

	<p style="text-align: center;"><b>Executive</b> <b>13<sup>th</sup> November 2006</b></p> <p style="text-align: center;"><b>Report from the Director of Children and Families</b></p>
<p>For Action <span style="float: right;">Wards Affected: Preston</span></p>	
<p style="text-align: center;"><b>Authority to award the contract for a new-build of a 4 form entry school at Wembley Primary</b></p>	

Forward Plan Ref: C&F 06/07 015

## **Appendix 2 is Not for Publication**

This part of the report is not for publication as it contains the following categories of exempt information as specified in the Local Government Act 1972, namely:  
Information relating to the financial or business affairs of any particular person (including the authority holding the information).

### **1.0 Summary**

- 1.1 This report requests authority to award the contract for the new build of a 4 Form Entry school at Wembley Manor as required by Contract Standing Order 88. This report summarises the process undertaken in tendering this contract and, following the completion of the evaluation of the tenders, recommends to whom the contract should be awarded.

### **2.0 Recommendations**

- 2.1 That the Executive approve the award of the contract for the rebuilding of Wembley Primary School to Norwest Holst Limited and the appointment of

William Verry Limited as reserve contractor subject to grant of planning permission.

- 2.2 That the Executive delegate to the Director of Children and Families in consultation with the Director of Finance and Corporate Resources authority to proceed with a construction agreement at the conclusion of stage 1 of the contract provided that the price for the construction element is within budget or up to 5% over the budget figure for the construction element.

### **3.0 Detail**

- 3.1 As reported to the Executive Committee on the 10th April 2006, 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.
- 3.2 A Two Stage Tender route was agreed by the Executive Committee for the procurement of the contract at the meeting of the 10th April. 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. As outlined in the Executive Committee report of the 10th April, the Council will adopt Option A within the two stage partnering route given that it provides greater cost certainty when compared to Option B of the two stage partnering route. 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.
- 3.3 The Borough Solicitor has verified that ownership of the site upon which the new Wembley Primary School is to be built is vested in the Mayor and Burgesses of the London Borough of Brent.
- 3.4 Since the submission of the planning application, the Planning Service has raised the issue of moving the new Wembley Manor School building by 1.5 metres east away from the Castleton Avenue boundary and 2 metres to the south of the boundary with East Lane. Officers and the architects for the scheme are exploring ways of accommodating this within the design and the matter will be considered by the Planning Committee. Further details regarding the possible financial implications for the scheme of moving the School building are set out in paragraph 4.4. In view of time pressures on the project, authority to award the contract is sought at this time but subject to grant of planning permission.

## **The Tender Process**

- 3.5 The contract will be let in two stages using a bespoke initial appointment for pre-construction services for the first stage, followed by a construction contract based on one of the Joint Contracts Tribunal family of contracts (JCT 98 Without Quantities With Contractor's Design Portion and Section Completion) and will incorporate Brent's standard amendments. Entering into the initial agreement does not oblige the Council to enter into the construction agreement; this will be entirely at the Council's discretion. It is proposed that the Director of Children and Families in consultation with the Director of Finance and Corporate Resources will proceed with a construction agreement at the conclusion of stage 1 of the contract provided that the price for the construction element is within budget or up to 5% over the budget figure for the construction element.
- 3.6 On 18th May 2006 the OJEU notice was despatched and adverts were placed in the Building Bulletin and the Wembley Observer to seek initial expressions of interest. The Council's pre-qualification questionnaire was sent to 20 organisations who had responded to the advert. By the due date of 26th June 2006, 13 organisations submitted pre-qualification questionnaires and following short-listing by Council officers and the project's Cost Consultants, E C Harris on the basis of the contractor's financial viability, experience of delivering similar schemes in occupied buildings, technical ability and Health & Safety, 6 organisations were invited to tender. Officers considered that all 6 organisations had demonstrated an ability to undertake the contract.
- 3.7 The six organisations selected for tendering were requested to provide compliant tenders by the 22nd September 2006. In addition to the Form of Tender, tenderers were required to submit price analysis and a works programme. In addition, tenderers proposed their consultancy fee for carrying out the pre-construction services. The 6 tenderers were invited to a mid-tender briefing on the 31st August which allowed for clarification of the procurement route, of the tender documentation and contract documentation.
- 3.8 At the request of the tenderers an extension was agreed for the return of the tenders until the 6th October, a further two weeks to the initial date. The reason for this was that tenderers could have better give cost certainty, especially from sub contractors given a further period for responses.
- 3.9 The tendering instructions stated that the contract would be awarded on the basis of the most economically advantageous offer to the Council and that in evaluating tenders, the Council would have regard to the following:

### **Cost**

- 3.9.1 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.

## Quality

3.9.2 Information relating to the Quality of the proposals was weighted at 50% in the evaluation (including a separate 5% weighting for criteria relating to terms and conditions of contract). The assessment of quality includes: 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 also includes experience and track record of partnership contracts.

## ***Evaluation Process***

- 3.10 Tenders were opened by Legal and Democratic Services at the Town Hall on the 6th October 2006 and four tenders were received. Two organisations invited to tender did not submit a tender. The tenderers were requested to submit 6 copies of their tender return which was distributed to each member of the evaluation panel.
- 3.11 The initial evaluation of the tenders was carried out on 9th October 2006 by a panel of officers from the Children & Families Department in liaison with Walters & Cohen, the Architects and E C Harris, the Cost Consultants and the rest of the design team. Walters & Cohen are the contract administrators for this project with E C Harris being part of their design team.
- 3.12 During the evaluation of tenders, a cost analysis was provided for each tenderer and compared with E C Harris's cost analysis. E C Harris's cost analysis estimated the cost of the works at circa £8.6 million. All of the tenders received were within the budget estimate, ranging from £6,699,858 to £8,515,543 as detailed at Appendix 2.
- 3.13 All of the tenders submitted were technically non-compliant. The areas which were not compliant ranged in degree from minor to more significant. This was explained to tenderers at clarification meetings held on 11th October 2006 and the tenderers were given the opportunity to clarify their bids in writing.
- 3.14 All four tenderers submitted written clarification responses, however following further evaluation, some areas of non-compliance remained. Under the conditions of tendering, the Council has the right to, but is not obliged to reject a tender which is non-compliant. Therefore the Council is entitled to accept or keep under consideration a tender which, although technically non-compliant, is non-compliant to a lesser degree than other tenders which the Council has chosen to reject.

- 3.15 Evaluation of tenders was carried out in accordance with the criteria as agreed by the Executive on 10th April 2006, namely that of price and quality. A matrix of the tender evaluation is detailed in Appendix 1.
- 3.16 None of the tenderers was able to provide an on-demand bond, as requested in the tender documents. On-demand bonds are financially onerous for contractors and therefore very hard for contractors to procure. They are increasingly unusual in the construction industry. All tenderers indicated they could, as an alternative, provide an on-default bond in the ABI standard form, which would offer the Council an adequate level of protection if a bond were felt to be necessary. The failure to comply with the Council's requirements for an on-demand bond is a minor non-compliance and need not be an impediment to the Council accepting a tender.
- 3.17 One tenderer (ISG Jackson) stated that the Council's commercial terms were not acceptable but repeatedly failed to propose alternative terms for the Council's consideration. As a result the evaluation panel recommends that their tender be rejected on compliance grounds.
- 3.18 The tenderers were requested to submit a Lump Sum Price for the Works detailed in the specification and drawings and any implied works. They were also required to take full responsibility for all quantities and were requested in the Post Tender Interview to confirm this. Only one tenderer (Norwest Holst) has confirmed that they have taken full responsibility for the quantities included in their tender submission. Of the remaining two tenderers, one (Fitzpatrick) has purely priced the schedule of works and made no risk allowances, while the other (Verry) has priced some risk allowances but not all. This made a direct comparison of the prices submitted in each tender impossible. The evaluation panel therefore recommends that Fitzpatrick's tender also be rejected on compliance grounds and that Verry be considered only as a reserve contractor, also on compliance grounds.
- 3.19 To examine whether the outcome of the evaluation process also provides value for money for the Council, EC Harris has carried out a risk assessment on all the tender returns to enable tenders to be compared on a like for like basis, so far as possible. This risk assessment includes allowances for risk associated with quantities, allowances for works not shown on the drawings, implied works, etc. The allowances included are based on tenderer's written clarification responses and on industry standards. The assessment based on an adjusted like for like tender return is detailed in Appendix 2. This assessment is an internal calculation only which has not been disclosed to or confirmed by tenderers, and therefore has not been taken into account for the purposes of evaluation.
- 3.20 To minimise the risk to the Council of failing to agree a suitable lump sum for stage 2 of the project with the successful contractor, this report also recommends that a reserve contractor be appointed for the duration of stage 1.

## **Results of the Evaluation Process**

- 3.21 A copy of the tender evaluation matrix is included as Appendix 1 showing the final scores awarded by the panel to each tenderer. The prices submitted by tenderers are contained in Appendix 2. Norwest Holst Limited scored highest overall followed by William Verry, ISG Jackson and Fitzpatrick. None of the tenders were totally compliant but Norwest Holst Limited's tender was regarded as most compliant, followed by William Verry Limited. For the reasons detailed in paragraphs 3.15 and 3.16, the evaluation panel considered that the other two tenderers, ISG Jackson and Fitzpatrick should be rejected on compliance grounds.
- 3.22 The evaluation panel recommends that the contract be awarded to Norwest Holst Limited of Astral House, Imperial Way, Watford, WD24 4WW based on the agreed criteria for the award of the contract on cost and quality as outlined in the Executive Committee report of the 10th April, and that William Verry Limited of School House, St Annes Row, London, E14 7HN be appointed as a reserve contractor. Should William Verry Limited cease to be reserve contractor and become main contractor, certain aspects of their tender will need to be clarified.
- 3.23 The first stage of the contract will commence after 25th November 2006 subject to approval by the Executive to award the contract to Norwest Holst Limited, as recommended by this report.

## **4.0 Financial Implications**

- 4.1 The Council's Contract Standing Orders state that works contracts exceeding £1,000,000 (High Value Contracts) shall be referred to the Executive for approval to award the contract.
- 4.2 The estimated value of this building contract is in excess of the EU threshold of £3,611,319.
- 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. Any additional costs relating to this scheme will be contained within the capital allocations for Children & Families Department. The breakdown of the total cost provision for the scheme at £10,347,500 is shown below :

Total Building Cost	£8,515,543
Professional fees	£878,150
Specialist fees	£115,780
Legal fees	£20,000
ICT & FF&E fees	£96,000
Contingency	£562,027
Project Management and sundry fees	£150,000
Planning Consultant Fee	£10,000
<b>Total</b>	<b>£10,347,500</b>

4.4 As detailed at paragraph 3.4, certain factors have become apparent in the scheme design that could impact on the planning application to be considered by the Planning Committee. The cost of required amendments to the scheme design if current plans are not approved and means of accommodating the required changes cannot be identified could add up to £700k to costs. Provision for such additional costs are not included within the capital allocation for this scheme and would have to be contained within the overall capital allocation for the Children and Families programme, having an adverse impact on other approved schemes.

## 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. The restricted procurement procedure has been followed.

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 As the Council has chosen to follow the restricted procurement procedure, EU law prevents the Council from holding negotiations with tenderers on price or other aspects of their bids prior to award of the contract. To ensure compliance with the law, the Council must therefore award the contract in respect of both stages of the project at stage one in order to be able to discuss design and price changes in detail and agree a final Contract Sum with one tenderer.

- 5.4 Following agreement or determination of a satisfactory Contract Sum during stage one, the Council may, at its discretion, trigger stage two (the construction phase) by giving the contractor notice that it is required to enter into the main contract. If the Council decides for any reason not to proceed to the construction phase with the contractor, the parties' relationship will come to an end in accordance with the provisions of the initial appointment and the main contract will not come into effect.
- 5.5 As detailed in paragraphs 3.13 and 3.14, all of the tenders submitted were technically non-compliant, ranging from minor to significant non-compliance. Under conditions of tendering the Council has a right to, but is not obliged to, reject tenders which are non-compliant. Norwest Holst Limited's failure to supply an on-demand bond but willingness to provide an on-default bond in the ABI Standard Form is considered a minor non-compliance and need not be an impediment to the Council accepting the tender. The failure of William Verry Limited to provide an on-demand bond and also to price for full risk allowances is more significant but again need not be an impediment to its appointment as reserve contractor.
- 5.6 The Council must observe the EU Regulations relating to the observation of a mandatory minimum 10 calendar day standstill period before the contract can be awarded.
- 5.7 Therefore once the Executive has determined which tenderer should be awarded the contract, all tenderers will be issued with written notification of the contract award decision. A minimum 10 calendar day standstill period will then be observed before the contract is concluded – this period will begin the day after all Tenderers are sent notification of the award decision – and additional debrief information will be provided to unsuccessful tenderers in accordance with the regulations.
- 5.8 As soon as possible after the standstill period ends, the successful tenderer will be issued with a letter of acceptance and the contract can commence.
- 5.9 As a result of the Council's obligation to comply with the standstill period requirements, the award of the contract may be delayed if, during the standstill period, the procurement process is challenged. This is likely to result in a suspension of the project programme until the challenge is resolved.
- 5.10 As detailed in paragraph 3.4, the Planning Committee will consider the grant of planning permission. The requirement to observe the standstill period does not affect the Executive's ability to approve the award decision subject to the grant of planning permission.

## **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 which will be compliant with the access requirements of the Disability Discrimination Act 1995.



- 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**

- 7.1 For the immediate purpose of this report, there are no staffing implications for Council staff nor for staff at Wembley Primary School nor for the evaluation process enabling subsequent recommendation for the award of this works contract.

### **Background Papers**

- I. Children & Families Asset Management Services Wembley Primary files
- II. Planning documentation
- III. Executive Report 10 April 2006

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