

**LONDON BOROUGH OF BRENT**  
**MEETING OF THE EXECUTIVE 8<sup>TH</sup> DECEMBER 2003**  
**REPORT FROM THE DIRECTOR OF EDUCATION ARTS & LIBRARIES**

**NAME OF WARD(S)**  
**ALL**

**REPORT TITLE:     AUTHORITY TO INVITE TENDERS FOR SCHOOLS MEALS CONTRACT**

Above ✓ |     Below   
**Confidential Line**  
**with the exception of**  
**Appendix 1 only**

**1.     Summary**

1.0     This report concerns the retendering of a schools meals contract on behalf of the schools who have expressed an interest in being part of a centrally negotiated contract. This report requests approval to invite tenders in respect of the above contract as required by Contract Standing Orders 89 and 90.

**2.     Recommendations**

2.1     The Executive to give approval to the pre - tender considerations and the criteria to be used to evaluate as set out in paragraph 6.13 of the report.

2.2     The Executive to give approval to officers to invite tenders and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.

**3.     Financial Implications**

3.1     The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 90.

3.2     The estimated value of this service contract is £8 million. This figure is based on the budgets for free school meals delegated to schools through the schools' delegated budgets together with an estimate of the value of meals provided to paying pupils. Currently, the take up by paying pupils is low. It is hoped to increase this take up, which will make the contract more attractive to potential tenderers.

3.3     The cost of this contract will be funded from existing resources that form part of schools' delegated budgets.

3.4     There is currently a high level of transported meals to schools that do not have the capacity to cook meals on site. The transportation of meals to schools is currently undertaken by the

Council Unit, Brent Transport Services under separate contract between the current contractor and BTS. Details of the amount paid by the contractor to BTS are provided in the below the line Appendix 1. The transported meals are of a lesser quality than non-transported meals.

- 3.5 In the new contract it will be for the successful tenderer to decide on the method of transporting meals. This may or may not be Brent Transport Services. If the successful tenderer does not wish to use Brent Transport Services, this will result in a loss of income to the Council in the amount identified in Appendix 1.
- 3.6 Officers will be seeking investment into the kitchen equipment which is in need of replacement in several schools. The amount of replacement required over the life of this contract will be in the order of £600,000. This investment is to be included within the contract price and tenderers will be asked to programme a schedule of replacement with the worst cases treated first. The equipment will become the property of the individual schools at the end of the contract period.
- 3.7 Schools have had delegated powers for the provision of this service since April 2000, resources for this service are included in their devolved budgets-schools are given a budget for the provision for free school meal pupils and paid meals are assumed to be self-financing. The payment for the service is made directly by the school to the contractor. It is proposed that this remains the same in the new contract. See paragraph 6.9 for further information on the arrangements for payment.

#### **4. Staffing Implications**

- 4.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from this retendering.
- 4.2 There may be staffing implications for Brent Transport Services should the successful tenderer not require the unit to transport meals on their behalf.

#### **5. Legal Implications**

- 5.1 This contract includes a mixture of supplies (supply and installation of kitchen equipment) and services (provision of a school meal service). The value of the services element is greater than the supplies element. Accordingly, this contract is treated as a service contract for the purposes of the EU Regulations.
- 5.2 The estimated value of this contract is higher than the EU threshold for services contracts (£154,000). However, the provision of school meals is a Part B Service. Accordingly, this contract is subject to only partial application of the EU Regulations in terms of non-discrimination in the specification and publication of an award notice. The Council is not required to advertise in OJEU or follow the procurement time scales set out in the Regulations. It will still need to be advertised in order to invite competition in accordance with the requirements in Standing Orders.
- 5.3 As the contract will be directly between the Council and the successful tenderer, the Council will be contractually bound to make payment to the contractor and take on all of the other risks associated with the contract. This is also the position under the current contract. Any costs arising would be levied against the school's budget share.
- 5.4 Section 48 of the Local Government and Housing Act 1989 defines the circumstances in which local authorities will be deemed to have entered into credit arrangements. One such

situation is where the value of the consideration which the authority has still to give at the end of a relevant financial year for or in connection with the benefit is greater than the value of the consideration the authority was still to receive immediately before the beginning of that financial year. The provision of the equipment by the contractor is not a credit arrangement as neither the Council or the schools will own the equipment during the life of the contract. Rather, the schools in which the equipment is situated will have paid in advance for assets that they will receive at the end of the contract period. In addition, the schools will not pay separately for the capital investment. The cost of this investment will be included in the price per meal paid to the contractor.

- 5.5 The School Standards and Framework Act 1998 inserted a new provision in the Education Act 1996 allowing the Secretary of State to make an order imposing on the governing body of any school a duty corresponding to the duty imposed on the LEA to provide school lunches. The Education (Transfer of Functions Concerning School Lunches etc) (England) (No 2) Order 1999 imposed such a duty on the governing body of any school. Despite this Order, the LEA retains the power to provide school lunches under section 512 of the Education Act 1996.
- 5.6 The Contracts (Rights of Third Parties) Act 1999 gives parties to a contract the power to confer on third parties the right to enforce a term of a contract.
- 5.7 Once the tendering process is undertaken Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contracts and recommending an award.
- 5.8 Legal Services have been instructed to draft appropriate conditions for this contract.

## **6. Detail**

- 6.1 A group contract for primary, special and nursery schools was last tendered in 2000. The current contract between the Council and the external provider comes to an end in August 2004. The new contract will be for the benefit of 46 primary schools, 4 nursery schools, 5 special schools and 1 Pupil Referral Unit. The service has been run by private contractors since 1995.
- 6.2 Given the interdependence of those schools with cooking facilities and those schools which cannot provide meals on site, schools have asked Officers to facilitate another group contract.
- 6.3 The two over-riding objectives for the school meals contract must be: that it should offer good value for money, both in terms of tender price and other contract design details; and that it will contribute positively to children's healthy and enjoyable eating. Healthy eating requires more than simply meeting technical minimum standards of nutritional content. It also means addressing qualitative characteristics such as:
  - freshness and quality of basic ingredients;
  - attractiveness of meals;
  - good presentation of meals to children;
  - variety of menus to meet diverse dietary preferences and requirements among Brent's schoolchildren;
  - and an on-going commitment to facilitate healthy eating options, building upon current health education advice.
- 6.4 There is some level of dissatisfaction with the current contractor regarding the quality of the food on the plate of which some is attributable to the meals having to be transported and kept up to temperature when received.

- 6.5 The specification for this contract will be an output specification that will require tenderers to be innovative in the way they address the Council's minimum requirements. These minimum requirements include the provision of food which is cooked from mainly fresh ingredients, meets Government standards in terms of the nutrition standards as laid down by the Department of Education and Skills. One of the key areas will be the tenderer's proposals to address the current issue of the quality of the food being reduced due to being transported and kept warm. The Council will be looking to tenderer's to propose methods of ensuring good quality food is provided to all schools who wish to participate in this contract. Officers are working with a school's dietician to seek improvements of the nutritional standards and quality of the meals. Consideration will be given to views of students on quality of meals.
- 6.6 Along with many local authorities the equipment in school kitchens needs a level of investment to bring the equipment up to modern standards. Accordingly, tenderers will be required to address in their tender submission how they propose to upgrade the present equipment. It may that tenderers suggest in their submission that a longer contract term is required in order to make their necessary investment. If such a tender is received this will be assessed against the evaluation criteria detailed below.
- 6.7 Presently, there are 10 schools with production kitchens that cook for themselves and 36 schools with dining centres, and 10 schools which have facilities to cook just for themselves. Using their business experience and expertise, the successful contractor will use these existing resources in the best possible manner in order to improve the current service or to introduce innovative ways of managing the service to improve the service provision.
- 6.8 In order to ensure that the contract is packaged in a way that is likely to generate as much competition as possible, the Council advertised in October 2003 seeking organisations willing to participate in a consultation exercise. At this consultation exercise officers are gaining feedback on options for packaging the contract within the framework indentified in this report. The feedback from this consultation exercise will be used in preparing the tender pack for the contract. In line with the Government's report on fair procurement and the use of small, local suppliers, officers will investigate the extent to which the use of small local suppliers can be encouraged in the contract.
- 6.9 A consultation is also being undertaken with the Schools Forum, using this report, at their next meeting on the 6<sup>th</sup> December that will outline the intended process.
- 6.10 A group of Council Officers, 5 Headteachers, a School Dietician from Brent Primary Care Trust and a catering consultant are meeting on a regular basis and are involved in steering the process. The Headteacher representatives are providing feedback to the other schools involved. A newsletter is also being produced to keep schools updated on the process.
- 6.11 The contract will be between the Council and the successful tenderer. There will be no direct contract between the participating schools and the contractor. However, the contract will state that it is for the benefit of the schools and will grant rights under the contract to the schools in relation to enforcing the provision of the service and monitoring. The contract will also state that although the Council will be contractually bound to pay the contractor, the contractor must invoice the schools directly and payment by the schools will be deemed to satisfy the Council's obligation to pay. In order to attract the necessary capital investment, the schools will not have the obligation to pull out of the agreement until the end of the term (i.e. 5 years unless the entire agreement was terminated)
- 6.12 The schools will be required to enter into separate agreements with the Council agreeing that they will pay the contractor for the services, acknowledging that they may not withdraw from the contract and indemnifying the Council against any loss it may suffer as a result of the school not meeting its obligations.

- 6.13 Council officers will maintain a strategic overview of the contract and act as a referral point for contract wide issues should they arise. Day to day monitoring of the contract will be the responsibility of the schools and the contractor. A forum consisting of officers, headteacher representatives and the contractor will be established to monitor the contract as a whole with regular termly meetings to discuss and resolve contract wide issues. The successful caterer will be expected to seek the views of the children through meetings with schools' councils or other school groups on the service provision as part of their contractual obligations.
- 6.14 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations have been set out below for the approval of the Executive.

Ref.	Requirement	Response																						
(i)	The nature of the service.	Catering: School Meals Service																						
(ii)	The estimated value.	£8million																						
(iii)	The contract term.	5 years but see paragraph 6.5 above																						
(iv)	The tender procedure to be adopted.	Restricted Procedure																						
(v)	The procurement timetable.	<table border="1"> <thead> <tr> <th>Indicative dates are:</th> <th></th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> Adverts placed to consult</td> <td>17<sup>th</sup> October 2003</td> </tr> <tr> <td><input type="checkbox"/> Advert to invite expressions of interest</td> <td>11<sup>th</sup> December 2003</td> </tr> <tr> <td><input type="checkbox"/> Shortlist drawn up in accordance with the Council's approved criteria</td> <td>14<sup>th</sup> January 2004</td> </tr> <tr> <td><input type="checkbox"/> Invite to tender</td> <td>1<sup>st</sup> February 2004</td> </tr> <tr> <td><input type="checkbox"/> Deadline for tender submissions</td> <td>Mid April 2004</td> </tr> <tr> <td><input type="checkbox"/> Panel evaluation and shortlist for interview</td> <td>Late April 2004</td> </tr> <tr> <td><input type="checkbox"/> Interviews and contract decision</td> <td>1<sup>st</sup> May 2004</td> </tr> <tr> <td><input type="checkbox"/> Report recommending Contract award circulated internally for comment</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Executive approval</td> <td>May 2004</td> </tr> <tr> <td><input type="checkbox"/> Contract start date</td> <td>1<sup>st</sup> September 2004</td> </tr> </tbody> </table>	Indicative dates are:		<input type="checkbox"/> Adverts placed to consult	17 <sup>th</sup> October 2003	<input type="checkbox"/> Advert to invite expressions of interest	11 <sup>th</sup> December 2003	<input type="checkbox"/> Shortlist drawn up in accordance with the Council's approved criteria	14 <sup>th</sup> January 2004	<input type="checkbox"/> Invite to tender	1 <sup>st</sup> February 2004	<input type="checkbox"/> Deadline for tender submissions	Mid April 2004	<input type="checkbox"/> Panel evaluation and shortlist for interview	Late April 2004	<input type="checkbox"/> Interviews and contract decision	1 <sup>st</sup> May 2004	<input type="checkbox"/> Report recommending Contract award circulated internally for comment		<input type="checkbox"/> Executive approval	May 2004	<input type="checkbox"/> Contract start date	1 <sup>st</sup> September 2004
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(vi)	The evaluation criteria and process.	<p>Shortlists are to be drawn up in accordance with the Council's Contract Management Guidelines. The select list questionnaire will meet the Council's financial standing order requirements, technical capacity and expertise, Health &amp; Safety requirements and Quality Assurance. Officers are working with a group of Headteacher representatives who represent the primary headteachers.</p> <p>The evaluation of the tenders will be undertaken by a panel consisting of Council Officers and the Headteacher representatives who will evaluate the tenders against the following criteria:</p> <ul style="list-style-type: none"> <li>Tender price</li> <li>Format of proposal</li> <li>Quality of food <ul style="list-style-type: none"> <li>• Nutritional standards</li> <li>• Sourcing of quality ingredients</li> <li>• Attractiveness of meals</li> <li>• Presentation of meals</li> <li>• Diversity of meal choice</li> <li>• Food/menus</li> </ul> </li> <li>Business plan for the service <ul style="list-style-type: none"> <li>• Induction and training</li> <li>• Recruitment and vetting</li> <li>• Equal opportunities</li> </ul> </li> <li>Cost/income</li> </ul> <p>Weightings will be allocated to each of the criteria. Format of proposal, business plan for the service, Quality of Food, and cost/income will have higher weightings, as they are the most important for a successful contract.</p>
(vii)	Any business risks associated with entering the contract.	None identified
(viii)	The Council's Best Value duties.	Officers will use Best Value principles to inform the process.
(ix)	Any staffing implications, including TUPE and pensions.	None
(x)	The relevant financial, legal and other considerations.	See sections 3 and 5 above

6.14 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 89.

## **7. Background Information**

### **7.1 Schools Meals Procurement File**

Any person wishing to inspect the above papers should contact :

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**Exec-08.12.03/0028R/J Bowtell/Lead Officer J Christie**

