
Meeting	Cabinet Resources Committee
Date	25 February 2013
Subject	Construction Contracts for Secondary School Expansions
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 Morgan Sindall in relation to the Secondary Schools Expansion programme

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	Woodhouse, Garden Suburb, Mill Hill
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, subject to acceptance of the Contractors Proposals, the proposed fee and level of cost certainty provided, entering into separate JCT Design & Build Contracts with Morgan Sindall for the construction works in relation to the permanent secondary school expansions programme.**
- 1.2 The Committee approve that, where required, the Council enters into enabling works agreements with Morgan Sindall for each scheme.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet: 3 November 2011, (Decision Item 6), Resolved to note the projected shortfall in secondary provision and considered the inclusion of an outline secondary expansion investment programme when finalising the medium term financial strategy for 2014/15 to 2016/17.
- 2.2 Business Management Overview & Scrutiny Committee: 9 January 2012, (Decision Item 11), resolved that: (1) the findings and recommendations of the Supply of Secondary School Places Overview and Scrutiny Panel be agreed by the Committee and forwarded to the meeting of the Cabinet on 20 February 2012 for consideration, and (2) the Supply of Secondary School Places Overview and Scrutiny Panel be recommended to reconvene one year after reporting to Cabinet to review progress made in implementing recommendations.
- 2.3 Cabinet: 20 February 2012, (Decision Item 9), Resolved to agree the recommendations made by the Supply of Secondary School Places Overview and Scrutiny Panel, as referred to Cabinet by the Business Management Overview & Scrutiny Committee.
- 2.4 6 August 2012: Report authorised by the Commercial Services Director to approve use of the Improvement and Efficiency South East (IESE) Framework.
- 2.5 Delegated Powers Report 1840 of the Deputy Chief Executive: 26 October 2012, authorised acceptance of pre-construction agreement for secondary 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 Pick Everard 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)

- 6.1 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 £10,800,000 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 Secondary School Expansion Programme which currently covers Christ's College, The Compton and Cophall schools.
- 6.2 The expected total value of each JCT Contract is detailed in the table below

Project	Combined Pre Construction, Early Works and JCT Contract Value
Cophall	2,700,000
The Compton	3,800,000
Christ's College	2,700,000
Total	£9,200,000

- 6.3 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.
- 6.4 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.
- 6.5 Of the eight firms on the framework three showed interest and two elected to quote. These quotes were assessed, and the resultant scores are given below:

	Weighted Quality Score (70%)	Weighted Cost Score (30%)	Total Score
Supplier A	36%	9.4%	45.4%
Supplier B	N/A	N/A	N/A
Morgan Sindall	55.02%	20.0%	75.02%

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 showed interest and that one company withdrew prior to submitting a tender, 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.

- 6.6 As a result of the evaluation, Morgan Sindall 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.
- 6.7 Morgan Sindall are currently providing pre-construction services across the three secondary schools within the programme up to RIBA stage F, at which point Morgan Sindall 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 Morgan Sindall to complete the works.
- 6.8 It is recommended that the Council should enter into separate JCT Design & Build Contracts with Morgan Sindall, 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 £9,200,000 including the pre-construction services.
- 6.9 To minimise disruption to the school and to reduce risk of delay to the programme the Council may enter into an agreement with Morgan Sindall 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 (Relevant section from the Constitution, Key/Non-Key Decision)

- 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 £11m in three Secondary Schools located within the Borough (Christ's College, The

Compton and Copthall) for them to expand and increase capacity in order to meet the rising demand.

- 9.2 To prioritise secondary schools for expansion, the same prioritisation criteria as for primary schools are used (close to area of demand; suitability of site and value for money; parental preferences; and ambition and vision of school) as set out in the Cabinet Report (see paragraph 1.3 above). Expansions that can help meet the recommendations of the Overview and Scrutiny Committee Panel on the Supply of Secondary School Places (see paragraph 1.2 above) have also been prioritised.
- 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 £10,800,000.
- 9.5 Under the Pre Construction Agreement, Morgan Sindall 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 Morgan Sindall, 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

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