

	<p style="text-align: center;"><b>Executive</b> 11<sup>th</sup> February 2008</p> <p style="text-align: center;"><b>Report from the Director of Children and Families</b></p>
<p>Ward Affected: Queensbury</p>	
<p><b>Authority to tender contract for the procurement of lunchtime catering services for Kingsbury High School</b></p>	

Forward Plan Ref: C&F-07/08-021

## **1.0 Summary**

- 1.1 This report concerns the procurement of catering services for Kingsbury High School, principally for morning break and lunchtimes. Existing contract arrangements expire at the end of July 2008 and there is no intention or provision to extend these service delivery arrangements beyond that date.
- 1.2 The report requests approval to invite tenders in respect of the provision of catering services for Kingsbury High School as required by Contract Standing Orders 88 and 89.

## **2.0 Recommendations**

- 2.1 That the Executive notes the tendering procedure followed to date and gives approval to the pre - tender considerations and the criteria to be used to evaluate tenders for the provision of catering services to Kingsbury High School as set out in paragraph 3.11 (vi) of the report.
- 2.2 That the Executive gives approval to officers continuing with the tender process for the catering services contract and to invite tenders and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.

### **3.0 Detail**

#### **Background**

- 3.1 Cater link Ltd is the high school's current provider of catering services. The school's contract with this company is due to expire on 3 August 2008.
- 3.2 The contract does not include provision for extension of the service arrangements beyond the expiry date and alternative catering services must be in place by 4 August 2008. This proposed commencement date will allow adequate time for the planning and implementation of a new service for the start of the Autumn 2008 term.

#### **The Tender Process and Council's Contract Standing Orders**

- 3.3 The school wishes to procure a new 3-year catering services contract that includes an option to extend the initial contract period by any number of periods up to a further two years in aggregate.
- 3.4 The contract was originally valued at less than £500,000 which meant that the procurement could proceed without Executive approval. However a subsequent review of the contract value in December 2007 indicated that the contract value would exceed the threshold over a five year period. Consequently Executive approval is now needed.
- 3.5 The procurement procedure that must be followed by schools is documented in Financial Regulation 4 of the Financial Information for Schools under Devolved Funding booklet. This booklet is dispatched annually to schools. The booklet states that all procurement on behalf of the Council must comply with the Council's Contract Standing Orders, the Council's Financial Regulations and the EU public procurement regulations (where applicable). Information is also issued to schools in the publication by Children and Families titled "School Property Manual – A Guidance".
- 3.6 The new catering services contract will be procured using the two-stage / restricted tendering procedure. The procurement process started in November 2007 with the placement of advertisements in the Wembley Observer and Caterer and Hotel Keeper inviting expressions of interest from suitably qualified contractors.
- 3.7 Twenty three contractors expressed interest and received a pre qualification questionnaire to complete and return by noon 21 December.
- 3.8 The tendering process is currently on hold until formal Executive approval is received.

- 3.9 The halting of the procurement process in order to seek Executive approval has so far had little impact on the project. The original timetable will only slip by between four to six weeks, therefore, it will still allow for a contractor to be appointed by the start of August 2008 and ensure adequate planning and implementation of the new catering services.
- 3.10 However any further delay will mean that a catering service will be unavailable to the pupils and staff of Kingsbury High School at the start of the 2008 Autumn school term. This will have adverse operational and public relations consequences.

The law requires local authorities to make arrangements for free school meals for eligible pupils, to provide facilities for eating lunch, to provide access to a paid meal service, if requested, and to ensure that meals provided meet nutritional standards.

### **Pre Tender Considerations**

- 3.11 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations have been set out below for the approval of the Executive.

<b>Ref.</b>	<b>Requirement</b>	<b>Response</b>	
(i)	The nature of the contract.	The provision of morning break and lunchtime catering services.	
(ii)	The estimated value.	The estimated value for this contract is £671,460 over the maximum 5 year contract period.	
(iii)	The contract term.	Three years commencing on 4 <sup>th</sup> August 2008, with an option to extend up to a further two years in aggregate.	
(iv)	The tender procedure to be adopted.	A two stage restricted tendering procedure will be followed in accordance with Council Standing Orders. The first stage: expressions of interest invited with short-listing of interested organisations based on an evaluation of the pre qualification questionnaire they submit. The second stage: invitations to tender will be issued to short-listed organisations.	
v)	The procurement timetable.	<b>Indicative dates are:</b>	
		Adverts placed	8 November 2007
		Expressions of interest returned	21 December 2007
		Executive approval to tender	11 February 2008
		Opening of Pre	12 February 2008

		<p>Qualification Questionnaires received.</p> <p>Shortlist drawn up in accordance with the Council's approved criteria</p> <p>Invite to tender</p> <p>Deadline for tender submissions</p> <p>Panel evaluation and interviews</p> <p>Panel recommendation</p> <p>Report recommending Contract award circulated internally for comment</p> <p>Executive approval</p> <p>Contract start date</p>	<p>29 February 2008</p> <p>3 March 2008</p> <p>14 April 2008</p> <p>15 April - 12 May 2008</p> <p>14 May 2008</p> <p>19 May 2008</p> <p>15 July 2008</p> <p>4 August 2008</p>
(vi)	The evaluation criteria and process.	<p>A shortlist will be drawn up in accordance with the Council's Contract Procurement and Management Guidelines, using a pre qualification questionnaire, thereby meeting the Council's financial standing requirements, technical capacity and technical expertise.</p> <p>Tenders will be evaluated by a panel (which may comprise officers from the high school, the Board of Governors, and the Council's Children and Families, Procurement and Finance Units) against the following criteria:</p> <p>Price and affordability (60%)</p> <p>Ability to meet the requirements of the specification (5%)</p> <p>Sustainability (5%)</p>	

		<p>Technical competence to provide services (associated service provision, including past experience, staff experience and customer references (10%)</p> <p>Ability to ensure smooth and seamless implementation (5%)</p> <p>Deployment of transparent, user-friendly accounting and invoicing procedures (10%)</p> <p>The extent to which proposed menus and tariffs reflect value-for-money and encourage healthy eating (5%)</p> <p>* See Appendix 1 for further information.</p>
(vii)	Any business risks associated with entering the contract.	If the appointed contractor performs poorly this could cause delays and possible costs to the school. These business risks will be reduced by employing a carefully managed and full procurement process, as set out in this report. Financial Services and Legal Services have been consulted.
(viii)	The Council's Best Value duties.	The competitive tendering of the service and award of a contract based upon the most economically advantageous tender will ensure that the Council meets its Best Value duties.
(ix)	Any staffing implications, including TUPE and pensions.	TUPE is likely to apply to contractor staff – see section 5 of this report.
(x)	The relevant financial, legal and other considerations.	See sections 4, 6 and 7 of this report.

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

#### **4.0 Financial Implications**

4.1 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.

4.2 The estimated value of this services contract is £671,460 calculated

over the maximum 5 year contract period.

- 4.3 The cost of this contract will be funded from existing school resources.

Delegated funding via the Local Authority for catering in the financial year 2007/08 is as follows:

From schools meals subsidy (section 52)	£84,358
From budget share for Management Fee	£12,000
From budget share for staff meal vouchers in lieu of lunchtime duties (estimated)	£ <u>27,720</u>
<b>Delegated funding</b>	<b>£ 124,078</b>
Cash sales (estimated)	£ <u>99,742</u>
<b>Total funding</b>	<b>£223,820</b>

Delegated funding accounts for about 55% of total catering funding.

- 4.4 Although qualitative factors are considered important in evaluating tenders (accounting for 40% of the total score for evaluation – please refer to Appendix 1) the limited school meal budget has meant that financial factors such as price and affordability (within existing budget) have been given a higher overall relative weighting, accounting for 60% of the total evaluation score.

## **5.0 Staffing Implications**

- 5.1 This service is currently provided by an external contractor employed by the Governing Body of Kingsbury High School. There are no implications for Governing Body or Council staff arising from re-tendering the contract.
- 5.2 It is likely that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to most, if not all, of the external contractor's staff providing a catering service for the high school.
- 5.3 The School Governance (Contracts) (England) Regulations 2005 state that when entering into a contract the governing body of every maintained school shall have regard to the Code of Practice on Workforce Matters in Public Sector Service Contracts. This Code applies to public sector service contracts which involve a transfer of staff from the public sector organisation to the service provider, or in which staff originally transferred out from the public sector organisation as a result of outsourcing are TUPE transferred to a new provider

under a re-tender of the contract. The Code will not be applicable to the new contract due to start on the 4<sup>th</sup> August 2008 because none of the external contractor's staff providing a catering service for the School are former employees of the School's Governing Body. Accordingly the Governing Body will not need to adopt any of the Code of Practice's provisions.

## **6.0 Legal Implications**

6.1 The estimated value of the proposed catering services contract is higher than the EU threshold for Services and the nature of these services means that the contract is classified as a Part B services contract by the Public Contracts Regulations 2006 ("the EU Regulations"). The tendering of the services is therefore subject to the partial application of the EU Regulations.

6.2 In addition, the Council's own Standing Orders and Financial Regulations in respect of High Value Contracts apply as the estimated value of the contract exceeds £500,000. By virtue of the Financial Information for Schools under Devolved Funding booklet the award is subject to the Council's own Standing Orders in respect of High Value Contracts, and the Council's Financial Regulations and transparency principles.

6.3 In accordance with the Devolved Funding booklet, "All procurement on behalf of the Council" must comply with Standing Orders, the Council's Financial Regulations as well as the EU public procurement regulations (if applicable). The School Financial Regulations outlined in that Devolved Funding booklet apply to all primary, secondary and special schools maintained by the Council and in receipt of delegated budgets (per School Financial Regulation 1.1).

"On behalf of the Council" means where schools spend money provided by the Council. As noted in paragraph 4.3 above, the school will be using money that the Council has provided to fund the catering services. Therefore although the school is a foundation school, it is subject to and should have complied with the rules outlined in the Devolved Funding booklet.

6.4 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 contract and recommending the award.

## **7.0 Diversity Implications**

7.1 Diversity implications are addressed in the service specification for the new contract.

7.2

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## Appendix 1

### Tender Evaluation Grid

<b>Evaluation criteria</b>		<b>Unaccept- able</b>	<b>Poor</b>	<b>Acceptable</b>	<b>Good</b>	<b>Excellent</b>	<b>Score</b>
	Weighting	0	1	2	4	5	
<b>Price and affordability</b>	60						
Price							
Affordability							
<b>Quality</b>							
Ability to meet the requirements of the specification	5						
Sustainability	5						
Technical competence to provide services (associated service provision, including past experience, staff experience and customer references).	10						
Ability to ensure smooth and seamless implementation	5						
Deployment of transparent, user-friendly accounting and invoicing procedures	10						
The extent to which proposed menus and tariffs reflected value-for-money and encouraged healthy eating	5						
<b>Total score</b>							