

## CABINET

1 OCTOBER 2013

### **GATEWAY 1 PROCUREMENT COMMENCEMENT: CORPORATE SCHOOL MEAL PROVISION**

Portfolio Holder: Councillor Mike O'Brien, Children's Services  
(Lead member)

Report from: Barbara Peacock, Director of Children and Adults  
Services

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#### **Summary**

This report seeks permission to commence the procurement of the school meal provision on behalf of Medway schools, which will deliver a sustainable, quality, value for money service to students in Medway within both small and large school services, and which will meet nutritional standards for school meals, as set by government.

This Gateway 1 report has been approved for submission to the Cabinet after review and discussion at Children and Adults Directorate Management Team meeting on 4 September 2013 and Procurement Board on 17 September 2013.

The Children and Adults Directorate Management Team and Procurement Board have recommended that this procurement project be approved as a Category B High Risk procurement project at Procurement Gateway 1 by Cabinet. This is because although this procurement project is a Services Category B High Risk procurement with a total contract value above £250,000.00, there are political implications and/or service sensitivities that Cabinet should be aware of.

These political implications and/or service sensitivities are that the risk analysis has identified the potential for there to be a lack of market interest for a short-term catering contract with a length less than three years, which could result in no contractor being successful. Therefore, in order to mitigate this risk, the contract duration is to be for a minimum of 3 years, with the option to extend for a further 2 years. In addition, due to the current media coverage of childhood obesity, media interest in school meals and the recent coverage relating to horsemeat, there is a potential for press interest for any school meal contract. In addition, it has recently been announced that all infant pupils in England will get free school meals from September 2014.

## **1. Budget and Policy Framework**

### **1.1 Service Background Information**

The current corporate let catering contract for schools expires July 2014. The contract is currently let to Chartwells (previously Scolarest) who have held the contract since 2003.

The responsibility and budget provision for the school meal service is delegated to Medway schools and schools have the option to either buy into the corporately let contract, contract out to an alternative provider (either individually or as part of a cluster of schools); or to provide their own in-house catering service. These options have been made available to Academies. The free meal element of the service is a government requirement; therefore an allowance is made in each school's delegated budget to cover the free meal element.

During the lifetime of the contract there have been significant changes to the existing specification, mainly to adhere to the change in government guidelines surrounding food standards for school meals.

The expected deliverables of the procurement process is to provide a corporate school meals service, which delivers a sustainable, quality and value for money service to pupils in Medway.

The School Contracts Team, which is part of the Children and Adults Directorate, has a Service Level Agreement with each of the participating schools. Under this agreement the School Contracts Team have been engaged to commission a service provider for the catering services.

### **1.2 Council's Strategic Priorities And Core Values**

The procurement of this requirement directly links into the following Council Strategic Priorities and Core Values:

## **Core Values**

- Putting our customers at the centre of everything we do.

This procurement requirement will deliver against the Core Value of 'Putting our customers at the centre of everything we do' by providing a service aimed at the needs of pupils in Medway.

- Giving value for money

This procurement requirement will deliver against the Core Value of 'Giving value for money' through providing a cost effective service for pupils in Medway schools and by providing a nil cost contract to all Medway schools. The contract will be nil cost as there is no additional costs for schools to pay throughout the life of the contract; the paid and chargeable elements of the contract will be picked up by the contractor and the free school meal element has already been factored into each schools' delegated budget.

## **Strategic Priorities**

- Children and young people having the best start in life in Medway.

This procurement requirement will deliver against the Strategic Priority of 'Children and young people having the best start in life in Medway' through providing a catering service aimed at providing a healthy meal option during the day.

### **1.3 Strategic Council Obligations**

The procurement of this requirement directly links into the following Strategic Council Obligations:

- Medway Council Plan

This procurement requirement does not link into the Medway Council Plan.

- Other Strategic Council Obligations

This procurement requirement does not link into any other Strategic Council Obligations.

### **1.4 Departmental and Directorate Service Plans**

This procurement requirement links into the following Departmental Service Plans through:

- School contracting – managing and monitoring major high risk contracts for the provision of school meals, cleaning and other facilities e.g. waste.
- Developing service offer for schools.

## **1.5 Funding/Engagement from External Sources**

As this procurement requirement encompasses funding from external sources, authority to proceed with this procurement direction has been reviewed and approved by each individual Medway school. The consultation was undertaken with school Headteachers and approval gained by a returned response form signed by the Headteacher confirming which procurement umbrella they wish to come under (i.e. corporate, grouped cluster or in-house) and that they are happy for this to be done on their behalf by the School Contracts Team.

## **1.6 Urgency Report**

This Gateway 1 Report and the associated decision is a matter of urgency for the Cabinet because the current corporate contract in place at Medway schools is due to expire on 31 July 2014, therefore, it is a matter of urgency for the procurement for this new contract to commence to allow sufficient time for a full procurement to be undertaken in readiness for a 1 August 2014 start date for the new contract. The result of not commencing this procurement project with approval from Cabinet is that there will be no catering contractor in place for schools in readiness for the start of the new academic year in September 2014.

## **2. Background**

### **2.1 Project Details**

2.1.1 This procurement is a Services procurement requirement.

2.1.2 This report seeks permission to commence a new procurement project with a proposed contract duration of 3 years with provisions to extend for a contract duration of 2 years.

The contract is proposed to commence on 1 August 2014 and conclude on 31 July 2019.

The total value of this new procurement contract is set out in the Exempt Appendix.

2.1.3 This procurement requirement is a standalone project with no linkage to any other procurement projects or procurement programmes.

2.1.4 This procurement requirement is required to fulfil Medway's statutory obligations. These statutory obligations are to improve school meals and support the aims and objectives set out in the School Food Plan and the DfE guidance in relation to school meals in the Local Area Agreement – take up of school meals NI-52.

## 2.2 Business Case

### 2.2.1 Procurement Project Outputs / Outcomes

As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
1. Appointing a provider for the catering service.	Successful procurement of catering service within the timescales	The School Contracts Team via service level agreement buy-in from Medway schools	On-going over the life of the contract

### 2.2.2 Procurement Project Management

This procurement project will be resourced through the following project resources and skills – the School Contracts Team will carry out the procurement of this project, funded via the Service Level Agreement with each individual school.

### 2.2.3 Post Procurement Contract Management

The contract management of this procurement project post award will be resourced through the following contract management strategy – this will be managed and monitored by the School Contracts Team in line with the specification and contract documentation.

### 2.2.4 Other Issues

There are no other issues that could potentially impact both the procurement process and overall strategic aims as identified within Section 1 Budgetary and Policy Framework.

### 2.2.5 TUPE Issues

Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it has been identified that TUPE does apply to this procurement process.

It has been identified that potentially 200 employees could be affected by TUPE resultant in the event that the incumbent provider is not successful as part of the procurement tender process.

### **3. Options**

In arriving at the preferred option as identified within Section 4.1 'Preferred Option', the following options have been considered with their respective advantages and disadvantages.

#### **3.1 Do nothing**

The option of doing nothing is not a viable option because the contract with all the schools ends July 2014, including all extensions. If no contract is in place, there will be no provision in place for school meals.

#### **3.2 In-house service provision**

The option of providing this requirement through in-house service provision has been considered and below are the advantages and disadvantages of this option:

Advantages:

- Bespoke service for each individual school, where the individual school would have complete control over service provision.

Disadvantages:

- Expensive and not value for money for all schools;
- The schools carry all the risks for food safety, management, finance and staffing issues.

#### **3.3 Using another local authority to deliver procurement requirements**

The option of using another local authority to deliver procurement requirements has been considered and below are the advantages and disadvantages of this option:

Advantages:

- None

Disadvantages:

- Additional costs to schools – for example market research has shown us that turning to other local authorities could have higher cost implications.

#### **3.4 Procurement via an EU compliant framework**

No EU compliant frameworks have been identified from which Medway Council's procurement requirements can be satisfactorily delivered.

#### **3.5 Formal tender process in line with Contract Procedure Rules**

The option of formally tendering this procurement requirement solely in line with Medway Council's Contract Procedure Rules has been

considered but this is not a viable option because the value of the requirement is above the EU Procurement Threshold for Services of £173,934.00.

### **3.6 Formal tender process in line with EU Procurement Regulations.**

The option of formally tendering this procurement requirement in line with EU Procurement Regulations has been considered because the value of this procurement requirement is above the EU Procurement Threshold for Services of £173,934.00 and below are the advantages and disadvantages of this option:

Advantages:

- Maximum exposure to the marketplace;
- Market driven pricing;
- Robust process that will produce the required outcomes for the schools;
- Food safety risks are transferred to the contractor;
- Health and safety risks are transferred to the contractor;
- Staffing issues are the responsibility of the contractor;
- Cost management is the responsibility of the contractor

Disadvantages:

- Time and costs associated with undertaking an EU procurement

### **3.7 Internal Medway Council Collaboration between departments**

The option of procuring requirements through internal collaboration between Medway Council departments in order to exploit economies of scale and synergies has been considered but no such opportunities exist.

### **3.8 External public sector collaboration (e.g. other Councils, Fire Service, PCT, Police)**

The option of procuring requirements through external collaboration between Medway Council and other external public sector organisations in order to exploit economies of scale and synergies has been considered but no such opportunities exist.

### **3.9 Private sector collaboration e.g. Private Public Partnering/Private Finance Initiatives**

The option of procuring requirements through private sector collaboration between Medway Council and other external private sector organisations has been considered but no such opportunities exist.

### **3.10 Procurement via a below EU Threshold Select List**

No below EU Threshold compliant Select Lists have been identified from which Medway Council's procurement requirements can be satisfactorily delivered, as this procurement is above the EU threshold.

### **3.11 Other alternative options**

No alternative options have been identified.

## **4. Advice and analysis**

### **4.1 Preferred option**

Further to an extensive review of procurement options as highlighted within Section 3 'Options' above, the following preferred option is recommended to the Procurement Board including justification for this recommendation:

The preferred option is 3.6 – formal tender process in line with EU Procurement Regulations. A 60/40 quality/price ratio is proposed to ensure that provision is of the highest quality and to mitigate any risks associated with health and safety, food hygiene and nutritional quality.

Advantages:

- Market driven pricing: the current market for catering is strong and this procurement will provide a competitive tender process, which will as a whole give a favorable outcome for the schools.
- Food safety risks transferred to the contractor: the contractor and not the schools carries the risk should the relevant food safety be breached and any prosecution would be of the contractor and not the schools.

Regulation (EC) 178/2002 of the European Parliament lays down the general principles and requirements of food law, establishes the European Food Safety Authority and lays down procedures in matters of food safety. It came into force on 21 February 2002, although certain key provisions applied only from 1 January 2005. The principal aim of this Regulation is to protect human health and consumers' interest in relation to food.

- Staffing issues are the contractor's responsibility: the day-to-day management of staff will include sickness and performance issues. The transference of responsibility to the contractor alleviates the requirement for a management structure to be in place within each school.
- Cost management is the contractor's responsibility: the management of operational costs will be the responsibility of the contractor, as there will be a nil cost to all schools.



## 4.2 Equality Act 2010

The Equality Act 2010 will be a clause in the general terms and conditions of the contract that the successful contractor will be contractually bound to adhere to.

## 4.3 Corporate Sustainability Plan

The project is being delivered in line with the Corporate Sustainability Plan and will be delivered in accordance with all relevant food safety and health and safety legislations.

## 4.4 Carbon Reduction Commitment Energy Efficiency Scheme (CRC)

The specification will include areas to reduce energy consumption in a practical way through the use of energy efficient equipment along with the reduced use of energy sources. The specification will support the reduction of deliveries to an individual establishment via the use of a single supplier.

The specification for this procurement will include the reduction of food waste from production kitchens, along with the reduction in food packaging. Emphasis will be placed on practical solutions to reduce food/packaging waste.

## 5. Risk Management

### 5.1 Risk Categorisation

The following risk categories have been identified as having a linkage to this procurement project:

Procurement process	<input checked="" type="checkbox"/>	Equalities	<input checked="" type="checkbox"/>
Contractual delivery	<input checked="" type="checkbox"/>	Sustainability / Environmental	<input type="checkbox"/>
Service delivery	<input checked="" type="checkbox"/>	Legal	<input type="checkbox"/>
Reputation / political	<input checked="" type="checkbox"/>	Financial	<input type="checkbox"/>
Health & Safety	<input type="checkbox"/>	Other/ICT*	<input type="checkbox"/>

For each of the risks identified above in OPTION B, further information has been provided below

<b>Risk Categories</b>	<b>Outline Description</b>	<b>Risk Likelihood</b> A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	<b>Risk Impact</b> I=Catastrophic II=Critical III=Marginal IV=negligible Impact	<b>Plans To Mitigate Risk</b>
a) Procurement process	Lack of market interest – in the event there is no market interest from contractors, there would be a significant risk to both schools and the LA.	E	I	Ensure the tender is advertised in all relevant procurement communications.  Contract documentation to reflect current issues in the marketplace.
b) Contractual delivery	Failure of contractor to deliver contractual arrangements.	B	III	Inclusion of contract monitoring procedures within the contract documents.  Default clauses are part of the contract documentation.
c) Service delivery	Lack of specified performance.	C	II	A detailed specification with key milestones and performance indicators.  Evaluation process will include contractor's quality performance systems.
d) Reputation / political	Any contractual failure would impact on the	B	III	On-going monitoring of the contract with specialist

	reputation of Medway Council.			catering monitoring staff.
e) Health & Safety	N/A	N/A	N/A	N/A
f) Equalities	Failure to comply with equalities legislation.	E	III	Policy is included in contract documentation.  Contractors will be evaluated on their compliance to equalities.
g) Sustainability / Environmental	N/A	N/A	N/A	N/A
h) Legal	N/A	N/A	N/A	N/A
i) Financial	N/A	N/A	N/A	N/A
j) Other/ICT*	N/A	N/A	N/A	N/A

## 6. Consultation

### 6.1 Internal (Medway) Stakeholder Consultation

- 6.1.1 Before commencement of the procurement process in order to direct the specification consultation will take place with Public Health.
- 6.1.2 During the procurement process in order to aid the evaluation process no internal stakeholder consultation is required.
- 6.1.3 Post procurement/tender award in order to aid the contract management process, as part of this procurement process, the following mandatory internal stakeholder consultation is required – the School Contracts Team will monitor and manage the contract on behalf of all schools via the Service Level Agreements.

## **6.2 External Stakeholder Consultation**

- 6.2.1 Before commencement of the procurement process in order to direct the specification as part of this procurement project, the following mandatory external consultation is required – the individual schools have already been consulted with in regards to the specification.
- 6.2.2 During the procurement process in order to aid the evaluation process as part of this procurement project, the following mandatory external stakeholder consultation is required – the individual schools will be consulted with throughout the process.
- 6.2.3 Post procurement/tender award in order to aid the contract management process as part of this procurement process, the following mandatory external stakeholder consultation is required – the individual schools will be consulted with throughout the process.

## **7. Procurement Board**

- 7.1 The Procurement Board considered this report on 17 September 2013 and amendments requested have been incorporated into this Cabinet report. The two amendments requested were, adjustment of the quality/price ratio to 60/40 and for the total contract value to reflect both free school meal value and paid school meal value. The Board supported the recommendations set out below.

## **8. Financial and legal implications**

### **8.1 Financial Implications**

- 8.1.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following financial implications which the Cabinet must consider – the full cost of the catering contract will be charged to each individual school's delegated budget, therefore there are no financial implications for the Council's budget.
- 8.1.2 Detailed finance and whole-life costing information is contained within the Exempt Appendix.

### **8.2 Legal Implications**

- 8.2.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following legal implications which the Cabinet must consider.
- 8.2.2 The proposed contract must include a variation clause to enable situations where schools may need to opt in or out of the corporate contract, for example those that convert to Academy status.
- 8.2.3 The discretionary power under s512 of the Education Act 1996 permits local authority to provide school meals. This is mandatory in the case of

persons eligible for free lunches or for any person making a request for such provision. S93 of the Local Government Act 2003 confers on local authorities a general power to charge for discretionary services providing that such charges are made on the basis of cost recovery and not on a profit-making basis. This applies where the provision of the service is linked to, or incidental to, a service that the Council has a power or duty to provide. In charging for services, in this instance the charges made to Academies for any work undertaken in respect of procuring and managing the proposed corporate meals contract, the Council must take account of DCLG guidance and in particular the CIPFA Best Value Accounting Code of Practice. Essentially this means that the Council can only provide a service to Academies on a cost recovery basis.

- 8.2.4 Where Academies are permitted to opt into the corporate meals contract, the Council must ensure that a separate contract between the Council and the Academy, setting out the arrangements and obligations of both parties, is agreed and completed prior to completion of the corporate contract or any variation thereto.
- 8.2.5 It has been identified that TUPE will apply to this procurement and that 200 employees could be affected in the event of the current incumbent not being successful. In view of the huge amount of information that will need to be provided, the provisions of the current contract should be reviewed to ascertain whether or not the process of providing information can be invoked now.

### **8.3 Procurement Implications**

- 8.3.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following procurement implications which the Cabinet must consider.
- 8.3.2 Whilst separate legal entities from the Council, the Academy schools are considered (as publically funded) to be subject to the requirements of the Public Contract Regulations and EU Procurement Regulations.
- 8.3.3 Due to the value of this procurement exceeding the EU threshold for Services (£173,934), Category Management support the recommendation to formally tender this procurement requirement in line with EU Procurement Regulations.
- 8.3.4 Whilst Medway Council will act as the lead on this procurement (and the contracting authority on behalf of the schools), the OJEU Notice will also need to identify all the potential contracting authorities (as Academy schools are separate legal entities) that may enter into their own respective contracts with the successful contractor(s).
- 8.3.5 The OJEU Notice will also need to state that the tender will be divided into lots – reflecting the authority maintained schools, academy trust groups and/or sole academies as to be agreed prior to the dispatch of the Invitation to Tender documentation.

## 8.4 ICT Implications

8.4.1 This procurement requirement does not have any ICT implications.

## 9. Recommendation

9.1 Cabinet is requested to approve the commencement for the procurement of school meals provision for Medway schools on the basis set out in paragraph 4.1 of the report.

## 10. Suggested reasons for decision(s)

10.1 The recommendations contained within Section 9 'Recommendations' above are provided on the basis of the current contract due to expire on 31 July 2014 and for a contract to be in place for commencement on 1 August 2014.

### Lead officer contact

Name  Title   
Department  Directorate   
Extension  Email

### Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
None		