

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	4422
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 3 additional schools in the Odyssey Collaborative Trust
Total Value:	£671,760.00 (Type: Revenue)
Decision Being Taken:	<p>1. To approve Nottingham City Council, Nottingham Catering to provide additional catering services under the existing contract with Odyssey Collaborative Trust to deliver the catering service in 3 additional schools, as referenced in the previous decision 3804, to increase to 7 schools within the term of the contract for a period of 3+2 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)</p>
Reasons for the Decision(s)	<p>The Odyssey Collaborative Trust is located in Derby and previously undertook a tender process in 2019 to select a new catering operator. This was for an initial 4 schools and later for the remaining schools within its operation to be included in the overall contract, as per decision number 3804 dated 26/02/2020. Nottingham catering formally submitted a bid for this contract and was successful, being awarded the contract on 27th January 2020 for a period of 3 years from April 2020 with an optional extension period of 2 years. This decision does not include the financial information for the original schools covered by the previous decision. The new catering services to the 3 additional schools will commence on 1 November 2021 until March 2023 (3 years) with the optional extension until March 2025. Employees who will transfer are employed by both private sector companies and the trust themselves. 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.</p>

Other Options Considered: To not provide the catering would be in breach of the original tender agreement with the trust as this included the additional schools at the appropriate future point as referenced in decision 3804 dated 26/02/2020. This option was rejected as provision of the contract is within the scope of the service Business Plan in seeking to generate a financial return to the council through additional catering contracts. Not delivering on this contract agreement would place the existing contract at risk and the council in a potential legal breach of contract and would be a lost opportunity to generate income to assist the councils challenging financial position.

Background Papers: None

Published Works: Delegated Decision 3804 - Approval to deliver the Education Catering contract for Odyssey Collaborative Trust - February 2020

Affected Wards: Citywide

Colleague / Councillor Interests: None declared

Any Information Exempt from publication: Yes

Exempt Information:

Description of what is exempt: 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

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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:

AP DDM Advice - Catering contract for Odyssey Collaborative Trust_.docx, Odyssey Collaborative Trust - Financial Sheet v2.1 - Sept 2021.pdf

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

None

Equality:

EIA not required. Reasons: No equality issues will result as part of this decision, in particular this contract is outside of the City boundaries.

Relates to staffing:

Yes

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

09/11/2021

Advice Sought:

Legal, Finance, Human Resources

Legal Advice:

Nottingham City Council currently provides catering services to 4 schools within the Odyssey Collaborative Trust (OCT) and has done so since January 2020 under a formal contract with the OCT for an initial term of 3 years. The report author advises that the contract contains the option for the catering services to be extended to include 3 additional schools which also comprise part of the OCT. The contract terms and conditions will remain the same for the remaining contract period with the additional charges for the additional catering services to be added to the contract.

Employment law advice has been provided separately by Aman Patel, Solicitor. Advice provided by Sarah O'Bradaigh (senior solicitor) on 26/10/2021.

Finance Advice:

Nottingham Catering currently delivers catering services to 4 schools in the Odyssey Collaborative Trust and this decision seeks to extend this service to 3 additional schools. This existing contract was for 3 years with a possible extension of 2 additional (5 years total) and started in April 2020. This decision relates to the remaining term of this contract and it is expected that this will generate a net additional income of £32k per year over this period.

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 2% in the first year of the contract and 1% per year in subsequent years. 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: 29/10/2021
Frank Jordan (Corporate Director, Resident Services)
SIGNED and Dated: 01/11/2021