

London Borough of Hammersmith & Fulham

Report to: Councillor Larry Culhane - Cabinet Member for Children and Education

Date: 03/10/2021

Subject: School Meals Direct Awards

Report Author: Joe Gunning, Programme Lead, Children's Commissioning

Responsible Director: Jacqui McShannon, Director of Children's Services

Summary

This report seeks approval to direct award contracts for the provision of school meals for the period from 1 January 2022 to 31 July 2023.

School Meals are an essential service used by many children and young people in the London Borough of Hammersmith & Fulham (H&F); whereby participating children receive a nutritionally balanced meal each day.

Recommendations

The Cabinet Member for Children and Education:

1. Notes that Appendix 1 to this report is exempt from disclosure on the grounds that it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under Paragraph 5 of Schedule 12A of the Local Government Act 1972.
 2. Approves the direct award of a contract to the current school meals provider for Nursery, Primary and Special Schools, Mitie Catering Services Ltd from the 1 January 2022 to 31 July 2023 at a total cost of circa £2.990m.
 3. Approves the direct award of a contract to the current school meals provider for Secondary Schools, Caterlink Ltd from the 1 January 2022 to 31 July 2023 at a total cost of circa £1.013m.
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Wards Affected: All

H&F Values	Summary of how this report aligns to the H&F Priorities
Building shared prosperity	Employment of local residents and use of local produce where possible

Creating a compassionate council	A range of meal options to suit all students needs
Doing things with local residents, not to them	Schools can choose to join the contract or make other arrangements that better suit their needs
Being ruthlessly financially efficient	Cost neutral service to the Council, however economies of scale will help to achieve best value for schools
Taking pride in H&F	Ensuring students receive a nutritious healthy meal each day and are able to thrive in school
Rising to the challenge of the climate and ecological emergency	Developing relationships with local suppliers and ethical, sustainable sources and supply chains

Financial Impact

There is no direct financial impact to Hammersmith & Fulham Local Authority (LA) budgets, however there are financial implications for schools which will be met by each school's individual schools budget funded from the Dedicated Schools Grant.

Each school that enters into the contract will pay for the service based on the number of staff, overheads and meal prices for their school. Each school will be invoiced directly by the supplier. The model ensures that each school only pays for their own service costs whilst continuing to benefit from the economies of scale generated by being in a large volume contract.

There is no requirement for a school to enter into this arrangement. If a school decides not to enter into this, it would need to make alternative arrangements which again would be met from its individual school budget.

Legal Implications

1. This report recommends the direct award of two school meals contracts to the incumbent suppliers:
 - (1) Mitie Catering Services Limited (the new name for Interserve Catering Services Ltd) from the 1 January 2022 to 31 July 2023 for the maximum sum of £2.990m for the provision of school meals to nurseries, primary and special schools; and
 - (2) Cater Link Ltd from the 1 January 2022 to 31 July 2023 for the maximum sum of £1.013m for the provision of school meals to secondary schools.
2. The Council has existing contracts with the suppliers which were extended earlier this year. If the recommendation is approved, the Council will enter into further extensions in the form of Variation Agreements on the same terms until

31st July 2023. As there is no provision in the existing contracts for extensions, they take effect as direct awards.

3. The contract values for each extension are above the threshold of £663,540 for “Social and Other Specific Services” under the Public Contracts Regulations 2015 (PCR). Therefore, the Council is required to comply with the full EU procurement regime unless there are grounds to use the negotiated procedure without prior publication under regulation 32. In this respect, the Council is satisfied that there are grounds under regulation 32(2)(c) in that the direct awards are ‘strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedure or competitive procedures with negotiation cannot be complied with.’ Under sub-paragraph (4), ‘For the purposes of paragraph (2)(c), the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.’
4. The need to extend the contracts is urgent. The contracts must be in place by 1st January 2022. The Council tried to ensure that contracts would be in place by that date by carrying out a procurement. The procurement commenced on 1st July 2021, but it was abandoned on 28th July 2021 prior to the closing date for receipt of tenders. This was because once the procurement had started it was clear there was insufficient interest in the market to produce adequate competition. In addition, a number of potential bidders raised issues that could not have been resolved in time for the tender submission deadline. There was also a number of technical queries to be resolved prior to the tender close date that required resolution.
5. Now that the procurement has been abandoned, the Council must take urgent steps to ensure that there are contracts in place for September through to the end of the academic year. While the existing contracts have already been extended to 31st December, they must be extended from 1st January 2022 to 31st July 2023 at which date the schools are scheduled to re-procure the service themselves. Re-procurement for the period from 1st January 2022 to 31st July 2023 is not viable as the market would not be interested in a contract of only a year’s duration.
6. The Council must publish a Contract Award Notice (reg 50 PCR) within 30 days of making the direct award including the date of the award and who won the contract.
7. Under the Council’s Contract Standing Orders, the contracts are High Value as they have values greater than £189,330. The CSO require either the use of an existing Framework or DPS which is compliant with the Regulations or to adopt a procedure in accordance with the PCRs. A waiver of these requirements can be granted on grounds of urgency. The decision maker in respect of the grant of the waiver is the s151 Officer or the Director of Resources on recommendation of the Contracts Assurance Board (CAB). The request for a waiver is the subject of a separate report to CAB.

8. As the subject matter of this report is in relation to two High Value Contracts above £0.5 million, the decision to approve the direct award is for the relevant Cabinet Member pursuant to CSO 21.1.
9. The Council is under an obligation under the Public Services (Social Value) Act 2012 to consider how the letting of services contracts can benefit the social, economic and environmental well-being of their area. These are factors which will be considered and built into the contract and procurement documents. The Council has adopted a Social Value policy which applies to all its contracts above £100,000, and although the contract recommended for award was not tendered as a way of driving social value, the ability of the recommended supplier to deliver social value will, as appropriate, be subject to assessment by an external assessor, a company called Social Value Portal. The requirements of the assessor and the Council's policy will need to be built into the contract documents.
10. As the value of each direct award contract is above £300,000, the award of both contracts is a Key decision and must be submitted to Committee Services for publication on the Council's website. In addition, a copy of the completed (dated) contract must be uploaded to the Council's Contracts Register along with a copy of the award report.
11. Additional legal implications are contained in the exempt appendix.

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Background Papers Used in Preparing This Report N/A

DETAILED ANALYSIS

Proposals and Analysis of Options

1. This report seeks the approval of a direct award to the current school meals providers due to a number of reasons detailed below.
2. A Procurement Strategy for the tender of a School Meals contract was approved at Cabinet on the 4th January 2021. On the same day the Government announced the delayed return to education for school children as a result of the Coronavirus pandemic. Schools in H&F were subsequently contending with supporting the significant majority of learners through remote learning whilst also providing face to face education for vulnerable and key worker children. A short-term direct award was undertaken from the 6 June 2021 to 31 December 2021 to enable a tender exercise to be completed with school engagement.
3. Schools have continued to be challenged as a result of COVID-19; contending with regular testing of pupils as well as significant levels of pupils being required to self-isolate all impacting on their ability to actively participate in the tender.
4. A tender was released via Capital E Sourcing in July 2021; however, it was withdrawn for a number of reasons; namely various clarifications raised throughout the procurement which were not possible to resolve before the closing date of the tender and subsequently the intended contract start date of the 1 January 2022 was no longer achievable due to the considerable mobilisation period required. There was also minimal interest in the invitation to quote with a number of providers opting out of the process despite using a well-established framework. It is expected this is as a result of the short contract period. The Autumn term also represents somewhat of an unknown for schools in regard to COVID-19 and therefore the school's ability to engage in mobilisation activity for a contract of such a scale posed significant risk.
5. All options within the available timescales have been considered to ensure that a high-quality school meals service can continue to be delivered to all H&F schools that form part of the current contract arrangements. These options are set out below.
6. It is recommended to directly award contracts to the existing providers to maintain continuity in provision and enable the Local Authority to work with schools as they transition to new operating models from July 2023 in line with the Procurement Strategy approved at Cabinet in January 2021.
7. As part of the current contracts, providers offer local employment opportunities, local employment and training opportunities particularly in relation to apprentices and people with disabilities. Officers will work with the providers in order to ensure Social Value is delivered at 10% of the total contract value in line with policy.

Option 1: Direct Award – Recommended

8. It is recommended to conduct a direct award with the existing school meals providers:
 - Mitie Catering Services Ltd for the provision of school meals in participating Nurseries, Primary and Special Schools
 - CaterLink Ltd for the provision of school meals in participating Secondary Schools.
9. Both are the existing providers and have long established relationships with schools and have continued to provide meals for children throughout the pandemic.
10. This option would ensure that schools are able to discharge their statutory duties in providing a school meals service, negating the risk of services ceasing due to lack of capacity both at school and provider level to undertake a tender exercise in sufficient time. During this time, Officers will continue to work with schools as they transition to a new model from July 2023. This approach was set out in the Procurement Strategy approved at Cabinet in January 2021 and this remains on track for implementation from 2023.
11. For the purpose of the Direct Award, providers will deliver a minimum of 10% social value contributions and will work collaboratively with the Local Authority in the development of their delivery plan.

Option 2: Do nothing and continue with original retender timeframes (Not Recommended)

12. The Procurement Strategy for the retender of school meals was approved at Cabinet on the 4th January 2021, however the implementation of this has been significantly delayed due to resource and capacity issues both at school and provider level as well as a number of provider clarifications that could not be resolved during the tender subsequently impacting the ability to mobilise a new contract in sufficient time. To do nothing would risk services not being tendered in time and the current contracts ceasing on the 31 December 2021 with no provider in place. Schools would be unable to discharge their statutory duties and there would be no provision for school meals in these settings.

Reasons for Decision

13. Option 1 is recommended to conduct a direct award to the existing providers to ensure continuity in provision and to enable sufficient time to support schools in moving to a new operating model.
14. School Meals are an essential service used by many children and young people in the London Borough of Hammersmith & Fulham (H&F); whereby participating children receive a nutritionally balanced meal each day.

15. The provision of free school meals is a statutory provision within the Education Act 2003. Each governing body has a duty to provide free lunches for eligible pupils and to provide the opportunity for other pupils to buy lunch.

Equality Implications

16. There are no direct negative equality implications for groups with protected characteristics, under the Equality Act 2010, associated with these proposals.

Local Economy and Social Value Implications

17. Commissioners have confirmed that they have met with the contractors and confirmed their commitment to deliver a minimum of 10% Social Value in line with the Social Value list of outcomes and measures and Social Value Policy requirement. Officers will work with the contractors ahead of the contract start date to agree the delivery plan in collaboration with the Social Value Officer.
18. Contractors will be required to register on the Social Value Portal and pay the relevant fees for effective monitoring of social value delivery. It is also recommended that commissioners will work with legal to include relevant social value clauses for non- delivery.

Implications verified by: Ilaria Agueci, Social Value Officer tel. 0777 667 2878

Risk Management Implications

19. The report proposals are consistent with ensuring that services continue, as far as reasonably practicable, during the Covid pandemic. One impact of the pandemic is the delay in commissioning or procuring services as the schools are faced with responding to many Covid challenges and continuing to provide an education service which is predominantly not classroom based as a result of the national lockdown. The providers have well established relationships with schools and have continued to provide meals for children throughout the pandemic. An award will ensure that schools continue to discharge their statutory duties in providing a school meals service, negating the risk of services ceasing due to lack of capacity both at school and provider level to undertake a tender exercise in sufficient time. All service providers must continue to operate within HM Government, Health and Safety and Industry guidance and regulations throughout the Covid pandemic.
20. Failure to approve direct award would create greater risks for Schools and the Council.

*Implications verified by Ray Chitty – Head of Insurance Service, 07739315565
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Climate and Ecological Emergency Implications

21. Based on service volumes from 2019/20, and an estimated greenhouse gas footprint of 1.03kg CO₂e per school meal, this service is associated with an estimated 755 tonnes CO₂e per year. These emissions are indirect for H&F as they occur during production outside the borough but are equivalent to 0.1% of the borough's direct emissions and represent a strong opportunity to reduce emissions.
22. The service currently includes a 'meat-free Monday' which may reduce food production emissions by up to 56% for that day, or 11.2% overall. Opportunities to require further emissions reductions are limited by direct awarding under the existing contract terms, so any reductions will have to be delivered through collaborative work with the providers.
23. The Contract Managers will work closely with providers to support the council in its commitment to delivering a net zero carbon borough by 2030 including working with contractors to reduce the embedded emissions in the food it procures as well as waste management and minimum food wastage policy and where possible reducing energy use and carbon emissions throughout its food and operations. The Contractor shall ensure sustainability by keeping to the Government Buying Standards for the procurement of healthier more sustainable food and catering services.

Implications verified by Jim Cunningham, Climate Policy & Strategy Lead (07504 478787)

Consultation

24. Schools have cited significant capacity issues in responding to consultation for the new tender. Officers will continue engagement with schools as they transition to new operating models from July 2023.

List of Appendices:

Appendix 1 – Exempt Information