

	Officer Key Decision
	Report to the Strategic Director of Regeneration & Environment
Authority to Award a Design and Build Contract for Uxendon Manor Primary School Expansion Project	

Wards Affected:	Kenton
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt – Appendices 1 and 3 are exempt as they contain 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)”
No. of Appendices:	3 Appendix 1: Bidders (exempt) Appendix 2: Evaluation Appendix 3: capital programme board report (exempt)
Background Papers:	
Contact Officer(s): (Name, Title, Contact Details)	Jas Yembra Capital Project Manager 020 8937 2379 Jas.Yembra@brent.gov.uk

1.0 Purpose of the Report

- 1.1 This report concerns the design and build contract to deliver Uxendon Manor Primary School Expansion Project. This report requests approval to award a contract in respect of the design and build contract required to deliver the remaining works for the Uxendon Manor Primary School Expansion Project as required by Contract Standing Order (CSO) 86(e).

2.0 Recommendation(s)

- 2.1 That the Strategic Director of Regeneration and Environment, following consultation with the Lead Member for Schools, Employment and Skills:
- a) Approves the award of a design and build contract for the Uxendon Primary School Expansion Project to Cosmur Construction (London) Ltd for the total price of £1,987,066 with a fixed contract term of nine (9) months (the 'Contract') plus 12 months defects liability period.

3.0 Detail

- 3.1 On 9 March 2020, Cabinet were updated on the progress to recover and complete the expansion project at Uxendon Manor Primary School. Part of this report detailed the way forward to complete the outstanding works in order for the school to occupy the new build areas and external play spaces.
- 3.2 The report outlined the intention of the Strategic Director of Regeneration & Environment in consultation with the Cabinet Members for Schools, Employment and Skills to approve the award of a Medium Value Works Contract for the required works. Cabinet approved a virement of £6.0m from Basic Need in order to award the contract and complete the required works.
- 3.3 On 11th December 2019, expressions of interest were invited from the 24 suppliers on the Fusion 21 Construction Works & Improvements Framework (Lot 2b). This Framework offered an appropriate mechanism to procure a contractor for this works because it is an education lot with suitable suppliers and allows the supplier to take responsibility for design work.
- 3.4 Officers sought and received approval that it was legally permissible to use this framework from the Director of Legal, HR, Audit and Investigation on 17 December 2019.
- 3.5 On 19th December 2019, 5 expressions of interest were confirmed and in accordance with Standing Order 86(e), the Strategic Director of Regeneration & Environment approved the invitation of tenders in line with powers delegated to him.
- 3.6 Officers initiated a call-off using a mini-competition from the Fusion 21 (Lot 2b) Framework. The tender was issued via the London Tenders Portal on 23rd December 2019 and was managed by officers in Procurement with assistance from officers in the Capital Programme Team.
- 3.7 In accordance with the Framework's mini-competition guidance, all 5 suppliers on the Lot who expressed an interest were invited to bid for this opportunity. The Council received 3 bids by the deadline of noon on 14th February 2020 from the organisations listed in Appendix 1.
- 3.8 The Council's cost consultant in December 2019 had issued a pre-tender estimate valuing the cost of the proposed works at £3,257,126. Therefore,

pursuant to CSO 86(e), the Contract is classified as a Medium Value Contract for works (£250,000 - £4,999,999).

Tender Evaluation

3.9 The instructions to tenderers document stated that the contract would be awarded on the basis of the most economically advantageous offer to the Council based on the following evaluation criteria:

- Price: 60%
- Quality: 40%
 - Delivery Methodology & Programme
 - Resources
 - Working within a live school environment
 - Quality and monitoring
 - Traffic Management
 - Social Value

3.10 The tender evaluation of the bids was carried out by a panel of officers from the Council's Capital Programme Team (Property & Assets, Resources), the Council's Cost Consultants, Employers Agent and Technical Adviser and was moderated by the Council's Procurement Team. Table 1 below shows the summary ITT evaluation scores of the bidders and Appendix 2 provides a more detailed breakdown of the full tender evaluation outcome.

Summary	Weighting	Bidder 1	Bidder 2	Bidder 3
Quality	40%	20.96%	14.80%	12.00%
Commercial (Pricing)	60%	60.00%	33.54%	38.97%
Total	100%	80.96%	48.34%	50.97%
Ranking		1	3	2

Table 1 - Tender Evaluation Outcome

3.11 Bidder 1 was the highest scoring bidder, scoring 80.96% overall. Their quality score was 20.96%, and their pricing submission is £1,987,065.98 which scored 60% and is within the budget assigned to the project. Officers confirm the bid was compliant.

3.12 The highest scoring bidder has submitted a compliant programme approach and adequate resources to complete the project on time.

3.13 The highest scoring bidder is the only bidder that individually costed each area of the scope compared with the other two bidders who costed a lump sum for each package of works.

Risk Assessment

- 3.14 As part of the tender evaluation outcome and subsequent proposed contract award in light of the financial position of the contractor and current Covid-19 situation, officers requested advice from Internal Audit on assessing and mitigating the risk on the proposed approach detailed in Appendix 3.
- 3.15 Internal Audit stated the mitigations to the risks identified in Appendix 3, paragraph 5.2 appeared sound but would benefit from extra assurance on the frequency of these checks and who would have responsibility for undertaking them. Also, it was recommended to formalise the Council's proposed contingency plan should, through these extra controls, the Council get an early warning that the preferred bidder might be in a parlous financial state. These additions were added to Appendix 3, section 5.0, paragraphs 5.2 – 5.4.

4.0 Financial Implications

- 4.1 The current maximum cost to complete the project is £17.3m, comprising of the existing budget of £11.3m and an additional budget of £6.0m that was approved by Cabinet on 9th March 2020.
- 4.2 Two of the three pricing submissions were within the budgeted amount. The highest scoring bidder's contract price is £1,987,065.98 which is 61% within budget. Therefore, there is enough capacity within the Uxendon Manor Primary School Expansion Project budget to cover the spend.
- 4.3 It should be noted that the highest scoring bidder's submission included the following provisional sums:
- Building works in connection with the above – provisional sum of £15,000.
 - Fixtures Fittings & Equipment – provisional sum of £25,500.
- 4.4 The above provisional sum, which were set by the highest scoring bidder, equates to 2% of the contract value.
- 4.5 The contract price also includes a provisional sum of £500,000 for Mechanical and Electrical (MEP) works set by the Council cost consultants. The MEP works are to be undertaken by a sub-contractor directly nominated by the Council. This contractual approach was adopted because of the unique circumstance of the contract. MEP works had already been substantially completed by the previous contractor Lakehouse (who went into administration). To save cost and allow the previous MEP works to be used and taken to full completion, it was necessary to retain the MEP sub-contractor that had been used by Lakehouse.
- 4.6 The negotiation between Council through its cost consultants with the MEP sub contractor is at an advance stage to agree a fixed price for the collateral warranty for works completed under the Lakehouse contract and for works required to complete and commission that aspect of the project. Therefore, the risk of having a provisional sum of £500,000 for MEP works will be removed and a fixed price agreed before the commencement of the contract.

- 4.7 The contractual approach of using a nominated MEP sub contractor has been considered and approved by both the external lawyers to this project and the council's Legal Services, as it provides an effective mechanism to meet the project's team requirement to use the MEP works already undertaken under the previous Lakehouse contract.
- 4.8 The highest scoring bidder's financial strength has been checked and is this further detailed in Appendix 3.
- 4.9 Insurance limits (as minimums) will be set as follows and the highest scoring bidder has confirmed these insurance levels are in place:
- Public Liability Insurance: £10,000,000
 - Employers Liability Insurance: £10,000,000
 - Professional Indemnity Insurance: £5,000,000
 - Contractors All Risks - £10,000,000

5.0 Legal Implications

EU Regulations

- 5.1 The Contract falls within the definition of a 'works contract' under the Public Contracts Regulations 2015 ('EU Regulations'), however, the estimated value of the Contract is below the EU procurement threshold for works (currently £4,551,413), and therefore the full rules of the EU Regulations will not apply to award of the Contract. Officers are still required to observe the rules of fairness and transparency and to maintain an auditable process.
- 5.2 The Council's Contract Standing Orders (CSO) provides in Part 2, section 86 (e) (ii), that no formal tendering procedures shall apply when contracts are called off a Framework. Where the Framework was established by another contracting authority (as the Fusion 21 Framework was), the CSO require approval that it is legally permissible to participate in it, from the Director of Legal, HR, Audit and Investigation, this was obtained on 17 December 2019. Therefore, no formal tendering procedures will apply to this award.
- 5.3 The process of tender and evaluation outlined in section 3 above, have satisfied the requirement for fairness and transparency.

Council CSOs

- 5.4 The award of the Contract is subject to the Council's own CSOs in respect of Medium Value Contracts and Financial Regulations. The relevant Chief Officer (Strategic Director Regeneration & Environment) approved the pre-tender considerations raised in respect of this Contract as set out in CSO 89 and the inviting of tenders for the Contract in accordance with CSO 88, and has

confirmed there is sufficient budgetary provision for the Contract as required by CSO 86(e)(ii) (as provided in the report dated 19 December 2019).

Authority to Award

- 5.5 The authority to award the Contract is derived from Para.9.5.3 (a) of the Scheme of Delegation in Part 3 of the Constitution, under which the Strategic Director of Regeneration and Environment has delegated authority to approve the Council's entry into a Medium Value Contract. Subject to the approval sought in this report, an approval to award the contract is legally permissible.

Contract Terms & Conditions

- 5.6 The form of agreement for this Contract is the Fusion 21 Call Off Agreement as given under the Framework, with additional and amended terms and conditions required by the Council (and approved by Legal Services) which strengthen the Council's overall position.

6.0 Equality Implications

- 6.1 Members are referred to the Equalities Impact Assessment from previous Cabinet reports as outlined below:

School	Cabinet Meeting date	Item	Appendix
Uxendon Manor Primary School	24 August 2015	5	4

- 6.2 The proposals in this report have been subject to screening and officers believe that there are no equality implications arising directly out of the proposals.

7.0 Human Resources/Property Implications (if appropriate)

- 7.1 Some pupils are currently being taught in temporary accommodation until such time as the permanent accommodation is made ready following completion of the project. As a result, the school is operating with reduced open space and play areas. There is currently sufficient accommodation for pupils at the school.
- 7.2 Any further delays to the project could lead to the requirement for additional works to maintain/prevent further deterioration to the new buildings before full completion.

8.0 Public Services (Social Value) Act 2012

- 8.1 The Council is under duty pursuant to the Public Services (Social Value) Act 2012 ("the Social Value Act") to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake

consultation. Officers have had regard to considerations contained in the Social Value Act in relation to the procurement.

- 8.2 Ten per cent of the quality evaluation criteria is assigned to evaluating the bidders' social value proposals. The bidder has committed to pay London Living Wage. The social value commitments included training & development, school pupil visits to site, supporting small business, volunteering and environmental measures. The bidder included a cost of £50,000 to deliver their social value offer.

Report sign off:

AMAR DAVE
Strategic Director, Regeneration & Environment