

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

Reference Number:	3783
Author:	Lee Kimberley
Department:	Commercial and Operations
Contact:	Lee Kimberley (Job Title: Head of Trading Operations, Email: lee.kimberley@nottinghamcity.gov.uk, Phone: 01158764958)
Subject:	Approval to deliver the Education Catering contract for a Nottinghamshire County School
Total Value:	Exempt (Type: Revenue)
Decision Being Taken:	1. To approve Nottingham City Council, Nottingham Catering to enter into a contract with a Nottinghamshire County Council School to deliver the catering service for a period of 3+1 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 (Nottinghamshire County Council) and to purchase provisions to deliver the service (Portfolio Holder Decision).3. To approve the TUPE of staff from the current provider (Nottinghamshire County Council) under scheme of delegation reference 16 (Non-Executive Officer Decision)
Reasons for the Decision(s)	The primary school is a maintained school of Nottinghamshire County Council, 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 new contract will commence on 1 April 2020 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.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:	No other options relevant. This is within the scope of the Commercial 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:** 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.

**Documents exempt from publication:** Financial Sheet v1.1 - Dec 2019.pdf , Finance Comments

**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:**

**11/02/2020**

**Advice Sought:**

**Legal, Finance, Human Resources**

**Legal Advice:**

**This proposal raises no significant legal issues. The contract terms and conditions for the provision of the services have been prepared by the Council. Advice provided by Sarah O'Bradaigh (senior solicitor) on 02/01/2020.**

**Finance Advice:**

**Advice provided by Susan Turner (Senior Commercial Business Partner) on 27/12/2019.  
Advice documents: Stanhope Primary - Exempt Finance Comments.docx**

**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 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.**

**TUPE places an obligation on Nottingham City Council as the transferee to engage with Nottinghamshire County Council to undertake genuine consultation with affected employees and trade unions on any proposed changes to the terms of employees' contracts of employment. 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.**

**Advice provided by Sheila Birch (HR Consultant) on 20/12/2019.**

**Signatures**

<b>Neghat Khan (PH Early Years, Education and Employment)</b>
<b>SIGNED and Dated: 03/02/2020</b>
<b>Andy Vaughan (Corporate Director Commercial and Operations)</b>
<b>SIGNED and Dated: 29/01/2020</b>