

Tendering Road Passenger Transport Contracts Best Practice Guidance

Department for Transport

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Document Information

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Document provenance

This document provides best practice guidance for everyone involved in procuring road passenger transport. It updates previous guidance (The TAS Partnership, 1999; Atkins, 2005), with an expanded scope from public bus to other forms of passenger transport. The scope has also been expanded to include Scotland and Wales.

This document has been prepared by Atkins Ltd and The TAS Partnership Ltd in good faith, based on professional expertise, experience, and intensive consultation with a number of transport and procurement professionals.

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Foreword



The recommendations in this revised guidance will save money. That is the clear message throughout.

Adopting the right structures and practices by those within public authorities that fund and secure tendered services can have a huge impact on value for money. Whether it is streamlining administrative procedures, improving relations with local operators or changing the way tender documents are prepared to encourage more bidders, this will all help to maximise the return on the estimated £2billion each year that UK public authorities spend supporting road passenger transport services.

I strongly urge everyone to take on board the recommendations in this Guidance, as it will result in real improvements to the delivery of supported transport services, which provide a vital lifeline.

A handwritten signature in black ink that reads "Kramer". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

BARONESS KRAMER

Minister of State for Transport

Executive Summary

Across the country, publicly funded road passenger transport supports individuals to access work, education, health, shopping, leisure and a host of other activities that contribute to social life. With some £2billion being spent annually by public agencies in this sector under pressure from considerations of financial sustainability, social equity, contribution to regeneration and environmental impact, the importance of extracting the best possible outcomes from the resources has never been greater.

This guidance has been produced to help in this task. It is designed as a hands-on document, highlighting best practice through contrasting examples of good and poor delivery, using real-life case studies that have saved money and improved standards.

Establishing integrated transport units enables authorities to create packages of work across sectors to maximise the use of vehicles and staff, ensure full use is made of existing local bus services for education and social work purposes and deliver consistency of standards across different modes. New opportunities to integrate commissioning and delivery of local authority transport with non-emergency healthcare transport have significant potential to deliver a simpler and more understandable service for the user.

An underlying theme is that those responsible for procuring road passenger transport need to use situational intelligence grounded in practical experience. That is to say, there is no single best way to procure passenger transport. Units need to develop procurement strategies optimised for local circumstances matching clear understanding of policy objectives with detailed analysis of the local supplier market. High performing transport units use this as the basis for identifying what they can do to encourage and support the commercial and community sectors to develop their own provision. Only then do they turn to assessing what additional services they need to procure for the authority and what tools they should deploy to do this.

The best transport units take the lead in active partnerships – with operators, with the policy-makers and budget-holders, and with other regulators including the Traffic Commissioners, VOSA and the police. They are also consumer-focused, engaging regularly with passengers on public and specialist services, using the results to refine the specifications they use in procurement, and to feed information back to operators.

The procurement techniques they deploy are designed to minimise red tape – onerous Pre-Qualification procedures, for example – and maximise operator participation, with longer-term purchase intentions set down in advance, long lead-in times and a market-oriented approach to balancing quality and cost whilst ensuring passenger safety is paramount. An extensive toolkit is used, including 'kickstart' arrangements providing initial support designed to create services that become commercially viable, joint working to lever third party contributions, and using highways and parking control powers to improve the bus operating environment and therefore service sustainability. Innovative approaches to incentivising operators and sharing risk are deployed, such as financial 'cap and collar' arrangements.

1. Introduction

1.1. The context

Some £2billion is spent in England, Scotland and Wales each year in direct financial support by public authorities¹ for road passenger transport services. In addition to local bus services, this includes home to school and college transport for mainstream pupils or students and those with additional needs, transport connected with social care and non-emergency patient transport. For many public authorities, this constitutes one of the largest single blocks of expenditure that they undertake, and it has a major impact on the quality of life for a very large number of people, as well as enabling many other activities to function effectively. Moreover, the way in which local authorities make this expenditure has a significant influence on the financial sustainability of both the commercial bus network and non-core community transport services in their area.

Every authority has a responsibility to provide the best possible outcomes from this expenditure. These outcomes include:

- Reducing the cost or obtaining more service;
- Improving service quality and safety.

Adopting the most effective procurement strategy is clearly a key component in achieving successful outcomes.

1.2. Why you should read this

Procuring passenger transport is big business, and a significant part of many authorities' expenditure. Passenger transport also has a number of features which demand particular skills on the part of those who are responsible for its procurement and management:

- Needs change rapidly and sometimes unpredictably in relation to (for example) the specific requirements of children with specialist support needs or day centre opening and closing times;
- Public bus services are provided both commercially (without local authority support) and with the support of transport authorities. Subject to notice, commercial services may be withdrawn or changed and local authorities need to be able to react quickly to assess the resulting impact and whether to procure a replacement. The reverse also occurs – some supported services may become commercially viable if passenger numbers increase. Services can therefore move from one sector to the other, and authorities are expected to manage this fluidity to ensure that a consistent public service offer is presented. Authorities' procurement approach need to take account of this;
- Supported services attract significant fares income, unlike many other services that authorities procure. This requires the authority to manage its support on a quasi-business basis if it is to minimise its net costs.

Passenger transport is therefore a branch of procurement that depends heavily on proactive relationships with suppliers. Procurement which takes the need both for specialist knowledge and flexibility into account, and which also takes into account that this is not a straightforward commodity purchase in which the authority has total control, is likely both to save money and to produce better outcomes.

This document provides best practice guidance to all those involved in procuring road passenger transport – procurement specialists, transport co-ordination specialists, policymakers and politicians. It updates previous guidance (The TAS Partnership, 1999; Atkins, 2005) but expands the scope of the guidance from public bus to other forms of passenger transport. It responds to a recommendation by the Competition Commission (Local Bus Services Market Investigation,

¹ Excluding Transport for London

December 2011) for the DfT to update its best practice guidance on tendering supported services to “reduce the risk that tenders are specified in ways that restrict competition”.

Two other drivers behind updating the guidance are:

1. the need to reflect the significantly changed legislative landscape since 2005; and
2. the need to reflect the equally significant change in public sector finance and to consider more critically the means and scope for driving value while continuing to provide quality services.

Note

In some cases pupils of compulsory school age attend institutions other than schools. Moreover, the statutory requirements for the provision of transport for pupils of compulsory school age, and students attending post-16 education and training, are different. However the procurement considerations are likely to be similar in all of these cases. Therefore the references in this document to ‘school transport’ equally apply to other education-related transport (whether statutory or discretionary) to and from other types of institution, and to transport to post 16 education and training.

2. Using this document

2.1. 'Better informed staff make better decisions'

This guidance does not seek to prescribe specific actions, methodologies, policies or interventions. It recognises that for any given situation or problem practitioners have at their disposal a range of tools and solutions. It also recognises that most practitioners are already well aware of those tools and solutions, and the report authors have taken the view therefore that most practitioners will wish to look beyond a straightforward rehearsal of a standard toolkit.

This guidance therefore seeks to provide practitioners with an informed view of the toolkit – which elements have worked well in the past; which have worked less well; the influences, and the reasons why. The purpose of this guidance is to enable professionals across all the relevant disciplines to make better-informed decisions based on sound evidence and grounded in experience. This informed view follows years of first-hand experience on the part of the report authors and follows an intensive consultation exercise with practitioners across the sector and in a wide range of disciplines from both the commissioning and operating sectors.

The term 'practitioners' is here defined as commissioning managers; procurement and legal advisors; transport co-ordinators and policy-makers including politicians. Each has a significant influence both on 'best practice' and on the ability to deliver best practice in the unique settings of public and passenger transport.

In section 2.3 we signpost the sections of the guidance most appropriate for different professionals involved in procuring passenger transport services.

We have placed technical details and background documentation into the appendices.

2.2. Using the case studies

The Guide includes a number of cases studies. These case studies are included to illustrate the influence of process, policy and structure of decision-making on outcomes.

2.3. Topic based sections

The guidance is structured according to topic. Whilst we hope that all sections of the guidance will be useful to all those involved in the procurement, management and supply of passenger transport services, the table below summarises which sections may be of particular interest to different groups.

Section	Procurement specialists	Transport co-ordinators	Policy specialists	Local members	Operators
3 - Why, What and Who?		✓	✓	✓	
4 – Best Value from Tendering	✓	✓		✓	✓
5 - Quality and value	✓	✓			✓
6 - Contract management	✓	✓		✓	✓
7 - Understanding the market	✓	✓			✓
8 - Partnership and Innovation	✓	✓	✓		✓

2.4. Scope

The scope of this document includes: public passenger transport services; schools transport for those in mainstream and additional needs establishments; adult and child social care transport; and non-emergency patient transport.

2.5. England, Scotland and Wales

This Guidance applies to England, Scotland and Wales with the exception of bus services in London. The differences in legislation and institutions under the three administrations are explained where necessary. Production of the document by the DfT has been supported by Transport Scotland and The Welsh Government.

2.6. Limitation of liability

Atkins Ltd and The TAS Partnership Ltd have prepared this guidance in good faith, based on their professional expertise, experience, and intensive consultation with a number of transport and procurement professionals. However, they do not accept liability for any inaccuracy in fact or interpretation contained in this guidance.

2.7. Copyright

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2.8. Updating this guidance

This guidance includes links to legislation. It is hoped that it will be possible to update this guidance continuously to reflect ongoing changes in legislation.

2.9. Acknowledgements

The writers of this guidance would like to express their sincere thanks and appreciation to the number of people across the passenger transport and procurement sectors who gave of their time, knowledge and experience in the preparation of the guidance, either by attending one of the four regional workshops, contributing by email or to the consultation page, or by joining the expert panel which reviewed the draft guidance.

3. Why, What and Who?

Key messages

- This best practice will enable a local authority to save money, improve standards and avoid the risk of dual standards for the same service
- Generic approaches for authorities to pursue to improve value are set out in this chapter
- Setting up an integrated transport unit provides a number of compelling and tangible benefits – including scope to cover NHS services

3.1. Why?

The national financial plans imply that there will be continuing pressure on public agency expenditure at central, regional and local levels over the next few years. With certain components being statutorily protected, discretionary expenditure, including that on public transport services, will come even more under the spotlight. Reductions in spend will severely constrain authorities' ability to intervene in the public transport market, let alone take constructive action in support of sustainable development, yet their duty to assess and fill gaps in the network will remain. This is compounded by similar pressure on transport operators' income, notably from current and proposed changes in Bus Service Operators Grant (or Regional Transport Services Grant in Wales) and concessionary fares reimbursement; if operators respond by raising their fares, passenger demand may well fall. It will be challenging for authorities to identify smarter ways to apply and pool funding so they can maintain essential services.

A second issue is the changing school system in England, as a result of the widening of the academies programme, the introduction of the free schools programme, and the power all schools now have to decide their session times. This is sometimes perceived as leading to a more complex pattern of transport demand which will therefore be more expensive to support. However, if anything, this underlines the need for greater co-operation in order to secure further efficiencies through collaborative working and by making the transport costs of changes explicit. For example, schools having different session times can spread the demand for transport over a wider period. This in turn might allow transport providers to reduce the number of vehicles deployed and therefore offer a more cost effective service. The duty to provide home to school transport rests with local authorities, so there will be an increasing need for them to work together in partnership with local stakeholders to agree and deliver transport policies that meet the particular needs of their area. Local authorities are best placed to lead this and by adopting a collaborative approach they should ensure that economies of scale are maximised and the best value for money achieved.

A third issue is change in the health and social care sectors, which represents both threats and opportunities. Attempts to merge health and social care activities are likely to intensify, although experience to date has been discouraging in transport terms. In England, the continuing move towards personalised budgets in social care², in place of centrally organised service provision, is likely to replace regular, collective movements with numerous individual and dispersed trips. However, local authorities' professional transport teams have a great deal to offer to inexperienced (as regards transport coordination) NHS commissioners, or individuals, struggling to find the most cost-effective, safe and punctual transport.

A final issue of concern is the maintenance of appropriate skills in local authority transport units. Many experienced transport co-ordinators have recently left through retirement or redundancy, and the introduction of lean management into the bus industry means that it can no longer play its traditional role as a source of replacements. If authorities are to avoid a debilitating loss of planning, analytical and negotiating expertise, investment will be required in extending the knowledge and experience of existing staff to fill the gap, particularly in scheduling, costing and

² *And progress in Scotland towards self-directed support*

operational management. The cost of training staff will be offset many times over by the savings made.

To make this work requires the management of the transport unit to think holistically and for the authority’s Senior Management Team to be able to take a balanced approach to supporting the transport unit in achieving what are sometimes quite disparate objectives. For example, making arrangements to get entitled children to school safely and on time meets a clear statutory duty, whereas contributing to a marginal improvement in the accessibility of one or more rural settlements by opening up a school bus to public use (which may be resisted by parents) is difficult to value.

What follows is recommended best practice to enable a local authority to:

- save money;
- improve standards;
- adopt a consistent approach across multiple services.

3.2. What?

This guidance is focused on procurement and tendering. However, it is important that this is not considered as a stand-alone issue. Indeed, as will be seen below, focusing on procurement as the primary approach for an authority to achieve best value from its spend will certainly deliver perverse results.

Generic approaches for authorities to pursue to improve value are set out in Figure 3-1 below:

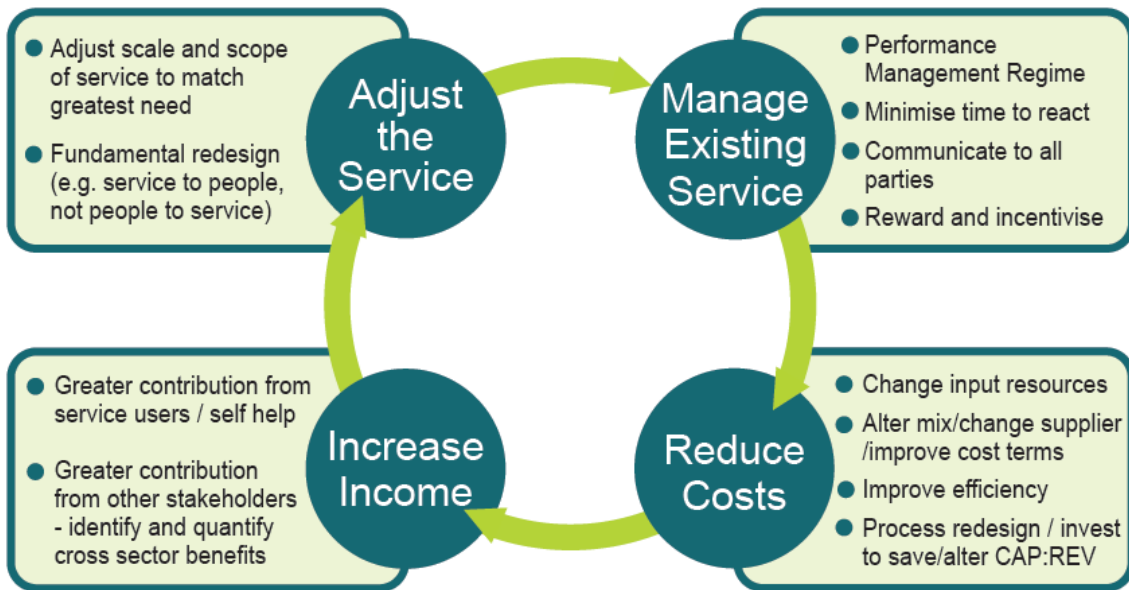


Figure 3-1 Tools for improving the value of public services

The key elements in this need to be approached systematically and in the right order, as shown in Figure 3-2.



Figure 3-2 Elements of public authority transport provision

‘Wrong order’ examples of poor practice that have been observed include:

- An authority which, faced with a budget crisis, introduced e-auctions without re-planning its routes; and
- A transport unit that undertook a clean sheet network review immediately before the client department made a major policy alteration.

What this means is that the procurement strategy the authority adopts towards transport needs to reflect the particular circumstances involved, rather than be driven by a generic corporate approach.

3.3. Who?

In 2001, the Audit Commission conducted a series of reviews³ of passenger transport provision by public authorities which encompassed:

- Contracted local bus services;
- Mainstream and specialist home to school transport;
- Social care transport; and
- Non-emergency patient transport (NEPTS).

A clear recommendation from this ‘Going Places’ report was that the most effective and efficient use of resources was achieved by creating a single unit to manage all four sectors of transport.

³ *Going Places – taking people to and from education, social services and healthcare, Audit Commission, 2001*

*Central co-ordination
allows authorities to
offer to tender packages
of transport work that
cover several services.*

It is important to stress that the setting of policy and budgets should be separated from the planning, organisation and procurement of transport. It is the responsibility of the policy/budget setters to commission transport from the organiser and therefore it is the former who determine the level of transport to be provided. Similar conclusions have been reached in subsequent reports such as that in 2011 by Audit Scotland covering health and social care transport.⁴

Since Going Places, an increasing number of local authorities have created an Integrated Transport Unit (ITU) to manage all their transport planning and organisation. However, integration with non-emergency patient transport was virtually non-existent in 2001, and that remains largely the case today.

The advantages an ITU⁵ (and authorities often use other names to describe such a unit) can deliver are that it:

- Achieves economy of scale;
- Ensures that there is an application of common standards, where these are desirable;
- Makes best use of scarce resources;
- Is able to employ at least one person with transport planning skills and use them across all forms of transport (particularly employment when such skills are in short supply);
- Ensures that the market can be managed to achieve best value for the authority;
- Can package work together in a way which gives suppliers the opportunity to make best use of their resources and therefore undertake work at a competitive price;
- Can deploy any in-house vehicle capability to influence the market in any one of the market segments; and
- Provides a single interface between the local authority and transport suppliers.

Examples of good practice, where the advantages above have been realised, are to be found in authorities such as Devon and Lincolnshire.

A good practice authority has the same core standards across different forms of road passenger transport. This is critical when it comes to risk management and safety requirements, likely to be set out in some detail in the conditions of contract, where the wording and the supporting processes should be identical for different client groups in similar circumstances. Failure to manage this properly provides prima facie evidence of inconsistency and will encourage hostile damages claims in case an accident occurs. Typical examples of such failures have included:

- Different passenger assistant training standards in respect of home to school and adult care transport;
- Different standards between mainstream and additional needs transport for removing operators that consistently fail; and

⁴ *Transport for health and social care, Audit Scotland, August 2011*

⁵ *See also Integrated Transport Units, North West Centre of Excellence, 2006*

- Deploying, for home to school transport monitoring purposes, the authority's own taxi licensing officers who ignore vehicles licensed in neighbouring areas, but serving schools in the authority's own area.

Clearly, there will be some needs that require differentiation, whether policy-led or reflecting legislation, and sometimes this can make service integration difficult. For example, a local policy decision not to use double-deck buses on home to school transport could end up requiring an additional fleet of vehicles in the area. This is not the place to discuss detailed safety policies, but the best result will be obtained for the authority when it is evidence-based i.e. the objective risks (not the perceived risks) are considered and wider cost implications are factored into account.

The ideal position for a transport unit is for the same systems to be deployed as far as possible for all forms of road passenger transport. There are now software suites that will manage everything including demand-responsive dial-a-ride services provided by community transport, adult care provided by an in-house operation, home to school transport provided by taxi and private hire contractors and supported bus services. Although these suites are often sold on the basis of improved scheduling efficiency, their primary benefit is in assisting in maintaining up-to-date management information in a consistent form which enables effective performance management to take place.

Critical therefore are the arrangements for data exchange with departmental databases covering pupils, students and social work clients. This is one of the commonest areas where systems are not harmonised – this is not just about software, more important is joint agreement on what data should be collected and how this should be interpreted and shared. The more vulnerable the passenger is, the more important it is to resolve this issue. Thus there should be a jointly agreed risk assessment system which identifies the details about the passenger that the transport unit and its agents (down to the driver and passenger assistant) need to know if they are to procure the appropriate transport arrangements to meet that passenger's needs.

Other points of interaction between the Transport Unit and the client department, where systems need to be aligned, include:

- Risk management at the facilities served – pick-up and drop-off points, traffic management, the points where responsibilities are handed over;
- Monitoring and ad hoc reporting – what do facilities staff do if they observe something wrong?
- Emergency arrangements – do the Transport Unit's instructions to operators match departmental protocols?

A further point is to ensure that the transport unit's financial reporting matches the departmental (or sub-departmental) budgeting requirements, and vice versa. Adequate time to respond is critical to the transport unit in being able to help departments set their budgets effectively. All this should be set down in the Service Level Agreements between the unit and the client departments, including target dates for data about changes to the list of eligible pupils and students (and the equivalent for other service departments) to be made available in a timely fashion.

Whilst the structure within authorities will vary, the commissioners of transport are likely to be:

- (Public bus services): Transport Policy
- (Community transport): Transport Policy; Social Care
- (Home to School Transport): Children, Schools and Families
- (Social Care Transport): Children, Schools and Families; Adult Social Care
- (Healthcare transport): Relevant NHS commissioning agencies
- (Other passenger transport): Schools, colleges, third sector agencies.

The fact that, apart from public bus services (which in most authority areas will predominantly be operated commercially) and home to school transport, more than one commissioner is involved in a category of transport reinforces the desirability of having a single Integrated Transport Unit to co-ordinate transport organisation.

A common requirement for all commissioners is to be clear what transport is being commissioned and why, and to have determined this in a way which is open, transparent and equitable. The commissioners must also determine with the ITU the monitoring arrangements – what measures will be applied to determine value for money and efficiency. Measures need to be meaningful and should be published. This would include performance measures applied to operators, indicating operator performance against targets.

Internal arrangements between the ITU and its client departments will vary but at the heart should be a Service Level Agreement setting out who is responsible for which part of the process, any particular standards to be applied, reporting mechanisms and how the ITU is engaged in the budget setting for the following financial year.

Case Study 1: Lincolnshire

Lincolnshire, as one of the largest and most sparsely populated counties in England, needed a system of public transport that allowed people to travel, on demand, to almost every location in the county. The solution Lincolnshire County Council and its partners came up with was 'CallConnect' which is a call centre that co-ordinates requests and thereby minimises the number of vehicles required to carry passengers in a rural area. Having been in place for over 10 years it is pretty well known but it emphasises what can be achieved if all agencies work together, to allow one central organiser to sort out transport for local bus, school, social care and NEPTS. In this case, it is not that the ITU plan all these but that there is a call centre that co-ordinates requests and minimises the number of vehicles required to carry passengers in rural areas. By feeding into trunk routes, it also supports the operation of these services, most of which are commercial.

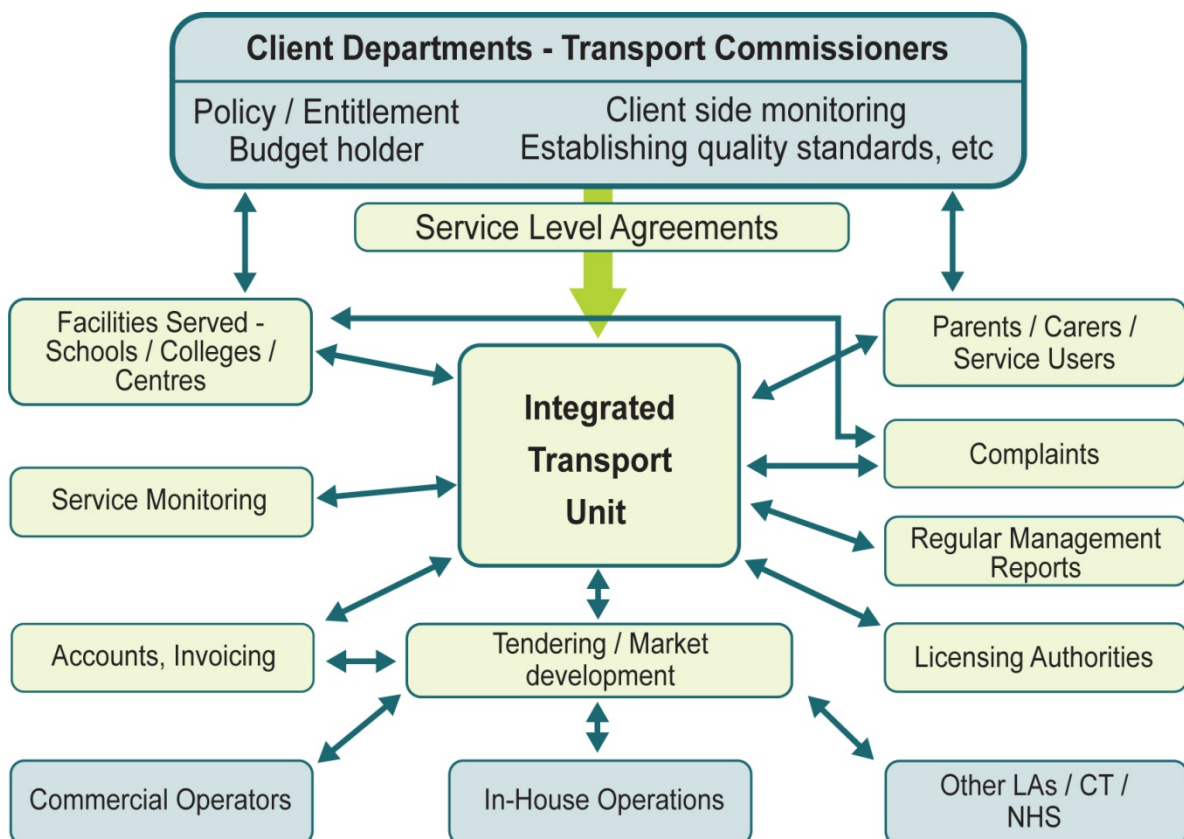


Figure 3-3 Typical Integrated Transport Unit model

This approach is in principle straightforward for unitary authorities which are also transport authorities i.e. the same authority has responsibility for public, community, education and social care transport. But even in metropolitan areas where two different authorities are involved, there are many examples of partial integration, such as:

- A single unit in the first tier authority managing in-house delivery and external procurement (especially taxis) for both education and social service purposes;
- A single unit in the first tier authority managing transport that has a care component, whilst mainstream school transport is managed by the second-tier transport authority and coordinated with public bus services.

In its 'Best Value' reviews, the Audit Commission often identified instances where, far from optimising resources, different parts of the authority were, in practice, competing with each other to purchase taxi services or to fund community transport. Failure to develop a corporate approach to transport procurement will pretty much guarantee that one section will receive worse value than necessary. Consequently, those local authorities which do not currently have an Integrated Transport Unit should take steps to create one, using a version of the model shown above, appropriate for their scope. A critical starting point for this is to identify the authority's overall spend on passenger transport and related or alternate activities⁶. Alternative activities may include:

- Staff using own cars rather than taxis;
- Grants to parents or carers to provide transport;
- Investment in independent travel training to enable service users to travel on mainstream public transport; and
- In-house passenger transport vehicle operation.

The Audit Commission identified common purpose between local authorities commissioning different forms of accessible transport and NHS agencies commissioning non-emergency patient transport, and suggested merit in joint planning and commissioning, a theme reinforced by the North West Centre of Excellence in 2006⁷ and most recently in Scotland by the Short Life Working Group on Healthcare Transport⁸. However, although there have been a number of successful pragmatic co-ordination initiatives such as those in operation in Norfolk⁹, most of these have focused on delivery (operational co-ordination) rather than policy, budget-holding or commissioning integration, and it is unsurprising, therefore, that many have ceased to exist.

Even though it has a significant impact on effective healthcare delivery, transport is only a minor item of expenditure within the NHS, and it is understandable that there has been limited appetite for radical change in the design and delivery of non-emergency services. However, the growing introduction of purchaser-provider separation within and between NHS agencies, even without opening the market up to full competition and commercial operator delivery of non-emergency patient transport as recently seen in England, still gives an opportunity for a new service model to be developed, specified and introduced. Local authority transport units are specialists in procuring and managing cost-effective accessible transport with a 'care' component and should therefore be ideally positioned to undertake this role for the NHS on an agency basis. This is the service currently provided by the transport team in Surrey County Council for the local Clinical Commissioning Group consortium and it provides the best starting point for more fundamental and longer-term integration between public, community and healthcare transport.

⁶ This should easily align with the 'Category Management' approach to procurement analysis

⁷ *Providing Transport in Partnership – A guide for health agencies and local authorities*, North West Centre of Excellence, 2008

⁸ *Healthcare Transport – Recommendations of the Short Life Working Group*, June 2013

⁹ See *NWCE Report, 2008, Appendix G*

Case Study 2: Surrey County Council

In 2012 Surrey County Council awarded an overarching framework transport contract for the provision of its own Adult Social Care journeys, along with NHS Surrey's Non Emergency Patient Transport Services (NEPTS) for the county. This project included partnership working, joint tendering and a joint booking service.

The NEPT booking service, which went live on 1 October 2012, is now delivered in-house by the Council. It encompasses eligibility assessment for NEPT users, and for those assessed as ineligible, signposting to comprehensive alternative solutions, e.g. community or voluntary transport, making this a significant step toward providing a "one stop 'transport' shop".

The previous Surrey County Council arrangements comprised of a large number of contracts (28 routes between 11 operators) that were let on a route by route basis. These were not managed in a consistent way and had no common performance measures associated with them. The level of fragmentation also limited the ability to gain any leverage in the market.

Steps were taken to stimulate interest in this tender opportunity through a number of supplier awareness events and service user engagement days. A joint market shaping event was held by the Council and NHS Surrey to engage with the market. Continuous engagement was undertaken with key stakeholders through a range of different methods including user co-design events, supplier events, specification meetings, email communications and feedback and regular monthly project board meetings.

The option to award the contract to a single supplier was discounted in favour of a multi supplier framework agreement (broken down into three Lots on behalf of NHS Surrey and the Council).

These were:

- Non Emergency Patient Transport (core service)
- Non Emergency Patient Transport (out of area)
- Day Services and Day Centres

Authority A –

- Has an Integrated Transport Unit
- Common standards are applied to all transport provided on behalf of the authority
- Is able to deploy scarce staff resources/skills, in particular transport scheduling, to where they are needed at any particular time
- Plans procurement to ensure that work on offer is phased and co-ordinated to allow operators to combine different types of work, to achieve best value for the authority overall
- Has a clear distinction between those who commission transport (Transport Policy, Children Schools Families, Social Care) and transport organiser (ITU)
- Commissioners set clear performance standards for the ITU, there are regular reports by the ITU to the commissioners and regular meetings to review performance
- The commissioners and the transport organiser have jointly agreed performance measures that are meaningful and practical

Authority B –

- Transport is organised in silos – local bus, school, social care each organising their own transport
- Transport suppliers have to meet different basic requirements for each organiser
- Transport operators have to provide each organiser with the same documents – insurance, operator licence, etc.
- Offers of work to the market occur in a piecemeal and uncoordinated fashion
- Has a narrow view of best value – acts only in the interest of one budget holder and not the overall interest of the authority
- Transport organiser is given a remit to organise transport but with unclear parameters
- The transport organiser does not have any or clear performance standards
- Data monitored by commissioners is simplistic and based on what is easy to collect rather than what is a useful measure of performance
- Commissioners only deal with transport organiser when something goes wrong; there are no regular reports or meetings

4. Best Value from Tendering

Key messages

- Innovative tendering, for example considering school and public transport together can deliver enhanced outcomes
- Packaging and bundling contracts across sectors e.g. transport for local authority clients and non-emergency patient transport for the NHS has the potential to deliver large benefits
- Local authority procurement units have delivered large savings for local authorities, but these authorities do not normally understand the complexities of transport provision. For this reason, the transport commissioners should work with the procurement unit to devise optimum locally tailored solutions
- Devising an appropriate realistic timeline for tendering is critical. Example timelines are outlined and explained

4.1. School and public transport interactions¹⁰

In practice, most common service integration questions faced by transport units concern home to school or college transport provided for pupils or students attending mainstream establishments:

- Do we buy passes on existing commercial services? If so, how can we ensure that these are priced competitively? What would the impact be if we pursued an alternative? Is there a peak load issue (for allocated pupils or students or, indeed, for other passengers)? Are there any pupil or student behaviour issues? Are these manageable – do they impact significantly on other passengers' perception of bus services? Are there any wider arrangements to be sought with the bus companies e.g. making the season ticket usable at other times? How do these arrangements relate to any commercial discounts the operators may have for young people and/or discretionary concession schemes the authority has introduced? Who issues and manages the tickets or passes involved? Is there a possible discount season ticket for non-entitled students?
- If there is no suitable commercial service, is there an existing supported local bus service? If so, how will the costs be allocated between children's services and public transport? Does this differ in respect of entitled children and non-entitled children?
- If there is no suitable local bus service, should the authority commission a public service with a requirement that it is available to students issued with a pass by the local authority (or that the operator must issue such passes against a list provided by the authority)? How is pass use monitored?
- As an alternative, should the authority procure dedicated (i.e. not available to the general public) 'closed-door' services? What do we know about the long-term impact of dedicated school bus services on bus use by teenagers and young adults? What standards should these services meet? Note that the purpose of high quality 'Yellow School Bus' services has always been to attract non-entitled children away from the parental 'school-run' car shuttle, not to

¹⁰ There is a significant amount of good quality guidance available, including (England):

<http://www.education.gov.uk/schools/adminandfinance/travelandtransport/g00224737/home-school-travel-transport> and <http://www.education.gov.uk/a0064794/post-16-transport> ; (Scotland)

<http://www.scotland.gov.uk/Topics/Education/Schools/Parents/transport/transport-guidance> and on safety -

http://www.transportscotland.gov.uk/files/documents/roads/Improving_School_Transport_Safety_guide_-_final.pdf ; (Wales) <http://www.wlga.gov.uk/school-transport1> and

<http://www.wlga.gov.uk/school-transport-project-reports/managing-special-needs-transport/> and on safety <http://wales.gov.uk/topics/transport/publications/hometoschooltransport/?lang=en>

provide a higher quality service to entitled children. Can this realistically be achieved by a dedicated service? How should this be priced?

It will be seen that the above are presented in order of reduced integration – other things being equal, it is assumed that the first options are to be preferred. Of course, there will be local decisions as to the appropriate age at which unaccompanied pupils may reasonably expect to use a public bus service.

The other area of significant interaction is in organising the transport for school trips including those with regular daytime patterns related to the curriculum, including swimming and sports, and the ad hoc requirements relating to clubs, outdoor pursuits and other extra-curricular activities. It is important for transport units to have a role, even at arm's length, in these arrangements which may, of course be funded from the school's own or a Parent Teacher Association budget. The key point is the transport unit's understanding of legal, safety and quality issues, which the schools and colleges should be able to rely on when arrangements are made.

Some schools may use funding from other sources (for example the Pupil Premium) to provide or subsidise additional transport, and some post-16 education institutions may also provide their own transport or subsidise it (for example providing college buses with preferential fare structures). Most post-16 providers also have access to bursary funding which they can use to help students with costs such as transport. Local authorities should therefore seek to engage with pre- and post-16 providers to make best use of all the funding / support that is available for transport.

4.2. Packaging and bundling

Local authorities with education and social care responsibilities need to become experts in specifying, procuring and managing passenger transport services with elements that involve additional care or support. Transport authorities have specific responsibilities, both under the Transport Act 1985 and under equalities legislation to ensure that reasonable and appropriate accessible transport provision is made to meet the needs of the (would-be) travelling public. It is surprising, therefore, that there are relatively few examples of consistent packaging of services into cross-sector bundles of work, such as:

- Peak run to day centres / SEN schools; PLUS
- Inter-peak dial-a-bus service for passengers with mobility difficulties; PLUS
- Off-peak transport for community groups, with priority for those requiring an accessible bus.

Where this model has been developed it can provide a lower cost accessible 'paratransit' service than would be achieved through a dedicated service, and makes more effective use of resources – good quality multi-occupancy accessible vehicles - that are still in relatively short supply.

Such an approach also has the potential to score highly against an assessment system established under the Public Services (Social Value) Act 2012 or Best Value in Scotland, and, if it includes a self-drive with driver training under a s19 Permit component, would be a more effective way of supporting a community transport project than separate grants and contracts.

The packaging approach also has significant potential to assist the NHS with its procurement of non-emergency patient transport services. Few NHS agencies have dedicated caring passenger transport procurement and management teams, whereas this is exactly what the local authorities on their area will possess. Moreover, there are structural arrangements in place to legitimise the local authority undertaking this work for the NHS on an agency basis. At a time when health bodies appear to be facing difficulty commissioning effective NEPTS whilst managing the interaction between NEPTS and community transport, especially voluntary car schemes, it is surprising that so little use has been made of local authority transport units for this purpose.

4.3. Relationships with general procurement units

The role of a central procurement unit should be to ensure that the appropriate legislation, both EU and domestic, is complied with and that the tendering process is open and transparent. The role of the transport unit is to apply its knowledge of the local market, its skills as a transport planner and organiser and its knowledge built up from customer feedback to the tender process so that tender invitations make sense to operators. A central procurement unit which, by definition is not expert in transport operations, can only advise on good practice and not determine the detail of what is offered to the market.

Note that procurement is a step in the process of obtaining the most cost-effective, fit for purpose service for the authority – this should not be simply about procuring the lowest-cost option. A major objective must be an assessment of the appropriate quality for the services procured. What is appropriate will change over time as new technologies come available, the aspirations of passengers, their parents, carers and helpers grow, and laws and guidance change to reflect this.

This implies that the transport unit will:

- include quality as part of its contract monitoring and reporting;
- include reporting on this in its Service Level Agreements with client departments and agree a service quality improvement strategy; and
- communicate this adequately in advance to operators so as to enable preparation for any necessary investment in vehicles, equipment and staff.

4.4. A timeline

The legislative framework in which transport units function means that there is not a single answer to how tenders are planned because the circumstances which require a tender to be issued will vary.

The vast majority of operations can be planned many months ahead because they concern contracts which are known to be expiring, whether local bus services, home to school transport or social care transport. Once it is decided that an operation is to continue either in its current form or a revised form, tender preparation should start. An example approach is shown below.

- Decision taken to continue the operation either as now or in revised form (if appropriate, after consultation with service users);
- Issue to all operators (including third sector) informal notice of what will be going to tender with a proposed timetable – noting that this is not the official notification but for information only. Wherever possible, the timetable should be such that operators have the potential to link operations to make best use of resources (and therefore deliver cost effective solutions for the authority) – for example having the same start dates for local bus, school transport and social care transport contracts;
- In the case of local bus services, the transport unit discusses with the current operator whether the service could be provided commercially, as a whole or in part, and whether any changes to the timetable/fares/route would enable some or all of the service to be operated commercially;
- For other types of operation, the transport unit seeks the views of incumbent operator on any ways in which the operation could be improved and made more efficient whilst retaining effectiveness and listens to any ideas the operator puts forward;
- Taking into account the outcome of the above, prepare and issue tenders. Depending upon the type of transport and the volume of tenders to be issued, phase these so that it is not an ‘all or nothing’ outcome for operators. For local bus services, information on existing passenger use, income both on and off bus, should be included to enable operators to calculate their bids or indeed whether they would offer to run the service commercially;

- Local bus: Unless the contracts for all services expire at the same time (unlikely), it is recommended that the tenders are issued as a batch. The nature of local bus operation is such that whilst there may be operators who stand to lose all their work (if they only operate a few contracted services all of which expire at the same time), in most cases, the operator will either have several contracts some of which do not expire and therefore the operator is able to remain in the bus business, and/or the operation of contracted services is marginal with the core business being commercial services;
- For local bus services, it is important that the timescale for inviting tenders and award of contract takes into account any requirements of the authority for operators to acquire vehicles. indeed, operators should be asked when they submit their tenders to indicate when the required vehicles will be available;
- School transport and adult social care transport. These operations are mainly undertaken by small (i.e. not the 'big five' bus operators) businesses. In many cases, the core of these businesses will be school or social care transport around which other operations are built. There are many instances of very small – maybe one vehicle owner/driver – businesses who have provided an excellent service to local authorities for many years and, subject of course to tenders being acceptable, it is in the interest of the authority and, importantly, the users that these operators are kept in business. An operator for whom the local authority is the bread and butter may be more likely to provide a good service than one for whom the local authority contracts are a bonus but not crucial to their business. It is recommended that within the requirement to have co-terminus start dates with other types of contract (local bus/social care), tenders are sought in three tranches:
 - Tranche 1 consisting of around 75% of the available contracts;
 - Tranche 2 (the closing date for which is after operators know who has won what in Tranche 1) consisting of about 20% of the available contracts plus any that were not awarded from Tranche 1 (due to high prices); and
 - Tranche 3 (closing date after operators know who has won what in Tranche 2) consisting of 5% of the available contracts plus any which were not awarded in Tranche 2.

If an operator loses out in Tranche 1, they have a chance to bid and win in Tranche 2 and the same applies to Tranche 3. Whilst this won't always be the case, if an operator is keen to remain in the business but is unsuccessful in Tranche 1, there's a good chance of them submitting competitive prices for Tranche 2 and so on.

- Throughout the tendering process, the transport unit needs to be aware that there is no absolute requirement to accept any tender if, in the opinion of the transport unit, the price is too high. In these circumstances – in the example above, after tranche 3 – the transport unit should go to all bidders for that particular operation and ask them to suggest what changes could be made to reduce the price. It is important that in the invitation to tender, it is made clear that the authority is not bound to accept any tender and that post-tender negotiations may take place where no acceptable tenders are received.

The tender timetable is clearly important in order to achieve the best outcome. Whilst most authorities' contracts for school transport commence with the new academic year, this is not true in all cases. Therefore the ideal timetable below is not specific to particular months of the year.

In this model, Day 0 is the date contract operations start:

- Nine months before Day 0 – issue informal notice
- Eight months before Day 0 – discussions with current operators

- Seven months before Day 0 – Issue tenders (either all or in tranche1 as described)¹¹
- Five months before Day 0 – issue tranche 2 tenders
- Three months before Day 0 – issue tranche 3 tenders

It is recognised that factors outside the control of the transport unit may impact on this timetable; for example if the decision on which contracts are to continue is delayed. Even so, it would be good practice for the transport unit to talk with operators as it is possible their proposals, if any, could influence the decision to continue with an operation.

The second category of operations are those which arise as a result of third party actions. These are most likely to be local bus service tenders, required when an operator de-registers a service and where the local authority decides that a replacement is required. The timescales are set in legislation (which varies between England and Wales and Scotland) but if there are good relationships with operators, advance warning of de-registrations (i.e. over and above the statutory minimum) can give more time for authorities to prepare. A best practice example is shown below:

- Operator gives warning of intention to deregister (or notice of deregistration received);
- Decision taken to continue the operation either as now or in revised form;
- Concurrently, discuss with operator what, if anything, the local authority can do to keep the operation commercial;
- Once a decision is taken, discuss with the operator whether a small de minimis payment¹² would permit the operation to continue without the need to invite tenders. Only an experienced ITU manager can decide whether the de minimis payment represents better value than inviting tenders;
- If the steps above are unsuccessful or the de minimis requirement is considered not good value, invite tenders; and
- Depending upon the scale of the operation, let a short term contract so that it expires at the same time as other contracts in the same geographical location so that at the next tender round for the area, the 'new' contract is included.

The third category of operations are those which have to be dealt with at very short notice – maybe only a few hours – and in these cases, it is impossible to go through a planned tender process although a well-run transport unit will have a procedure in place to deal with this type of operation. A best practice process is shown below:

- Maintain a 'continuity' plan that can be activated at very short notice. This requires the transport unit to have good up to date market intelligence (see Section 7) and know which operators in which part of their area are likely to be able to step in at short notice; and
- For short notice movements – typically ASN/SEN or Social Care – have email groupings that enable the transport unit to send out the movement details and receive bids by email. Software systems exist to enable this to occur without compromising the integrity or transparency of the process.

¹¹ In Wales, all public sector opportunities should be advertised on the website <http://www.sell2wales.gov.uk/>; similar arrangements apply in Scotland (on <http://www.publiccontractsscotland.gov.uk/>) and some English regions

¹² See section 4.6

4.5. Standing orders

Every local authority will have standing orders which set out how expenditure is to be incurred and accounted for, who has authority to award contracts and so on. Standing orders will vary and what transport units should do is to ensure that the unique features of the transport market are properly reflected in the standing orders of the authority so as to give transport officers the greatest possible flexibility (within the limits of transparency) to use the legislation which permits things like de minimis.

4.6. Using ‘de minimis’

Authorities in England and Wales now have considerable flexibility to award subsidy without a competition under the ‘de minimis’ tendering rules. Up to 25% of an English authority’s budget¹³, or 40% in Wales¹⁴, can be directly awarded in this way. This is especially valuable where a variation to an otherwise commercial service is the most effective way of meeting a particular need, or where supporting the commercial, daytime operator to provide an evening service ensures the retention of network benefits for passengers. However, it is always necessary to weigh up the benefits against any possible reduction in competition, and to act fairly.

In Scotland, the specific Transport Act 1985 ‘de minimis’ powers were abolished by Section 60 of the Local Government in Scotland Act 2003 (along with the general obligation to invite tenders for subsidised services). Thus authorities will be free to award subsidies directly up to the threshold at which general EU procurement rules apply¹⁵, but in exercising this function authorities must also comply with the ‘best value’ duty contained in s1 of the 2003 Act, in respect of which Scottish Government has issued general guidance¹⁶. In principle, this gives transport units greater flexibility than under the 1985 Act arrangements; however, this appears in some cases to have been constrained by the corporate adoption of general and more restrictive procurement rules and their incorporation in local authorities’ internal regulations. Authorities in Scotland should ensure that their Standing Orders, Financial Regulations and Schemes of Delegation provide their transport teams with the appropriate flexibility to avoid the expense and potentially perverse results from unnecessary competitive tendering.

Case Study 3: Angus Council

In order to utilise the ‘Best Value’ legislation introduced in Scotland specific provision has been made within Angus Council’s Financial Regulations. To award contracts outside the tendering process requires a clearly defined policy. The agreed course of action for Angus Council is detailed below.

When will ‘Best Value’ be used as opposed to the normal tendering procedures?

- To enhance frequencies on an otherwise commercial route e.g. two-hourly to hourly, hourly to half-hourly etc.
- To provide off-peak journeys on a route that otherwise operates commercially. This can avoid ticketing issues for passengers should another operator win the contract. Also this ensures that where a high quality vehicle is used on the service during the daytime it is also used off-peak.
- To procure small amounts of work up to £12,000 per annum where it might not be cost effective to go through the tendering process.
- To procure emergency replacements for withdrawn services until they can go through the tendering process.
- To divert an existing commercial service to serve a settlement/area – the alternative being to provide a separate contract in order to provide the facility
- To protect overall service provision within the corridor and maintain/improve links with other corridors.

What checks will be put in place to ensure ‘Best Value’?

¹³ Unless the annual budget is less than £600,000, when a limit of £29,999 p.a. only applies to individual contracts. See The Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations 2004 as covered in http://transportforcommunities.co.uk/files/Guide_to_De_Minimis_rules.pdf

¹⁴ *The Service Subsidy Agreements (Tendering) (Amendment) (Wales) Regulations 2002*

¹⁵ That is, up to a **lifetime** contract value of €200,000 (currently £173,934) excluding VAT.

¹⁶ <http://www.scotland.gov.uk/Publications/2004/04/19166/35253>

- Such contracts will be checked against other tendered services to see that the cost per mile is comparable. This will be checked against similar peak/off-peak operation and where possible for services in the same area.
- Scores attained in respect of the following criteria (as defined in Angus Council's Public Transport Policy Statement):
 - Subsidy per mile;
 - Subsidy per passenger; and
 - Percentage of workers using the service
 should be comparable to existing contract scores.
- Most contracts will be awarded on 2 months notice of termination as they will be subject to change should the commercial timetables be reviewed by the companies concerned. The exception to this may be low value contracts of less than £12,000 which may be awarded for up to 3 years.
- Contracts will be reviewed on a 3 yearly basis and will only be renewed if they can be seen to be still providing 'Best Value'.
- Care will be taken to ensure fairness should the situation arise that more than one operator provides commercial services on a route.

Awarding contracts under 'Best Value':

- The maximum value of all contracts awarded under 'best value' will be 40% of the local bus service subsidy budget each year.
- For contracts of up to £12,000 then the Head of Planning and Transport should have delegated power to approve that contracts meeting the criteria listed for award on a 'Best Value' basis are awarded as such.
- For contracts of more than £12,000 then the approval of the Chief Executive and Head of Finance is also required to agree that contracts meeting the criteria listed for award on a 'Best Value' basis are exempted from the normal tendering process.
- Where practicable 'Best Value' contracts will be awarded following committee approval; however, where this is not practicable, for example where services are required to be introduced at short notice to coincide with changes to the commercial network or on an emergency basis, then –
 - The Head of Planning and Transport should have delegated power to award contracts up to a maximum annual subsidy of £12,000 per contract and will report such awards to the next meeting of the Infrastructure Services Committee.
 - For contracts of more than £12,000 the award should be made by the Head of Planning and Transport in consultation with the Head of Finance, Chief Executive and Convenor of the Infrastructure Services Committee and reported to the next meeting of the Infrastructure Services Committee.

4.7. Duty not to inhibit competition

Probably not explicitly but certainly implicitly, within standing orders there will be a duty to issue invitations to tender in a manner which does not inhibit competition. For some transport operations – notably local bus services – there is legislation which spells this out. There are various ways in which competition can be inhibited ranging from over-complex invitations to tender, through over-complex conditions to be allowed to tender, to a demand for requirements that are unlikely to benefit or improve the standard of service provided.

4.8. Contract scope and scale

Competition is likely to be best served if invitations to tender are for the smallest sensible level of operation. The purpose of this is to allow small operators the opportunity to bid for work. Clearly there is a balance to be struck and splitting 'natural' operational areas artificially is less likely to lead to a good quality of operation. An example would be a local bus service which required three vehicles to operate it. Theoretically, it would be possible to seek tenders for each vehicle working but this is not likely to result in an attractive service and so it would be sensible in this case to invite tenders for the complete service. At the other extreme, packaging services together so that only operators with, say fifteen vehicles, could bid would potentially be anti competitive because it would debar smaller operators from bidding. What should be made clear in the Invitation to Tender is that operators are encouraged, in addition to providing individual bids, to provide groups of services

together in a discounted price package of work, leaving the local authority to determine whether best value (most efficient and effective use of resources as the 1985 Transport Act put it) is achieved by accepting a series of individual bids or a combined tender.

4.9. Over-specification

Requiring operators to provide copies of policies on Health and Safety, Equal Opportunities, etc, either to be allowed on to a tender list, with tenders or prior to award of contract, is likely to be self defeating. A question which every transport or procurement officer should ask themselves is whether anyone reads the policies sent by operators, determines whether they are 'satisfactory' and once the contract is awarded, checks that the policies sent by the operator are being applied. Unless the answer to all these is 'Yes', then requesting these policies in advance is an unnecessary level of bureaucracy. Whilst the large, publicly quoted or publicly owned businesses will probably have all the relevant policies, the medium and smaller operators are unlikely to and either they will simply download a model policy from the internet (with no real idea of what it says) or not bother to tender. Clearly operators (and all employers) must comply with relevant legislation on Health and Safety, etc but it is strongly suggested that all that is required is for the local authority to ask each tenderer to sign a document confirming they understand their responsibilities under the HSE, Equal Opportunities and related legislation rather than requiring detailed policies.

A number of authorities require operators to provide financial statements, as a pre-requisite to be included on a tender list or at time of tender. It is questionable whether this practice fulfils any useful purpose. It is worth remembering that for PSV operators to obtain an Operator Licence, they must satisfy the Traffic Commissioner that they are of appropriate financial standing which, amongst other things, means having sufficient funds available to operate the vehicles safely and in accordance with the law. A local authority which applied a test more stringent than required by law could be seen to be inhibiting competition. At the very least, it would discriminate against start-up businesses which would not have a track record which they could demonstrate, even though in order to obtain their Operator Licence, they would have had to prove adequate financial standing. The situation with hackney carriage and private hire vehicle operators is different in that each licensing authority sets its own rules on who is a fit and proper person to hold a licence. Even so, given the scale of contracts likely to be held by a hackney carriage or private hire vehicle operator, the risk to the authority is low and almost certainly this consideration outweighs any time spent dissecting financial statements. Finally – and perhaps crucially – local authorities pay operators in arrears. Therefore in the event of an operator suddenly ceasing to trade due to financial difficulties, the most likely scenario is that the local authority will owe the operator money rather than the other way round.

The one exception to the above concerns insurance. It is necessary for authorities to check that their contractors are adequately insured, in order to ensure that no financial liability would attach to the authority should an accident occur.

4.10. Advance information to operators

Elsewhere, the merits of different types of contract for local bus services are discussed. Most local authorities invite tenders as both minimum cost (authority takes the revenue risk) and minimum subsidy (operator takes the revenue risk). In the case of the latter, when inviting bids, it is essential for local authorities to provide all tenderers with details of on-bus revenue, off-bus revenue and passenger use. It follows therefore that in contract documents, it must be a requirement that the contractor provides this information regularly to the local authority so that when due for re-tender, information is available to send to all potential operators.

Providing information to potential bidders is more challenging if a service which has been operating commercially is withdrawn. There is no statutory responsibility on the operator to provide this information to the local authority although where relationships are good, many operators are willing to do so and this is commended as good practice. If the local authority is faced with the problem of not being able to obtain this information, then awarding a contract for a short period – maybe six months – would give the authority the opportunity to acquire the data for the contract period, when it could then be made available to those bidding for a longer and substantive contract period.

Case Study 4: Bath & North East Somerset and South Gloucestershire Councils

Bath and North East Somerset and South Gloucestershire were both praised by local bus operators for the amount of information they provide with their tenders and the timescales they work to. They offer the current operator the opportunity to comment on forthcoming tenders several months in advance including adopting the approach of stating how much funding is available and then inviting proposals from operators. This approach has worked very well and allowed operators to offer innovative solutions that make the most of the existing commercial network.

4.11. Post-tender negotiations

For transport services, post-tender negotiations (as opposed to clarification during the tender) have usually been avoided due to fears of falling foul of competition legislation and/or requirements for transparency. This is difficult to explain given that post-tender negotiations are often used by local authorities when awarding other contracts¹⁷. If post-tender negotiations are to be allowed, two important principles must be followed. Firstly, the negotiations must be open in the sense that, once concluded, there is full disclosure and publication of the outcome so that all bidders can see the process was fair and equitable – in effect, an audit trail. Secondly, at the time of invitation to tender, it must be made clear that post-tender negotiations are permitted, and the circumstances in which this may take place.

Authority A –

- Procurement of transport is managed by transport professionals in the ITU
- Advice from the corporate procurement team is taken on compliance with EU and UK procurement requirements and best practice
- Has standing orders that permit ITU to award contracts and, within appropriate safeguards of transparency, conduct post tender negotiations
- Has simple and easy to understand tender process
- Does not ask operators to complete a complex PQQ process
- Invites tenders at the lowest sensible level but allows or encourages operators to bundle them
- Where practical, designs timetables that permit operators to provide the services efficiently and effectively
- Acknowledges the importance of requiring operators to comply with Health and Safety, Equal Opportunities, etc legislation but only seeks confirmation that operator understands these requirements
- Does not require operators to submit 'back-up' documents (insurance, operator licence, etc.) with every tender round but holds these details on file, seeking regular (annual) confirmation of continued compliance
- Does not ask operators for financial statements or accounts (unless capital grants are being made)

¹⁷ And guidance on how to undertake Post Tender Negotiations is published by the Chartered Institute of Purchasing and Supply
<http://www.cips.org/Documents/Resources/Knowledge%20Summary/Tendering%20and%20Post%20Tender%20Negotiation.pdf>

- Is aware of and in appropriate cases, makes use of relevant de minimis legislation – incorporates this into the authority's standing orders
- When inviting tenders for local bus services, provides bidders with as much data as possible on current passenger use and income (including off-bus) to enable operators to build this into their bids

Authority B –

- Transport procurement is managed by procurement specialists not transport professionals
- Has a complicated tendering process that deters smaller operators
- Requires operator to go through a PQQ process that is more appropriate to a multi-million pound construction contract
- Bundles tenders so that few operators have resources to bid or which by combining disparate types of operation, restrict the number of operators with the required vehicle specification
- Creates timetables that are inefficient to operate thereby raising costs
- Requires operators to submit Health and Safety, Equal Opportunities, etc. policies
- Requires operators to submit documents such as insurance, operator licence, with each tender round
- Seeks financial statements or accounts from operators who are bidding for contracts where payment is made in arrears
- Does not provide passenger use and income data to operators when inviting tenders for local bus services
- Does not engage in post-tender negotiations in appropriate circumstances

5. Quality and value

Key messages

- There is a balance to be struck between the need to keep costs down, and the need to specify high quality transport, particularly where these quality aspects relate to passenger safety
- Overly complex and onerous Pre-Qualification Questionnaires (PQQs) are not useful in helping to decide who will be awarded a contract and may create an unnecessary barrier preventing small companies from bidding

5.1. Quality or cost

Every local authority will have been faced with the demand for higher quality transport services whilst at the same time trying to minimise cost to the local tax payers. For most authorities, the problem of balancing quality and cost is likely to be most high profile with school transport where parents, understandably, want a high quality vehicle and operation.

There is of course a basic quality control on all commercially operated transport. For PSV operation, the licence holder must demonstrate to the Traffic Commissioner that they are of good repute, that their vehicles are maintained in a roadworthy condition and are operated in accordance with the law. For hackney carriage and private hire vehicles, licensing authorities are able to set minimum standards for both vehicles and drivers. Each licensing authority sets its own standards and therefore unlike PSV operation, there is no consistent 'minimum' threshold which every operator must reach.

Given that there are statutory requirements on quality, local authorities do therefore need to consider their rationale for asking for higher quality standards, and what benefits would be achieved.

It is important at this stage to distinguish between quality and specification. An authority will, for very good reasons, want to specify certain requirements to be fulfilled - for example if a vehicle is to convey a passenger who is a wheelchair user then it must have the equipment to load and safely carry this passenger.

Case Study 5: Transport for Greater Manchester

As part of a recent tender exercise for Community Transport (CT) operation, under the Local Sustainable Transport Fund programme, quality standards were included which ensured: compliance with the CT Quality Framework, involvement in training and a requirement that the operator is expected to work closely with the local community to develop the service and to be pro-actively involved in helping to promote the services and distribute publicity materials.

5.2. Objective measurement of quality

A number of authorities evaluate contracts on a matrix made up of X% price and Y% quality. However, during the consultation process leading to the preparation of this Best Practice Guide, no local authority was able to demonstrate an objective measure of Y. There was a common view from both local authorities and operators that minimum quality and specification should be set in the invitation to tender and that only bids in which the operator was able to meet or exceed the standard should be accepted. It would then be a case of accepting the lowest bid, although there may be factors such as past performance, or operator capacity that would need to be taken into account.

5.3. Accounting for past performance

Taking into account past performance is an issue that needs to be treated with care. A key factor, discussed in more detail in the following section, is that if there were issues of performance, these had been drawn to the attention of the operator, the operator had been given a chance to address the issues, the problems had persisted, the authority had made it clear to the operator what needed to be done and the consequences of failing to act and finally that continuing failure would prejudice future contract awards, then in these circumstances, it would be quite justifiable for an authority to decline to accept a tender from an operator whose provision of services to the authority was not of an acceptable standard.

5.4. Use of PQQs

There has been a trend, often driven by procurement professionals, to require potential bidders to complete a pre qualifying questionnaire (PQQ). Whilst detailed PQQs are understandable for many types of local authority contract, for transport operation they can be an inhibitor of competition and are likely to increase costs because some operators – perfectly satisfactory performers – are unable or unwilling to complete a detailed questionnaire.

Case Study 6: An Anonymous County Council

To bid for a transport contract in this shire authority, an operator has to complete what the authority describes as a simplified PQQ. This has 29 pages and amongst other things requires the operator to explain or provide copies of:

- Their financial standing
- Management capability including back up
- Equal Opportunities policy
- Race relations policy
- Health and Safety policy
- Environmental policy
- COSHH declaration
- References

The feedback from this and a number of local authorities across the UK has been that the onerous degree of information required to prequalify was felt to be disproportionate to the size of the contracts, and the risk to the authority of failure. One recent case/example has forced the transport team to define their evaluation methods better to avoid challenges to alternative awards. It was generally felt that these were being imposed by the authorities' Procurement Departments who did not necessarily understand the special nature of transport contracts.

A number of authorities have indicated that they have concluded that onerous PQQ documents can be a disincentive and have simplified their paperwork e.g. Southend on Sea Borough Council now ask all tenderers to tick that they have relevant policies (such as H&S policy) but only require any actual documents from successful bidders.

There are two features of transport operation which mean it is unlike most other businesses with whom a local authority contracts. Firstly, every type of operation has a quality regulation built in, be it Traffic Commissioner for PSV (and S19/22) operation or licensing authorities for hackney carriage and private hire vehicles. Secondly, almost without exception, payment for services is made in arrears. This renders much of the 'standard' PQQ questionnaire irrelevant.

Having said this, there clearly is a requirement for a basic PQQ where the authority is establishing a framework or using the restricted tendering procedure. However, authorities should note that central government is eliminating PQQs from tenders under the EU Threshold and is strongly advising others to follow suit¹⁸

¹⁸ See Cabinet Office Procurement Policy Note 01/12
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62093/PPN-01-12-Use-of-PQQ.pdf

5.5. Training frontline employees

One area where local authorities have been active and which is certainly good practice is to provide training for operators' staff. Much of the training that has been offered relates to passenger assistants and drivers who are transporting passengers with special needs. Some authorities make it a condition of contract that passenger assistants and drivers undergo an approved training course to raise awareness of the particular requirements of people with special needs. These authorities report that initially there was some reluctance by operators but subsequently operators have been using the fact that their staff are trained and accredited by the local authority in their marketing. The reason why authorities should consider providing or commissioning the training directly is the need to maintain quality control over the content and approach to the training. Experience suggests that relying on self-accredited systems such as MiDAS¹⁹ does not guarantee that contractor staff will demonstrate the required behaviour. Whilst it is clear that the content of MiDAS and PATS²⁰ is more than adequate for general use, authorities should only accept certificates accredited by organisations they trust.

Authority A –

- Before inviting tenders, decides on a minimum quality threshold – vehicle age, whether drivers or passenger assistants are required to hold particular NVQs/SNVQs, etc.
- Having set the quality threshold, evaluates tenders on the basis of price
- Sets a clear specification of the type of vehicle and qualification of staff required for certain types of operation – for example ASN/SEN home to school transport
- When awarding contracts, takes into account past performance
- Keeps its PQQ to a minimum
- Recognises that many transport contracts are low value to the authority but high value to a small business and so does not deter smaller operators from bidding by requiring unnecessary documentation
- Requires transport operators' staff to be appropriately trained, especially those dealing with vulnerable individuals with special needs and arranges training courses

Authority B –

- Invites tenders on the basis of X% price and Y% quality
- Has to determine whether, for example, to accept a bid of £100 per day using an eight year old vehicle or a bid of £120 per day using a four year old vehicle and justify its decision
- Does not specify clearly what facilities a vehicle must incorporate for particular type of operation – tail lift for example – and whether staff need any specialist skills, such as manual handling/wheelchair management
- Takes no account of past performance
- Does not require operators' staff to have any training in dealing with vulnerable people or offer any training to staff

¹⁹ *Minibus Driver Awareness Scheme*

²⁰ *Passenger Assistant Training Scheme*

6. Contract management

Key messages

- Active management rather than passive management should be used
- Good relationships with VOSA and the Police should be developed
- In the event of dispute, arbitration is generally to be preferred over court action

6.1. Active versus Passive models

In this context, contract management can be equated to performance monitoring. In other words, is the local authority getting the service for which it has paid?

Performance monitoring can be approached in two ways. The first could be described as 'passive' where the authority reacts to complaints from or contacts with users and/or where it relies on data provided by operators. The second is 'active' management where the authority regularly checks and inspects operations, where it has a programme of monitoring in addition to responding to complaints and comments.

6.2. Monitoring and feedback

Expenditure on transport operation will be a sizeable proportion of every local authority's budget and yet most authorities spend a tiny amount, if anything at all, on monitoring. Compare this with the 'norm' for monitoring other contracts such as highway maintenance, building, cleaning, etc. One of the things which mitigates against spending on monitoring is that each transport operation contract is seen as small whereas they ought to be viewed as a whole because a monitoring capability will be spread across a large number of contracts.

To gain the most benefit, authorities should be public about their planned programme of monitoring, and ensure that there is a structure to it. A typical example for school contracts would be a programme that means each operation would be monitored X times in a year. School contracts are easy to monitor because twice a day all operators are in a specific place at the same time, so any monitoring programme is likely to be school based. The same principles apply to some extent to social care transport although this is more variable in its time of operation. Local bus services are different, especially in authorities where such services are predominantly in the evenings, on Sundays or are infrequent rural operations. For these operations, the authority should have a plan that monitors each service in proportion to the volume of operation. Technological solutions enable those monitoring the operations to report immediately to both the authority and operator of any apparent problems identified. If, for example, it is a journey not running, immediate contact with the operator may result in them being able to send a replacement vehicle out.

The monitoring described in the previous paragraph is 'human' and on-the-ground. Modern technology enables much more monitoring to be undertaken remotely and economically and authorities are urged to adopt this practice wherever possible. Local bus services are, almost without exception, operated by vehicles fitted with electronic ticket machines (ETM). It should be a requirement of the contract that data from the ETM should be sent regularly to the authority who should examine it (also electronically) for any non-compliance issues. Software programs to undertake this analysis are readily available at modest cost. Increasingly, authorities and vehicle operators are investing in real time tracking technology. Operators are recognising the value to them of investing in this technology, linked as it is to vehicle and driver performance (fuel use, braking, speed, etc.) with the relevant data being supplied to the authority as a condition of contract. In an ideal world, all vehicles operating any local authority contract should be trackable in this way but realistically, it is not reasonable to expect operators to fit the necessary equipment to vehicles only ever used on school contracts.

An important part of monitoring is inviting feedback from users; indeed, some authorities go further and actively promote user forums. As anyone involved in the transport industry knows, human nature is to complain when something appears to go wrong but say nothing when it works as planned. This is true of any service industry, but best practice across the board is to treat complaints seriously and investigate them. Intelligent operators (and indeed public agencies) welcome criticism as a chance to improve.

Case Study 7: Strathclyde Partnership for Transport (SPT)

SPT undertakes a range of activity to keep the bus network under review. Activities include: SPT Compliance Inspectors monitor bus services across the west of Scotland noting potential violations of traffic regulations and preparing reports for the Traffic Commissioner. Nearly 3,000 vehicle checks were undertaken under the Glasgow Statutory Quality Partnership. SPT prepares reports for its Operations Committee – for example, reports are prepared about its supported bus services including patronage, scheduled versus actual mileage, passengers per mile on supported services and lost mileage of supported bus contracts. The report also details the trend of four-weekly passenger patronage on SPT's MyBus (Demand Responsive Transport) services. SPT's Compliance Inspectors carry out monitoring across eleven of the twelve councils across the SPT area and report back instances of non-compliance, including engine idling, parking issues or missing information. The Compliance Inspectors work with drivers and draw to their attention when possible any failures that are found and submit reports to the Traffic Commissioner as required. MyBus services are monitored by SPT officers to ensure the service being provided by operators meets with expected standards. Monitoring arising from local service complaints that the Compliance Inspectors are requested to investigate are also included in these figures reported to the Operations Committee.

There has been a significantly reduced level of non-compliance recorded since SPT's Compliance Inspectors started work. The high level of compliance is reflected by the very low number of breaches found and specific monitoring is undertaken after complaints have been received. Figures are presented on a 4 weekly period basis.

6.3. Penalty points

A number of local authorities apply a system of 'penalty points' on contracts. These will be included in the conditions of contract, setting out what triggers the application of points, the process by which an operator has the opportunity to comment and the impact of the outcome if the operator is found to be at fault. The points for each 'transgression' need to be fair, which means appropriate to the problem. As an example, an unlit but otherwise correctly set destination display ought to have fewer points than failure to run a journey. The authority needs to make it clear what sanctions are to be applied. These can be either reputational or financial. Reputational could follow the same principle as the VOSA system of green, amber and red scores, that is to say an operator who builds up a number of points moves into the amber or red zone and is therefore subject to more frequent monitoring than one whose record is good and is always in green. Financial sanctions need to be applied carefully for two reasons. Firstly, use of the word 'penalties' should be avoided, as this can have a specific legal meaning when applied to breach of contract. Authorities overcome this by applying an administrative charge (sometimes known as 'liquidated damages') where an operator fails to provide the service in accordance with the contract. Secondly, the financial sanction needs to be proportionate to the problem and to the resulting costs faced by the authority. These costs should include reimbursing the cost of officer time – for example in finding and organising a replacement service if the contract was terminated prematurely by the operator's failure or by the authority giving notice due to poor performance.

In all matters relating to monitoring and enforcement of contract, experience has shown that dialogue with operators is vital. In determining how contracts are monitored, the parameters to be used, and the sanctions to be applied, these should, wherever possible, be agreed with operators collectively (for example at an annual operators meeting) and those authorities who have adopted this practice report a high degree of co-operation. The vast majority of operators want to do a good job and are supportive of action that removes from the contracted market operators who are not up to standard.

6.4. Relationship with VOSA

During the consultation workshops, authorities spoke of the need for a good working relationship between themselves, VOSA and the police in relation to safety and quality enforcement checks on passenger transport vehicles, and the advantages of all three organisations working together when checks were to be carried out. It appeared that the quality of this relationship was patchy, with some authorities reporting that it was difficult to establish a relationship where information could be exchanged.²¹

Nevertheless, it is regarded as best practice for authorities and VOSA to work together and at local level, both are encouraged to share information, within the bounds of what is possible within the constraints imposed by the commercially or otherwise sensitive nature of the information that may be gathered or held.

Case Study 8: North Wales Police

A tripartite operation involving North Wales Police, VOSA, Denbighshire and Flintshire County Councils was undertaken on 15th January 2013 to check vehicles used in home to school transport in North Wales. Over 100 vehicles were stopped and examined – these included taxis, minibuses, coaches and buses. The operation was undertaken under the national ‘Operation Coachman’ banner and is recurrent. In addition to vehicle issues, driver and operator licensing, insurance and byelaw compliance are also checked. With both police and VOSA staff present, a wide range of immediate and deferred sanctions may be applied covering issues from vehicle maintenance, tyres, missing or malfunctioning equipment, mobile phone, seatbelt, driving and other offences.

North Wales Police publicised the operation using YouTube: <http://www.youtube.com/watch?v=4-wDqmo9E54>

6.5. Planning and managing contract variations

Authorities should have in their contract conditions the scope to vary contracts during the contract period. These variations may range from minor timing or route variations to cancellation of the entire contract. Although not exclusively so, most variations will occur on social care or special needs transport. This is also the category of transport where smaller numbers are travelling and in a few cases, a vehicle may only be used to transport one person. Should that person no longer need to travel, either for a period or permanently, the contract needs to be clear on what happens. The outcome must however be fair to both operator and authority. If the operator had to acquire a specially adapted vehicle, then it is not unreasonable for that to be reflected in the way in which the contract is suspended or terminated. Other less fundamental variations can usually be dealt with fairly easily, provided the contract includes a relevant clause. It is not possible to put forward a formula for dealing with contract variations and therefore these have to be subject to negotiation with the contractor, always subject to the possible outcome of terminating the contract if it is not possible to agree a variation.

6.6. Emergency / short-term arrangements

Authorities are frequently faced with short notice movements or have to make arrangements in an emergency. The former are most likely to occur with special needs and social care transport. A cost effective way of handling these is the use of email. Using electronic means (SMS text and email) to send details of the movement, with any special requirements such as need for passenger assistant, passenger lift, etc, to all operators on the tender list, gives the widest possible opportunity to achieve a cost effective movement, and the whole process can be completed within a matter of hours if necessary. Emergency contracts are different where they involve the sudden and unexpected cessation of business by an operator. In these cases, the authority does not usually have time to even go through an email procurement process. In chapter 7, reference is made to understanding the market and it is in circumstances where a contract has to be awarded

²¹ As regards checks on bus services, Welsh Government now fund Bus Users UK Wales to employ three full-time bus compliance officers (BCOs) for Wales

at very short notice – maybe a matter of hours – that knowledge of the local operating market is vital because the only way of dealing with an emergency is to telephone an operator whom the transport team think will be best placed to keep the operation running, at least in the short term.

6.7. Payment arrangements

Contracts will have in them the arrangements for payment. In most authorities there will be common standards and terms of payment. In general, operators acknowledge that local authorities are regular in their payments, that payment periods are adhered to and that there is of course no risk of not being paid. Contracts should allow consideration to be given to an offer of a discount for prompt payment, although to make it worthwhile, the discount needs to be sufficiently large. Finally, most operators will be SMEs (Small and Medium-Sized Enterprises) with tight cashflow requirements and the authority should take particular care to ensure that the Prompt Payment Code is complied with.

6.8. Disputes

Even in areas where relationships between operators and authorities are excellent, there will be disputes and contracts need to cover this eventuality. Most authorities will have a standard practice included in contracts for dispute resolution. Some authorities will effectively say 'our word is final' but others will have a mechanism for appointing an arbiter(s) to resolve the dispute. In many cases, the arbiter(s) are a mixture of local authority staff and representatives of the operators, and this is the best and most cost effective way to deal with a dispute.

6.9. Auditing

A key element of monitoring is to audit, and be seen to audit, operations for which the authority is paying. In most cases, the 'audit' will be no more than as described at the start of this chapter, monitoring what happens and taking action if required. This is satisfactory for those operations, such as school contracts, where the operator supplies the transport and the authority pays. In circumstances where the authority is paying an operator to provide a service and that service involves either the collection of fares or payment of a grant, the authority must include in its contract the power to examine the records of the operator to ensure that money is being correctly accounted for and that if the finance is in the form of a grant, the grant is being used for the purposes for which it was given. The authority's professional auditors may need to advise on the data gathering and checking process and may undertake spot checks or investigate where a problem is suspected. It is important that the transport staff have access to and can comment on the findings of the audit team, to ensure that there is no misinterpretation of the conclusions.

6.10. Remedies

If there is a breach of contract, then one of the legal remedies is damages. This is an area of activity where the authority's legal team need to be involved although for transport staff there are a few simple principles to understand. First of all, damages are payable for breach of contract only to the extent that one party to the contract has suffered a loss. It is also incumbent upon the 'injured' party to minimise their losses. So to take a theoretical example, if an authority were to terminate a contract (other than in accordance with the terms of the contract or for poor performance), the operator may well be entitled to damages. Assuming that damages were to be awarded, the amount assessed as being due would not be the total remaining value of the contract but would include loss of profit and any unavoidable costs faced by the operator during the outstanding contract period. The ability to deploy the resources on other work, possibly for the authority, will reduce this amount.

Authority A –

- Has a rigorous programme of monitoring that ensures the authority is receiving the services for which it is paying
- Employs staff to monitor operations both 'desktop' and on the road
- Has a plan that ensures all contracts are monitored over a set period
- Uses modern technology – ETM, GPS, etc. – to monitor contract compliance
- Encourages users to feedback their experiences through direct contact, local forums, etc.
- Makes clear to operators when tenders are invited that failure to operate in accordance with the contract will be penalised, including in appropriate circumstances termination of the contract and payment of damages
- Has a dialogue with operators in relation to how penalties are to be applied
- Has a dialogue with local VOSA staff and police regarding operator standards, information on poorly performing operators, and dialogue with Traffic Commissioners where operators may have their licence curtailed or revoked
- Has a clear system in place for making contract variations – one that is clear to operators at the time they bid for contracts
- By keeping up to date operator records is able to react quickly to an emergency transport requirement
- At the time of tender, makes clear to operators the payment terms and sticks to them
- With operator representatives, sets up a dispute resolution process that minimises the risk of a problem escalating to the stage where court proceedings are started

Authority B –

- Has no on the road monitoring capability
- Restricts feedback to comments received
- Has no capability to use technology to monitor contract operation
- Does not penalise operators for failure to operate in accordance with the contract requirement, largely because the authority is unaware of the failures unless drawn to their attention by users
- Has no or minimal contact with VOSA, police or Traffic Commissioner and only learns of problems when reported in the media
- Does not make clear to operators how variations in contract will be dealt with
- Has a haphazard approach to payment which does not allow operators to plan cash flow
- Has no process in place to deal with disputes and consequently heightens the risk of a dispute ending up in court

7. Understanding the market

Key messages

- A good understanding of the local supplier market will assist in developing effective procurement
- A wide view of the market should be taken, for example community transport operators should be considered. The role of the in-house provider should be considered
- The market should not be seen as fixed and unalterable. Market development should be pursued through techniques such as formal and informal meetings with operators

7.1. Market analysis

In achieving good value, an understanding of the local market is vital. In practice of course, it is not a single market but a series of markets, with some overlap. That overlap may be in the type of vehicles operated, the type of work undertaken, the geographic area of operation or scale of operation.

7.2. Operator lists

For every authority, a database of licensed operators should be compiled. Local circumstances will vary but at the highest level, the database should distinguish between PSV operators, hackney carriage (taxi) operators and private hire vehicle (PHV) operators. All of this information is readily available from VOSA (PSV operators) and from the relevant authority's licensing department for hackney carriage and private hire vehicle operators. Recommended further sub-division of the operator list will include the size of vehicles available, vehicle access features and location, especially in larger areas.

7.3. Market flux

So far, what has been described is 'desk-top' creation and structuring of a database. At the next level, local knowledge, experience and dialogue with operators becomes important. Some operators will be willing to bid for all types of work, others will specialise in one or more. In general terms, the large group bus operators are only likely to be interested in bus services and mainstream school transport. At the other extreme, hackney carriage and private hire operators will be interested in mainstream school transport, ASN/SEN²² and social care transport. None of these categories is exclusive and there may well be exceptions. This is why it is important to maintain dialogue with operators both to establish which parts of the market they are interested in, and whether it is possible for the local authority to encourage them to compete for other categories of work.

7.4. Role of Community Transport

The role of community transport groups should also be considered as they have the potential to operate across the whole range of types of work, and there is evidence of them doing so. Community Transport (CT) is a generic term and there is no consistent definition as to what is, or is not, community transport²³. For some authorities, CT will be seen as being something operated wholly on a voluntary basis, e.g. social car schemes, others will define it as including social car, minibus, dial-a-ride and brokerage, or any combination. The larger CT schemes will all have paid staff, certainly at the co-ordinator level and probably driving staff. Increasingly, CT schemes are filling in gaps in bus service provision and are encouraged to generate funds themselves by

²² *Additional Support Needs / Special Educational Needs*

²³ *See Appendix D for a fuller discussion of these issues*

undertaking contract work. This does, however, require care on behalf of the authority to stay within State Aid²⁴ rules. It is potentially distorting competition for the authority to grant aid a CT scheme and then to allow, or indeed to expect, the scheme to bid competitively to undertake contract work for the authority using grant-aided resources. Better practice would be to either:

- Ensure separation between the grant-aided and the contract functions – for example for the scheme to undertake its contract work through a separate legal entity;
- Ring-fence the grant aid so that it cannot be used to subsidise the contract operation; or
- Integrate the two functions together as a single package which can be tendered – it may be that this is most appropriately done on a single tender basis.

Whichever approach is taken, the authority must have considered and be reasonably sure that the chosen approach will provide corporate best value.

7.5. Role of in-house provision

If an authority, or a neighbouring authority, has an in-house fleet, this should have an impact on tender prices, if it is known that the in-house operation is able to provide services where the authority feels that the commercial sector is taking advantage of a lack of competitive activity. Of course care has to be taken because there is no advantage to be gained by utilising an in-house operation if the resultant cost is greater than would be paid to a commercial operator.

Case Study 9: Hartlepool Borough Council

Hartlepool Borough Council has taken the opportunity to maximise the operation of its in-house fleet in order to provide both core services and extended opportunities to Schools, Colleges and Educational Sites. The programme offers cost effective transport to a range of establishments and generates income to support further development.

The model/approach includes the ITU allocating a Transport Officer Support to each school within the region in order to encourage educational sites to utilise the integrated transport facility. This function reduces the considerable risk to school staff when administering the procurement and risk assessment process relating to the provision of transport and ensures the most cost effective provision is procured. The role of the Transport Officer is to support the school in identifying further transport related efficiencies and if required procure the transport in line with recommended procurement practice.

The integrated structure has allowed the service to form a considerable contribution to supporting the educational needs of young people within Hartlepool. The service currently provides support to further education, swimming programmes, educational visits, extended school activities and is currently evaluating possible further twilight provision through a review including representatives for the Young People's Parliament. To date the ITU has generated significant efficiencies over a 5 year period and generates a substantial income from charges to schools and other external bodies to support the future developments.

Case Study 10: Monmouthshire Passenger Transport Unit (PTU)

Monmouthshire is one of the most rural counties in the South East of Wales. By contrast to neighbouring city councils Newport and Cardiff; both of which have a number of large passenger transport operators based locally to accommodate regional supply and demand at reasonable costs to the general public, Monmouthshire does not host enough local passenger transport operators to cater for the regional demand of its residents. In 2006, Monmouthshire County Council took a proactive approach to remedy this issue, by establishing its own Passenger Transport Unit (PTU) and purchasing a small fleet of buses, which have since been used to deliver home to school transport and community transport ('Grass routes') contracts, providing flexible bus services to benefit local residents. The PTU's success has resulted in the expansion of the unit and subsequent purchase of additional vehicles, varying in size and specification –

²⁴ State Aid refers to forms of assistance from a public body, or publicly-funded body, given to selected operator(s), which has the potential to distort competition. More detailed guidance is available at: <https://www.gov.uk/state-aid>

including vehicles with 16 – 70 seats, coaches (with toilet and refreshment facilities), luggage space on many vehicles, wheelchair accessible vehicles, all fitted with seatbelts. The PTU also operates a private hire service, whereby the vehicles can be leased with or without drivers for commercial use, providing the authority with an additional revenue stream which is then reinvested to fund other services and facilities for the people of Monmouthshire.

7.6. Previous competition levels

One way to gain an understanding of the market is to analyse bids for contracts. The Competition Commission report on bus services (2011) found that in general, the larger the number of bids, the lower the prices became. This is not a surprise and is what would be expected but the number of bids is not the only factor to affect prices. What is also important is to analyse who bids, whether there are geographic fluctuations (in rural areas, almost certain to be the case), whether there are areas where two operators are always in competition and whether contracts change hands at each tender round.

If this analysis suggests that there is an uncompetitive market, then the transport unit should take active steps to expand and extend competition. To begin with it should engage with operators to identify whether any aspects of its procurement process are acting as a disincentive, and respond accordingly, including, for example, running 'open days' to explain the process to smaller or newer operators. It should review whether it has maximised the list of operators invited to participate, including those from neighbouring authorities. It should consider how it makes use of CT and whether there is a business case for establishing an in-house operation.

7.7. Market development

Entry to the transport operation market is relatively easy, especially for operators of private hire vehicles and to a lesser extent, PSVs. Whether the same is true for hackney carriages depends on the policy of the local licensing authority on restricting entry to the market. However, as between them PSV and PHV operators can provide all services that a local authority may wish to contract, any restriction on numbers of hackney carriages is unlikely to be a problem.

Where competition for contracts is low, then local authorities should consider taking steps to encourage operators to bid. The desirability of keeping paperwork and bureaucracy to a minimum is covered in 4.9 above; making it as easy as possible for new operators to bid for contracts is very much in the interest of the local authority.

There is evidence that some operators are deterred because they think that dealing with the local authority is 'difficult' and they want to retain full commercial freedom. Local authorities need to reassure operators that their fears are groundless and make this a reality.

Case Study 11: Norfolk County Council

Norfolk County Council employs a number of techniques to ensure that the market is suitably engaged with the procurement process:

- Training given to operators when new e-procurement systems were introduced;
- Online surveys as a way of getting feedback from operators on the process;
- Requesting operators to complete a pre-tender questionnaire relating to expiring contracts to ensure records are up to date and asking for suggestions on how the service could be better procured; and
- Use of social media to make suppliers aware of opportunities, with all tender opportunities published on Twitter.

7.8. Formal and informal operator meetings

A number of examples of good practice can be cited to explain how competitive tenders can be encouraged. In Merseyside, when a major tender round is being planned, Merseytravel (the PTE) holds seminars to which all operators are invited. The purpose is to explain to operators what is on offer, how to bid, what to do if the operator wishes to make an alternative bid and to go through the paperwork.

7.9. Information and training

Metro (West Yorkshire PTE) offers operators basic scheduling courses to help them understand how work can be packaged to make up viable operations and like Merseytravel encourages operators to look at what is on offer and how the authority would view alternative proposals. On mainstream school transport, many authorities will invite bids on the basis of a route and timetable with an overall number of seats required. An alternative is to give the operator the basic information that there are X children to be picked up at point A, Y at point B and Z and point C and let the operator work out what would be the most cost effective approach and to submit a bid accordingly. An alternative is to put all the transport to a single school or schools pyramid out as one tender, simply identifying how many children there are at each pick up, maximum journey time permitted, and then allow operators to submit a bid for the whole package. This may require the authority to specifically encourage subcontracting to enable a mixture of PSV and PHV provision to be made, with the largest operator taking overall responsibility for the operation.

Case Study 12: Essex County Council and East Lothian Council

A number of local authorities have achieved some success with outsourcing delivery and planning by introducing a school based contract where tenderers were asked to plan the services based on demand information supplied by the local authority. This has included the facility for bus operator tenderers to subcontract and manage smaller flows provided by taxi operators. Two good examples of this are Essex (2009) and more recently in East Lothian in 2012/2013 where the process of outsourcing planning and management had led to significant one off savings as it has encouraged a better use of resources and economies of scale. In Essex, the OSOO (One School One Operator) model involved operators taking over responsibility for issuing passes, communicating with parents and carers, and managing operational changes directly with the schools.

7.10. Regular contact

Increasingly, authorities are recognising the importance of dialogue with operators, both those who are currently contractors and those who hope to become contractors. Operators are well placed to suggest to authorities improvements that would reduce operating costs and therefore tender prices. What is difficult to deal with is that if operator A suggests an improvement which is incorporated in a tender, and operator B may be the successful bidder and understandably, operator A may feel aggrieved. Post-tender negotiations are covered at 4.11 above; to allow operator A in this example to benefit, invitations to tender need to make clear that some post-tender negotiations are permitted.

Case Study 13: Devon County Council

When Devon County Council (DCC) introduced electronic tendering in 2007 and the Dynamic Purchasing System (DPS) in 2012 there was a consensus decision to ensure that they had a long lead-in time with help and advice being available to operators. They held a number of road shows around the county explaining the new DPS system which was divided into 5 lots: a) PCV; b) Taxi and wheelchair accessible transport; c) driver provision; d) escort provision; and e) public transport. The Dynamic Purchasing System is open to existing and new suppliers and DCC has worked with other public bodies in Devon to encourage their transport requirements to be tendered via the framework thus increasing the contractor base, achieve savings from integrating passenger movements and benefiting from economies of scale.

They also hold annual “contractors’ forums” where operators can come and meet DCC officers and discuss any issues, including those relating to procurement.

They found that some suppliers needed more advice as they are not as computer literate as others. For local bus service contracts there have been no problems aside from some routine queries related to:

- Comprehension of the basis of pricing (net subsidy versus gross cost);
- Route / timetable / fares queries;
- BSOG.

All of these were resolved satisfactorily in advance of the tender closing date, usually by telephone.

The advice from Devon is: *"Design tenders (without compromising standards) such that as many potential contractors as possible might submit a bid. This is particularly relevant when considering the size of a contract (in terms of the number of vehicles required).*

Keep up formal and informal communications with contractors about current issues. Nurture an open, trusting working relationship whilst accepting that operators will 'play the market,' as indeed will the authority, but at the same time seek win-win outcomes - profitable work for operators, best value for the authority, good service for the passenger".

7.11. Clear position towards (potential) cartels

Whilst there may be frequent suspicions that cartels operate in the transport business, there have been very few references to the enforcement authorities and even fewer cases where those references have produced evidence of a cartel. Leaving aside reporting suspicions to the relevant authorities, if a local authority suspects a cartel may be in existence (but has insufficient proof), then there are a number of actions that can be taken. Firstly, the authority can encourage new bidders into the market, or segment of the market, where it is thought the cartel may be operating. Secondly, the authority can consider deployment of an in-house fleet (if it exists and has the right capacity). Thirdly, the authority can decide not to accept any tender (documentation discussed in section 4 covers this) but instead issue a new invitation to tender, maybe amending the specification and encouraging operators outside the immediate locality to consider bidding. Care is needed though that lack of competition is not, per se, taken as evidence of a cartel. This goes back to understanding the market for it is possible that the lack of bidders for, say, a contract to move 65 children is because only one operator in the area has a vehicle of sufficient capacity.

Authority A –

- Has a comprehensive database of PSV operators, hackney carriage operators, private hire vehicle operators and community transport groups
- Database is regularly updated
- Has regular dialogue with operators to encourage new entrants to each category of transport provision
- Regularly examines whether an in-house capability provides or would provide good value both as a stand-alone operation and as a market regulator
- Keeps in regular contact with operators through a combination of liaison meetings with groups of operators and performance meetings with individual operators
- Ensures operators are aware of the authority's tendering programme, what will be on offer and when, and any particular features of note
- Holds a comprehensive record of tenders so that each year, trends in terms of number of bidders, value of bids, any geographic variations, pockets of low level of competition are identified and acted upon

- Identifies gaps in operator competence or confidence to undertake certain types of work, and offers training or advice to encourage operators to bid for work outside their 'comfort zone'
- Analyses tenders over time to detect any potential of a cartel operating

Authority B –

- Has no comprehensive database and only adds to it if an operator asks to go on the tender list
- Is passive and accepts that one type of operator will only ever be interested in one type of work
- If it has an in-house capability, never checks that it provides value for money, allows it to continue operating the work it has always done; if it does not have an in-house capability, never examines whether creating one would provide good value
- Only contacts operators if there is a problem
- Sends invitations to tender without any prior notice to operators that a tender round will start on a certain date

8. Partnership and Innovation

Key messages

- Seeking operator input is an important way of achieving positive outcomes. This can be achieved by developing meaningful ways of on-going liaison with operators which could be both formal and informal
- Voluntary and statutory bus partnerships have proved to be an effective way of local authorities and bus companies working together to develop and deliver better services
- Kickstart funding can be used to pump-prime new services until they become self-sustaining
- Third-party 'developer contributions' can be used to support bus services and this can be either capital or revenue support. Revenue support will be time-limited
- Local authorities who are responsible for highways can assist buses to run punctually through both bus priority and other measures such as parking control
- There are a variety of risk and reward sharing mechanisms which can be used to support bus services including a financial 'cap and collar' arrangement

8.1. How do operators contribute?

It is well documented that the most successful bus operations, with positive impacts on public policy objectives such as environmental improvements and congestion reduction, are established in areas where close partnership exists between the local authority and the bus operators. However, there is inherent tension between such co-operation with incumbent operators and the need to remain impartial and ensure a competitive market for secured services.

Whatever the local situation, it is important for the authority's transport team to maintain continuous good liaison with current operators. This helps to build mutual understanding of each party's objectives, issues and planned actions, and enables a process to identify proportionate responses and opportunities to overcome barriers. Such liaison is an essential part of keeping the local bus network under review, and in particular the balance between commercial and subsidised services. In times of financial stringency, this may be especially valuable in promoting the continuation of services which are close to break-even. It is equally applicable with school transport and social care transport contractors, as an integral part of the continuous review necessary to prevent the network becoming less efficient.

Liaison is also relevant prior to significant tendering exercises, to include prospective contractors. Experience shows that clear advance communication of the authority's standards, approach and priorities tends to result in more and better bids. Of particular importance, however, is the encouragement of bids for alternative tender specifications or packages, which enables operators to offer benefits from synergies beyond the services being tendered, or to identify more efficient scheduling options. It is also good practice to capture existing operators' feedback on operational experience, far enough in advance to allow the refinement of tender specifications before publication; this might entail either informal discussion or a formal contract review process, as long as all operators are treated equitably.

By no means least, authorities should look for opportunities to use the substantial flexibility now available through de minimis payments²⁵ to a network operator, to secure a comprehensive service package requiring financial support for a minority of its components. This approach has the additional advantage of retaining network benefits (ticketing, access to information, etc.) for

²⁵ Except in Scotland, although a similar approach can be adopted there (see section 4.6)

passengers, while avoiding the usual loss of patronage when operation of a service becomes fragmented across the day.

8.2. Voluntary and statutory partnerships

This guidance is concerned with partnership arrangements between authorities and bus operators, of whatever type, only so far as they affect the market for and operation of supported services. Although the principles of partnership can be successfully applied to most areas of passenger transport, this chapter deals primarily with local bus services and, apart from section 8.9, will be of only peripheral interest to those solely concerned with tendering school or social care transport.

Effective partnerships not only help to sustain commercial bus operation, but also reduce demands on the budget for supported services by increasing the overall patronage and income and/or enabling more cost-effective operation, thus increasing the proportion of the network which can be maintained on a commercial basis. The impacts of some of the specific techniques employed are discussed below.

There is a role for both voluntary partnership agreements (VPAs) and statutory quality partnership schemes²⁶ (QPSs). While VPAs may be applied anywhere, the use of a QPS will be limited to particular sets of circumstances; i.e. where some new physical infrastructure can appropriately be provided to enable smoother, more efficient bus operation or to offer better passenger facilities. The enforcement powers attached to a QPS offer some valuable protection to the investment of both authority and operators, by ensuring that they cannot be faced with equal competition from another operator who does not meet the specified standards. In many cases, it will be most effective for a QPS to be supported by a complementary VPA operating alongside.

Either type of agreement may include standards relating to the frequency and timing of the services covered, and the fares chargeable on them. Where the authority is providing significant investment and/or the benefits to operators are substantial, it is good practice to secure agreement that extended minimum levels of service should be provided commercially (or within agreed funding limits on a de minimis basis) during specified periods of the operating day. The standards for service levels and operating periods should be reasonable and proportionate to the benefits; moreover, a mechanism will be necessary to allow for variations to be agreed over time, to meet changing circumstances, unless the duration of the agreement is unusually short (i.e. less than two years).

8.3. Kickstart arrangements

A particular use of subsidy which can support enhanced long-term services is a 'kickstart' partnership arrangement, whereby tapering revenue support (often de minimis) is provided over a limited period, typically three years, to fund initiatives which are intended to make the service commercially viable on completion. While many such schemes have been aimed at improving already commercial services, where benefits to secured services can be obtained indirectly, there are also examples of partially-tendered services which have been moved into wholly commercial operation with the aid of authority-funded marketing and timetable initiatives. Such an arrangement can also offer an excellent way to develop new ideas – perhaps for new developments (see below).

Dedicated funding streams for this type of agreement are no longer available in England, although the Local Sustainable Transport Fund can provide such funding. The Bus Route Development Grant from the Scottish Government has nominally been devolved to local authorities by rolling it into other funding. In Wales, the Welsh Government currently provides limited grant support for innovative transport schemes that require tapered pump priming. Most authorities will therefore need to find funding for any kickstart schemes from their own resources, although bids to 'invest to save' funds should also be considered. It is essential that any scheme is developed in close and genuine partnership with the operator, on whom responsibility for its success will ultimately fall.

Although operators have to date initiated most kickstart proposals, there is no reason why authorities should not do so. However, throughout the process, care must be taken to act in a fair and accountable manner which does not discriminate against particular operators. Authorities should not enter into unilateral kickstart arrangements with any operator for a service which is

²⁶ Designated under the Transport Act 2000 or the Transport (Scotland) Act 2001

experiencing direct competition over a relevant section. The authority must also ensure that it obtains good value for money.

Case Study 14: Torbay Council

Torbay has a public transport network that is run almost entirely on a commercial basis. The Council has encouraged operators to grow their passenger base, especially among fare paying customers. One successful technique has been to seek opportunities for operators to extend existing service provision, either to serve new sites close to an existing route or to improve the frequency. The Council actively seeks funding through DfT grants, Section 106 planning obligations and its own revenue streams to kickstart bus routes, without the need for ongoing subsidy.

This is significantly cheaper than subsidising a brand new service, where bids would include a risk element as operators cannot be sure how successful a service might be. Extending an existing service allows an operator to grow a known passenger base, without worrying about the capital outlay involved. Equally the local authority has no forward financial commitment.

One example is new service 67, which Torbay Council tendered to improve accessibility to health, retail and education facilities in Brixham. The service was soon extended to a new build residential estate in Brixham, supported by paying the capital costs of an additional vehicle for the extended service, with S106 funding. The service won the 'Dedication to Access for All' award at the National Transport Awards in 2011. Today the service is still run by the original operator, but is now entirely commercial apart from two morning and evening journeys which attract a small subsidy.

Each operator signs a legal agreement for any funding given to extend existing services, which requires them to return a pro rata percentage of the monies paid if they stop operating the service extension early.

8.4. Third party contributions

The principles of 'developer contributions' are well known, and have been successfully applied in supporting new or enhanced services to serve new commercial, industrial or residential developments. These may be provided voluntarily or under a planning obligation²⁷; in England and Wales, planning authorities may opt to apply a Community Infrastructure Levy (although focussed on physical infrastructure rather than service provision), and the corresponding use of planning obligations will be limited from April 2014. Transport units should consult closely with planning colleagues where a CIL is proposed, to ensure that it does not restrict the options for capture and use of developer contributions for transport.

Among other potential sources of external funding for bus and CT services, the two most important are likely to be:

- the National Health Service; and
- universities and the Further Education (FE) sector.

Despite the large transport impacts and expenditure of many of these organisations – and the statutory obligation on the FE sector in England and Wales to provide local authorities with information that they might need to help them fulfil their transport duty (including compiling post-16 transport statements) – engaging the FE sector in the co-ordinated planning and delivery of services can be difficult.

However, the benefits which might be captured are substantial, and there are other potential synergies. Authorities have the great advantage of being able to offer expertise in transport planning and procurement that many educational and health organisations lack, and could be deployed to mutual benefit. (See Appendix F with specific reference to Health.)

²⁷ Under Section 106 of the Town & Country Planning Act 1990 (for England and Wales) or Section 75 of the Town & Country Planning (Scotland) Act 1997

8.5. Traffic management and PIPs

Local traffic authorities can have a major influence on the reliability, efficiency and attractiveness of bus services (and hence their viability) through their management of the road network. It is always good practice for the public transport co-ordinator to liaise closely with roads and traffic management officers, and to facilitate good communication between them and local operators.

Taking this approach further, either within a specific Performance (or Punctuality) Improvement Partnership (PIP) or a wider quality partnership, provides a framework for effective improvement of bus journey times and reliability through targeted action. This will vary according to local circumstances, but include (apart from bus priority measures, which are not always appropriate) parking control and enforcement, traffic signal settings, traffic flow changes, road and lane geometry and marking, bus stop location and layout, roadworks management, etc.

The importance of these interactions is recognised in the Statutory Guidance on standards for Local Bus Services. Traffic Commissioners regulate bus operators' compliance with their registered timetables, and already have powers²⁸ to summon local traffic authorities in England or Wales to account for the delivery of their network management duty²⁹, and to recommend remedial actions where relevant. These powers have been used sparingly to date, but new draft guidance³⁰ makes clear that a partnership approach to bus punctuality between operators and local traffic authorities will be expected in the future, to support more stringent punctuality targets.

This will have direct impact on tendering, where service timetables are specified by the authority. Setting of unrealistic timetables will, at best, create conflict with contracting operators and instability as services are adjusted to reality; at worst, it will result in no service, as no operator will be willing to risk the cost of the Traffic Commissioner's substantial sanctions.

Thus, there are both positive and negative reasons for authorities to adopt a proactive partnership approach with operators to managing the punctuality and reliability of bus services. They must also ensure that their tendered service timetables are appropriate and realistic, i.e. that no bus should, for a foreseeable reason, run early or more than five minutes late.

8.6. Information and marketing

The location of primary responsibility for information and marketing of tendered services will depend on the type of contract, and lie with the party which carries the revenue risk – thus:

- for minimum subsidy contracts, the operator;
- for minimum cost contracts, the authority.

This should align the benefits from better marketing with the costs incurred. All activity must, as a minimum, meet the authority's specifications in its public transport information strategy, covering information provided at the roadside, by telephone, on paper, on the internet and, increasingly, through social media and services provided through regional Traveline organisations. If the strategy is deficient or outdated in any of these areas, it should be revised and re-launched.

As noted under kickstart above, good marketing can play an important role in improving the viability of commercial (or near-commercial) services and in minimising the net cost of tendered services. It may therefore play a vital role in maximising the network which can be sustained at times of falling income to buses, and should be a first – not last – option considered for expenditure by tendering authorities, in conjunction with operators.

²⁸ Contained in Section 27A of the Transport Act 1985, inserted by the Local Transport Act 2008

²⁹ Under the Traffic Management Act 2004

³⁰ Published by the Senior Traffic Commissioner for formal consultation on 21 August 2013

8.7. Infrastructure provision

The provision of 'infrastructure' in the usual sense is, of itself, unlikely to make much difference to the balance between commercial and subsidised services – although it can be a powerful indicator of the commitment to a wider partnership between authority and operators. In such agreements, each party should play to its strengths – thus authorities are best placed to provide capital investment in items such as passenger shelters or information facilities, while operators tend to be better placed to undertake ongoing revenue-funded tasks such as maintenance or updating of displays.

One specific type of infrastructure which can be useful in supporting a service is the provision of one or more buses at the time of tendering – particularly common as a form of support to CT operations. This can take the form of either:

- Providing a bus for an 'operation only' contract. This requires great care in the contractual specification of responsibilities for maintenance and repairs to the vehicle(s), which should normally lie with the operator. Good practice is to request tenders for both operation with the authority-owned vehicle or with the operator's own vehicle; or
- Providing a vehicle to the operator, with appropriate conditions as to its use (e.g. that it is allocated to specific routes, or that it is not transferred out of the authority's area) and an agreement for the operator to provide a particular service at reduced (or nil) cost for a specified period.

In either case, complications can arise at the expiry of the contract/agreement period, especially if operators perceive the authority's negotiating position to be weakened by its need to find productive employment for the vehicle(s). Tenders or offers must be objectively evaluated to ensure that good value is maintained, and vehicles retained only if justified by economic or strategic considerations.

Case Study 16: Transport for Greater Manchester (TfGM)

TfGM employs some operation-only contracts. These avoid the operator having to source a vehicle, thus improving tender responses and reducing overall cost, including vehicle cost. The approach has also facilitated the introduction of diesel-electric hybrid buses to some secondary services in the conurbation.

TfGM's experience is that it is best to group contracts that are operationally linkable within the batch invited. Minimum Cost contracts can offer better value/more flexibility for school services and for new or enhanced services, when revenue risk is significant.

One of the strategic considerations should be the ability of small operators to meet the approaching deadlines for full compliance with the PSV Accessibility Regulations, which has significant potential to reduce the market for bidders.

Case Study 17: Strathclyde Partnership for Transport (SPT)

SPT has pioneered 'Spend to Save' bus investment where SPT purchases buses for supported bus service contracts rather than these being provided by an operator as part of the contract. This has proved to be very cost effective and has substantially reduced the revenue cost of supported service provision. Buses provided by SPT as part of the contract are on a lease and repair basis. SPT also for a time operated an initiative called the 'Network Enhancement Grant'. This was an arrangement whereby an operator could approach SPT with a proposal for a bus service which they believed could eventually be commercially viable but for the first few years would require subsidy. SPT would provide a vehicle(s) to the operator in return for the operator operating that service for a specific period of time.

SPT's investment in vehicles over the last 2 years has contributed to a 7.8% decrease in the oldest vehicle categories (pre Euro, Euro 1 and Euro 2). In addition, SPT's policy of procuring only low floor accessible vehicles, as well as a number of hybrid vehicles, has contributed to a 9.5% increase in vehicles with engine emission standards of Euro 3 or better. All buses procured and leased to operators by SPT are low floor accessible.

8.8. Advance notice agreements

Agreements which provide for operators to give authorities advance notice of variation or cancellation of service registrations which exceed the statutory minima³¹ can greatly assist in smoothing transitions in service or provider. They can also help in achieving good value for authorities, by avoiding or reducing the need for emergency tenders which are often expensive and quickly incur additional re-tendering costs.

The extra period which each authority will need to assess the new situation, determine what action is necessary and enter into any appropriate contracts will vary according to its own procedures and the scale of changes. These should be reflected in the agreed period(s), which should not be unreasonably long, and should allow for circumstances requiring shorter notice which are outside the operator's control. Good practice suggests that about 15 weeks is appropriate for most purposes, but where large-scale changes are proposed, up to six months' notice may be necessary.

Notice of complete or partial cancellation of commercial services is especially valuable if accompanied by patronage and revenue data, to assist the authority in assessing needs and the appropriate response [See also next section.]

8.9. Data provision and protection

A recurrent feature of best tendering practice is good, open communication between authorities and operators, including prospective bidders. Developing a clear understanding of the authority's requirements and standards prior to tendering has been shown to improve the quality and number of bids, as well as eventual contract performance.

With current contractors, this should extend beyond the simple transmission of operational data – which will be the main task with new contractors – into regular dialogue covering operational performance, contract review and service improvement, developing (where possible) a common approach to all these issues based on shared objectives.

Such dialogue should be founded on good quality data, which will vary according to the type of service. Home-to-school and social care transport will depend on accurate information about individual passengers, the level of detail increasing with their needs, matched by regular feedback reports from the operator. For all passenger transport, the reliability and punctuality of operation will be a core parameter, of growing relevance to local bus operation with impending revision of the Traffic Commissioners' punctuality standards. Passenger and revenue data should be collected and assessed on a regular basis for all contracted local bus services (ideally using electronic ticket machine data or reports) and supported community transport services, as part of routine service and financial monitoring.

Routine dialogue promotes better understanding of operational needs and potential economies, contributing to better tender specification. Providing bidders with accurate estimates of revenue (from all sources, e.g. including concessionary fares reimbursement) will also encourage greater confidence and keener pricing, and reduce the incumbent operator's advantage. However, individuals' personal details should not be circulated with tenders, but only sufficient information to allow intelligent bidding (e.g. postcode and description of mobility needs).

Data confidentiality and protection, consistent with the principles of the Data Protection Act 1998, should be covered by clear protocols set out in contracts or agreements and applicable to all parties. Particular care will be required with any information relating to individuals, especially if they are young or vulnerable, and operators' commercial data.

³¹ 56 days (28 for Community Buses) in England and Wales (*The Public Service Vehicles (Registration of Local Services) (Amendment) (England and Wales) Regulations 2002*) (*The Public Service Vehicles (Registration of Local Services) (Amendment) (England and Wales) Regulations 2004*); 70 days in Scotland (*The Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001*)

8.10. Revenue risk

Revenue from passengers (and the associated commercial risk) may lie either with the authority ('minimum cost' contracts) or the operator ('minimum subsidy' contracts). There is no clear evidence that either model is better than the other – both have their place in appropriate circumstances. The principal features of each are:

- Minimum cost –
 - Maximises authority's control, but also its financial exposure
 - May encourage new / small operators into the market
 - Reduces problems about ticket inter-availability
 - Usually requires close monitoring by authority, including ticket inspection
- Minimum subsidy –
 - Maximises operator's incentive to invest and grow patronage
 - May encourage integration (if run by the network operator), but may contribute to fragmentation (if not)
 - Limits authority's financial commitment, as long as contract is stable
 - Tends to self-regulation with minimal monitoring

Best value can be ensured by requesting both minimum cost and minimum subsidy prices for each contract. To make this effective, the authority must have good knowledge of the revenues on the service from all sources, including concessionary reimbursement, and a clear understanding of its costs and risks in managing each type of contract.

Case Study 18: Metro (West Yorkshire Passenger Transport Executive)

Metro (West Yorkshire Passenger Transport Executive) undertook the exercise of fully costing all its tenders and established (using industry norms and local information) the profitability of individual tenders to bus operators. This identified some tenders that were capable of covering marginal cost without subsidy and also identified some tenders where operator margins were very thin or non-existent. This assisted future planning of which tenders were let and when. It also informed the likely cost the operators would charge for variations.

8.11. Sharing benefits of growth

There can be situations where authorities and operators can share reward as well as risk, with agreements or contractual relationships to enable this. The most common application of this type of approach has historically been in the provision of Park & Ride services, but there is no reason why it should not be used in other contexts.

A particularly effective use would be where an operator wishes to initiate a service over an unserved route, but there is doubt whether it will be commercially viable. A 'cap and collar' agreement could enable this, with the authority guaranteeing a minimum level of revenue, but receiving (say) a half share of all revenue above a slightly higher level. Where the service is for a new development, such an arrangement might operate for a limited 'kickstart' period.

8.12. Stimulating innovation

Local authority staff have many good ideas, but it is unlikely they have a monopoly. Therefore authorities are encouraged to stimulate others to come forward with proposals that can be considered as alternative ways of funding or providing passenger transport services.

It is important to keep the dialogue as wide as possible, including CT or other third sector groups alongside conventional operators. Furthermore, there is no particular reason why ideas should only come from those already providing transport, and authorities should publicise the opportunity as widely as possible, so that individuals or other organisations have the chance to put forward ideas.

8.13. Creating local challenge funds

One way of creating a culture of innovation is to earmark funding that would be available to operators to provide services in different ways – a local version of the Challenge Funds that have been available from central government sources.

It is strongly recommended, however, that if an authority is to pursue this course of action, the 'bidding' process is kept as simple as possible so that operators do not spend a disproportionate amount of time or money in putting together bids.

8.14. Advanced market approaches

Another example, on the same principle, occurs where a developer is proposing a retirement complex. By definition, the people in the complex are more likely to have transport needs that they cannot meet independently, and a S106 payment to enable the local authority to purchase a fully accessible vehicle (not necessarily to be used exclusively for the complex) can be sought. It is not of course necessary for that vehicle to be operated by the local authority itself; it could be operated by a commercial operator or, more likely, a community transport scheme who could make use of the vehicle for a wider social benefit. Note that in procuring the operation, the authority would need to abide by its standard procurement rules.

Alongside the use of some of the approaches discussed above, it is possible to vary the method of tendering. One complex approach could be to seek a small number of major contractors for a network, expected to organise their work and sub-contract as necessary; this might be awarded using the competitive dialogue process, although experience of this has generally not been good. A more modest option is shown in the following case study.

Case Study 19: Devon County Council

Devon has recently introduced a "sum of money" tender. This takes the form of working out - based on the DCC subsidy per passenger criteria - how much a service is "worth" in terms of subsidy. The tender then invites operators to quote the route and timetable they would offer in return for this fixed sum (which is however subject to future inflationary awards). The tender specifies the geographical points or area to be covered, together with a preferred level of service for guidance and, for information only, the current service timetable. The advice to tenderers makes clear, however, that a lower level of service than the preferred one will be considered. Any mode of provision will be considered, including fixed or flexible routes - local bus, Section 22 Community Bus, Taxibus, Fare Car (shared Private Hire). Quality standards are set along the same lines as a more conventional tender (e.g. accessibility for wheelchairs).

The successful tenderer is the one who offers the best level of service (in terms of route coverage and frequency) in return for the fixed sum of money.

Authority A –

- Engages with operators on a continuing basis, with regular meetings to review performance and receive feedback and suggestions on new ideas for the provision of transport
- Looks for opportunities to add value through partnership with operators, and challenges them to do likewise
- Works jointly with operators to identify operational and punctuality problems, and improvement / mitigation actions
- Collates and makes intelligent use of data, and ensures contractors are well briefed with full advance information, all handled under clear guidelines
- Uses its additional knowledge of contracts to refine tender specifications
- Actively informs current and potential contractors in good time about forthcoming tender rounds and the standards it is seeking, encouraging innovative solutions
- Considers alternatives to conventional subsidy, such as marketing support or traffic priorities to reduce operating costs
- Keeps up to date with developments in other parts of the UK and abroad with a view to examining whether lessons can be learnt from elsewhere
- Examines technological developments to see whether these can be used to improve transport provision
- Holds limited funding available to operators, and others, for innovative transport operation
- Considers using capital funds to reduce revenue expenditure – for example, providing the capital cost of a vehicle

Authority B –

- Monitors operators' performance through routine contract returns or complaints, with meetings only when a specific problem arises
- Leaves operators to get on with the job, assuming they will raise any problems or suggestions
- In the absence of complaints, assumes all contracts are running optimally
- Minimises demands for data from operators, and provides the minimum information operators need to fulfil their contracts
- Compiles tender specifications based on its previous experience or clients' stated requirements, without consulting incumbent operators
- Tenders are usually finalised at the last minute using standard formats, and sent only to those on the select list with minimal background information
- Sticks to tried and tested models of revenue support
- Is happy with the status quo in the way that transport is provided

9. Glossary

Additional Support Needs	Requirement under the Education (Additional Support for Learning) (Scotland) Act 2004 to provide additional support where needed to enable any child or young person to benefit from education
Bus Strategy	Document required under Local Transport Plan (2006 – 2011)
Community Transport	Transport service provided by a voluntary or community group, or by social enterprise
De Minimis	The award of a contract without competitive tender. Permissible to certain values or thresholds defined in The Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations 2004 (S.I. 2004 No.609) and The Service Subsidy Agreements (Tendering) (Amendment) (Wales) Regulations 2002 (S.I. 2002 No. 520).
Demand Responsive Transport	A service which is flexibly routed, or which only operates, on demand.
Dynamic Purchasing System	A completely electronic process for making commonly used purchases for a period of up to four years. See: http://ec.europa.eu/europeaid/prag/document.do?chapterId=4.2.5.2.&id=41
eAuction	A system whereby services are procured via an auction site on the internet – sometimes called a ‘reverse auction’ as the bid price reduces with competition.
EC Regulation 1370/2007	The legislative framework for procurement of public transport services across the EU: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0001:0013:EN:PDF This is currently (2013) under reform, with a new Directive agreed – the UK implementation is likely during 2014.
Electronic Ticket Machine	Ticket machine capable of recording passenger and revenue information electronically.
Equality Act 2010	Replaced all previous equality and anti-discrimination legislation http://www.legislation.gov.uk/ukpga/2010/15/contents and as amended http://www.legislation.gov.uk/uksi/2012/334/contents/made .
eTendering	Tender process run through a secure website in which tender documents and responses are downloaded or uploaded using the internet.
Hackney Carriage	A taxi licensed to collect passengers from a taxi rank and is available to be hailed in the street.
Integrated Transport Unit (ITU)	A unit within a local authority to manage the provision and procurement of passenger transport services for all authority departments.
Local Transport Plan (LTP)	A requirement under the Transport Act 2000 on the part of English and Welsh local authorities to set out transport policies and programme.

Local Transport Strategy (LTS)	Similar to an LTP, applying in Scotland.
Minimum cost	Type of local bus service contract where the authority pays the operator a fixed gross cost of operation but receives all the revenue from the service. The net contract cost is therefore variable, and the authority carries the commercial risk.
Minimum subsidy	Type of local bus service contract where the authority pays a fixed sum, and the operator retains all the revenue from the service and the commercial risk. The net cost to the authority is therefore fixed, and depends on the operator's estimate of the shortfall of revenue against operating costs.
Non-Emergency Patient Transport Services (NEPTS)	Non-urgent, planned transportation of patients with a medical need for transport to and from a premises providing NHS healthcare, and/or between NHS healthcare providers. Patient Transport Services (PTS) is called Patient Care Services (PCS) in Wales.
Official Journal of the European Union (OJEU)	All public sector contracts above a certain threshold must be published here http://ted.europa.eu/TED/main/HomePage.do
Operator Licence	Enables operators of commercial or large passenger carrying vehicles to carry passengers for hire or reward, as defined in the Public Passenger Vehicles Act 1981. (There are some exceptions for local authorities' own school bus operations and for services operated under s19 or s22 Permits.)
Permit	(In context) A Permit issued under s19 or 22 of the Transport Act 1985 allowing not-for-profit operation for hire or reward without requiring an Operator Licence.
Private Hire Vehicle	A taxi licensed for pre-booking only (can also be used as a pathway to obtaining a Special Restricted Operator Licence allowing a local service to be operated with a private hire vehicle).
Public Services (Social Value) Act 2012	An Act in England and Wales to ensure that public procurement includes consideration of the social benefits that may accrue from that procurement http://www.legislation.gov.uk/ukpga/2012/3/contents
Pre-Qualification Questionnaire (PQQ)	The first stage in a restricted process tender.
Public Service Vehicle (PSV)	Defined in the Public Passenger Vehicles Act 1981 as a vehicle adapted to carry 9 or more passengers for hire or reward or a vehicle adapted to carry 8 or fewer passengers and is used to carry passengers for hire or reward at separate fares and is used in the course of a business of carrying passengers.
Regional Transport Plan	Equivalent of Local Transport Plan in Wales, prepared jointly by Welsh local transport authorities.
Section 19 Transport Act 1985	Defines community minibuses (as well as smaller and larger vehicles) as operated by community groups or providing passenger transport on a not-for-profit basis but not carrying members of the public at large.

Section 22 Transport Act 1985	Defines community buses as providing transport services to the public at large, operated by a non-commercial organisation pursuing the well-being of one or more local communities.
SMEs	Small and Medium-sized Enterprises. See the EU definition for Medium, Small and Micro within the SME category ³²
Special Educational Needs	<p>A child defined as having a need or a disability that affects their ability to learn. The Special Educational Needs code of practice became effective in 2002.</p> <p>http://www.legislation.gov.uk/all?title=Education%20%28Special%20Educational%20Needs%29%20%28England%29%20%28Consolidation%29%20Regulations%202001. This is expected to be modified following enactment of the Children and Families Bill. See also http://wales.gov.uk/consultations/education/senframeworkconsultation/?lang=en for reform consultation in Wales.</p>
State Aid	An advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. Defined in the transport sector in EC Regulation 1370/2007.
Traffic Commissioner	The bus and coach industry regulator; there is one for each Traffic Area (six in England and one each in Scotland and Wales).
Vehicle and Operator Services Agency (VOSA)	An executive branch of Department for Transport responsible for operator and vehicle licensing and standards, and supporting the Traffic Commissioners
Voluntary Ex-Ante Transparency Notice	This is an EU notice that should be produced where a contracting authority deems that an otherwise in-scope contract does not require prior publication of a contract notice in the European Journal (OJEU). ³³

³² <http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/>

³³ See http://simap.europa.eu/docs/simap/pdf_jol/en/sf_015_en.pdf

Appendices

Appendix A. Procurement FAQs

A.1. Procurement FAQs

Q. *How does de minimis work?*

A. 'De minimis' contracting is authorised by the Transport Act 1985 in England and Wales as a means of directly awarding limited subsidy to a local bus operator. It also falls within the EU definition of 'direct award' in Regulation EC 1370/2007, but the limits this imposes will far exceed any likely use of de minimis (see below).

Q. *Can I make a de minimis payment to an operator without tendering or any prior notice?*

A. Yes, subject to your authority's Standing Orders and any limits (see next question).

Q. *Are there any limits on the amounts of de minimis?*

A. Yes, but these differ in each country. In England, an authority can award up to 25% of its forecast annual bus subsidy expenditure through de minimis, unless its expenditure totals less than £600,000, when a limit of £29,999 p.a. only applies to individual contracts (but up to 100% can be by de minimis). Welsh authorities may award up to 40% of their annual bus subsidy budget through de minimis. Scotland has no specific de minimis rules, as there is no legal requirement to put bus services out to tender, but the EU threshold (see next question) effectively sets a ceiling.

Q. *What are the current thresholds below which EU rules don't apply?*

A. If the expected spend on the contract(s) does not exceed the EU threshold of €200,000 (£173,934)³⁴ in total over its/their lifetime, you do not have to follow EU procedures. Because of the rules on 'aggregation' (see below), however, most contracts will be covered.

Q. *To meet the rules, when do I need to advertise an OJEU notice?*

A. If the EU rules apply, then the tender should be published in the Official Journal of the EU. The minimum timescales (if all communications are electronic only) before closure for submissions differ depending on the procedure being used, are set out in the following table:

Procedure	Prior Information Notice to first Contract Notice	Contract Notice to close of PQQ	Invitation To Tender to close of tenders
Open Procedure	N/A	52 days (40 days)	
Open Procedure with PIN	52 days	36 days (29 days) ³⁵	
Restricted Procedure	N/A	37 days (30 days)	40 days (35 days)
Restricted Procedure with PIN	52 days	37 days (30 days)	36 days (24 days) ³⁵
Accelerated Restricted Procedure	N/A	15 days (10 days)	10 days
Negotiated Procedure	N/A	37 days (30 days)	Not specified
Accelerated Negotiated Procedure	N/A	15 days (10 days)	Not specified
Competitive Dialogue Procedure	N/A	37 days (30 days)	Not specified

³⁴ Note that the sterling equivalent value is due to be revised with effect from 1 January 2014: new values can be checked at <http://www.ojeu.eu/Thresholds.aspx>

³⁵ 22 days where exceptionally justified

Q. *How long can I let a contract for?*

A. When tendering a contract you should always give details of the contract period, and any extension that may apply. Local bus contracts have a maximum permitted contract period of 8 years in England and Wales, or 10 years in Scotland; de minimis or direct award contracts cannot exceed 5 years in duration.

Q. *What is a Framework Agreement?*

A. A framework agreement is an 'umbrella agreement' that sets out the terms (particularly relating to price, quality and quantity) under which individual contracts (call-offs) can be made throughout the period of the agreement (normally a maximum of 4 years). Further specific 'mini' competitions can be run within the framework on reduced timescales. Operators have to tender to get on to the framework, but then the tendering process is greatly simplified. New operators cannot join a framework once it is let.

Case Study 20: Northamptonshire County Council use of frameworks

Northamptonshire Highways currently commission and contract manage approximately 730 contracts for transport to carry passengers such as pupils from home to school, special needs and vulnerable adults to various centres throughout the county and beyond. Before 2009, their procurement processes were mainly paper based and operators would have to resubmit the same information on an annual basis for the team to then evaluate before being able to look at any pricing.

This in itself was time consuming for both the council and operators, and so in 2010, various frameworks were created to satisfy certain requirements and also to eliminate the need for re-evaluating on a regular basis (the quality score awarded was applicable for the duration of the framework). This coincided with a restructure of the business and enabled the team to reduce from 4 full time employees to 2 full time employees whilst still maintaining the same number of contracts to be procured. The three frameworks that were procured were Home to School/Social Care and Health, Public Transport and Ad-hoc transport.

To streamline the process even more, the frameworks were procured electronically in a way that meant that the vast majority of the quality points were automatically awarded. This was only achieved by a rigorous schedule of training and road shows throughout the county to ensure that the operators were fully prepared. The framework agreements contract durations range from 2 years to 3 years with possible one year extensions and also enable both mini competitions and e-auctions to take place. It is through the e-auctions that substantial annual savings have been achieved.

The introduction of frameworks has also enabled procurement not just for Northamptonshire County Council but also for schools and other public bodies within Northamptonshire.

Q. *I've heard terms like Competitive Dialogue and Dynamic Purchasing System (DPS) – are they applicable to the sort of transport contracts I am awarding, and are they worth using?*

A. Competitive dialogue is normally used for particularly complex contracts which require refinement during the tendering process. It should only be used where the contracting authority considers that using the usual open or restricted procedures will not result in a successful contract award. It is unlikely to be appropriate for transport contracts.

A DPS is similar to a Framework, but all procurements must be undertaken electronically, and operators can join at any time by submitting an indicative tender (which must be evaluated within 15 days). A disadvantage is the need to advertise a simplified contract notice, and evaluate all indicative bids, which can include new participants, which means it is not suitable for urgent procurements.

Q. *Is there an easy answer to which method allows me the greatest freedom?*

A. Unfortunately not – you need to consider the options in light of your analysis of the market (see section 7) and the type and scale of service you wish to procure. The approach that you use does need to be consistent with your authority's standing orders and financial procedures.

- Q. *I want to be able to negotiate with the operator who is likely to be the successful bidder – can I do this?*
- A. Tendering under EU rules allows for this only in exceptional circumstances, including where no (acceptable) tender has been received in a competition, or there are objectively justifiable reasons why the operator would be the only sensible choice of supplier. You should also issue a Voluntary Ex-Ante Transparency Notice. Under UK rules, this is possible under de minimis provisions for local bus services, but otherwise it is recommended this should only be used in similar circumstances to the EU procedure. In all cases, the authority's Standing Orders must be complied with.
- Q. *When a local bus service is deregistered, I have around eight weeks to award a contract – how does this fit with the rules on advertising and how do I reconcile the two requirements? AND*
- Q. *What do I do when an operator suddenly ceases trading? I will have to organise a replacement within a few hours, but for how long can that run before I have to invite tenders?*
- A. You can award an emergency contract by any means, in accordance with Standing Orders. In England and Wales, the duration of such a contract cannot exceed three months, but the service should be retendered as soon as possible in any case. In the unlikely case that the contract value exceeds EU limits, you should issue a Voluntary Ex-Ante Transparency Notice. Use of email to the full list of operators with whom you have previously engaged will enable you to demonstrate that you have not artificially restricted competition by not going through full OJEU advertising procedures.
- Q. *Do I have to tell operators how I will make my decision to award contracts?*
- A. Yes, if the EU rules apply – if the award is not based solely on price, then you must advise bidders of the weighting given to each of the evaluation criteria. Of course, it is good practice to do so in all cases.
- Q. *What is aggregation and how do I work out if it applies to my contracts?*
- A. Aggregation is the sum of the whole-life costs of the same type of contracts including any permitted extensions. In judging whether services are “of the same type”, account should be taken, for instance, of whether they would normally be ordered together and/or from the same suppliers.

Appendix B. e-Procurement

B.1. eProcurement

eProcurement involves increasing levels of electronic management at all levels in the supply chain process. It covers:

- eSourcing
- eTendering
- eContract Management
- eAuctions (reverse auctions)
- eEvaluation

The benefits have been estimated in work by Deloitte MCS Ltd for ODPM and include reductions in the cost of goods and services of 2.8% across the board. Of this, 64% comes from good procurement, 35% from eProcurement and 1% from eAuctions. Deloitte estimates that ePurchasing can save £26 per transaction by automating the transaction process, reducing duplication of information held and data entry and speeding up the information exchange. It also estimates that eTendering can deliver average savings on process costs of 13% for an RFQ, 21% for a non-OJEU tender and 25% for an OJEU tender.

In addition, it provides other valuable benefits to an authority, including:

- Enabling staff to concentrate on their prime function
- Meeting the Prompt Payment Targets
- Meeting eGovernment targets
- Financial transparency and accountability.

Benefits to suppliers include:

- reduction in ordering and processing costs
- reduced paperwork
- improved cash flow
- reduced cost of credit control.

The stated benefits from the National eProcurement Project's (NEPP) 15 local authority case studies, in order of citation frequency, are:

- Improved management information across all areas of purchasing
- Improved transparency on all purchases
- Standardised and streamlined purchasing practices
- Control of maverick spend and better use of corporate contacts
- Budget holders have visibility and 'hands-on' control
- Supplier bills are paid on time

- Reduction in paper work and duplicated records
- Improved customer service
- Improved ability to analyse and measure spend and performance
- Management information can be used to improve terms of trade
- Achieving purchasing best practice
- Time taken to procure goods cut by 50%
- Centrally managed contracts
- Pre-spend approval
- Fewer orders, invoices, BACS and cheques to be processed
- Identifying need for ownership of procurement

It is important to understand that adopting eProcurement is a fundamental and long term strategy – it is not an appropriate tool to deliver rapid savings to meet budget pressure. As the NEPP report puts it:

Full benefits will be delivered over a 3-5 year period. This allows time for eProcurement technology to be deployed, business processes to be changed and existing contracts to expire. Sustained commitment over the medium term is, therefore, essential.

Moreover, the authority's approach to passenger transport procurement needs to be integrated into its approach to procurement generally, so that, as far as is practicable, common tools and processes are deployed. This can be seen most clearly in respect of the financial aspects, with ePayment systems eliminating both cheque issue and much paper trail work, through automated match of order invoice and receipt leading to BACS payments.

Introducing eProcurement will involve changes to:

- a) People
- b) Processes
- c) Technology

...in that order of importance.

Although it often suggested that smaller minibus, taxi and private hire operators will be resistant to a shift to exclusive electronic communication arrangements, this is not borne out by experience in practice, particularly if:

- a) The chosen technology makes use of SMS messaging, and the bidding process is planned for appropriate times of day; and
- b) There is a planned programme, long enough in advance (e.g. 3 months), for explanation, discussion and training in how to use the software.

It should be recognised that, given the nature of the minibus, MPV and taxi/hire car market, there is a tension between a stated desire within some procurement strategies to obtain scale benefits and lower transaction costs by reducing the number of suppliers, and the authority's responsibility to SMEs. This is an area where, because of the high levels of self-employment, consolidation of contracts, whilst it may reduce transaction costs, is not guaranteed to reduce overall costs to the authority. The extent to which the generally low pricing in this sector is dependent upon low administrative costs (and self-exploitation) associated with self-employment can be seen by the

failure, despite decades of trying, of the major passenger transport operators to penetrate the taxi and private hire market.

This is especially true where there is a quality component which needs to be calculated during the evaluation. The traditional written bid model usually involved a panel meeting around a table, sharing understanding of the bids, including soft aspects, and reaching a collective conclusion. The fully electronic approach can involve the procurement team working off the written specification to create a web-based marking matrix. The panel members are invited to access the web page and mark the bids which they will see electronically. The system then undertakes the weighting calculations (also incorporating the price element), identifies the successful bidder(s) and, when the Council agrees to accept the bid, sends confirmation to them and rejection (along with the calculated scores) to the unsuccessful bidders.

The absence of a panel meeting means that collective panel knowledge of the bidders, past experience or the context, cannot be shared. Instead, more weight is placed on 'objective' information, including quality assurance components, written supplier policies and so on. Unfortunately, it is a fact that SMEs generally and particularly those that are very small (fewer than 10 staff) tend to be less effective at writing up and maintaining administrative documentation or being able to formally evidence their qualities. Consequently, they are likely to be disadvantaged by this process, whereas larger companies that can carry the administrative overhead involved in writing e.g. 'well-being policies' (a recent requirement in a tender going through The Chest – North West Procurement Portal), will have an advantage even though in practice they may be no more effective in delivery and are certainly likely to have higher costs.

It should also be recognised that although in principle eProcurement is a neutral process, authorities have in practice found it difficult to incorporate objective evaluation systems that take into account:

- Environmental benefits to the authority – for example, in the research for this guide we have not come across a working carbon impact tool within eProcurement software; and
- Community benefits and social added value – again, we have not observed any tools that could meet the guidance from the Office for Government Commerce in respect of the benefits deriving from local spend (e.g. LM3), nor from doing business with the 3rd sector.

This latter point is of particular importance given the government's model for the 'big society' (e.g. various forms of community transport) to take responsibility for areas of transport provision that authorities will in future not be able to afford. The model suggests that 3rd sector organisations will be enabled to undertake this discretionary provision on the back of building up their capacity by undertaking core local government contracts.

Finally, it must be stressed that the more standardised the commodity or service is, the more appropriate it is to the full portfolio of electronic procurement and automation, including eAuctions. However, the reverse applies – where some very specific or unique service aspects exist, as can be the case with both SEN Home to School and Social Care transport, then an exclusively electronic approach becomes less appropriate. Moreover, where the authority has a number of possible approaches it might take to specifying the goods or services it requires, or is interested in seeing what options the market might offer and possibly extracting added value for itself by stimulating suppliers to do the development thinking and innovation then once again the standard eProcurement models become less appropriate.

At present, the feedback we received during the research for this guide is that whilst electronic communication (issue of tenders, etc. and use for spot purchase competitions) should rapidly become the norm, the standard corporate local authority eProcurement software suites are not well-designed for transport service procurement, and therefore create difficulties for the commissioner and the tenderer alike. It is significant that Transport for London, which has a team dedicated exclusively to passenger transport procurement, has reviewed available procurement software and concluded that as yet, there is nothing fit for the specific purpose of procuring bus and related services.

B.2. eAuctions

eAuctions, commonly called reverse auctions, online auctions, eBay in reverse or Dutch auctions, are electronic auctions where suppliers bid online against each other for contracts against a published specification.

Stated benefits include:

- elimination of paper and streamlined processes
- very short negotiation cycle
- better value for money procurement
- increased transparency of the contract award process
- audit trail and reporting.

Savings of over 50% in time and therefore process costs are reported by authorities that have undertaken reverse auctions.

Reverse auctions create an environment where suppliers bid against each other for a contract. This environment encourages competition with the result that transport services are offered at their current market value (i.e. it is claimed that the eAuction process is more likely than other processes to produce, on a regular basis, a realistic market price). Vendors report price savings ranging between 5% and 20% compared with non-reverse auction derived pricing. Note that this is a one-off shift and depends upon how competitive the prior arrangements were.

Reduced paperwork, short procurement cycle and increased transparency of competing bids are clear benefits for suppliers.

Reverse auctions tend to be used either as hosted services or in house applications.

The main effort involved in carrying out each online reverse auction is usually focused on the set up activities.

The key steps involved in using reverse auction technology for passenger transport are as follows:

- a. Prepare detailed electronic generic service specifications, including a clear statement of value assessment. It is important to produce a clear requirements specification as it will help suppliers in bidding and also makes post-auction evaluation more straightforward.
- b. Recruit suppliers.
- c. Train suppliers to use the software/website – reverse auction service providers can help with this as well.
- d. Train purchasing staff in using the software/website.
- e. Publish detailed route specifications in advance of event and invite suppliers to the reverse auction event.
- f. Start the reverse auction event. Buyer and suppliers access the event via the web. They can log in and out of the event to view and place bids. The event can last from a couple of hours (most common in the UK) to a few days, depending upon the number of routes involved. Suppliers bid anonymously against each other. Suppliers are able to see the bids on their personal screens. There is no limit to the number of individual bids they may make.
- g. Reverse auction closes. The bids are analysed using preset criteria. Some reverse auction systems provide bid evaluation tools and assessment engines, which automate the evaluation process.

h. Award contract.

Some reverse auction systems, offer integration facilities which allow for automatic creation of a commitment in the corporate accounting system for the winning bid.

Integration can allow service details taken from the winning bid to be uploaded into the catalogue of the council's electronic ordering system or eMarketplace.

The main effort involved in carrying out each online reverse auction is usually focused on the set up activities:

- preparing detailed service specifications – this is a critical part of the process, and where 'nice to have' considerations need to be either eliminated or turned into costable options;
- designing a structured evaluation framework, especially one that can be automated as far as possible;
- recruiting suppliers – Some suppliers are not experienced in taking part in electronic reverse auctions and therefore may not be immediately willing to join in. Reverse auction service providers may be able to help with supplier recruitment; and
- training suppliers in using the software/website – reverse auction service providers will provide training assistance. This may be included in the price.

There are a number of cost options available:

- software license purchase - the auction software is bought and installed on the council's server. The council can then use the software and organise an unlimited number of events at no extra cost. The additional cost involves consulting services required to set up and manage the first auctions and train users to be able to manage auctions independently in future;
- pay as you go – the buyer can purchase individual events from a third party auction provider. The price will depend on the number of suppliers taking part in the auction;
- multibuy – the buying organisation can purchase a number of auctions as a package for a set price. The package usually includes support and training for both users and suppliers;
- commission on the realised savings, where the vendor takes a percentage of the savings realised by the buyer on the agreed contract;and
- supplier pays – in some cases, the suppliers of the product or service to be auctioned pay to be able to take part in the auction on either a "no win, no fee" basis, or an annual fee.

A model eAuction for passenger transport should involve:

- a. Pre-qualification to a set quality standard, with it made clear to bidders that operations will be well-monitored and failures penalised – this means that the auction itself can simply focus on price
- b. Optimised route planning undertaken by the authority to create the routes
- c. Contract conditions that allow for, say, a 10% plus or minus variation in route length without price change, together with an agreed basis for variations outside this envelope (to give the authority flexibility to adjust routes at a later stage)
- d. Auction log shows the winning price to stimulate price reduction
- e. Option for tenderers to offer route package discounts
- f. Tenderers may bid for any routes but must state the maximum number of vehicles of different types they could make available if successful in this round

- g. Gap between the close of the auction and the award of contracts to allow the authority to identify the optimum award mix, taking into account available capacity and package discounts.

B.3. Case Studies

B.3.1. Introduction

These case studies rely partly on published information garnered from seminars, workshops and the internet and partly on personal knowledge of the author.

B.3.1.1. Hillingdon

A commonly cited case study (from an early adopter in 2006/07) is Hillingdon's approach to tendering for SEN transport³⁶. As taxi rates increased in 2006 and face to face negotiation failed, Hillingdon decided to pilot an internet reverse auction on one route. The borough's procurement team identified an auction software service provider called Achilles. The team worked with Achilles to set the auction up and train the six suppliers selected on how to bid electronically.

The procurement team reduced the bid element to a single field called 'total mileage cost' which was to include all cost elements, wages, fuel, taxi maintenance and any other relevant costs. The mileage for the routes was calculated and built into the auction tool so the suppliers only had to enter a mileage cost figure and the auction tool multiplied it by the total miles for the route to give the final price. The bidders could see their current price and their current ranking in the bid, but not the names of the other suppliers. The team used the current route price as the starting price of the auction. They ran the auction for 1 hour with an automatic 3 minute extension.

The results of the pilot on one route reduced the current price by 38% (£134/day down to £83/day). The pilot was then extended to five further routes and achieved a 33% saving across these (ranged from +6% to -45%). The costs of running the auction were insignificant when measured against the return.

Following this success, operators on the remaining routes were given 3 months notice (the standard clause) and these were then subject to eAuction. Of 160 SEN routes, 101 were auctioned in all; existing suppliers were retained where:

- Children had more complex special needs which the current suppliers were meeting successfully;
- The routes were already efficient.

The first 70 routes were grouped together into 8 lots based around schools and vehicle types. Two new suppliers who had approached the Council went through PQQ and reference checking, the remainder were existing suppliers. All received a 30 minute telephone based training session whilst logged in to a mock auction the week before the real auctions.

The auctions were held in early August 2006 allowing (just) the routes to commence at the start of academic year. Eight auctions were run – two per day for four days, the first starting at 12.00 and the second at 15.00. Suppliers requested that auctions not be run in the mornings as they were too busy to participate. The overall saving on the 101 routes was around 33%, but this was reduced to 21% as a result of suppliers returning routes that proved unaffordable for them to provide at the price they bid.

Hillingdon have pointed out some lessons to be learned from eAuctions, as despite achieving greatly reduced prices, they did not believe that they secured adequate quality on all routes, and they damaged relations with some long established good quality suppliers. In part this was due to tackling the process too rapidly in response to budget pressures. Hillingdon have suggested the following learning points:

³⁶Procurement of home to school transport services for pupils with Special Educational Needs in London, DfES 2008

- a. Quality assurance – Even though suppliers have pre-qualified, the principle of accepting the lowest bid does not allow for consideration of the balance between quality and price as other methods do. No consideration was given to valuing continuity which was a mistake. More weight needs to be given by the Procurement team to the views of the Transport Department.
- b. Ensure suppliers have capacity to run all the routes they have won – Failure to do this led to a number of quality problems such as frequent driver changes and late running as suppliers tried to create capacity by doubling up. This was exacerbated in Hillingdon by the loss of some established providers as a result of the eAuction process.
- c. Detailed specification – this needs to be detailed enough to ensure that there are no post-auction hiccups. Hillingdon concluded that the more specialist requirements may need to be excluded from the eAuction process because of the level of specification detail relating to ‘human’ factors.
- d. Contract management – Additional effort (and cost) was required to counter the effects of underbidding.
- e. Develop a pricing framework and manage variations – routes were awarded for three years subject to variations. For small variations, this can be mileage based. However, some variations, such as a child dropping off the route, may create sustainability problems. They suggest creating a cost floor, a minimum cost below which the route will not run. This suggests using a fixed price plus a unit price per mile, rather than a simple mileage rate. Furthermore, a key factor in cost effectiveness is geography and related traffic volume – prices based simply on mileage do not accurately reflect journey time. They consider it may be necessary to have a range of mileage rates defined by locality.
- f. Maintain supplier relations – The ruthless nature of the initial process in Hillingdon undoubtedly damaged some long term relationships with good quality suppliers – loyalty and cooperation were lost. The suggestion is that a longer planning and preparation process, with more supplier involvement, might help ensure the best approach to e.g. selection of routes, quality specifications and the pricing framework whilst maintaining good supplier relationships.
- g. Develop capacity – The authority needs to work continuously to develop good quality capacity and add to the approved suppliers list to keep competition strong.

Finally, although TUPE does in principle apply to these services, it never surfaced as an issue in Hillingdon.

B.3.1.2. Essex

Essex County Council started revitalising its procurement processes some five years ago, and has piloted a number of innovations such as One Operator One School. Initially it moved away from the conventional ‘3 quotes’ model towards establishing a series of local frameworks (reflecting the geography of Essex) each with no more than 20 providers. It took note of Norfolk’s failure in establishing its framework in 2003 to ensure good geographical coverage (they only received interest from 56 of their previous 200 suppliers). The frameworks were established in 2008.

Subsequently Essex County Council (ECC), with support from Improvement East (many local authority procurement initiatives were supported by regional agencies) piloted its first direct spend category (Home to School contracts) by eAuction through Bravo Solutions. The council sought to procure 138 routes which had an existing contract cost of just over £3 million.

Before the auction took place a network re-planning exercise was undertaken to try to drive out efficiency savings through co-ordination and better planning of routes. From this first round of network planning and a conventional re-tendering exercise (stage one) circa £980,000 was saved.

After the initial phase, 57 routes were selected for eAuction where:

- Two or fewer bids had been received for an individual route;

- 1st and 2nd placed bids were within a 6% price range.

These routes were grouped into 4 geographical areas to reduce the number of auctions that individual operators would have to participate in. 80 operators had submitted conventional bids for these routes and these were automatically carried over to the eAuction as their first bid. 8 additional operators entered the bidding, but 30 of the original 80 did not place a further bid.

The eAuction round (stage two) involved a fair amount of churn from the original bids, with 22 of the 57 routes being won by an operator who had not previously bid for that route, and only 17 routes being won by the operator who had submitted the lowest conventional bid. The eAuction saved a further £150,000.

Thus from the two stages, against the £3m starting point ECC saved 33% from the network review and conventional tender and 5% from the eAuction.

ECC reports that they have seen increased competition within the market place. The general move to eProcurement has added credibility to the council's procurement process through greater transparency and has created a process that has engendered greater supplier engagement.

B.3.1.3. Lincolnshire

LCC has a rolling programme of tendering which at its maximum sees 1,500 contracts a year awarded, with a 2008/09 value of ca. £32m. So far their 10 eAuctions have delivered them some £1.3m savings across some 140 contracts.

Previously LCC had used a traditional paper-based tendering service, with an approved Operator select list of 400 originally contacted by Recorded Delivery. This moved to e-mail contact in 2003. The idea of an auction pilot came through a meeting at the West Midlands Centre of Excellence with other authorities and the offer of a £5,000 grant to pay for an auction pilot. Preparation started in late 2007 and the pilot trial ran from 2008 to 2009, involving very extensive face-to-face consultation, free training and a help desk. They have tried out variations:

- PSV and non-PSV
- Specific geographical locations / county-wide / north or south
- Setting a starting price (current + 3.1% for inflation) or not
- Using a PQQ (added a month on to the process)
- Mix of postal and auction (not repeated!).

After the trial it was agreed that eAuctions would only continue for Public Service Vehicle contracts, of which there are approximately 45 approved operators in Lincolnshire. This meant that PQQs were no longer deemed necessary.

Across the 10 auctions held, the lowest decrease in costs was 1.5%, and the highest was 26%. Their experience is that eAuctions have not affected how long contracts are retained for. Key points from Lincolnshire are:

- Consultation and communication is vital
- Operators know instantly whether they have won or not which speeds up their planning process
- Not having a starting price is the fairest strategy
- eAuctions do not allow for composite bids, which means that the transport team must already have optimised the network by identifying potential packages
- ultimately, eAuctions do constitute a 'level playing field'

- Interaction during the auction (live helpdesk) is invaluable for all parties
- Make sure the time of day chosen does not disadvantage smaller operators (LCC chose not to run afternoon auctions for this reason)
- Don't expect to use eAuctions for all services – they did not find it feasible for non-PSV where there was inadequate interest

B.3.1.4. Authority X

In Authority X during 2009, the Procurement team initially predicted savings could be achieved by eAuctions for SEN home to school transport on the basis of the percentage saving achieved in Hillingdon (which they understood to be 17.2%).

The baseline position was:

- £4m budget
- 400 daily routes (08/09)
- 76 destinations
- 32 suppliers
- 40 passenger assistants provided by suppliers

Following discussions with other authorities and with auction providers, Authority X assumed that savings would be:

- Best case – 15% (£600k)
- Worst case – 4% (£160k)

with a £6k investment in the process (excluding staff time, etc.).

The resulting process was that:

- 43 auctions were run (26 for taxis, 17 for minibuses);
- Auctions ran for 15 minutes/route with a single 5 minute extension;
- The auction host did not identify any technical hitches.
- Suppliers were able to bid.

The initial savings calculated after tendering were £330,000 (8.2%). However, various risks subsequently appeared:

- Contract volatility – packages and routes change between auction and contract start date and require renegotiation / retendering;
- Suppliers' bidding strategies were not robust (i.e. they did not understand their own costs);
- Supplier capacity information was not reliable (i.e. suppliers overestimated their own capacity).

These factors had the result that:

- Tenderers returned unprofitable routes after they had started the service.
 - This led to emergency tenders having to be let;

- This had a significant negative effect on the service quality that users experienced;
- The calculated savings were significantly reduced.

In many ways, what seems to have happened at Authority X is an object lesson in how not to undertake eAuctions:

- Senior management were persuaded by the procurement manager that the transport team had been inefficient in not achieving savings
- Senior management therefore took the process off the transport team and handed it to their procurement unit to run
- The transport team could see that things were going wrong, but their comments and suggestions were rejected – they therefore ‘withdrew’. For example, the PQQ phase required operators to state their capacity. The transport team could see that the operators were overstating – what was actually happening was that they were forming informal consortia to lend each other capacity if successful. However, each was stating the total capacity of their consortium, which was thus multiplied several times. The transport team pointed this out, but were overruled on the basis that the statements in the PQQ were a clear legal commitment by the operators.
- The procurement team committed to a ‘big bang’ (i.e. tendering all routes) before thinking about the need to undertake a clean sheet route review (so as to minimise the number of routes going out in the first place). This was because senior management had accepted the global savings estimates and written them into the budget, so it was an imperative to deliver savings in the short term, even if this would cost the authority in the medium or longer term.
- The acceptance of operators through the PQQ process was done purely on the completion of the form. There was no means of taking into account previous experience and contract failures.
- The commitment to a ‘big bang’ initially ignored calculating how long the tendering process would actually take (400 routes @ 15 minutes each = 100 hours). When this was considered they took two actions:
 - They ran a conventional paper exercise first for all the routes, explaining that this was to establish a base price and then, where uncompetitive, they would run an eAuction. In practice, they accepted the paper prices for the majority of routes. However, it became clear that this approach meant that operators did not give their best price initially, as they perceived that starting higher would give them a margin to discount from if the route was chosen for eAuction.
 - They grouped runs together around schools so that operators had to bid for several routes together. This favoured a smaller number of operators with appropriate capacity (it also favoured the informal consortia which, in some cases, were unable to deliver).

B.3.1.5. Warwickshire

Warwickshire County Council spends ca. £5.4m on taxis. From a strategic procurement viewpoint (but not necessarily from a strategic transport viewpoint) taxis meet the criteria for effective eAuctions set down by the Office of Government Commerce:

- High level of market competition
- Contract value attractive to market
- Low level of procurement complexity
- Simple specification easily understood by the market
- Award criteria easily quantifiable

They undertook considerable pre-auction education and hearts and minds work, agreeing the pilot locations and scale and taking potential participants through both a PQQ process as well as getting them to sign a contract relating to quality and service issues before allowing them to participate in the auction. They used Bravo Solutions (supported by West Midlands Regional Improvement and Efficiency Partnership (RIEP)).

The reverse auction rules they used were:

- Auction reserve prices set at current cost +10%;
- Auctions scheduled for 30 minutes – clock re-set to 5 minutes whenever a bid was placed within the final 5 minutes;
- During the auction, participating bidders could view their bid, the best bid and their ranking in the auction;
- Minimum bid decrement for all lots: £0.50; and
- Prices submitted per route per day – to allow direct comparison with current day rates.

The first pilot was 10 rural routes around Stratford-upon-Avon – half mainstream and half SEN, but mostly with 5 seat vehicles. They excluded specialist vehicle (no lift-equipped vehicles) or care (complex or challenging needs) requirements. 161 bids were received in an auction lasting 2 hours 10 minutes; 6 out of 10 operators retained their existing routes. However, Warwickshire saw an average 20% cost saving, with 8 routes cheaper than the previous price.

The second pilot was 9 routes into an urban special school, mostly 6 to 8 seaters and some passenger assistant requirements (but no passenger lifts or extra care). 177 bids were received in an auction lasting 1 hour 41 minutes; 4 out of 9 operators retained existing routes. The average saving was 13.8%, with price increases on only 2 routes.

The average saving across both pilots was 16.7%.

The County's Strategic Director of Finance stated:

"The auction made absolutely compelling viewing – the first time I had considered Finance as a spectator sport. The potential of this is huge."

B.3.2. Various other points

There have been a number of critical articles about reverse auctions in the bus and taxi operators trade press over the last 24 months. Key issues identified have been:

- Need for small operators to bid for more work than they can cope with in an attempt to ensure that they win some;
- The "complete" absence of necessary information about the particular route, against which the operator would want to make a decision;
- Equivalent absence of information about vehicle specifications beyond seating capacity required;
- The use by a County Council of district zones for reverse auctions for resource tenders, where only live mileage will be paid for. Given that some rural districts are very sizeable, the bidding operator cannot know how much dead mileage they will have to absorb;
- The length of time taken for each auction – one hour was cited as unacceptably long;
- Use of pre-determined maximum prices based on historic costs i.e. the price can only move one way – down – regardless of fuel inflation, etc.;
- Auction timings being set for the convenience of council officers rather than working operators;

- Use of the automated 'extension' period – apparently in some systems, an extra 5 minutes is triggered if there is a bid in the last 5 minutes, this can go on and on;
- Instability resulting from an influx of new operators who have not managed to sustain their work and have handed contracts back;
- Perceived reduction in the weight given to quality as against cost;
- The process undermines any concept that operators and the authority are working in a partnership; and
- School bus contracts being subject to reverse auctions when local bus services are not, with no option for package bids – this removes the coordination potential between the two and makes maintaining some marginal rural bus services impossible.

B.3.3. Comment

eAuctions are undoubtedly appropriate for a product or service that can be treated as a standard commodity and in respect of which there are a number of suppliers capable of providing an undifferentiated product.

Two questions therefore arise for an authority considering this approach for passenger transport:

- a) To what extent can the transport services be standardised?
- b) Is there an adequate supplier base?

As an example of the first issue, one authority has reduced the basis of costs subject to auction down to a simple rate per mile for a vehicle type, giving them the opportunity to vary routes using that rate – in essence a combination of auction and framework.

We have observed a number of eAuctions which have produced significant savings. However, we believe that the savings cannot be 100% causally linked simply to the eAuction technique. In each case:

- The process of planning for the eAuction has required significantly increased supplier engagement, which has increased interest and understanding and therefore the level of competition; and
- The technique has been introduced by the authority as a response to high unit costs revealed through review. That is to say, the authority has historically been paying above an appropriate market rate, creating the opportunity for significant saving.

Consequently, although there are clear justifications for introduction of eAuctions on grounds of speed and streamlined administration, caution should be observed in predicting significant reductions in tender prices.

Moreover, we have observed examples where eAuctions have been introduced within an inadequate timescale and without investing in the necessary training in advance, and also without thinking through the technical implications for the tendering process nor about the relationships with the supply market.

In these cases, a number of problems have occurred:

- Relationships with the supply market have been soured – this knocks on into reduced flexibility and responsiveness when called on, post-award;
- Some operators have withdrawn from the process, thus reducing competition. It might be argued that reducing the number of operators is a useful objective because this will simplify administration; however, one of the objectives of eProcurement is to simplify the administration so that dealing with extra operators does not involve additional cost;

- In some cases, the auction schedules were committed to before adequate consideration had been given to the logistics, which compromised the integrity of the process;
- The reverse auction nature of eAuctions effectively prevents any premium being paid for continuity. This goes against the stated wishes of parents and carers and is a key contributor to poor satisfaction with the service; and
- Although, in principle, one can have a high quality threshold before operators are invited to take part in the auction, many do not seem to have managed this process well. This is acknowledged in the practice of excluding lift-equipped vehicles, and routes where additional care is required, from the eAuctions.

There is a general concern about the longer term impact of using this technique in the taxi and private hire market where there are many smaller operators and very low barriers to entry. Business planning is in scant supply and there is significant evidence of self-exploitation with no drivers' hours restrictions, and some operators adopting a 'cash economy' and failing to charge enough to make an adequate return on the capital they employ. The nature of the auction is likely to extract some prices that are below economic rates. Whilst deliverable in the short term (although there is some evidence of more frequent early stage withdrawal from contracts) this is likely to have four unwanted consequences:

- Greater churn in the supply market, leading to a further loss of continuity;
- Suppressed investment in vehicles and training;
- Greater likelihood that operators will test the flexibility of the school pick-up timings in order to try to squeeze in other work opportunities; and
- The authority may be complicit in breaches of minimum wage legislation, and even where this does not apply because of self-employment, in breach of the principle involved. As this is almost certainly linked to excessive working hours, there is a clear link to health and safety.

It should be noted that eAuctions are not the only approach to improving value from taxi and minibus contracts, whilst moving away from the '3 quotes' model. For example, a number of authorities have pursued the simplified 'mileage rate' approach (more or less a resource contract) whereby operator provide a simple rate per mile for work. As an instance, Windsor & Maidenhead did an analysis of their taxi / minibus contracts and identified the average mileage rate. They bundled 250 routes into 10 contracts and told the operators the target price (based on 90% of the average mileage rate). They invited operators to offer a discount on the base value cost. 10 operators (out of 34) were awarded contracts following an evaluation exercise that included quality assessment as well as price. They achieved a 19% saving (no information about the split between route reduction and price reduction), and they also significantly cut down administrative processes (one monthly invoice submitted by each operator for the entire bundle). They strengthened monitoring and quality, especially driver and passenger assistant training – this was easier with only 10 operators. Downsides included the administrative burden of doing all the mileage calculations and the route bundling, the loss of flexibility for operators to combine different combinations of routes and the potential risk of an entire bundle of routes having to be terminated.

Two criticisms are commonly made against eAuctions. One is that they are not strategic and do not facilitate long term relationships with suppliers. The second is that suppliers do not like them. As regards the first point, eAuctions should rarely be used in relationships with strategic suppliers or suppliers where there is a good degree of collaboration or integration of supply chains that can only take place within a long-term relationship. Reverse auctions are best targeted toward relationships that are more transactional in nature and are highly focussed on obtaining favourable pricing. They are designed for purchases that feature little collaboration, shorter term contracts, products with common specifications and little complexity, and purchases where there are savings opportunities. Strategic relationships with suppliers rarely meet these criteria.

The second criticism of eAuctions is that suppliers do not like them. This is understandable, as reverse auctions are very effective at lowering prices when they are used well. However, rational suppliers do take part in them because they offer business opportunities. They also provide other benefits for suppliers. They provide real time feedback on the competitiveness of a bid. The

supplier does not need to wonder if the bid was too high or too low. Reverse auctions also shorten the time it takes for a supplier to win the business. For these reasons, the criticism that suppliers don't like eAuctions does not seem to hold a lot of weight.

B.3.4. Summary

In summary, the eAuction approach should be adopted with some caution, and only as a component in a general process of adopting eProcurement techniques. It cannot automatically be assumed that it will deliver double-digit savings as has been suggested in some quarters, as much depends upon the efficiency of and the scale of market engagement within the current procurement process. Nevertheless, it is a useful tool to apply to those parts of the service that are 'commodifiable' i.e. capable of being described and delivered in a standardised form.

Appendix C. Environmental and Social Value

C.1. Introduction

A significant amount of guidance has been produced in the last few years, particularly since the Local Government Act 2000 and Local Government in Scotland Act 2003 introduced the wider 'well-being' powers³⁷, explaining how public authorities can use their procurement to maximize the benefits to society in their area³⁸. This primarily relies on the use of social or 'community benefits' clauses within the procurement process.

These cover issues such as:

- Labour issues – standards, local or targeted recruitment, apprenticeships, training investment;
- Disability, gender and race equality issues – anything that can assist the authority meet its Public Sector Equality Duty;
- Fair trade;
- Environmental initiatives;
- Support for SMEs, with an emphasis on Small and Micro Enterprises, social enterprises and those owned and operated by minority groups;
- Maximising local spend in the supply chain behind the service;
- The promotion of community consultation and engagement; and
- Contributions to education (e.g. running seminars in schools that help create a closer link between school and the world of employment).

It would be fair to say that until now there has been very limited application of such clauses in respect of passenger transport procurement, despite the clear contribution that they could make to broader national and local policies in pursuit of sustainable development.

The guidance makes clear that the use of social clauses should be consistent with the key EC principles of:

- Equal treatment and non-discrimination - ensuring that everyone has the same chance to bid for and win the contract;
- Transparency – setting out the terms of the contract and the award criteria in advance and keeping to these;
- Proportionality – ensuring that the terms of the contract and the award are focused on its primary purpose; and
- Mutual recognition – of standards and qualifications across member states.

³⁷ *Promotion of economic, social and environmental well-being in the authority's area*

³⁸ *Take, for example: Scottish Government – Community Benefits in Public Procurement (2008):*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62093/PPN-01-12-Use-of-PQQ.pdf *Office of Government Commerce: Social Issues in Purchasing (2006):*

http://webarchive.nationalarchives.gov.uk/20100503135839/http://www.ogc.gov.uk/delivering_policy_aim_through_public_procurement_social_issues.asp *Investment Strategy Northern Ireland – Delivering Social Benefits through Public Procurement – A Toolkit (2010):*

<http://www.isni.gov.uk/Documents/Social%20Clauses%20Toolkit%20-%20Latest%20Draft%20Toolkit%20-%2025%20February%202010.PDF>

Indeed, EU Directive 2004/18/EC (Article 26) specifically allows public authorities to introduce contract performance requirements relating to social and environmental considerations provided that these are publicised in advance. Clearly, they also need to be relevant and proportional and it is suggested that authorities should ensure that any issues that they include as criteria in transport contracts can be referenced back to underlying authority policies. Furthermore, the criteria must be objective, which therefore means that the authority must have identified a valuation and assessment framework in advance. Post-hoc justification is not an acceptable approach and is likely to leave the authority open to legal challenge. For those who are new to this issue, establishing such a framework may seem somewhat subjective and difficult to complete – however, there are now models available (see the Guidance cited) that can be adapted to meet each authority's priorities.

C.2. Public Services (Social Value) Act 2012

Intended to compel commissioning authorities to seek to gain additional economic, social and environmental value from their procurement activities, the relevant clauses of this Act came into effect (England & Wales) on 31 January 2013. The official summary details the requirements of the Act: *“This Order brings into force on 31st January 2013 sections 1 and 2 of the Public Services (Social Value) Act 2012. These sections require certain public authorities at the pre-procurement phase of procuring public services to consider how what is being procured might improve the economic, social and environmental well-being of an area and how the authority might secure that improvement by the procurement process itself. These sections also include a requirement that authorities consider whether to consult on these matters.”*³⁹

The relevant sections for passenger transport procurement are:

“(3) The authority must consider -

(a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and (b) how, in conducting the process of procurement, it might act with a view to securing that improvement.”

and

“(7) The authority must consider whether to undertake any consultation as to the matters that fall to be considered under subsection (3).”

Initial likely implications of this Act are that it will require authorities to think about these issues and be able to demonstrate that they have done so reasonably (i.e. as to the scope of its consideration, timing and so on, and whether to consult at all), which would suggest the production of a formal statement. In this context, it is very important that authorities do not treat this as a tick box exercise and instead think positively of what they could achieve.

Applied properly, systems could enable authorities to evaluate ‘added value’ components of tender bids, and award contracts accordingly. This presents council procurement teams with a challenge: they will need to develop an evaluation framework sufficiently flexible to be able to weigh up and compare different kinds of social benefits being offered by tenderers in their tender proposals for passenger transport.

The position in Scotland is slightly different in that the concept of considering Community Benefits has been promoted for some time, based on the Public Contracts (Scotland) Regulations 2006 and the Local Government Act (Scotland) 2003. Authorities now commonly identify a corporate standardised set of community benefits that bidders can offer in order to improve their likelihood of success in bidding. Unfortunately, these are less obviously appropriate for smaller passenger transport operators and will usually exclude any community-based transport provision with their focus on employment and training as a community benefit. Transport units may therefore need to develop their own set, more appropriate for passenger transport contracts, provided these meet the requirement of being set down in advance within a transparent valuation system.

³⁹ <http://www.legislation.gov.uk/ukxi/2012/3173/made>

C.3. Clean Vehicles Directive

Road passenger transport is a major contributor to greenhouse gas emissions and currently relies very heavily on fossil-fuel based energy. The Directive on the Promotion of Clean and Energy Efficient Road Transport Vehicles (2009/33/EC)⁴⁰ is intended to improve the environmental performance of transport by supporting and accelerating the introduction of clean and energy-efficient vehicles.

It does this by requiring that public procurement purchasing decisions about vehicles must be based upon a consideration of the whole-life costs of the vehicle(s) in question, including the environmental impacts, suitably monetised. The Directive sets down the rules for establishing the financial values relating to vehicle energy consumption, CO² emissions and pollutants (NO_x (Nitrogen Oxides), NMHC (Non-methane Hydrocarbons), PM (Particulate matter)) of vehicles. The whole-life cost is established by multiplying the lifetime mileage by the corresponding mileage values for energy consumption or emissions and by the respective cost per unit of energy or emission.

The EU has established a website to provide further and continuously updated information: <http://www.cleanvehicle.eu/> The background is set out at: <http://ec.europa.eu/transport/themes/urban/vehicles/directive/>

The Directive is implemented in the UK by Regulations⁴¹. These apply to public bodies, including local authorities and NHS agencies, but also to operators that provide public transport services for such an authority. The Regulations apply to contracts that would be covered by the Public Contracts Regulations 2006 or the Public Contracts (Scotland) Regulations 2006 i.e. that are above the minimum thresholds.

To comply with the regulations, those purchasing vehicles have three options. They can either:

- a) Set technical specifications for energy and environmental performance in the documentation for the procurement of road transport vehicles (option 1);
- b) Include energy and environmental impacts in the purchasing decision by using energy and environmental impacts as award criteria as part of a procurement procedure (option 2); or
- c) Include energy and environmental impacts in the purchasing decision by monetising them in accordance with set methodology provided within the Directive (option 3).

Given that a result of procuring passenger transport services is that operators or their agents end up procuring vehicles, it is important for public authorities to incorporate requirements to meet the Clean Vehicles Directive into their tendering arrangements. Where environmental sustainability is a stated policy for the authority, then this requirement could be extended to operations that involve vehicle procurement that is below the threshold, provided that the Invitation to Tender makes clear that additional points will be awarded for improved environmental performance, and explains the method for calculating these points.⁴²

⁴⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0005:0012:en:pdf>

⁴¹ For England and Wales: *The Cleaner Road Transport Vehicles Regulations 2011 (2011/1631)*; For Scotland: *The Cleaner Road Transport Vehicles (Scotland) Regulations 2010 (2010/390)*

⁴² See DfT *Guidelines for the Directive on the Promotion of Clean and Energy Efficient Road Transport Vehicles (Directive 2009/33/EC)*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3623/guidelines.pdf

Appendix D. Community Transport

D.1. Introduction

Procuring community transport can create some challenges for authorities, so it is worth considering as a separate item. The primary difficulties occur with the status of the community transport organisation itself – it may be not-for-profit, or charitable – and with the market within which its services operate – this may or may not be contestable, and may or may not have a significant ‘care’ component. As will be seen, these issues can influence the options available to authorities.

By ‘community transport’, we mean:

- Services operated under s19 Permits. These may be paratransit services for individuals, such as dial-a-ride (but not for the general public), or services for other community groups. Local authorities can obtain (indeed, may be designated to issue themselves with) s19 Permits;
- Services operated under s22 Permits. These may be registered local bus services or other services undertaken to provide financial support for the registered services. Local authorities can obtain s22 Permits for their own operations; and
- Social car schemes – these usually operate with volunteers using their own cars and receiving a mileage reimbursement. They are exempt from PSV, taxi and private hire licensing under s1(4) Public Passenger Vehicles Act 1981, provided the reimbursement is no more than the running costs of the vehicle for the journey.

Community transport groups may provide a range of other services such as Shopmobility schemes, independent travel training, provision of passenger assistants and travel buddies. These are excluded from consideration here as they do not involve the direct provision of a passenger transport service. Some community transport groups operate as social enterprises under Community Interest Company rules (and could not therefore operate under a Permit); others have wholly owned trading arms that operate under a PSV ‘O’ licence. Local authorities should treat such groups as if they are conventional commercial operators, from a tendering perspective, although they may produce additional social value that could be taken into account in any assessment process (see Appendix C).

An overview of local authority procurement of community transport needs to start with the premise that there is no ‘one size fits all’ formula. Approaches throughout the UK are primarily responses to local need, and may not easily be transferred between different locations. The perceived differences of locale, political complexion, community characteristics and infrastructure need to be accommodated. The Department for Transport February 2010 publication *Resource Guide for Local Authorities: Transport Solutions for Older People* is relevant to how a large proportion of this sector can be supported and developed.

D.2. Current Procurement Options - General

The current broad approaches for procurement of community transport services are:

Grant – a traditional way of funding non-commercial activities from external agencies, but one with limitations for local authorities. This is now less favoured than was previously the case due to its lack of specificity, the fact that significant discretion in how the funds are applied is passed to the recipient organisation, the potential for misunderstandings in the relationship between the authority and the grantee and, more recently, and particularly as CT groups have moved towards establishing themselves on a more business-like footing, its vulnerability to criticism that it distorts the market for transport services by providing unfair competition with private operators.

Service Level Agreement (SLA) – this was developed in an attempt to overcome the lack of specificity and potential for misunderstandings by creating a framework that sets out the expectations of both parties to the agreement. In particular, this usually describes the expected

outputs, any conditionality about the funding and what happens if the outputs are not delivered or other conditions are not complied with, including revocation of the funding.

Contract – the legal agreement of offer, acceptance and consideration around a specification for delivery.

From a formal legal perspective, funding arrangements are either grants or contracts; there is no legal form that is a halfway house between them. Consequently, whether an SLA is actually intended to be a clarification of a grant arrangement, or whether it is intended to create actionable obligations between the parties, i.e. a contract, will depend upon individual circumstances. It is apparent that some local authorities are not aware of this distinction. However, despite various disagreements between CT operators and local authorities over the years, there is no history of actual court action. This reflects the effective power that the authority has to dictate terms for future funding.

The Transport Act 1985 requirement for competitive tendering (subject to 'de minimis' rules) that applies in England and Wales only applies to 'local bus services'. These require operation under a PSV 'O' Licence or s22 Community Bus Permit. Whilst the latter could be subject to competitive tender, in practice authorities utilise the de minimis rules and negotiate support for Community Bus operations directly. More importantly, the largest group of community transport services that are funded by local authorities (usually services for people with restricted mobility) such as dial-a-ride, dial-a-bus or social car schemes are operated under s19 Permits or the 1981 Act lift-giving exemption and therefore, whilst they do count as public passenger transport services under s63(10)(a) of the Transport Act 1985 (and can therefore come within the authority's funding powers and duties) are not subject to the local bus service competition rules. In particular, s106 of the 1985 Act gives explicit powers to authorities to make grants, *subject to such terms and conditions as they think fit*, to 'persons' providing vehicles, equipment or other facilities provided wholly or mainly for the purpose of facilitating travel by members of the public who are disabled.

D.3. State Aid Rules

However, whilst such services may be outwith mandatory UK tendering requirements, they are not, in principle, exempt from EU public procurement regulation.

Recently, a few authorities have concluded that financial support for community transport qualifies as 'State Aid' under European rules, and therefore EU competition regulations apply. However, the majority of authorities do not accede to the reasoning behind it as regards community transport funding. In principle, any 'State Aid' (publicly financed interventions that favour one operator or class of operator and which distort or potentially distort market competition) above €100,000 over 3 years (ca. £69,348 – that is, a maximum grant of £23,116 p.a.) is not allowed under EU legislation. In general terms (but see exceptions below), financial support for services above this level therefore has to go through a competition process that meets EU standards, assuming that the service concerned can be considered to be provided within a competitive market.

The European Court considered State Aid in the *Altmark*⁴³ judgement, setting out four criteria which, if met, mean that the 'public service compensation' does not constitute State Aid. For land transport, these have been amplified in Regulation 1370/2007 which covers public passenger transport services by road, and guidance provided in a Commission Working Document SEC(2010) 1545.

There are some distinctions in treatment and exemptions between SGEIs (Services of General Economic Interest [Public Services in UK terminology]) and those SSGIs (Social Services of General Interest [Social Services]) which are non-economic. However, community transport would be unlikely to count as an SSGI because the service is inadequately personalised i.e. provided to assist particular individuals in a bespoke manner (example SSGIs include assistance for drug addicts, family breakdown, occupational training, social housing). Moreover, most larger community transport services are generically 'economic in nature' and therefore count as SGEIs for State Aid purposes, even if they were to come within the SSGI remit. SGEIs are services which the state may legitimately apply a public service obligation to in some way.

⁴³ *Case C-280/00 Altmark [2003] ECR I-7747*

European competition rules apply in general terms to undertakings engaged in an economic activity. The fact that the activity is 'social' or is carried on by a non-profit operator is not enough to avoid classification as an economic activity. The Glöckner⁴⁴ case makes this clear in the case of emergency transport services and patient transport services which, by their nature, are less 'economic' than community transport, so this is more likely to be true for community transport services. This case has been reinforced by another concerning healthcare transport services in Tuscany⁴⁵. The Tuscany Region concluded several framework agreements with the Italian Red Cross and two other charitable associations, and this led to a complaint and Commission intervention. The Commission lost the case on procedural grounds (inadequate evidence), but not before the Court rejected in full Italy's arguments that State Aid did not apply because the agreement was not a public services contract given the associations were not commercial operators, did not provide their services within a competitive framework and were motivated by social solidarity. So this was a potential State Aid situation.

The Glöckner case is also relevant to the interaction between loss-making and profit-making services. In Germany, the provision of ambulance services is regulated at regional (Länder) level. In the Land Rheinland-Pfalz, the market for the emergency transport of sick people was reserved to two medical aid organisations. State authorities could grant an authorisation for non-emergency transport to other companies. However, this authorisation was not given if the two companies entrusted with the emergency transport regarded such an authorisation as a danger to their delivering this. Hence these companies were able to leverage their market power from the reserved market to the market that was open for competition, which amounted to an abuse of a dominant position. As a state body caused this restriction of competition, there was an infringement of Articles 102 and 106 of the fundamental EU Treaty. The Land argued that this infringement was justified because, taken overall, the restrictions enabled the medical aid organisations to deliver the emergency service more economically. In essence, opening up the market would have created a position whereby the losses were socialised whilst the profits were privatised. This argument was upheld in this particular case but with the caveat that any restriction would not be justified if a) the incumbents were not capable of delivering a comprehensive and efficient non-emergency service (could be evidenced by delays and lack of capacity), and b) it would deter operators from other member states from establishing ambulance services in Rheinland-Pfalz (there was inadequate evidence of cross-border interest). Given that the cross-subsidy justification has been removed by the Transport Act 1985 in respect of local bus services, it would not seem realistic to try to resurrect it for accessible paratransit services. This therefore suggests an open market is appropriate for non-emergency patient transport and, by extension, to some of the more intensive community transport services.

The Altmark criteria, all of which must be met if public service compensation is not to constitute State Aid, are:

1. The recipient undertaking must actually have public service obligations to discharge that are clearly defined;
2. The parameters to form the basis for calculating the compensation must be established in advance in an objective and transparent manner;
3. The compensation cannot exceed what is necessary to cover all or part of the costs involved in the discharge of the obligations, taking into account any receipts and a reasonable profit;
4. Where the undertaking is not chosen through a procurement mechanism designed to select the bidder capable of providing the services at least cost to the community, the level of compensation must be determined on the basis of an analysis of costs which a typical undertaking, if well run and adequately equipped, would have incurred.

It would be difficult to argue that all these criteria apply to all aspects of community transport support, particularly (point 4) given the significant level of cost variation across the UK.

The fact that the public service compensation constitutes State Aid does not automatically mean that it is forbidden. A number of general and specific exemptions have been created; however,

⁴⁴ Case C-475/99 *Glöckner* [2001] ECR I-8089

⁴⁵ Case C-119/06 *Italy*

these do not apply to land passenger transport, which is exclusively covered by Regulation (EC) 1370/2007. This regulation applies to the operation of 'public passenger transport services' which in EU terms means passenger transport services of general economic interest (i.e. a public service) provided to the public on a non-discriminatory and continuous basis. A case could be made for community transport to be counted within 'public passenger transport services' where it is provided as part of a range of services open to the general public and is provided on a continuous basis with no private or special discrimination (other than that which derives from conventional public services).

Unless prohibited by national law, any authority may decide to provide public passenger transport services itself, or to award public service contracts directly to a legally distinct entity over which the competent local authority exercises control similar to that exercised over its own department⁴⁶. This legitimises authorities funding their own in-house community transport services, including s22 services for the public.

In other cases (i.e. where a third party operator is used rather than an internal operator) public service contracts must be awarded on the basis of a competitive tendering regime, with certain exceptions - in particular, contracts with an average annual value of less than €1,000,000 (ca. £860,000) or where they concern the annual provision of less than 300,000 service kilometres. Where the operator has no more than 23 vehicles, these values may be doubled.

D.4. EU Competition Rules – Part A and Part B

It should be noted that for competition rules purposes, the EU categorises services into Part A (Priority) and Part B (Residual). It may be arguable into which category CT services are considered to fall. As defined in *Public Contracts Regulations 2006 (Statutory Instruments)*, Part A includes:

- "Transport by land" (Category 2)

and Part B includes

- "Supporting and auxiliary transport services" (Category 20), and
- "Health and Social Services" (Category 25).

Given that EU definitions of Part B are interpreted narrowly, community transport would largely be considered under Part A unless an authority very explicitly procured it as a social care function that was segmented from its public transport procurement. However, there are precedents for both approaches. Swindon Borough Council put its DaR out to tender under Part A Category 2 in November 2010, whilst Pembrokeshire County Council cited its CT services as a Part B Category 20 service in their invitation to tender documents issued in November 2011. Note that even though they consider their CT services to come within Part B, they still chose to advertise in OJEU.

Most community transport services fit most easily into Category 2 or, possibly, Category 20, and not into Category 25. For an authority to argue for a Category 25 allocation would be to rely on the very medicalization of disability that the last 30 years of community transport provision have worked against. Moreover, the Commission working document on State Aid points out that 'ambulance services' have a health service component and a transport service component and states that where the latter exceeds the former in value, any exemptions for health services will not apply.

Within the procurement rules there is a minor exemption for Part B. "A contract for a Part A service is subject to the full requirements of the Directive. Part B services do not have to be advertised in OJEU, but you are obliged to place a notice in OJEU once the contract has been awarded. However, case-law has established that there must still be adequate publicity, such as advertising in the national press or website."⁴⁷ Contracting authorities must still procure Part B services in line with the general EU principles of non-discrimination, equal treatment, transparency, proportionality and mutual recognition. In practice, this means that the contract has to be "adequately" advertised

⁴⁶ For more detail see the *Teckal legal case C-107/98 Teckal s.r.l. v the Commune of Viano*, and more recently *Brent London Council & Ors v Risk Management Partners Limited [2011] UKSC 7* for an English interpretation

⁴⁷ *Scottish Public Procurement Toolkit* (www.scotland.gov.uk)

and some form of fair competition run thereafter. The scope and nature of the advertisement will depend on the nature of the contract in question and who is or is likely to be interested in it.

One of the arguments against putting CT services out to tender has been that this is not a contestable market. Whilst this may have been universally true when the early community transport schemes were established, it seems unlikely to be true in every case today. Whilst it is still likely to be the case that there is no contestable market for social car schemes, nor for community transport s19 provision for groups, particularly where volunteer drivers are involved, this is not the case for the professionally organised dial-a-ride services. Quite apart from the potential role played by taxi and private hire operators, who already provide accessible door to door services to public authorities to meet home to school and adult care requirements, there is evidence from those authorities that have subjected dial-a-ride services to open tendering that this can lead to competition from community-based as well as commercial operators. It would require a quite specific packaging of straight forward dial-a-ride services with services that could only be operated by a non-profit operator, to prevent such competition (for example by making it a requirement to operate under s19 Permits so that other community groups can be lent the vehicles outside peak usage times).

D.5. Social Enterprise, S19 Operation and Charitable Capacity

There has been pressure from many authorities in recent years for community transport groups to adopt a more entrepreneurial model, in particular one which involves them undertaking contract work for public authorities as a means of financially underpinning their operation. It needs emphasising that there is no bar under transport or procurement regulations to local authorities using s19 Permit operators to undertake education or social care contracts, even though it might be argued that there is no level playing field if a s19 operation can compete with a PSV operator.

However, undertaking such work at any scale can potentially distort the constitutional objectives of the community transport group. In the cases of schemes that are charitable in law⁴⁸, there is no legal bar on using charitable funds to deliver public services or facilities, but case law establishes a principle that charitable funds should be used reasonably and prudently. It is not acceptable to put charitable assets at risk simply to undertake non-discretionary work for a local authority. Moreover, charitable law (notwithstanding differences in the regulatory regime in Scotland) makes a distinction between primary purpose trading (i.e. work that directly furthers the charity's objectives) and ancillary or other work that is undertaken to raise funds to support the charity's objectives. If at any scale, the latter should be undertaken by a trading subsidiary.

Note that under s19 Permit rules, the operation cannot deliberately be established to make a profit, whereas under charity law, a community transport group cannot undertake work for the authority that is planned to make a loss. This creates a delicate balance challenge for the community transport group involved. There is no bar on undertaking contract work for the authority, but if it cannot make a surplus to support its other activities, why would it? Some groups will answer this by reference to their objective of improving the quality of service received by disabled or older passengers i.e. that they commit to delivering a higher quality than the authority would obtain from elsewhere in the market. Others may do it as a means of adding to their vehicle and staffing resources, which can then be deployed on their primary objectives when not on authority contracts. The point here is that the transport unit commissioning from the community transport group should have a clear understanding of their motivation, their legal and constitutional capacity and any necessary ring-fencing or separation of funds. Note that the restriction on making a deliberate surplus on non-core work does not apply to s22 Permit operations.

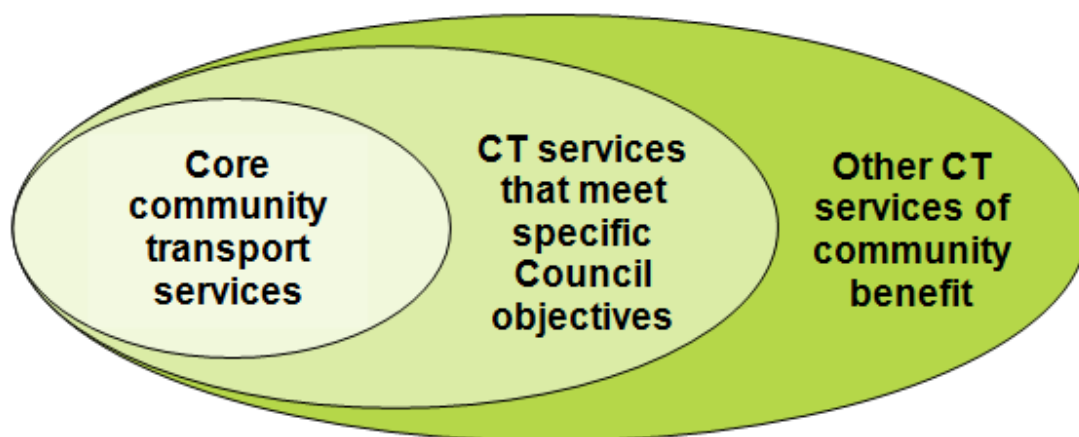
⁴⁸ *There is no specific requirement to be registered with the Charity Commission in England & Wales or the Office of the Scottish Charity Regulator in Scotland, to obtain the taxation benefits that attach to charities.*

D.6. Getting the balance right

Many community transport groups offer a range of services, and this creates a challenge for an authority that wants to support them. The procurement focus might be on writing a detailed specification that can be tendered. However, the broad outcomes that the community transport group wants to see (reflecting their constitutional objectives and possibly mirroring objectives set out in the authority's transport plan) may not be easily reducible to a simple specification. This is because:

1. Community transport is not a simple commodity output that is straightforward to measure. Not least of the difficulties is the fact that community transport is partly about outputs and partly about the process (community-based, local control, etc.). Procuring the former does not guarantee the latter.
2. Some of the critical components of community transport (especially, licensing and volunteer recruitment) are not available to the conventional commercial sector – if these are included in a specification, this can rule out or deter commercial bidders.
3. The range of CT services that could be provided or developed covers:
 - a. Services that meet core statutory duties for a council (e.g. a basic accessible paratransit service)
 - b. Services that meet specific council policy objectives, but which may be discretionary e.g. services that provide improved rural accessibility
 - c. Services that are of clear community benefit but which don't meet specific council transport objectives e.g. services to local youth organisations

In general, it is an objective for councils to wish to stimulate community-based service provision that goes beyond simply delivering their own services, so supporting a) above in a way that stimulates b) and c) is clearly to be preferred to a strategy of simply supporting a) above without regard to b) and c).



It can be seen that as one moves away from the core it becomes increasingly difficult for an authority to specify in detail how it will value services, because it actually wants the service mix to be developed within the community. Nevertheless, other things being equal, a community transport that offers a range of other services is clearly more valuable to the authority than one that simply provides the core that might be specified within a minimal contract.

It would clearly not be 'Best Value' if the authority fails to take into account the additional community benefits on offer when determining how to finance the community transport group or, indeed, whether to accept or encourage bids from them for home to school, adult care or equivalent contracts. The authority needs to have a clear understanding of the issues in advance and use this to determine its strategy publicly, otherwise it will be open to accusations that it is not

meeting the 'equal treatment' principle in the EU procurement Directive. The options available include:

- Use grant aid, backed up with a Service Level Agreement. However, this is not appropriate where the council requires the certainty of a contract, as would apply for home to school services, for example;
- Decide that the package it wishes to support is not contestable and negotiate a contract directly with the community transport organisation;
- Create a deliberate package mixing a peak contract with off-peak community transport so that both parties can benefit;
- Where a decision to competitively tender community transport work (or accept bids from community transport groups for other work) is made, then include a requirement in any grant aid or directly negotiated contract, that the resources supported in this way cannot be used on the competitively tendered work, or else must involve some repayment to the authority of the value used on the contract; or
- Make appropriate use of the Public Services (Social Value) Act or Community Benefits in Scotland by setting out in advance the wider social benefits that will be accepted as adding value to the bid when assessed.

Appendix E. Equality Duties

E.1. Equality Duties

The Equality Act 2010 has consolidated anti-discriminatory legislation into one core piece of legislation, covering the following ‘protected characteristics’:

- age;
- disability ;
- gender reassignment;
- marriage or civil partnership;
- pregnancy and maternity;
- race (including colour, nationality, ethnicity and national origin);
- religion or belief (including lack of religion or belief);
- sex; or
- sexual orientation.

The Act prohibits discrimination on the basis of any of these characteristics, and requires ‘reasonable adjustments’ to be made in many cases to avoid discrimination against disabled people. However, it does not exclude the application of other, relevant conditions – for example, a contract requirement for a good knowledge of English, to ensure that drivers can communicate clearly with their passengers. It is also permissible to exclude people based on a legal requirement, such as holding a relevant driving licence, or occupational requirement (but the latter is normally interpreted very narrowly).

The Act goes further by creating a duty for public authorities, in exercising their functions, to have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This can be viewed as a (significant) extension to the earlier requirement for authorities to have regard to the transport needs of elderly and disabled people, which has existed since the Transport Act 1985.

The new duty applies to procurement of any value, and authorities will have adopted their own policies and procedures to comply with the wide-ranging requirements of the Act. It is good practice to carry out an Equalities Impact Assessment as part of the planning for any major tendering exercise, but use of a generic form for small-scale tenders may also be valuable. The Equalities and Human Rights Commission has also produced guidance on constructive application of the public sector equality duty in procurement.⁴⁹

⁴⁹ Available at: (for England)

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/buying_better_outcomes_final.pdf

(for Scotland) <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/procurement-guidance-for-scottish-public-authorities/>

(for Wales)

http://www.equalityhumanrights.com/uploaded_files/Wales/PSED_Wales_docs/7._psed_wales_procurement.pdf

Appendix F. Health

F.1. Interaction with the NHS

Several challenges face authorities trying to organise fully integrated passenger transport services when it comes to the National Health Service (NHS). These include:

- The minor impact which transport is perceived as having on NHS service delivery and budgets – although substantial sums are spent;
- The division of responsibilities – and funding – between the NHS and local authorities, compounded by perceptions that all ‘NHS’ provision should be free to users;
- The sheer scale and complexity of the NHS – which can make it appear impenetrable (but remember local government can look the same from the outside). Near-constant re-organisations and staff turnover have exacerbated this problem for many years;
- This scale and complexity can also lead the NHS to be introspective and resistant to external influences – sometimes exemplified in reluctance to acknowledge the transport impacts of relocation decisions, or to consider non-NHS transport options;
- The emotiveness of ‘access to health’, which can lead to pressure for inappropriate prioritisation of scarce public transport resources, despite its generally low usage by patients; and
- Difficulty in reconciling different service standards and scheduling constraints – e.g. timing outpatient appointments around transport is alien to most NHS cultures, not least ‘patient choice’.

Despite all these difficulties, co-ordination offers valuable benefits on both sides. Firstly, as the country’s biggest employer, NHS staff travel can have a huge impact on the viability of public transport services and the achievement – or not – of Local Transport Plan or Strategy objectives. Secondly, there is now duplication of effort and resources between local government, the voluntary sector and the NHS in providing bespoke transport, with complex overlaps and uncertainties about responsibilities. Non-emergency patient transport services (PTS) generally have much more in common with social care or Community Transport than with emergency paramedic services, yet are usually delivered by the same NHS agency. Thirdly, there is widespread confusion among users and staff about eligibility for and access to services, with consequent diversion of staff time and effort.

F.2. An alternative model

The alternative, co-ordinated vision might be for:

- NHS organisations and authorities sharing information and planning data to facilitate the provision of appropriate public transport services for staff, patients and visitors in facilities well-sited for sustainable travel, supported by effective Travel Plans and, where necessary, funding; and
- Development of a unified demand-responsive travel service with single-point access, able to cater for the whole range of passenger needs (including access to health services, people with mobility or other special needs, and general public transport in low-demand areas) by using buses, taxis, CT or PTS as appropriate, funded in proportion by both local government and the NHS.

These measures, although complicated to achieve, would provide more effective and efficient services at lower overall cost to the public purse.

Current NHS responsibilities for transport are limited, in statutory terms. In England and Wales, it is required⁵⁰ to provide “ambulance services”, although these are not defined. The duty in Scotland⁵¹ is a little more explicit:

“It shall be the duty of the Secretary of State to make such provision as he thinks necessary for securing that ambulances and other means of transport are available for the conveyance of persons suffering from illness or of expectant or nursing mothers or of other persons for whom such transport is reasonably required in order to avail themselves of any service under this Act.”

In practice, a comprehensive emergency service (with which we are not concerned) is provided alongside PTS, which is made available according to NHS guidelines based on medical need. All emergency services, and a large proportion of PTS, are provided by Ambulance Service NHS Trusts (twelve covering England and one in Wales), or the Scottish Ambulance Service, which is a Special Health Board.

The responsibility for commissioning PTS in England lies with over 200 new Clinical Commissioning Groups (CCGs) led by General Practitioners, while in Wales it rests with the seven Local Health Boards (LHBs), which also deliver primary healthcare and hospital services. There is now a number of cases where substantial PTS contracts have been awarded to private contractors, including a major bus-owning group, and many more where smaller scale arrangements have been made to involve the private or voluntary sectors, or local authority vehicles. This underlines the similarities of PTS and much of the transport secured by authorities. Equally, there should be opportunities for Ambulance Services to benefit by putting their considerable resources at the disposal of ITUs, although the limited entrepreneurial spirit in the sector appears to have diminished in recent years. In Scotland, although the Ambulance Service retains control over all PTS, it has sought to broaden the scope of its delivery somewhat in partnership with the voluntary sector, and a pilot information scheme about health travel options is operating in Grampian.

On wider NHS travel issues, notably including staff travel, authorities will have an even wider range of agencies to deal with, especially in England, where separate Trusts are responsible in most areas for primary (community) healthcare, acute hospitals and mental health services. In Scotland and Wales, liaison will usually involve the multi-functional Health Boards or LHBs.

Authorities should be realistic about their abilities to achieve co-ordination with the NHS. Synergies and economies will usually be found more easily and quickly within (or between) local authorities; in most cases, it will only be worthwhile to devote effort to working with the NHS once full integration has been achieved internally.

However, this does not suggest that strategic links should not be forged, nor that reasonable opportunities should be ignored. At the time of writing, there are rare opportunities to explore synergies with the commissioning of PTS in both England (through the new CCGs) and Wales (where the roles of the Welsh Ambulance Service are under review). In Scotland, there is a specific initiative to make greater use of community transport services to provide for certain health journeys.

The following guidelines are suggested as the most effective way of promoting co-ordination with NHS transport:

- Identify the appropriate individuals within relevant NHS organisations with whom to discuss transport issues, and seek to build relationships;
- Secure high-level (Director/Assistant) support within the authority, and use this to secure strategic approval at equivalent level in NHS organisations;
- Focus on what you can offer to help the NHS agencies. Most NHS staff with a commissioning remit have no transport expertise, and do not have the time, budget or energy to go looking for it – hence, for example, they tend to hand the running of PTS over to the Ambulance Service, which has little interest in or incentive to change, given that the performance indicators they are

⁵⁰ Section 3(1)(c) of the National Health Service Act 2006 and the National Health Service (Wales) Act 2006

⁵¹ Section 45 of the National Health Service (Scotland) Act 1978

challenged to meet are almost exclusively focused on urgent or emergency services. The ability to provide unbiased and tailored planning and procurement, or just advice, is a Unique Selling Point for an authority's Integrated Transport Unit;

- Develop consensus through shared objectives – e.g. reducing overall costs; improving quality or reach of services; contributing to public health objectives (which can be wide-ranging); and
- Look initially for small-scale initiatives to deliver better value and/or service quality, to build trust in delivery and outcomes – once these are achieved, you can work towards the bigger 'wins'. A start might not even involve passengers – internal courier services might offer synergies.

Case Study 21: Hywel Dda Health Board - Moving to mixed provision for non-emergency patient transport

In August 2010, the Hywel Dda Non-Emergency Patient Transport Pilot was established as one of four pilot projects across Wales that would be used to test how improvements in non-emergency patient transport (PTS) could be delivered. The project was branded ICARHS - Improving Customer Access to Rural Health Services. In January 2012, The Hywel Dda Health Board (which covers Carmarthenshire, Ceredigion and Pembrokeshire) and the Welsh Ambulance Service NHS Trust (WAST) signed up to a joint paper "Time to deliver in Hywel Dda" and started its implementation.

Using £100,000 of Welsh Government Invest to Save funding, the pilot project identified key information:

- Over 50,000 patient journeys were undertaken per annum
- 90% of journeys related to outpatients
- 70% of journeys related to walking patients
- 14% of journeys were aborted

Instead of WAST providing all journeys, the project introduced mixed service provision and (for patients in Ceredigion) a single point of contact for PTS. The mixed provision model includes the following features:

- 23% of journeys are now undertaken by non-WAST providers
- Eight hospitals are supported by local authority Social Care transport utilised during downtime
- A CT group provides a vehicle to support a Mental Health Unit in Pembrokeshire
- Community regeneration initiative Menter Cwm Gwendraeth and the RVS provide transport to hospitals / falls clinics in Carmarthenshire

The outcomes included:

- Fewer aborted journeys
- A significant reduction in waiting times for patients
- Improved timeliness in arriving for appointments
- The single point of contact and Extra Contractual Referrals delivered:
 - £85,000 savings in 2012-13
 - A process to reclaim costs from other NHS agencies (where appropriate)
 - Significant saving of clinical staff time that was previously used to arrange transport
- Discharge delays substantially reduced

These features have now been incorporated in mainstream practice in Hywel Dda Health Board, which works in close collaboration with the three County Councils.

Appendix G. Concessionary Travel

G.1. Concessionary travel

Reimbursement for concessionary travel is a key component of revenue for most tendered bus services (and those community transport services where travel concessions are offered), many of which carry a high proportion of concessionary passengers. The amount of reimbursement receivable for a given tendered service may significantly affect the level of subsidy required. Formulae for reimbursement should be determined in accordance with statutory requirements; in England, DfT publishes non-statutory reimbursement guidance⁵² for authorities, while in Scotland and Wales reimbursement rates for mandatory schemes are determined centrally.

The mandatory concession schemes do not cover community transport, taxis or (except in Scotland) young people, but local transport authorities may offer such concessions at their discretion. Authorities will have to consider their priorities, financial resources and the nature of services when deciding on the nature and application of discretionary concessions. For example, where a community transport service has replaced a local bus service, there may be a strong case for it to offer the equivalent to mandatory travel concessions.

Operators must be reimbursed for carrying concessionary passengers under both mandatory and discretionary schemes, and concessionary schemes must apply equally to commercial and tendered services. Where services are provided under a minimum cost contract, however, the authority carries the revenue risk and must be credited with reimbursement payments along with other passenger revenue. For financial reporting and budgeting purposes, the authority should continue to calculate the value of reimbursement which is attributable to carrying concessionary travellers.

Where services are provided under a minimum subsidy contract, the bus operator carries the revenue risk, and retains all passenger receipts including concessionary reimbursement. Payments for reimbursement should be calculated and paid separately from the subsidy payment – this accords with section 103 of the Transport Act 1985, which says that reimbursement cannot be included in service subsidy payments unless no mandatory or discretionary concessionary travel scheme is in force.

⁵² Available at <https://www.gov.uk/government/publications/guidance-on-reimbursing-bus-operators-for-concessionary-travel>