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Meeting	Cabinet Resources Committee
Date	25 February 2013
<b>Subject</b>	<b>Construction Contracts for Primary School Expansions</b>
Report of	Deputy Leader of the Council / Cabinet Member for Resources and Performance Cabinet Member for Education, Children and Families
Summary	In line with the Improvement and Efficiency South East construction framework. This report seeks approval to award JCT contracts for construction works from Mace in relation to the Primary Schools Expansion programme

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Officer Contributors	Matt Waters – Senior Project Manager, Corporate Programmes, Deputy Chief Executives Service James Wills-Fleming – Head of Corporate Programmes, Deputy Chief Executives Service
Status (public or exempt)	Public (with separate exempt report)
Wards Affected	Brunswick Park, Oakleigh, East Finchley, West Finchley
Key Decision	Yes
Reason for urgency / exemption from call-in	N/A
Function of	Executive
Enclosures	None
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## **1. RECOMMENDATIONS**

- 1.1 The Committee approve that, 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.**
- 2.2 The Committee approve that, where required, the Council enters into enabling works agreements for each scheme with Mace.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 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.
- 2.2 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.
- 2.3 Council on 6 March 2012 (Decision Item 9), Council Budget and Council Tax 2012/13 – Council approved the recommendations of Cabinet as referred to at 2.2 above.
- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 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.

- 2.9 Delegated Powers Report 1894 of the Deputy Chief Executive: 17 January 2013, authorised acceptance of pre-construction agreement for primary school expansions.

### **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The Corporate Plan 2012-2013 has a corporate priority of 'Sharing opportunities, sharing responsibilities' that has a strategic objective of "ensuring that every school is a good school for every child", under which the Council will 'ensure sufficient primary and secondary school places are available to meet demand by delivering a programme of permanent and temporary expansions'.
- 3.2 Ensuring there are sufficient school places is also a key component of the Barnet Children and Young People's Plan 2010/11 – 2012/13. Furthermore, 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.

### **4. RISK MANAGEMENT ISSUES**

- 4.1 A project risk register is maintained by the Corporate Programmes Team. There are no risks considered to be significant.
- 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.
- 4.3 The Council has appointed a technical advisory team through the NLSA Framework including Gleeds as CDM Coordinators, Mott Macdonald as Quantity Surveyors and Mouchel as Architectural leads. 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.
- 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. EQUALITIES AND DIVERSITY ISSUES**

- 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.

- 5.2 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.
- 5.3 The Borough's schools provide a service to diverse communities covering a wide range of backgrounds.
- 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.

**6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 5.1 The Council and its technical team are working with the contractor through a pre-construction agreement to achieve the best value for money solution possible. The total combined value of the JCT contracts is not to exceed £7,600,000 plus VAT. This figure covers all contractor activities and can be contained within the overall project budget, when taking into consideration construction costs and fees for Quantity Surveyor, Construction Design Management Co-ordinator, legal costs, planning costs and a contingency sum. This is funded from the Primary School Places Capital Investment Programme which has a total budget of £8.3m. The primary school places capital programme currently covers Martin, Oakleigh, Brunswick Park and Moss Hall Infant & Junior schools.
- 5.2 The expected total value of each JCT Contract is detailed in the table below

<b>Project</b>	<b>Combined Pre Construction, Early Works and JCT Contract Value</b>
Martin	£2,200,000
Oakleigh	£1,000,000
Brunswick Park	£1,700,000
Moss Hall Infants & Junior	£2,300,000
<b>Total</b>	<b>£7,200,000</b>

- 5.3 Procurement for construction services was undertaken via the IESE (Improvement & Efficiencies Social Enterprise) South East and London Construction Framework for Major Projects. 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 30% cost and 70% quality, in line with the requirements of the Framework Agreement and to ensure a value for money solution.
- 5.4 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 Commercial Services and Specialist Construction Consultants.

- 5.5 Due to the nature of the iESE Pre Contract Services Agreement (PCSA) which is in place with Mace, they are currently working with the Council's technical team to produce a fixed contract sum for these projects. It should be noted that through the tender Mace have fixed their level of overhead & Profit and have priced for both the project preliminaries and for the PCSA. The formulation of the agreed contract sum associated with all four projects will be dealt with in an "Open Book" method. This will ensure transparency and will provide our Quantity Surveyors Mott MacDonald with total visibility of the formulation of the sum to assess the price for all construction works.
- 5.6 It should also be noted that employing this method of working will ensure that the market has been fully tested. Each element of work provided by Mace or their sub-contractors must be competitive, with at least three quotations obtained. As part of this "Open Book" method of working, Mace will provide this documentation to Mott MacDonald as proof that this has been carried out and to enable Mott MacDonald to undertake any required benchmarking to ensure that value for money is being achieved.
- 5.7 MACE will also offer a further opportunity to maximise value for money by employing economies of scale. This is achieved by looking at separate sub-contractor packages over all of the school sites and combining works packages to include works to all four schools. By procuring a larger value of work from individual sub-contractors, better value can be achieved. Through this route we are also able to utilise the buildability knowledge of the main contractor to ensure that the risk of surprises and changes following contract award are kept to an absolute minimum.
- 5.8 Of the eight firms on the framework three elected to quote. These quotes were assessed, and the resultant scores are given below:

	Supplier A	Mace	Supplier C	Maximum Score
<b>Part 1</b>				
<b>Section 1 - Capacity</b>	22.50%	14.50%	13.00%	30.0%
<b>Part 2</b>				
<b>Section 2 - Technical Criteria</b>	20.40%	28.80%	24.50%	40.0%
<b>Section 3 - Financial Criteria</b>	14.40%	16.80%	14.80%	30.0%
<b>Total</b>	<b>57.30%</b>	<b>60.10%</b>	<b>52.30%</b>	<b>100%</b>

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. While it is acknowledged that only three out of the eight companies on the Framework submitted tenders, the project team are satisfied that value for money will be achieved. The low level of response could be due to capacity given a recent upturn in the demand for construction from other IESE public sector clients with similar requirements.

- 5.9 As a result of the evaluation, Mace have been chosen as the recommended supplier. The identity of the unsuccessful firms referred to in the above table is detailed in the accompanying exempt report.
- 5.10 Mace are currently providing pre-construction services across the four primary schools within the programme up to RIBA stage F, at which point Mace will provide contractors proposals for the Council and its technical team to review. Following a review of the contractors proposals and confirmation of cost certainty the Council will have an option to enter into contract with Mace to complete the works.
- 5.11 It is recommended that the Council should enter into separate JCT Design & Build Contracts with Mace, subject to the Contractors Proposals meeting defined requirements and being containable within the budget. The total value of the potential JCT Design & Build Contracts is currently expected to be £7,200,000 including the pre-construction services.
- 5.12 To minimise disruption to the school and to reduce risk of delay to the programme the Council may enter into an agreement with Mace to carry out minor enabling works prior to committing to the full JCT Contract for each scheme. The value of each enabling works agreement will be kept below £200,000 and should be subtracted from the main JCT Contract for each scheme.

## **7. LEGAL ISSUES**

- 7.1 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.
- 7.2 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.
- 7.3 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.

- 7.4 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 JCT Contract.

## **8. CONSTITUTIONAL POWERS**

- 8.1 Council Constitution, Part 3, Responsibility for Functions, Section 3.6 – details the responsibilities of the Cabinet Resources Committee which includes all matters relating to land and buildings, rented or proposed to be acquired or disposed of by the Council.
- 8.2 Council Constitution, Contract Procedure Rules, Paragraph 5.5 (Table 5.1) – sets out authorisation and acceptance thresholds for works, supplies and services. Cabinet Members are authorised to accept tenders with a value of £500,000 and above where the tender is: a) lowest; or b) represents value for money and is the best available option for the Council and the tender value is no more than 25% above the lowest priced tender. Although the decision to accept these contracts rests with the relevant Cabinet Members, the Committee are utilising the provision in section 3.5 which enables the Committee to discharge the executive functions that fall within their remit, whether or not they are also delegated to officers.
- 8.3 Council Constitution, Contract Procedure Rules, Section 6.11 deals with participation in framework agreements. All of the relevant provisions within this rule have been adhered to.

## **9. BACKGROUND INFORMATION**

- 9.1 There is currently a high volume of demand for school places in the borough both at Primary and Secondary level. The Council is investing around £7.8m in four Primary Schools located within the Borough (Martin, Oakleigh, Brunswick Park and Moss Hall Infant & Junior schools) for them to expand and increase capacity in order to meet the rising demand.
- 9.2 To prioritise primary schools for expansion, the prioritisation criteria as set out in the Cabinet Report is used (see paragraph 1.3 above) (close to area of demand; suitability of site and value for money; parental preferences; and ambition and vision of school).
- 9.3 Plans to develop each of the selected schools have been developed to date by the Council's appointed Technical Team (Procured through the NLSA Construction Related Consultancy Framework).
- 9.4 In line with the iESE framework, suppliers tendered on an expected total contract value of £7,600,000.
- 9.5 Under the Pre Construction Agreement, Mace is developing the design further through to a detailed design and will present a fixed fee proposal for the construction of the schemes.

9.6 Following receipt of the contractors proposals and subject to an assessment of the Contractors Proposals by the Council's Technical Team, the proposed fee and level of cost certainty provided, the Council will need to enter into a JCT Design & Build Contract with Mace, in line with the process set by the iESE Framework. Alternatively, the Council may choose to retender the works if officers and the Council's technical team are not satisfied with the quoted fixed fee or contractors proposals. However, if the Council retenders the works, the programme for delivery will be significantly delayed.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None

<b>Cleared by Finance (Officer's initials)</b>	<b>JH/MC</b>
<b>Cleared by Legal (Officer's initials)</b>	<b>JF</b>