



Cabinet
15 September 2014

**Report from the Strategic Director of
Regeneration and Growth and
Strategic Director of Children and
Young People**

Wards affected:
ALL

**School Expansion Programme – Approval to Procure
Works Contracts for Phase 3 Projects**

1.0 Summary

The Council has a challenging programme of school expansion designed to meet increased pressure for school places year on year and ensure that all children have access to a school place. The delivery of the school expansions to time and budget is becoming increasingly difficult, partly as a consequence of changes in the construction market which are making it more difficult to procure contractors to build the schools. This report seeks approval to a new strategy for the procurement of works contracts for the next phase of the school expansion programme (Phase 3), which aims to provide sufficient permanent school places to meet demand from September 2015. It is important to note that this procurement strategy, if agreed, will become the means of appointing building contractors for agreed school expansion projects. It will have no impact on normal consultation processes for determining which schools will expand. This report comes to Cabinet ahead of the final version of the School Place Planning Strategy which is scheduled for October in order to enable projects which have already been agreed to proceed on time.

2.0 Recommendations

The Cabinet is recommended to:

- 2.1 Approve the strategy for the procurement of works as set out in paragraph 3.16 of this report to deliver the Phase 3 School Expansion Programme of

projects.

- 2.2 Approve inviting tenders on the basis of the pre-tender considerations set out in paragraph 3.17 where this is considered by the Strategic Director of Regeneration and Growth in consultation with the Lead Member for Regeneration & Housing, the Director of Legal and Procurement and Chief Finance Officer as the most appropriate procurement route in accordance with the strategy for the procurement of works to deliver the Phase 3 School Expansion Programme.
- 2.3 In respect of paragraph 2.2 above, approve the evaluation of tenders on the basis of the evaluation criteria set out in paragraph 3.17 of this report. Following evaluation, Cabinet approval will be sought to award high value contracts in accordance with Council Standing Orders.
- 2.4 Note that officers will review a medium term procurement solution for the development and delivery of capital projects (including establishment of a Brent contractors framework) and report back to Cabinet early in the New Year, as described in paragraph 3.15.

3.0 Detail

- 3.1 In August 2012 Members approved a four year rolling School Expansion Programme to address the demand for primary school places up to 2016-17. Subsequent reports have provided updates including in November 2013 when projects within that overall Portfolio were more formally allocated to Programmes of expansion to provide additional school places in each academic year.
- 3.2 The Phase 3 School Expansion Programme will generate additional permanent primary school places from September 2015 with capital project works anticipated to complete during that academic year. The programme of Phase 3 school expansion as approved by Members currently includes the following schools:

Project	Description	Notes/Status
Islamia Primary	Expand by 1FE	Funding recently secured
Elsley Primary	Expand by 2FE	
Stonebridge Primary	Expand by 1FE	
Malorees Infant & Junior	Expand by 1-2FE	
Uxendon Manor Primary	Expand by 2FE	Approved in Phase 2 Programme but moved to Phase 3
Total	7-8 FE	

- 3.3 Each of these projects is at a different stage of development given the lengthy and sometimes complex process of securing schools' sign up, undertaking the necessary statutory consultation on expansion as well as the planning process. At this stage Members should note that the Governing Bodies of

Malorees Infant and Junior Schools have not yet agreed to expand, nor has formal confirmation been received from the Governing Body for Elsley Primary. The Cabinet will need to receive reports on the outcomes of the statutory consultations for each school and make specific decisions in respect of each expansion in order for each of these schemes to go ahead. These reports will need to come to Cabinet during the autumn of 2014 if the expansions are to take place from September 2015. All school expansions will also require planning approval.

- 3.4 All of the works contracts have an estimated value in excess of £500k and thus each will individually be classified as High Value Contracts for works under the Council's Contract Standing Orders. Of these five projects, two (Elsley and Uxendon) have reasonably well developed designs produced with engagement from the relevant schools but subject to further design development before planning submission and invitation to tender. Work at Stonebridge and Malorees is at an early feasibility stage while at Islamia a previously approved design is currently being reviewed.
- 3.5 One of the key challenges that the Council faces in terms of the delivery of these school places is the current buoyant state of the construction market. Over the last year the Council has faced real difficulties in procuring contractors to deliver new schools, for two key reasons. Firstly the value of the contract packages has only been attractive to a small segment of the market, with limited experience of building schools. Secondly, the requirement to undertake a large amount of design work 'at risk' as part of the procurement process has not been attractive to contractors who already have a significant amount of work. Essentially contractors find themselves in a position where they can pick and choose the tenders that they respond to.
- 3.6 In order to address this issue, a review of the alternative procurement routes that are open to the Council has been undertaken. The four main options are as set out below and each is considered in turn:
- a) Standard tender in accordance with the Public Contracts Regulations 2006 ("EU Regulations") for a single project or batch of projects
 - b) Use of existing contractors framework e.g. LHC Framework
 - c) Use of new EFA Regional Contractors Framework
 - d) Establishment and use of Brent Contractors Framework
- 3.7 a) *Standard Tender in accordance with the Public Contract Regulations*
This is one of the current approaches used to deliver school expansions. At present the Council uses a 'one stage' tender process, whereby contractors are asked to respond to a brief from the Council with an appropriate 'design and build' solution at a fixed price. It is this model which has failed to elicit a good response from the construction market over the last year and continuing to use this as the sole procurement method is likely to make it harder for school places to be delivered in a timely way.
- 3.8 A variant of this model is a two stage tender process. In this model the Council would go to the market at an earlier point in the design process and ask the market to submit proposals in the first instance (Stage 1) based on a

cost made up of the contractor's preliminaries, over-heads and profits, design and survey costs and any other pre-construction works that are specified. A contractor would then be appointed to work with the Council and the schools to jointly develop the design further and then tender the construction packages into their sub-contractor market. The resulting cost would trigger Stage 2 of the tender process, with a resultant transfer of risk and responsibility to the contractor at this point.

3.9 The intention in a two stage process is that a single contractor is appointed at Stage 1 for both stages, but there is no obligation on the Council to accept the price that is presented at Stage 2. There are risks of not doing so, most specifically in terms of timescale as this would require the Council to go back to Stage 1 of the process. The success of the two stage process really depends on the Council and appointed contractor building a good relationship through Stage 1 based on a common understanding of the quality and cost parameters in which the projects need to be delivered.

3.10 *b) Use of existing contracts framework*

The Council has also made use of this procurement model over recent years, essentially procuring partners from existing EU compliant frameworks. Again though, this model suffers from many of the issues facing the single stage standard tender described above. The Council attempted to use a framework to procure elements of the Phase 2 school expansion programme over the last year and was unable to appoint a contractor as there was very limited interest in the tender packages. This has had a significant impact on the 2013/14 expansion schemes. Whilst all of the school places will be available as committed, there are delays in completing the works as a result of having to go back through the procurement process leading to frustrations for schools and a less than ideal temporary teaching environment.

3.11 Undeniably the framework options are attractive in the right environment and if new frameworks come on stream over the coming year then it is recommended that they are considered as a potential procurement route. Officers are unaware of any new frameworks that will be available in time to deliver the Phase 3 expansions.

3.12 *c) Use of new EFA Regional Contractor Framework*

The Education Funding Agency (EFA) has established a Regional Contractor Framework, primarily to utilise for the delivery of the Priority Schools Build programme. This programme is largely based on the provision of new schools (as distinct from expansions) and the framework is predicated on a set of 'expected build costs' for different elements of the builds. The Council has no visibility of these rates at present and it is unclear as to whether they would represent good value for money in respect of school expansions. The framework requires a two stage approach whereby the contractor appointed at Stage 1 designs up the new school proposals and is responsible for securing planning permission. This may make it very difficult for the Council or the school to influence the detailed nature or quality of the design.

3.13 On the positive side, the framework is newly procured and is regional, which means that the contractors will have had to submit at rates appropriate to

London. Officers' judgement is that it is unlikely that there will be enough information available to make use of this framework for Phase 3 school expansions particularly where scheme design has commenced, but this route shouldn't be ruled out for specific schemes if further clarification emerges over the autumn.

3.14 d) *Brent Contractors Framework*

Given the challenges that are faced going forward, the procurement of a local framework which takes account of the changes in the market is attractive. However, the lead in time and upfront costs of procuring a local contract are considerable and certainly this would not be achievable in time for the delivery of the Phase 3 school expansions.

3.15 In the medium term this solution, or one similar to it, is likely to be the only way that the Council can address the procurement challenges it faces. It is therefore recommended that officers review this option, along with others (eg. the forming of a strategic partnership for the development and delivery of capital projects, establishing some kind of joint venture arrangement) and report back to Cabinet early in the New Year.

Proposed Procurement Strategy

3.16 It is clear that each of the procurement routes open to the Council includes some element of considerable risk. The Council's preferred single stage tender route is increasingly less desirable to contractors and is considered too high risk to continue with. Having considered the relative merits and risks of each option, the following procurement strategy is proposed for the Phase 3 school expansion programme:

- As a default position to package school expansion projects into packages to be procured using a two stage Standard Tender process, utilising the assessment criteria set out in paragraph 3.17 below. Note in particular the proposal to assess bids on the basis of a 50:50 split between price and quality.
- To continue to review the available frameworks, including the EFA Regional Framework, to consider their applicability and suitability for particular projects or packages of projects.
- To undertake a strategic review of procurement options for schools and other capital projects with a view to recommending alternative models for the medium term that will strengthen the choices and options available to the Council in the future.

Pre-tender Considerations

3.17 In accordance with Contract Standing Orders 88 and 89, pre-tender considerations for all projects within the Phase 3 schools programme to be let using a formal tender route compliant with EU Regulations (if required) are set out below for the approval of the Cabinet:

Ref.	Requirement	Response
(i)	The nature of the service	<p>Works (construction) contracts for school projects within the Phase 3 Permanent Primary School Expansion Programme. Schools currently agreed are as follows:</p> <ul style="list-style-type: none"> • Uxendon Manor Primary • Elsley Primary • Stonebridge Primary • Malorees Infant and Junior • Islamia Primary
(ii)	The future estimated value of the contract/s	<p>Pre-tender construction estimates cannot be provided on a school by school basis at this point, as design development is either underway or yet to substantively start, a new procurement route is being proposed and because it is not yet known which schools will formally be included in the programme (as in some cases consultation with and the agreement of the schools has yet to be finalised).</p> <p>The schools potentially in scope are set out in 3.2, and repeated below for convenience.</p> <ul style="list-style-type: none"> • Uxendon Manor Primary • Elsley Primary • Stonebridge Primary • Malorees Infant and Junior • Islamia Primary <p>As a guide to contract size the average contract cost per FE procured in the last 12 months was £2.8m. As described previously, the anticipated maximum size of the programme is 7-8 FE, on this basis alone the programme might be valued at £22.9m. The programme is unlikely to be procured as a whole, but rather as individual projects or small batches of projects. There is a clear expectation is that this procurement is intended to improve value for money. Other factors, such as the topography of individual sites, constraints imposed by existing buildings and other factors will also impact on the price.</p>

(iii)	The contracts term	Each construction contract will be for a period of approximately 12 months with an anticipated defects liability period of 12 months	
(iv)	The tender procedure to be adopted.	The procedure will be a Restricted Procedure compliant with EU Regulations. The indicative timescale below applies to the Restricted Route. If the Open Procedure were to be used then PQQ and ITT documents are issued simultaneously and the tender period from issue to receipt of tenders is reduced to 40 days. The tender considerations for the Open Procedure would remain the same as those listed for the Restricted Process.	
(v)	The procurement timetable	<p>As previously noted, the projects within this programme of work are at different stages of development and the issue of tender documents is likely to be staged accordingly. Individual project timescales may vary but indicative dates for the 2-stage design and build contracts are:</p> <ul style="list-style-type: none"> • Adverts placed • Expressions of interest (Pre-Qualification Questionnaire) returned (30 day PQQ period) • Shortlist drawn up in accordance with pre-determined minimum standards as to financial standing and technical competence • Invite to tender • Deadline for tender submissions (minimum 40 day ITT period) • Panel evaluation • Report recommending 	<p>01.10.14</p> <p>31.10.14</p> <p>28.11.14</p> <p>1.12.14</p> <p>20.1.15</p> <p>10.2.15</p> <p>13.2.15</p>

		<p>Contract award circulated internally for comment</p> <ul style="list-style-type: none"> Award of Stage 1 and 2 contracts . Triggering of Stage 2 contract Stage 2 contract start date (including standstill period) 	<p>16.3.15 (Cabinet meeting)</p> <p>27.3.15 (Contract start date following 10 day standstill period)</p> <p>27.7.15</p> <p>7.8.15</p>
(vi)	The evaluation criteria and process	<p><u>Pre-qualification stage</u> Shortlists are to be drawn up in accordance with the Council's Contract Management Guidelines by a pre-qualification questionnaire (PQQ).</p> <p>The pre-qualification will test the capacity and capability of potential bidders as well as potential bidder eligibility to take part in the Procurement.</p> <p><u>Invitation to Tender (ITT)</u> For those that passing the PQQ stage there will follow an Invitation to Tender (ITT) stage.</p> <p>As this route is proposed with a two-stage tendering process, the initial tender evaluation described below will lead to award of contract for Stage 1 of the Design and Build Contract.</p> <p><i>Stage 1 of the tender</i> Tenders will be evaluated on the basis of the most economically advantageous tender using the following criteria and overall weightings.</p> <p>1. Quality</p>	

		<p>Quality will consist of 50% of the overall evaluation. The quality assessment will be evaluated using the following criteria.</p> <ul style="list-style-type: none"> • Project and cost Management • Construction programme • Project Understanding and client liaison • Quality • Health and Safety • Innovation • Sustainability <p>2. Price</p> <p>Price will consist of 50% of the overall evaluation.</p> <p>Price will be evaluated using a lump sum price that will be built up from fixed costs for Overheads and Profits, Preliminaries, Pre-construction Services and if required, Enabling Works.</p> <p><i>Stage 2 of tender</i></p> <p>The contract sum and programme for Stage 2 of the contract will be developed based on an open book procurement by the Stage 1 contractor of agreed work packages. The triggering of this part of the contract will be awarded under delegated authority subject to the agreement of a programme and contract sum that falls below the agreed maximum levels determined on award of the Stage 1 contract. It is anticipated that Stage 2 would be agreed within 3-4 months of the tender submission but this would be confirmed per project dependent on the specific requirements.</p>
(vii)	Any business risks associated with entering the contract	No specific business risks are considered to be associated with agreeing the recommendations in this report.
(viii)	The Council's Best Value duties	This procurement process and on-going contractual requirement will ensure that the Council's Best Value obligations are met.
(ix)	Any staffing implications	There are no direct staffing implications

(x)	The relevant financial, legal and other considerations	<p>See Sections 4 and 5.</p> <p>This is a two stage tendering process. If a contract sum and programme for Stage 2 can not be agreed at the end of Stage 1, the works undertaken within Stage 1 would be self-contained and would still contribute to the delivery of the project. Designs worked up by the contractor within Stage 1 can be used to inform further tenders. Notwithstanding programme pressures to deliver sufficient school places, the council would not be contractually committed to agree to Stage 2 if an acceptable contract sum and programme within agreed parameters could not be agreed at the end of Stage 1.</p>
(xi)	Measures to deliver economic, social or environmental benefits in accordance with the Public Services (Social Value) Act 2012	The works contracts will place a requirement on contractors to support the council's objectives for enterprise and employment.

4.0 Financial Implications

- 4.1 The costs of the proposed works will be met through use of capital grants already secured by the Council including Basic Need and Targeted Basic Need.
- 4.2 It is envisaged that tendered costs will fall within the current capital programme budget, however officers will need to manage the programme within the overall allocation.
- 4.3 As with any procurement process there are significant risks to be managed. This process is proposed as a way of delivering school expansions because the existing process is not delivering good value for money or timely school expansions. For it to operate effectively the council will need to take great care in selecting its contractor for stage one and two, as that contractor, having won the first procurement round, will have exclusive rights to the stage two contracts. The council will have contractual rights not to award stage two contracts, if for example the contractor's stage two proposal exceeds or falls short of specified price measures, but exercising these rights would have implications for programme delivery.
- 4.4 Officers are clear that the proposed arrangement can only work effectively if the Council is prepared to exercise the full contractual rights if required, in order to ensure that the programme remains affordable.

5.0 Legal Implications

- 5.1 The estimated value of the individual contracts is expected to be above the EU Regulations threshold for Works of £4,322,012 and therefore subject to the full application of the EU Regulations.
- 5.2 The estimated value of all of the contracts is above the Council's Standing Orders threshold for High Value Works Contracts of £500,000. For High Value Contracts, the Cabinet must approve the pre-tender considerations set out in paragraph 3.19 above (Standing Order 89) and the inviting of tenders (Standing Order 88).
- 5.3 Once the tendering process is undertaken Officers will report back to the Cabinet in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contracts and recommending award.
- 5.4 The council is proposing to use a 2 stage award process. EU law prevents the Council from holding negotiations with tenderers on price or other aspects of bids prior to award of the contracts. To ensure compliance with EU law, the Council must therefore award contracts in respect of both stages of the project at Stage 1 in order to be able to discuss design and price changes in detail and agree a final Contract Sum with one tenderer in respect of each contract. Following agreement or determination of a satisfactory Contract Sum during Stage 1 of each project, the Council may, at its discretion, trigger Stage 2 (the main construction phase) by giving the contractor notice that it is required to enter into the main contract. If the Council decides for financial or good other 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 The Council will observe the full requirements of the EU Regulations in relation to the mandatory minimum 10 calendar standstill period imposed by the EU Regulations before the contracts can be awarded. The requirements include notifying all tenderers in writing of the Council's decision to award and providing additional debrief information to unsuccessful tenderers on receipt of a written request. The standstill period provides unsuccessful tenderers with an opportunity to challenge the Council's award decision if such challenge is justifiable. However if no challenge or successful challenge is brought during the period, at the end of the standstill period the Council can issue a letter of acceptance to the successful tenderers and the contracts may commence.
- 5.6 Should the Strategic Director of Regeneration and Growth, following consultation with the Director of Legal and Procurement and Chief Finance Officer consider that it is more appropriate to use an existing contractors framework or the EFA Regional Contractors Framework for particular projects, it will be necessary to operate the procurement in accordance with the relevant framework rules. The Constitution allows officers to operate a mini-competition under a framework agreement without seeking prior Cabinet approval. As described in the procurement timetable at 3.17 where the contract being procured is a High Value Contract (regardless of the

procurement route adopted), Cabinet approval will be sought before the contract can be awarded and the Cabinet therefore has the ability to refuse to award if it is unhappy with Officers use of a framework.

6.0 Diversity Implications

- 6.1 An Equality Impact Assessment was undertaken for the school place planning strategy. This found that the strategy was consistent with the council's equality policies and did not have any adverse impact.

7.0 Staffing/Accommodation Implications

- 7.1 There are no staffing or accommodation implications for the immediate purpose of this report.

8.0 Public Services (Social Value) Act 2012

- 8.1 Whilst the Public Services (Social Value) Act 2012 ("Social Value Act") does not formally apply to works contracts, Officers have had regard to the ethos of the Social Value Act and the opportunities that significant capital investment in local areas bring to achievement of council objectives on employment and enterprise. The design and build contracts will require contractors to work with the Council on the employment of new and existing apprentices in all areas of work including professional roles as well as skilled manual positions, the creation of new local jobs and the use of local businesses for the supply of materials and labour. There will be measurable targets within these contracts that will be regularly monitored.

Background Papers

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