

Committee: Cabinet

Date: 8 November 2021

Agenda item:

Wards: All Wards

Subject: Award of Contract for PFI Schools Catering Service 2021

Lead officer: Jane McSherry - Director of Children, Schools & families

Lead member: Cllr Eleanor Stringer – Joint Deputy Leader and Cabinet Member for Children and Education

Contact Officer: Murray Davies, murray.davies@merton.gov.uk, 020 8545 3069

Recommendations:

Members are asked to approve the recommendation that:

- A. The council award to Bidder A (as detailed in the Confidential Appendix to this report) a contract for provision of the school meals catering service at Merton PFI secondary schools for a period of 3 years from 1 January 2022, with an option to extend for up to two further years at the discretion of the council.
 - B. In accordance with Contract Standing Orders (CSO 24.3) that authority be delegated to the Director of Children, Schools and Families to exercise, in consultation with the Cabinet Member for Children and Education, the council's option to grant one or more extensions of the contract term for any period up to two further years beyond the expiry of the initial contract term on 31 December 2025.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The purpose of this report is to seek the approval of Cabinet for the award of the contract for the provision of school meals at Merton PFI Secondary Schools to Contractor A following a single stage tender process.
- 1.2. This new contract will be for an initial period of 3 years from 1 January 2022, with an option at the discretion of the council to extend the term for a further period or periods of any duration up to a maximum two years in total.
- 1.3. Members are further advised that the new daily charge for a standard school meal for the 2022 calendar year will be £2.40.

2 DETAILS

- 2.1. Following the agreed variation of the council's PFI contract approved by Cabinet on 12 July 2021, the council has assumed responsibility for the provision of 'soft services' for the four PFI secondary schools in the borough – Harris academy Morden, Raynes Park High School, Ricards Lodge High School and Rutlish School. Soft services include cleaning, caretaking, grounds maintenance and the provision of catering for staff and pupils at the schools.

- 2.2. In line with agreements reached in discussion with the four schools, the council has sought bidders for the provision of school meals and related catering services on their behalf.

Tender Process

- 2.3. A single stage 'open' procedure, as set out in the Public Contract Regulations 2015 (SI 2015/102) ("PCR 2015"), was used for the purpose of this tender exercise.
- 2.4. In accordance with the requirements of that procedure, potential contractors were requested to bid for the proposed contract following the publication of a Contract Notice in September. The tender opportunity was also advertised to interested bidders via the Contracts Finder website and through the London Tenders Portal - the tender process was conducted electronically using the portal.
- 2.5. Organisations were invited to submit a proposal based on a meal price of £2.40 for the provision of a standard school meal along with detailed method statements explaining how they would deliver the catering service. The information requested to support the price proposal required potential contractors to detail the breakdown of their costs.
- 2.6. The council stipulated that the contract would be awarded to the bidder whose tender was judged to be the most economically advantageous based on price and quality criteria. The relative weighting of criteria as between quality and price was determined in accordance with the previous discussions with schools – affordability of the school meal is a significant consideration for head teachers and, accordingly, 30% of the evaluation was based on pricing considerations and 70% on the assessment of qualitative criteria. It should be noted that the minimum requirements for school meals are mandated by the National School Food Standards - <https://www.gov.uk/government/publications/standards-for-school-food-in-england>
- 2.7. The qualitative criterion was assessed across a range of operational areas to take account of the priorities of schools and the council in relation to the quality of service. The invitation to tender detailed the agreed scoring methodology for potential bidders.
- 2.8. Bidders were required to submit as part of their tender submission a proposal in regard to adding Social Value.
- 2.9. Bidders were also advised of the focus of the council on achieving the commitments under its Climate Emergency Action plan and that they would be expected to detail in their bids how they proposed to assist the council in doing so.
- 2.10. Contractors were also informed that in the event of a tenderer other than the current contractor being awarded this contract, the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006 were likely to apply ("TUPE Provisions").
- 2.11. Bidders were advised that the contract would be awarded in accordance with the assessment of bids against the criteria and weightings detailed below.

- 2.12. The return date for tenders was 19 October 2021. A number of potential bidders expressed an interest in Merton's contract and, by the date set for delivery of tenders, the council received bid submissions from four organisations.

Tender Evaluation

- 2.13. The evaluation of bids received was undertaken in three stages – an initial review of the bids to check completeness and to review grounds for exclusion, a detailed consideration and scoring of written quality and prices submissions followed by a final interview which was used to verify the written proposals received.
- 2.14. The evaluation process was supported and overseen by an officer from the council's Commercial Services team, acting in a quality assurance role to ensure EU procedures were complied with in full, and that the approach of the team to testing and scoring against the evaluation criteria was rational and consistent for all elements of the tender.
- 2.15. Bids were checked for completeness and assessed against the mandatory and discretionary grounds for exclusion and on their turnover and experience of delivering a school meals service. All four bidders passed these threshold requirements.
- 2.16. In the second stage of the evaluation process, the evaluation team assessed each tender and marks were awarded to each bidder. Following a moderation exercise, to arrive at a consensus score for each bidder, final scores based on written submissions were confirmed. The bidders' proposal were further verified through an interview during which bidders were asked to clarify and support their bid proposals.
- 2.17. Following the conclusion of this process, the evaluation team determined that Bidder A scored best against the published criteria so it is recommended the council awards the contract to this company.

3 ALTERNATIVE OPTIONS

- 3.1. The making of arrangements for school meals is a legal requirement and, as part of the council's obligations under the PFI contract arrangements, it is responsible for the provision of catering services for these four sites.
- 3.2. While the provision could be delegated to schools, a centrally managed contract avoids the necessity for a school to spend extensive amounts of time making arrangements to procure and monitor their own services. It also helps to ensure that school meals are to a consistent quality and healthy standard across the borough. It is the specific request of the 3 maintained schools to be part of a jointly procured arrangements, and Harris Academy Morden has currently reserved judgement, so contractors have been asked to provide proposals with and without that school.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. School head teachers have been fully consulted in relation to the provision of the catering and other soft service as part of the process for varying the

council's PFI contract and their specific requirements have been incorporated into the tender documentation.

- 4.2. A school bursar participated in the evaluation process and, in addition, a nominated head teacher representative was invited to participate in the evaluation of tenders and sat on the interview panel at the last stage of the tender process.
- 4.3. The Corporate Procurement Team has been consulted at all stages throughout the process to ensure probity existed at all times and to ensure we are able to fulfil our obligations at a later date in the event of a Freedom of Information Enquiry.

5 TIMETABLE

- 5.1. The new contract is required to commence on 1 January 2022 or the council would need to extend its temporary contract with Sodexo Limited.
- 5.2. The award of this contract is subject to observing a 'standstill' period. Accordingly, the contract can be formally awarded to the successful tenderer from 26 November 2021

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The value of the existing contract in 2018/19 financial year was just over £968,350 based on meals provided to both pupils and staff. During 2019/20 and throughout the current financial year, the take up of meals was affected by pupils not attending school due to COVID 19 restrictions. Consequently, the current expenditure under the school meals contract is difficult to estimate accurately. However, for the purposes of tendering, the council estimated that the value of the new contract over a full is likely to be of the order of £4.9 million assuming that school attendance returns to normal.
- 6.2. The cost of the service to the council is determined by the numbers of free school meals provided as against the meal price, which is tendered as a fixed price of £2.40 per meal, and the fixed concessionary fee payable to the council as set out in the Confidential Appendix to this report.
- 6.3. The council is not responsible for payment of the costs of school meals provided to staff or visitors.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The Council has the power to enter into this contract by virtue of section 1 of the Localism Act, section 111 of the Local Government 1972 Act and section 1 of the Local Government (Contracts) Act 1992.
- 7.2. The service being procured falls under the Light Touch Regime in the Public Contract Regulations 2015 and as such does not need to comply with the full rigors of the procurement regulations, but the Council still needs to follow the requirements to advertise the contract, issue an award notice and procure in accordance with the published tender documents (Regs 74-77 PCR).
- 7.3. The procurement must however be in accordance with the Council's own Contract Standing Orders. CSO 15 require that light touch procurements

comply with the Contract Standing Orders. CSO 19.5 require a ten day standstill to be in place and CSO 19.2 require the contracts once awarded be entered onto the Council's Existing Contracts Register in line with the Local Government Transparency Code 2015 as well as Contracts Finder in accordance with CCS Guidance.

- 7.4. Contract terms have been prepared in consultation with the council's Legal Services team.
- 7.5. Subject to the contract with the PFI contractor and any subsequent arrangements with any of the PFI contractor's sub-contractors, and on the basis that the contract is awarded to Bidder A does not result in the Council taking on or ceasing to provide any service delivery or service management function, any provision of the TUPE Provisions that might apply in the event of an award of the contract to a Bidder will not have any TUPE Provisions liability for the Council (as no workers would be transferred to or from the Council's employ).
- 7.6. If, as an alternative outlined in section 3 above, the service is taken on by a school or school maintained by the Council, the TUPE Provisions would apply to transfer the employment of staff allocated to the contract / relevant part of the contract to the Council and in time the Council could be liable for redundancy costs if there were to be redundancies affecting the staffing of the service provision.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The tender documentation submitted by all selected tenderers was assessed against the threshold requirement to ensure bidders comply with current equalities legislation. This will ensure that contracts are awarded to organisations that have an equalities and diversity policy and practices which can impact positively on the delivery of the service.
- 8.2. As part of the tendering process the council developed within its specification a formal requirement for providers to reflect the need to cater for an increasingly diverse child population in delivering the school meals service. Bidders' submissions were assessed as to the extent their proposals address these issues.
- 8.3. The council revised the standard meal price down to £2.40 from £2.67 to ensure school meals could be affordable for families that do not meet the threshold for free school meal eligibility.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. There are no substantive crime and disorder implications arising from the recommendations contained within this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. All organisations that are awarded contracts must have a health and safety policy and procedures for effective health and safety and risk management.

Particular attention was given to assessing food hygiene procedures as part of the tender assessment.

- 10.2. The contract award is subject to the successful bidder agreeing to provide, if required, a guarantee undertaking from any parent company in order to mitigate any risks associated with a failure of performance by the council's chosen contractor.
- 10.3. During the recent pandemic, in line with HM Treasury and Department for Education guidance, the Council arranged to pay the incumbent contractor on behalf of schools an agreed sum to cover its continued operating costs during the period of the lockdown. Schools remained open for pupils who are deemed vulnerable or are the children of key workers throughout this period. The Council's expenditure was recharged in full to the schools participating in the central contract.
- 10.4. Similar arrangements would apply if such events affect the new contract and specific provisions to cover this eventuality have been included in the terms and conditions of contract issued to potential bidders.
- 10.5. The EU procurement regulations allow a company to challenge a contract decision from a public body, especially on matters of procedure. To mitigate this risk a separate quality assurance role was established for an officer from Commercial Services to monitor the tender procedures.

11 BACKGROUND PAPERS

Contract Standing Orders

Exempt Annex to Report