

Report for: ACTION
Item Number: 11

Contains Confidential or Exempt Information	NO
Title	Authority to Tender the School Meal Service
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Portfolio	Councillor Johnson, Cabinet Member for Schools and Children's Services and Deputy Leader
For Consideration By	Cabinet
Date to be Considered	19 March 2019
Implementation Date if Not Called In	01 April 2019
Affected Wards	All
Keywords/Index	School Catering, Meals, Re-tendering, Procurement, Ealing School Catering Consortium (ESCC)

<p>Purpose of Report:</p> <p>To obtain authority from Cabinet to tender a contract for the school meal service on behalf of 57 Primary and Special schools which form the Ealing School Catering Consortium (ESCC) as the existing contract with Harrison Catering Services Limited expires on 31st July 2020.</p> <p>To obtain authority from Cabinet to research options available in respect of tendering the contract for this service with either a neighbouring authority and/or a consortium of other London Boroughs.</p> <p>To seek a commitment for the Council to provide contract management services for the duration of the new contract.</p>

1. Recommendations

It is recommended that Cabinet:

- 1.1 authorises the Executive Director for Children, Adults and Public Health to invite and evaluate tenders for the contract for the provision of the school meal service either for Ealing Council alone or as a joint procurement with one or more other London Boroughs;
- 1.2 notes that authority will be sought from Cabinet to award the new contract in early 2020, with the new contract commencing from 1st August 2020;
- 1.3 agrees to the Council providing contract management services for the duration of the new contract, provided that the Council's own management costs are reimbursed by the ESCC.

2. Reason for Decision and Options Considered

- 2.1 The existing contract, currently in place with Harrison Catering Services Limited, is due to expire on 31st July 2020.
- 2.2 The management committee of the ESCC, on behalf of its members, has requested the Council to:
 - 2.2.1 undertake the work of tendering and evaluation of tenders and the subsequent award of the contract, as it cannot enter contracts in its own right;
 - 2.2.2 provide contract management services for the duration of the new contract.

The ESCC is prepared to reimburse the Council the cost of undertaking this work.

3. Key Implications

- 3.1 Responsibility for the provision of a mid-day meal service has been delegated to all schools and their governing bodies. The provision of a meal service is a legal requirement under the Education Act 1996. Consequently, schools are able to make their own arrangements regarding the provision of a mid-day meal service.
- 3.2 The ESCC was created in 2002, the principle being to allow schools to buy into a single centralised meals service, via the ESCC, which offers value for money through economy of scale. The contract is managed by the Council and fully funded by schools directly as a consortium model. 57 schools currently buy in to the service. There are no direct costs to the Council. The operating budget is set annually to determine the forecast contribution of each school, with each school paying a membership fee and receiving a performance budget, performance against which is monitored and reported on a monthly basis. There is a mechanism by which at the end of each year those schools that have operated at a profit may receive a rebate and those schools which have performed below target may be liable for a further contribution.
- 3.3 The ESCC cannot at this stage guarantee the numbers of schools that will commit to the new contract, but Council officers will visit member schools in the spring term of 2019 to establish the potential level of commitment prior to going out to tender. In addition, they will visit the primary schools that have alternative arrangements to establish if they are interested in joining the ESCC arrangements.
- 3.4 The continuation of a consortium of schools is regarded as desirable as it offers economies of scale, protects smaller schools, provides consistency across all member schools, offers training opportunities to the staff that would be difficult for an individual school to provide, assists with making improvements to the staff's employment terms & conditions and reduces the administrative burden for member schools.
- 3.5 Prior to tendering the contract for this service, it is proposed that the Council and the ESCC will investigate if a greater economy of scale is

available by completing a tender procedure with either a neighbouring Borough and/or a consortium of other London Boroughs. This will be conditional upon other authorities' contracts being due to expire at a similar time and the other authorities having a similar philosophy with respect to school meal provision.

3.6 The ESCC management committee has been supportive of the Council's desire to see staff employed by contractors paid as a minimum the Mayor of London's living wage. Progress has been made during the current contract as below:

- The Minimum Living Wage for persons aged 25 and over is currently £8.21/hr.
- Lowest paid role Kitchen assistant on the contract is currently paid at £8.66/hr.
- The Mayor's Living Wage is £10.55/hr.

The Tender documents for the new contract will provide that the Council supports the London Living Wage and seek proposals from tenderers for moving towards that during the contract term.

4. Financial

4.1 Financial impact on the budget

- 4.1.1 All schools receive the funding through the fair funding formula, which provides most of the funding for their catering service for free meals.
- 4.1.2 The service is also funded from DfE grant for Universal Infant Free School Meals (UIFSM) for infant age pupils (Reception, Year 1 and Year 2), and money collected from parent and carers for payment for meals, so there is no direct financial impact on the Council.
- 4.1.3 The ESCC currently pays the cost of the contract management services provided by Children and Adults Services.

4.2 Financial background

- 4.2.1 The current cost of a meal to parents is £2.30 (September 2018) and parent/carers can pay by debit cards over the telephone or on-line.
- 4.2.2 The contractor is responsible for the collection of payments from parent/carers, with support from the schools.
- 4.2.3 As a typical funding profile, the contract's current annual value 2018/19 is £6.64 million and supplies 2.85 million school meals a year. The cost of the meals for 2018/19 is funded as follows:
 - UIFSM payment: £3.27m (actual allocation from DfE for children in Reception, Year 1 and Year 2);
 - Traditional Free School Meals contribution and membership fee: £1.57m (actual contribution from the schools);
 - Paying parents: £1.8m (budget forecast).
- 4.2.4 Take up rates have increased since this contract started in 2008 and stands at around 46%, which is slightly higher than the School Food Trust's 2011 national annual survey of take-up for primary schools of

44%. Higher take up on the contract as a whole and significant improvements at individual schools with low take-up have improved the financial performance of the contract.

5. Legal

- 5.1 The Council has a duty under s512 of the Education Act 1996-LEA Functions concerning provision of meals etc and section (ss)of Schedule 1 of the Contracting Out (Local Authority Education Functions)(England) Order 2002-s512 (provision of meals etc at schools maintained by local education authorities) for the provision of school meals to schools it maintains and therefore to enter into a contract for the school catering service on behalf of the schools that delegate the responsibility back to the Council.
- 5.2 The tender process to be followed for the procurement of this contract will be compliant with the Council's Contract Procedure Rules, the Public Contract Regulations 2015 (as amended) or the Concession Contracts Regulations 2016 as applicable.
- 5.3 Any food provided under the contract must comply with the nutritional standards for food and drink supplied in maintained schools under The Education (Nutritional Standards and Requirements for School Food)(England) Regulations 2007.
- 5.4 Under s512 Education Act 1996 as amended, local authorities may provide registered pupils at their schools with milk, meals and other refreshments, either on school premises or elsewhere where education is being provided. Local authorities are to provide facilities for the consumption of food and drink brought to school by pupils. On request, they are to provide school lunches as defined and in whatever form they think fit unless circumstances make it unreasonable to do so or the child is a part-time pupil under compulsory school age. They may charge for these refreshments and lunches. If they do charge, the cost is to be the same for all except that school lunches (and milk if provided) are to be free of charge for pupils whose parents (or who themselves) are on specified benefits.
- 5.4 The Secretary of State may by order set conditions that must be met before a local authority is required to provide school lunches. The Secretary of State may by order (applying to all or to specified maintained schools) transfer from local authorities to governing bodies the duty to provide school lunches, to provide them free and to provide free milk.
- 5.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may potentially be applicable in the event that:
 - (a) the activities which are being carried out , on the Council's behalf, under the current arrangements are sufficiently similar to the activities which will be carried out, on the Council's behalf, under the new arrangements; and
 - (b) the current provider(s) has an organised team of employees whose main purpose is to perform the Ealing work

Where TUPE applies, employees of the existing contractor(s) may have the right to be transferred to the new contractor(s), on the same terms and

conditions and with their employment law rights preserved. There are certain conditions to be fulfilled and there are some exceptions. There are obligations to inform/consult representatives of the affected employees. The outgoing contractor has obligations to supply information about relevant employees to the incoming contractor.

The legal obligations to comply with TUPE fall on the respective incoming and outgoing contractors.

6. Value For Money

- 6.1 The current contract pays a management fee to the contractor, which is linked to meals numbers. The more meals the contractor sells the higher the fee. The budget is set annually, by the contractor and the Council, with a stop loss limit being agreed to cap the Council's liability in the event of the budget not being achieved and a loss being incurred. Should the actual performance produce a surplus this is shared between the contractor, their staff and the ESCC. This method of working means that joint decisions are made about issues that relate to the financial performance of the contract and we can respond quickly to changes. The ESCC is looking to continue with a similar arrangement for the new contract.
- 6.2 The management committee of the ESCC meets each term in the academic year and deals with strategic issues, which include agreeing the budget, the contractor's proposed wage increase for their staff and setting the meal price.
- 6.3 Monthly contract review meetings are held with the contractor, culminating in an annual review in late August.
- 6.4 Council officers are members of a pan London group of officers with responsibility for school catering, who meet each academic term to discuss latest developments and to compare services. Our current meal price has remained fixed at £2.30 since 2012, with external pressures coming to bear to increase. The current price of meals in other London boroughs ranges from £2.10 to £2.40, although this may not be directly comparable on a like for like basis.

7. Sustainability Impact Appraisal

- 7.1 The contractor has use of kitchens in ESCC member schools and consume energy. Whenever new equipment is purchased for use in the kitchens any purchasing decision will take into account energy consumption. The energy used is provided by the school without charge to the contractor, who acting responsibly by instructing their staff to use energy sensibly, without compromising the provision of the meal service.
- 7.2 The current contractor supports the two recycling initiatives that the Council has introduced (waste cooking oil and schools cardboard and food recycling), and both of these would be included in the service specification of the new contract.
- 7.3 Since the last tendering exercise in 2012/2013, the Council and schools have through rebuilding schools and making improvements reduced the

transporting of food from a production kitchen in a school from 11 to 5. This has reduced CO2 emissions. The local food miles reflect the city nature of the borough and fruit and vegetable travel from New Covent Garden, meat comes from Park Royal and dry and frozen food from either Basingstoke or Slough. The current contractor's suppliers have minimised the deliveries into schools, despite our reliance on predominately fresh food: 2 a week for fruit & vegetables and 1 to 2 for frozen food and 1 for dry goods.

8. Risk Management

As schools are responsible for the provision of the mid-day meal they may decide not to support the ESCC. If significant numbers of schools with high meal numbers left the ESCC, costs would increase for those remaining. A priority for the officer visits mentioned in Paragraph 3.2 above will be to those schools to ensure the service specification of the new contract reflects the ESCC's member's future requirements.

9. Community Safety

None

10. Links to the 3 Priorities for the Borough

The project is linked to 'Opportunities and living incomes' and 'A healthy and great place' priorities.

The consortium approach delivers value for money in a direct way as well as by improving children's eating habits, by providing a nutritious meal that meets the government's guidelines for school food, which ultimately will reduce the future costs of the Health service.

11. Equalities, Human Rights and Community Cohesion

An equalities impact assessment has been carried out and is attached at Appendix A.

12. Staffing/Workforce and Accommodation implications:

- 12.1 Should there be no support for the continuation of the ESCC, then potentially the loss of income to Children and Adults, could have an impact on jobs unless an alternative source of income could be found.
- 12.2 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may be applicable as explained in more detail under section 5.5 (Legal).
- 12.3 Schools and Corporate HR have been consulted and will be kept up to date with progress.

13. Property and Assets

- 13.1 The contractor is given use of school kitchens, which are maintained and the responsibility of the schools. Funding of minor repairs is included in the funding provided in the Fair Funding Formula to schools. Any major works required will be prioritised with other works needed in the school and if necessary consider for inclusion in the Council's capital program.

14. Any other implications:

None

15. Consultation

- 15.1 All member schools will be visited by a Council officer to discuss their catering requirements and these discussions will inform the writing of the service specification for the new contract.
- 15.2 Pupils, school staff and governors will be involved in the tender process, as it is intended that, for those contractors that pass the pre-tender qualification and are invited to tender, there will be a visit to a school(s) to provide a sample of food which will be evaluated by pupils, school staff and governors as part of the tender process.
- 15.3 Members of the ESCC management committee will evaluate the final part of the tender process that will involve a presentation by the contractors that have been invited to tender and make the final recommendation to Cabinet for the award of the contract in the spring of 2020.
- 15.4 As a major contract that schools can access we will need to consult with the Ealing Schools Forum and it is proposed that this will be included on the agenda for their November 2019 meeting.

16. Timetable for Implementation

It is intended that the indicative timetable for the procurement of the new contract will be as follows, and if there are any changes to the procurement process the timetable shall be revised accordingly:

Date	Action	Measurable Outcomes
19 March 2019	Cabinet approval to tender	Given go ahead
Spring 2019	Initial contact with other London Boroughs to see if joint procurement could be possible	Contact other London boroughs. Establish how they provide a school meals service and whether they are interested in Joint procurement
Spring 2019	Determine procurement strategy	Procurement strategy agreed
March to April 2019	Officer to visit 57 schools	To confirm support for ESCC to continue
March to April 2019	If a partner(s) London borough is/are found develop a strategy to deliver joint procurement	Strategy written and timetable, key dates agreed
April to June 2019	Decide if joint procurement is possible and Draft Specification, Selection Questionnaire (SQ) and evaluation criteria prepared	Documentation completed
June/July 2019	Advertise and invite expression of interest and	Sufficient expressions of interest received

	issue SQ	
September/October 2019	Evaluate SQ and issue invitations to tender	Documentation issued
November 2019	Visits	Visits completed
December 2019	Evaluate tenders	Tender submissions evaluated
January 2020	Presentation and ESCC make recommendation	Presentation evaluated and ESCC able to recommend preferred contractor
March 2020	Cabinet approval	Approval received
April to August 2020	Contract awarded, TUPE consultation, mobilisation starts, and school sign up begins	Schools sign up, contract is awarded, TUPE consultation undertaken
September 2020	First meals served in schools	All signed up schools receive a meal service starting at the beginning of the 1 st day of term

17. Appendices

Appendix A – EAA

18. Background Information

The School Food Plan 2014

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Cllr Yvonne Johnson	Portfolio Holder, Schools and Children's Services	21/2/19	21/2/19	Throughout
Judith Finlay	Executive Director Children, Adults & Public Health	21/2/19	21/2/19	
Gary Redhead	Assistant Director Schools Planning and Resources:	21/2/19	4/3/19	Throughout
Sajal O'Shaughnessy	Lawyer (Legal Contracts)	9/1/19 and 14/2/19	14/1/19 and 18/02/19	Throughout
Geraldine Chadwick	Interim Senior Finance Business Advisor	9/1/19 and 14/2/19		
Craig McDowell	Category Lead (People)	9/1/19 and 14/2/19		
Kamaljit Kaur	Interim Finance Business Partner– Children & Schools	9/1/19 and 14/2/19	15/1/19 and 18/2/19	
Mark Nelson	Head of School HR Consultancy	9/1/19 and 14/2/19	14/1/19 and 14/2/19	12
Rhiannon Evans	Solicitor (Social Care & Education)	9/1/19 and 14/2/19	15/1/19	5
Justin Morley	Head of Legal Services (Social Care and Education)	9/1/19 and 14/2/19	14/1/19	
Paddy Quill	Senior Lawyer (Legal Services)	9/1/19 and 14/2/19	14/1/19	Throughout
External				
Sharon Fida	Chair of the Ealing School Catering Consortium	21/2/19	28/2/19	

Report History

Decision type:	Urgency item?
Key decision	No
Report no.:	Report author and contact for queries:
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