



## Decision of Cabinet Member for Education, Employment & Skills

### Report from the Strategic Director of Regeneration & Environment

## Approval to waive the Contract Standing Orders in relation to the procurement process to appoint an alternative contractor for the dining hall works at Oliver Goldsmith Primary School

<b>Wards Affected:</b>	Fryent
<b>Key or Non-Key Decision:</b>	Non-Key Decision
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt Appendix 1: This part of this report is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"
<b>No. of Appendices:</b>	Appendix 1 – Exempt – Names of Tenderers Appendix 2 – Evaluation Scores
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> (Name, Title, Contact Details)	Neil Martin Head of Capital Programmes (Schools) <a href="mailto:neil.martin@brent.gov.uk">neil.martin@brent.gov.uk</a> 020 8937 4203

### 1.0 Purpose of the Report

1.1 This report concerns the dining hall project at Oliver Goldsmith Primary School and forms part of the 2018 – 2023 School Asset Management Programme. This report requests Individual Cabinet Member approval to waive the contract standing orders (CSO) in relation to the procurement process to appoint an alternative contractor for the design and build of the new dining hall at Oliver Goldsmith Primary School.

### 2.0 Recommendation(s)

That the Cabinet Member for Education, Employment & Skills, having consulted with the Leader:

- 2.1 Notes the outcome of the previous procurement exercise for the design and build of the new dining hall at Oliver Goldsmith Primary School and the subsequent withdrawal of the successful contractor from the contract.
- 2.2 Approves a waiver of Contract Standing Order 96 for the requirement to undertake a tender process for the design and build of the new dining hall at Oliver Goldsmith Primary School to enable award of the contract.

### **3.0 Detail**

- 3.1 Brent Council (the Council) is the responsible body for 40 community and foundation schools and has a duty to undertake major projects at these schools to ensure the buildings are weather tight and provide a safe environment for education. Funding is provided to responsible bodies to carry out these works by the Education and Skills Funding Agency (ESFA) via the School Condition Funding (SCF). This funding is provided each year based on an assessment by the ESFA of high level building condition need and is provided to meet the responsible body's own local condition priorities across their schools. The Council places SCF monies in a specific capital budget, the School Asset Management Programme (AMP) budget to meet its statutory requirement.
- 3.2 A five year programme was agreed by Capital Investment Panel (CIP) in October 2017 to address condition improvement priorities across the schools. These projects are considered the most vital and cover boiler replacement, fire safety, electrical distribution upgrades and roof and window improvements. This programme is in line with the Council's responsibilities for schools in terms of major replacement or renewal projects. Making improvements to school buildings will enhance the teaching and learning environment that will enable the schools and the Council to deliver a superior learning experience for Brent school aged children.
- 3.3 The Council appointed consultants to confirm the scope of works at each project identified in Phase 2. The proposed project at Oliver Goldsmith Primary School involves completing the design and building the new dining hall. The new dining hall will be modern and fit for purpose and include breakfast club and after school club facilities so the school can provide wrap-around provision
- 3.4 In June 2021, following a single stage tender process, Lilstone Ltd were awarded the contract to design and build the dining hall at the school for £1,316,043.10 (refer to Appendix 2 for the tender evaluation scoring). Following this, the contractor began mobilisation activities including appointment of their design team to complete the design.
- 3.5 In August 2021, the contractor divulged that they could no longer deliver the project at the tendered price and would require a contract sum increase. This pushed the cost over the project budget and so officers and the Council's

appointed consultants began negotiations and value engineering workshops to assist to bring the cost back within budget.

- 3.6 Unfortunately, this was not successful and officers are now proposing to cancel the agreement with the successful contractor and instead appoint the contractor who came second in the original tender exercise. There are no exit charges to cancel the agreement and take forward this proposal.
- 3.7 The original tender offer validity has expired and in line with the Council's Standing Orders, the contract should be re-tendered. However, in order to provide an expedient process to start this project, officers are requesting the Individual Cabinet Member waive this requirement and approve the Strategic Director, Regeneration & Environment to award the contract to the second highest scoring supplier from the original tender opportunity.

#### **4.0 Financial Implications**

- 4.1 The project budget approved within the AMP Programme is £1.26m. This project is part of the wider AMP Programme budget which CIP endorsed and Cabinet approved through the annual budget setting process.
- 4.2 The proposed contractor's contract price is £1.22m which is within the budget. This will provide enough capacity within the School AMP budget to cover the contract and still enables the Council the ability to respond to any emergency works across the school portfolio if required.
- 4.3 Finance have completed a financial assessment of the supplier using the most recent available financial accounts. The bidder passed the Council's minimum thresholds.
- 4.4 A retention figure of 2.5 per cent will be used to ensure any snags/defects are dealt in an appropriate manner with during the 12 months defects liability period.

#### **5.0 Legal Implications**

- 5.1 The contract falls within the definition of 'public works contract' under the Public Contracts Regulations 2015 ('PCR'), but as the value of the contract is below the threshold for works under the PCR, the procurement is not subject to the requirements of the PCR, so there is no issue from PCR procurement perspective with the recommendation to waive CSO 96. However, the contract is subject to the Council's Contract Standing Orders ('CSO') and Financial Regulations in respect of Medium Value works contracts in that Officers are required under CSO 96 to undertake a competitive procurement by way of a Single Stage or Two Stage Tender process before the contract is awarded.

- 5.2 Under the Council's Constitution, Individual Cabinet Members have delegated to them certain functions by the Leader that can be exercised within their portfolio. The table in Paragraph 13 of Part 3 of the Constitution provides that Individual Cabinet Members can agree to waive Contract Standing Orders for Medium Value revenue and capital contracts. Officers have provided the reason for the recommendation to waive the requirements of the CSO 96 to enable award of the contract to the second preferred contractor in paragraph 3 above and it is deemed that the Cabinet Member for Education, Employment & Skills has the delegated authority to waive the CSO 96.
- 5.3 Subject to this approval, Officers will seek approval of the Strategic Director, Regeneration & Environment to award the contract to the second highest scoring bidder. Under Part 3 of the Constitution, at paragraph 9.5 in section 3(a) of the table therein, relevant Strategic Directors have delegated to them authority to award Medium Value Contracts, so far as the contract relates to the service area which they are responsible for.
- 5.4 The contract will be administered using the 2016 JCT Design and Build Contract with the Council's amendments.

## **6.0 Equality Implications**

- 6.1 The Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment and victimisation
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.

- 6.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.3 The purpose of the duty is to enquire into whether a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision. Due regard is the regard that is appropriate in all the circumstances.
- 6.4 Officers consider there are no equalities implications.

## **7.0 Consultation with Ward Members and Stakeholders**

- 7.1 The school has been kept up to date with the issues with the previously successful contractor. Subject to these approvals, the school will be invited to meet the new contractor in order to confirm delivering and agreements regarding access.
- 7.2 Ward Councillors have been kept up to date on project progress and will be further updated following the outcome of this request and the subsequent appointment of the alternative contractor.

## **8.0 Human Resources/Property Implications (if appropriate)**

- 8.1 None identified.

### **Related documents:**

[Authority to Award Decision](#)

8 June 2021

**Report sign off:**

**Alan Lunt**

Strategic Director of Regeneration & Environment