

## Notice of KEY Executive Decision

<b>Subject Heading:</b>	Approval to award a Procurement Across London (PAL) framework and call- off supplier contract for the provision of Fresh Fruit and Vegetables
<b>Decision Maker:</b>	Tara Geere, Director of Starting Well
<b>Cabinet Member:</b>	Councillor Oscar Ford
<b>SLT Lead:</b>	Barbara Nicholls, Strategic Director of People
<b>Report Author and contact details:</b>	Michelle Tarten, Brokerage Service and Partnerships Manager <a href="mailto:Michelle.tarten@havering.gov.uk">Michelle.tarten@havering.gov.uk</a>
<b>Policy context:</b>	Supports educational outcomes within the 'Communities' context of the Havering Vision.
<b>Financial summary:</b>	<p>The indicative value of the framework is c. £1,812,000 per annum (£7,248,000 total framework value over 3 plus 1-year term) across all PAL members. Havering's estimated annual contract value is £355,000 (£1,420,000 total contract value over 3 plus 1-year term).</p> <p>The estimated cost is based on current expenditure, however as this is a call off arrangement, there is no minimum financial commitment, and the actual cost will vary depending upon demand and can be controlled.</p> <p>The funding will come from HES Catering Service revenue budgets. As Catering is a Traded Service, there is no base budget provision, but expenditure is offset against income that is generated from Catering contracts with schools.</p>

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<b>Reason decision is Key</b>	Expenditure or saving (including anticipated income) of £500,000 or more
<b>Date notice given of intended decision:</b>	3rd July 2023
<b>Relevant OSC:</b>	People OSC
<b>Is it an urgent decision?</b>	No
<b>Is this decision exempt from being called-in?</b>	No

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

People - Things that matter for residents X

Place - A great place to live, work and enjoy

Resources - A well run Council that delivers for People and Place.

## Key Executive Decision

### Part A – Report seeking decision

#### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

Approval is requested for the award of;

- A) A pan London 3 (plus 1-year option to extend) year multi-supplier framework agreement for the supply of fresh fruit and vegetables.
- B) A three year call-off agreement for the provision of the supply of fresh fruit and vegetables at cost to the council of up to £355K per annum, £1,420,000 total contract value over 3 plus 1-year term.

#### AUTHORITY UNDER WHICH DECISION IS MADE

3.3 Powers of Members of the Senior Leadership Team

##### General Powers

(a) To take any steps necessary for proper management and administration of allocated portfolios

##### Contract powers

(b) To award all contracts with a total contract value of between £500,000 and £5,000,000

#### STATEMENT OF THE REASONS FOR THE DECISION

This is a re-tender of the current HES Catering Service Fresh Fruit and Vegetable Framework. The existing Framework expires on 1<sup>st</sup> December 2023. The Council's current call-off expires on 30<sup>th</sup> November 2023.

The below five Local Authority school meals services work collaboratively as the PAL group (Procurement Across London) aggregating their purchasing power in order to achieve best value and economies of scale from the market. Each participating member is responsible for their respective call-off agreements and will enter into separate call-off contracts.

- London Borough of Havering (HES Catering Service)
- London Borough of Barking & Dagenham,
- London Borough of Tower Hamlets,
- London Borough of Waltham Forest,
- Thurrock Unitary Authority.

##### Procurement Process

An open procurement process was undertaken in accordance with the Public Contracts Regulations 2015 and advertised on the Government's Find a Tender portal ref 2023/S 000-021136 on 21<sup>st</sup> July 2023.

Two bidders expressed an interest in the tender and two bids were received from;

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- 4degreesC T/A Fresh N Fruity (UK) Ltd (Registration Number 04444939)
- Prescott Thomas Ltd (Registration Number 00600075)

The weightings applied to this procurement were:

Commercial Assessment 70% of the overall assessment

Quality Assessment 30% of the overall assessment

Both suppliers met the tender eligibility requirements and provided the necessary certification & reassurances. All are credit-worthy and have adequate turnover and insurance cover. This was confirmed from the SQ and method statements received from the bidders.

Based on the evaluation of the scores, the service recommends that approval is given to appoint both bidders on to the framework given that the intention was to establish a multi-supplier framework.

It is also recommended that The Council awards a call-off contract to both companies. The reason for awarding a call off to both companies is that the prices submitted will be held for six months after the award of the contract. Thereafter, a mini-competition will be held bi-annually. The aim of this exercise is to take advantage of variable pricing for seasonal produce.

The contract will not include any commitment from HES Catering Service or the collaborative PAL group to volume or value of orders. PAL group members will be individually responsible for calling-off the framework via their own internal corporate governance arrangements.

## **OTHER OPTIONS CONSIDERED AND REJECTED**

### **Not to re-tender for this requirement but purchase ad-hoc from the market**

It was considered that the requirements are not re-tendered and HES Catering Service purchases FF&V on an ad-hoc basis from suppliers on the open market. This option will not be compliant with procurement laws, the Council's procurement rules and policies due to the cumulative value of spend over time. Furthermore, the option will add significant additional cost to HES Catering Service due to the uncertainties and significant spikes in pricing of food supplies being experienced across the market. This would undermine the financial viability of the service. In addition, this option will not allow for the prerequisite due diligence on assured food chains which is an essential part of the full competitive process to be carried out, resulting in reputational risk to the council. Therefore, this option was rejected.

### **Carrying out an open tender just for HES Catering**

This option was considered however was rejected as the PAL arrangement delivers greater efficiencies through combined purchasing power and drives major economies of scale. Furthermore, this option would result in a loss of income to HES Catering which results from managing the framework for the PAL group.

### **Call- off from an existing framework**

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The option to procure via existing national frameworks such as via Yorkshire Purchasing Organisation (YPO) was considered. Whilst this option can provide an alternative procurement route, the framework owners charge 1% management fee for any call-off made from their frameworks which will potentially add £9.5K cost to the Catering Service over the lifetime of the contract. Furthermore, this option would result in a loss of 0.75% management fee income to HES Catering which results from managing the framework for the PAL group. Therefore, this option was rejected.

### **PRE-DECISION CONSULTATION**

HES Catering Services engaged with PAL members to ascertain whether a new framework was required. It was unanimously decided by the group that the framework should be refreshed.

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

Name: Michelle Tarten

Designation: Brokerage Service and Partnerships Manager

Signature: *Michelle Tarten*

Date: 09.10.23

## **Part B - Assessment of implications and risks**

### **LEGAL IMPLICATIONS AND RISKS**

- Local authorities should have regards to Sections 512, 512ZA, 512ZB, 512A, 512B and 533 of the Education Act 1996, as amended, Section 114A of the School Standards and Framework Act 1998, The requirements for School Food Regulations 2014 as it is a requirement for all local authorities to ensure that food provision is adequate in schools and in compliance with certain nutritional standards.
- The Council has the general power of competence under section 1 of the Localism Act 2011 to do anything an individual may generally do.
- Additionally, the Council has the power to procure the contract under Section 111 of the Local Government Act 1972 which, permits the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions
- The total value of the contract (£1,420,000) is above the applicable threshold stipulated in Public Contracts Regulations 2015 ("PCR"). Therefore this contract is subject to the full rigours of the PCR. The Council has arranged procurement by creating a compliant framework by way of Regulation 33 PCR.
- Therefore, the contract can be awarded to companies 4degreesC T/A Fresh N Fruity (UK) Ltd and Prescott Thomas Ltd.
- The Council is permitted to charge for provisions made available to other Councils and schools under the Local Government (Goods and Services) Act 1970 without the need to consider setting up a company under sections 3 and 4 of the Localism Act 2011. The facilitation of the framework for a charge is therefore permitted.

### **FINANCIAL IMPLICATIONS AND RISKS**

The indicative value of the framework is c. £1,812,000 per annum (£7,248,000 total contract value) across all PAL members. Included in this is Havering's estimated annual spend of £355,000 (£1,420,000 over the lifetime of the framework duration of three plus one years). The estimated cost is based on current expenditure, however as this is a call off arrangement, there is no minimum financial commitment, and the actual cost will vary depending upon demand. This allows the expenditure to be controlled. The costs related to this procurement will be funded from HES Catering Services revenue budgets. As Catering is a Traded Service, there is no base budget provision, but expenditure is offset against income that is generated from Catering contracts with schools. Any trading surplus or deficit on the trading accounts is managed through the council's general fund.

Due to the current pressures faced by the Catering Industry in terms of supply chain issues, increasing costs, and labour shortages, it is recognised that the current framework contract terms of an annual price variation would be challenge. In addition to this, to achieve seasonality pricing, annual price variations were not realistic. There

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are now updated terms and conditions of which Legal were consulted and advised on. These new terms now set out the expectation that a price variation process will be expected by The Council every six months. Through effective contract management, price variation requests will continue to be analysed, and effects on budgets scrutinised with a view to minimising any potential cost impact on the service.

The contract will be managed by the catering service and funded from a 0.75% management fee received from the participating organisations within the PAL Framework. The contributions will vary according to the level of contract spend, but based on the indicative contract values shown above, this would generate income of around £11,000 per annum, with the risk of a significant variation assumed to be minimal.

The expectation is for the contract to deliver effective value for money, allowing the service to continue operating as a viable catering provision to its clients.

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

There are no recognised issues impacting Havering or placing any risk upon Human Resources in relation to this type of contract.

## **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, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

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.

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### **HEALTH AND WELLBEING IMPLICATIONS AND RISKS**

Havering Council is committed to improving the health and well-being of all residents including that of school pupils.

This proposed procurement process will support the provision of fresh fruit and vegetables for school meals. This is instrumental in getting children to eat more fruit and vegetables that are vital for good health. Introducing children to a wide variety of fruit and vegetables establishes healthy eating habits for life, reducing the risk of heart disease, stroke and some cancers. The products are ethically sourced and either meet or exceed the minimum food standards required by Government.

### **ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

The HES Catering Service recognises its role and responsibility in tackling the Social Value agenda and to contribute to the wider council's new vision of "The Havering you want to be a part of" and corporate plan.

To underpin this, the tender had a 10% sub-weighting attributed to Social Value within the overall 30% quality assessment section of the tender evaluation. This is to demonstrate to bidders that the Council wishes to award contracts to suppliers who align with its Social Value objectives, and who provide the necessary quality, provenance and sustainability certifications.

Through the tender process, bidders were asked to submit evidence of

- How they will create employment opportunities for local people/ and/or disadvantaged people as part of the contract.
- The approach to reducing the company's carbon emissions and how they are working towards net zero greenhouse gas emissions
- Management of other environmental impacts relating the service e.g. reduced water use, reduced packaging, use of low energy equipment etc.
- How they ensure materials and products relevant to the provision of the service are sustainably sourced, produced and deployed
- Their company's measures to identify, mitigate and manage modern slavery risks relating to the contract and supply chain.

Robust evidence was supplied by both bidders and both scored highly.

Once suppliers are awarded a place on the framework, this area will continue to be reviewed via the contract management process. The service will continue to ask for evidence both qualitative and quantitative of any initiatives undertaken. Ongoing work will take place with suppliers to encourage and support in this area.



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**BACKGROUND PAPERS**

None

**APPENDICES**

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 Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_