

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	4417
Author:	Lee Kimberley
Department:	Resident Services
Contact:	Lee Kimberley (Job Title: Head of Nottingham Catering, Email: lee.kimberley@nottinghamcity.gov.uk, Phone: 01158765432)
Subject:	Approval to deliver the Education Catering contract for 2 schools in the Blagreaves Federation
Total Value:	£586,656.00 (Type: Revenue)
Decision Being Taken:	<ol style="list-style-type: none">1. To approve Nottingham City Council, Nottingham Catering to enter into a contract with the Blagreaves Federation with 2 schools in Derby to deliver their catering service for a period of 3 years (Portfolio Holder Decision).2. To approve budget provision to meet the needs of the contract and for the TUPE of staff from the current provider (Various) and to purchase provisions to deliver the service (Portfolio Holder Decision).3. To approve the TUPE of staff from the current provider (Various) under scheme of delegation reference 16 (Non-Executive Officer Decision)
Reasons for the Decision(s)	The Blagreaves Federation is located in Derby and has undertaken a tender process to select a new catering operator for 2 of its schools in close proximity. Nottingham catering formally submitted a bid for this contract and was successful, being awarded the contract on 24th September 2021 for a period of 3 years. The new contract will commence on 1st November 2021 for a period of 3 years. Employees who will transfer are employed by both schools and will transfer at an agreed date in 2021, subject to formal consultation and TUPE processes. Trade unions and affected employees will be consulted in line with HR advice in regards to the TUPE transfer of staff at the appropriate time.
Other Options Considered:	To not provide the catering. This option was rejected as provision of the contract is within the scope of the Catering Business Plan for the service and would be a lost opportunity to generate income to support the council's financial stability.
Background Papers:	None

Published Works: **None**

Affected Wards: **Citywide**

Colleague / Councillor Interests: **None**

Any Information Exempt from publication: **Yes**

Exempt Information:

Description of what is exempt: **The detailed financial details of the contracts.**

An appendix (or appendices) to this decision is exempt from publication under the following paragraph(s) of Schedule 12A of the Local Government Act 1972

3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because the council is competing in a highly competitive sector for catering contracts. Publishing its financial modelling and the proposed budget for this contract would expose its commercial information to the competition and therefore place the council at a disadvantage and risk in regards to both new contracts and existing contract renewals.

4 - Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.

The public interest in maintaining the exemption outweighs the public interest in disclosing the information to enable the correct TUPE process to be undertaken, including notification and consultation with the affected staff. Publishing this information would potentially compromise this legal process. Some information to remain exempt to protect the rights of the employees.

5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

The public interest in maintaining the exemption outweighs the public interest in disclosing the information to allow confidential legal advice to be provided to the client department to enable the client dept to determine whether the proposed terms and conditions are acceptable to the council

Documents exempt from publication:

Gayton Junior - Sept 2021- 3yr Bid.pdf, Ridgway Infants - Sept 2021- 3yr Bid.pdf

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

None

Equality:

EIA not required. Reasons: EIA not required. Reasons: EIA not required. Reasons: No equality issues will result as part of this decision, in particular this contract is outside of the City boundaries and will be a continuation of an existing service.

Relates to staffing:

Yes

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

03/11/2021

Advice Sought:

Legal, Finance, Human Resources

Legal Advice:

Nottingham City Council has successfully tendered for a contract with the Blagreaves Federation to provide catering services as set out in the main body of the report. The parties will enter into a contract containing the terms and conditions governing the provision of those services. The contract will be for an initial period of 3 years commencing on 1st November 2021.

Employment law advice has been provided separately by Aman Patel. Advice provided by Sarah O'Bradaigh (senior solicitor) on 20/10/2021.

Finance Advice:

Nottingham Catering has been successful in winning the contract with Blagreaves Federation to provide catering services at 2 schools in Derby. This is a three year contract and it is estimated to generate a net additional income of £27k-£45k per year over the 3 years of the contract.

A financial model has been developed to evaluate this scheme using the information available (see appendix). Labour costs, provisions and other direct costs have been accounted for. The meal numbers used in the model are based on figures provided by the school and assume an anticipated increase in meal numbers of 5% in each of the first two years of the contract and 3% in the third year. This is considered realistic by the operational team based on the experience of previous contracts.

The Nottingham Catering Service has a budgeted net contribution of £730k to the MTFP and income from this contract will help to achieve this. Schools Catering will need to ensure the sustainability of income levels following the end of this contract as the income generated from this will be embedded in its future base budget.

The model has been reviewed by relevant colleagues and is seen as realistic and achievable. However, as with all forecasts there is an inherent risk that they don't materialise as expected, particularly in light of any future impact of Covid-19 on Schools Catering. The service will need to ensure tight controls and regular reviews on the ongoing expenditure for these areas to ensure it meets its net income and ensure value for money for the Council. Any impact from this or other factors will need to be mitigated by the service area and/or reflected in the MTFP at the appropriate time.

Advice provided by Matthew Connell (Commercial Business Partner) on 22/10/2021.

HR Advice:

Advice

As the proposal relates to a service being brought in-house, this will create a 'Service Provision Change' under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

TUPE places an obligation on Nottingham City Council as the transferee to undertake genuine consultation with affected employees and trade unions on any proposed changes to the terms of employees' contracts of employment. These changes must be for an economic, technical or organisational ('ETO') reason and this must be consulted on with affected parties. Nottingham City Council cannot harmonise terms and conditions unless it is for an ETO reason. Therefore it is important for Nottingham City Council to obtain information on incoming employee's terms and conditions in order to identify where potential measures may need to be proposed. All individuals employed by Nottinghamshire County Council should transfer with their existing terms and conditions of employment. This includes their existing salary and any additional costs relating to their salary should also be considered in the budget. Their continuity of service is also preserved.

If the transfer was likely to lead to a restructure or potential redundancies, this should be fed into the consultation process and costs and relevant legal requirements in relation to this should be considered.

An appropriate induction must also be planned to ensure individuals feel welcomed into the organisation and the transition is successful and continuity is provided for service users. There will also need to be a transition period and support and development for the new post holder once they are in post.

Advice provided by Sheila Birch (HR Consultant) on 18/10/2021.

Signatures

Eunice Campbell-Clark (Portfolio Holder Leisure, Culture and Schools)
SIGNED and Dated: 26/10/2021
Frank Jordan (Corporate Director, Resident Services)
SIGNED and Dated: 27/10/2021