



**Executive**  
26 July 2010

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

Wards affected:  
All

**Authority to invite tenders for a managed service for the supply of  
staff services for Brent transport services**

## 1.0 Summary

- 1.1 Brent Transport Services (BTS) provides passenger transport services for Council clients with Special Educational Needs and those in receipt of Adult Social Care support. It currently operates most of its 92 daily routes with a workforce of 204 drivers and passenger attendants that is comprised mostly of temporary staff provided by 4 employment agencies. These staff generally work on a 'split shift' basis to meet the needs of BTS' core morning and afternoon activities. This long standing arrangement has proved to be highly cost effective and flexible in comparison with the employment of permanent Council staff to carry out these duties. However, no formal contracts are in place with the agencies concerned; and the impending implementation of the EU Agency Workers Directive (AWD) in October 2011 would result in a significant increase in BTS' wage costs<sup>1</sup> if these arrangements continue, because the AWD requires parity of pay, and some other benefits, between temporary and permanent employees.
- 1.2 A review has been undertaken to consider the options for the future provision of drivers and passenger attendants and it has been concluded that the letting of a Managed Service contract offers the best solution to contain costs, maintain service levels and standards and ensure that the requirement is subject to open competition.
- 1.3 This report requests approval to invite tenders in respect of a 'Managed Services for the Supply of Staff Services' contract for Brent Transport Services, as required by Contract Standing orders 88 and 89, to commence in April 2011.

## 2.0 Recommendations

- 2.1 The Executive to give approval to the pre-tender considerations and the criteria used to evaluate tenders for a managed service for the supply of staff services for BTS as set out in paragraph 7.0 of this report.
- 2.2 The Executive to give approval to officers to invite tenders for a managed service for the supply of staff services and evaluate them in accordance with the approved evaluation criteria referred to in paragraph 2.1 above.

<sup>1</sup> £2.1M in FY 09/10 out of the BTS budget of £6M .

### 3.0 Background

3.1 The current BTS workforce of drivers and passenger attendants is comprised as follows:

	<b>Drivers</b>	<b>Passenger Attendants</b>
Temporary Staff	86	101
Council Staff	6	11
<b>Total</b>	<b>92</b>	<b>112</b>

3.2 The number of temporary staff is reasonably stable but varies flexibly to meet the needs of BTS' tasks as generated by customer departments.

3.3 The ongoing 'Modernising Transport' project - a Performance Partnership contract between Brent Council and Northgate Public Services - has reviewed the hours worked by temporary staff to ensure that, as far as possible, they are employed and paid only for the hours required to carry out BTS' tasks. In addition, following a review last year, passenger attendants required for contracted routes (i.e. those not delivered by the in-house service) are now provided by the relevant private hire contractor rather than through BTS, as this was proven to be more cost effective.

3.4 Safety and safeguarding have always been paramount in the provision of transport services by BTS. Temporary staff are fully vetted and trained to meet BTS' requirements and although employed on 'temporary' terms, many have worked with BTS for several years and the turnover of staff is low. In BTS' experience, most temporary staff have proved to be well-motivated and enthusiastic about their role and many appreciate the employment flexibility that working for BTS provides.

3.5 The hourly rates charged to BTS by the 4 agencies concerned are broadly similar and are reviewed annually in conjunction with the Head of Brent Transport Services. Whilst the rates charged to BTS, and those paid to staff by the agencies, are thought to match local market rates broadly, this has not been tested through any formal competition in recent years, and it cannot be certain that the current rates represent the best that can be achieved. Moreover, whilst the use of 4 agencies provides a degree of flexibility and spare capacity to provide additional staff when BTS need them, this must be set against the possibility that a single contracted supplier would provide the full requirement at lower cost, given the basis of the volume of business involved. In addition, although the Council's corporate requirement is that all agency workers should be supplied through its temporary staff management contract, currently with a company called Commensura, this has not yet been extended to include BTS (see below). Finally, although contracts for individual agency workers are excluded from the application of Brent's own Contract Standing Orders, block contracts for the supply of a number of workers are arguably not exempt. Therefore the lack of any competitive tender for staff provision at a current annual cost of some £2.1m may be in breach of Council Standing Orders. All of these factors point towards the requirement being exposed to competitive tendering arrangements for a single supplier as soon as possible.

3.6 As an alternative to a competitive tender, BTS has investigated the possible use of Comensura. This contract is used by Brent Council to meet its wider temporary staff requirements, and operates on a Vendor Neutral Managed Services (VNMS) basis to provide the Council with temporary staff. Comensura do not recruit temporary staff directly but enter into agreements with one or more agencies to provide staff to the Council at agreed rates. However, after further investigation it is clear that the provision

of temporary staff through this Framework would invoke all the provisions of the AWD (see below), with its consequent impact on BTS' costs, and that the contract does not offer the degree of day-to-day operational flexibility and control that would be necessary to accommodate BTS' specific and dynamic requirements.

- 3.7 The remaining small number of permanently employed full-time Council staff are utilised to the maximum possible on BTS' transport tasks. However, they are paid significantly more than temporary staff on a comparative hourly-rate basis<sup>2</sup> and the current intention is to continue to reduce the number of permanent posts through 'natural wastage' as individual employees retire or otherwise leave the Council's employment.

#### **4.0 Impact of the Agency Workers Directive**

- 4.1 The UK is to implement the EU Agency Workers Directive in Oct 2011. In broad terms, the Directive requires that temporary staff should receive 'parity' of pay with permanent employees within the same employing organisation, after 12 weeks of employment. In some organisations, the pay of temporary staff, pro-rata, is higher than that of permanent staff in any case, so implementation of the AWD would have little cost impact. However, in the case of BTS, permanent staff are relatively well-paid in comparison with their temporary counterparts, and it has been calculated that implementation of the AWD would result in an increase in the annual wage bill for temporary staff of 25-30%, amounting to some £500k - £600k. Set against an overall BTS budget of just under £6M, and in the current financial climate, such an increase in cost is considered unacceptable and unaffordable.
- 4.2 Until recently, it had been thought by some employers that it would be possible to avoid the impact of the AWD on wage costs through various means including arranging 'breaks in service' such that temporary staff would not cross the 12-week threshold of employment. However, recent advice from the Department of Business, Industry and Skills, indicates that the UK's implementation of the AWD will not permit such arrangements, so as to ensure that the intent of the legislation is delivered.
- 4.3 The BTS review, which has taken account of advice received from the Council's HR and Legal staff, has concluded that it will neither be possible nor practicable for BTS to avoid the cost impact of the AWD if it continues to employ temporary staff to meet its needs. Moreover, the proposed use of the contract with Comensura would offer no relief because the staff provided under this contract would still be considered as temporary agency staff under the AWD.

#### **5.0 Options Considered**

- 5.1 The Strategic Steering Group (SSG) for the 'Modernising Transport' project considered 4 options for the future provision of staff for BTS; briefly, these were:

**5.1.1 Employment of Temporary Staff Through Agencies.** BTS would continue to employ temporary staff in compliance with the requirements of the AWD from Oct 11. This would require a competitive tender procurement in order to ensure compliance with the Council's Standing Orders, or use of the existing Brent contract with Comensura. However, this adoption of this option would invoke the requirements of the AWD and add an estimated £500-600K to BTS' wage costs.

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<sup>2</sup> For drivers the equivalent rate of pay is £10.11/hr for Council staff vs. £7.50/hr for agency staff.

- 5.1.2 **Employment of Permanent Staff.** BTS would replace all of its temporary staff with permanent staff employed on flexible contracts designed to match working hours with BTS' task requirements, as far as possible. On the assumption that such new staff would be paid the same as current BTS permanent staff, adoption of this option would invoke the same additional cost as the continued employment of temporary staff plus the further additional 'on-costs' (eg pension provision etc) associated with the employment of permanent staff, making this a more expensive option than the current arrangements and more expensive than the Managed Service option described below.
- 5.1.3 **Managed Service Contract.** Under this option, BTS would seek a single 'Managed Service' partner to carry out the majority of its service requirements for the crewing of vehicles. Staff employed by the Managed Service contractor would generally be employees of that contractor, rather than temporary staff, and the 'pay parity' requirement of the AWD would not apply in relation to the rates of pay of the Council's permanent staff who would continue to work as Council employees alongside the staff employed and provided by the contractor. This would require a competitive tender procurement in order to ensure compliance with the Council's Standing Orders. It might be envisaged that many of the current temporary staff employed by BTS and provided by agencies would either transfer under TUPE<sup>3</sup> to the successful bidder for a Managed Service contract, or simply migrate to the contractor, if they did not have employee status with their agency, as such a move would offer the additional benefits to them of being an employee; this would help to maintain 'continuity' in service provision for users. Indicative costings received from 2 major companies in the market, which are familiar with BTS' operations, indicate that costs would be slightly lower than the current arrangements.
- 5.1.4 **Full Outsource of the BTS Service.** If no other means could be found to mitigate the impact of the AWD on staff costs, it would be necessary to consider fully outsourcing the BTS service for the provision of vehicles and crews to an external contractor. This would require a competitive tender procurement in order to ensure compliance with the Council's Standing Orders and EU regulations. Under this option, it would be necessary to transfer the remaining BTS permanent staff to the contractor under the TUPE provisions, but there would be no 'pay parity' requirement between the contractor and the Council under the AWD provisions. However, previous modelling of this option in the early stages of the 'Modernising Transport' project has shown that it would be likely to more expensive than the current arrangements given that, in effect, much of the BTS service is already 'outsourced' - contracted private hire services are used only where proven to be cheaper than the in-house provision, staff costs have been 'optimised' by the use of temporary staff who only work for the hours required to undertake BTS' tasks, and vehicle provision and maintenance is currently being procured on a 'contract hire' basis following an extensive options appraisal last year. Given the additional overhead of a management fee (profit margin) implicit in outsourcing the full service, it is considered that outsourcing would be more expensive than the current arrangements and, by extension, even more expensive than the Managed Service option discussed above.

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<sup>3</sup> Where the individual was an employee of an existing provider to BTS and transferred to another company that bid successfully for the contract. There would be no direct TUPE obligation on the Council in this scenario as these individuals are not employees of the Council.

5.2 **Preferred Option.** Considering the options described above, the SSG concluded that only a Managed Service solution for the future provision of staff would contain or reduce BTS staff costs and, therefore, is the preferred way forward.

## 6.0 Conclusions

6.1 BTS cannot continue to operate without contractual cover for the provision of temporary staff an annual cost of over £2m. Additionally, the predicted impact of the AWD would add 25-30% to this cost if BTS continues to employ temporary staff beyond October 2011.

6.2 Of the options considered for the future provision of staff for BTS, the procurement of a Managed Service contract is the preferred option to avoid the significant cost impact of AWD and to ensure that proper contractual cover is provided.

6.3 By moving to a 'Managed Service' contract the following benefits would also be realised:

- A flexible workforce that is fit for purpose with the ability to quickly react to variations in staffing requirements.
- Any decrease in service need that might be anticipated can be managed without the potential redundancy costs that would be associated with a large complement of permanent staff.
- Cost mitigation as staff are employed directly by the Managed Service provider and not on local government benefit schemes.
- On-site resource from contractor to manage all recruitment, selection, sickness absence and discipline of their staff.

## 7.0 Pre-Tender and Procurement Considerations

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

Ref.	Requirement	Response
(i)	The nature of the service.	Provision of a 'Managed Service for the supply of staff services for Brent Transport Service.
(ii)	The estimated value.	Estimated contract value £8 million over the 4 year period (3 years with an option to extend up to a further 1 year in aggregate) of the contract.
(iii)	The contract term.	3 years with an option to extend for up to 1 year. Likely commencement date April 2011.

(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 (S96 (c)): 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.	<p>Adverts placed in trade journal and local publication for expression of interest.</p> <p>PQQ Return Date</p> <p>Evaluation of PQQ</p> <p>Invite Tenders</p> <p>Tender Return Date</p> <p>Tender Evaluations</p> <p>Award Report to Executive</p> <p>Contracts Awarded</p> <p>Contract Start</p>	<p>2 Aug 10</p> <p>10 Sep 10</p> <p>8 Oct 10</p> <p>15 Oct 10</p> <p>19 Nov 10</p> <p>10 Dec 10</p> <p>Jan 11</p> <p>Jan 11</p> <p>1 Apr 11</p>
(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. Once tenders are received, the panel will evaluate the tenders against the following criteria:</p> <p>Tendered prices (60% weighting)</p> <p>Quality assessment (40 % weighting)</p> <p>Proven ability to meet the requirements of the service specification</p> <p>Approach to the delivery of the service</p> <p>Approach to ensuring standards are achieved</p> <p>Development of a good working relationship with the council</p> <p>Capacity and continuity of service</p> <p>Training</p> <p>The relative weighting given to each individual evaluation criteria will be stated in the tender documentation.</p>	

(vii)	Any business risks associated with entering the contract.	The following business risks are considered to be associated with entering into the proposed contract: The potential partner fails to meet the requirements of the contract. However, this risk is significantly reduced by the stringent procurement process.
(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	There are no TUPE implications for Council staff as stated in paragraph 9.1. There may be TUPE implications for the current temporary staff depending upon whether they are classified as employees of the agencies who seek work on their behalf.
(x)	The relevant financial, legal and other considerations	This report has been reviewed by Legal, Finance and Procurement and any comments/additions incorporated. The new contractor would be responsible for training and vetting employees to Brent standards before deploying them to the contract.

## 8.0 Financial Implications

8.1 As stated in paragraph 6.1 above, the introduction of the AWD would result in an increase in BTS staff costs of between 25-30%, amounting to approximately £500k - £600k on current staff costs of £2.1M, if the current arrangements for the provision of staff were to continue. This needs to be seen in the context of a total budget of just under £6M for the entire transport service. There is no provision for growth of this scale in BTS' costs.

8.2 Based on the estimated 'core hours' required for Drivers and Passenger Attendants, the estimated annual comparative costs for the financial year 2010-11 would be:

Option	Drivers	Passenger Attendants	Total
Current Cost <sup>4</sup>	£933k	£735k	£1,668k
Temporary Staff <sup>5</sup>	£1155k	£951k	£2,106k
Permanent Staff <sup>6</sup>	£1,182k	£997k	£2,179k
Managed Service I <sup>7</sup>	£816k	£813k	£1,629k
Managed Service II <sup>8</sup>	£907k	£699k	£1,606k

<sup>4</sup> Based on current agency rates before application of AWD

<sup>5</sup> Estimated cost of agency-provided staff after application of AWD

<sup>6</sup> Estimated cost of permanent staff at highest spine point

<sup>7</sup> Illustrative cost provided by commercial provider

<sup>8</sup> Illustrative cost provided by commercial provider

8.3 The above analysis shows that the Managed Service would be the cheapest option and would be marginally cheaper than the current arrangements. It is not possible to obtain illustrative costs for a fully-outsourced option without full exposure to the market, but previous modelling has shown that this would be more expensive, in terms of the total cost of provision of the BTS service, than the current arrangements.

## **9.0 Legal Implications**

9.1 The estimated value of the proposed managed service contract for the supply of personnel will over its lifetime exceeds the EU threshold for services contracts. However such a service is categorised as a Part B service under the Public Contracts Regulations 2006 ('the EU Regulations') and is therefore exempt from the main requirements of the EU Regulations about how the service needs to be tendered. However the Council still needs to comply with general duties set out in the EU Regulations, such as the duty to act fairly and transparently, and the need to use non-discriminatory language in specifications.

9.2 In addition, as the estimated value of the proposed contract over its lifetime is in excess of £500,000, the procurement and award of the contract are subject to the Council's Contract Standing Orders and Financial Regulations in respect of High Value Contracts. Consequently the Executive needs to approve the tendering of this contract and also the tender strategy, including evaluation criteria.

9.3 Once the tendering process is undertaken, officers will report back to the Executive in accordance with the Contract Standing Orders, explaining the process undertaken in tendering the contracts and recommending award.

9.4 The contract with the new contractor will impose strict requirements on the contractor in relation to training and vetting of the staff, with a corresponding right for the Council to monitor this. This is especially important in light of the anticipated implementation of the Vetting and Barring Scheme under the Safeguarding Vulnerable Groups Act (though this is currently being reviewed by the new Coalition government). Failure by the contractor to comply with the scheme may also mean that the Council attracts liability. Nevertheless, BTS is experienced in managing similar risks inherent in the execution of contracts for the provision of contracted taxi/bus services and similar provisions for managing and monitoring compliance will be included in this contract.

## **10.0 Diversity/Equality Implications**

10.1 An Equalities Impact Statement (attached as Appendix A) has been undertaken as part of this review. There are no adverse implications.

## **11.0 Staffing Implications**

11.1 There are no TUPE implications for the small number of Council-employed drivers and passenger attendants in BTS who would continue to work alongside the staff provided through the new 'Managed Service Contract' in the same way that they currently work alongside temporary staff provided by agencies.

11.2 The current temporary workers supplied through the current arrangements with four agencies may transfer under TUPE from their agency to the successful bidder, depending upon whether they are classed as employees of the agencies.



## **12.0 Accommodation Implications**

12.1 There are no accommodation implications.

### **Background Papers**

None

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### **Appendices:**

**A. Equality Impact Assessment**