
Meeting	Cabinet Resources Committee
Date	25 February, 2014
Subject	Variation of contract value and extension of frozen food contract
Report of	Cabinet Member for Education, Children and Families
Summary of Report	This report seeks: <ul style="list-style-type: none">i. to vary the value of the current contract with Hopwells Limited for the provision of frozen food supplies; andii. to extend the contract with Hopwells Limited for the provision of frozen food supplies until the 29 July 2015

Officer Contributors	Teresa Goodall, Catering Services Manager, Children's Service Daniel Bailey, Contract Monitoring Assistant, Children's Service
Status (public or exempt)	Public
Wards Affected	All
Key Decision	Yes
Reason for urgency / exemption from call-in	Not applicable
Function of	Executive
Enclosures	None
Contact for Further Information:	Daniel Bailey, Contract Monitoring Assistant, Children's Service, Daniel.bailey@barnet.gov.uk

1. RECOMMENDATION

- 1.1 That the Cabinet Resources Committee:
 - 1.1.1 authorise the variation of the Frozen Foods contract with Hopwells Limited for an additional £1,000,000; and
 - 1.1.2 authorise the extension of the Frozen Foods contract with Hopwells Limited for a further year until 29 July 2015, for the value of £1,750,000, to allow for a new procurement exercise to be undertaken.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet Resources Committee, 24 May 2011 (Decision 5) – approved the Contract Procurement Plan for the 2011/2012 financial year, including frozen food supplies for catering services.
- 2.2 Delegated Powers Report (1366), 5 August 2011, Award of Frozen Foods Contract (Public and Exempt)
- 2.3 Cabinet Resources Committee, 4 November 2013, – approved the Contract Procurement Plan for the 2014/2015 financial year, including frozen food supplies for catering services.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATION

- 3.1 The Corporate Plan 2013-2016 states that under the Financial Strategy “We will continue to keep a tight rein on our finances and provide quarterly reports on how we are managing the business – and our new contracts – to ensure even better value for money for tax-payers.”
- 3.2 The use of framework contract for the supply of frozen food allows for maximum flexibility in the sourcing of cost effective frozen food supplies, and directly supports the objective in the Corporate Plan 2013-16 that 90% of savings are expected to be derived from efficient planning and delivery.

4. RISK MANAGEMENT ISSUES

- 4.1 The contract with Hopwells Ltd is a call-off contract which facilitates the provision of frozen food products as and when required. There is no risk of financial commitment incurred by the contract as there is no specific requirement for levels or frequency of use. In addition payment terms provide for payments in arrears for frozen food products received.

- 4.2 As the framework is let on behalf of the partner authorities of Eastern Shires Purchasing Organisation (ESPO) the continuity of supply is protected. The Business Continuity plan for the framework contract includes provision for access to alternative suppliers within the framework should there be a risk of interruption of service.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Pursuant to section 149 of the Equality Act, 2010, the council has a public sector equality duty to have due regard to: (i) eliminating unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (ii) advancing equality of opportunity between those with a protected characteristic and those without; (iii) promoting good relations between those with a protected characteristic and those without. The, relevant, 'protected characteristics' are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination
- 5.2 Having 'due regard' means: (i) consciously thinking about the three aims as part of the decision-making process; (ii) that an incomplete or erroneous appreciation of the duties will mean that due regard has not been given to them; and (iii) that the duty must be exercised in substance, with rigour and with an open mind.
- 5.3 The tendering documentation included provision for ensuring equality and diversity which incorporated the Council's current policies. These are set out under paragraph 6.24 of the Framework Agreement.
- 5.4 The contract with Hopwells Ltd includes provision for ensuring equality and diversity which incorporates the Council's current policies. These are set out under appendix 1, Section 3 of the contract.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 Finance

- 6.1.1 The funding for the contract variation and extension which are being sought in table 6.1.1 will be met from the trading account of Catering Services and contained within existing budgets in Children's Services.

Catering Table 6.1.1

Existing Contract Period and Value	Variation to existing contract	Length of extension	Value of extension	Total contract value
30/07/2011 – 29/07/2014 (3 years) £1,950,000	£1,000,000	30/07/2014 – 29/07/2015 (1 year)	£1,750,000	£4,700,000

6.2 Performance & Value for Money

6.2.1 Under the framework agreement, regular performance monitoring is undertaken on Hopwells Ltd by ESPO. The contract is monitored on the following criteria:

- Sales Management Information
- Benchmarking and Trend Analysis
- Delivery and Quality Performance
- Invoice, Delivery and Credit Note Accuracy
- Retrospective Rebate Payments
- Account Management
- Sustainability
- Continuous Improvement
- Supplier Accreditation and Development

6.2.2 Benchmarking carried out by ESPO ensures continuing value for money by comparing Hopwells Ltd's prices against the Catering Price Index at least three times a year. In addition ESPO carry out monthly price checks with other suppliers, local authorities and members of the Pro 5 consortia to ensure that value for money is being achieved.

6.3 **Sustainability**

6.3.1 The Public Services (Social Value) Act 2012 requires the Council to have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes. In Staff and Civic Catering, and School Catering, Catering Services directly support the council's priorities set out in the Corporate Plan, the Children and Young People's Plan and the Health and Wellbeing Strategy.

6.3.2 ESPO's tender qualification criteria incorporates rigorous standards with regard to the sustainable and ethical sourcing of supplies and assessment. Following a comprehensive tender evaluation, Hopwells Ltd was assessed as being the most sustainable of all the providers who tendered for the contract.

6.3.3 As part of the performance monitoring Hopwells Limited are required to produce an annual report to provide details of annual improvements regarding sustainability performance.

6.4 **Staffing, IT, Property**

6.4.1 There are no staffing, IT or property implications associated with the award of contract to Hopwells Ltd.

7. **LEGAL ISSUES**

7.1 Where the intended users of a framework agreement have been inadequately or ambiguously identified during the procurement of the framework agreement, then subsequent call-off contracts made under that framework agreement are likely to be regarded by the European Commission as illegal direct awards, and attract infraction proceedings if they come to the Commission's attention.

7.2 The London Borough of Barnet is specifically identified within the OJEU notice and in the Invitation to Tender as a party to the framework agreement

8. CONSTITUTIONAL POWERS

- 8.1 A variation and extension is sought for the Frozen Food contract with Hopwells Ltd.
- 8.2 Contract Procedure Rules direct that Contracts may only be extended or varied if all of the following conditions have been met (paragraph 14: Extensions and Variations):
- the initial contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;
 - contract does not exceed the original Authorisation threshold as defined in Appendix 1, Table A, Contract Procedure Rules;
 - the extension or variation has an approved budget allocation;
 - the extension or variation is in accordance with the terms and conditions of the existing contract;
 - if the initial contract was subject to EU tender procedure, that the extension option was declared within the OJEU notice and the original Acceptance (Delegated Powers Report/Cabinet Resources Committee Report) ; and
 - the contract has not been extended before.

All of these criteria are met in relation to the contract variation and extension with Hopwells Ltd.

- 8.3 The Council's Constitution (paragraph 4.5: Responsibility for Functions) permits Cabinet Committees to discharge the Executive functions that fall within their terms of reference, whether or not they are also delegated to officers, except for matter specifically reserved to Cabinet.
- 8.4 Council Constitution, contract Procedure Rules, Rule 17 Appendix 1 – Table A – authorisation and Acceptance thresholds provide that Cabinet Resources Committee can accept contract variations and extensions of values of over £500,000.

9. BACKGROUND INFORMATION

- 9.1 Following a tender exercise by ESPO, the Frozen Food Framework Contract was awarded to Hopwells Ltd in July 2011. The contract was awarded for a three year period with an option to extend for a further year.
- 9.1.1 At the time of awarding the contract, expenditure on frozen food supplies was anticipated to be £1,950,000 over the lifetime of the contract, 30 July 2011 – 29 July 2014. As set out in table 6.1.1, permission is requested to increase expenditure on this contract by a further £1,000,000. This is due to a significant increase in business combined with on-going food inflation of at least 3% the annual spend has been significantly higher than initially expected.
- 9.2 Hopwells Ltd has performed well on the existing contract achieving a 99.5% accuracy rate on deliveries of frozen food supplies. In addition to this, the benchmarking carried out by ESPO has shown continued value for money

being achieved. Due to the strong performance of the provider it is recommended that the Council employs the option to extend the contract with Hopwells Ltd for a further year until 29 July 2015. This will also provide sufficient time for a comprehensive tender exercise to be undertaken for the award of the new Frozen Food contract. Permission to tender the new Frozen Food contract during 1 April 2014 – 31 March 2015 has already been obtained through the Cabinet Resources Committee, 4 November 2013 Contract Procurement Forward Plan.

9.2.1 During the extension period expenditure on frozen food is expected to continue to rise:

- From September 2014 Government policy will require local authorities to provide all Reception and Infant pupils with a free school meal. This is likely to have a significant impact on meal take-up; although the final figures won't be available until later in the year.
- Food inflation will continue to increase the cost of frozen food during the foreseeable future.

9.2.2 Authorisation is therefore sought to extend the contract for the period 30 July 2014 – 29 July 2015 for a value of £1,750,000.

10. LIST OF BACKGROUND PAPERS

10.1 A copy of the invitation to tender documentation including Terms and Conditions and Specification is available for viewing in Catering Services.

10.2 Any person wishing to inspect the background papers listed above should telephone Teresa Goodall, 020 8359 5140.

Cleared by Finance (Officer's initials)	AD
Cleared by Legal (Officer's initials)	SD