

	<p style="text-align: center;"><b>Children, Education, Libraries &amp; Safeguarding Committee</b></p> <p style="text-align: center;"><b>15 September 2014</b></p>
<p style="text-align: center;"><b>Title</b></p>	<p>Contract variations for 2013 Primary School Expansions</p>
<p style="text-align: center;"><b>Report of</b></p>	<p>Commercial and Customer Services Director</p>
<p style="text-align: center;"><b>Wards</b></p>	<p>Brunswick Park, Oakleigh, East Finchley, West Finchley</p>
<p style="text-align: center;"><b>Status</b></p>	<p>Public</p>
<p style="text-align: center;"><b>Enclosures</b></p>	<p>N/A</p>
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<h2>Summary</h2>
<p>This report seeks approval to</p> <ul style="list-style-type: none"> <li>• vary existing construction contract with Mace Ltd.</li> <li>• vary existing consultancy contract with Mouchel Ltd. for Architectural Services and include payment for surveys</li> <li>• vary existing consultancy contract with Mott MacDonald Ltd. for Cost Consultancy Services</li> </ul> <p>In relation to Expansions at Brunswick Park School, Martin Primary, Moss Hall Junior and Infants School and Oakleigh School.</p>

## **Recommendations**

- 1. That the Children, Education, Libraries & Safeguarding Committee approve the variation to the construction contract between the Council and Mace Ltd entered into on 20 December 2013 for the carrying out of 2013 Primary School Expansions Phase 2 works, from the previously approved value of £10,300,000 to £10,599,597.**
- 2. That the Children, Education, Libraries & Safeguarding Committee approve the variation to the consultancy contract between the Council and Mouchel Ltd, entered into on 13 February 2013, from £ 354,095 to £ 389,595.**
- 3. That the Children, Education, Libraries & Safeguarding Committee approve payment for the sum of £ 86,940 (plus VAT) to Mouchel Ltd for the value of the surveys procured on behalf of the Council in relation to the primary school expansions programme.**
- 4. That the Children, Education, Libraries & Safeguarding Committee approve the variation to the consultancy contract between the Council and Mott Macdonald Ltd entered into on 7 January 2013 from £67,950 to £100,000.**

### **1. WHY THIS REPORT IS NEEDED**

- 1.1 There is currently a high volume of demand for school places in the borough both at Primary and Secondary level. To help address this demand the Council is investing around £12.95m in four Primary Schools located within the Borough (Martin, Oakleigh, Brunswick Park and Moss Hall Infant & Junior schools) for them to expand.
- 1.2 The expansion works were delivered via a Design and Build contract, with separate appointment of technical consultants to provide architectural and cost consultant services to the Council. The costs for the construction works and the consultant services have risen from the originally agreed contract sums and contract variations are required.
- 1.3 The costs for the Mace contract have risen due to undertaking utility works on site. The consultants have sought additional costs for surveys and fees due to an increase in construction value prior to letting the contract to Mace. All increases have been subject to rigorous review by the Council's Employers Agent and can be contained within the overall programme budget.
- 1.4 This report is seeking approval to vary the contracts in line with the recommendations set out above. Although not all of the recommendations require approval at committee level the items are closely linked and are best considered together. The variations will allow payment of the remaining construction costs and outstanding consultancy fees.

### **2. REASONS FOR RECOMMENDATIONS**

- 2.1 Following competitive tender Mace Ltd were appointed as the Council's contractor to develop the design and construct the required facilities in two phases, for an agreed fixed fee. Phase 2 has reached Practical Completion

and the Final Account has been submitted. There has been an increase in Mace costs following utility company delays in relation to an electricity upgrade at Moss Hall School and a new water supply at Martin School. These delays were beyond the control of the Mace, which has entitled the contractor to an extension of time under the contract, with associated costs. These costs have been taken into consideration in agreeing the Final Account and the overall contract sum needs to be varied accordingly.

- 2.2 The architectural consultants (Mouchel) were appointed at an early stage of the project to identify and design the most suitable solution at each school for meeting the demand on pupil spaces. They were retained following contractor appointment to check the quality of the design and construction. They were appointed on a fixed fee, based on the original expected construction cost of £7,55m., in line with the requirements of the North London Strategic Alliance (NLSA) construction related consultancy framework agreement under which they were procured. Stakeholder engagement and design development prior to letting the contract to Mace resulted in agreed changes, refinements and enhanced benefits to the community and school, which increased the construction cost. Mouchel sought an increase in fees for the latter stages of their work, based on this revised cost, and a revised fee has been negotiated. There is a proposed final account figure which the Council's appointed Employers Agent considers this value for money. The contract with Mouchel needs to be varied to allow for the revised fees and the survey costs identified below.
- 2.3 Surveys were required across the school building programme to reduce risk to the schemes by identifying potential issues early on in the design process so that they could be dealt with minimal impact on the delivery of the projects and to identify and design the most suitable solution at each school for meeting the demand on pupil places. Mouchel were appointed through the NLSA construction related consultancy framework and this framework provides that consultants can provide associated supply chain services and surveys under the contract. In line with the framework rules Mouchel procured site surveys in relation to each scheme on behalf of the Council, and payment is required to cover the cost of these.
- 2.4 The cost consultants (Mott MacDonald Ltd) were appointed at an early stage of the project to provide advice on cost, contract administration and value for money of the design and construction and to provide assurance through the life of each project. They were appointed on a fixed fee, based on the original expected construction cost of £7,55m., in line with the requirements of the NLSA framework agreement under which they were procured. Stakeholder engagement and design development prior to letting the contract to Mace resulted in agreed changes and refinements which increased the construction cost. Mott MacDonald sought an increase in fees for the latter stages of their work, based on the revised cost of the contract, and a revised fee has been negotiated. There is a proposed final account figure which the Council's appointed Employers Agent considers this value for money. The contract with Mott MacDonald needs to be varied to allow for the revised fees.

### **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

3.1 No alternative options are available.

### **4. POST DECISION IMPLEMENTATION**

4.1 Once the recommendations have been approved the outstanding consultancy fees will be paid. Remaining payments due to the contractor will be made in line with requirements of the works contract. No further approvals will be required.

### **5. IMPLICATIONS OF DECISION**

#### **5.1 Corporate Priorities and Performance**

5.1.1 The Corporate Plan 2013-16 has a priority outcome 'To create better life chances for children and young people across the borough' under which the Council will invest £65 million to provide additional primary school places to meet demand and provide targeted support for young people who most need it.

5.1.2 As a Local Authority, the Council has a statutory duty to offer a school place to every child of school age in the Borough who requests one.

#### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 The school expansion projects covered by this report are Martin, Oakleigh, Brunswick Park and Moss Hall Infant & Junior schools. The works are being funded from the Primary School Places Capital Investment Programme which has a total budget of £12.95m for the four schools. The additional costs required to fund the variations set out below totals £454,087 and this can all be contained within the existing budget, when taking into consideration construction costs, consultancy and project management fees, legal and planning costs plus contingency sum.

5.2.2 The projected construction costs from Mace are £10,599,597. This is an increase of £299,597 from the previously approved £10,300,000. There has been an increase in Mace costs following utility company delays in relation to an electricity upgrade at Moss Hall School and a new water supply at Martin School. The revised costs need to allow for £58,312 Contractors costs for delays due to UK Power Networks, £122,910 Contractors costs for delays due to works by Affinity Water, £60,687 for associated trenching costs for utilities across the four schools, and the remaining £57,688 to cover rectification of various unforeseen issues across the four schools. The value for money of the additional works has been confirmed by the cost consultant.

- 5.2.3 The agreed fee for architectural services from Mouchel is £389,595. This is an increase of £35,500 from the previously approved £354,095. This has been negotiated down from a higher potential fee claim and the Employers Agent is satisfied this provides value for money.
- 5.2.4 The cost of the surveys procured by Mouchel on behalf of the Council is £86,940. A minimum of 3 competitive quotes were obtained for each survey.
- 5.2.5 The agreed fee for cost consultant services from Mott MacDonald, is £100,000. This is an increase of £32,050 from the previously approved £67,950. This has been negotiated down from a higher potential fee claim and the Employers Agent is satisfied this provides value for money.
- 5.2.6 Mace have undertaken two phases of works on the school expansions, with the contract for the first phase being subsumed into the second phase contract, and necessary approvals being granted for each. The works were procured via the iESE framework in line with Contract Procedure Rules (CPRs). The CPRs require that for variations where the revised contract value is £172,514 and over approval to the variation needs to be by relevant thematic committee, which in this case is Children, Education, Libraries and Safeguarding Committee (CELS). The contract has not been extended before.
- 5.2.7 The original contract with Mouchel was procured via the NLSA framework in line with Contract Procedure Rules. The CPRs require that for variations where the revised contract value is £172,514 and over approval to the variation needs to be by relevant thematic committee, which is CELS. The contract has not been extended before
- 5.2.8 The original contract with Mott MacDonald was procured via the NLSA framework in line with Contract Procedure Rules. The CPRs require that for variations where the revised contract value is between £25,001 and £172,514 approval to the variation needs to be by full DPR. However approval to this variation is being brought to CELS Committee as it is so closely linked to the other approvals within this report. The contract has not been extended before.
- 5.2.9 Mouchel were appointed through the NLSA construction related consultancy framework to provide architectural services in relation to the primary schools expansion programme. This Framework provides that consultants can provide associated supply chain services and surveys under the contract. In line with the framework rules, Mouchel procured site surveys in relation to each scheme on behalf of the Council. A minimum of three competitive quotations were required per survey.

### **5.3 Legal and Constitutional References**

- 5.3.1 Under Section 14 of the Education Act 1996, the Council must ensure that sufficient schools for providing primary and secondary education are available in its area

- 5.3.2 Procurement processes must comply with the European public procurement rules and the European Treaty obligations of transparency, equality of treatment and non-discrimination as well as the Council's Contract Procedure Rules.
- 5.3.3 A framework agreement is an agreement between one or more clients and one or more contractors, the purpose of which is to establish the terms governing particular call-off contracts that may be awarded during the term of the framework, in particular terms relating to price and quantity. The advantage of establishing framework agreements is that as long as the original framework agreement has been advertised and let in accordance with the EU public procurement rules, subsequent call-off contracts can be let under the framework agreement without further advertisement even where those call-off contracts exceed the stipulated financial threshold for works and services.
- 5.3.4 Council Constitution, Responsibility for Functions, Section 3, Annex A, sets out the Terms of Reference for the Children, Education, Libraries and Safeguarding Committee, whose specific responsibilities include planning the adequate provision of school places in the Borough and investment in educational infrastructure to meet the needs of the Borough's learners.
- 5.3.5 Under the Council's Contract Procedure Rules, clause 14.3, contracts may be varied provided all the following conditions are met:

- *the initial contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;*
- *the value of the extension or variation added to the value of the original contract does not exceed the original Authorisation threshold as defined in Appendix 1, Table A;*
- *the extension or variation has an approved budget allocation;*
- *the extension or variation is in accordance with the terms and conditions of the existing contract;*
- *if the initial contract was subject to EU tender procedure, that the extension option was declared within the OJEU notice and the original Acceptance (Delegated Powers Report/relevant Committee Report); and*
- *the contract has not been extended before;*

The conditions above have been met

- 5.3.6 Council Constitution, Contract Procedure Rules, Appendix 1 Table A – sets out authorisation and acceptance thresholds for works, supplies and services. For contract variations where the total value of the contract including variation is between £25,001 and £172,514, Full DPR. For contract variations where the total value of the contract including variation is £172,514 and over, if within budget, Relevant Thematic Committee.

## **5.4 Risk Management**

- 5.4.1 Risk registers are maintained by the Capital Programmes Team. Risks are monitored by the Project Team and the risk register updated as required. Any significant risks are reported to Education Capital Programmes Board and Assets and Capital Board. There are no risks considered to be significant at this stage.
- 5.4.2 If approval is not given to vary the contracts the Council will not be able to meet its contractual obligations and pay invoices when due. This risks damaging the council's reputation and exposes the council to risk of legal action.
- 5.4.3 It is considered that any issues involved are unlikely to raise significant levels of public concern or give rise to policy considerations.

## **5.5 Equalities and Diversity**

- 5.5.1 Pursuant to the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.5.2 The proposed works will enhance the Borough's reputation as a good place to live and work and will assist in delivering a first class education to all pupils as well as providing a safe environment for staff and pupils.
- 5.5.3 The Borough's schools provide a service to diverse communities covering a wide range of backgrounds.
- 5.5.4 The successful tenderer has equal opportunities policies in place which meet the Council's equalities standards. In addition iESE Framework members are required to provide details of their equal opportunities policies as part of the pre-qualification process, including how the policies are implemented, maintained and continuously improved and any training in place. There are no areas of concern in relation to equalities within the submissions as part of the tendering process.

## **5.6 Consultation and Engagement**

- 5.6.1 To inform the decisions set out above there has been on-going engagement with the relevant project stakeholders and further advice has been sought from the Council's appointed advisors in relation to procurement and legal issues.

## **6. BACKGROUND PAPERS**

- 6.1 Cabinet: 3 November 2011, (Decision Item 6), Resolved to note (i) the continuing pressure on primary school places for Reception aged children and other year groups, the methodology used to determine the current investment programme and the progress made to date to permanently expand primary provision and (ii) the need for a second phase of primary investment (for 2014/15 to 2016/17) of £24m for permanent expansions and £2.8m for temporary expansions which will be considered when finalising the medium term financial strategy.
- 6.2 Cabinet on 20 February 2012, (Decision Item 6), Cabinet received the Corporate Plan, Budget, Council Tax and Medium Term Financial Strategy proposals for the period from 2012/13 to 2014/15 and recommended them to Council for adoption, and resolved that considering conscientiously the consultation outcomes and giving due regard to the statutory equality duties, recommend to Council the approval of the Business Planning documents as set out in the report.
- 6.3 Delegated Powers Report of the Director of Commercial Services: 4 March 2012, authorising the use of the NLSA Construction Related Consultancy Framework for four years commencing on 5 March 2012.
- 6.4 Delegated Powers Report 1707 of the Cabinet Member for Education Children and Families: 10 July 2012, Approved the expansion of Brunswick Park Primary from one to two forms of entry on its existing site.
- 6.5 Delegated Powers Report 1706 of the Cabinet Member for Education Children and Families: 10 July 2012, Approved the expansion of Moss Hall Infant school from three to four forms of entry on its existing site
- 6.6 Delegated Powers Report 1705 of the Cabinet Member for Education Children and Families: 10 July 2012, Approved the expansion of Moss Hall Junior School from three to four forms of entry on its existing site.
- 6.7 6 August 2012: Report authorised by the Commercial Services Director to approve use of the Improvement and Efficiency South East (IESE) Framework Agreement for Construction.
- 6.8 Delegated Powers Report 1731 of the Cabinet Members for Resources and Performance and for Education, Children and Families: 7 August 2012 approved acceptance of the quotation from Mouchel Ltd for the supply of architectural services in relation to the Primary Pupil Places Programme.
- 6.9 Delegated Powers Report 1788 of the Deputy Chief Executive: 17 August 2012 approved acceptance of the quotation from Mott MacDonald Ltd for the supply of quantity surveying services in relation to the Primary Pupil Places Programme.



- 6.10 Delegated Powers Report 1776 of the Cabinet Member for Education Children and Families: 16 August 2012, Approved the expansion of Martin Primary School from two to three forms of entry on its existing site.
- 6.11 Delegated Powers Report 1894 of the Deputy Chief Executive: 17 January 2013, authorised acceptance of pre-construction agreement for primary school expansions.
- 6.12 Delegated Powers Report 1919 of the Cabinet Members for Resources and Performance and for Education, Children and Families: 1 February 2013 gave approval to Pick Everard to supply surveys in relation to the Secondary School Expansion Programme under the North London Strategic Alliance (NLSA) Framework for the supply of construction related consultancy.
- 6.13 Cabinet Resources Committee on 25 February 2013, (Decision Item 13), approved that,
- i) subject to acceptance of the Contractors Proposals, the proposed fee and level of cost certainty provided, entering into separate JCT Design & Build Contracts with Mace for the construction works in relation to the permanent primary school expansions programme.
  - ii) where required, the Council enters into enabling works agreements for each scheme with Mace.
- 6.14 Delegated Powers Report of the Cabinet Members for Resources and Performance and for Education, Children and Families: 10 December 2013, gave approval to award a JCT contract for construction works to Mace in relation to the Primary Schools Expansion Programme.
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