



**Author/Lead Officer of Report: Leah Barratt,
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Report of: *John Macilwraith*

Report to: *Individual Cabinet Member*

Date of Decision: *13th January 2021*

Subject: *Approve both the extension of the current contract by 3 months and the re-tendering of the next School Drinking Milk Contract*

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
- Expenditure and/or savings over £500,000	<input checked="" type="checkbox"/>	
- Affects 2 or more Wards	<input checked="" type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? <i>People Services</i>		
Which Scrutiny and Policy Development Committee does this relate to? <i>(Insert name of Committee) Children's</i>		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If YES, what EIA reference number has it been given? <i>817</i>		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		
<i>"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."</i>		
Purpose of Report:		
1. To request approval to proceed with the re-tender of the contract with a commencement date of 1 st April 2021 for a proposed 2 years plus 2 extension periods of 12 months each.		
2. To request authorisation to extend the current contract for 3 months from 1 st January to 31 st March 2021, as the impact of the Covid-19 pandemic has caused a delay to the re-tender process.		

Recommendations:

1. To approve the request to re-commence the procurement of the next contract
2. To approve the request for a waiver of council standing orders to extend the current contract by 3 months
3. To agree that the new contract is re-let as an Individual Cabinet member decision.
4. To note the complexities of managing a cost neutral service while making the best decision for schools and pupils in relation to the council's zero carbon commitment.

Background Papers: None

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: <i>Liz Gough/Helen Damon</i>
		Legal: <i>David Cutting</i>
		Equalities: <i>Bashir Khan</i>
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	EMT member who approved submission:	<i>John Macilwraith</i>
3	Cabinet Member consulted:	<i>Councillor Abtisam Mohamed</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: <i>Leah Barratt</i>	Job Title: <i>Service Manager, School Food Service</i>
	Date: <i>15th December 2020</i>	

1. PROPOSAL

1 Retender Proposal

The current School Milk Contract provides daily drinking milk to 141 primary schools and it expires on 31st December 2020. It is proposed that the new contract commences on 1st April 2021, and not on 1st January 2021 as planned, in order that a full procurement exercise can be conducted.

The new School Milk contract will be based on a contract length of 2 years plus 2 extension periods of 12 months each from 1st April 2021 to 31st March 2023, with 2 periods of 12 months in length as possible extension periods. The contract could in theory end on 31st March 2025 if both periods of extension were used, but this would only be at the council's discretion, with decisions made nearer the time.

2 Waiver of Council Standing Orders

A request for Waiver of Council Standing Orders is also being sought at the same time to agree the 3 months extension to the current contract – from 1st January 2021 to 31st March 2021. Due to the disruption caused by the Covid-19 pandemic, all procurement activity was halted in March 2020 and it was judged not to be possible to achieve a satisfactory conclusion following a fair process in the time allowed.

3 Legal Requirement

There is no legal requirement on local authorities to provide a milk service to pupils. However, the provision of a daily portion of fresh drinking milk is a statutory duty for schools, as it forms part of the School Food Standards. It is also a legal requirement that any pupils entitled to Free School Meals must have their daily drink of milk free of charge.

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 Many Primaries prefer to meet the statutory duty of milk by having a service provided at mid-morning. In effect, Sheffield City Council brokers the contract on behalf of schools in order to provide children with a daily drink of milk, for hydration and for its nutritional qualities. It helps schools meet their statutory duty and ensures that the children are the recipients of the available EU farming subsidies.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 There has been no formal consultation with schools on whether to re-tender this contract as a daily drink of milk is a statutory duty and the majority of primary schools join this contract to receive exactly that . However, at the point at which they sign up to formally participate in the contract, two questions will be asked about their opinion on the environmental aspects of packaging and what their specific waste disposal arrangements and preferences are. This will help to inform the specification regarding the Social Value requirement regarding packaging and recycling. The questions will also try to find out whether there is an appetite from schools for the council to assist regarding a wider waste management approach. The latter aspect is outside the remit of the dairy supplier alone, but it will be useful whilst schools are signing up to participate in the contract to check the various independent arrangements that schools have in place.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 There are no Equality of Opportunity implications

4.2 Financial and Commercial Implications

- 4.2.1 It is a straightforward supply contract that gives a cash neutral position for the council. The costs of the service are met by parents, schools (from delegated budgets since 2013) and EU subsidies which support the farming industry.

As part of the service there is an element of EU subsidy allowed which contributes to the overall administration of the subsidy claims process. Based on our current contract price, the price the milk is sold and the volume of cartons, we can claim 2.7p per carton. This subsidy is used to offset the cost of administering the contract by the council – the value for 18/19 (as the last complete year) was £82,000.

Therefore, there is no inherent risk to the council in re-letting a new drinking milk contract. A breakdown of the income streams is below:

Nursery Milk Reimbursement Unit (NMRU) – 30%
Schools Budgets – 29% (free school milk)
Parents - 27%
Rural Payment Agency (RPA) – 14%

The value of the contract in the last complete financial year was £712k (18/19). The impact of Covid-19 has obviously affected the provision of milk but the service is operating normally at the moment, but with reduced take up.

The contract is for two years with 2 periods of 12 months extensions (2+1+1)

4.3 Legal Implications

- 4.3.1 The Local Authority has a statutory duty to provide free drinking milk on request to pupils educated in mainstream schools who are in receipt of free schools meals.

The provision of free school meals by maintained schools, academies and free schools to pupils of all ages that meet the criteria is a statutory provision within the Education Act 1996 (as amended) and the Children and Families Act 2014. Should the local authority provide a drinking milk service on behalf of schools, then milk must be given free to those children who are eligible for free school meals.

The school food standards under the Requirements for School Food (Regulations) 2014 state that a daily drink of milk must be available for pupils.

The current school milk contract will expire on 31st March 2021.

The Localism Act 2011 provides local authorities with a “general power of competence” which enables them to do anything that an individual can do as long as the proposed action is not specifically prohibited. A purpose of the Act is to enable local authorities to work in innovative ways to develop services that meet local need. The arrangement for the existing school milk service by the Council (acting on behalf of schools) has proven to be a good way to help schools maximise their economies of scale and access to the most economical and high quality drinking milk service.

Under the Public Contracts Regulations 2015 (“PCR”) catering services which would include a drinking milk supply service are deemed to be ‘light touch’ services as set out in regulations 74 to 77 of PCR and are not subject to full rigour of PCR. However, it is essential for the Council to fulfil transparency duties under the PCR in the procurement of the new School Milk Contract.

In the meantime, the Officers responsible for the procurement of school catering and drinking milk services shall also ensure that they comply with the Council’s Contracts Standing Orders.

4.4 Other Implications

- 4.4.1 There are no human resources, property or public health implications

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 The other option is to leave schools and settings to make their own individual arrangements rather than the council brokering the best value service on their behalf. This could have the effect of higher prices for parents if the service is not subsidised due to schools lack of time or inclination to claim for the EU subsidies.

There could also be a reduction in the volume of milk consumed by the youngest and most vulnerable children if schools decide to not provide a daily drinking milk service. To do this would prevent these children from receiving a healthy, nutritious drink during the day to supplement their diet.

6. REASONS FOR RECOMMENDATIONS

- 6.1 The daily service of dairy drinking milk is part of the school food standards (The Requirements for School Food Regulations 2014). Further reviews by the government-appointed School Food Review Panel in 2013 recommended that every child should be given the opportunity to have additional calcium and nutrients during the day, provided by milk. Daily provision of drinking milk was therefore made a statutory duty from January 2015 as part of the main body of the school food standards that have been introduced in stages from 2005.

By procuring a contract on behalf of schools, the statutory duty is met.

Other Ofsted-registered settings such as eligible day care facilities including children's residential homes can also take advantage of this contract for a service over 190 days per year. The definition of eligibility is set out in the Nursery Milk Scheme and the School Milk Subsidy Scheme. These Government schemes were created to ensure compliance with Regulation (EU) No 1308/2013 of the European Parliament and of the Council - Articles 22, 26 to 28, and 217. By procuring a service that can include these settings at the same time as schools, it offers better value for money for other day care providers.

When a drinking milk service is provided, it can be made available free of charge to children under 5 due to an EU subsidy from the Nursery Milk Reimbursement Unit. By virtue of s512ZB of the Education Act 1996, those children who are eligible for a free school meal because of their family income, any milk provided must also be free of charge. By providing such a service, the youngest and the most vulnerable children can receive additional nutrients and hydration during the day, which contributes to their overall health and well-being, growth and development.

