

	<p style="text-align: center;">Executive 10th April 2006</p> <p style="text-align: center;">Report from the Director of Children & Families</p>
For Action	Wards Affected: Preston Ward
<p>Authority to seek Expressions of Interest for the contract for the new-build of a 4 Form Entry School at Wembley Manor</p>	

Forward Plan Ref: C&F05/06-032

Appendix 1 of this report is not for publication

1.0 Summary

- 1.1 This report requests approval to invite Expressions of Interest and tenders for the proposed building of a 4 Form Entry primary school on the present site of Wembley Manor Junior and Infant Schools (“the Wembley Manor Schools”).
- 1.2 The estimated commencement date of the contract is no later than 31 January 2007. This report contains the relevant pre-tender considerations (paragraph 3.11 - 3.17) as required by Contract Standing Orders 89 and 90.

2.0 Recommendations

That the Executive:

- 2.1 Approve the pre-tender considerations and the outline evaluation criteria to be used to shortlist and evaluate the tenders for the Wembley Manor rebuilding contract as set out in paragraph 3.11 – 3.17 of this report.

- 2.2 Authorise officers to invite expressions of interest and tenders and evaluate them in accordance with the approved outline criteria referred to in paragraph 2.1 and authorise the Director of Children & Families, in consultation with the Borough Solicitor and the Director of Finance and Corporate Resources, to select the appropriate procurement procedure for the contract from the two options outlined in paragraph 3.3 and 3.4 of the report.
- 2.3 Note that in the event that a pre-construction agreement is to be entered into a further report will be brought to the Executive in respect of the award of that contract.

3.0 Detail

The Case for the New School

- 3.1 The School Organisation Committee met on 9th September 2005 and unanimously agreed to the amalgamation and expansion proposal in respect of Wembley Manor Junior and Infant Schools. Both current schools have major condition and suitability issues with their current buildings. The existing buildings do not meet the requirements of the Disability Discrimination Act 1995 and do not lend themselves easily for adaptation to meet the Act. Due to housing developments in the Wembley area, it is projected that there will be a need for extra pupil places in the local area equivalent to one form of entry in each year group. There is therefore a need to rebuild and expand Wembley Manor schools as one new school. The Executive on the 14th November 2005 approved the award of the Architectural Services contract for the new Wembley Manor School to Walters & Cohen. This report seeks members' approval to invite expressions of interest and tenders in respect of the construction contract.

Procurement Process

- 3.2 Two procurement options are being considered in respect of this contract. These are the traditional single stage restricted procedure (lump sum contract with or without Bill of Quantities) and a "Partnering" approach using a tender mechanism that operates in two stages. An indicative programming schedule undertaken by the Cost Consultants for the project indicated that it is unlikely that a traditional single stage competitively tendered lump sum procurement route would deliver the preferred completion date of no later than 30 April 2008 because it would not be possible to invite tenders until all the design work is completed. This route is likely to impact on cost due to late delivery. The time taken to achieve full design under this route would in all likelihood lead to the completed building not being delivered by 30 April 2008 and the consultants have advised that a two stage procurement or partnering solution to the project may be the only route capable of delivering to the preferred completion date for the new build of no later than 30 April 2008. In addition the advice of consultants is that under the partnering (two stage procurement) route the contract sum can be agreed and fixed at Stage 2 (when the award of the contract takes place) following the first stage when the design is developed and buildability tested.

Traditional Procurement : Single Stage Lump Sum Contract

3.3 The single stage restricted procedure (lump sum with or without Bills of Quantities), is the route normally adopted by the Council and is fully compliant with the Council's Standing Orders and (where the contract value exceeds the threshold as in this case) with the EU Public Contract Regulations 2006 (the "EU Regulations"). In this procedure the contract is competitively tendered against full design information with or without Bills of Quantities. The advantages and disadvantages of this approach are outlined below.

Advantages:

- 3.3.1 With the Single Stage restricted procedure (lump sum contract with or without Bill of Quantities), it is argued that there is cost certainty at the point the contractor is selected and programme certainty. It is a transparent competitive process which will normally lead to value for money.
- 3.3.2 It is a transparent competitive process which is capable of being converted into a Guaranteed Minimum Price (GMP).
- 3.3.3 This is a tried and tested procurement route which traditionally has had the most common use.

Disadvantages:

- 3.3.4 It is argued that the traditional process can become adversarial because it is often the contractor who has cut his initial tender costs the most who wins the project; experience indicates that in practice contractors often seek to recover the shortfall in profit by exploiting weaknesses in the design information to make claims for additional payment during the course of the contract. Full design is not usually achievable before award of the contract.
- 3.3.5 The traditional single stage tender is also criticized for not harnessing the full value and input of sub-contractors in terms of design value, engineering and buildability that will normally produce a better quality building. This is due to the fact that the design side of the supply chain is separated from the construction side until a full design has been completed, thereby preventing any supply side input into the design process.
- 3.3.6 It relies on full design information prior to tender; time to prepare. ie: slow start on site, with corresponding slippage at completion stage
- 3.3.7 It is reliant on quality and completeness of tender document.
- 3.3.8 The client is more likely to be penalised if major changes introduced during contract as it is presumed that the design is fixed at an early stage before the contractor is on board.

3.3.9 There is a possible risk that the project may not be attractive enough to the market in a single stage tender form owing to the price risk involved for contractors and the higher level of work involved in returning a tender. Contractors may be faced with easier two stage tender opportunities at the same time which involve less financial commitment during the tender stage and a more attractive risk and reward profile. There is evidence, available to the cost consultants, of this risk materializing in the Government's City Academies programme.

Two Stage Tendering (Project Partnering)

3.4 In this process, which is now increasingly used in the construction industry, following the advert or OJEU notice and shortlisting, tendering is conducted against RIBA Stage design information (normally after Stage D) on the basis of cost and quality indicators, as outlined in 3.10. There are different variations and permutations on this route which can increase the degree of partnering ethos that pervades the project. One option ("Option A") is for a lump sum to be tendered at stage 1 which is then adjusted during stage 2 in the light of design changes. An alternative ("Option B") is for the tender at stage one to be on the basis of staffing proposals, preliminaries, overheads and a proposed percentage rate for profit on sub-contracts. The successful contractor is then provided with progressively released design information and packages of works are let to sub-contractors. A preconstruction agreement will be entered into with the chosen contractor under which they will be paid for their contribution to stage two up to the appoint that the construction contract itself is award. The project is controlled against a target cost plan during this stage after which the contractor signs up to a lump sum contract. The overlap between design, tendering and construction under this route (as under Option B the design and detailing of the finishes can proceed whilst tendering the ground works, substructure, frames of buildings etc and start with those works early) should in theory allow for faster completion of the project than traditional methods. Under Option B therefore a final contract sum can not be agreed until the last package of works is agreed thereby rendering Option B more uncertain than Option A. Therefore, the Council will seek to be in a position in which the scheme is on programme so that Option A (the preferred of the two Options) is secured thereby fixing a Lump Sum price prior to start on Site. This report proposes that the Director of Children & Families, in consultation with the Borough Solicitor and the Director of Finance and Corporate Resources, be authorised to select which of the two options outlined should be adopted and that if Option B is selected a further report be brought to the Executive before the pre-construction contract is awarded.

3.5 With the Partnering approach there is the ability to secure an earlier involvement of the main building contractor and their sub-contractors to work with the design team (architects and their full design team) on buildability because the first stage tender is conducted prior to completion of the full design, thus reducing the documentation period required before tendering. The Partnering route therefore is one mechanism that could be used to facilitate an earlier start on site of construction operations since it does not rely on the completion of sequential design and procurement activities in order

to move through the different stages of the project life cycle. The Council's appointed consultants have advised the Council that there is evidence in the construction industry to prove that this style of collaborative partnership working between designers and contractors leads to better quality buildings, better programme certainty and promotes Best Practice delivery processes in line with the Egan Agenda, which revolves around re-thinking construction and modernising relationships between clients and the supply chain placing emphasis on partnerships, enhanced performance measurements underpinned by collective project and finance risk management.

3.6 The two stage partnering process allows the client access to the Contractors expertise earlier in the design Stages thereby fully utilising his ability to define costs, identify risks, plan the programme of works and propose opportunities to save time and money. All of these factors should lead to increased cost certainty when compared to the single stage lump sum traditional tender. Under the partnering route, the final cost becomes known when the final design has been progressed and tendered in packages by the Contractor with the design team. Under partnering the construction contract is not signed and agreed until the second stage pricing and design has been completed. The advantage of this feature to the Council is that it delays the point of commitment to the Contractor until an affordable design has been secured. The possibility of over inflated subcontractor prices is therefore positively discouraged as no contractual commitment to start on site will exist.

3.7 The design team are experienced in working in this way and have developed tools and techniques to maximise the benefits of this method and better manage the risks. Children and Families Department have in place an officers' Project Review Group. Subject to Executive's agreement to this method of procurement, the Council will put in place a process for monitoring the performance of the contract.

3.8 The two stage process is considered by officers to have the following advantages and disadvantages:

Advantages

- 3.8.1 Shorter tender documentation period resulting in an earlier start on site.
- 3.8.2 Allows the early involvement of a main contractor and sub-contractors to advise design team on construction issues.
- 3.8.3 Quality is controlled by Project Team (Client and Design Team) involvement in listing (Contractor Design Portion Supplement) CDPS sub-contractors.
- 3.8.4 There is flexibility for latest procurement of finishes to accommodate client requirements without penalty.
- 3.8.5 Under the Open Book method (Option B) once all work packages are tendered, and sub-contractors appointed, the main contractor takes responsibility for the sub-contractors

- 3.8.6 This option renders the contract capable of conversion to a Guaranteed Maximum Price.
- 3.8.7 It is possible to remove the main contractor in the event of non-performance prior to the completion of the second stage tender (prior to fixing the Lump Sum) process where the performance of the contractor is of concern and therefore limit the liability of the Council. It is possible to do so without penalty, other than the pre-construction fee.

Disadvantages:

3.8.8 Design co-ordination is harder to control as the design is progressively released in packages and tendered to sub-contractors one after the other. Hence, co-ordinating design information produced at different times requires better change management, and cost control and discipline. However this will not lead to the Council incurring additional costs as the design team have been appointed on a percentage fee capped on the basis of an assumed construction cost.

3.8.9 Final cost of provisional sums not known until later in contract. Subject to market inflation as procuring in the future. Greater risk to the client until packages are fully designed, co-ordinated tendered and sub-contractors appointed.

3.8.10 There is limited cost certainty at the end of the first stage with the open book option (Option B) of the two stage/partnering route.

3.9 The two stage route is overall more attractive to the market and the supply chain than the traditional single stage tender route. The two stage or partnering route leads to greater confidence, on the part of the supply chain, in achieving the delivery of the scheme on time and on costs. The Council will seek to adopt Option A within the two stage partnering route given that it provides greater cost certainty when compare to Option B of the two stage partnering route. Conversely, the traditional route (single stage) potentially poses a greater risk to delivering the project on time and on budget.

Procurement

3.10 Subject to all necessary approvals being obtained and, in line with the Council's Standing Orders and the Public Contracts Regulations 2006 ("the EU Regulations"), advertisements are to be placed in the Official Journal of the European Union (OJEU), the relevant trade press and a local paper as soon as possible to obtain initial expressions of interest. Those organisations that respond to the advert will be sent the Council's Pre-Qualification Questionnaire (PQQ) , which addresses issues such as Business Probity, Economic and Financial Standing, Technical Ability (which includes experience of delivering primary schools, quality of references, recent experience in other education projects) and Health & Safety considerations. Organisations meeting

the Council's required standards will be invited to tender for this contract. Members are referred to the paragraph on Quality (Paragraph 3.15) However a maximum of six organizations will be invited to tender and this will be specified in the OJEU notice.

3.11 The OJEU and other advertisements will also set out the Council's ambition for this new ground breaking Primary school as well as the Council's ambition for high quality public buildings providing strong resources for local communities.

3.12 The tendering instructions will advise tenderers that their tenders will be evaluated in accordance with the outline evaluation criteria set out in this report which will be weighted as indicated in the instructions to tenderers in accordance with the EU Regulations and shall state that the recommendation to award the contract will be made on the basis of the most economically advantageous offer to the Council. They will make clear whether a one or two stage process is to be used. The proposed outline evaluation criteria are based on the tender price and Quality criteria including design capability:

3.13 **Cost Proposal : Value or Percentage**

If the Executive does not approve use of the two stage process the tender price will consist of a lump sum figure. If the Executive does approve the two stage process the tender price will consist of either a lump sum figure (Option A) or a lump sum for preliminaries and a percentage profit to be charged on sub-contractor contracts (Option B – open book). In any event the tender price for the demolition of the old buildings and the construction of the new 4 Form Entry Primary School will constitute a 50% weighting in the evaluation. This report proposes that power be delegated to the Director of Children and Families in consultation with the Director of Finance and Corporate Resources and Deputy Borough Solicitor to decide whether Option A or B (within the Two Stage tender route) is likely to be the most beneficial to the Council in view of the considerations set out in paragraph 3.4.

3.14 **Quality**

Information relating to the Quality of the proposals will be weighted at 50% in the evaluation. The assessment of quality is to include , experience, expertise and track record of interpreting and developing primary school briefs and delivering high quality primary school buildings, and other education projects within budget and on time; proposals for quality and cost control and measures for sustainability; current capacity including the leadership of the project; the quality of references; previous experience of constructing on an occupied site; good communications with end-users on previous projects; evidence of good relationships with neighbouring properties on previous projects; evidence of contribution to buildability. The assessment will also include experience and track record of partnership contracts.

Criteria	Evidence sought
Experience	Evidence of experience in school

	(particularly primary schools) or similar works, through tender documents, references from clients, end users, site visits and interview if required, strengths and relevant experience of the proposed team in respect of site management and cost control and management; experience and track record of partnership contracts.
Expertise and track record	As above
Proposals for quality and cost control	Through tender documents, references and interview if required
Current capacity	Through tender documents and interview on previous projects
Construction on an occupied site	As for 'Experience'
Good communication with end-user	As above
Evidence of relationships with neighbours bordering site	As above
Contribution to buildability	As above

3.15 The tender evaluation panel will comprise Brent Officers (working in consultation with representatives of the Governing Body) with the advice of the appointed design team who will evaluate the tenders and make a recommendation to the Executive.

3.16 Subject to all necessary approvals being obtained, the Executive is requested to authorise Officers to place advertisements as described in paragraph 3.17, evaluate Expressions of Interest and tenders and make a subsequent recommendation to the Executive as to whom to award the building contract for the new 4 Form Entry primary school to.

3.17 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations are set out below for the approval of the Executive.

Ref.	Requirement	Response
1.	The nature of the service.	Building works contract for the proposed new 4 Form Entry primary school on the present site of Wembley Manor Junior and Wembley Manor Infants Schools.
2	Estimated value	This is in excess of the EU threshold of £3,611,319 (see Appendix)
3.	Contract term	January 2007 with a completion date of Spring 2008.
4.	The tender procedure to be adopted	A two stage restricted procedure with powers delegated to the Directors of Children & Families in consultation with,

		the Director of Finance & Corporate Resources and the Borough Solicitor to determine whether Option A or Option B (paragraph 3.4) would be the most appropriate procurement route.	
5.	The procurement timetable		Indicative timetable
		OJEU notice dispatched and other adverts placed	May 2006
		Expressions of interest (PQQs) returned	June 2006
		Shortlist drawn up in accordance with the Council's approved criteria	July 2006
		Invite to tender	July 2006
		Deadline for tender submissions	September 2006
		Panel evaluations and interviews	September 2006
		Contract recommendation decision	October 2006
		Report recommending Contract award circulated internally for comment	October 2006
		Executive approval	November 2006
		Debriefing to tenderers	November 2006
		Notice of award published	Must be within 48 days of the award
		Completion date	Spring 2008
6.	The evaluation criteria and process	The completed pre-qualification questionnaires, which shall be in the	

		Council's standard format (as outlined in the Council's Procurement and Contract Management Guidelines), will be used to evaluate and shortlist those contractors who meet the Council's standards in relation to financial standing and technical capacity. The panel will evaluate the tenders against the outline criteria set out in paragraph 3.13 and 3.14 above.
7.	Any business risks associated with entering the contract	No specific risks other than has been outlined in this report. Financial Services and Legal and Democratic Services have been consulted concerning this contract.
8.	The Council's Best Value duties	The competitive tendering process will assist the Council in achieving Best Value.
9.	Any staffing implications, including TUPE and pensions	See section paragraph 7.0 below
10.	The relevant financial, legal and other considerations	See paragraph 4.0 and 5.0 below

4.0 Financial Implications

- 4.1 The Council's Contract Standing Orders state that works contracts exceeding £500,000 (High Value Contracts) shall be referred to the Executive for approval to invite tenders.
- 4.2 The estimated value of this building contract is in excess of the EU threshold of £3,611,319 (see Appendix).
- 4.3 Council members agreed in February 2005 a gross capital budget of up to £10.0m for the design and build of the new 4FE Wembley Manor primary school.
- 4.4 The view of the Consultant is that by choosing a Two Stage or Partnering route Brent Council would receive more interest from contractors in the Wembley Manor project and the risk of not being able to find sufficient number of contractors able to tender would be greatly reduced. With the single stage route there is a risk of not being able to attract sufficient number of interested contractors to guarantee a competitive tender with consequential delays to the

programme. Any additional costs relating to this scheme will be contained within the capital allocations for Children & Families Department.

- 4.5 The costs of the pre-construction agreement which will be entered into if the open-book process is adopted (see paragraph 3.4) are estimated at £50,000 to £100,000 and are included in the estimated value figure in the Appendix. These costs are normally incorporated in the Preliminaries of a traditional Single Stage Lump Sum Contract. This additional cost of undertaking the open book process is ultimately paid for in any procurement route you may follow. With a Two Stage Procurement Route, this design fee is paid for upfront and not included in the contractors Preliminaries.

5.0 Legal Implications

- 5.1 The estimated value of this contract is above the Public Contracts Regulations 2006 threshold for Works (of £3,611,319) and is therefore subject to the full application of the EU Procurement Regulations.
- 5.2 The estimated value of this contract is above the Council's Standing Orders threshold for High Value Works Contracts (of £1,000,000).
- 5.3 Where the EU Regulations apply, it is only possible to undertake negotiations with tenderers where the specific grounds for undertaking a negotiated procedure under the regulations can be established. Where the restricted procedure is used as here it is not permissible to negotiate with the selected contractor prior to awarding a contract. However, it is permissible to seek undertake discussions in order to clarify or supplement the content of tenders or the requirements of the authority provided this does not involve discrimination against other tenderers. It is not always easy to draw a clear line between acceptable clarification and unacceptable negotiation. It is considered that provided the discussions undertaken in the proposed second stage of the procedure in this case are carefully handled, with the requirement to avoid discrimination kept in mind, what is envisaged is consistent with the EU Regulations. If the open book procedure is adopted the second stage will be covered by the pre construction agreement which will be awarded following a further report to the Executive. In forming this conclusion we have discussed the issues with the consultants advising the Council and other legal advisers and taken into account the prevalence of the use of this procedure in the industry under the EU restricted procedure without challenge.
- 5.4 The new EU Regulations which came into force on 31st January 2006 provide for a new procurement procedure known as the Competitive Dialogue Procedure. Where a contracting authority wishes to award a particularly complex contract and considers that the use of the open or restricted procedure would not enable the award of that contract, the contracting authority may use the new competitive dialogue procedure. The regulations define "particularly complex contract" as a contract where a contracting authority is not objectively able to define the technical means capable of satisfying its needs or objectives or specify either the legal or financial make-up of a project or both. Should the Executive approve the use of the two-

stage procedure described in this report for the procurement of this contract it is intended that the procurement be regarded as a pilot and be reviewed at its conclusion to evaluate the extent to which it has contributed to the quality and cost effectiveness of the construction project. It is envisaged that in any future project where the two stage procedure is considered to be potentially beneficial, consideration will be given to whether the competitive dialogue procedure would be available and where it is, it is likely that that procedure will be recommended rather than the restricted procedure.

- 5.5 Once the tender evaluation panel has evaluated the tenders, Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contract and recommending award. This will be on completion of the second stage of the procedure.

6.0 Diversity Implications

- 6.1 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications. However, the new proposals will provide a high quality inclusive building.
- 6.2 The corresponding Equality Impact Assessment has been carried out for the previous report on procurement of Architectural Services and there are no changes to that assessment. A copy of the report is available.
- 6.3 Given the diversity of the present schools, this new high quality inclusive environment created through the new school design will further contribute to the Council's efforts in raising standards and benefit those communities deemed to be at most disadvantage.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 For the immediate purpose of this report, there are no staffing implications for Council staff nor for staff at either of the Wembley Manor Schools arising from the invitation of expressions of interest, the invitation of tenders, nor for the evaluation process enabling subsequent recommendation for the award of this works contract.
- 7.2 Separate from the construction process, discussions are underway between the substantive head of the new school and staff with regard to the new staffing structure required in the new organisation.

Background Papers

- i) EAL Asset Management Service Wembley Manor Infant School and Wembley Manor Junior School files.

- ii) Executive Committee report of the 14th November 2005 seeking award of contract for the Architectural (Full Design team) Services for the new 4FE Wembley Manor School
- iii) Equality Impact Assessment report.
- iv) Cost consultants schedules.

Contact Officers

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