



Executive
13th March 2006

**Report from the Director of
Children and Families**

For Action

Wards Affected:
KENTON

**Tender of Contract for the Design And Build Contract of a
New Sports Hall and Associated Improvements at
Claremont High School**

Forward Plan Ref: C&F05/06-036

1.0 Summary

- 1.1 This report concerns the procurement process adopted by Claremont High School's Governing Body in respect of a design and build contract for a new sports hall at the school.
- 1.2 This report requests Members' approval to the process undertaken to date in respect of Claremont High School's new sports hall design and build contract, and seeks authority to continue with the tender process as outlined in this report.

2.0 Recommendations

- 2.1 That the Executive note the tendering procedure followed to date for the design and build contract for Claremont High School's new sports hall and agree the evaluation criteria stated in paragraph 3.29.
- 2.2 That the Executive agrees that for the reasons set out in this report there are good financial and operational reasons for the tendering process for Claremont High School Sports Hall to be exempt from the requirements of the Council's Contract Standing Orders as set out in paragraph 3.24.
- 2.3 That the Executive authorises the Governors of Claremont High School to continue with the tender process for the new Sports Hall outlined in this report.
- 2.4 That the Executive note that it will receive a further report recommending award of the contract in due course.

3.0 Detail

Background

- 3.1 The school identified a local need to meet the demands of the PE National Curriculum. The construction of a purpose built sports hall within the school grounds will meet this need and will enable and provide a wide range of sporting activities together with much needed changing accommodation. The building of the sports hall and associated improvements is part of a long-term phase of works to bring about a major re-design and refurbishment to the school to better accommodate and meet the National Curriculum standards and to raise levels of student achievement. This proposal was identified following the commissioning by the school of a Masterplan and School Development strategy plan for the site; this is in line with best practice advice from the Council's Children and Families service particularly in the context of the programme, Building Schools for the Future, and the Department for Education and Skills thinking for the successful and strategic thinking for school sites and also the Commission for Architecture and the Built Environment (CABE).
- 3.2 It is expected that the sports hall will also be accessible to the local community and that it will play a key role in taking the Council's agenda for Extended Schools further forward and supporting community development. Indeed, access to the new hall has been designed and zoned so that access to it by both the public and students can be managed well (protecting the security and safety of students) whilst retaining overall control of access to the main school buildings. The new hall will also have managed reception facilities.
- 3.3 Planning Approval for the sports hall was obtained on 17 October 2005 from Brent Council for the construction of the sports hall and also for the associated improvements to the site plan ("the Sports Hall Scheme").
- 3.4 A programme for the development of the Sports Hall Scheme noted that construction of the works needed to take place during summertime 2006 in order to limit any disruption to the school; a potential maximum construction period of 9 months, including the fit out of the building, was also noted.
- 3.5 The building site is very constrained and any construction access for the development of buildings on the site will impact and affect the school's social areas for students as well as external areas of the informal curriculum. The sense of constraint is exacerbated by the proximity of the main teaching accommodation to the proposed sports hall, which also serves as dining facilities for the students.

- 3.6 The construction works form part of a design and build contract. The timescale for works would enable the sports hall to be completed by late April/May 2007, with the commissioning of the building and facilities taking place in June 2007. The scheduled completion date will mean that the new sports hall will provide additional flexibility to the school in respect of available accommodation and for the summer period of 2007 for the community, as well as full flexibility to the school for sports activity, large spaces and teaching spaces. It will also result in the hall being available for examination timetabling for that summer.
- 3.7 A copy of the critical path for the sports hall scheme is provided at Appendix A. This programme was prepared in December 2005 following instruction from the school to proceed with the development of the sports facilities as soon as possible. The school has now progressed part way through the First Stage Tender task and are currently at the stage of the receipt and evaluation of tenders submitted by the shortlisted contractors. However the submitted tenders will not be opened and evaluated unless and until the Executive's approval of the procurement process is obtained. It is important to note that the scheduled dates for the tasks listed in the sports hall scheme development programme are beginning to slip which is likely to adversely impact upon the intended commencement date for the construction works.

The Tender Process

- 3.8 The new construction contract for the Sports Hall will be let using the JCT Design and Build Contract 1998, which will include special conditions of contract, and has an estimated completion date for the Project of April/May 2007.
- 3.9 The procurement procedure that must be followed by schools is documented in Financial Regulation 4 of the Financial Information for Schools under Devolved Funding booklet (current version January 2005). This booklet is dispatched annually to schools. The booklet states that all procurement on behalf of the Council must comply with the Council's Contract Standing Orders, the Council's Financial Regulations and the EU public procurement regulations (where applicable). Information is also issued to schools in the publication by Children and Families titled "School Property Manual – A Guidance".
- 3.10 Unfortunately Executive approval was not sought before the Tender process began and the contract was not advertised as required by Council's Contract Standing Orders.
- 3.11 It is worth noting that prior to 1997 Claremont High School was a Grant Maintained School and therefore followed the procurement procedures set by the Funding Agency for Schools ("the FAS") and was subject to

the supervision and regulation of the FAS. The FAS was disestablished in 1997 at which point in time the school became a Foundation school. In the context of the devolution and delegation of the scheme to the school, the school erroneously thought that as a Foundation school it could continue to follow the FAS procedures rather than the Council's Contract Standing Orders.

- 3.12 As a result, the school commenced the procurement of the construction contract by instructing Cube Design Ltd ("Cube Design"), the school's appointed consultant architects, to issue a letter on 5 December 2005 inviting expressions of interest. The invitation was sent to a list of 10 potential tenderers drawn up by Cube Design from a list of contractors that had applied for a separate Council design and build tender further to the advertisement for that tender.
- 3.13 The school's letter inviting expressions of interest outlined key criteria for the contract and requested interested contractors to submit a form of pre-qualification questionnaire ("PQQ") information – e.g. technical ability, financial status and health and safety; the Council's standard PQQ was not used. The main issue to be addressed by the PQQ information was the competence of the contractor to deliver an educational project on a constrained site.
- 3.14 Shortlisting was carried out in two stages. The first stage involved Cube Design checking the references and financial suitability of the contractors and evaluating the information provided using an evaluation matrix it had previously used for Brent Council which assessed financial standing, experience in similar projects, health & safety and quality assurance. The number of interested contractors was shortlisted to seven after this initial PQQ evaluation.
- 3.15 The second stage of PQQ evaluation entailed interviewing the shortlisted contractors on 13 January 2006 (this was at the request of the school governors) in order to meet the contractors, to discuss their understanding of site conditions and constraints and to ensure they have a better understanding of the issues associated to the occupied site. After the interviews were conducted, the relevant stakeholders scored and evaluated the contractors resulting in the number of potential tenderers being reduced to six.
- 3.16 Following the PQQ evaluation, Cube Design was instructed by the school governors to invite the submission of first stage tenders from the shortlisted contractors on 19 January 2006. This was the first stage tender process of the procurement strategy agreed with the Governing Body, namely a 2 stage design and build procurement.
- 3.17 The tendering procedure adopted is a "two stage selective tendering process", which the school's consultants advise is an industry standard

approach. This procedure is also used in large schemes such as City Academies. This means that after the list of potential contractors is shortlisted from an evaluation of the submitted PQQ information, tenders are invited in two stages. For the first stage, all six shortlisted contractors are invited to submit prices for preliminaries (i.e. overhead and profit); for the second stage, following an evaluation of the submitted preliminaries prices, a preferred tenderer is selected and invited to submit a tender of sub-contractor prices, their work and the main contractor's mark-up and to work alongside the design team to achieve best value in terms of buildability and also the deliverability of the project. The preferred tenderer is paid to participate in the second stage however a contract is not awarded to the preferred tenderer until the conclusion of the second stage of the process (when the contract price is finalised and confirmed), subject to the school obtaining the Executive's approval to award.

- 3.18 The "two stage selective tendering process" was adopted in order to assist the overall programme for the delivery of the building, to address the constrained site issues and to obtain the benefit of the contractor working in a partnership arrangement with the school to develop the building proposals, to complete the building on time and to achieve best value.
- 3.19 Tenderers were required to submit information providing details of their proposed arrangements for performing the services including (but not limited to) the following: a fixed percentage for overheads and profit; a fixed lump sum for preliminaries; a price for the provision of the second stage tender services; pricing for the Dayworks; second stage tender procurement and construction programmes; construction method statements; proposals for siting offices, welfare facilities etc; proposals relating to the security of the site for the duration of the contract; and proposals regarding the control of quality.
- 3.20 Health and Safety information, with regards to working practice on site, was also requested as well as procedures for the health and safety plan for verifying the Construction (Design and Management) Regulations 1994, within the PQQ process.
- 3.21 In respect of the second stage tender, the school's consultants advised that the contract would be awarded on the basis of the most economically advantageous offer to the school in accordance with the evaluation criteria outlined in the table at paragraph 3.29 below.

Council's Contract Standing Orders and Financial Regulations

- 3.22 The process followed by Claremont High School to date is not in full compliance with the Council's Standing Orders for the following reasons:

- (i) Executive approval of the procurement process was not sought and obtained before the tender process was initiated;
 - (ii) The tendering exercise was not advertised in accordance with the Council's Contract Standing Orders;
 - (iii) Fully priced and comprehensive tenders were not requested; and
 - (iv) The tender documents issued to the shortlisted contractors did not include evaluation criteria.
- 3.23 The school's non-compliance with the Council's Standing Orders was an unintentional error on the part of the school. The school incorrectly believed that as it is a foundation school, the procurement rules stated in the School Financial Regulations outlined in the Financial Information for Schools under Devolved Funding booklet did not apply to any procurement that the school undertakes.
- 3.24 If the school continues with the two stage selective tendering procedure which has already commenced, the remainder of the process will deviate from the Council's Standing Orders because it will introduce two phases of tendering and will involve the appointment of a preferred contractor, which is not anticipated by the tendering procedure set out in the Standing Orders for non-EU procurement.
- 3.25 Legal and Democratic Services has advised the school that the Executive has the power to agree that aspects of the Council's Contract Standing Orders in respect of tendering need not be complied with provided that there are good operational and/or financial reasons.
- 3.26 The school and Officers consider that there are good financial and operational reasons for the procurement to continue and to deviate from the usual requirements of the Standing Orders, being that:
- (i) Timescales for the delivery of the best value project for the school are critical bearing in mind the constrained site, that is, the lack of play areas; the lack of social areas; the lack of space for students and the school's need to transfer students whilst the construction is underway;
 - (ii) Restarting the procurement process would affect the programme for the delivery of the project and delay the start date for the construction works to October 2006 at the earliest instead of summertime 2006;
 - (iii) The effect on the school's students including school standards, quality of play and delivery of the school's services; the disruption caused by the works to students may otherwise continue for a further term and curriculum year;
 - (iv) As the construction works require major construction plant to be brought onto the school site for piling etc, due to the constrained

nature of the site and the limited access for the plant and equipment the ability to complete the majority of the construction works in the summer holidays would be of immense benefit to the school;

- (v) Given that contractors with experience of working in constrained sites and educational experience is also critical for the project, the evaluation and selection of the shortlisted contractors has not been taken lightly by the Governing Body in order to establish and ensure that the contractors are aware of the school's concerns;
- (vi) The time and expense incurred by potential contractors to date in taking part in the procurement process could lead to cost increases in the tender returns as tenderers may seek to adjust their prices to cover the additional costs incurred by them; in addition, delays may also lead to rising building cost indices; ;
- (vii) The commitment of funding from the current financial year to the project has been secured;
- (viii) Potential contractors' availability to participate in the tender process may not be present at a later stage – particularly bearing in mind the need for most school works to be undertaken over the summer holiday period; and
- (ix) The two stage selective tendering process will enable the school to select a preferred tenderer and to progress the design and construction works in a true partnership format.

3.27 The school and Officers believe that even though the contract was not advertised and will deviate from the Standing Orders, Best Value will still be achieved because:

- (i) 10 contractors were invited to express an interest and to submit PQQ information so the contract was still open to competition, even though the contract was not advertised;
- (ii) The evaluation process has been thorough – it included the selection of contractors who have extensive experience in educational sectors and also on constrained sites; the evidence and information provided by the shortlisted contractors clearly demonstrates quality in the final product;
- (iii) The references provided by the contractors clearly show that the contractors will provide high quality product for the school under tight timescales and on major educational sites;
- (iv) The selection process included the evaluation of the contractors' PQQ information in detail – including their financial, health and safety which resulted in the production of a best value list of contractors in a short timescale;
- (v) The two stage selective tendering procedure enables the contractor to become part of the design team, to familiarise itself with the set up of the school, management issues and the

proposed content of the sports hall scheme and to reduce the risk of financial overspend;

- (vi) The tendering procedure provides for best value in terms of total partnership between the contractor, the school and the Council under tight timescales and tight constraints on the site; and
- (vii) The tendering process can ensure that the majority of the disruptive works are completed during the summer holidays thereby reducing the impact in terms of health and safety to the students and also in terms of the education services provided by the school; the major piling and the frame works can be completed quickly without cost for the mobilisation of plant etc having to be managed around the school day.

3.28 The Director of Children & Families recognises that the Claremont High School procurement procedure highlights the need to ensure that all schools are aware of the procurement rules and is therefore taking measures to reinforce this with schools. Officers will also consider conducting a review of the Devolved Funding booklet with a view to better recognising the position of schools where they lead on schemes locally generated and where schemes may be devolved and delegated to schools' Governing Bodies.

The Council's Contract Standing Orders

3.29 The Executive is asked to approve the tender considerations and evaluation criteria set out in the table below.

Ref.	Requirement	Response	
1.	The nature of the service	The construction of a new sports hall and the undertaking of associated improvement works.	
2.	Estimated value	The value of the contract is estimated to be £2million.	
3.	Contract term	The contract will be for a period of 9 months with an intended commencement date of 1 August 2006.	
4.	The tender procedure to be adopted	A two stage selective tendering procedure, as described in paragraph 3.17 of this report.	
5.	The procurement timetable	Indicative dates are:	
		Invitation of expressions of	5 th December 2005

Ref.	Requirement	Response	
		interest	
		Expressions of interest and PQQ information returned	23 rd December 2005
		Shortlist drawn up in accordance with evaluation criteria	3 rd January 2006
		Invite to tender (stage 1)	19 th January 2006
		Deadline for stage 1 tender submissions (Opening of Tenders 14 th March 2006)	3 rd February 2006
		Panel evaluation and interviews	20 th March 2006
		Selection of preferred tenderer for stage 2	10 th April 2006
		Commencement of stage 2 process	17 th April 2006
		Conclusion of stage 2 process	Mid May 2006
		Report recommending contract award circulated internally for comment	End of May 2006
		Executive approval	June 2006
		Contract start date	10 August 2006
		Completion date	April/May 2007

Ref.	Requirement	Response
6.	The evaluation criteria and process	<p>A two stage selective tender process involving the following stages: submission of pre-qualification questionnaire information; short-listing of those to be invited to tender; Invitations to Tender sent out; submission of first stage tenders; evaluation of first stage tenders; selection of preferred tenderer; negotiation with preferred tenderer regarding sub-contractor packages; invitation to submit second stage tender; submission of second stage tender; evaluation of second stage tender and recommendation to award.</p> <p>The PQQ information was used to evaluate and shortlist those contractors who met the School's standards in relation to financial standing and technical capacity.</p> <p>The submitted first stage tenders will be evaluated against the following criteria, as set out in the letter and documentation issued to contractors in January 2006:</p> <ol style="list-style-type: none"> 1. Quality – the experience and expertise of the contractors including the CVs of the personnel proposed and references; 2. Proven ability to meet the works and service requirements; 3. Appropriateness and effectiveness of proposed procedures and working methods; 4. Price and its component parts; 5. Ability to meet the school's standards in relation to management of the working relationship with the school and its consultants and the quality of the works and services; 6. An evaluation of economic and financial standing; and 7. An evaluation of health and safety capability and procedures.

Ref.	Requirement	Response
		<p>Once evaluated a preferred tenderer will be selected on the basis of most economically advantageous offer and invited to enter into negotiations regarding the contractor and sub-contractor packages and the final contract price. The preferred tenderer will be invited to submit a second stage tender which will be evaluated with regard to:</p> <ul style="list-style-type: none"> ▪ Price and its component parts; and ▪ The appropriateness and effectiveness of the proposed works programme including the interface between all the trade packages. <p>The contract will be awarded on the basis of the most economically advantageous offer.</p>
7.	Any business risks associated with entering the contract	No specific risks are considered to be associated with entering into the proposed contract other than those outlined in this report – Financial Services and Legal and Democratic Services have been consulted concerning this contract and have identified the risks associated with entering into this contract as set out in section 5 of this report.
8.	The Council's Best Value duties	The competitive tendering process will assist the Council in achieving Best Value Qualities – see paragraph 3.27.
9.	Any staffing implications, including TUPE and pensions	See section 7.0 below.
10.	The relevant financial, legal and other considerations	See sections 4.0, 5.0 and 6.0 below.

4.0 Financial Implications

- 4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders.
- 4.2 The estimated value of this building contract is £2 million.
- 4.3 The Council has agreed to support the school's sports hall project under the School Loan Scheme and to provide financial support.
- 4.4 The cost of this contract will be funded as follows:
- £300,000 from the Council, as a direct Capital contribution to the project as approved by Executive on 11 July 2006;
 - £1 million borrowed from the Council (annual loan repayable over 25 years, proposed commencement date 1 April 2006) under the Council's Schools Loan Scheme utilising the Council's new Prudential regime;
 - £456,000 of devolved formula capital (DFC) allocated from the Council to the School on the basis of pupil numbers on roll. The school's DFC stands at £649,000 including a balance of £334,000 for the current year and allocations for 2006/07 and 2007/08;
 - £240,000 of the school's retained reserves; and
 - £4,000 of the school's private funds.

5.0 Legal Implications

- 5.1 The estimated value of this contract over its lifetime is below the EU threshold for Works and therefore the award of the contract is not governed by the EU Regulations for Works Contracts. However by virtue of the Financial Information for Schools under Devolved Funding booklet the award is subject to the Council's own Standing Orders, in respect of High Value Contracts, and the Council's Financial Regulations and transparency principles.
- 5.2 In accordance with the Devolved Funding booklet, "All procurement on behalf of the Council" must comply with the Council's Contract Standing Orders, the Council's Financial Regulations as well as the EU public procurement regulations (if applicable). The School Financial Regulations outlined in that Devolved Funding booklet apply to all primary, secondary and special schools maintained by the Council and in receipt of delegated budgets (per School Financial Regulation 1.1).

"On behalf of the Council" means where schools spend money provided by the Council. As noted in paragraph 4.4 above, the school will be using money that the Council has provided to fund the construction project. Therefore although the school is a foundation

school, it is subject to and should have complied with the rules outlined in the Devolved Funding booklet.

5.3 The procurement process inadvertently deviated from Council Standing Orders and the Financial Regulations in a number of respects, namely:

(i) In accordance with the Council's Standing Orders, Executive approval of the procurement process was not sought before the process began, including approval of the invitation of expressions of interest for High Value Contracts and the criteria for shortlisting and evaluation;

(ii) The tendering exercise did not begin by inviting expressions of interest by advertisement in at least one local newspaper and at least one relevant trade journal in accordance with the Council's Contract Standing Orders;

(iii) A "two stage selective tendering" process (which actually involves three stages – the evaluation of a PQQ submission; the contractor's tender submission and the sub-contractor tender submission) is not provided for in the Contract Standing Orders; and

(iv) The tender documentation issued to the shortlisted contractors did not include evaluation criteria.

5.4 Standing Order 84(a) provides that the Executive may decide that a contract need not be procured in accordance with the Council's Standing Orders if there are good financial and/or operational reasons for this.

5.5 In respect of paragraph 5.3(ii) above, although the school failed to comply with the advertising requirements outlined in the Contract Standing Orders, the tendering process followed can still be regarded as competitive given that interest was sought from 10 contractors who would potentially meet the required criteria to undertake the Project. However there is a risk that aggrieved contractors could challenge the failure to advertise the contract and give them the opportunity to express an interest in the contract.

5.6 For paragraph 5.3(iii), as noted previously in this report, while the Contract Standing Orders do not specifically provide for a "two stage selective tendering procedure" (which in fact entails three stages) the school's consultants have advised that this is an industry standard approach.

5.7 In respect of paragraph 5.3(iv) above, although the tender documentation issued to tenderers did not state the evaluation criteria

that would be used by the school and its consultants, it is reasonable to assume that contractors would understand that tenders will be evaluated on the basis of the listed information in the Instructions to Tenderers. The tenders will be evaluated on the criteria stated in paragraph 3.29 which links to the information that tenderers were requested to submit.

- 5.8 Once the tendering process has been undertaken, Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contracts and recommending award of the contract.

6.0 Diversity Implications

- 6.1 There are direct diversity implications arising as a result of this report. However, the new facilities will contribute to raising standards of education across a wide curriculum and will add value to local facilities in the area, therefore benefiting a wide sector of the community.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 There are no direct staffing implications arising as a result of this report.

Background Papers

AMS files, incorporating correspondence with relevant parties; held in the Asset Management Team section.

Contact Officers

Christine Moore
Capital Project Manager, Asset Management Service, Children & Families
Chesterfield House, 9 Park Lane, Wembley Middlesex HA89 7RW
Tel: 020 8 937 3118
Fax: 020 8 937 3093
Email: Christine.moore@brent.gov.uk

Nitin Parshotam
Head of Asset Management, Children & Families
Chesterfield House, 9 Park Lane, Wembley Middlesex HA89 7RW
Tel: 020 8 937 3080
Fax: 020 8 937 3093
Email: Nitin.parshotam@brent.gov.uk

Director of Children & Families
John Christie

APPENDIX A

NEW SPORTS HALL SCHEME DEVELOPMENT PROGRAMME

