

## **CABINET**

**29 MARCH 2011**

### **GATEWAY 3 PROCUREMENT TENDER PROCESS REVIEW AND CONTRACT AWARD: LORDSWOOD SCHOOL – PRIMARY AMALGAMATION 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 from the Cabinet to award a contract to the supplier as highlighted within section 2.5.1 of the Exempt Appendix.

This is based upon the recently undertaken procurement process for the amalgamation project works at Lordswood School. Lordswood Infant and Junior school were amalgamated in September 2010. The education vision for the headteacher, governors and senior team are to provide functional, inspirational and secure learning environments for all pupils, using the foundation stage model of open plan spaces and project-based learning.

The works will make best use of the space on the ground floor providing disabled access to all classrooms in accordance with the Equality Act 2010. The classrooms will be situated together in year groups, with access to shared resources and to outside classroom space, enabling cross class working. The new link building will join and unite the two schools physically as well as providing a functional weatherproof route for children, staff and visitors.

Cabinet approved the commencement and delivery of this procurement requirement at Procurement Gateway 1 on 21 December 2010.

This Procurement Gateway 3 Report has been approved for submission to the Cabinet after review and discussion by Children and Adults Directorate Management Team and consideration at the Strategic Procurement Board on 9 March 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 Contract Award Decision**

1.1.1 The decision to award a contract to the supplier as highlighted within section 2.5.1 of the Exempt Appendix for this procurement requirement is within the Council's policy and budget framework and ties in with all the identified Core Values, Strategic Priorities, Strategic Council Obligations and Departmental/Directorate service plans as highlighted within the Gateway 1 Report to Cabinet on 21 December 2010.

## **2. Background**

### **2.1 Permission Required from the Cabinet**

2.1.1 This Procurement Gateway 3 Report asks the Cabinet to award a contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix.

2.1.2 This is based upon the recently undertaken procurement using a mini-competition to select five contractors from KCC's select list of approved contractors. The competition was established to procure a single stage tender on specification and drawings with a standard JCT contract. The design team fully specified the build solution prior to inviting tenders. This enabled greater certainty on cost, as the design is not likely to vary post-tender unless something unforeseen occurs and this will be managed via the formal contractual variation process.

### **2.2 Contract Details**

#### **2.2.1 Procurement type**

The proposed award of a contract to the supplier as highlighted within section 2.5.1 of the Exempt Appendix relates to a Construction procurement requirement.

#### **2.2.2 Contract duration**

The contract duration for this procurement requirement is 21 weeks and there are no provisions within the contract to extend. The contract is proposed to commence on 11 April 2011.

### 2.2.3 Contract value

The total contract value associated with the contract is set out in section 7.3 of this report.

## 2.3 Procurement Tendering Process

2.3.1 A formal mini-Competition tender process in line with Medway's Contract procedure Rules was undertaken via Below EU threshold Select List.

2.3.2 This below EU threshold Select List is entitled Kent County Council's (KCC) select list of approved contractors and was set up and managed by KCC.

2.3.3 This below EU threshold select list is available for use by Medway Council as prescribed within the Original Select List Advertisement. A partnering agreement between Medway Council and KCC gave Medway Council access and use of the Select List of approved contractors.

2.3.4 The protocols of the below EU threshold Select List provider required Medway Council to complete requirements by selecting contractors on the following basis –

A selection of six contractors based on a rotation system as dictated by the protocol of the select list was used

Cat 1: Two Contractors can be nominated by the Project Manager/Consultant/Client on the basis of proven previous good performance (must be from the Select List).

Cat 2: Two Contractors can be provided from the last similar tender i.e. the winner and second most competitive tenderers subject to a financial risk assessment.

Cat 3: Two Contractors will be provided from the Work Category List by rotation (further Contractors will be provided from the list if less than four Contractors).

2.3.5 The Mini-Competition document was subsequently issued to six contractors using the rotation system simultaneously on 4 January 2011 with instructions to return the documents by 12.00 on 7 February 2011.

2.3.6 Subsequently, five companies returned the Mini-Competition document within the prescribed deadline for completed submissions of 12:00 on 7 February 2011 as defined within the document.

2.3.7 The evaluation criteria set within the Mini-Competition document was based on Most Economically Advantageous Tender (MEAT) based upon a composite mixture of quality and price; 20% for quality and 80% price equating to 100% in total.

2.3.8 After a compliance check against the instructions set out in Mini-Competition document, five compliant submissions were evaluated. The results of this evaluation process are set out in the Exempt Appendix.

### 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.

#### **Proceed with contract award for the specified programme of works**

This option will provide good value for money. The tender values are below the pre-tender cost estimate provided by the quantity surveyor, therefore ensuring the scheme will not require value engineering and will be constructed to the specification and quality developed by the design team.

##### Advantages

- Provides best value for money for the Council
- Supports the improved teaching and learning facilities required in the business case

##### Disadvantages

- None

### 3.1 Contract award options

This procurement tendering process has resulted in the following procurement contract award options:

#### 3.1.1 Do not award any contract and cancel procurement process

The option of not awarding any contract and cancelling the procurement process has been considered: but there is no justification for not awarding this contract as it provides best value and has been delivered in accordance with the original advertisements and associated procurement documentation and therefore this option has been discounted.

#### 3.1.2 Award a contract to the contractor as highlighted within the Exempt Appendix

The option of awarding the contract to the contractor as highlighted within the Exempt Appendix has been considered and below are the advantages and disadvantages of this option

##### Advantages

- The contractor will carry out the refurbishment work to the existing buildings as well as construction of the new link building, therefore

offering best value for money, over the procurement of two contracts for this work.

#### Disdvantages

- None

#### 3.1.3 Other alternative options

No alternative options have been identified.

### **4. Advice and analysis**

#### **4.1 Preferred option**

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

The preferred option for this procurement is option 3.1.2 above – to award a contract for the refurbishment works and construction of the new link building.

The recommended preferred option is the most viable option for contract award because the proposed contract award meets the requirements as set out in Section 5.1 'Business Case' within the Gateway 1 Report in the following ways:

- By providing functional, inspirational and secure learning environments for all pupils using the foundation stage model of open plan spaces and project-based learning.
- Providing one united building for the school following their amalgamation and improved accommodation for teaching and learning.
- Providing all classroom accommodation on the ground floor ensuring full disability access and ensuring classrooms are situated together in year groups, with access to shared resources and to outside classroom space, enabling cross class working.
- Providing a physical link building to join the two schools uniting the schools as well as providing a functional weatherproof route for children, staff and visitors.

#### 4.1.1 Procurement Project Outputs / Outcomes

The following procurement outcomes/outputs identified as important at Gateway 1 to the delivery of this procurement requirement have been

appraised in the table below to demonstrate how the recommended procurement contract award will deliver said outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended procurement contract award option deliver outputs/outcomes
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. Staff and governors of Lordswood School	Monitored throughout the programme by monthly site visits and contractor reports.	The preferred contractor has experience of delivering within stipulated timescales and a budget allocated.
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. Staff and governors of Lordswood School	Monitored throughout the programme by monthly site visits and contractor reports.	The preferred contractor has extensive experience of working within school environments, including successes within Medway.
3. Delivery of the key objectives for the project which are: Completion of the refurbishment works and construction of the new link building.	Completion of the building works meeting all the Client's requirements	School Organisation team. Building & Design Services. Staff and governors of Lordswood School	Assessed at the end of the project, and also monitored throughout the contract period	The specification included in the tender includes the key objectives outlined for delivery, which will be undertaken by the contractor.
4. Improvements to the teaching and learning at the School.	Measured through Key Stage results , Ofsted ratings and National Indicators	School Organisation Team Staff and governors of Lordswood School & Ofsted	Through the school results produced following completion of building works in September 2011.	Improved facilities and environment will enhance the delivery of the curriculum.
5. The development of collaborative and community use of the facilities	Development of SLA for use of facility for community and	School Organisation Team. Staff and	Following the completion of the building works in	Improved facilities and environment will allow the

	other users	governors of Lordwood School	September 2011.	development of additional uses
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#### 4.1.2 Procurement Project Management

This procurement project will be taken through the remainder of the Gateway Procurement Process through the utilisation of 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.

#### 4.1.3 Post Contract Award Contract Management

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

The contract will be managed and monitored via Building & Design Services, in association with a project manager from the Bailey Partnership. 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. The financial monitoring will be completed by the School Organisation Team, progress reports will be presented to Education Programme Board at key milestones and reporting to Members will be through the capital monitoring reports to Cabinet.

#### 4.1.4 Other Issues

There are no other issues that could potentially impact the recommended procurement contract award

#### 4.1.5 TUPE Issues

Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it was identified at Gateway 1 that TUPE does not apply to this recommended procurement contract award as this is a Works related procurement with no Services related implications.

### **5. Risk Management**

#### **5.1 Risk Categorisation**

The following risk categories have been identified as having a linkage to this recommended procurement contract award:

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	<b>X</b>
Reputation / political	<b>X</b>	Financial	
Health & Safety	<b>X</b>	Other	<input type="checkbox"/>

<b>Risk Categories</b>	<b>Outline Description</b>	<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>
a) Procurement process	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) Contractual delivery	Failure of contractor to deliver contractual arrangements	II	D	Inclusion of Contract monitoring procedures within the contract documents. Default clauses are part of the contract documentation.
c) Service delivery	Lack of specified performance	III	C	Through a detailed specification with key milestones and performance indicators.

d) Reputation / political	Negative publicity as a result of poor communication	III	C	Advise via the Communication Strategy regarding the works to be carried out
e) Health & Safety	Construction works in close proximity to pupils, staff, visitors and other site occupants	I	D	Contractor to provide clear and concise health & safety procedures / measures, with close liaison with the school. CDM-C to ensure reasonable measures have been taken by all.
f) Financial	Possibility of unforeseen costs identified	III	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

As part of this procurement project, statutory internal stakeholder consultation with Medway Council Planning Department was required and was undertaken before the commencement of the procurement project in order to direct the specification.

#### 6.1.2 During the procurement process in order to aid the evaluation process

As part of this procurement project, consultation with the Section 151 Officer, Strategic Procurement and the Monitoring Officer was required and was undertaken during the procurement process in order to aid the evaluation process.

#### 6.1.3 Post procurement/tender award in order to aid the contract

management process

As part of this procurement project, continued internal consultation with Medway Council Planning Department will be required and will be undertaken post procurement/tender award in order to aid the contract management process.

### **External Stakeholder Consultation**

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

As part of this procurement project, external stakeholder consultation with the headteacher and governors and pupil's at Lordwood School was required and was undertaken before the commencement of the procurement project in order to direct the specification. Consultation with STG Building Control was also undertaken.

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

As part of this procurement project, external stakeholder consultation with the headteacher and governors at Lordswood School was required during the procurement process in order to aid the evaluation process.

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

As part of this procurement project, external stakeholder consultation with the headteacher and governors at Lordswood School will be required and will be undertaken post procurement/tender award in order to aid the contract management process.

### **7. Detailed procurement process tender evaluation information**

7.1 Tenders have been evaluated 20% on quality and 80% on price. The quality evaluation has been carried out by Building and Design Services and the financial evaluation by the project quantity surveyors, Faithful & Gould.

7.2 Quality has been assessed on the following criteria

- Health & Safety – pass or fail
- Company Profile and Experience including workloads and resourcing, details of recent projects including local authority work and reference details
- Project Execution including management, planning and programming and key personnel
- Medway employment and skills including apprenticeships (This area is not scored).

7.3 Following the price evaluation process on the playground extension tender, please see below the rank order table –

<b>Rank based on score</b>	<b>Company Details</b>	<b>Quality Score out of 20%</b>	<b>Price</b>	<b>Price Score out of 80%</b>	<b>Total Score</b>
1	Tender 1	15.75%	£832,992.19	70.00%	85.75%
2	Tender 4	16.50%	£892,488.89	68.29%	84.79%
3	Tender 5	16.00%	£934,974.36	62.40%	78.40%
4	Tender 6	11.50%	£934,470.00	63.91%	75.41%
5	Tender 3	15.25%	£987,474.81	58.77%	74.02%
6	Tender 2	0%	Withdraw	0%	0%

7.4 Following the evaluation process, the winning tender is tender 1. This contractor Tender 1 is the most economically advantageous tender.

## **8. Strategic Procurement Board – 9 March 2011**

8.1 The Strategic Procurement Board considered this report on 9 March 2011 and recommended approval to Cabinet.

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

### **9.1 Financial Implications**

9.1.1. This recommended procurement contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 10 is 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 the successful tender can be met from within this budget

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

### **9.2 Legal Implications**

9.2.1 This recommended procurement contract award per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 10, has the following legal implications, which the Cabinet should consider. The contract value is below the EU procurement threshold for works and so the procurement of the project will primarily be subject to the Council's Contract Rules. Where the contract value is below the EU procurement threshold it may be appropriate to use an approved or select list of contractors from which a tender list can be drawn. The proposal to use KCC's select list of approved contractors was approved at Gateway One. The contractors on this list will have been selected after advertisements in the appropriate trade journals and a process of evaluation that would have considered the financial stability and technical competence of contractors applying to be included in the list. The selection from the KCC select list has

been undertaken in accordance with the requirements of participation in the select list as set out in paragraph 2.3.

### **9.3 Procurement Implications**

- 9.3.1 This recommended procurement contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 10, has the following procurement implications, which the Strategic Procurement Board must consider. The estimated value of the contract is below the EU threshold for works, which is £3,927.260. Although the value of this particular requirement is below the EU threshold for works, it is the client's responsibility to ensure the procurement process adheres to underlying EU treaty principles of fairness, transparency and equal treatment. In general terms, these rules require a competitive tendering process to be undertaken. However, EU 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. Contracts that are not subject to OJEU requirements must still be conducted in line with procurement best practice and also in line with the principles of the EU Treaty principles to afford fairness, competition and transparency in public procurement activities.
- 9.3.2 This procurement activity was undertaken by inviting contractors on a select list who were thereafter subjected to a mini competitive process. The winning tenderer was chosen on the basis of the most economically advantageous tender.
- 9.3.3 The client department must satisfy itself that the selection and evaluation of tenders are compliant with the treaty principles stated above as well as the protocol of the select list of approved contractors to ensure that the Council is not exposed to any risk of a challenge.

### **10. Recommendation**

- 10.1 The Cabinet is asked to recommend to award to the preferred contractor as outlined within section 2.5 'Procurement Contract Award Recommendation' of the Exempt Appendix, for the provision of the amalgamation project works at Lordswood School.

### **10. Suggested reasons for decision(s)**

- 10.1 The recommendations contained within Section 10 'Recommendations' above are provided on the basis that the procurement will deliver the objectives outlined in the business case and summarised in Section 4.1, to provide improved accommodation to enable the school to deliver project based learning in improved accommodation in a linked building.

## 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
Gateway 1 Options Appraisal Report: Lordswood School – Primary Amalgamation Project	W:\School_Services\Planning_Review\Live Projects\9X822 Lordswood\Lordswood\Procurement\Procurement Board Gate 1 - 1 December 2010	21 December 2010
Lordswood Federated Schools - Business Case	W:\School_Services\Planning_Review\Live Projects\9X822 Lordswood\Lordswood\Business Case	13 May 2010