

CABINET

29 NOVEMBER 2011

GATEWAY 3 PROCUREMENT TENDER PROCESS REVIEW AND CONTRACT AWARD REPORT: ELAINE PRIMARY SCHOOL, STROOD BUILDING PROJECT

Portfolio Holder: Councillor Les Wicks, Children's Services

Report from: Rose Collinson, Director of Children & Adult Services

Author: Janet Elliott, Capital Projects Manager

Summary

This report seeks permission from the Strategic Procurement Board 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 Elaine Primary School in Strood. The head teacher, governors and senior team have confirmed their key aims for this project are to provide an additional classroom to accommodate the forecast increase in roll in 2011/12, as well as safer parking provision. Elaine Primary School has been identified as one of the priority schemes to receive funding as part of the Council's Basic Need Programme. This project proceeded to Gateway 2 as part of a batched procurement process with two other projects at Abbey Court, Rainham and Twydall Primary School in Gillingham. Tenderers were able to bid for one or more of the individual school projects.

The aim of the procurement was to procure either a single contract for all three schools, or a series of individual contracts that deliver all of the requirements of the schools, whilst ensuring best value for money.

All three procurement projects were evaluated separately, but had the option to be awarded both separately or collectively based upon whichever procurement option provided optimum value for money outcomes.

Following detailed evaluation of the tender submissions the best option in the case of the Elaine Primary School project is to award a single contract to the preferred bidder.

Cabinet approved the commencement and delivery of this procurement requirement at Procurement Gateway 1 on 2 August 2011. The approved Procurement Gateway 1 Report relating to this Gateway 3 report is available on the council website and upon request.

This Procurement Gateway 3 Report has been approved for submission to Cabinet after review and discussion between the Director of Children's and Adults Services and Assistant Director for Commissioning and Strategy and also after consideration by the Strategic Procurement Board.

The Children's and Adults Directorate Management Team has 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 new 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 will 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 noted at 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.

2. Background

2.1 Permission Required From Cabinet

2.1.1 This Procurement Gateway 3 Report asks the Cabinet to award a contract to the supplier noted at 2.5.1 of the Exempt Appendix.

2.1.2 This is based upon the recent tender process with seven contractors on Constructionline's approved list of contractors. The competition was established to procure a single stage tender on specification and drawings with a standard JCT design and build 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 noted at 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 26 weeks and there are no provisions within the contract to extend. The contract is proposed to commence on 16 January 2012 and conclude on 29 August 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 A formal Mini-Competition Tender process in line with Medway's Contract Procedure Rules was undertaken via a Below EU threshold Select List.

2.3.2 This Below EU threshold Select List is entitled Constructionline Select List of Contractors, which is the UK's largest register for pre-qualified contractors, and is recommended by the Government Procurement Services Common Minimum Standards and The Local Government Task Force.

2.3.3 This Below EU threshold Select List is available for use by Medway Council as prescribed within the Select List Advertisement.

2.3.4 The protocols of the Below EU threshold Select List Provider required Medway Council to select 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).

2.3.5 The Council's Invitation To Quote document was issued to six tenderers simultaneously on 03/08/2011 with instructions to return tenders by 12:00 on

21/09/2011. Two companies declined the invitation. As a result, a seventh company was included in the process.

- 2.3.6 Subsequently, five companies returned the Invitation To Quote document within the prescribed deadline for completed submissions on 12:00 on 21/09/2011 as defined within the Invitation To Quote document.
- 2.3.7 The evaluation criteria set within 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.
- 2.3.8 After a compliance check against the instructions set out in the Invitation To Quote 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.

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 classroom and parking provision, as well as a new staff work area and storage, plus improved SEN and medical rooms

Disadvantages

- None

3.1.3 Other alternative options

No alternative options have been considered.

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 to build the new classroom and parking area, as well as the new staff work area and storage, plus improved SEN and medical rooms.

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 2 'Business Case Summary' within the Gateway 1 Report in the following ways:

- Create an additional classroom to accommodate the forecast increase in pupil numbers in 2011/12 and beyond
- Provide safer parking and circulation for vehicles
- Create a new staff work area; there is currently no suitable space for staff to prepare lessons as all suitable rooms have been allocated to teaching space
- Provide improved SEN spaces and much needed medical room
- Create much needed storage

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	Successful completion of the building works within the timescales which will be measured	School Organisation team. Building & Design Services. Staff and	Monitored throughout the programme by monthly site visits and contractor	The preferred contractor has experience of delivering within stipulated timescales and a

and within the given budget	through the tender process	governors of Elaine School	reports.	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 Elaine 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 Elaine 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 Foundation and Key Stage results, Ofsted ratings and National Indicators	School Organisation Team Staff and governors of Elaine School & Ofsted	Through the school results produced following completion of building works in August 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 Elaine School	Following the completion of the building works in August 2012.	Improved facilities and environment will allow the development of additional uses

4.1.2 Procurement Project Management

The School Organisation Team will take this procurement project through the remainder of the Gateway Procurement Process.

The 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 led by the Project Manager, which was 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 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 School Organisation Team will complete the financial monitoring, progress reports will be presented to Children and Adults Capital Programme Cabinet Advisory Group 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	<input checked="" type="checkbox"/>	Equalities	<input type="checkbox"/>
Contractual delivery	<input checked="" type="checkbox"/>	Sustainability / Environmental	<input type="checkbox"/>
Service delivery	<input checked="" type="checkbox"/>	Legal	<input checked="" type="checkbox"/>
Reputation / political	<input checked="" type="checkbox"/>	Financial	<input checked="" type="checkbox"/>
Health & Safety	<input checked="" type="checkbox"/>	Other/ICT	<input checked="" 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) Financial	Possibility of unforeseen costs identified	III	D	Detailed investigative work prior to the tendering of works undertaken to highlight any issues.
g) Other/ICT	ICT provision not accounted for in design of the new building	II	E	Design team to work closely with ICT team to ensure all equipment installed on time and compatible with the rest of the school infrastructure

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 Elaine Primary 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 Elaine Primary 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 Elaine Primary 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 2 November 2011 and supported the recommendations set out in paragraph 9 below.

8. Financial, Legal, Procurement and ICT 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, where an allocation has been made for Basic Need 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 the Constructionline list of approved contractors was approved at Gateway 1. 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:

The proposed procurement 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. Strategic Procurement is satisfied that the proposed route using the Constructionline's select list of approved contractors should deliver best value as it will save officer time and costs without subjecting this requirement to a formal tender process via advertisement.

Although this is a below threshold requirement, the client department must ensure that the treaty principles of fairness, transparency and equal treatment are upheld as these apply to both above and below threshold procurements. In addition, the client department must ensure that both high level and sub criteria are clearly adhered to within the procurement process to ensure compliance with the Remedies Directive.

8.4 ICT Implications

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

1. The ICT requirements have not yet been defined, but they are expected to be in line with the existing ICT infrastructure within the school.
2. Consultation with corporate ICT must take place before any commitment relating to the design of the ICT infrastructure and associated equipment is made.
3. All additional revenue costs should be identified and funding allocated to meet annual rental, maintenance and service charges, if appropriate.

9. Recommendations

9.1 The Cabinet is asked to approve the contract award to the preferred contractor as outlined within Section 2.5 'Procurement Contract Award Recommendation' of the Exempt Appendix.

9.2 The Cabinet is recommended to approve the virement set out in paragraph 2.1.1 of the Exempt Appendix to cover design, enabling works, construction works and all associated professional fees. This is a whole project cost.

10. Suggested reasons for decision(s)

10.1 The recommendations contained within Section 9 '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 accommodation to enable the school to offer a much improved teaching and learning environment to the children at the school

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Background papers

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

Description of document	Location	Date
Elaine Primary School Extension of Primary Accommodation	W:\School_Services\Planning_Review\Live Projects\9X453 Elaine Expansion\Business Case	19 January 2011
Gateway 1 High Risk Batched Procurement Commencement: Abbey Court School Rainham, Elaine Primary School, Strood, Twydall Primary School Building Projects Report:	W:\School_Services\Planning_Review\Live Projects\9X833 Twydall Schools\Procurement and Cabinet Papers	6 July 2011