

	ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER In consultation with the Chair of Children, Education, Libraries & Safeguarding Committee and the Chair of the Assets, Regeneration and Growth Committee Date
Title	Awarding of the construction contract for the 2015 School Expansion Scheme at Oak Lodge School.
Report of	Chief Operating Officer
Wards	East Finchley
Status	Public
Enclosures	N/A
Officer Contact Details	Megan Hallett - Project Manager, Corporate Programmes, 020 8359 4469, Megan.Hallett@barnet.gov.uk

Summary

This report seeks approval to accept the fixed fee proposal for construction works from Morgan Sindall and to enter into an NEC contract for construction works in relation to the 2015 Schools Expansion at Oak Lodge School.

Decisions

1. That subject to completion of legal and all other documentation, the fixed fee proposals in the sum of £6,484,967 (plus VAT) from Morgan Sindall for the construction works at Oak Lodge be accepted.
2. That the Council enter into an NEC 3 Design and Build contract with Morgan Sindall to undertake the construction works at the school.

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, and in line with the overall increase in demand, there is also increasing demand for SEN school places. The proposed expansions form part of the Council's 2015 School New Build and Expansions Programme, designed to increase capacity to help meet the rising demand.
- 1.2 The proposed expansion at Oak Lodge School will provide 35 additional SEN places plus associated works for dining and gym reprovision.
- 1.3 The Council needs to respond to the rising demand for places in order to meet its statutory duty to provide sufficient school places. If there are insufficient SEN spaces within the Borough, children will need to be placed in out of borough schools, at increased cost. Increasing capacity within Barnet's existing special schools is the most cost effective way of meeting the increasing demand for special school places.
- 1.4 The Council and its technical team have worked with the contractor, through a Professional Services Contract for pre-construction services, to achieve the best value for money solution possible. This solution and associated costs have now been presented by the contractor Morgan Sindall for acceptance by the Council.
- 1.5 This report is seeking authority to accept the fixed fee proposal from Morgan Sindall for the construction works at the school and to enter into an NEC Design and Build Contract with them. The Contract will enable the contractor to proceed with the works and construct the required expansions on site.

2. REASONS FOR DECISIONS

- 2.1 The procurement route follows that proposed in the Procurement Strategy for Oak Lodge School and London Academy, which in turn builds on the Strategy for Procurement of New Education Projects as set out in Section 5 of Capita's Corporate Capital Programme Review report from September 2013.
- 2.2 The agreed procurement route requires appointment of a contractor via the iESE framework, to undertake pre-construction services. These services include production of detailed designs and fixed fee proposals for construction. This is to be followed by construction works on site under an NEC Design and Build contract once the fee proposals have been agreed. .
- 2.3 Morgan Sindall are the appointed contractor and they have worked with the Council and its technical team via a Professional Services Contract (PSC) to achieve the best value for money solution for the proposed works. They have fulfilled the pre-construction services requirement to provide detailed designs

and a fixed fee proposal for construction, and the project team are satisfied with the proposals following Gateway Review. The decisions above are needed to enter into contract and proceed with the construction phase of the works.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 The Council is not obliged to accept Morgan Sindall's proposals and the alternative would be to re-tender the construction works. This option has been rejected as it would have serious programme implications and it would not be possible to achieve the targeted completion for the school.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the recommendations have been approved the Council will instruct HB Public Law to prepare the NEC3 Design and Build contract with Morgan Sindall and construction works can proceed on site, subject to necessary planning and building control approval.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2013-16, in place when this project started, had a priority outcome 'To create better life chances for children and young people across the borough' under which the Council proposed to 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 The Corporate Plan 2015 – 2020 has a strategic objective 'to ensure that Barnet is a place of opportunity, where people can further their quality of life' This report will help to meet this objective by providing expanded and improved school premises for the borough's SEN children.
- 5.1.3 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 This project is funded from the Education Capital Programme which included provision for creating new secondary and SEN places. The Education Capital Programme accounts for £195m within the Council's Capital Budget.
- 5.2.2 The fixed fee construction contract value for Oak Lodge is **£6,484,967** plus

VAT. This figure covers construction activities, and can be contained within the allocated funding from the Education Capital Programme Budget capital when taking into consideration Professional Services Contract costs, and fees for technical team, surveys and legal and planning costs.

- 5.2.3 The works contract, NEC3 Design and Build, provides for changes to be instructed if necessary during the contract. The nature of construction works means that changes may be required as works progress, with associated costs, resulting in reductions or increases in the contract value. The project team includes commercial leads who will be able to provide assessment and appropriate scrutiny of cost where an event occurs. Any changes would be subject to appropriate project governance and adequate contingency funding remaining in the approved project budget.
- 5.2.4 The Council's Contract Procedure Rules detail that an approved tendering process is required for any works projects in excess of £500,000. The mini competition that has been undertaken within the IESE Framework complies with this requirement. All companies on the Framework potentially have the capacity and expertise to meet the Council's requirements and the project team are satisfied that value for money has been achieved.
- 5.2.5 Authority to use the IESE (Improvement & Efficiencies Social Enterprise) South East and London Construction Framework for Major Projects was granted on 6 August 2012. Authority to seek quotes for the pre-construction services was granted via inclusion on the Forward Plan submitted to CRC on 4 November 2013. Authority to enter into the pre-construction services agreement was granted via Officer DPR on 14 July 2014.
- 5.2.6 Procurement for construction services was undertaken via the IESE Framework, with procurement undertaken on Barnet's behalf by the framework contract owner. Eight firms were sent an Invitation to Quote (ITQ) in line with the Council's Contract Procedure Rules and the Framework requirements. The award criteria were selected as 45% cost and 55% quality, in line with the requirements of the Framework Agreement and to ensure a value for money solution.
- 5.2.7 The IESE ITQ process was conducted in two parts. Contractor selection was by mini competition in which tendering companies offered pre-construction services on a fee basis including open book sub contract tendering. Part one was designed to assess the supplier's proposed team and appreciation and understanding of the project and service proposals. Part 2 tested the supplier's project specific approach, understanding and engagement with the project. This part also tested the suppliers' financial response to Overhead and Profit, Insurance and London Weighting percentage uplifts, project specific pre-construction and construction management resources and costs and indicative preliminaries costs. Evaluation was undertaken by a team consisting of technical staff from Barnet's appointed Commercial Services provider (Capita) and Specialist Construction Consultants.

5.2.8 Of the eight firms on the framework five elected to quote and four were invited to proceed to Part 2. A summary of scores for both parts are given below:

	Supplier A	Supplier B	Morgan Sindall	Supplier D	Supplier E	Maximum Score
Part 1	18.5%	17%	19%	13%	14%	30%
Part 2	39.2%	46.5%	51.8%	n/a	39.5%	70%
Total	57.7%	63.5%	70.8%	n/a	53.5%	100%

5.2.9 As a result of the evaluation, Morgan Sindall were chosen as the recommended supplier for pre-construction services and awarded the Professional Services Contract (PSC) to provide these services. A breakdown of the scores for both parts were published in the public DPR dated 14 July, which gave approval to enter into the pre-construction services agreement with Morgan Sindall, and the identities of the unsuccessful firms referred to in the table above were detailed in the exempt report of the same date.

5.2.10 Due to the nature of the NEC Professional Services contract (PSC) in place with Morgan Sindall they have worked with the Council's technical team to produce a fixed contract sum for these projects. It should be noted that through the tender Morgan Sindall have fixed their level of overhead & Profit and have priced for both the project preliminaries and for the PSC. The formulation of the agreed contract sum associated with the project has been dealt with in an "Open Book" method. This has ensured transparency and has provided Capita's cost consultants with total visibility of the formulation of the sum to assess the price for all construction works.

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, equal 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 quality. 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 Under the Council's Contract Procedure Rules, the Council and the successful tenderer will need to enter into a written contract to document the terms for the provision of the works/services. This is the NEC3 Design and Build contract.

5.3.5 Council Constitution, Contract Procedure Rules, Appendix 1 Table A – sets out authorisation and acceptance thresholds for works, supplies and services. For tenders with a procurement value of £172,514 and over, if within budget, Officer in consultation with Chairman of relevant theme or Policy and Resources 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 works are not carried out to accommodate additional classes for the coming academic years, there is a significant risk that the council will not be able to meet its statutory duty to ensure that sufficient schools for providing primary and secondary education are available in its area.

5.4.3 The Council has appointed a technical advisory team. The project team will monitor all aspects of the build to ensure continued assessment of the finances, appropriate design and health & safety through design and from construction start to completion.

5.4.4 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.

<http://barnet.moderngov.co.uk/Data/Cabinet/201111031900/Agenda/Document%204.pdf>

- 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.

<http://barnet.moderngov.co.uk/Data/Cabinet/201111031900/Agenda/Document%204.pdf>

- 6.3 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.
- 6.4 14 July 2014: Delegated Powers Report of the Commercial and Customer Services Director in consultation with the Chair of the Children, Education, Libraries and Safeguarding Committee gave approval to enter into a Pre-Construction Agreement with Morgan Sindall for Expansions at the London Academy and Oak Lodge School.
<http://barnet.moderngov.co.uk/documents/s16320/Selection%20of%20Construction%20Partner%202015%20School%20Schemes%20Public.pdf>

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

8. OFFICER'S DECISION

I authorise the following action

- 8.1 **That subject to completion of legal and all other documentation, the fixed fee proposals in the sum of £6,484,967 (plus VAT) from Morgan Sindall for the construction works at Oak Lodge be accepted.**
- 8.2 **That the Council enter into an NEC 3 Design and Build contract with Morgan Sindall to undertake the construction works at the school.**

Signed



Date

29/10/15.
