

LONDON BOROUGH OF BRENT

EXECUTIVE MEETING – 14 JUNE 2004

FROM THE DIRECTOR OF EDUCATION, ARTS & LIBRARIES

NAME OF WARD(S)

ALL

REPORT TITLE: PRIMARY SCHOOL EXEMPTION FROM SCHOOL MEALS
TENDERING PROCESS

Above

Below

Confidential Line with the
exception of Appendix 2 only

FP REF: EAL-04/05-0052

1. Summary

1.0 This report updates members on the retendering of a schools meals contract on behalf of those schools which expressed an interest in being part of a centrally let contract. The report explains that the tendering process was unsuccessful as the Council received no compliant tenders and proposes that the Executive agree that for good financial and operational reasons the schools may enter into new school meal contracts without complying with the tendering requirements contained in the schools Financial Regulations.

2. Recommendations

2.1 That the Executive agrees where the estimated value of the contract is £150,000 or more that there are good operational and/or financial reasons, as set out in paragraph 6.25 of this report, for the schools detailed in Appendix 1 not to comply with the tendering requirements under Standing Orders in entering into a school meals contract.

2.2 That the Executive authorises the Director of Education, Arts and Libraries (or in his absence the Assistant Director, Planning, Information and Resources) to assess whether the reasons set out in paragraph 6.25 apply to any school not included in Appendix 1 seeking to enter into a school meals contract and if he is satisfied that they do to approve an alternative process to be undertaken by the school which ensures value for money is obtained.

3. Financial Implications

3.1 The estimated values of the contracts proposed by the schools detailed in Appendix 1 are set out in the below the line appendix, Appendix 2.

3.2 The cost of each contract will be funded from existing resources that form part of schools' delegated budgets. Schools are given a budget for the provision for free school meal pupils and paid meals are assumed to be self-financing. However, it may be that a level of investment is required in a school's kitchen equipment and a fund to contribute to this if necessary was identified in the Education, Arts and Libraries capital programme which was agreed by the Executive on 24 May 2004.

3.3 In each contract it will be for the successful contractor to decide on the method of transporting meals. This may or may not be Brent Transport Services. If most of the successful contractors do not wish to use Brent Transport services this will result in a loss of income to the Council which could be up to £130,000 per annum.

- 3.4 Individual schools' may require some investment in their kitchens. A number of funding options exist for this which could include devolved funding, schools' balances or contributions, operational leasing and the Education, Arts and Libraries capital programme. Another option may be for any equipment to be provided through contractual provisions with the successful contractor and paid through the contract price. Such an arrangement may trigger a credit arrangement and care needs to be taken in structuring the payment mechanism to ensure that the charge for the service reflects the level of the service consumed in every year and that no costs are deferred until later years. Any such proposed arrangements will therefore need to be examined by Legal Services and Brent Financial Services and its impact assessed against the statutory and accounting requirements that prevail at that time.

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 new contractors not require the unit to transport meals on their behalf.

5. Legal Implications

- 5.1 The contracts for individual schools are likely to include a mixture of supplies (supply and installation of kitchen equipment) and services (provision of a school meal service). The value of the services element will be 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 the contracts will vary depending upon primarily upon the size of school and the length of the contract and may in some cases be higher than the EU threshold for services contracts (£153,376). 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. There is no requirement to advertise in OJEU or follow the procurement time scales set out in the Regulations.
- 5.3 The Council's Contract Standing Orders provide that contracts with a value of £150,000 and above should be let by inviting competitive tenders. The Council's Contract Standing Orders also provide that contracts with a value of between £20,000 and £149,999 should be let by seeking at least three written quotes which should be recorded.

However, the Council's Contract Standing Orders paragraph 85(a) states:

'Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions AND shall be procured in accordance with all relevant domestic and European legislation and unless for good operational and/or financial reasons the Executive agree otherwise ... Contract Standing Orders and the Council's financial Regulations'

- 5.4 Under the Financial Regulations forming part of the devolved funding arrangements with schools, schools are required to comply with the Council's Standing Orders.
- 5.5 Paragraph 6.25 sets out the good operational and financial reasons for agreeing that the schools set out in Appendix 1 do not have to comply with the requirements of Standing Orders in respect of the tendering process.

- 5.6 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.
- 5.7 Since 1 April 2004 Part 1 of the Local Government Act 2003 has replaced the capital finance legislation previously contained in Part 4 of the Local Government and Housing Act 1989. Under the new rules the Council must not enter into a credit arrangement unless the arrangement is within its borrowing limit.

6. Detail

- 6.1 The school meals service has been outsourced to private contractors since 1995. A group contract for the provision of meals at primary, special and nursery schools was last awarded in 2000. The current contract between the Council and Scolarest trading under Castle Independent comes to an end on 31 August 2004 when it was hoped that a new contract would commence. The new contract was planned to be for the benefit of 46 primary schools, 4 nursery schools, 5 special schools and 1 Pupil Referral Unit who had asked Officers to facilitate another group contract due to the interdependence of those schools with cooking facilities and those schools which cannot provide meals on site. A steering group of Primary school head teachers met on a regular basis to discuss the process.
- 6.2 In order to package the contract in a way that would be deliverable by the market and would achieve maximum market interest, consultation was undertaken with market leaders. In October 2003 the Council advertised for organisations interested in participating in the Council's consultation prior to tendering for this contract. Six companies responded to this advert and attended a half day meeting with Officers on the proposed service arrangements for the new contract. Officers discussed the proposed arrangements with the companies and made some amendments to the packaging for the contract based on these discussions. The Council also engaged a consultant to provide expert advice on the packaging of this contract.
- 6.3 As a result of this consultation, an output based specification was produced which allowed the tenderers to be imaginative, innovative and was not prescriptive in how they packaged the service.
- 6.4 The Council advertised on 18/12/03 for companies interested in providing the school meals service. Ten companies expressed an interest in the contract and were sent the Council's Standard Pre Qualification Questionnaire which addresses the Council's requirements in terms of financial standing, Health & Safety, Quality Assurance, technical capacity and technical expertise
- 6.5 Following evaluation of the responses to the Pre Qualification Questionnaire, five companies were invited to tender for the contract. Tender documentation was provided to the companies on the 5th of February and the date for return of tenders was 5th of April. Along with many local authorities the equipment in Brent school kitchens needs a level of investment to bring the equipment up to modern standards. Accordingly, the tender documentation sought innovative responses from tenderers on the ways of delivering that investment. This approach was consistent with the feedback obtained in the consultation exercise detailed above.
- 6.6 Currently the equipment is the responsibility of the contractor for repair and maintenance. The equipment is reaching a point where spare parts are becoming difficult to obtain and much of the gas-powered equipment does not meet new CORGI regulations. A reinvestment in equipment would mean more reliable equipment, and would help provide a better quality meal on the plate, helping to better meet the new guidelines on nutrition standards.

- 6.7 A meeting with the companies invited to tender was held on 11th February to discuss any concerns or queries with the tender documentation. Overall the companies expressed agreement with the specification; initial discussions were conducted on the condition of the equipment about which issues were raised by the incumbent company, Scolarest, at the meeting.
- 6.8 Officers also arranged a tour for the 5 shortlisted companies of a selection of school kitchens on the 5th of March.
- 6.9 Following receipt of the full tender documentation and visits to school kitchens organised by officers all the prospective tenderers indicated that they would not be willing to tender on the basis of providing investment into the kitchen equipment and taking the responsibility for the repair and maintenance of that equipment. All felt that this was too much of a commercial risk. This is becoming a problem for many local authorities who have not invested in kitchen refurbishment in the preceding years, both Ealing and Essex County Council having a similar issue when they retendered their contracts in 2003. Commercial companies are becoming more selective with their tenders as many more local authorities and individual schools are now tendering for a school meals service.
- 6.10 In order to address this, a letter was sent out to the tenderers on 25th March. This letter advised tenderers that in addition to tenders for the service as described in the tender documents, the Council would consider one or more of the alternatives set out below:
- (a) An alternative proposal which addressed all of the requirements of the Specification except the requirements relating to investment, repair and maintenance of the kitchen equipment. Effectively, this would mean that the Council would be responsible for the equipment and the contractor would be responsible solely for the provision of a catering service.
 - (b) An alternative involving the preparation of food not using existing Council facilities or school production kitchens. This option would require the storage and regeneration of those meals at the Schools. Under this alternative Tenderers were required to determine the regeneration and storage equipment that will be required, the capital cost and:
 - (i) price firstly for the provision of the equipment by the Tenderer; and
 - (ii) secondly an alternative pricing structure should the Council be in a position to fund the equipment purchase.
- Under this alternative, the food would be prepared at a central production unit, chilled and transported to each school. The contractor's staff at each school would then regenerate the food when required. This option would mean that the eight production kitchens in the borough would not be required which may result in redundancies. All staff involved in the provision of the school meals service are employed directly by the contractor. Depending on the way the contract is structured, the cost of any redundancies is likely to be the responsibility of either the outgoing contractor or the incoming contractor.
- 6.11 In order to allow time for tenderers to develop their alternative proposals, the deadline for return of tenders was extended to 19 April 2004.
- 6.12 The new school meals contract tender process was unsuccessful as the Council received no compliant tenders. The Council received only one tender and that was non-compliant as the tender did not include a Form of Tender, it was qualified and did not meet the specific requirements as set out in the Instructions to Tender.

- 6.13 Feedback from the companies on some of their reasons for not tendering was: the condition of some of the kitchen equipment, the differential pay rates within the workforce, and the competitive tender process – most companies would rather go through a negotiating process.
- 6.14 Following the breakdown in the tendering process, a meeting for the participating schools was arranged on 26th April, where several options were outlined as set out below:

Option 1	Schools seek their own provision. Schools could consider either bringing the service back in house or seek to enter into an individual contract with a provider.
Option 2	Extension of existing contract with Scolarest for two terms. Scolarest were agreeable to an extension of the present contract for a further two terms at an increased cost of 11p per meal.
Option 3	A Cold service option for schools. A contract for the provision of a cold meal service for two terms while alternative arrangements from September 2005 were put in place.
Option 4	Cook/chill option. The food would be prepared by the contractor, chilled and transported to individual schools where it would be regenerated. The cost of the regeneration equipment would be approximately £500,000 for those schools currently in the contract.

- 6.15 A further meeting was arranged on the 5th of May to allow schools to review their options.
- 6.16 Schools were updated on the various options. As a number of schools had subsequently indicated that they would rather find their own provider, Option 2 had become even more expensive for any remaining schools and not enough responses were received from schools in order to provide Scolarest with sufficiently accurate information for them to give accurate figures.
- 6.17 With Option 3, other companies who had expressed an interest in the new schools meals contract indicated that they would not be interested in this option.
- 6.18 With regard to Option 4, if this option was to be pursued, negotiations would need to be undertaken with those organisations that were invited to tender and these would not be completed in time for September 2004. There was also no real interest in this option from the head teachers at the meeting.
- 6.19 Following the meeting with head teachers, it was agreed that the only real alternative for schools was to look for providers either on a single school basis or clusters - a production kitchen and its current satellite dining centres.
- 6.20 Financial regulations applicable to schools require schools to seek three quotes for services contracts whose estimated value is up to £150,000 and undertake a competitive tendering exercise for contracts valued over £150,000. However where a school considers that there are good financial and/or operation reasons not to comply with these requirements there is provision to seek an exemption from the Council's Executive. As the new arrangements need to be operational by September 2004 there would be insufficient time for a tendering process to be undertaken by each of the schools or for a developed proposal to be prepared against which to obtain 3 quotes. However, it would be feasible for them to obtain proposals for provision of a school meals service from 3 potential providers.

- 6.21 Many schools have already approached catering companies and received proposals for a service to commence in September. Given that many schools are now negotiating their own contracts with catering companies, with support from the LEA and Brent's legal services when requested, there is no longer a realistic numbers of schools to put into a group contract to make a group contract attractive to large catering companies and to make it affordable for schools. The locally negotiated contracts give schools more direct involvement in the specification and give schools a chance to influence directly what they want and receive.
- 6.22 The schools covered by the existing school meals contract have been informed of steps they need to take in order to comply with schools financial regulations in entering into a new contract direct with a provider, including the possibility of applying to the Executive seeking approval not to comply with those requirements where there are good financial and/or operational reasons for this. The schools detailed in Appendix 1 have already approached the Council requesting approval and it is anticipated that over the next few weeks additional schools will make similar requests. In the case of each school detailed in Appendix 1 the proposed alternative approach to testing the market is also set out.
- 6.23 Sudbury Primary School and Kingsbury Green School currently receive a school meals service from Scolarest. However, unlike the other schools listed in Appendix 1, Sudbury and Kingsbury Green advised officers that they did not wish to be part of another group contract last year. Since that time Sudbury and Kingsbury Green have sought proposals from possible providers but have not undertaken a formal tendering exercise. Like the other schools listed in Appendix 1, Sudbury and Kingsbury Green now have insufficient time to undertake a tendering exercise before September 2004. The below the line appendix, Appendix 2 details the estimated values of the contracts proposed by the schools in Appendix 1.
- 6.24 In order to avoid the Executive having to consider a series of reports covering the same issues and to enable schools to proceed promptly with negotiating new arrangements it is proposed that if the Executive agree that the reasons given in paragraph 6.25 amount to good financial and/or operational reasons in respect of the schools detailed in Appendix 1 they authorise the Director of Education (and in his absence the Assistant Director Planning, Information and Resources) to assess whether the same reasons apply to other schools who seek approval not to comply with the requirements of schools financial regulations and, if so, to give approval to them.
- 6.25 In summary, officers consider that there are good financial and/or operational reasons for schools not to undertake a tendering exercise or for a detailed proposal to be prepared against which to obtain 3 quotes. The reasons for this are:
- (a) the Council has already undertaken a comprehensive tendering exercise which failed to produce any compliant tenders;
 - (b) there is insufficient time to undertake a tendering exercise by September 2004 when a new arrangement for school meals needs to be in place; and
 - (c) the methods of market testing set out in Appendix 1 will enable schools to procure a good value service
- 6.26 Where there are such good financial and/or operational reasons schools will still be advised to undertake a robust process which will involve at a minimum:
- (a) seeking proposals from three alternative providers;
 - (b) seeking appropriate legal and financial advice on those proposals; and
 - (c) undertaking an assessment of the proposed contractor's technical competency and financial standing.

6.3 In considering contracts schools will seek to ensure that they offer good value for money, both in terms of tender price and other contract design details; and 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.

7.0 DIVERSITY ISSUES

7.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

Background Papers

i) Executive Report, 8 December 2003 - 0028R

Any person wishing to inspect the above papers should contact:

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APPENDIX 1

Name of School	Proposed Process
Chalkhill Primary School	The school has sought a proposal from one provider and will seek proposals from two more providers.
Kingsbury Green Primary School	The school has sought a proposal from one provider and will seek proposals from two more providers.
Oliver Goldsmith School	The school has sought proposals from three potential providers. Two have responded and the school is assessing the proposals made.
Sudbury School	The school has sought proposals from three potential providers. The head Teacher has made a presentation to the Governing Body on the 3 three proposals and is proposing to enter into negotiations with one of the providers