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Report of: *John Doyle, Deputy Executive Director*

Report to: *Cabinet*

Date of Decision: *9 October 2019*

Subject: *Re-tender of the School Catering Contract 1st August 2020 to 31st July 2025*

Is this a Key Decision? If Yes, reason Key Decision:-	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
- Expenditure and/or savings over £500,000		<input checked="" type="checkbox"/>		
- Affects 2 or more Wards		<input checked="" type="checkbox"/>		
Which Cabinet Member Portfolio does this relate to? <i>People</i>				
Which Scrutiny and Policy Development Committee does this relate to? <i>N/A</i>				
Has an Equality Impact Assessment (EIA) been undertaken?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
If YES, what EIA reference number has it been given? 590 (Attached)				
Does the report contain confidential or exempt information?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-				
<p><i>“The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended).”</i></p>				

Purpose of Report:

- This report seeks approval for procuring a new school catering contract from 1st August 2020 for 5 years (“**New School Catering Contract**”). The Council will enter into the New Catering Contract on behalf of the participating schools.

Recommendations:

That the Cabinet:

1. acknowledges that the Council has procured a school catering contract on behalf of schools since 2001; and the existing school catering contract has commenced since August 2011 with 107 schools participating ("**Existing School Catering Contract**");
2. acknowledges that the Existing School Catering Contract is due to expire after its extension period by the end of July 2020; and agrees that the Council will continue procuring a school catering contract on behalf of participating schools who have elected to join the school catering service from August 2020 ("**Participating Schools**");
3. approves that the Council will re-tender the school catering service from 1 August 2020 to 31 July 2025 ("**New School Catering Contract**") with an option to extend for a period of 24 months if agreed between the Council and the Contractor. Each period will be at the sole discretion of the Council following consultation with the applicable Schools.
4. delegates authority to the Executive Director of People Services in consultation with the Cabinet Member for Education and Skills, the Director of Finance and Commercial Services and the Director of Legal and Governance,
 - i. To approve the procurement strategy of re-tendering the new School Catering Contract from 1st August 2020 to 31st July 2025 in line with this report unless paragraph 5.3 in Schedule 2 of the Leader's Scheme of Delegation applies;
 - ii. To negotiate terms and conditions with the contractor and to award the contract in line with this report unless paragraph 5.3 in Schedule 2 of the Leader's Scheme of Delegation applies;
 - iii. To approve of a risk sharing approach that sees both contractor and the Council (acting on behalf of schools) managing the service jointly and which minimises risks for individual schools;
 - iv. To take all other necessary steps not covered by existing delegations to achieve the outcomes outlined in this report; and
 - v. To advise all Participating Schools under the terms and conditions as he sees fit after consulting with the Director of Legal Services and the Director of Finance and Commercial Services. Such agreement shall:

- allow any Participating Schools to withdraw from their commitment to the new School Catering Contract at the end of year 3 of the contract period; and
- To acknowledge a single contract arrangement:
 - where schools elect to join and agree to pool their respective resources,
 - where schools receive the service that they need when they need it,
 - that is legally binding on all participating schools
 - that is not a series of separate, individual service level agreements

Background Papers:

(Insert details of any background papers used in the compilation of the report.)

N/A

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: <i>(Insert name of officer consulted)</i> Liz Gough/Helen Damon
	Legal: <i>(Insert name of officer consulted)</i> Rachel Ma
	Equalities: <i>(Insert name of officer consulted)</i> Bashir Khan
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	EMT member who approved submission: <i>John Doyle</i>
3	Cabinet Member consulted: <i>Cllr Abtisam Mohammed</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.
	Lead Officer Name: <i>Leah Barratt</i>
	Job Title: <i>Service Manager, School Food Service</i>
Date: <i>[the date on which you have got all of the above signed off]</i>	

1. PROPOSAL

The Council has procured 3 previous school catering contracts on behalf of schools electing to receive the school catering service since 2001.

The Existing School Catering Contract commenced from 1st August 2011 and will run until the end of July 2020 (including extension period).

Re-tendering is considered by the responsible Officers as an appropriate legal option so that the Council will have a chance to review and update the existing contractual terms; and also to engage a contractor who can provide the best value and good quality of catering services to all Participating Schools.

The proposed New School Catering Contract will operate as follows:

- a single contract arrangement will be used and the Council will enter into the Contract on behalf of all Participating Schools who have the statutory duty to deliver a school meals service to their pupils or who have chosen to receive the school catering service under the New School Catering Contract;
- the New School Catering Contract will run from 1st August 2020 to 31st July 2025 (inclusive) with an operation to extend up to 24 months;
- all Participating Schools may be entitled to terminate their catering service at the end of the 3rd year of the New School Catering Contract;
- both the Council (acting on behalf of schools) and the contractor will manage the service jointly in order to minimise risks for individual schools.

2. HOW DOES THIS DECISION CONTRIBUTE ?

In line with its aims to promote a vibrant, sustainable and strong economy, the Council will procure a citywide large catering contract on behalf of schools. By doing so:

- a significant number of pupils (approximately 22,000 meals a day, eat a school meal that meets the high standards set by national and local government;
- the Council can influence the contract specification and delivery and thereby bring public health and wellbeing strategies into the service;
- it also shows support for all the city's children and young people whether they attend a locally maintained school or an academy.

By procuring a strategically important school meals contract, economies of scale can be achieved but also a diverse delivery model that is flexible enough to be aligned with individual school's needs. The service can provide for a range of medical diets and religious requirements as well as providing a wide choice of foods.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1** The citywide contract approach was designed by Headteachers in 2000/2001. The basis for the service design is that each school benefits from the economies of scale by pooling their resources so that they receive the service that they need when they need it. Headteachers also wanted one charge made annually, rather than a Service Level Agreement approach which would see each school acting independently of each other. To deliver the service this way would inhibit and in some cases prevent responses to individual problems being resolved in a timely manner or slow any necessary developments to a school's service as it would be dependent on schools contributing further funds during the school year.
- 3.2** A series of meetings were held by the Client Manager with 25% of schools in the Existing School Catering Contract during the Autumn term in 2017. Schools were in favour of continuing with a new contract, procured by the Council on their behalf. Then initial discussion was carried out with the Cabinet Member and her deputy about re-tendering the contract along with an overview of the whole service during 2018.
- 3.3** A survey was conducted in October-November 2018 by the School Food Service to gauge Headteachers views on the current service, their

priorities for a food provision and whether they wanted to join a centrally procured contract. They were also asked how they wanted to be consulted – as an individual school, in their multi academy trust group or by locality meeting. The summary of the survey is attached as Appendix A. The majority of schools want to join a group school catering contract organised by the council on their behalf.

- 3.4** Following the survey, a wide ranging consultation with schools began in December 2018 through locality meetings with Headteachers. This has been followed up by individual meetings with schools and Business Managers. These are continuing until September 2019.
- 3.5** There was also a ‘soft market testing’ exercise on the 5th June 2019 where individual companies were invited into a formalised scoping discussion to find out about current market trends and difficulties. The results of this are being built into the tender specification. One such area is the development of environmentally friendly packaging and the treatment of waste food. Any national and local sustainability priorities are clearly being developed in the education catering industry as a whole, so it is right that these recent initiatives stemming from consumers be built into any school catering specification.
- 3.6** Written communication has gone out to all schools – to Headteachers, Business Managers and Chairs of Governors – which sets out the procurement timeline and the objectives as well as asking schools to tell us what their particular requirements are. The deadline for school decisions to be returned is 22nd October 2019 at the latest.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Food Provision

All children and young people in Participating Schools must have their legal needs met, i.e. free school meals that also entitle a primary pupil to free milk. The New School Catering Contract is open to all schools and academies with the exception of PFI schools that are managed under a facilities management contract. Children with medical dietary needs are catered for and menu planning takes into account the statutory 14 allergens¹ as required by the Food Labelling Regulations 2016. Religious requirements can also be catered for when requested by schools, and in line with council policies, such as stunned meat. This ensures that there is an inclusive service that represents the diverse nature of the city. There is a hot, nutritious meal available for all pupils who request one in line with the legal and equality requirements.

¹ Celery, cereals containing gluten (spelt, rye, barley, oats), crustaceans (prawns, crabs and lobsters), eggs, fish, lupin, milk, molluscs (mussels and oysters), mustard, tree nuts (including almonds, hazelnuts, walnuts, brazil nuts, cashews, pecans, pistachios and macadamia nuts), peanuts, sesame seeds, soybeans, sulphur dioxide and sulphites (if they are at a concentration of more than ten parts per million)

A Shared Risk Approach

4.2

The single contractual arrangement works for schools as the Council and the contractor will share the risks of the service management. The School Food Service manages the kitchens and equipment on behalf of schools, ensuring that the kitchen environment is managed, adhering to all health and safety legislation and is accessible at all times. This ensures that the catering contractor can fulfil their contract obligations to serve hot, nutritious food to all pupils who want a meal throughout the school year.

A key part of the compliance of the Contract is for the School Food team to audit the catering contractor's service against all appropriate legislation. This includes checking details of suppliers in particular the traceability and certification of meat, involving Trading Standards and the Public Analyst as required.

The catering contractor ensures that the schools' statutory duty is delivered every day, by bringing with them the specialist and professional knowledge of the school meals service. They are responsible for the staff, and their on-going training so they can meet the food safety and hygiene regulations as well as the national and local school food standards.

By this arrangement, school leaders can concentrate on teaching and learning, rather than managing the various aspects of running a high risk and legislatively challenging service.

4.3 Financial and Commercial Implications

The New School Catering Contract is tendered on behalf of schools that have elected to join the council's contract. It is funded entirely by schools via the Dedicated Schools Grant as a subscription charge, organised and managed by the Peoples' Business Strategy teams. Other funding streams are via an external grant made by the Department For Education to schools i.e. universal infant free meals.

The New School Catering Contract is for five years as a minimum to attract the right contractor who will work in partnership with the Council and all Participating Schools. However, Participating Schools will be entitled to terminate the service through the Council at the end of year 3 should they wish.

The current value of the contract is £8.5m per year.

4.4 Legal Implications

The legal responsibility for the provision of school meals transferred to the governing bodies of schools with the delegation of school meals

funding as a consequence of the School Standards and Framework Act 1998.

The provision of free school meals by maintained schools, academies and free schools to pupils of all ages that meet the criteria is a statutory provision within the Education Act 1996 (as amended) and the Children and Families Act 2014. Each school governing body has a duty to provide free lunches for eligible pupils and the opportunity for other pupils to buy a lunch each day.

The current school catering contract will expire on 31st July 2020.

The Localism Act 2011 provides local authorities with a “general power of competence” which enables them to do anything that an individual can do as long as the proposed action is not specifically prohibited. A purpose of the Act is to enable local authorities to work in innovative ways to develop services that meet local need. The arrangement for the existing school catering service by the Council (acting on behalf of schools) has proven to be a good way to help schools maximise their economies of scale and access to the most economical but high quality catering service.

Under the Public Contracts Regulations 2015 (“PCR”) catering services are a ‘light touch’ service as set out in regulations 74 to 77 of PCR and is not subject to full rigour of PCR. However, it is essential for the Council to fulfil transparency duties under the PCR in the procurement of the New School Catering Contract.

In the meantime, the Officers responsible for the procurement of school catering services shall also ensure that they comply with the Council’s Contracts Standing Orders.

The Council will enter into the New School Catering Contract on behalf of Participating Schools. To mitigate the Council's risks and avoid lengthy contract negotiation, all Participating Schools will be given a document that confirms their participation in the new school catering service arrangement by the Council. All Participating Schools must return their signed proforma that confirmed their decision to participate. It will clarify their role

- in helping to deliver the catering service, namely that they will use their best endeavours to assist the Council to comply with the terms and conditions under the New School Catering Contract, and that they will make payment of the relevant contract fees on time;
- The document will confirm the position that it is not an individual Service Level Agreement. Schools effectively pool resources to ensure that they get the service they need. This includes the management of the kitchen premises which is done by procuring two specialist contractors to cover all commercial gas and electrical equipment and all air-handling units i.e. ventilation and extraction systems. All health and safety requirements are met and ensure that the statutory duty of schools is discharged consistently and safely.

If the school becomes an academy during the term of the New School Catering Contract, the relevant academy will be required to take responsibility for what the school has agreed to participate in the New School Catering Contract unless it is otherwise agreed by the Council and the contractor.

4.5 Staffing and Human Resources

There are no implications for staffing as the current contractors on site teams would transfer to a new contractor under TUPE arrangements.

4.6 Property

There are no implications for property as all equipment and kitchen premises are managed on school's behalf and the contractor has the right to occupy free of charge while they are invited in to provide the service.

4.7 Public Health

The contractor will work with the Council to further any public health initiatives either locally or nationally.

4.8 Environmental Sustainability

The contractor will work with the Council on any environmental and sustainability initiatives that have been adopted, including the reduction or elimination of single use plastics as far as possible. This is an area of development in terms of the type and use of plastics that suppliers to the catering industry are actively reviewing and implementing. Recycling and re-using waste food will also be a feature of the New School Catering Contract.

4.9 Ethical Procurement

The Council has recently agreed an ethical procurement framework which will be adopted as part of this contract. It will enable the Council on behalf of schools to:

- maximise the Council's ability to use its discretion to apply ethical standards to behaviour throughout the supply chain
- to increase the social value and benefits for local people and businesses

The Council expects all internal staff, partners and suppliers to work to these standards which assure we will:

- trade with those who comply with an Ethical Code of Conduct
- exclude suppliers committing acts of Grave Misconduct
- improve Social Outcomes for the citizens of Sheffield
- increase the power of procurement and its Local economic impact

5. **ALTERNATIVE OPTIONS CONSIDERED**

There are two alternative options but neither is advantageous to the council and schools and carries significant risks:

- 5.1 Insource the service** – for the Council to be able to manage the service directly there would need to be changes to the structure within the portfolio. This change will need to be agreed with the schools. Statutory responsibility for delivering school meals rests with the governing bodies and they may choose to put alternative arrangements in place. The service has been delivered via private sector education catering specialists for 18 years and the level of training and expertise to manage a city wide service would need to be acquired. As this is a school's contract and not all schools join it, it would be hard to see what benefits there would be to the Council for funding such a change. All the costs of the service are funded by the schools that elect to join it – the Council does not fund any aspect of the service to schools. This option is therefore not recommended.

5.2 Not offer a service to schools – this would effectively mean that schools would have to manage the provision of a catering service directly or procure their own contracts. Both options may detract from their core purpose of teaching and learning. There may be increased costs for schools with this option due to them having to buy in expertise on due diligence checks for food safety, food labelling (e.g. 14 statutory allergens), traceability as well as managing catering teams, and procurement activities. Smaller primary and special schools would be disproportionately disadvantaged as they do not have the capacity in their administrative teams. This option is therefore not recommended

6. REASONS FOR RECOMMENDATIONS

The majority of schools wish the Council to procure a catering contract on their behalf. Schools pay for the services of a contractor, a client team and all procurement costs from their individual budgets. There is no specific council funding in the delivery of the contract.

The Council benefits by having public health initiatives built into the specification.

All risks associated with large scale catering both food and finance related are contained and managed by the contractor and the client team, using expertise from within the council's Resources teams i.e. legal, commercial and financial.

7 RECOMMENDATIONS

Many schools and academies do not want to directly manage catering in their schools and the single contract method is one that has been proved through consultation to be their preferred option.

Re-tendering the School Catering Contract will ensure that a high quality, value for money service can be achieved for schools. The professional expertise to manage a large scale catering activity, heavy with regulation, is assured and schools statutory duty is delivered.

The outcomes for schools are also one of flexibility in how the service is delivered in their schools, meeting the needs of their community. The Council also gains by being able to guide and influence service delivery in relation to public health initiatives and wider city priorities, such as climate change.

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