

CABINET

7 JUNE 2011

GATEWAY 3 CONTRACT AWARD: PROCUREMENT TENDER PROCESS REVIEW AND CONTRACT AWARD: ALL FAITHS' CHILDREN'S COMMUNITY 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 from the Cabinet to award a contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix.

This is based upon the recently undertaken procurement process for the project works at All Faiths' Children's Community School. The head teacher, governors and senior team have confirmed their key aims for this project are to provide the much needed additional teaching space and new hall, create a new Children's Centre and combined reception area, and provide safer vehicular access and additional parking for staff and parents.

Cabinet approved the commencement and delivery of this procurement requirement at Procurement Gateway 1 on 15 February 2011. The approved Procurement Gateway 1 Report relating to this Gateway 3 Report is available upon request.

This Procurement Gateway 3 Report has been approved for submission to the Cabinet after review and discussion between the Director of Children and Adults and Assistant Director for Innovation & School Improvement and at the Strategic Procurement Board on 27 May 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 3 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 service sensitivities that Cabinet should be aware of.

These service sensitivities refer to the project approvals process agreed by Cabinet on 28 September 2010 (decision number: 142/2010) where it was agreed that all Children 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 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 Procurement Gateway 1 Report.
- 1.1.2 Following consideration at the Strategic Procurement Board on 27 May 2011, the Cabinet is requested to consider this report as urgent to enable the necessary preparations to be undertaken prior to the commencement of the works on 25 July 2011.

2. Background

2.1 Permission Required From the Strategic Procurement Board

- 2.1.1 This Procurement Gateway 3 Report asks the Strategic Procurement Board to recommend to Cabinet the award of a contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix.
- 2.1.2 This is based upon the recent tender process of a tender with six contractors on the KCC's select list of approved contractors. The competition was established to procure a single stage tender on specification and drawings with a JCT Standard form of contract. The design has been developed to RIBA (Royal Institute of British Architects) stage G. This includes the relevant survey works to ensure any risks are managed or mitigated.

2.2 Contract Details

2.2.1 Procurement type

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

2.2.2 Contract duration

The contract duration for this procurement requirement is 29 weeks and there are no provisions within the contract to extend. The contract is proposed to commence on 25 July 2011 and conclude on 10 February 2012.

2.2.3 Contract value

The total contract value associated with the contract is outlined in the exempt appendix.

2.3 Procurement Tendering Process

2.3.1 In line with Medway Council's Contract Procedure Rules this procurement requirement was subjected to a formal mini-competition tender.

2.3.2 A formal Mini-Competition Tender process in line with Medway's Contract Procedure Rules was undertaken via a Below EU threshold Select list.

2.3.3 This Below EU threshold Select List is entitled Kent County Council Select list and was set up and managed by Kent County Council.

2.3.4 This Below EU threshold Select list is applicable for use by Medway Council as prescribed within the Original Select List Advertisement.

2.3.5 The protocols of the Below EU threshold Select List Provider required Medway Council to complete requirements by selecting contractors on the following basis -

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).

2.3.6 The Council's Invitation To Quote document was issued to six tenderers simultaneously on 07 March 2011 with instructions to return tenders by 12.00 on 8 April 2011.

2.3.7 Subsequently, five companies returned the The Council's Invitation To Quote document within the prescribed deadline for completed submissions of 12:00 on 8 April 2011 as defined within the The Council's Invitation To Quote document.

2.3.8 The evaluation criteria set within the Invitation To Quote document was 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.

2.3.9 After the compliance check against the instructions set out in the Framework Provider's documentation, 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.

3.1 Options Resultant From Procurement Tender Process

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 construction of the new extensions buildings to provide the hall, classrooms and Children's Centre, as well as external works to improve car parking facilities and safer access to the school site

Disadvantages

- None

3.1.3 Other alternative options

The following alternative options have been identified for consideration including advantages and disadvantages:

- Alternative Option 1

3.1.4 Award a contract to the contractor as highlighted within the Exempt Appendix regarding asbestos management works

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

3.2 Asbestos Management Works

- 3.2.1 Asbestos surveys are carried out in schools every 3 years in line with current legislation, which means that the Council and schools have a clear record of the location of any asbestos in schools. The Council's policy is not to remove asbestos where it is not necessary to do so, i.e. where it is located in an area where it poses no risk to staff and students.
- 3.2.2 As part of the project it was always planned to undertake asbestos surveys and they were given consideration when preparing the cost estimate referred to at Gateway 1, and an amount of money was allocated. The work needing to be carried out is inside the ceiling, in the space where the new cable routes for power to the new extensions need to be laid. If this space were to remain untouched it would be completely safe. However it has been addressed as a matter of safety for the contractors who need to work in this area. A specification and programme of works has been produced, and can be safely carried out in two phases, taking advantage of the school holidays in May 2011 (phase 1) and July/August 2011 (phase 2), when the buildings will be unoccupied. A separate low value Category A procurement exercise has been undertaken for phase 1 of these works (scheduled to take place during the school holidays at the end of May 2011). Working to this programme will substantially reduce the risk to the main building project in terms of programme and cost, and allow this work to continue as planned. Quotes have been obtained based on the specification, and the Quantity Surveyor has scrutinised the figures.
- 3.2.3 The value of the tender submitted by the preferred contractor, for phase 2, will allow for this work to be completed as well offering savings to be returned to the Capital Programme to be allocated to other projects.

Advantages

- The work can be carried out in two phases to ensure this is addressed safely
- Failure to allow the asbestos works to be carried out will have a negative impact on the programme and costs related to the project
- Additional works planned to improve the kitchen and school meal facilities, also scheduled for the school holidays and being managed directly by the school, could not go ahead, and there would be a risk that the funding would subsequently be allocated elsewhere

Disadvantages

None

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 Strategic Procurement Board (for recommendation to Cabinet) including justification for this recommendation

The preferred option for this procurement is option 3.1.2 above – to award a contract for the construction of the new classrooms, hall and Children's Centre, and remodelling of the vehicular access and staff and parent parking areas.

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 Summary' within the Gateway 1 Report in the following ways:

- In order for the school to provide improved teaching and learning for its pupils, and to accept up to its maximum published admission number of 30 in each year group, we will provide 3 additional classrooms and a new school hall.
- Provide a greatly improved Children's Centre to replace the current building which is in a temporary unit and not fit for purpose, and a new combined reception area allowing for a stronger link between the school and Children's Centre
- Create a new safer internal road and extra parking for staff and visitors
- Provide 1 temporary classroom for the duration of the contract period, which will allow the school to accept pupils from September 2011.

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 All Faiths' 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 All Faiths' 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 All Faiths' 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 All Faiths' School & Ofsted | Through the school results produced following completion of building works in February 2012 | 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 other users | School Organisation Team. Staff and governors of All Faiths' School | Following the completion of the building works in February 2012. | Improved facilities and environment will allow the development of additional uses |

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 would be resourced post award through the following contract management strategy

The contract will be managed and monitored in association with a project manager from Building & Design Services. 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 | X | Equalities | <input type="checkbox"/> |
| Contractual delivery | X | Sustainability / Environmental | <input type="checkbox"/> |
| Service delivery | X | Legal | X |
| Reputation / political | X | Financial | |
| Health & Safety | X | Other | <input type="checkbox"/> |

| 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 | II | C | 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) Health & Safety | Asbestos works identified from the routine surveys, to be carried out prior to the project works; if not authorised could cause substantial cost to the project and delay to the programme | I | B | Contractor to be appointed to carry out initial works in May 2011, and the main works in Summer holiday 2011 |
| g) 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.

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, external stakeholder consultation with the headteacher and governors at All Faiths' Children's Community 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.

6.2.2 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 All Faiths' Children's Community School was required during the procurement process in order to aid the evaluation process.

6.2.3 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 All Faiths' Children's Community School will be required and will be undertaken post procurement/tender award in order to aid the contract management process.

7 Strategic Procurement Board

- 7.1 The Strategic Procurement Board considered this report on 27 May 2011 and supported the recommendations set out in section 9 of this report.

8. Financial and legal implications

8.1 Financial Implications

- 8.1.1 This recommended procurement contract award 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: This recommended procurement contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9 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.

- 8.1.2 Detailed finance and whole-life costing information is contained within Section 2.1 Finance and Whole-Life Costing of the Exempt Appendix at the end of this report.

8.2 Legal Implications

- 8.2.1 This recommended procurement contract award 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 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.

8.3 Procurement Implications

- 8.3.1 This recommended procurement contract award 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: Strategic Procurement has provided quality assurance to the client department and is satisfied that a robust and compliant procurement process has been followed based upon the high level information provided. The use

of the KCC Select List and corresponding award from this list is wholly compliant with the EU Procurement Regulations as the total proposed contract value is below the EU procurement threshold for works of £3,927,260 and therefore is subject to the Council's Contract Procedure Rules, which require either, a formal tender process via advertisement or a tender process using an appropriate and compliant select list or EU Compliant Framework.

- 8.3.2 Whilst this procurement contract award is below the EU works threshold requirement, the client department must ensure that the treaty principles of fairness, transparency and equal treatment have been upheld during the procurement tendering process, as these apply to both above and below threshold procurements.
- 8.3.3 The preferred recommendation to award the contract based upon the Most Economically Advantageous Tender (MEAT) outcome is supported by Strategic Procurement, as it should deliver best value. The client department must ensure that the low-level evaluation weightings associated with the 20% quality MEAT allocation wholly comply with the evaluation process outlined to all tenderers as part of the procurement tendering documentation.
- 8.3.4 Furthermore, the recommendation is requesting that additional asbestos works be subjected to a Category A Insignificant Risk Quotation Process. This is because in line with Contract Procedure Rules, procurement contracts with a value between £15,000.00 and £100,000.00 must be subjected to a minimum of 3 quotes. The client department is advised that if further quotes are sought, then in line with Contract Procedure Rules, they must liaise with the Children and Adults Strategic Procurement Board representative and place the procurement project on their respective Forward Procurement Plan.

9. Recommendation

- 9.1 The Cabinet is asked to award the contract for the All Faiths' Children's Community School Building Project to the preferred contractor as outlined within Section 2.5 'Procurement Contract Award Recommendation' of the Exempt Appendix.

10. Suggested reasons for decision(s)

- 10.1 The recommendations contained 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 offer a much improved teaching and learning environment to the children at the community school and Children's Centre.

Lead officer contact

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|------------|--------------------------|-------------|-----------------------------|
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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 High Risk Procurement Report Project Commencement/Options Appraisal Report: All Faiths' Children's Community School Building Project | W:\School_Services\Planning_Review\Live Projects\9X832 All Faiths Primary\All Faiths\Procurement and Cabinet Papers | 19 January 2011 |