

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	4999
Author:	Lee Kimberley
Department:	People
Contact:	Lee Kimberley (Job Title: Head of Nottingham Catering, Email: lee.kimberley@nottinghamcity.gov.uk, Phone: 01158765432)
Subject:	New Catering Contract
Total Value:	£365,251 (Type: Revenue)
Decision Being Taken:	<p>1. To approve Nottingham City Council, Nottingham Catering, entering into a contract with a Derby School (as detailed in an exempt appendix) to deliver the catering service for a period of 3+1 years from 1st September 2023 (Portfolio Holder Decision). 2. To approve the budget provision as detailed in the exempt appendix to meet the needs of the contract and for the TUPE of staff from the current provider and to purchase provisions to deliver the service.</p> <p>3. To note the transfer, establishment of posts and recruitment of staff under TUPE from the current provider to the Council, subject to falling within the above budgetary approval is a non-executive decision delegated to Corporate Director for People under delegation 16 of the scheme of delegation.</p>
Reasons for the Decision(s)	<p>The primary school is a maintained school of Derby City Council and requested that Nottingham Catering provide a quote for the delivery of its catering service to replace its current supplier. Nottingham Catering submitted a quotation and were successful in winning the contract. The school will be subject to the standard contract terms of the council catering service for an external school. The new contract will commence on 1st September 2023 for a period of 3+1 years. There is an optional extension of 1 year available to the school at the end of the initial 3 year period. The school will be charged the full costs of catering plus a management fee to ensure that the council receives its planned financial return and minimises financial risks by entering into this contract. 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. This decision supports the Service Plan of Nottingham Catering and MTFP proposals for the 2023/24 financial year.</p>

Other Options Considered: Not entering into the contract was considered as an option but has been rejected as the proposal in the decision is within the scope of the growth aspirations and Business Plan for the service.

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: Financial Details and Name of the School

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.

Documents exempt from publication:

Portway - Revised Quotation - June 2023.pdf

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

None arising from the decision to be taken.

Equality:

EIA not required. Reasons: No equality issues will result from 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:

14/08/2023

Advice Sought:

Legal, Finance, Human Resources

Legal Advice:

Please see the attached note. Advice provided by Richard Bines (Solicitor) on 20/07/2023.
Advice documents: Legal advice re proposed contract with Maintained Infant School.docx

Finance Advice:

Based on an expected contract value of £365,251 and expenditure of £319,995, the contract if approved will generate a management service fee over the term of the contract of £45,256.

There are some possible risks associated with TUPE, however the service has experienced minimising any such risks to the local authority undertaking a HR lead process of transition with the current employer, Chartwells Catering.

The service will need to liaise with finance to construct an appropriate budget in line with the financial model within Oracle. Advice provided by Paul Stevenson (Interim Strategic Finance Business Partner) on 19/07/2023.

HR 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 should transfer with their existing terms and conditions of employment. Their continuity of service is also preserved.

Management have not made it clear how many employees will be transferring to Nottingham City Council under TUPE and HR have not yet been provided with this information from the School. Management need to be aware, and take into consideration for their budget, that the salaries under the previous employer may be higher than Nottingham City Council's pay scales and Nottingham City Council will need to honour any higher salaries.

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 these individuals once they are in post.

Louise Hobbs
 HR Consultant
 28/06/2023
 Advice provided by Louise Hobbs (HR Consultant) on 28/06/2023.

Signatures

Cheryl Barnard (PH - Children, Young People & Education)
SIGNED and Dated: 07/08/2023
Catherine Underwood (Corporate Director for People)
SIGNED and Dated: 04/08/2023