

Meeting:	Economy & Transport Executive Member Decision Session
Meeting date:	14 November 2023
Report of:	James Gilchrist, Director of Transport, Environment and Planning
Portfolio of:	Cllr Pete Kilbane, Executive Member for Transport and Economy

Decision Report: Local Bus Service Updates

Subject of Report

1. A review of the York bus network ("**Bus Network Review**") is currently underway to determine if there are opportunities to better serve residents and visitors to York and to achieve better value for money from bus subsidies administered by the Council of the City of York ("**CYC**").
2. The results of the Bus Network Review will inform recommendations to the Executive on future support for tendered bus services. These recommendations are planned to be presented in c. January 2024 for proposed implementation on or around 1 May 2024.
3. The purpose of this report is to seek approval to align several existing short-term tendered bus service contracts with the timeframes outlined above. The first contract covers some early morning and evening services on routes 1, 4, 6, 10/10A, with an estimated cost to extend by four months to 30 April 2024 of up to £45,000. The second contract is for route 19, which would cost up to £8,000 to extend by one month to 30 April 2024.
4. Extension of the above tendered bus service contracts would provide time for the Bus Network Review outputs to be carefully considered before any decisions or changes are made. It would also minimise the number of potential timetable changes and

maximise the opportunity for securing value for money on future tendered service contracts.

5. The proposed contract extension is affordable within the existing DfT granted York Bus Service Improvement Plan (“**BSIP**”) revenue budget for bus service support, which is currently 94.1% committed.

Benefits and Challenges

6. Approval is sought to extend several short-term tendered bus service contracts to 30 April 2024 using BSIP funding. The rationale for this approach is to enable the results of a Bus Network Review to be completed and recommendations to be prepared and consulted upon prior to presentation to the Executive in c. January 2024. Such a timeline will enable plans to be carefully considered and communicated to all stakeholders, in support of a sustainable and stable bus network.
7. Retaining existing tender contract dates would necessitate more pressurised decision-making with shorter windows for effective communication with decision-makers, stakeholders, and bus users. This could affect our ability to deliver on the objectives of the BSIP and lead to reputational damage for the council.

Policy Basis for Decision

8. CYC’s commitment to stabilising, improving, and growing the bus network is consistent with the 10-Year Plan for the city, known as “**York 2032**”, which recognises transport as a key priority for the city, setting the goal that York’s transport networks will be inclusive and sustainable, connecting neighbourhoods and communities.
9. The Climate Change Strategy 2022-2032 notes that emissions from transport represent 27.9% of York’s emissions and of this, 88% of emissions are from car travel or public transport. The strategy sets an objective to increase the share of vehicles on the road that are electric or hybrid and reduce overall car use through alternative modes, such as public transport.
10. Initiatives to support, stabilise and grow bus patronage contribute towards the emerging Local Transport Strategy reflecting the importance of public transport in York’s transport hierarchy and the Bus Services Improvement Plan agreed for York.

11. The new Council Plan 2023-2027 has four Core Commitments, which fit with the initiatives aimed at supporting and growing bus patronage:

- **Affordability – Tackling the cost-of-living-crisis**

Bus travel offers an affordable alternative to reliance on private car ownership, which is prohibitively expensive for some people. Those aged under five years old, or of pensionable age, are eligible for free bus travel, plus those with a registered disability. In addition, a £2 single fare cap is in place for bus travel until October 2024, and the York BSIP is funding several other fares initiatives.

- **Climate – Environment and the climate emergency**

Providing a high-quality bus service supports an increase in alternatives to car usage which will reduce carbon emissions. York has secured zero emissions bus grants for a fleet of electric buses, which are currently being rolled-out.

- **Health – Health and wellbeing**

Supporting people to use public transport may reduce the number of petrol and diesel car users which could improve air quality, leading to significant health benefits.

12. Within the Council plan there is a commitment to deliver the Bus Service Improvement Plan, including a new provider of bus shelters with real-time information and lobbying for improvements in York's bus services.

13. In October 2023 the Executive approved a vision, objectives and Policy Focus area for a Local Transport Strategy. One of the policy focus areas is about improving public transport – so that all areas of the city have good and reliable public transport access. Key to this will be extending the bus network, ensuring effective and reliable early and late services when people need them, and upgrading high frequency bus services – in some cases into bus rapid transit services. We will also work to upgrade heavy rail services where they play a local role or support our other policies. Not only will this result in a 50% or greater increase in bus patronage by 2030, it will also enhance the viability of public transport and protect its future.

Financial Strategy Implications

14. The BSIP allocation to CYC totals £17,360,000 over 3-years. This is broken down £10,665,000 capital funding and £6,695,000 revenue funding. CYC also has a separate revenue budget of £704,000 that is used to support bus services.
15. The proposed extension to existing short-term tendered bus service contracts set out in this report are to be covered by the BSIP revenue allocation, which is grant-funded from the Department for Transport (“**DfT**”).
16. The external funding that will be utilised from the BSIP award is only available up to and including 31st March 2025, and therefore cannot fund long term interventions beyond that time.
17. The bus market remains unpredictable. Through the Enhanced Bus Partnership, CYC officers work closely with operators and support them to take back subsidised services to commercial operation, wherever practicable. However, there remains a risk that further commercial bus services could be withdrawn in the coming months, resulting in further requests for intervention. In the future, with constrained budgets, CYC and Enhanced Bus Partnership may have to make challenging decisions regarding bus service affordability. The Bus Network Review will inform such choices, with results and recommendations to be presented to the Executive in c. January 2024.
18. There may be opportunities to transfer funds from other BSIP revenue support initiatives, such as subsidised fares, to tendered bus service support but that would reduce the value and impact of such interventions.
19. Central government’s recent “Network North” announcement included £700,000,000 to fund hundreds of new local bus routes through BSIPs. This new funding will be administered based on a formula rather than via a competitive bidding process. CYC’s indicative BSIP allocation from this latest funding round is £1,153,000 of additional new revenue for 2024/25. Further details are expected shortly.

Recommendation and Reasons

20. The Executive Member is recommended to:

- To note and approve plans to extend the existing subsidy arrangements for some early morning and evening bus services on routes 1, 4, 6, 10/10A and 19 up to and including 30th April 2024.
- To delegate authority to the Director of Transport, Environment and Planning (and their delegated officers) to liaise with the Director of Governance and the Chief Finance Officer (and their respective delegated officers) to draft, negotiate and conclude any necessary documentation to properly extend the existing subsidy arrangements and/or bus service contracts for the aforementioned routes in compliance with (where applicable) the rules and regulations set out within Regulation 72 under Part 2 of the Public Contract Regulations 2015 (the “**Procurement Regs**”) or Regulation 43 within Part 4 of the Concession Contract Regulations 2016 (the “**Concession Regs**”) (in respect of any extensions and/or variations to service contracts between CYC and the relevant operator(s)), the Subsidy Control Act 2022 (the “**2022 Act**”) (in respect of any extensions and/or variations to any existing grant funding arrangements between CYC and the relevant operator(s)) and CYC’s Financial Regulations set out within under Appendix 10a of the Council’s Constitution (the “**Council’s Financial Regs**”) and CYC’s Contract Procedure Rules set out within under Appendix 11 of the Council’s Constitution (the “**Council’s CPRs**”).

Reason:

- The rationale for this extension is to enable the outputs of the York Bus Network Review to be thoroughly considered and discussed with stakeholders, with a view to bringing recommendations for longer-term, better value, and more stable bus network to the Executive and York Enhanced Bus Partnership in January 2024, for a controlled and well-communicated implementation in c. May 2024.
- Also, the extension will help to ensure that the Bus Network in York is stabilised and that the council can work with the statutory Enhanced Bus Partnership to deliver its stated Bus Service Improvement Plans objectives in line with the National Bus Strategy, by both improving passenger experience and increasing bus patronage.

Background

21. Prior to the COVID-19 pandemic, York's bus services carried approximately 16,000,000 passengers per year, with a steady increase in passenger volumes since 2014. Current bus patronage is averaging around 85% of pre-COVID volume, at a time when service operating costs (most notably fuel and wages) have increased.
22. CYC has been successful in securing funding to develop the bus network. Zero Emissions Bus Grants ("**ZEBRA**") of £11,300,000 have been awarded and CYC was successful in attracting £17,400,000 funding through central government's BSIP.
23. Though the Local Plan process a series of network enhancements have been identified to support new developments in York.

BSIP Funding for Bus Service Support

24. In April 2022, CYC was given an indicative allocation of c. £17,400,000 for enhancing York's bus network working with the Enhanced Bus Partnership. This funding comprised capital funding of c. £10,700,000 and revenue funding of £6,700,000. The grant for the first year (i.e., c. £4,600,000) was paid to CYC in November 2022, at which point CYC mobilised to deliver the programme.
25. Key elements of the programme in development, design and/or delivery are listed below.
 - In development and design, upgrading York's Park and Ride sites to become multi-modal transport hubs with a wider range of services. Under consideration are opportunities to connect with additional bus and coach services, provide overnight parking, deliver e-bike, e-scooter and/or car club collection points; and offer numbers of cycle lockers, amongst other improvements.
 - In development and design, bus stop infrastructure improvements and bus priority on high frequency bus corridors and in the city centre.
 - In delivery, new and improved real-time information screens at bus stops across York, with inclusion of audio announce facilities to aid blind and partially sighted people to travel more confidently and independently.

- In development and delivery, a range of reduced fares, targeted at younger people and those who may be suffering hardship, but are not covered by existing concessionary fares schemes.
 - In delivery, introducing an all-operator tap-on-tap-off ticketing system, which will potentially enable cheaper travel across the York boundary into North Yorkshire and the East Riding of Yorkshire.
 - In development, travel behaviour change campaigns to encourage greater use of sustainable modes, including buses.
 - In delivery, support for the existing bus network. Significant increases in operating costs and a national driver shortage continue to present a challenging context for bus operations. By stabilising the network, we hope to set a foundation to grow bus patronage. This is being achieved by providing subsidies for services that are no longer commercially viable. A full York Bus Network Summary is provided in **Annex A**.
26. The BSIP budget currently available for Bus Service Support is £2,285,000. This is made up of £1,535,000 for Bus Network Support and £750,000 for restart and subsidised operation of Poppleton Bar Park and Ride.
27. New BSIP funding has recently been announced by Central Government following the cancellation of the HS2 Project. This was outlined in the “Network North” policy paper. CYC’s indicative BSIP allocation from this latest funding round is £1,153,000 of revenue for 2024/25, but this still needs to be confirmed at the time of drafting this report.

Bus Service Support

28. The York Bus Network has been affected by decreased passenger numbers both on the Park & Ride (particularly weekday commuters) and wider network, with a currently estimated 15% reduction overall in passengers compared to pre-COVID.
29. Bus operators have continued to experience rising operating costs, with fuel price increases of around 40% and staff costs increases of around 30% over recent years. Increases in staff costs have largely been driven by driver shortages, with York particularly affected due to the small pool of local drivers.

30. The combination of overall reduced patronage levels and rising operating costs is continuing to reduce the commercial viability of several services, thus increasing demand for subsidy to retain the current network.
31. Stability of the existing bus network is key to providing a foundation upon which to grow patronage.

During summer 2023, the Executive Member for Economy and Transport tasked officers with seeking short-term quotes from bus service operators to retain all under threat elements of the First York Limited (“**First**”) network for a 3-month period, October to December 2023. A short-term tender was supported by the Executive and York Enhanced Bus Partnership in July 2023. The services affected are summarised in **Table 1** below:

Table 1

Route No.	Day/period	Journeys requiring BSIP support		Est. PVR*	Approx. Bus Hrs.	Average daily patronage
1	Weekday mornings	0530, 0550, 0610, 0635 ex Wigginton	n/a	4	3	26
	Saturday mornings	0531, 0606, 0636 ex Wigginton	0620, 0655 ex Chapelfields	3	3.5	32
1	Weekday evenings	2215, 2246 ex Wigginton	2201, 2231, 2302 ex Chapelfields	3	3.5	16
4	Weekday mornings	0530, 0600, 0630 ex Acomb	0600, 0632, 0647 ex Clifford St	2	3	55
4	Weekday evenings	2317 ex Acomb	2303 ex Clifford St	1	1	21
6	Weekday mornings	0545 ex Clifton Moor	0550 ex University Campus East	2	1.5	28
	Saturday mornings	0540, 0610, 0640 ex Clifton Moor	0545, 0615, 0645 ex Campus East	3	4	72
10	Weekday evenings	1833, 1917, 2001, 2109, 2209 ex Poppleton	1828, 1903, 2017, 2117, 2217 ex S.Br.	3	10	172
10	Saturday mornings	0550 ex Piccadilly; 0630, 0659, 0729 ex. Pop.	0629, 0729 ex Stamford Bridge	3	5.5	107

* Peak Vehicle Requirement

32. From 1 October 2023, the bus service operator First did take back on a commercial basis some specific early morning, evening and weekend services that had been previously subsidised. The routes and bus subsidy savings gained are listed below.
- Service number 1 (Chapelfields - City – Wigginton)
 - Saving of £74 per week.
 - Service 2A (Rawcliffe Bar – City)
 - Saving of £210 per week.
 - Service 6 (Clifton Moor – City – University Campus East)
 - Saving of £55 per week.
 - Service 10A (Poppleton – City – Stamford Bridge)
 - Saving of £161 per week.
33. During autumn 2023, notification was received that the weekday service 19 was to be withdrawn by the commercial operator, Reliance. A short-term tender exercise was carried out and five compliant bids were received. A Director Decision, taken in consultation with the Executive Member for Economy and Transport, was made to support subsidy of the service and retain the existing timetable from 30th October 2023 to 31st March 2024 at a total cost of up to £42,000 for the duration of the period.
34. **Table 2** below shows all current committed spend in relation to support of local bus services through the BSIP programme, including current subsidies for routes 1, 4, 6, 10/10A and 19, as outlined above. Current commitments represent 94.1% (£2,150,221) of the available BSIP Bus Service Support revenue budget:

Table 2

Financial year	BSIP Budget			BSIP Expenditure											Year end budget remaining
	Network Support	Poppleton Bar	Net position at start of year (including previous year's carry-over)	12	13 (Sat)	412	1, 2A, 4, 6, 10/10A	13 (Mon-Fri)	19 (Mon-Fri)	13 / 412	59 (Poppleton Bar P&R)	Contribution from NYC towards service 412	Contribution from ERYC towards service 10	Total spend	
2022/23	£800,000	£250,000	£1,050,000	£58,007	£8,400	£10,476	£0	£0	£0	£6,702	£0	£0	£0	£83,585	£966,415
2023/24	£500,000	£350,000	£1,829,510	£298,999	£33,630	£74,451	£64,885	£27,000	£41,091	£0	£600,000	-£37,250	-£6,000	£1,096,806	£719,609
2024/25	£235,000	£150,000	£1,117,704	£298,999	£33,630	£74,451	£0	£0	£0	£0	£600,000	-£37,250	£0	£969,830	£134,779

35. An extension of the current tendered services contracts for routes 1, 4, 6, 10/10A and 19, to 30 April 2024 would incur the following new expenditure:

- Up to £45,000 from BSIP network support revenue for a 4-month extension of support for early morning and evening journeys on services 1, 4, 6 and 10/10A.

(Note, the estimated cost for the extension is £39,604, based on the current contract, but this will be subject to negotiation with the operator)

- Up to £8,000 from BSIP network support revenue for a 1-month extension to support service 19.

(Note, the estimated cost for the extension is £7,180, based on the current contract, but this will be subject to negotiation with the operator)

36. Based on current contract prices, **Table 3** below shows the estimated committed BSIP Bus Service Support spend if the extension to support for the early morning and evening services on routes 1, 4, 6, 10/10A and 19 to 30 April 2024 is approved. With the extension approved, 96.4% (i.e., £2,203,221) of the current BSIP Bus Service Support revenue budget would be committed:

Table 3

Financial year	BSIP Budget			BSIP Expenditure											Year end budget remaining
	Network Support	Poppleton Bar	Net position at start of year (including previous year's carry-over)	12	13 (Sat)	412	1, 2A, 4, 6, 10/10A	13 (Mon-Fri)	19 (Mon-Fri)	13 / 412	59 (Poppleton Bar P&R)	Contribution from NYC towards service 412	Contribution from ERYC towards service 10	Total spend	
2022/23	£800,000	£250,000	£1,050,000	£51,799	£10,640	£14,938	£0	£0	£0	£6,702	£0	£0	£0	£83,585	£966,415
2023/24	£500,000	£350,000	£1,829,510	£298,999	£33,630	£74,451	£98,496	£27,000	£41,091	£0	£600,000	-£37,250	-£6,000	£1,130,417	£685,998
2024/25	£235,000	£150,000	£1,088,140	£298,999	£33,630	£74,451	£11,389	£0	£8,000	£0	£600,000	-£37,250	£0	£989,219	£81,779

37. It should be noted:
- The 2024/25 costs for Poppleton Bar are still to be finalised, with £600,000 the likely the worst-case position but actual spend may be lower depending on patronage levels.
 - The weekday Flaxman Croft, Copmanthorpe and West Nooks, Haxby sections of the number 13 bus service which are currently subsidised, are at risk beyond the end of 2023. Officers are looking into alternative options for serving these area as part of the ongoing Bus Network Review. However, short-notice service support decisions may also be required in relation to this specific service.
38. Through the Enhanced Bus Partnership, officers continue to proactively work with bus operators to identify opportunities to return bus services to commercial operation. All spend is being carefully monitored.

Consultation Analysis

39. Consultation has been undertaken with York's bus operators and with the Enhanced Bus Partnership forums. They have responded that they are keen to support the retention of as many bus services as possible across the city.

Options Analysis and Evidential Basis

40. The rationale for recommending an extension to 30 April 2024 of existing short-term tendered bus service contracts, covering some early morning and evening services on routes 1, 4, 6, 10/10A and 19, is to enable the outputs of the York Bus Network Review to be thoroughly analysed and discussed with stakeholders, with a view to bringing recommendations for longer-term, better value, and, hopefully, a more stable bus network to the Executive and York Enhanced Bus Partnership in January 2024, for a controlled and well-communicated implementation in May 2024.
41. The first contract that it is proposed should be extended covers some early morning and evening services on routes 1, 4, 6, 10/10A. The estimated cost of the extension by four months to 30 April 2024 is up to £45,000.

42. The second contract proposed for extension is for route 19, which would cost up to £8,000 to extend by one month to 30 April 2024.
43. Extension of the above tendered bus service contracts would enable any changes to be carefully planned and communicated to all affected stakeholders and consider the results of the Bus Network Review. The alternative would be to retain the current contract renewal dates, but this would be more difficult to manage and communicate, and could lead to missed opportunities for financial savings, plus potentially lead to loss of confidence by bus users and reputational damage to CYC.
44. The proposed contract extensions are currently affordable within the existing DfT granted York BSIP revenue budget for bus service support, which is currently 94.1% committed.

Organisational Impact and Implications

Financial

45. The cost of the interventions agreed in this report total £53,000. This reduces the available funding for further bus service interventions from £134,779 to £81,779.

Human Resources (HR)

46. There will be no HR implications arising from the short-term bus contract extensions outlined in this report.

Legal

47. The delivery of the BSIP through either an Enhanced Partnership (“EP”) Route or a Franchise Route is mandated by the Transport Act 2000. EP Plans and Schemes are statutory documents.
48. The Bus Services Act 2017 incorporates a duty on local transport authorities to consult on EP Plans and EP Schemes into the Transport Act 2000.
49. Many public contracts envisage a service arrangement that will last over a very long period of time, and, because of that, the contract may contain sophisticated mechanisms by which various categories of change can be affected during the contractual term. Any existing bus service contracts between CYC and existing

operators must be extended and/or modified in accordance with their contractual terms and conditions. Advice must be sought from Legal Services on this point.

50. Further to the paragraph immediately above, any extension and/or modification to any service contracts will also be subject to Reg. 72 under Part of the Procurement Regs.
51. Notwithstanding any existing extension and/or variation provisions within the current bus service contract(s), in the event of a major change, whether pursuant to an extension and/or variation clause or not, care must be taken to ensure that the relevant variation does not amount to a “substantial” modification so that a new competitive tendering process must be undertaken. If the parties continue with the 'new' contract without re-tendering, the authority risks a fine and a declaration of ineffectiveness, which would result in the contract being set aside.
52. Reg. 72 sets out a comprehensive set of principles that will determine when a contract may be modified without a new procurement and when a new procurement procedure will be required.
53. The threshold for service contracts is currently set at £213,477. Whilst it seems unlikely in this particular case, if the total value of the contract (together with the proposed extensions and all other previous extensions and/or variations before that) falls below this threshold, the Procurement Regs will not apply.
54. Assuming that the Procurement Regs could apply in this instance, the contracts already contain an existing right to extend the duration of all or any specific bus routes (by any existing right, one does not mean via a variation and/or change control procedure, but a specific clause that sets out a right to extend and when and how this right can be exercised), then this would be permitted under Reg 72.(1)(a), irrespective of the value of the proposed extension and/or modification (i.e., “a modification, irrespective of value, which has been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and do not provide for modifications or options that would alter the overall nature of the contract”).

55. In the absence of such a clause, any extension would be a variation to the contract and in this instance would need to be justified under one or more of the following safe harbour provisions under Reg. 72:

- **Reg 72(1)(b)** - “additional works, services or supplies by the original contractor, where their provision by a different contractor is not possible for economic or technical reasons or would cause significant inconvenience or substantial duplication of costs (so long as the increase in price does not exceed 50% of the value of the original contract)”.

NOTE – It may be possible, based on the values in this report, to justify any extensions and/or variations under this Reg. However, reliance upon Reg 72(1)(b) requires CYC to submit a modification notice on the UK e-notification service, *Find a Tender*. This would alert the rest of the market to what CYC are proposing to do and may invite scrutiny and challenge. That said, given the nature of the contracts in this instance, the proposed duration of extensions, and the fact the extensions are to allow completion of the Bus Network Review to facilitate future procurement exercises, there is a fairly good chance that no such challenge and/or complaint would materialise. It is difficult to know however until the notice is published.

- **Regs 72(1)(f) and 72(5)** – where the proposed extensions and/or changes are considered to be low-value/risk (i.e., “where the proposed extension and/or modification is below the relevant procurement threshold (i.e., £) **AND** is worth less than 10% of the initial contract value for bus services when it was original advertised and went out to tender, **AND** provided that the modification does not alter the overall nature of the contract).

NOTE – Whilst the value of the proposed extensions set out within this report would arguably meet these requirements, the thresholds above are cumulative. So, if there have been any other low-value changes to this contract, and the cumulative total value of those changes exceeds either the 10% threshold and/or the relevant procurement threshold, then Regs 72(1)(f) and 72(5) will **NOT** be available to CYC. Any modification under these Regs does not require a modification notice on the UK e-notification service, *Find a Tender*.

- **Regs 72(1)(e) and 72(8)** – where the proposed extension (irrespective of its value) is deemed to be a “non-substantial change”. In this context, the extension and/or modification would have to meet **ALL** of the following criteria:
 - The extension and/or modification does not render the contract materially different in character from the one initially concluded.
 - The extension and/or modification does not conditions which, had they been part of the initial procurement procedure, would have:
 - Allowed for the admission of other candidates than those initially selected;
 - Allowed for the acceptance of a tender other than that originally accepted; or
 - Attracted additional participants in the procurement procedure.
 - The extension and/or modification does not alter the economic balance of the contract in favour of the operator in a manner which was not provided for in the initial contract.
 - The extension and/or modification does not considerably extend the scope of the original contract - a variation is likely to be deemed “substantial” where it evinces an intention on the part of the contracting parties to rewrite key terms of their contract, including with respect to the nature and extent of services to be provided.
 - A new contractor does not replace the current operator by virtue of the extension and/or modification.

Note – based on the limited information set out within this Report, it may be possible to justify the extensions under Regs 72(1)(e) and 72(8). Most of the criteria appear to have been met. The only possible outlier is whether the extension would have altered the original tender, but

given the low value of the extensions, the short duration and the fact the services during the extension period, it may be arguable that this criterion has been met also. Any modification under these Regs Any modification under these Regs does not require a modification notice on the UK e-notification service, *Find a Tender*.

56. A substantial variation can relate not only to the type of services provided, but also their duration, location and the identity of their supplier. Note that a contract may be deemed varied even where the terms themselves do not change, but one of the parties does not fully enforce those terms (e.g., where a contracting authority waives an obligation on the part of a supplier to provide a particular service despite it featuring in the original bid). Similarly, a decrease in the scope of works under a public contract may also amount to a substantial variation.
57. Where any of the above-mentioned permitted grounds under Reg 72 do not apply, then the extension and/or variation to any service contract will be deemed unlawful and (subject to certain limited exceptions) trigger the need to restart the tender process. In that case, various remedies are available to both CYC and aggrieved unsuccessful bidders. For example, CYC may be entitled to terminate its contract if it has been subject to an impermissible modification which would have required a new procurement process (Reg 73(1)(a)). If no such provisions are specifically included, they will be implied by law. The contractual provisions may regulate notice and how the consequences of termination will be dealt with. Should the contract remain in operation and varied by a prohibited modification (and where no new procurement process was reopened), it may be subject to a declaration of ineffectiveness, although this remedy is subject to strict time limits (Reg 93(2)).
58. Further detailed advice must be sought from both Commercial Procurement and Legal Services before proceeding with any proposed extension and/or variation to any bus service contract to ensure compliance with Reg. 72 (where applicable).
59. Reg 72 of the Procurement Regs only apply insofar as any contract with a bus operator is considered a service contract – one of the key components of which is that CYC pays the operator for the provision of the services.

60. The contracts may be structured as a concession contract, which is to say a contract where CYC has entrusted the provision and the management of bus services to one or more operators, the consideration of which consists either solely in the right of the bus service operators to exploit the services that are the subject of the contract (potentially together with payment from CYC), and the award of the contract involves the transfer to the bus operators of an operating risk in exploiting the services encompassing demand or supply risk or both and the part of the risk transferred to the bus operators shall involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the bus operators shall not be merely nominal or negligible.
61. The operators shall be deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession contract.
62. This could very well apply in this instance, in which case the Procurement Regs would not apply, but instead the Concession Regs could potentially apply.
63. The threshold for concession contracts is currently set at £5,336,937. If the total value of the contract (together with the proposed extensions and all other previous extensions and/or variations before that) falls below this threshold, the Concession Regs will not apply.
64. Assuming that the Procurement Regs could apply in this instance, Reg. 43 of the Concession Regs sets out similar rules regarding modifications to a contract apply to concession contracts as for service contracts under Reg 72 of the Procurement Regs. Accordingly, a substantial modification after award of a concession contract may be considered a new contract, and thus require a fresh procurement exercise, unless it falls within one of the prescribed exceptions set out in Reg 43.
65. Again, where any of the permitted grounds under Reg 43 do not apply, then the extension and/or variation to any concession contract will be deemed unlawful and (subject to certain limited exceptions) trigger the need to restart the tender process. In that case, various remedies are available to both CYC and aggrieved unsuccessful bidders. For example, CYC may be entitled to

terminate its contract if it has been subject to an impermissible modification which would have required a new procurement process (Reg 44(1)(a)). If no such provisions are specifically included, they will be implied by law. The contractual provisions may regulate notice and how the consequences of termination will be dealt with. Should the contract remain in operation and varied by a prohibited modification (and where no new procurement process was reopened), it may be subject to a declaration of ineffectiveness, although this remedy is subject to strict time limits (Reg 59(2)).

66. Further detailed advice must be sought from both Commercial Procurement and Legal Services before proceeding with any proposed extension and/or variation to any bus service contract to ensure compliance with Reg. 72 (where applicable).
67. Further, any extensions and/or variations will be subject to the requirements of Rule 20 of the Council's CPRs. Further detailed advice must be sought from both Commercial Procurement and Legal Services on this point.
68. It is also possible that the current contracts with operators may have been structured as grant funding arrangements, with CYC providing financial assistance for the operation of these routes. In which case, not only must any extension and/or modifications be in accordance with the terms and conditions of said contracts, but advice must be sought from Legal Services to ensure that said amended contracts still comply with the requirements of the 2022 Act, and to ensure that such variations are permitted under any external funding arrangements we have with central government or any other funder (e.g., BSIP funding arrangements; ZEBRA funding arrangements, etc.). Any variations to grant funding arrangements will also be subject to Rules 4 and 20 of the Council's CPRs, and Part E of the Council's Financial Regs.

Procurement

69. Any proposed works or services will need to be commissioned via a compliant procurement route under the Council's Contract Procedure Rules and where applicable, the Public Contract Regulations 2015. All tenders will need to be conducted in an open, fair, and transparent way to capture the key principles of procurement. Further advice regarding the procurement routes, strategies and markets must be sought from the Commercial Procurement team. In addition, any variations, extensions, or

modifications to existing contracts, both Commercial Procurement and Legal Services must be consulted prior to any agreements or engagement with the incumbent suppliers taking place.

Health and Wellbeing

70. The Director of Public Health supports the short-term extension to existing bus contracts to allow the review to be fully analysed and discussed with stakeholders and reduce the missed opportunities for savings. The relationship between transport and health and wellbeing are well evidenced and notes that:
- Availability of transport plays a key role in improving access to health services, particularly for vulnerable groups like older people.
 - Travel choices can affect physical health in relation to reduction of body weight and traffic accidents, air pollution.
 - Mode of transport affects physical and mental health and evidence shows that concessionary travel passes and subsidised travel expenses are instrumental in making bus transport more accessible and affordable which improves mental health and wellbeing.
 - Public transport can facilitate social interactions and promote social inclusion.

Affordability

71. The bus network offers an affordable transport alternative to reliance on private car ownership and is accessible to all. It is therefore vitally important to local communities and the local economy.

Equalities and Human Rights

72. CYC has taken account of the Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

73. Equality Impact Assessments (“**EIAs**”) formed parts of the previous reports on York’s bus network. As this report makes no change to scope of the projects, the EIAs have not been reviewed.

Data Protection and Privacy

74. This report outlines plans to extend existing short-term bus contracts; therefore no new data protection or privacy implications are foreseen. A full assessment will be made of the proposals resulting from the ongoing Bus Network Review, which this report references.

Communications

75. While the report seeks approval for short term extensions to align existing contracts with the review timetable and framework it is not envisaged that there will be significant demand for the Communications Service over and above managing any potential reactive media enquiries
76. In the longer-term alignment of the review with work on the BSIP and Local Transport Strategy will be required to bring together maintain the planned communications work and narrative.

Economy

77. This report outlines plans to extend existing short-term bus contracts to enable a Bus Network Review to be completed and decisions to be taken on how best to target limited bus service support budgets. A comprehensive, affordable and reliable bus network is vital to support a strong and sustainable local economy, therefore a full assessment will be made of the recommendations arising from the forthcoming Bus Network Review that will follow in the New Year.

Risks and Mitigations

78. The minimal-risk option is to maintain the base network to support the delivery of the BSIP growth targets.
79. The economic state of the bus industry remains fragile with operators seeing increases in labour costs and fuel without a

corresponding increase in fare revenue. This makes commercial services less viable increasing the risk that further services will be withdrawn. The council is not able (even with BSIP support) to support all such services and therefore will need to prioritise which services to support. This will be informed by the Bus Network Review, the results of which will be presented to the Executive in January 2024.

80. The current BSIP funding is due to end on 31 March 2025 and therefore at that time significant public sector support to the industry will be withdrawn. If there is no or insufficient additional funding identified, this will have a significant impact on bus services in the city at that time.

Wards Impacted

81. All wards are impacted by the decision.

Contact details

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Background papers

Council approve 10-Year Plan (York 2032) Agenda for Council on Thursday, 15 December 2022, 6.30 pm (york.gov.uk) item 36

Executive approve Climate Change Strategy 2022-2032 Agenda for Executive on Tuesday, 22 November 2022, 5.30 pm (york.gov.uk) item 46

Annexes

Annex A - York Bus Service Summary