

NOTES FOR GUIDANCE

ON THE

GENERAL CONDITIONS OF CONTRACT FOR PASSENGER TRANSPORT

**VEHICLES CONSTRUCTED OR ADAPTED TO CARRY 17
OR MORE PASSENGERS**

January 2018



NOTES FOR GUIDANCE ON THE CONDITIONS OF CONTRACT FOR PASSENGER TRANSPORT – JANUARY 2018

1. INTRODUCTION

- 1.1 The Borough of Poole, as a Unitary Authority, has a number of passenger transport responsibilities. These include the provision of subsidised local bus services where they are not provided on a commercial basis and home to school bus services.
- 1.2 Most of the passenger transport organised by the Council is undertaken by private operators on its behalf. To ensure best value, the Council arranges this transport through the tendering of contracts which have to meet certain conditions. These conditions ensure that as well as meeting legal requirements, the transport also ensures quality requirements determined by the Council. The General Conditions of Contract for Passenger Transport apply to all Local Bus Service contracts, Local School Bus Service contracts and Mainstream Education bus (closed) contracts let by the Council.
- 1.3 The purpose of these notes is to assist tenderers in understanding how to bid for Transport contracts and what is expected from them once they begin operating a contract. They do not form part of the contract.

2. GUIDANCE FOR NEW OPERATORS WISHING TO TENDER FOR CONTRACTS

LICENCES

- 2.1 The Council welcomes tenders from firms or individuals who do not currently have the required licences to provide Hire or Reward. However, before accepting such a tender the Council will need to be satisfied that the tenderer will be able to obtain the necessary licences or permits before the start date of the contract.
- 2.2 You will need a Public Service Vehicle (PSV) Operator's Licence to operate this type of contract on behalf of the Council. PSV Operator's Licences are required for the operation of vehicles designed or adapted to carry nine or more passengers and payment is taken. Your Operator's license will include the number of vehicles you can run under it.
- 2.3 The operator licensing system in Great Britain is regulated by independent Traffic Commissioners, who are appointed by the Secretary of State for Transport. The Vehicle and Operator Services Agency has produced a guide for operators on PSV Operator Licensing which can be found at: <https://www.gov.uk/government/publications/psv-operator-licensing-a-guide-for-operators-psv437>.
- 2.3 PSV Operators Licences are issued by the Traffic Commissioner. The Borough of Poole is part of the Western Traffic Area. Correspondence address for the office of The Traffic Commissioner & Public Inquiry Team:

Jubilee House
Croydon Street
Bristol
BS5 0GB
Telephone: 0300 123 9000

ROUTE REGISTRATION (LOCAL BUS CONTRACTS AND LOCAL SCHOOL BUS CONTRACTS)

- 2.4 Operators are required to register the local bus or local school bus route they intend to operate with the Traffic Commissioner. This applies even if the operator has been awarded a local bus service contract by the Council. Route registration normally should be undertaken 56 days before the service is due to start. In certain circumstances, including the award of a local authority contract at short notice, the Traffic Commissioner may waive this requirement provided it is supported by the local authority.

BUS SERVICE OPERATORS' GRANT (LOCAL BUS SERVICES)

- 2.5 Bus Service Operators' Grant (BSOG) is a payment made to bus operators related to fuel consumption and offsets a proportion (around 57%) of the duty paid on fuel consumed. BSOG is paid by the

Department for Transport (DfT) to all operators for their registered local bus service mileage on commercially operated services. BSOG for tendered services was withdrawn from 1 January 2014 and in its place Local Authorities now receive a grant equivalent to the BSOG previously paid for tendered services during 2012/13.

- 2.6 Bus operators receive financial incentives from the government if they have fully functioning smartcard and/or automatic vehicle location (avl) equipment fitted, or if they run low carbon emission vehicles. Full details may be found at: <https://www.gov.uk/government/collections/bus-services-grants-and-funding>.
- 2.7 Tenderers are asked to price contracts on the basis no BSOG payments being available from DfT. No separate BSOG payments will be paid by the Borough of Poole and all costs should be included in the tender price.

DRIVER LICENCES

- 2.8 Since April 1991 PSV Drivers Licences have been replaced by a new PCV (Passenger Carrying Vehicle) category. Changes introduced on 1 January 1997 mean that categories of entitlement depend on whether a driver passed a test before or after that date.
- 2.9 Drivers of passenger carrying vehicles with more than 8 seats must hold category D or D1 entitlement to drive on Council contracts. Category D covers PCVs with more than 8 seats (in addition to the driver's seat). Category D1 is a sub-category of D being a passenger carrying vehicle having 8 but not more than 16 seats, in addition to the driver's seat. Prior to 1 January 1997 drivers who passed the Category B test (motor cars and light vans with up to 8 passenger seats) received automatic entitlement to Category D1. Since 1 January 1997 drivers will have to pass an appropriate PCV test.
- 2.10 PCV drivers must also hold a professional driving qualification called the Driver Certificate of Professional Competence (CPC). This requires passing 4 tests that make up the Driver CPC and taking 35 hours of periodic training every 5 years to stay qualified.
- 2.11 For details of minimum ages, duration of category D entitlement, medical standards and the PCV Driver's CPC please see: <https://www.gov.uk/become-lorry-bus-driver>.

3. THE CONDITIONS OF CONTRACT

3.1 DEFINITIONS

DBS Checks: Operators will need to provide evidence that all drivers engaged on school transport services have a current enhanced DBS check. Such checks should be repeated at intervals no longer than 3 years.

ENCTS: It is a statutory requirement for operators to take part in the English National Concessionary Travel Scheme (ENCTS). All holders of ENCTS bus passes are to be carried free of charge on registered local bus services. For Minimum Support contracts operators will be reimbursed as set out in the Connect Concessionary Travel Scheme (available on request). Contractors will receive no payment for the carriage of concessionary passengers on Minimum Cost contracts.

Local Bus Contract: A service which may operate on any or all days of the week usually throughout the year for which separate fares are charged.

Local School Bus Service: A service which operates on school or college days only for which separate fares are charged. On these services pupils holding season tickets issued by the Council are to be carried free of charge.

Closed Education Contract: A contract which provides free transport for pupils who are entitled to it under Section 509 of the Education Act 1996 or the Education and Inspections Act 2006. The main difference between this and a Local Bus Service contract is that no fares are charged and it does not need to be registered with the Traffic Commissioners.

The Council charges some pupils and students who travel in concessionary spare places on home to school contracts. This is done under the Public Passenger Vehicles Act 1981. Pupils pay the Council direct to receive a pass. No fares are collected on the vehicle and there is no need to register the service with the Traffic Commissioners.

In certain circumstances the Council may wish to convert Home to School transport contracts into Local School Bus Services to introduce charging to other passengers. In this situation the contractor will be asked to register the service and it will normally become a Minimum Cost Contract. The cost of the registration would be met by the Council.

Minimum Cost Contract: All the revenue taken during its operation will be credited to the Council. As a result the Council has the right to audit the collection of revenue.

Minimum Support Contract: All the revenue taken during its operation will be retained by the successful tenderer who must estimate the revenue and take account of it in the tender. The Passenger/Revenue Information Schedule is to help tenderers estimate the revenue but does not form part of the Contract. The Council accepts no responsibility for its accuracy. Tenderers may wish to make their own estimate of the revenue by surveying the service (payment of fare would be required).

The Council will determine whether each Tender Offer accepted will be on a minimum support or minimum cost basis by considering which offer will give best value for money. It is anticipated most contracts will be offered on a Minimum Support basis.

3.2 CONTRACT TERM

Unless the contract is for an emergency arrangement the period will normally be for up to 7 years. However, contracts can be let for, or extended to, a period of 8 years. Emergency arrangements are let shorter periods (depending on the value) during which time surveys may be undertaken and longer term arrangements planned. The Council would not normally wish to serve notice before the end date; however, there are occasionally circumstances where it is necessary because of a change in demand. The Council recognises the problems this can cause a contractor and will only serve notice when absolutely necessary.

3.3 OPERATOR'S LICENCE

The Council welcomes tenders from firms or individuals who currently do not have the appropriate licence for the required vehicle size (See 2.1 above). Under normal circumstances it is intended to give a period of up to 8 weeks between the closing date of tenders and the starting date of a contract to allow time for the successful tenderer to obtain licences and vehicles as necessary.

3.4 VEHICLES

Vehicles must comply with all legal requirements and industry best practice. It is now a requirement for all vehicles to comply where applicable with the Public Service Vehicle Accessibility Regulations 2000 (as amended). Vehicles must have the seating capacity as set out in the Service Specification.

3.5 DRIVERS

Where the contract is for the conveyance of children, drivers are required to be approved by the Council in advance. This is because they are in a position of trust as they are likely to have substantial, regular, unsupervised contact with children. A check undertaken by the Disclosure and Barring Service (DBS - see 4.1 above) will be required (renewable every 3 years). Drivers will be required to complete a form as part of a confidential check by the DBS. It is important that the Council is notified of changes of circumstances.

If a pupil does not have a valid ticket they should not be refused transport because of the dangers they might face making their own way to or from school. The driver should make a reasonable effort to obtain their name and address and report this to the Contractor who should inform the Head of Transportation Services. It is recognised that some pupils may not co-operate with the driver in which case they should still be carried and a report submitted to the Council.

If it is established to the satisfaction of the Council that a driver does not possess the correct licence or gives a false identity to a Council Official this will be regarded as a material breach of contract and may result in termination.

3.6 REGISTRATION

When an operator wins a local bus or local school bus contract which must be registered as a Local Bus Service but he/she has not previously completed a registration form, help is available on request from the Council's Growth and Infrastructure Unit. The cost of the registration is currently £60 and this should be built into the tender price.

As well as by post, operators can also register through the electronic bus service registration (EBSR) system.

Full details regarding local bus service registrations may be found at: <https://www.gov.uk/run-local-bus-service/how-to-register>.

If the Council requires a starting date for the contract within the prescribed 56-day registration period the Council will assist with obtaining the necessary approval from the Traffic Commissioner.

3.7 SUB-CONTRACTING

The Council does not normally agree to sub-contracting because if an operator is unable to fulfil his/her commitment directly the Council would wish to retender the contract rather than rely on a third party to carry out the work. However, it is recognised that there may be exceptional circumstances where an operator does not have the required vehicle available for a short period. In such circumstances the Council may be prepared to agree to the hiring of a replacement vehicle from a third party. The Council must be notified in writing of such proposed arrangements as soon as possible. Failure to comply with this Clause in any respect is considered a material breach default and may result in immediate termination.

3.8 PASSENGER AND REVENUE INFORMATION

Great importance is placed on the accurate and prompt supply of this information both to monitor the financial performance of the contract and to provide up to date information when the contract is retendered.

A full journey by journey analysis for two separate weeks is required on request. It will not normally be the Council's intention to ask for this information for all contracts at once but selective requests will be made for individual contracts.

The Council may carry out a programme of Audit checks on Contracts and unless there are exceptional circumstances adequate notice will be given and a mutually convenient time agreed. Failure to keep adequate records or issue tickets will result in warnings being issued and in the case of Minimum Cost contracts will be considered as a material breach of contract.

3.9 LIABILITY

The operator is contracting with the Council to provide a service on its behalf. Therefore, to avoid any claims against the Council, the Council must satisfy itself that the Contractor is insured against any third party claim (a minimum cover of £5m is required) e.g. for damage to property or injury to an individual caused during the operation of the contract. Similarly the cover must also apply to any claim made against the Council as a result of negligence in the performance of the contract.

3.10 COMPLAINTS

All complaints that the Council receives are investigated to establish the circumstances leading to the complaint. There may be some complaints made by passengers which after investigation are denied by the operator and it will not be possible to obtain independent corroboration of either party's claim. In these circumstances the Head of Growth and Infrastructure has to make a judgement about where the truth lies and what action to take. In making this judgement the Council will take into account the following factors:

- a) The Council is providing the service on behalf of the passenger who has an expectation that this should be provided to an acceptable standard.
- b) The previous record of the Contractor both in performing the contract satisfactorily and in fully investigating previous complaints.

Any action taken by the Council will be in accordance with the Warning Procedure set out in Schedule 4 of the Conditions of Contract.

3.11 MODIFICATIONS TO THE SERVICE

It is recognised that transport contracts are subject to change following variations in demand and there will be occasions when it becomes necessary to introduce revisions. If either the Contractor or the Council wish to re-negotiate the terms of the Contract in respect of price or Service Specification this clause allows them to do so provided that it is a mutually acceptable agreement. If agreement cannot be reached then one party would serve notice on the other. Contracts awarded as part of a group will be considered as individual contracts in these circumstances. Provided that the Contractor satisfactorily operates the contract during the full period of notice after he/she has served notice on the Council, this will have no effect on any future tenders that the contractor may wish to submit.

3.12 TERMINATION

Termination by the Council would normally follow action under the Service Performance Specification (see below) but in exceptional circumstances this procedure may be by-passed.

It is one of the requirements of Section 135 of the Local Government Act 1972 that a Local Authority makes Standing Orders for contracts let by them or on their behalf. The purpose of Standing Orders is to regulate the expenditure of public money and to ensure that all necessary steps are taken to provide the best arrangements possible for the Council. Under the Council's Standing Orders it is clearly stated that a contract with the Council should contain clauses restricting assignment of the contract and for prevention of corruption.

3.13 HEALTH AND SAFETY

A Health and Safety Policy sets out the general approach, objectives and arrangements put in place for managing health and safety in an organisation. The policy describes how health and safety controls are implemented and monitored. It is mandatory to have a written policy for organisations with five or more employees. You are asked to provide a copy of your policy or a website link to this.

3.14 EQUALITY

An Equalities policy should show that the organisation is aware of its obligations under law and that it is committed to meeting those obligations. There are several pieces of legislation that the organisation will need to comply with relating to disability, race, sex discrimination, employment rights and employment equality. You are asked to provide a copy of your policy or a website link to this.

4. SCHEDULE 1 VEHICLE SPECIFICATION

4.1 PASSENGER CARRYING CAPACITY

The tender offer specifies the number of seats required based on the Council's estimate of the maximum number of passengers to be carried on any trip in the contract. Any additional capacity that may be available for standing passengers on local bus service contracts is not taken into account although it is recognised that there are occasions when it may be required as a result of an unforeseen increase in the number of passengers.

4.2 TICKETING ARRANGEMENTS

There is now a requirement for ticket machines to be capable of recording journeys undertaken with ITSO media including ENCTS bus passes. Operators are also encouraged to use the latest ticketing technology including contactless and smartphone payments.

4.3 SIGNS AND NOTICES

The Road Vehicles Lighting (Amendment) Regulations 1994 require operators of buses to display prescribed signs to the front and rear of the vehicle when it is carrying children under the age of 16 to and from school. The sign must have a black border enclosing a silhouette of two children on a reflective background. The size of the sign at the front of the vehicle must be at least 250mmx250mm with the black border not more than 20mm wide and the sign at the rear at least 400mmx400mm with the black border not more than 30mm wide. The requirement to display signs does not apply to registered services on which at least half of the accommodation in the vehicle is normally available to and regularly used by the general public.

4.4 SEAT BELTS

Coaches which are used to transport children must be fitted with seat belts as specified in the Road Vehicles (Construction and Use) (Amendment) (No.2) Regulations 1996. This applies to all contracts used to transport children. However, unless specifically stated, the Council leaves the choice of whether to use a bus or a coach to the Contractor and if a bus is used no seat belts are required. (It is the Council's policy to provide seatbelts for school children aged under 8 years).

5. SCHEDULE 2 SERVICE SPECIFICATION

5.1 The specification for the service contains the Route, including maps where appropriate, timetable and Fare Conditions. You must submit a proposal which meets the specification but if you wish the Council to consider an alternative proposal, detailed timetables and routes must be submitted together with the reasons why they should be considered.

6.1 THE ROUTE

The service will observe all existing stops along the line of route. Where the route operates along roads without recognised stopping places you will be required to stop on request from intending passengers where it is safe to do so.

The requirement to reverse to undertake turning manoeuvres will be kept to a minimum. However, where it is necessary to reverse, reversing lights and hazard warning lights should be used. Buses should be fitted with an audible warning which is activated when the vehicle is reversing. Drivers should try to avoid reversing where children are waiting to board or have just left the bus.

6.3 THE TIMETABLE

The proposed timetable gives a good indication of the time required to travel the route although no account is taken of varying traffic conditions. If you wish to propose changes in the running time you should take care to ensure that your proposed running times are realistic. If in the view of the Head of Growth and Infrastructure the proposed running times are unrealistic this may be sufficient reason for not accepting the tender.

For contracts serving schools, the timetable also shows the number of pupils to be carried free of charge at the start of the contract. Where the numbers of passengers to be carried free of charge increases during the life of the contract, the Contractor will be asked to carry these subject to the capacity of the vehicle. No price increase will be granted in these circumstances unless the contractor can demonstrate that he/she is either incurring a significant cost increase or loss of revenue.

6.4 ALTERNATIVE TENDERS

You must submit a tender exactly meeting the requirements of this specification but you may also suggest alternative proposals. These could be minor adjustments such as :-

- a) Adding or deleting early and late positioning journeys over all or part of the route.
- b) Altering the departure or arrival time of particular journeys or the headway by up to 10 minutes either way. You should be aware that where a service is timed to serve a particular school it is unlikely that a significant variation to the timetable will be considered.

The alternative proposals could also involve a major change to the specification such as:-

- a) Altering the timetable or route to inter-work with other registered local bus services that you already operate in the area covered by the route.
- b) Altering the timetable or route if you think this will give a better service to passengers and/or increase the revenue.
- c) Withdrawing particular certain journeys if they are particularly costly to operate or adding journeys which could be operated at a low additional cost.
- d) If you are suggesting a smaller capacity vehicle than required you may have to provide extra journeys at certain times.

If you do decide to submit alternative proposals of whatever nature they must be separately identified and each must include:-

- a) A complete timetable and route description.
- b) An explanation of the alternative and how it differs from the Council's specification.
- c) The reasons for suggesting the alternative.
- d) An additional copy of the Tender Offer which is clearly identified as an Alternative Tender Offer.

6.5 GROUP PRICES

If you submit a price covering more than one tender then you must submit separate individual prices for each tender. If the Council accepts a group price for two or more contracts it will then wish to agree with the tenderer a separate price for each contract for invoicing purposes.

7. SCHEDULE 3 SERVICE PERFORMANCE SPECIFICATION

7.1 INTRODUCTION

The general principles used to define the Service Performance Specification and the guidelines used to interpret the specification are:-

- a) They should be clearly understood by Contractors.
- b) They should ensure, as far as possible, equal treatment of all Contractors by the Council.

- c) They should strike a balance between protecting the interests of the passengers, ensuring value for money for the Council and not treating the Contractor unreasonably.
- d) They should be sufficiently flexible to deal with a conscientious Contractor who experiences a combination of bad luck and misjudgement but who makes a genuine and sustained effort to improve the situation as well as a Contractor who is consistently unwilling or unable to provide an adequate level of resource or management to meet the required standard.

When adopting these principles it is also recognised that:-

- a) There may be special extenuating circumstances for every failure to meet the required standards.
- b) There may be extraordinary circumstances in which the Council reserves the right to step outside these guidelines in order to obtain satisfactory performance.

7.2 LOST MILEAGE

Expected Standards of Performance on Local Bus Services

The Council does not specify a required minimum standard of service as the Contract is to provide all the journeys described in the Service Specification. This could result in a 'bench-mark' being seen as an acceptable target for Contractors.

Lost Mileage is classified into two different categories. Those which should be under the control of the operator such as shortage of drivers or vehicles and those which are not, such as abnormal traffic congestion or severe weather conditions. Lost Mileage which falls into the first category is subject to a penalty of the average contract price per mile and to warnings being issued. There are, however, a number of cases where the classification is more difficult.

Industrial Action

All lost mileage due to industrial action is considered eligible for penalty. A lower penalty may be agreed if the Contractor can demonstrate that the loss of service is beyond his/her control.

Severe Weather

Where severe weather factors lead to lost mileage the operator will be expected to have taken all reasonable steps in the circumstances to provide the service. When the weather prevents the operation of services, for example when roads are blocked by snow, there is no penalty imposed because it is clearly beyond the operator's control. However, where a service is not operated because the vehicles are affected by severe frost and either cannot be started or break down on the road the situation is not as clear-cut. One of the factors that will be taken into account in deciding whether to impose lost mileage penalties and issue warnings if necessary is the extent to which other operators in the area have also suffered lost mileage on the day for the same reason.

Abnormal Traffic Congestion

The reliability of a regular urban service can be seriously affected by traffic congestion through accumulated delays. However, where such regular traffic congestion is a predictable feature, schedules should be adjusted to take account of it and this may involve renegotiating the contract. When considering whether to impose the penalty and issue warnings the experience of other operators in the area will be taken into account as well as whether the traffic congestion was predictable.

This is particularly the case where operators have either submitted an alternative tender with a different timetable or have inter-worked the contract service with other services, commercial or tendered, in a way not specified by the Council. Where traffic congestion causes reliability problems on timetables specified by the Council it will jointly agree with the operator what steps should be taken to resolve the situation.

Expected Standards of Performance on Local School Bus Services, Home to School Contracts and Special Needs Contracts

The Council has a statutory duty to provide (under Section 509 of the Education Act 1996) nearly all the journeys operated by these contracts. Due to this and the potentially serious consequences of a school journey not operating to schedule the Council requires a high level of service. The procedures for ensuring such standards are set out in Schedule 4 of the Conditions of Contract.

7.3 WARNINGS, MATERIAL DEFAULT OF CONTRACT AND TERMINATION OF CONTRACTS

The reasons for why and when warnings are issued, what constitutes a material default of contract, the appeals procedure and the termination of contracts is set out in Schedule 4 of the Conditions of Contract.