

CABINET

1 OCTOBER 2013

GATEWAY 1 PROCUREMENT COMMENCEMENT: BROMPTON WESTBROOK PRIMARY SCHOOL PHASE 1 WORKS

Portfolio Holder: Councillor Mike O'Brien, Lead Member for Children's Services

Report from: Barbara Peacock, Director of Children and Adult Services

Authors: Chris Sewell, Senior Administrator, Children & Adults
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Susan Goss, Category Specialist, Place & Projects

Summary

This report seeks permission to commence the procurement of the permanent expansion to 2 forms of entry at Brompton Westbrook Primary School. The Outline Business Case for the new building was approved by Cabinet on 11 June 2013 (decision number: 99/2013).

This Gateway 1 report has been approved for submission to the Cabinet after review and discussion at Children and Adult Directorate Management Team virtual meeting on 2 September 2013 and Procurement Board on 17 September 2013.

The Children and Adult Directorate Management Team has recommended that this procurement project be approved as a Category B High Risk procurement project at Procurement Gateway 1 by Cabinet. This is because although this procurement project is a Works Category B Medium Risk procurement with a total contract value above £250,000.00, there are political implications and/or service sensitivities that Cabinet should be aware of.

These political implications and/or service sensitivities are:

The school serves the local community including army families from the Brompton Barracks area and the school sits within the footprint of the Great Lines Heritage Park.

1. Budget and Policy Framework

1.1 Service Background Information

- 1.1.1 This project supports the Council's School Organisation Plan 2011 – 2016, approved by Cabinet on 12 June 2012 (decision number 85/2012), which highlights the need for more pupil places in Gillingham. The Council has a statutory duty to ensure there are sufficient school places as set out in the Education & Inspections Act 2006.
- 1.1.2 A budget has been identified to provide the additional accommodation required to increase the planned admission number to 60. A feasibility study has been undertaken that has highlighted the shortfall in the current accommodation, in line with the DfE Building Bulletin guidance.
- 1.1.3 The new accommodation includes a school/community hall with changing facilities, a new main entrance, two new classrooms and additional dining space. This allows the existing hall to be used for improved SEN group rooms and pastoral care. It also allows reconfiguration of the office spaces, which are currently unsuitable.
- 1.1.4 The new accommodation will allow the school to expand the potential for community engagement. The arrangement of the existing hall, in the centre of the building, severely limits these opportunities for security reasons.

1.2 Councils Strategic Priorities And Core Values

- 1.2.1 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 expansion of Brompton Westbrook Primary School and opportunities for expanding the community use of the building.

- 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 of approved contractors selected from the KCC Select List on the basis of 60% quality and 40% price.

Strategic Priorities

- Safe, clean and green Medway.

This project will deliver against the Strategic Priority of 'Safe, clean and green Medway' through the delivery of investment in Medway School buildings to provide 21st Century accommodation in order to achieve and succeed in learning.

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

This project will deliver against the Strategic Priority of 'Children and young people having the best start in life in Medway' through the delivery of suitable accommodation for the expansion of Brompton Westbrook Primary School.

- Adults maintaining their independence and live healthy lives.

This project will deliver against the Strategic Priority of 'Adults maintaining their independence and live healthy lives' through offering increased opportunities for use of the new hall by the local community. The new placement of the hall will allow it to be used when the main body of the school is closed.

- Everybody travelling easily and safely around Medway.

This project will deliver against the Strategic Priority of 'Everybody travelling easily and safely around Medway' through ensuring there is suitable primary school provision throughout Medway, so that parents and children have a shorter journey to school.

- Everyone benefiting from the area's regeneration.

This project will deliver against the Strategic Priority of 'Everyone benefiting from the area's regeneration' through increasing the capacity for local education and offering increased opportunities for community engagement.

1.3 Strategic Council Obligations

- 1.3.1 The procurement of this requirement directly links into the following Strategic Council Obligations:

See reference to Council's School Organisation Plan 2011 – 2016 in paragraph 1.1 above.

- 1.3.2 Medway Council Plan

This procurement requirement links into the Medway Council Plan through:

See reference to Council's School Organisation Plan 2011 – 2016 in paragraph 1.1 above.

1.3.3 Other Strategic Council Obligations

This procurement requirement links into the following other Strategic Council Obligations through:

See reference to Council's School Organisation Plan 2011 – 2016 in paragraph 1.1 above.

1.4 Departmental and Directorate Service Plans

1.4.1 This project links into the following Departmental/Directorate Service Plans through:

See reference to Council's School Organisation Plan 2011 – 2016 in paragraph 1.1 above.

1.5 Funding/Engagement From External Sources

1.5.1 As this project encompasses funding/engagement from external sources, authority to proceed with this procurement direction has been reviewed and approved by the following Partnering Organisations/External Funding bodies:

As the Targeted Funding bid made to the DfE in respect of this project was unsuccessful, funding will be provided from the DfE Basic Need Grant and Developer Contributions.

1.6 Other Information

1.6.1 Brompton Westbrook sits within the footprint of the Great Lines Heritage Park. The expanse of open space in front of the defensive bastions was built as part of the defences for Fort Amherst and ultimately Chatham Dockyard.

1.6.2 Surveys undertaken for the development of Brompton Academy highlighted a number of underground tunnels in the area of the Great Lines Heritage Park. This survey information has been considered for the feasibility study and where possible new buildings have been located close to the existing building footprint to mitigate the risks of extensive ground works.

2. Background

2.1 Project Details

2.1.1 This procurement is a Works/Construction project.

2.1.2 This report seeks permission to commence a new procurement project for the main contract works essential for the operation of the school that need to be available for use by Wednesday 3 September 2014. The non-critical items are to be completed as a separate phase. The budget for Phase 1 of this procurement contract is set out in the Exempt Appendix.

2.1.3 This project is based on the linkage to the delivery of the Phase 2 works within a period of three years. Phase 2 has a budget of approximately £500,000.

2.1.4 This project is required to fulfil Medway's mandatory /statutory/ legal obligations. These mandatory/statutory/legal obligations are –

The Council has a statutory duty to ensure there are sufficient school places as set out in the Education & Inspections Act 2006.

2.2 Business Case

2.2.1 Procurement Project Outputs / Outcomes

As part of the successful delivery of this project, 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.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
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

2.2.2 Procurement Project Management

This procurement project will be resourced through the following project resources and skills:

- Susan Goss, Category Specialist Place & Projects

- Philip Tucker, Interim Capital Programme Manager
- Chris Sewell, Senior Administrator, Children & Adults
- Firas Witwit, Building Design Services
- Mark Sears, Building Design Services
- Faithful & Gould, Cost Consultant, Dean Lucas.
- Faithful & Gould, Employers Agent, TBC.
- Faithful & Gould CDM Coordinator, TBC.

2.2.3 Post Procurement Contract Management

The contract management of this procurement project post award will be resourced through the following contract management strategy:

- Susan Goss, Category Specialist Place & Projects
- Philip Tucker, Interim Capital Programme Manager
- Chris Sewell, Senior Administrator, Children & Adults
- Firas Witwit, Building Design Services
- Mark Sears, Building Design Services
- Faithful & Gould, Cost Consultant, Dean Lucas.
- Faithful & Gould, Employers Agent, TBC.
- Faithful & Gould CDM Coordinator, TBC.

2.2.4 TUPE Issues

Further to guidance from Legal Services, Human Resources and Category Management, it has been identified that TUPE does not apply to this procurement process. This is because it is a Works/Construction procurement.

3. Options

In arriving at the preferred option as identified within Section 4.1 'Preferred Option', the following options have been considered with their respective advantages and disadvantages.

3.1 Do nothing

The option of doing nothing is not a viable option because the school needs to expand to cope with increasing pupil numbers.

3.2 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 the council does not have directly employed professional consultants or contractors.

3.3 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.

3.4 Procurement via an EU compliant framework

The option of using an EU compliant framework to deliver procurement requirements has been considered and the following frameworks have been identified from which Medway Council's procurement requirements can be satisfied:

iESE Contractors Regional framework (Hampshire CC) Tier 1 Value Band £1 million – no upper limit

iESE Contractors Sub Regional framework (East Sussex CC) Tier 2 Value Band £1 million - £5 million.

Both of these frameworks are available to all members of SE7.

Below are the advantages and disadvantages of this option:

Advantages :-

1. Early contractor involvement to provide programme and design advice
2. Contractor Overhead and Profit fixed in framework
3. Value based 2-stage procurement process
4. Quality Assurance process and governance
5. KPI performance measurement built into the process
6. Local area spend, SME and sustainability targets
7. Design risk passed to Main Contractor
8. Stakeholder engagement via iESE Gateway process
9. Process and efficiency saving on traditional tender process
10. Target Cost approach gives budget certainty

Disadvantages:-

- Process requires full buy-in from all parties and a change in culture to embrace collaborative working
- Requires close working between Contractor and Medway Council's Cost Consultant to ensure rigour in pricing all sub-contract packages to achieve guaranteed maximum price
- Management cost of using the framework is 0.4% of 1% of the contract value or a maximum of £3,000 which is paid by the contractor.

IESE Procurement Process:-

The iESE Contractor selection process is undertaken in two stages.

Expression of Interest:- This comprises brief summary documents giving outline details of the project which Medway send to the Sussex Framework Manager to send out to all eight contractors on the Framework. On the basis of this the contractors advise the Framework Manager if they want to be considered to go forward as one of either three or four contractors to submit a Mini-Competition for the Pre-contract Phase.

Mini-Competition:- The Sussex Framework Manager selects the three or four most suitable contractors based on agreed criteria to go forward to the Mini Competition. Medway provide as much detail as available plus performance outcomes expected of the Contractors who are required to answer up to six quality questions specifically set by Medway. They also provide a detailed cost analysis of the works, a detailed programme plus a schedule of the resources and costs required to deliver the pre-contract outcomes. The submissions are scored on a 60/40, (quality/price) basis and all contractors are interviewed on required to review the content of their Mini Competition submission at an interview with representatives of all the stakeholders.

A Contractor is selected and at this stage Medway Council enters into a Pre-Contract Agreement with the contractor to deliver the pre-construction phase. Medway Council and the Contractor partner then work together to build a full design and build cost using a target cost approach based on the budget provided.

3.5 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 £100,000.00 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 in paragraph 3.10 below.

3.6 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.

3.7 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.

3.8 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 and found not suitable due to the timescale of this particular project.

3.9 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 are not appropriate.

3.10 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 the requirement on bidders to submit information
- 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
- Current pressure of Local Authority work is resulting in reluctance of best quality contractors to price traditional tendered contracts
- Discriminates against those suppliers who have not paid to be members of Constructionline
- Full tender process needs to be undertaken

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
- Current pressure of Local Authority work is resulting in reluctance of best quality contractors to price traditional tendered contracts

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.

4. Advice and analysis

4.1 Preferred option

Further to an extensive review of procurement options as highlighted within Section 3 'Options' above, the following preferred option is recommended to the Cabinet including justification for this recommendation:

The preferred option for this project is a single stage Design and Build tender via the Kent County Council Select List, (see item 3.10 (2) above), which will allow for works to commence 6 weeks earlier than via the IESE framework two stage tender route. It is believed that the single stage route offers a better opportunity to deliver the key items for September 2014.

4.2 Equality Act 2010

A review of tenders Equality Policy 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.

4.3 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. Sustainability will be covered within the quality criteria during the tender process.

4.4 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

5. Risk Management

5.1 Risk Categorisation

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

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

For each of the risks identified above further information has been provided below:

Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
a) Procurement process	Council decision-making process affects programme, resulting in programme delays and cost increases.	A	II	A degree of Flexibility

b) Contractual delivery	Failure of Contractor to deliver contractual arrangements	D	III	Choice of proven contractor and close monitoring of all contract procedures with KPIs
c) Service delivery	(i) Lack of specified performance	E	II	A detailed specification with stakeholder engagement via Gateway process.
	(ii) Unidentified costs could reduce scope of works	C	III	Attempt to value engineer back to budget of £2.1m.
d) Reputation / political	Negative publicity as a result of failure to deliver and communicate	C	III	Proven contractor and project specific communication plan.
e) Health & Safety	Construction work in close proximity to pupils, staff and visitors resulting in injury.	B	I	Site Specific H&S Plan plus Construction Design Management Coordinator (CDMC).
f) Financial	(i) Possibility of unforeseen costs being identified. Please see exempt appendix 1.1.2.	C	II	Detailed investigative works prior to approval of GMP.
	(ii) May not be able to value engineer back to budget.	D	III	Would have to seek additional budget.

6. Consultation

6.1 Internal (Medway) Stakeholder Consultation

6.1.1 Before commencement of the procurement process in order to direct the specification it the Interim Capital Programme Manager (Children & Adults) will be required to consult with Category Management, Building Design Services and Section 151 Officer in order to direct the specification and aid the evaluation process.

6.1.2 During the procurement process and post procurement tender process the Interim Capital Programme Manager (Children & Adults) will be required to consult Category Management and Building Design Services in order to aid the design and evaluation process.

6.2 External Stakeholder Consultation

6.2.1 Before commencement of the procurement process in order to direct the specification external stakeholder engagement is required with: -

- STG Building Control
- Planning Department
- Head Teacher and School Governing Body

6.2.2 During the procurement process in order to aid the evaluation process the Building Design Services, Project Manager, in collaboration with the Client Project Manager and Design Team 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 gateway reviews including performance monitoring with the contractors and all parties to the delivery process. There will be monthly valuations and strict change control processes along with regular progress reporting to Children's & Adults Capital Programme Cabinet Advisory Group.

6.2.3 There will be regular consultation with staff at the school.

7. Procurement Board

7.1 The Procurement Board considered this report on 17 September 2013 and supported the recommendations as set out in paragraph 9 below.

8. Financial and legal implications

8.1 Financial Implications

8.1.1 This project and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has financial implications which the Cabinet must consider:

8.1.2 Detailed finance and whole-life costing information is contained within Section 1.1 Finance and Whole-Life Costing of the Exempt Appendix that accompanies this report.

8.2 Legal Implications

- 8.2.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following legal implications which the Cabinet must consider:

Perusal of the title to the school and playing field discloses that restrictive covenants affect the use of the property. The Council is advised to obtain a variation of the covenants prior to commencement of the works to build the new community hall. It is anticipated that the variation of the covenants will be able to be completed using the Assistant Director of Legal and Corporate Services' delegated powers and that any consideration and costs payable for the variation will be able to be contained within the budget for the scheme.

Details on the framework agreement terms and conditions must be forwarded to Legal for record purposes including the collaborative agreement for these particular works.

8.3 Procurement Implications

- 8.3.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following procurement implications which the Cabinet must consider:

The preferred option for this project is a single stage Design and Build tender via the Kent County Council Select List, (see item 3.10 (2) above), which will allow for works to commence 6 weeks earlier than via the IESE framework two stage tender route. It is believed that the single stage route offers a better opportunity to deliver the key items for September 2014.

8.4 ICT Implications

- 8.4.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9 'Recommendations', has the following ICT implications which the Cabinet must consider:

Enhancements will be provided for the school within the new classrooms. There is provision within the project budget for ICT, loose furniture and equipment.

To minimise risks, the ICT requirements should be scoped prior to any building work, including cabling work, and the ICT implementation managed by a project manager from ICT Services. There will need to be provision in the project budget for this resource, as they are commissioned by ICT but not internally funded.

Care should be taken during the building works and subsequent implementation of additional ICT services, that the connectivity to the Medway grid for learning service is not disrupted.

ICT manage the connectivity to the Medway grid for learning network, but do not support ICT equipment within the school – the school is responsible for securing support for such equipment.

9. Recommendations

- 9.1 That Cabinet approve this Gateway 1 High Risk Report for progression to Gateway 2 of the procurement process for a single stage Design and Build tender via the Kent County Council Select List, (see item 3.10 (2) above).

10. Suggested reasons for decision(s)

- 10.1 The recommendations contained within Section 9 'Recommendations' above are provided on the basis of granting permission to commence the procurement of the permanent expansion of Brompton Westbrook Primary School to 2 forms of entry in accordance with the decision of Cabinet on 11 June 2013 (decision No. 99/2013). This recommendation will allow for works to commence 6 weeks earlier than via the IESE framework two stage tender route. It is believed that the single stage route offers a better opportunity to deliver the key items for September 2014.

Lead officer contact

Name Title

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Service Directorate

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Background papers

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

Description of document	Location	Date
Outline Business Case (Main Body)	http://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=20322	11/06/2013