

From: Simon Jones, Corporate Director, Growth, Environment and Transport

To: Peter Osborne, Cabinet Member for Highways & Transport

Subject: **To extend current Dynamic Purchasing System (DPS) framework SS 15096 Supported Local Bus & Home to School Transport**

Key Decision: **25/00078**

Classification: **Unrestricted**

Electoral Divisions Affected: **All**

Summary:

The current DPS framework expires on the 31st of December 2026 and under the new Procurement Act 2023, there is no like for like replacement. To provide suitable time for alternative procurement frameworks to be fully explored and a new commercial strategy to be developed, it is proposed to extend the current DPS to 23rd February 2029. Such an extension is allowed under the Procurement Act 2015.

Recommendation: The Cabinet Member for Highways and Transport is asked to agree the proposed decision to:

EXTEND the current DPS framework for SS15096 Supported Local Bus & Home to School Transport from its current expiry of 31st December 2026 to 23rd February 2029.

ENABLE the development of an appropriate commercial strategy, taking account of the procurement options available under Procurement Act 2023.

DELEGATE authority to the Director of Growth, Environment and Transport to approve the DPS extension report, as prepared by Commissioning and Procurement.

DELEGATE authority to the Corporate Director of Growth, Environment and Transport to take other necessary actions, including but not limited to entering into contracts or other legal agreements, as required to implement the decision as shown at Appendix A.

1. Introduction

1.1 Since the 1st of January 2017, the procurement of supported local bus and mainstream home to school transport has been through a Dynamic Purchasing System (DPS), compliant with the Public Contracts Regulations 2015 (PCR2015). This framework for procurement was chosen following an exhaustive evaluation and it was chosen for the flexibility it provided for procurement, especially at short notice.

- 1.2 The DPS is due to expire on the 31st of December 2026 and Public Transport alongside colleagues in Procurement and Commissioning have been examining the options available under the Procurement Act 2023.
- 1.3 Under the new act there is no comparable replacement for a DPS and so, to provide further time to evaluate a new commercial/procurement strategy, this paper seeks to extend the current DPS from 31st December 2026 to 23rd February 2029. Under the Procurement Act, any DPS extension must be made by 23rd February 2026, and the latest it can run is to 23 February 2029.

2. Background

- 2.1 Kent County Council (KCC) has a statutory duty to provide home to school transport for eligible children of compulsory school age under the Education Act 1996. As the Local Transport Authority, KCC also has a duty under the Transport Act 1985 to provide socially necessary public passenger transport services where the requirements for such would not otherwise be met, for example by a private or commercial operator.
- 2.2 The annual budget for supported local bus services is £6.2M and the budget is held by Growth, Environment and Transport. The annual budget for mainstream home to school transport is £13.5M and held by Children's, Young People, and Education. (CYPE).
- 2.3 This leads to a need to contract from bus and coach operators (known as Public Service Vehicle Operators (PSV)), be it for a local registered bus service or a contract transporting children from their home to a local school.
- 2.4 Most of the requirement is centred on local registered bus service, with the smaller requirement being contracted home to school transport workings.
- 2.5 The Supported Local Bus (including Kent Karrier) and Home to School Transport Services DPS was established as a route to market to meet both obligations. This route to market was determined following a full review of the procurement options/frameworks available to the service. It sought feedback from other local authority transport teams, in particular their preferred procurement routes and benefits of. Approval of the route to market involved full engagement with a range of stakeholders across the authority.
- 2.6 The DPS allows the Public Transport Team to run competitive and PCR2015-compliant tenders with pre-qualified Public Service Vehicle (PSV) Operators for the provision of bus and coach services.
- 2.7 Supported Local Bus Services and Home to School Transport services are generally tendered on a cyclical basis, but circumstances do occasionally arise where the facility to seek bids on an accelerated basis is necessary. KCC commits to have transport in place for eligible children within six weeks of the application being made, and this includes the time CYPE needs to process the

details, so there are occasions where the requirement is not passed to Public Transport with enough time remaining for a full 30-day tender window. Additionally, an Operator may give 30 days' notice to terminate a contract, in which case an alternative provider must be sought.

- 2.8 Furthermore, the DPS includes the facility to directly award de-minimis (low value) contracts, including small additions to an existing contract and in emergencies, where a supplier becomes insolvent or has their PSV licence revoked by a Traffic Commissioner and an alternative is required the next morning.
- 2.9 The DPS commenced on 1st January 2017 with a 10-year lifespan and estimated total value of £100 million and stands to conclude on 31st December 2026.
- 2.10 When the DPS was set up in 2016, the Public Contract Regulations 2015 applied. However, as of 24th February 2025, any new procurement or purchasing mechanism is subject to the Procurement Act 2023, which provides new procurement processes but does not have a directly comparable replacement for Dynamic Purchasing Systems. Under the Procurement Act 2023 (PA23), there is no longer the option to establish new Dynamic Purchasing Systems. However, two new arrangements were introduced: Open Frameworks and Dynamic Markets. These options have been explored and assessed, and it has been determined that they are not currently viable routes to market for this service. In addition, 'Guidance: transitional and saving arrangements' was published to advise on managing the changeover from the previous legislation, including the lifespan of extant DPSs. With the current DPS set to expire at the end of next year, several options for fulfilling KCC's statutory obligations have been identified and evaluated.
- 2.11 The service, following consultation with colleagues in Commissioning and Procurement, still believe that a DPS provides a procurement framework, that meets its needs in terms of being procurement compliant, is resident/client focused, is flexible, is resource efficient, allows planned tendering but also short-term tendering, even for urgent needs. Allows direct award de-minimus contracts, which are useful in this arena. Therefore, to not have a comparable replacement for the DPS under the new Procurement Act 2023, poses a risk to how the service tenders transport and ultimately users.
- 2.12 This is not an issue unique to Kent, several local transport authorities (those tender transport contracts) have conveyed to national government the risk of not having a DPS replacement and the limits that the procurement options available bring to transport tendering. It is hope that this may see changes brought forward by national government. The recognition of this gap in the Procurement Act has led to the allowance for DPSs to continue under transitional provisions until 23 February 2029.

- 2.13 Options to extend the DPS were not published within statutory notices, as traditional extensions typically do not apply to this form of purchasing mechanism as they do to Framework Agreements and Contracts. The spend to date is approximately £65 million over the first eight years.
- 2.14 DPSs live at the time the new Act came into effect must expire by no later than 23rd February 2029. The current termination date is 31st December 2026 but can be varied as described in Section 34 and regulation 72, of the Public Contract Regulations 2015.
- 2.15 Extending the term of the current DPS would minimise service disruption by retaining processes which KCC staff and Suppliers are already familiar with. Additionally, it offers relative stability in the medium-term, while the potential impacts of Local Government Reform crystallise. Whilst this still does not directly resolve the matter of the route to market beyond 23rd February 2029, it does offer an interim solution which can be delivered, while work progresses to develop a longer-term commercial strategy.

3. Financial Implications

- 3.1 There are no financial implications from this extension of the DPS, as all spend through the DPS is agreed, either by key decisions already in force or through the authority's budget setting process.
- 3.2 The framework still provides best value to the authority, as all tenders (commissions) that are run through the framework is market tested, i.e. the lowest compliant bid is the winning bid and all bids are ranked. Every tender issued through the framework is available to all suppliers on the framework.

4. Options (other options considered but discarded)

- Procuring under PCR15
- Dynamic Markets
- Open Frameworks

5. Legal Implications

- 5.1 Appropriate legal advice was taken in respect of extending the current DPS until 23rd February 2029. Advice was sought from KCC's legal team, and an appropriate legal organisation was commissioned to provide the advice.
- 5.2 That advice set out a recommended approach for making the modification, including the use of safe harbour provisions under the regulations, which aligns with both the Public Contracts Regulations and the Procurement Act.
- 5.3 On which basis, there are no legal implications.

6. Equality implications

6.1 An EqlA has been undertaken and there are no equality implications.

7. Other corporate implications

7.1 It should be noted that in extending the DPS arrangement, this is to provide time to explore the opportunities under the Procurement Act 2023 for an arrangement, that whilst complying with the new regulations, provides the flexibility in tendering currently enjoyed.

7.2 As such work will continue, between the service, Public Transport, and Commissioning and Procurement, to determine a post Feb 2029 arrangement.

8. Governance

8.1 Subject to key decision, the extension report in respect of the DPS will be prepared by Commissioning and Procurement, to be approved by the Corporate Director of Growth, Environment and Transport.

9. Recommendation

The Cabinet Member for Highways and Transport is asked to agree to:

EXTEND the current DPS framework for SS15096 Supported Local Bus & Home to School Transport from its current expiry of 31st December 2026 to 23rd February 2029.

ENABLE the development of an appropriate commercial strategy, taking account of the procurement options available under Procurement Act 2023.

DELEGATE authority to the Director of Growth, Environment and Transport to approve the DPS extension report, as prepared by Commissioning and Procurement.

DELEGATE authority to the Corporate Director of Growth, Environment and Transport to take other necessary actions, including but not limited to entering into contracts or other legal agreements, as required to implement the decision as shown at Appendix A.

10.0 Appendices

Appendix A – Record of Decision
EqlA

11. Contact Details

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