

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**EXECUTIVE MANAGEMENT TEAM'S  
REPORT TO CABINET**

**18 March 2020**

**Report Title:** Air Quality – A53 Bus Retrofit Contract

**Submitted by:** Head of Environmental Health – Nesta Barker

**Portfolios:** Environment & Recycling

**Ward(s) affected:** May Bank Ward

**Purpose of the Report**

To ask Cabinet to approve the award of a contract for the retrofit of buses operated by First Potteries Ltd to bring them up to Euro 6 emission standards.

**Recommendation**

**That Cabinet authorise the Chief Executive, in consultation with the Portfolio Holder for Environment and Recycling, to enter into a contract with First Potteries Ltd to:-**

- 1. Secure the retrofit of exhaust abatement technology to 25 buses and the replacement of hydraulic fan systems to 18 of these buses with electrically driven fan systems to ensure that buses operating on the A53 Etruria Road achieve compliance with Euro 6 emissions standards.**
- 2. Jointly promote the benefits of using the Euro 6 complaint buses to further reduce traffic related roadside NO<sub>2</sub> levels.**

**Reasons**

To enable the Council to fully comply with the legal duty imposed on the Council by The Environment Act 1995 (Implementation of measures for nitrogen dioxide compliance) Air Quality Direction 2018.

**1. Background**

- 1.1** The Borough of Newcastle-under-Lyme and City of Stoke-on-Trent, like many areas across the UK, continues to experience areas of poor air quality. The relevant Councils were highlighted by DEFRA as two of a number of Local Authorities where the UK's national air quality assessment has identified road links that are currently exceeding the annual mean nitrogen dioxide (NO<sub>2</sub>) limit value, with exceedances predicted to continue in 2020 and beyond.
- 1.2** In October 2018, Ministers Coffey and Norman for the Department for Environment, Food and Rural Affairs (DEFRA) and Department for Transport (DfT) respectively, served two ministerial directions on the Council under the provisions of the Environment Act 1995. These directions are The Environment Act 1995 (Feasibility study for nitrogen dioxide compliance) (No 1) and The Environment Act 1995 (Implementation of measures for nitrogen dioxide compliance) Air Quality Direction 2018.
- 1.3** With regards to The Environment Act 1995 (Implementation of measures for nitrogen dioxide compliance) Air Quality Direction 2018, this mandates the authority to implement a bus retrofit programme for the affected road link ( a specified section of Etruria Road at Basford) as soon as possible to bring forward compliance with air quality standards. This direction has been served on

the Council as previous work undertaken by the Council identified that retrofitting public buses with pollution abatement technology to bring them up to the latest Euro 6 emissions standard

- 1.4 would result in compliance with the annual mean NO<sub>2</sub> limit value being brought forward by a year on the stretch of affected road. Similarly the remaining sections of road where exceedances have been identified would also experience reductions in NO<sub>2</sub> levels, however, for various technical reasons, retrofit alone has been shown to not achieve full compliance with the annual mean NO<sub>2</sub> limit value until 2025 on the remaining sections of road.
- 1.5 Members will already be aware, from earlier report to Cabinet, of work currently underway in conjunction with the City Council and County Council to comply with The Environment Act 1995 (Feasibility study for nitrogen dioxide compliance) (No 1) where measures in addition to bus retrofit are being explored to secure compliance with the annual mean NO<sub>2</sub> limit value in the shortest possible time.

## 2. **Issues**

- 2.1 Your officers have engaged positively with First Potteries Ltd, currently the only public bus operator on the relevant section of the A53 and who operate service 3, 4 and 4A. First have identified 25 buses, in addition to already compliant buses, which need to be retrofitted with CVRAS accredited emissions abatement technology to bring them up to Euro 6 emission standards to enable the Council to fully comply with the associated Ministerial Direction. Alongside this, First have also identified a need to replace hydraulic fan driven engine cooling systems with electrically driven fan cooling systems on 18 of the buses to be retrofitted. This technology will help offset reductions in fuel economy and CO<sub>2</sub> emissions caused by retrofit abatement technology. The remaining buses are already provided with factory fitted electric fan systems.
- 2.3 First Potteries Ltd is part of First Group PLC. At a national level, First Group have gone through a competitive tender exercise with CVRAS accredited providers for the pollution abatement technology and have nominated a single supplier to undertake retrofit of their affected fleet. Costs per bus have been compared to those deemed typical by DEFRA and are in line with typical costs. The electric fan engine cooling system is only manufactured by one supplier. The costings have been accepted by DEFRA and are in line with similar projects.
- 2.2 The full costs to the Council associated with the retrofit programme and replacement fan system have been identified and the Council is to receive full grant funding from DEFRA to support this work. It is currently anticipated that the full retrofit of the 25 buses will be achieved by August 2020 and that a fully EURO 6 complaint public bus service on the relevant sections of road will be in operation from August 2020.
- 2.3 There are a number of conditions that the Borough Council and the bus company are required to meet in respect of this work, including a requirement for the buses to remain in service for 5 years or 150,000 miles or be replaced with a Euro 6 engine bus. The Council is also required to provide a range of information relating to retrofit performance and impacts on emissions and air quality to DEFRA on a quarterly basis for 5 years post retrofit.
- 2.4. The retrofit programme will be underpinned by a formal legal agreement between the Council and First Potteries Ltd to secure the retrofit and engine cooling technology to identified buses. This will fully cover the grant term conditions to enable the Council to comply with the Direction as well as detailing the arrangements to facilitate monitoring and reporting arrangements by the Council.

There are also claw back provisions in the event of First Potteries not meeting its obligations under the agreement.

- 2.5. Alongside the retrofit initiative, both the Council and First are planning to work together to jointly promote the usage of the complaint buses with the aim of promoting modal shift away from cars and increasing and sustaining bus patronage. This will help to further reduce levels of roadside NO<sub>2</sub> across a wider area than just the routes themselves.
- 2.6. Your officers will also be requesting that the Traffic Commissioner, who is responsible for registering bus service operations, imposes a traffic regulation condition to require all buses on the relevant section of road are Euro 6 complaint from a given date. If agreed to, this will legally oblige First and any other future public bus service operators to only use Euro 6 compliant buses from a specified date.

### 3. **Proposal**

- 3.1 That Cabinet authorise the Chief Executive, in consultation with the Portfolio Holder for Environment and Recycling, to enter into a contract with First Potteries Ltd to:-
  1. secure the retrofit of exhaust abatement technology to 25 buses and the replacement of hydraulic fan systems to 18 of these buses with electrically driven fan systems to ensure that buses operating on the A53 Etruria Road achieve compliance with Euro 6 emissions standards.
  2. Jointly promote the benefits of using the Euro 6 complaint buses to further reduce traffic related roadside NO<sub>2</sub> levels.

### 4. **Reasons for Proposed Solution**

- 4.1 It is essential for the Council to fully comply with the Ministerial Direction to implement the bus retrofit scheme for the affected road link as soon as possible and at least in time to bring forward compliance.

### 5. **Options Considered**

- 5.1 The Council must secure the co-operation of First Potteries Ltd. to ensure that Euro 6 complaint buses operate on the relevant section of road and for this purpose enter into a formal contract, to ensure that all relevant buses are complaint by the end of 2021 at the latest.

### 6. **Legal and Statutory Implications**

#### **6.1. Ministerial Direction**

- 6.1.1 The Environment Act 1995 (Implementation of measures for nitrogen dioxide compliance) Air Quality Direction 2018 mandates the authority to implement the bus retrofit scheme for the affected road link as soon as possible and at least in time to bring forward compliance to 2021.
- 6.1.2 Failure to comply with the Direction may result in proceedings being brought against the Council by the Government or third parties. Any such proceedings may result in adverse costs awards being made against the Council.

## **6.2. Procurement**

6.2.1 With regards to procurement, the project costs exceed the 2020 OJEU procurement threshold for public supplies and service of £189,330. However, it is considered an exemption from Public Contract regulations 2015 and the need to undertake a compliant OJEU procurement can be utilised as there is effectively only one supplier for the equipment to be installed, this being First Potteries Ltd, who will be sourcing the retrofit equipment and ancillaries from appropriate supplier.

## **6.3 State Aid**

6.3.1. Funding provided by the state to economic operators is covered by state aid rules which prohibit governments within the EU from providing financial support to economic operators. However following a review of the state aid rules and applicable exemptions, it is considered that the funding does not amount to state aid in this case and is thus lawful.

## **7. Equality Impact Assessment**

7.1 Not applicable

## **8. Financial and Resource Implications**

8.1. The full cost associated with the securing the fitment of appropriate accredited retrofit technology to all buses currently operating on the A53 at Basford together with costs to administer the project and to support promotion of the buses are to be met from funding awarded by DEFRA to the Borough Council. The grant award to the Council is £507,627.90. The subsequent funding to First will not include VAT as public transport operations are zero rated for VAT. First will reclaim supplier VAT on the equipment through an existing arrangement with Revenue and Customs.

8.2 It should be noted that the Council is required to provide DEFRA with quarterly reports on the progress of the retrofit delivery along with information on vehicle emissions and retrofit performance, improvements in air quality and details of monitoring of compliance with the grant award conditions for a period of 5 years post fitment. The associated costs are also factored into the grant award.

## **9. Major Risks**

9.1 A full risk assessment has been undertaken for both this project and is available upon request. The following is a summary of the major project risks.

### **9.2. Failure to comply with the ministerial direction**

9.2.1.. The implications of failure to manage this element is covered in section 6.1. of this report Your officers and the operator are working to secure 100% compliance by summer 2020 either through the provision of existing compliant vehicles or retrofitting qualifying vehicles through the provision of a council administered grant to bring them up to Euro 6. This is underpinned by an appropriate project plan with identified resource requirements which are being met from the DEFRA grant awarded to the Council.

9.2.3. On the basis of the above, it is considered that this risk is appropriately controlled.

### **9.3. Legal compliance with direction and grant terms and conditions**

9.3.1. Prior to the Council placing an order with First Potteries Ltd (as the local operating company), both First Potteries Ltd and the Council will enter into a formal legal agreement outlining the terms of the grant, monitoring arrangements and clawback provisions in the event of grant

conditions not being complied with. The operator is required to keep the buses on the route for a minimum of 5 years or 150k miles, whichever comes first post retrofit.

9.3.2. Both the Council and First Potteries have reviewed a proposed legal agreement between the two parties. First have committed to sign this in advance of any council approval, with the Council entering into this subject to approval from Cabinet.

9.3.3. On the basis of the above, it is considered that this risk is appropriately controlled.

### **9.3. Anticipated emissions NO<sub>2</sub> reductions not realised**

9.3.1. The Ministerial Direction is predicated on work undertaken by the Council as a result of a previous ministerial direction which identified that for the relevant stretch of road that by bringing the public buses up to Euro 6 emissions standards this would secure specified reductions in levels of NO<sub>2</sub> and bring forward compliance with the Annual Mean NO<sub>2</sub> Limit Value across the relevant sections of road by a year. This work has been accepted by DEFRA. The council is required to provide data on vehicle emissions to DEFRA for five years post retrofit alongside roadside NO<sub>2</sub> levels for the same period.

9.3.2. Cabinet will also be aware of work being undertaken jointly with Stoke on Trent City Council and Staffordshire County Council in connection with a related Ministerial Direction requiring the identification and evaluation of measures to further reduce road traffic related NO<sub>2</sub> levels to secure compliance with the Annual Mean NO<sub>2</sub> Limit Value on the relevant sections of road within the shortest possible time.

9.3.3. The two projects when taken together are anticipated to improve roadside NO<sub>2</sub> levels and bring about compliance with the Annual Mean NO<sub>2</sub> Limit Value much sooner than by themselves.

9.3.4. On the basis of the above, it is considered that this risk is appropriately controlled.

### **9.4. Procurement, State Aid , VAT**

9.4.1. These matters are already covered in the body of the report in section 6 and 8.

9.4.2. On the basis of the information provided, it is considered that these risks are appropriately controlled.

### **9.5. Compliance with Council Standing Orders for Procurement**

9.5.1. Based on the research undertaken by officers with both DEFRA and First Potteries and based on the outcome of First Potteries procurement process, it has been identified that there is only one provider that can deliver a compliant solution. Therefore it is considered that with no effective competition there would be little point in undertaking a procurement exercise and as such the council should instead make a grant award to First Potteries of monies received from DEFRA. On this basis a formal Exception to Contract Procedure Rules is not required and as such this falls outside the relevant section of the Councils Standing Orders. However given the project amount the risks and considerations identified in this report, especially those outlined in section 9.4 an Exception to Contract procedure Rules waiver will be produced and submitted to the office of the CEO for sign off to maintain a compliant audit trail.

## **10. Sustainability and Climate Change Implications**

10.1 Air pollution and climate change are intrinsically linked; therefore work to improve air quality will also support climate change improvements. This project will also have positive impacts on air

quality for other areas of the Borough and City serviced by buses operating on routes 3, 4 and 4A.

11. **Key Decision Information**

11.1 The contract value is over £150,000, so this is a key decision item.

12. **Earlier Cabinet/Committee Resolutions**

12.1 Cabinet Report Air Quality 6<sup>th</sup> February 2019

Cabinet Report Air Quality Ministerial Direction Strategic Outline Case 20<sup>th</sup> March 2019

Cabinet Report Air Quality Award of contract 24<sup>th</sup> April 2019

Cabinet Report Air Quality Ministerial Direction Update 10<sup>th</sup> July 2019

Cabinet Report Air Quality Ministerial Direction Update 5<sup>th</sup> February 2020

13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1. Environment Act 1995 (Implementation of Measures for Nitrogen Dioxide Compliance) Air Quality Direction 2018

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746119/air-quality-no2-plan-direction-2018-implement-measures.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746119/air-quality-no2-plan-direction-2018-implement-measures.pdf)