

## **CABINET**

**8 MARCH 2011**

### **GATEWAY 1 OPTIONS APPRAISAL: NAPIER COMMUNITY AND NURSERY SCHOOL BUILDING PROJECT**

Portfolio Holder: Councillor Les Wicks, Children's Services  
Report from: Rose Collinson, Director of Children and Adults  
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#### **Summary**

This report seeks permission to commence the procurement of building works at Napier Community and Nursery School in Gillingham. Napier Community School is currently housed within 2 groups of early Edwardian buildings with connections via an open timber link. The previously occupied Robert Napier sixth form school and land adjoin the school. The Robert Napier are obliged to hand the sixth form building back to Medway as part of the agreement with the Council once they have moved into their new premises in Third Avenue in Gillingham. Due to its heritage and location external areas are constrained. The decant of this building provides the opportunity to improve the Primary accommodation in line with current learning and teaching requirements to allow for future flexibilities and provide community use and integration. This project supports the Council's strategy to provide improved accommodation for the school and create one facility for the pupils, families and local community.

This Gateway 1 report has been approved for submission to Cabinet after review and discussion at Children and Adults' Directorate Management Team meeting on 10 February 2011, and consideration at the Strategic Procurement Board on 16 February 2011.

The Children and Adults Directorate Management Team and Strategic Procurement Board have 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 Works Category B Medium Risk procurement with a total contract value above £250,000.00, a new project appraisals process was agreed by Cabinet on 28 September 2010 (decision number: 142/2010) that all Children's Services Capital projects for schools over £500,000 would be considered by Cabinet.

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

### **1.1 Service Background Information**

1.1.1 Napier is one of the schools identified as a priority to receive funding as part of the Council's Primary Capital Programme. The objective of the programme is to ensure the schools are equipped to offer 21<sup>st</sup> century teaching and learning in suitable premises.

### **1.2 Council's 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' by delivering the pupils, families and community in the Napier Road area of Medway much improved facilities to reach the highest possible standards of achievement and skill base, and allow to local community to flourish.
- Giving value for money  
This procurement requirement will deliver against the Core Value of 'Giving value for money' through procuring the construction works through a market-tested framework.

#### **Strategic Priorities**

- Children and young people having the best start in life.  
This procurement requirement will deliver against the Strategic Priority of 'Children and young people having the best start in life' through delivering investment in the school buildings to provide the pupils with 21<sup>st</sup> century accommodation in order to better achieve and succeed in learning.

### **1.3 Strategic Council Obligations**

1.3.1 The procurement of this requirement directly links into the following Strategic Council Obligations: The project will support the Council's Primary Strategy for Change, in providing 21<sup>st</sup> century accommodation for high quality teaching and learning.

- Council Plan  
This procurement requirement links into the Council Plan through delivering investment in the school buildings and fulfilling the Council's aim of giving children and young people the best possible start in life by succeeding in learning

- Other Strategic Council Obligations

This project will help the school carry out its responsibilities to make sure children achieve well throughout the foundation stage and make good progress through KS1 and KS2 with good outcomes. In particular, the project will ensure that any children in care or having special educational needs will maximise their potential.

## **1.4 Departmental and Directorate Service Plans**

- 1.4.1 This procurement requirement links into the School Organisation and Student Services Departmental Service Plan by addressing the key priorities for a school of the 21<sup>st</sup> century by delivering:
- Inclusive buildings that can accommodate children with special needs;
  - Extended school facilities open to the community and/or including other community services on site;
  - Sustainable buildings where possible, using sustainable energy sources;
  - The school's educational vision through partnership working and consultation with stakeholders, translated into an individual design solution.

## **2. Background**

### **2.1 Project Details**

- 2.1.1 This procurement is a Works/Construction procurement requirement.
- 2.1.2 This report seeks permission to commence a new construction project with an estimated contract duration of 1 year and 2 months, with provisions to extend the contract duration only in such circumstances as described by the contract conditions.
- 2.1.3 The contract is proposed to commence on 30/06/2011 and conclude on 24/08/2012. The contract form will be a standard JCT contract, as this will provide the Council with more cost certainty following the tender exercise.
- 2.1.4 The total value of this new procurement contract is set out in the exempt appendix.
- 2.1.5 Should the tenders submitted exceed the budget, the design team will work with the school to carry out a value engineering exercise to bring the scheme within budget.
- 2.1.6 This procurement requirement is a standalone project with no linkage to any other procurement projects or procurement programmes. Where better value for money can be achieved by linking this project to other similar projects, the Council will take advantage of this opportunity.

## 2.2 Business Case

### 2.2.1 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.

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	School Organisation team. Building & Design Services. Napier School	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	School Organisation team. Building & Design Services. Napier School	Monitored throughout the programme by monthly site visits and contractor reports.
3.Delivery of the key objectives for the project which are: reconfigure and refurbish to incorporate the Robert Napier 6 <sup>th</sup> Form building; new entrance; linking key stage 1 and key stage 2 buildings; external learning and play improvements; improved staff facilities; community provision	Completion of the building works meeting all the Client's requirements	School Organisation team. Building & Design Services. Napier School	Assessed at the end of the project, and also monitored throughout the contract period
4. Improvements to the teaching and learning at Napier School. Investment in the new building and facilities for the school community will enable	Measured through Key Stage results and Ofsted ratings	School Organisation Team Napier School Ofsted	Through the School results produced following the opening of the new school in September 2012

the school and Governing Body to achieve better outcomes for the pupils			
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### 2.2.2 Procurement Project Management

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

The School Organisation Team 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 lead by the Project Manager, who were all appointed via Building and Design Services.

### 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: The Client Project Manager in collaboration with the 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 regular meetings with the contractor, project reporting, monthly valuations, strict change control processes and risk reviews.

### 2.2.4 Other Issues

There are no other issues that could potentially impact both the procurement process and overall strategic aims as identified within Section 1 Budgetary and Policy Framework.

### 2.2.5 TUPE Issues

Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it has been identified that TUPE does not apply to this procurement process. This is because these works will be undertaken by outside contractors and will not impact on existing staffing.

## 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 as part of the amalgamation process the school requires suitable accommodation, and the existing layout will not be suitable for its future needs.

- 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 Medway Council does not currently employ in-house contractors for these works.
- 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 because other local authorities do not currently employ contractors for these works.
- 3.4 Procurement via an EU compliant framework**  
No EU compliant frameworks have been identified from which Medway Council's procurement requirements can be satisfactorily delivered.
- 3.5 Formal tender process in line with EU Procurement Regulations.**  
The option of formally tendering this procurement requirement in line with EU Procurement Regulations has been considered but this is not a viable option because the value of the requirement is below the EU Procurement Threshold for Works of £3,927,260.00.
- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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 frameworks have been identified from which Medway Council's procurement requirements can be satisfied.

Kent County Council select list of contractors

Below are the advantages and disadvantages of this option:

#### Advantages

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

#### Disadvantages

- External fees paid to utilise the framework

### **3.10 Other alternative options**

No alternative options have been identified.

## **4. Advice and analysis**

### **4.1 Preferred option**

4.1.1 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.

4.1.2 The preferred option is set out in paragraph 3.4 Procurement via an EU compliant framework

#### Advantages

- Market driven pricing for building works is a feature and the procurement will provide competitive tenders.
- The design team will fully specify the requirements prior to inviting tenders
- The Council will have greater cost certainty following the tender exercise
- Sustainable systems will be installed providing the schools with more energy efficient systems and thereby reducing running costs.
- Health & Safety Risks are transferred to the contractor
- The contractor and not the school carries the risk should the relevant health & safety legislation be breached, any prosecution would be of the contractor and not the school.

#### Disadvantages

- None.

### **4.2 Equality Act 2010**

4.2.1 The procurement of this project will not have an adverse affect on the equality of access to services at the school. Where possible improvements will be made and all works will be in accordance with the latest legislation on equality of access. The schools service has been subject to a Diversity Impact Assessment through the corporate equalities team. The project provides buildings, which will offer facilities for the local community.

### 4.3 Corporate Sustainability Plan

4.3.1 There will be no adverse environmental impact through the delivery of this project. 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 project is being delivered in line with the Corporate Sustainability Plan. The aim is to achieve a BREEAM rating of very good in all new buildings wherever possible and within the constraints of the budget. The procurement of the project will be in accordance with all relevant health and safety legislation and will make improvements as necessary.

### 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	<input type="checkbox"/>

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

Risk Categories	Outline Description	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Plans To Mitigate Risk
a) Procurement process	Council decision making process affects programme, resulting in programme delays and cost increases	2	D	Projects are planned with Procurement and Cabinet dates in mind to minimise delays
b) Contractual delivery	Failure of contractor to deliver contractual arrangements	3	E	Inclusion of Contract monitoring procedures within the contract documents. Default clauses are



				part of the contract documentation.
c) Service delivery	Lack of specified performance	3	E	A detailed specification with key milestones and performance indicators.
d) Reputation / political	Negative publicity as a result of poor communication	3	E	Advise via the Communication Strategy regarding the works to be carried out
e) Health & Safety	Construction works in close proximity to pupils, staff and visitors, resulting in disruption, injury or worse	1	E	Contractor to provide clear & concise H&S procedures, with close liaison with the school. CDM Co-Ordinator to review measures taken
f) Financial	Possibility of unforeseen costs identified	2	D	Detailed investigative work prior to the tendering of works undertaken to highlight any issues.

## 6. Consultation

### 6.1 Internal (Medway) Stakeholder Consultation

- 6.1.1 Before commencement of the procurement process in order to direct the specification.
- 6.1.2 As part of this procurement project no internal stakeholder consultation is required before the commencement of the procurement project in order to direct the specification.
- 6.1.3 During the procurement process in order to aid the evaluation process.
- 6.1.4 As part of this procurement project, consultation from the Section 151 Officer, Strategic Procurement and the Monitoring Officer is required during the procurement process in order to aid the evaluation process.
- 6.1.5 Post procurement/tender award in order to aid the contract management process.
- 6.1.6 As part of this procurement project no internal stakeholder consultation is required post procurement/tender award in order to aid the contract management process.

## **6.2 External Stakeholder Consultation**

### **6.2.1 Before commencement of the procurement process in order to direct the specification**

As part of this procurement project, the following statutory external stakeholder consultation is required before the commencement of the procurement project in order to direct the specification:

School staff, pupils and Governing Body  
Medway Council Planning Department  
Medway Council Traffic and Highways Department  
Local community consultation  
STG Building Control.

### **6.2.2 During the procurement process in order to aid the evaluation process**

As part of this procurement project, the following statutory external stakeholder consultation is required during the procurement process in order to aid the evaluation process:

School staff and Governing Body to review the scheme and value engineer if required, to ensure quality and best value for money.

### **6.2.3 Post procurement/tender award in order to aid the contract management process**

As part of this procurement project, the following mandatory/statutory/legal external stakeholder consultation is required post procurement/tender award in order to aid the contract management process:

The Client Project Manager in collaboration with the 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 regular meetings with the contractor, project reporting, monthly valuations and strict change control processes.

Regular consultation with the School Staff will ensure any issues are managed efficiently and with little impact to the programme, budget and quality.

## **7. Strategic Procurement Board**

### **7.1 The Strategic Procurement Board considered this report on 16 February 2011 and recommended Cabinet to approve this project to proceed to Gateway 2.**

## **8. Financial, legal and procurement implications**

### **8.1 Financial Implications**

#### **8.1.1 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 financial implications which the Cabinet must consider:**

8.1.2 The costs for this project are being met from the Capital Programme. £14.9 million has been approved for Primary Strategy projects, of which this is one; the total budget required for this project is detailed in the exempt appendix. The construction budget is capped and should tenders come in above the budget sum, the design team will work with the school to carry out a value engineering exercise to bring the scheme within budget.

8.1.3 Detailed finance and whole-life costing information is contained within Exempt Appendix.

## **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 8, has the following legal implications which the Cabinet must consider:

8.2.2 As the contract value is below the EU procurement threshold of £3.9m for works and although the Public Contracts Regulations 2006 (as amended) do not require prior advertising of works contracts below the threshold value in the OJEU, the letting of these contracts is subject to the general procurement obligations of transparency, equal treatment and non-discrimination that derive directly from the Treaty on the functioning of the European Union. EC case law now suggests that some form of advertising of requirements should take place in all instances regardless of contract value or any need to place a notice in the OJEU. The Preferred Option is to invite tenders from contractors on KCC's select list of approved contractors. The contractors on this list would have been selected after advertisements in the appropriate trade journals and following a process of evaluation that would have considered the financial stability and technical competence of contractors applying to be included in the list. Such a competitive process will satisfy the general procurement obligations referred to above and should also result in the award of a contract delivering value for money to the Council.

## **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 8, has the following procurement implications which the Cabinet must consider:

8.3.1 Strategic Procurement supports the use of the KCC Select List to procurement requirements as a robust procurement mechanism to deliver the requirements as specified within this report. The KCC Select List is a below EU threshold mechanism which affords a quick and compliant process to invite tender suppliers from a pre-approved list of contractors that have been assessed for financial, health and safety, equalities and insurance requirements. As the value of this procurement is below the EU Works threshold of £3,927,260.00 and therefore other than the principles of fairness, transparency and equal treatment, there are no other requirements applicable in terms of the EU Procurement Regulations. However, the client department must ensure that the protocols of the KCC Select List is fully understood and

adhered to and that the Council's Contract Procedure Rules are fully complied with.

## 9 Recommendation

- 9.1 Cabinet is asked to approve this project to proceed to Gateway 2 of the procurement process and invite tenders for the scheme of works, on the basis set out in paragraph 3.9 of the report (Procurement via a below EU Threshold Select List).

## 10 Suggested reasons for decision(s)

- 10.1 The recommendations contained within Section 8 'Recommendations' above are provided on the basis that the project will support the delivery of the required improvements to Napier School, within the required timeframe.

### Lead officer contact

Name  Title   
Department  Directorate   
Extension  Email

### Background papers

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

Description of document	Location	Date
Napier Community and Nursery School Business Case	W:\School_Services\ Planning_Review\Live Projects\9X827 Napier\Napier Primary\Business Case	10/05/2010