

## **CABINET**

**30 SEPTEMBER 2014**

### **GATEWAY 1 PROCUREMENT COMMENCEMENT: SEN PROVISION AT NEW HORIZONS ACADEMY, CHATHAM**

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

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

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#### **SUMMARY**

This report seeks permission to commence the procurement of a works contractor to carry out Phase 2 of refurbishment works at the New Horizons Children's Academy, Chatham to deliver accommodation for therapy and counseling services for up to 20 pupils per day. This Gateway 1 report has been approved for submission to the Cabinet after review and discussion at Children and Adults Directorate Management Team Meeting on 3 September 2014 and Procurement Board on 10 September 2014.

The Children and Adults Directorate Management Team has recommended that this project be approved as a Category B, high-risk procurement.

## **1. BACKGROUND INFORMATION**

### **1.1 Budget and Policy Framework**

1.1.1 The project supports the Council's School Organisation Plan 2011 – 2016, approved by Cabinet on 1 November 2011 (decision number 143/2011) and the Special Educational Needs – An Inclusive Policy and Strategy for Medway 2009 – 2014. Delivery of this provision will also reduce the number of children placed in out of area independent provision.

1.1.2 Funding for the new academy has been provided by the government's Targeted Basic Need Programme which was granted to the Council as a result of a successful bidding process.

1.1.3 The cost of the project to provide the buildings for the mainstream school did not require the entire amount of the bid funding that was

awarded. Conditions of the funding mean that the money must be spent on the New Horizons project, and must be spent by September 2015, otherwise the remaining funding could be clawed back by the Education Funding Agency (EFA).

1.1.4 The availability of this funding affords an assured opportunity to provide the therapy provision at Hew Horizons, whereas, in the future no funding may be available to provide this facility.

1.1.5 At the Children and Adults Directorate Management Team Meeting on 23 June 2014 it was agreed that the remainder of the funding from this bid should be utilised for SEN provision at New Horizons Children's Academy

## **1.2 Service Background Information**

1.2.1 The New Horizons Children's Academy opened in September 2014 on the site of the former Chatham South school and will, over time, provide primary education for 630 mainstream children plus a nursery group.

1.2.2 There was always an in-principle agreement between the Thinking Schools Trust and the Local Authority that the academy would accommodate SEN provision for pupils in some form, but it was agreed with the Trust that this would not be from the outset, enabling the academy to establish itself before taking on the additional provision.

1.2.3 The form that the additional provision will take was not formally agreed when the design of the academy was agreed although the Trust initially indicated that a nurture group would be their preference.

1.2.4 The building highlighted for the additional provision at New Horizons is the science block on the former Chatham South site. This building did not form part of the project to create mainstream primary provision. The mainstream works are now complete and have been handed over to the Academy Trust.

1.2.5 It is proposed to use the science block for offices and consulting rooms for the Therapy Team to be relocated from its current base in the Elms building at Silverbank, which will create additional space enabling additional pupils to be admitted into Silverbank Pupil Referral Unit, which will reduce the numbers of pupils having to be placed in more expensive out of area and independent provision.

1.2.6 The therapy team will require 5 therapy rooms, 3 offices, staff room and facilities, 2 waiting areas and client WC's as well as access to ICT and telephones.

## **1.3 Parent Company Guarantee/Performance Bond Required**

1.3.1 A parent company guarantee will be sought where applicable.

## **2. PROCUREMENT DEPENDENCIES & OBLIGATIONS**

### **2.1 Project Dependency**

2.1.1 Building and Design Services will be tasked with the procurement project management of the phase 2 works working with Category Management.

### **2.2 Statutory/Legal Obligations**

2.2.1 "The Council has statutory duties and powers in respect of children and young people with SEN, in accordance with Part 3 of the Children and Families Act 2014, and Part IV of the Education Act 1996 (As amended)."

2.2.2 The statutory obligations include the identification of children and young people in its area with SEN and disabilities, assessment of those needs, and ultimately the preparation of an EHC Plan (Education, Health and Social Care Plan), setting out the special educational provision required to meet those needs identified. The Council is responsible for maintaining existing Statements of SEN as well as EHC Plans (Save in specified circumstances relating to the ordinary residence of the child), such obligations being legally enforceable.

### 3. BUSINESS CASE

#### 3.1 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>                                   |
|---|--|--|---|
| <b>1. Completion of works on time</b>                     | Successful completion of building works within the agreed programme and to the specified standard of quality                               | Building and Design Services                         | Monitored throughout the contract period and at handover and completion |
| <b>2. Completion of works within the specified budget</b> | Successful completion of the building within the budget available to ensure the funding levels are spent and not requested back by the EFA | Building and Design Services                         | Monitored closely throughout the contract period                        |
| <b>3. Provision of additional spaces</b>                  | The development of the space at New Horizons Academy will provide spaces for pupils with social and emotional needs in Medway              | Stakeholders   | Post completion   |

## **3.2 Procurement Project Management**

3.2.1 Category Management will manage the procurement process working with Building and Design Services and the service department.

## **3.3 Post Procurement Contract Management**

3.3.1 Building and Design Services will project manage the works post procurement.

## **4. PROCUREMENT APPROACH**

### **4.1 Procurement Process Options Considered**

#### **4.1.1 Do Nothing**

The option of doing nothing is not a viable option as there is a risk that the funding awarded by the EFA will need to be returned if it is not spent by September 2015. This will also mean that there would be fewer places across Medway leading to inequality of choice and provision for those pupils with alternative needs.

#### **4.1.2 Varying the Contract of the Previous Contractor Working on the Refurbishment of the Former Chatham South Site Advantages**

The main contractor for Phase 1 has delivered the Academy to allow for the occupation of the building in time to receive children for the start of the 2014 September term. In doing so they have established a local supply chain that is now familiar with the school and have built excellent relationships with the both the new and existing Academy Staff.

The delivery of this project has been achieved despite the contractor having to accommodate changes to the extent and design of the structural steel frame that were needed to address major deficiencies identified in the existing building frame, which had not been allowed for in the original refurbishment design. This added both time and cost to the project

If this procurement route was followed, the award of the phase two works would only be awarded on the basis of an open book collaborative negotiation whereby the new contract price would be negotiated on the basis of the agreed 2013 rates for Phase 1, which resulted from competitive tender using the Kent Select List.

The programme for the project would be shorter as the procurement process would be simplified. A contract period of 6 months should be allowed to set the unit up

#### **Disadvantages**

Procurement of the existing contractor for the mainstream works was through the Kent County Council Select list. The work was not offered to the open market so the opportunity of further efficiencies could be lost if the open procedure is not followed for the SEN works

The projected cost for Phase 1 will be approximately £160,000 above the GW3 budget but the additional cost is not as a result of poor performance by the contractor. The additional cost is the result of the need for additional steel omitted from the design and as a result of the delay caused by the extra work needed to procure and install the steel.

If both projects at the school had been tendered at the same time, the total value would have exceeded the OJEU works threshold, which was £4,348,350 when the mainstream works were tendered in August 2013. This procurement would then have been advertised to the open market and would have attracted a wider range of contractors and could have affected the outcome of the procurement process. It is possible that Medway could receive a challenge regarding this.

#### **4.1.3 Open Tender via the Kent Business Portal Advantages**

This will encourage the greatest level of competition from the market and offer opportunities to local SMEs.

Ensures fairness and transparency to the tendering process, and ensures the Council complies with its own Contract Procedure Rules and EU regulations.

The procurement could attract suitable contractors from the local areas as there is not a suitable Kentish framework.

A contract period of 6 months would be required to set the unit up. This tender process would allow for this

#### **Disadvantages**

The procurement process will lengthen the total project programme, although the completion target of August 2015 is still achievable. Failure to follow this option could mean the Council breaches EU procurement rules, unless another EU compliant procurement method is used.

**This is the recommended option.**

#### **4.1.4 Procurement via IESE Contractor's Regional Framework Advantages**

Offers a quick route to market.

Ability for Medway to request SMEs, apprenticeships, local supply chain and local employment as part of the mini competition.

Time and cost predictability.

#### **Disadvantages**

The main contractor will not be a local supplier.

The main contractor is not required to employ the SMEs or supply chain suggested by Medway Council.

The contractors on the IESE Framework are regional or national, and historically look for contract values higher than the values for this procurement project, and may not be competitive for this value.

## **4.2 Evaluation Criteria**

- 4.2.1 It is proposed to use the 60% quality 40% price split to achieve best value.

## 5. RISK MANAGEMENT

### 5.1 Risk Categorisation

|  |                        |                         |
|--|------------------------|-------------------------|
| <b>1. Risk Category: Financial</b>   | <b>Likelihood: Low</b> | <b>Impact: Critical</b> |
| <b>Outline Description:</b> Unforeseen expenditure outside the approvals   |                        |                         |
| <b>Plans to Mitigate:</b> Building and Design services to work closely with the contractor to ensure any requirements for variations are considered before being approved. The design will be targeted to manage costs within the budget   |                        |                         |
| <b>2. Risk Category: Service Delivery</b>  | <b>Likelihood: Low</b> | <b>Impact: Marginal</b> |
| <b>Outline Description:</b> Provision is not complete by September 2015  |                        |                         |
| <b>Plans to Mitigate:</b> Detailed procurement and project programme to be adhered to ensure deadlines are met and stakeholders are engaged throughout. Initial review of scope indicated the timescales are achievable  |                        |                         |
| <b>3. Risk Category: Contractual Delivery</b>  | <b>Likelihood: Low</b> | <b>Impact: Critical</b> |
| <b>Outline Description:</b> Contractor unable to meet the schedule of works  |                        |                         |
| <b>Plans to Mitigate:</b> Programme of works to be requested at the ITT stage; contractual financial consequences for delays   |                        |                         |
| <b>4. Risk Category: Health and Safety</b>   | <b>Likelihood: Low</b> | <b>Impact: Critical</b> |
| <b>Outline Description:</b> Possible risk to safety of pupils and staff during the works phase   |                        |                         |
| <b>Plans to Mitigate:</b> Due diligence carried out during the tender stage to ensure capability of contractor; contractor to provide clear health and safety procedures with close communication with the school; CDM co-ordinator to carry out risk assessment of the work processes and site throughout the contract period |                        |                         |

## **6. CONSULTATION**

### **6.1 Internal (Medway) Stakeholder Consultation**

Category Management  
Building and Design Services  
STG Building Control  
School Organisation Stakeholders

### **6.2 External Stakeholder Consultation**

New Horizons Academy/ Thinking Schools Trust

## **7. PROCUREMENT BOARD**

7.1 The Procurement Board considered this report on 10 September 2014 and supported the recommendation set out in paragraph 10 below.

## **8. SERVICE IMPLICATIONS**

### **8.1 Financial Implications**

8.1.1 The procurement requirement and its associated delivery (as per the recommendations at Section 9, will be funded from existing revenue budgets/will be funded from the existing Capital Programme.

8.1.2 Further detail is contained within Section 2.1 Finance Analysis of the Exempt Appendix.

### **8.2 Legal Implications**

8.2.1 The proposed contract constitutes a contract for Works under the provisions of the Public Contracts Regulations 2006 ("the 2006 Regulations"), and so must be advertised via a formal OJEU procedure if the total value is in excess of £4,322,012.

8.2.2 The proposed works do not exceed the current OJEU threshold and do not by themselves require an OJEU procedure.

8.2.3 However, the 2006 Regulations do require that procurement exercises to which the formal procedures do not apply should still follow the principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality.

8.2.4 Although not mandatory, using the OJEU Open Procedure gives a high degree of confidence that the above requirements are met.

8.2.5 Using the OJEU Open Procedure gives a high degree of confidence that the Council's primary objectives for procurement are met, as required by Rule 1.2.1 of the Council's Contract Procedure Rules ("the CPRs").

- 8.2.6 The services should also be advertised on the Kent Business Portal in order to comply with the Contract Procedure Rules advertising provisions (rule 3.3.1).
- 8.2.7 It is considered that the option of varying the contract for the previous works presents a high risk of breaching the relevant legislation and thus laying the Council open to challenges under the Public Contracts Regulations (as amended). It is difficult to see how this option would meet the principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality.
- 8.2.8 Therefore, the least risk route for the current procurement is as proposed in this report [Open procedure (Non-OJEU) through Kent Business Portal].

#### **8.4 Procurement Implications**

- 8.4.1 As per the Contract Procedure Rules under section 3.3.1: 'All requirements above £100,000 must be advertised on the Council's Website, the Kent Business Portal and in the OJEU (where above the EU tender thresholds for goods, services or works).'
- 8.4.2 The value of this procurement means the works should be advertised to comply with these rules, and to support the Council's procurement strategy to provide best value.
- 8.4.3 The remaining funds to cover the cost of the work are the maximum available and this must be considered when preparing the specification and tender documents, to ensure the budget is not exceeded. Once let, the contract must be carefully managed to ensure the works are delivered within budget.
- 8.4.4 Contracts should only be extended where such provision for an extension exists. The contract for the mainstream works ended on 5 July 2014, with no provisions to extend.

#### **8.5 ICT Implications**

- 8.5.1 Should there be a requirement for IT connectivity in the areas of the school under refurbishment, I would recommend that an IT project manager is appointed to ensure that the work is carried out as required from the technical perspective. I would also recommend that during works, the existing IT service is considered and disruption to existing services avoided where possible, as any disruption to IT services could have a significant impact on the school's ability to deliver lessons to its pupils.

## 9. OTHER CONSIDERATIONS

### 9.1 Social, Economic & Environmental Considerations

9.1.1 Children of primary and secondary ages in Medway will have the much needed provision to support their particular needs in a safe environment, without having to leave the boundaries of the authority.

## 10. RECOMMENDATION

10.1 The Cabinet is requested to approve the procurement of a contractor via the Kent Business Portal to carry out the additional works at New Horizons Academy in Chatham.

## 11. SUGGESTED REASONS FOR DECISION

11.1 The proposed procurement process will encourage the greatest level of competition from the market and offer opportunities to local SMEs.

## LEAD OFFICER CONTACT

|            |   |             |  |
|------------|---|-------------|--|
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## BACKGROUND PAPERS

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

| Description of Document  | Location  | Date            |
|--|---|-----------------|
| GW3 Report New Primary School in Chatham Refurbishment and Remodelling Works – Cabinet | <a href="http://democracy.medway.gov.uk/mgIssueHistoryHome.aspx?Ild=1109">http://democracy.medway.gov.uk/mgIssueHistoryHome.aspx?Ild=1109</a> | 29 October 2013 |