months - have remained very low. The effect of this on comparative costs has been to present the existing internal vehicle operating lease costs (which end in 2014) in a relatively unfavourable light as they were based on interest rates which were higher at the time of purchase than currently. In contrast, current indicative rates from suppliers reflect ongoing low interest rates. Any future procurement decisions must take into account that LBB could face a significant relative increase in financing costs - as recession eases and interest charges rise - when replacing vehicles in the future, thus making the Council's internal fleet finance operation appear less competitive than hitherto.

The table sets out the relative advantages of the different models of provision over both the 4 year initial term and a longer 10 year replacement period (10 years being the projected time to replace all the current fleet).

<b>Serial</b>	<b>Option</b>	<b>Year 4 Total</b>	<b>Year 10 Total</b>	<b>Remarks</b>
<b>(a)</b>	<b>(b)</b>	<b>(c)</b>	<b>(d)</b>	<b>(e)</b>
1	In House Outright Purchase + BTS Maint	<b>£4,728,067.36</b>  Discounted Cash Flow - <b>£4,319,600</b>	<b>12,291,258.98</b>  Discounted Cash Flow - <b>£10,078,609</b>	Vehicles replaced again after <b>7</b> years
2	Outsourced Leasing + Maint	<b>£3,544,755.97</b>  Discounted Cash Flow - <b>£3,235,080</b>	<b>12,315,520.69</b>  Discounted Cash Flow - <b>£9,981,386</b>	Vehicles replaced every <b>4</b> years. Complete Fleet leased after <b>9</b> years when near steady state achieved
3	Outsourced Leasing only + BTS Maint	<b>£4,459,065.57</b>  Discounted Cash Flow - <b>£4,075,058</b>	<b>14,565,334.07</b>  Discounted Cash Flow - <b>£11,853,396</b>	BTS Maint @ <b>£60.8</b> per hour vice Leasing Company's <b>£40</b> per hour

*\* Figures relate to the full BTS Fleet*

*Note – the discount rate applied is 3.5%*

- 5.4 Although qualitative factors are considered important in evaluating tenders (accounting for 40% of the evaluation – refer to appendix B) the challenging financial position means that price has been given a higher overall relative weighting, accounting for 60% of the evaluation, thereby meeting the requirement to use the most economically advantageous tender as a basis for the evaluation.
- 5.5 Appendix A (Fleet Funding Option) identifies how the vehicle passenger transport replacement programme could be funded over a ten year period, with minimal impact to existing budgets. In summary, the current vehicle purchasing, lease payment and maintenance budgets could be re-directed to contribute to the new leasing charges incurred for BTS's vehicles. By uplifting the vehicle purchasing budget by £30,000 per annum from Year 1 of the programme and increasing the utilisation of vehicles - thus reducing vehicle replacement requirements from Year 6 - BTS' budget would not incur a deficit until Year 10. The deficit in Year 10 would amount to £50,642. However, if no vehicles were purchased during 2009/2010, the current year's £306,000 vehicle purchase budget could be carried forward, thereby covering the Year 10 deficit and producing a surplus of £255,358.

## **6.0 Legal Implications**

### **Statutory Requirements**

- 6.1 The availability of a vehicle fleet to the Council is essential to the operation of the Council and the discharge of various of its functions in the course of providing services across the community. Moreover, the Council has powers (and in some instances the duty) to make provision for the transportation of children with SEN, vulnerable adults and others under (amongst other provisions) ss312 to 324 of the Education Act 1996, s21, s26 and s29 of the National Assistance Act 1948, s45 of the Health Services and Public Health Act 1968, s2 of the Chronically Sick and Disabled Persons Act 1970 and s2 of the Local Government Act 2000, all in conjunction with s111 of the Local Government Act 1972 (see 5.2 below).
- 6.2 Under section 111 of the Local Government Act 1972, local authorities have the power to do anything calculated to facilitate the discharge of their functions. Section 111 specifies that this power extends to the power to do anything which is incidental to their functions. This empowers the Council to purchase and maintain vehicles to discharge the main functions referred to in the previous paragraph.
- 6.3 By virtue of section 1 of the Local Government (Contracts) Act 1997, local authorities are empowered to enter into contracts for the provision of assets (which are specified in the section to include vehicles) for the discharge of their functions.
- 6.4 Failure to approve measures to maintain an effective BTS fleet would lead to a sharp decline in operational service delivery, thereby adversely impinging on LBB's capability to meet its statutory ASC and C&F transport responsibilities.

### **Procurement Requirements**

- 6.5 Lot 1 of the proposed framework agreement will lead to the individual call-off contracts being awarded that are a combination of supplies and Part A services (maintenance of vehicles). Lot 2 of the proposed framework agreement will allow Brent and other WLA boroughs to make a call-off of a vehicle maintenance contract (Part A services). Given the estimated value of the proposed framework agreement over its lifetime and the nature of what is being procured as a mixture of supplies and Part A services, the tendering of the contract is subject to the full application of the European public procurement regulations ("the EU Regulations"). The award is also subject to the Council's own Standing Orders and Financial Regulations in respect of High Value Contracts.

## **Use of Land consideration**

- 6.6 It will be necessary to consider the basis upon which Hirst Hall is made available to tenderers for them to use if they wish. This could be done on the basis of it being available at a minimal rent or discounted rent, or at a market rent. Under section 123 of the Local Government Act 1972, a disposal of land by way of a short tenancy for 7 years or less does not require the Council to obtain “the best consideration reasonably obtainable”. This will need to be agreed with the Council’s Property and Asset Management Service prior to tender despatch.

## **Workforce Matters**

- 6.7 The considerations for the current Council staff are addressed in section 8 below. It is also necessary to consider the impact of the Code of Practice on Workforce Matters in Local Authority Service Contracts, where it relates to additional non-TUPE staff recruited to work on the Brent contract. The Code requires the successful tenderer who recruits new staff to work on a local authority contract alongside former local government staff, to offer those recruited staff fair and reasonable terms and conditions (excluding pensions) which are, overall, no less favourable than those of the former local government staff. The Code further requires the Council to make these requirements legally binding on the contractor through contractual terms. Should the Executive give approval to the invitation of tenders then it will be necessary for the Council to consider the guidance and decide whether to apply the Code by making some or all of these requirements legally binding on the successful tenderer. In coming to the decision it will be necessary for the Council to consider in respect of each of the Code requirement, the respective costs and benefits of making that requirement legally binding on the successful tenderer.

## **7.0 Diversity/Equality Implications**

- 7.1 The proposal to change the way that the Council procures its vehicles is not considered to have any diversity implications. A Diversity/Equality Impact statement has been prepared in relation to outsourcing of the in-house maintenance service by Brent Council’s HR department. It is shown at Appendix C.

## **8.0 Staffing Implications**

- 8.1 At the point in time when the Council calls off a maintenance contract from the new framework for the legacy fleet (lot 2), there will be a TUPE transfer for the current BTS workshop staff (Workshop Manager and 3-4 Fitters). This should be addressed through the Council’s HR and Legal department at the earliest opportunity. The staff may well prefer that all maintenance is centred on the existing workshops at Hirst Hall, thereby permitting a smooth transition. However as it is

proposed to let tenderers decide whether or not to use Hirst Hall, this continuity cannot be guaranteed. Where a TUPE transfer involves or will involve a substantial change in working conditions to the material detriment of an employee who TUPE transfers or who would TUPE transfer, it is open to that employee to resign and claim constructive unfair dismissal. The relocation of a workplace as a result of a TUPE transfer could be such a substantial change. Therefore if the contractor decides not to use Hirst Hall then depending on the location of the new workshops there is a risk some or all of the BTS workshop staff could refuse to transfer and bring successful unfair dismissal claims against the Council. If a member of the BTS workshop staff objected to TUPE transferring then their employment with the Council would end at the point when s/he would otherwise have TUPE transferred. Such an objection would not prejudice his/her ability to claim constructive unfair dismissal as stated above. These issues would need to be addressed in discussions between the Council, the contractor, the staff and the staff's recognised trade union(s) prior to the transfer.

- 8.2 Where the whole or part of a Council service is outsourced, the Council has a legal obligation to include in the contract a term requiring the contractor to secure pension protection for Council employees who transfer under TUPE to the contractor or to a sub-contractor of the contractor as a result of the outsourcing. In order that pension protection is secured for these employees they must, as employees of their new employer, have rights to acquire pension benefits and those rights must be the same as, or count as being broadly comparable to or better than, the Local Government Pension Scheme. This applies to employees who are members of the Local Government Pension Scheme as well as those who have a right to join it. As a result of the direction the contract must also allow each of the transferring employees to enforce against the contractor its obligation under the contract to secure pension protection for that transferring employee (i.e. to bring legal proceedings against the contractor for breach of contract if the obligation is not complied with). Council policy and the Best Value Code of Practice in Workforce Matters in Local Authority Service Contracts also place an obligation on the Council to offer pension protection.

## **9.0 Accommodation Implications**

- 9.1 The Council holds a five year lease on the premises at the East Lane Industrial Estate - including Hirst Hall - from 29 September 2008 expiring in September 2013 at an annual rent of £188,650 per annum exclusive. It is proposed that tenderers will be offered the use of the workshop in Hirst Hall, but they may not take up this option. The tender evaluation will need to take into account the financial impact of any bid that involves the use of alternative premises to Hirst Hall in terms of the reallocation of overheads and business rates across the remaining site occupied by the Council and the cost of and ability to sublet the workshop area to another tenant.



## **10.0 Background Papers**

- Brent Transport Services: Fleet Options Appraisal
- Fleet Procurement Option Appraisal

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### **Appendices:**

- A. Fleet Funding Options**
- B. Evaluation Criteria**
- C. Equality Impact Assessment**
- D. Procurement Timetables**