

## **CABINET**

**11 JUNE 2013**

# **GATEWAY 1 PROCUREMENT COMMENCEMENT AND OUTLINE BUSINESS CASE: REFURBISHMENT AND REMODELLING WORKS AT CHATHAM PRIMARY FREE SCHOOL**

Portfolio Holder: Councillor Mike O'Brien, Children's Services  
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### **Summary**

This report seeks approval of the Outline Business Case and proposed procurement route, based on an initial feasibility study and evaluation of procurement and construction options, for the new Chatham Primary Free School and permission from Cabinet to proceed to detailed design stage and Gateway 2 before requesting approval at Gateway 3.

## **1. Budget and Policy Framework**

- 1.1 This project supports the Council's School Organisation Plan 2011 – 2016, approved by Cabinet on 1 November 2011 (decision number 143/2011), which highlights the need for more pupil places in the Chatham area. The Council has a statutory duty to ensure there are sufficient school places as set out in the Education & Inspections Act 2006.
- 1.2 Subject to the approval of the Outline Business Case and the recommendations in this report, officers will develop the design and report to Cabinet for approval in compliance with the Council's procurement rules. This will then lead to Gateway 2 where a tender exercise will be undertaken in compliance with applicable EU rules and Medway Council's internal procurement processes and contract rules.
- 1.3 The Outline Business Case confirms the level of funding required from the capital programme to provide the buildings for Chatham Primary Free School and makes a recommendation on the procurement option for delivering the expanded buildings.

## **2. Related Decisions**

- 2.1 On 12 June 2012, Cabinet approved the development of plans to use the former Chatham South site for the establishment of a new primary age Academy from September 2014, and for officers to formally notify the DfE of the council's intention to consult with interested parties to identify a preferred provider.

## **3. Background/Introduction**

- 3.1 This procurement is a Works/Construction requirement

This report seeks permission to commence a new construction procurement project with a contract duration of 33 weeks, with provision to extend for a contract duration only in such circumstances as described by the contract conditions. Scheduled phase details as follows:

- Contract period commencement - 6 November 2013
- Contract period completion – 24 June 2014

The total value of this new procurement contract has been estimated by the quantity surveyor, and is below the EU threshold. This cost has been based on the outline designs developed by the architects.

The breakdown of the costs is included within the exempt appendix

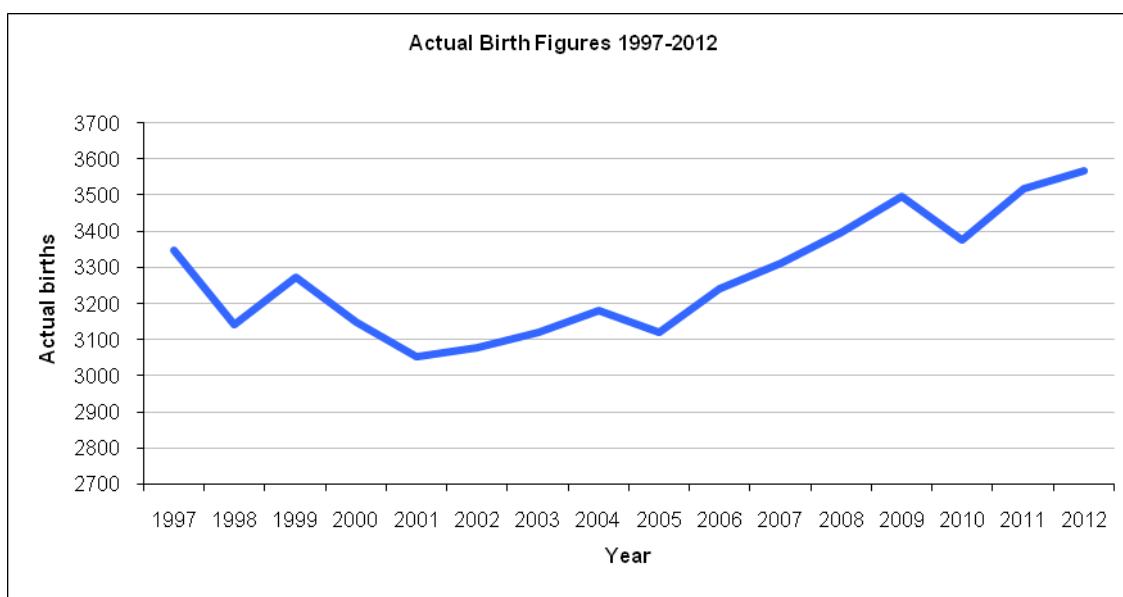
The contract will be a traditional JCT intermediate form of contract with contractors design portion 2011 (Latest Edition) with specification and drawings.

## **4. Business Case**

### **4.1 Business Case Summary**

- 4.1.1 The School Organisation Plan 2011-16 highlighted an emerging need for additional primary age provision in some areas of Medway, specifically, Chatham, Rochester and Gillingham West.
- 4.1.2 The forecasts using the data received in Spring 2012 indicate that the pressure on primary school places is likely to be even more severe than initially highlighted in the School Organisation Plan 2011-2016. This pressure is primarily a result of significant unforeseen inward migration. There have also been further increases in the birth rate, both of which have particularly impacted on the Chatham area. The proposals for development of additional primary age provision in Chatham paper approved by Cabinet on 12 June 2012 highlighted the emerging need for schools places in Chatham and presented options for the creation of sufficient provision to meet this further additional demand in the future.
- 4.1.3 The School Organisation Plan 2011-16 highlighted that birth figures in Medway up to 2010 were increasing. As can be seen from the graph below this trend has continued with the past two years being the highest on record. Almost 500 more children were born in Medway between

September 2011 and August 2012, than in the same period between 2000 and 2001.



- 4.1.4 Our weekly monitoring of births in Medway suggests that there continues to be an increase in the birth rate during the current academic year, although the rate of increase is unlikely to be as pronounced as in the previous two years. This will continue to be monitored and taken into account when planning future provision.
- 4.1.5 The main factors behind the increased pressure on school places in Chatham are significant unplanned net inward migration over the past year on top of a continued increase in the birth rate.
- 4.1.6 The main drivers for the inward migration into Chatham are likely to be economic. Central Chatham is one of Medway's most deprived areas, and whilst the majority of residents (62.7% compared to the Medway average of 75.7%) are owner-occupiers, there is also a significant private housing supply in the area which tends to be much less expensive than other areas of Medway. There is also a higher than average rental population in private and social housing; these rental values also tend to be lower here than in other areas.
- 4.1.7 The full Outline Business Case provided as an exempt appendix to this report details a proposal to provide school buildings for the new Chatham Primary Free School that enables it to open with sufficient accommodation by September 2014, to meet demand for school places in the area.
- 4.1.8 The preferred option assumes use of some of the buildings currently leased by the council to the Bishop of Rochester Academy on the West Campus, which are due to be vacated by 31 August 2013.
- 4.1.9 The Education Brief including the accommodation schedule will be developed by the Project Board and key stakeholders and signed off by the Project Board and presented for ratification by the council through procurement Gateway process. The accommodation schedule details a

total area that is within the BB99 gross internal floor area stated in DfE guidance.

## **4.2 Councils Strategic Priorities And Core Values**

The procurement of this requirement directly links into the following Council Strategic Priorities and Core Values:

### **Core Values**

- Putting our customers at the centre of everything we do.

This procurement requirement will deliver against the Core Value of 'Putting our customers at the centre of everything we do' through the delivery of suitable accommodation for the new Chatham Primary Free School.

### **Giving value for money**

- This procurement requirement will deliver against the Core Value of 'Giving value for money' through the use of a separate procurement via tender with local contractors. The competitive nature of recent tenders has shown good value for money, when compared with the refurbishment rates offered via the Education Funding Agency National Framework.

### **Strategic Priorities**

- Children and young people having the best start in life in Medway.

This procurement requirement will deliver against the Strategic Priority of 'Children and young people having the best start in life in Medway' through the delivery of investment in Medway School buildings to provide 21<sup>st</sup> Century accommodation in order to achieve and succeed in learning.

### **Strategic Council Obligations**

The procurement of this requirement directly links into the following Strategic Council Obligations: The Council has a statutory duty to ensure there are sufficient school places available. The Council also has a duty to promote high standards and secure sufficient school places and ensure the sustainability of its schools throughout Medway (Education Act 2006 and 2011).

- Medway Council Plan

This procurement requirement links into the Medway Council Plan by supporting the Council priority to give children and young people the best start in life.

## **Departmental and Directorate Service Plans**

This procurement requirement links into the Children & Adults Directorate Service Plan by supporting the development of 21<sup>st</sup> century education provision for all pupils.

### **4.3 Procurement Project Outputs/Outcomes**

As part of the successful delivery of this procurement requirement, the following procurement project outputs/outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

<b>Outputs / Outcomes</b>	<b>How will success be measured?</b>	<b>Who will measure success of outputs/ outcomes</b>	<b>When will success be measured?</b>
1. Appointing a contractor for the works who will deliver a quality product within the timescales required and within the given budget	Successful completion of the building works within the timescales which will be measured through the tender process	Building & Design Services	Monitored throughout the programme by monthly site visits and contractor reports.
2. Appointing a contractor for the building works who is able to work within the constraints of a school environment	Successful procurement of the contractor within the specifications contained within the tender process	Building & Design Services	Monitored throughout the programme by monthly site visits and contractor reports.
3. Delivery of the key objectives for the project which is refurbishment	Completion of the building works meeting all the Client's requirements	Building & Design Services	Assessed at the end of the project, and also monitored throughout the contract period

### **4.4 Procurement Project Management**

This procurement project will be resourced through the School Organisation Team, which has the resources in place to act as Client Project Manager for the project. They will be supported by a full design team of external consultants appointed by Building and Design Services including an external project manager and will be led by a Building &

Design Services Project Manager in order to prepare the specification and drawings. Category Management will support the procurement process.

#### **4.5 Post Procurement Contract Management**

The contract management of this procurement project post award will be resourced through the Building and Design Services Project Manager, who will undertake full management and monitoring of the project to ensure the work is progressing on time and within budget and providing quality assurance for the process. Outputs of this process will include regular meetings with the contractor, project reporting, monthly valuations, strict change control processes and risk reviews, with progress reports going to the Children and Adults Capital Programme Cabinet Advisory Group.

#### **4.6 Other Issues**

There are no other issues that could potentially impact both the procurement process and overall strategic aims as identified within Section 1 of this report.

#### **4.7 TUPE Issues**

Further to guidance from Legal Services and Human Resources it has been identified that TUPE does not apply to this procurement process. This is because there will be no reductions in current staffing as a result of this project. In the event that the proposed contract is amended or extended, or there is any change in contractor, however, then further legal advice needs to be sought from Legal Services as to applicability of TUPE.

### **5. OPTIONS**

In arriving at the preferred option as identified within Section 6.1 'Preferred Option', the following options have been considered with their respective advantages and disadvantages

#### **a) Do nothing**

The option of doing nothing is not a viable option, as the existing Bishop of Rochester Academy buildings are not suitable for primary aged pupils. Remodelling and refurbishment will be required to ensure the accommodation meets the needs of pupils aged from 3 to 11 years.

#### **b) In-house service provision**

The option of providing this requirement through in-house service provision has been considered but is not a viable option because Medway Council does not currently employ in-house contractors for construction.

**c) Using another local authority to deliver procurement requirements**

The option of using another local authority to deliver procurement requirements has been considered but is not a viable option because other local authorities do not currently employ contractors for these services.

**d) Procurement via an EU compliant framework**

No EU compliant frameworks have been identified from which Medway council's procurement requirements can be satisfactorily delivered, within the budget.

**e) Formal tender process in line with Contract Procedure Rules**

The option of formally tendering this procurement requirement solely in line with Medway Council's Contract Procedure Rules has been considered because this procurement requirement is a Category B Procurement that has a total contract value above £100,000 but below the EU Procurement Threshold for Works of £4,348,350, thus only requiring a competitive process in line with Contract Procedure Rules. Analysis of the options for formal tender via the various select list options is given below.

**f) Formal tender process in line with EU Procurement Regulations**

The option of formally tendering this procurement requirement in line with EU Procurement Regulations is not appropriate because the value of the requirement is below the EU Procurement Threshold for Works of £4,348,350. Consideration has been given to the use of the National Framework, however this is not appropriate as the contract value will be below the EU Procurement Threshold for Works of £4,348,350.

**g) Internal Medway Council Collaboration between departments**

The option of procuring requirements through internal collaboration between Medway Council departments in order to exploit economies of scale and synergies has been considered but no such opportunities exist.

**h) External public sector collaboration (e.g. other Councils, Fire Service, PCT, Police)**

The option of procuring requirements through external collaboration between Medway Council and other external public sector organisations in order to exploit economies of scale and synergies has been considered but no such opportunities exist.

**i) Private sector collaboration e.g. Private Public Partnering/Private Finance Initiatives**

The option of procuring requirements through private sector collaboration between Medway Council and other external private sector organisations has been considered but no such opportunities exist.

**j) Procurement via a below EU Threshold Select List**

The option of using a below EU Threshold compliant Select List to deliver procurement requirements has been considered and the following Select Lists have been identified from which Medway Council's procurement requirements can be satisfied.

1) Constructionline – the UK register of pre-qualified construction Services:

Advantages

- Reduces procurement time
- Contractors are already checked for financial viability, quality and service
- Building and Design Services have already paid to utilise this service

Disadvantages

- External fees paid to utilise the framework

2) Kent County Council Select List of contractors

Advantages

- Reduces procurement time
- Contractors are already checked for financial viability, quality and service
- Building and Design Services have already paid to utilise this service

Disadvantages

- External fees paid to utilise the framework

3) Tendering directly to the marketplace

Advantages

- Potentially better value for money, as framework prices are usually fixed and do not always reflect market changes
- No additional fees to Medway for use of a framework

Disadvantages



- Medway would need to carry out additional checks for financial viability, quality and service, therefore impact on the project programme as it would increase procurement time

No other options have been identified.

## **6. ADVICE AND ANALYSIS**

### **6.1 Preferred option**

Further to an extensive review of procurement options as highlighted within the 'Options' Section above, the following preferred option is recommended to the Cabinet including justification for this.

The preferred option is (e) **Formal tender process in line with Contract Procedure Rules** and (j) using the Kent County Council Select List, for **procurement via a below EU threshold Select List**.

Advantages:

- Market driven pricing for building works is a feature and the procurement will provide competitive tenders.
- The design team will fully specify the employer's requirements prior to inviting tenders.
- The Council will have greater cost certainty following the tender exercise
- Health & Safety Risks are transferred to the contractor.

Disadvantages:

- None

### **6.2 Equality Act 2010**

A review of tenderers' equality policies will form part of the quality assessment of the tender documentation. The review will check for compliance to the Equality Act 2010 and to Medway Council's equality policy. This must also be accompanied by a statement that there are no past or pending prosecutions against the Equality Act 2010.

### **6.3 Corporate Sustainability Plan**

There will be no adverse environmental impact through the delivery of these projects. The school organisation service is applying the principles of the Waste & Resources Action Programme to all its projects to ensure that materials are sustainably resourced and that any waste is recycled responsibly, with waste to landfill at a minimum. The projects are being delivered in line with the Corporate Sustainability Plan. The procurement of the projects will be in accordance with all relevant health and safety legislation and will make improvements as required by current sustainability targets.

## 6.4 Carbon Reduction Commitment Energy Efficiency Scheme (CRC)

The Carbon Reduction Commitment Energy Efficiency Scheme (CRC), which started in April 2010, is a mandatory carbon emissions scheme that aims to increase energy efficiency in the UK. It will have financial and legal implications for local authorities and most schools in the UK, so gives an additional incentive for schools to reduce their energy use. As part of the Council's response to the new scheme, all designs for capital programme schemes require that works are undertaken to make schools more energy efficient whilst ensuring that overall schemes provide the best value for money. Reduced energy use will enable the Council to meet the CRC requirements and also reduce the cost of energy bills for schools. Measures to ensure the most efficient scheme at each school will be detailed as the design progresses

## 7. RISK MANAGEMENT

### a. Risk Categorisation

The following risk categories have been identified as having a linkage to this procurement project:

Procurement process	<b>X</b>	Equalities	<input type="checkbox"/>
Contractual delivery	<b>X</b>	Sustainability / Environmental	<input type="checkbox"/>
Service delivery	<b>X</b>	Legal	<input type="checkbox"/>
Reputation / political	<b>X</b>	Financial	<b>X</b>
Health & Safety	<b>X</b>	Other	<input type="checkbox"/>

For each of the risks identified above, further information has been provided in the following table.

<b>Risk Categories</b>	<b>Outline Description</b> A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	<b>Risk Impact</b> I=Catastrophic II=Critical III=Marginal IV=negligible Impact	<b>Risk Likelihood</b> A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	<b>Plans To Mitigate Risk</b>
<b>a) Procurement process</b>	D – Council decision making process affects programme, resulting in programme delays and cost increases	II	D	Projects are planned with Procurement and Cabinet dates in mind to minimise delays
<b>b) Contractual delivery</b>	D – Failure of contractor to deliver contractual arrangements	III	E	Inclusion of Contract monitoring procedures within the contract documents. Default clauses are part of the contract documentation.
<b>c) Service delivery</b>	E – Lack of specified performance	III	E	A detailed specification with key milestones and performance indicators.
<b>d) Reputation / political</b>	E – Negative publicity as a result of poor communication	III	C	Project specific communications plan has been developed
<b>e) Health &amp; Safety</b>	D – Construction works in close proximity to pupils, staff and visitors, resulting in disruption, injury or worse	I	D	Contractor to provide clear & concise H&S procedures, with close liaison with the school. CDM Co-Coordinator to review measures taken
<b>f) Financial</b>	D – Possibility of unforeseen costs identified	II	D	Detailed investigative work prior to the tendering of works undertaken to highlight any issues.

## 8. Consultation

### a. Internal (Medway) Stakeholder Consultation

As part of this procurement project, consultation with the Section 151 Officer, Category Management and Monitoring Officer will be undertaken in order to aid the evaluation process.

### b. External Stakeholder Consultation

The following statutory external stakeholder consultation is required before the commencement of the procurement project in order to direct the specification:

- STG Building Control

## 9. Procurement Board

- 9.1 The Procurement Board considered this report on 22 May 2013 and supported the recommendations set out in section 11 of this report.

## 10. Financial and Legal Implications

### 10.1 Financial Implications

As set out in the exempt appendix, the budget for this procurement requirement and its associated delivery as per the preferred option highlighted at Section 6.1 and the recommendations at Section 11, was agreed by Departmental Management Team on the 14 May 2013. The funding for the project is included in the Children & Adults capital programme approved by Full Council on 21 February 2013.

Detailed finance and whole-life costing information is contained within **Section 2.1 Finance and Whole-Life Costing of the Exempt Appendix.**

### 10.2 Legal Implications:

This procurement requirement and its associated delivery as per the preferred option highlighted at Section 6.1 and the recommendations at Section 11, has the following legal implications which the Cabinet must consider:

The legal implications have been set out within the body of the report; the form of contract proposed to be used has been recommended by Build & Design Services.

### 10.3 Procurement Implications:

This procurement requirement and its associated delivery as per the preferred option highlighted at Section 6.1 and recommendations at Section 11, has the following procurement implications - the refurbishment element of the capital works programme for Chatham Free Primary School is below the EU Works Threshold, which currently stands at £4,348.350. Albeit in principle the Public Contracts Regulations 2006

(as amended) do not apply to sub threshold contracts nonetheless, the award procedures for contracts must comply with the general principles derived from the Treaty on the functioning of the European Union, as well as the Council's Contract Procedure Rules. This means that the contract should still be given a sufficient degree of advertising necessary in order to alert likely potential suppliers of the opportunity to bid.

Category Management supports the client department's recommendation to undertake a formal a tender as competition remains the main mechanism by which Medway Council can ensure both improvements in quality and innovation of service provision as well as value for money are achieved.

#### 10.4 ICT Implications

It is important that any requirements for the IT infrastructure for the school, such as cabling, power points, data sockets, server cabinet etc, are identified prior to the commencement of any building work so that the technology requirements can be included during the refurbishment phase rather than implemented afterwards, which would be more cost-effective and less intrusive.

Any circuit and IT provision should also be considered in advance, as for circuit delivery by the third party providers, there could be a delivery period of approximately 90 days, and all provision is subject to survey.

### 11 Recommendations

- 11.1 Cabinet is asked to approve the Outline Business Case/Gateway 1 High Risk Report to progress to Gateway 2 of the procurement process and invite tenders for the building refurbishment and remodelling works.
- 11.2 Cabinet is asked to approve the virement of sufficient funding of £500,000 from the basic need capital programme to undertake further surveys, develop a detailed design and deal with asbestos removal, prior to the main contract works.

### 12 Suggested Reasons for Decisions

- 12.1 The new remodelled accommodation is required to enable the new primary academy to open in September 2014. The capital programme approved by Cabinet on 23 February 2013 includes funding for the project.

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### **Background papers**

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Proposals for development of additional primary age provision in Chatham	<a href="http://democracy.medway.gov.uk/mgconv2pdf.aspx?id=15451">http://democracy.medway.gov.uk/mgconv2pdf.aspx?id=15451</a>	12 June 2012