

Notice of KEY Executive Decision

Subject Heading:	To approve the award of the Procurement Across London (PAL) Framework Agreement for the Supply of Fresh Fruit and Vegetables procured by the London Borough of Havering on behalf of the PAL Group
Cabinet Member:	Cllr R Benham
SLT Lead:	<i>Robert South</i>
Report Author and contact details:	James Hughes 01708 433906 James.hughes@haverling.gov.uk
Policy context:	Opportunities making Havering Lead by example by running a low-cost Council that respects residents by using their money wisely. We will work with others to reduce costs; we will help people to do business with us at any time of the day or night, and we will hold ourselves to the high standards residents expect from us.
Financial summary:	There is no commitment by either Havering or any other Participating Bodies to utilize the Framework Agreement. The combined total value of the Framework Agreement over the two year term is expected to be £6.2M (LB Havering's call-off contract with spend of £215,000 per annum is the subject of a separate report.)

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Reason decision is Key	(a) Expenditure or saving (including anticipated income) of £500,000 or more
Date notice given of intended decision:	10/07/2020
Relevant OSC:	Children's OSSC
Is it an urgent decision?	Yes – <i>General Exception</i>
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input checked="" type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Place an X in the [] as appropriate

Part A – Report seeking decision

This report describes the process undertaken to procure a two-year Framework Agreement on behalf of Procurement Across London (PAL) for the Supply and Delivery of Fresh Fruit and Vegetables and recommends the appointment of three firms.

1. Fresh and Fruity
2. IDC Ltd
3. Prescott Thomas

Call-off contracts from the Framework Agreement will allow continuity of the schools meals and other catering services within the participating bodies of PAL.

AUTHORITY UNDER WHICH DECISION IS MADE

Council's Constitution Part 3 – Responsibility for Functions

2.5 The following Functions may be delegated to individual Cabinet members by the Leader

(h) To award contracts, agree extensions of contract terms and awards/extensions of Consortia contracts of a value above £5,000,000 and up to £10,000,000 and contracts where external funding is guaranteed and there is no longer term financial commitment to the Council

STATEMENT OF THE REASONS FOR THE DECISION

The PAL group is a collaboration of London Boroughs and other nearby Councils, which work in partnership to award Framework Agreements, thus through economies of scale obtaining best value for the supply of various goods and services. Havering Council is the lead Council for various catering contracts.

As with any Framework Agreement, there is no commitment by either the London Borough of Havering or any other participating body to use it to fulfil their requirements. Councils wishing to use the Framework agreements will be required to complete an Access Agreement. They will then be sent copies of the relevant documents to allow them to put in place their own Call-off Contracts with the Supplier.

Eight Councils expressed an interest in the Framework Agreement for the supply and delivery of fresh fruit and vegetables, namely

1. Royal Borough of Greenwich
2. London Borough of Havering
3. London Borough of Newham

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4. London Borough of Tower Hamlets
5. London Borough of Enfield
6. London Borough of Waltham Forest
7. London Borough of Barking and Dagenham
8. Unitary Authority of Thurrock

The combined total value of the contract over the two-year term is expected to be £6.2m. The Contract Notice ensured that other London Boroughs could access the framework if they required, during its term.

The reason for letting a two-year contract is that a number of these PAL catering contracts fell due within the same year putting additional pressure on officers to re-let the contracts. By reducing the period of this and other upcoming frameworks, the re-letting schedule will then be manageable at two per year.

The Call-off contract from the Framework Agreement within Havering will be used mainly by Catering Services as part of the provision of school meals and will be available as and when required across the wider Council.

An open procurement process was undertaken in accordance with the Public Contracts Regulations 2015. Advertisements were placed in the Official Journal of the European Union (OJEU) and on Contracts Finder.

Expressions of interest were received from nine bidders. Five declined to tender and four submitted a tender response.

One supplier failed and three Suppliers passed the Selection Questionnaire evaluation. Failure was due to: unable to supply references, did not have two years' accounts and did not have the necessary two years average turnover of £500k.

Members of the Strategic Financial Business Team and Learning and Achievement Services evaluated the financial submissions. The evaluation of the tenderers was based on the most economically advantageous tender ('MEAT'), due diligence was undertaken by carrying out financial and economic standing assessments of the proposed winning tenderers. The intended outcome of this approach is that best value would be achieved.

Three Suppliers' tenders passed this assessment.

The recommendation is to appoint three Suppliers' to the PAL Framework Agreement for the Supply and Delivery of Fresh Fruit and Vegetables, namely

1. Fresh n Fruity (incumbent)
2. IDC Ltd.
3. Prescott Thomas Ltd.(incumbent)

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The prices submitted will be held until the end of December 2020. Thereafter, an e-auction will be held to set the prices for the next school term. There are three terms per year and therefore, it is expected that the e-auctions will be held in December, March and August of each year. The aim of the e-auction is submit pricing for products that are affected by seasonal variation. The bidders were advised of this approach in the tender documents and OJEU notice.

The advantages of purchasing in-season fruit and vegetables is that the produce can be at their freshest and, being abundant, they generally require less energy to produce and tend to cost less.

The pricing schedule will also act as a safety net to prevent pricing from increasing and allow the seasonal variations to reflect in lower prices and provide savings to the councils. The products in the pricing schedule are compared against the previous submitted schedule.

The London Borough of Havering, as the lead Borough, will carry out Contract Monitoring in relation to the Framework Agreement, reporting to the PAL Catering Group. For this Havering receive a 0.5% contract management contribution from the Supplier based on all participating bodies' annual spend and paid yearly by the relevant supplier.

OTHER OPTIONS CONSIDERED AND REJECTED

Other options considered:

Option 1 - Do nothing

The current Framework is due to expire on 31st July 2020; there is no further option to extend. Therefore doing nothing would result in the end of the supply and delivery of fresh fruit and vegetables for the provision of school meals and Catering Services, within the London Borough of Havering. Therefore, this option was rejected.

Option 2 - Call -Off an established Framework Agreement

This option has been considered, via either the Eastern Shires Purchasing Organisation (ESPO) or Yorkshire Purchasing Organisation (YPO) Framework Agreements. Whilst these routes will provide an alternative route to procure the goods, neither provide the variable options to purchase fresh fruit and vegetables as required by the catering group. In the main, the supply of fresh fruit and vegetables via these frameworks is pre-packed and or frozen, supplied in quantities that do not align themselves to the requirements of each catering service and, therefore rejected. This option also favours larger suppliers over smaller, local suppliers.

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PRE-DECISION CONSULTATION

Internally consultations has been carried out with Legal Services, OneSource Finance, Strategic Procurement and Catering Services.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: James Hughes

Designation: Contracts Supply Manager, Learning and Achievement Service.

A handwritten signature in black ink, appearing to read 'J Hughes', is written over a light blue circular stamp.

Signature:

Date: 7th July 2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. The decision is to award the Fresh Fruit and Vegetable PAL Framework set up by Havering Council to Fresh n Fruity, IDC Ltd and Prescott Thomas Ltd, the Framework is for a period of 2 years. The report states that the framework has an estimated value of £6 million. Legal has been advised this value includes the purchases of the Council and the other 7 contracting authorities named in the report.
2. In relation to the activities which are the subject of this report the Council has powers under s111 Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Council is also empowered to enter into contracts for the discharge of its powers as Local Government (Contracts) Act 1997. These powers can be coupled with the Council's general power of competence under s1 Localism Act 2011 to do anything that individuals generally as long as there are no statutory limitations.
3. This is a supply contract under the Public Contracts Regulations 2015 ('the Regulations'), the value of the contract will exceed the financial threshold of £189,330 and needs to comply with the Regulations including advertisement under the OJEU. Section 33 of the Regulations state that the term of a framework agreement shall not exceed 4 years, save in exceptional cases and that contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in the Regulations. The Framework can only be used by those contracting authorities clearly identified in this report for that purposes.
4. The Council's Contract Procedural Rules 20 ('CPR') also permit the Council to set up corporate frameworks for goods services and supplies for the Council and other public sector bodies.
5. Legal understands the Framework was set up with the assistance of OneSource Procurement in accordance with section 33 of the Regulations using the open procedure and the bidders were evaluated based on the most economically advantageous tender in accordance with the Regulations.
6. Regulation 50 sets out the requirements for an award notice. Not later than 30 days after the conclusion of a framework agreement, following the decision to award or conclude it, contracting authorities shall send for publication a contract award notice on the results of the procurement procedure. In the case of framework agreements, the Council shall not be bound to send an award notice of the results of the procurement procedure for each contract awarded under the Framework Agreement.
7. When making individual awards under the framework those contracting authorities using the framework must comply with the award processes set out in section 33 of the Regulations, whereby awards can be made by call off, mini

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competition or both. Where the Council uses the framework itself to make individual awards under the framework, its award must be approved in accordance with Council's Contract Procedure Rules and scheme of delegation.

8. The standstill period under Regulation 87 whereby the Council must not conclude the framework agreement before the end of the standstill period, applies when you set up a framework agreement. However, there is no mandatory standstill period for a call-off contract under a framework. The standstill period is normally 10 days from when the Council sends an email to the suppliers as to the outcome of the procurement process, during

FINANCIAL IMPLICATIONS AND RISKS

Experian Credit checks were undertaken on the three suppliers listed above to confirm financial viability and risk on 8th June 2020, and showed the risk scores shown in table 1.

Table 1: Experian Risk Scores

Company	Risk Score	Risk Rating
Fresh n Fruity	70	Below average
IDC Ltd	78	Below average
Prescott Thomas Ltd	80	Below average

Further ratio analysis of company accounts for the last 3 financial years (2017 to 2019), has confirmed that all 3 companies have good liquidity. There are some risks regarding their ability of liquid assets covering short term liabilities, however, all 3 have total net worth values which mean they have the ability to settle any liabilities using their assets.

There are therefore no immediate financial concerns regarding the appointment of the three suppliers to the framework.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

General equalities considerations are vetted through the use of the standard selection questionnaire.

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HEALTH AND WELLBEING IMPLICATIONS AND RISKS

The proposed procurement will support the provision of fresh meat and poultry for school meals. This in turn, supports the healthy development of children through the provision of healthy, tasty and nutritious food.

The products are ethically sourced and either meet or exceed the minimum food standards required by Government.

The Suppliers are required to ensure that their vehicles meet the Ultra-Low Emission Standard for London, which requires that vehicles meet the most recent vehicle emission standard, Euro VI, which contributes to lowering vehicle emissions and improving the air quality around the schools to which deliveries are made.

In addition,

BACKGROUND PAPERS

None

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Committee Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____