

**CORPORATE AND RESOURCES COMMITTEE**

**13 JULY 2021**

**URGENT ITEM AUTHORISED BY THE CHAIR**

The following material has been received since the publication of the agenda for this meeting:

The Chair has agreed to accept this report at the meeting of the Corporate and Resources Committee on 13 July 2021 on the grounds of urgency in accordance with the provisions of S100B(4) of the Local Government Act 1972 by reason of special circumstances, namely that approval of the procurement strategy is required before the next scheduled meeting of this Committee to enable practical completion of the project by 28 August 2023 in time for the September 2023 school intake.



## **Corporate & Resources Committee**

13 July 2021

### **Burlington Junior School Expansion Project**

Nazeya Hussain Executive Director, Place  
Sarah Ireland Executive Director, Corporate & Commercial

Cllr Kirsch, Portfolio Holder for Finance and Commissioning  
Cllr White, Portfolio Holder for Children's Services including Education.

#### **Purpose of Report**

To seek approval for the proposed procurement strategy to source the necessary contracts under a Design and Build model, including the Pre-Construction Services Agreement (PCSA), to support the expansion of Burlington Junior School. The Burlington Junior school Expansion project is currently in RIBA Stage 2. During Stage 3 the intention is to tender to main contractors and appoint a main contractor via a PCSA. This report sets out the process, benefits, timeframe and approximate cost of this transition to the next phase of the project.

#### **Recommendation(s)**

##### **The Committee is asked to RESOLVE that:**

1. the procurement strategy identified within this report to source a contractor to deliver the Burlington School Expansion Programme be approved, which will result in the award of contracts for the Pre-Construction Services Agreement for a period from November 2021 to April 2022 and the Main Construction Works at a total value of £13.16m for a period from April 2022 to September 2023 (plus 12 months latent defect period).
2. it be noted that, in accordance with the Contract Regulations, the Executive Director of Corporate and Communities will approve the award of Pre-Construction Services Agreement (PCSA) including associated surveys for the school expansion project at an estimated contract sum of £600k.
3. it be noted that, in accordance with the Council's Contract and Financial Regulations further contract awards valued below £1m might be made relating to the following services, subject to receipt of satisfactory proposals in respect of Time, Cost and Quality:
  - a) Associated Enabling Works Contract;
  - b) Associated provision of Temporary facilities;
  - c) Early orders which may be necessary to secure factory slots;

4. it be noted that the main works contract will be valued in excess of £1m and will be recommended to Committee for approval in due course;
5. it be noted that the totality of contract awards, including the main works contract, will be met from the capital budget allocation for the construction programme of £13.16m.

### **Benefits to the Community:**

The Council has a duty under section 14 of the Education Act 1996 to ensure that sufficient school places are available within the borough for providing primary and secondary education. The expansion will improve access to learning for children within the area to enable them to lead healthy, independent and resilient lives.

Approval of the procurement strategy and the subsequent PCSA will enable the project to move forward within the current programme and result in practical completion by 28th August 2023.

### **Key Points**

- A. This project delivers the Council's requirement to ensure sufficient school places are provided under section 14 of the Education Act 1996. In November 2019 the Children's and Adults' Care and Education (CACE) Committee endorsed the statutory proposal to expand the physical capacity of Burlington Junior School from four to five forms of entry. This needs to be effective from September 2023.
- B. Burlington Junior school is rated 'Good' by Ofsted. The Head Teacher and her staff believe this to be partially down to the number, size and variety of accommodation available including after school rooms, art/music rooms and good secondary breakout areas. The project will be aiming to provide accommodation that continues this status for a larger number of pupils.
- C. As a consequence of COVID, throughout the UK there have been a large number of education projects placed on hold or cancelled. Also, the construction industry is reporting materials price inflation and labour supply concerns. It is prudent to enter negotiations with the proposed Framework as soon as possible to ensure the Council is to get sufficient value for money tender returns as the construction market is likely to enter a busy period once previously delayed projects are put back in stream.
- D. Undertaking a competitive tender exercise via the proposed public sector approved Southern Construction Framework (SCF) will ensure legal compliance, supply and deliver quality works and services to enable practical completion of the Burlington junior school expansion build by 28 August 2023.

- E. The Southern Construction Framework has been established in accordance with the Public Contract Regulations 2015; therefore this offers compliance including with the requirements of the Council's Contract Regulations. The procurement process is planned to commence during July/August 2021. The potential framework Contractors on the SCF are all able to specialise in the construction of schools and educational buildings.
- F. Appointment of the main contractor would be carried out in two stages. A tender resulting in a Pre-Construction Service Agreement (PCSA) contract which is currently estimated at £600k, whereby the appointed contractor will work with the Design Team, followed by a pricing period as part of RIBA Stage 3 and 4 cost plan.

## **Context**

1. The Council has appointed Consultants to support the delivery of this complex and high priority project, providing architectural services, project management and cost management related key activities in accordance with RIBA Stage 1-6.
2. The procurement process for the Main Contractor will be carried out utilising the Southern Construction Framework. This framework has been recommended by Pick Everard (the Project Team's Cost Consultants) as having the appropriate contractors, relevant sector experience and cost levels.
3. An initial Invitation to Mini-Competition 1 (MC1) in accordance with the framework procedures, will be sent to all eight potential contractors on the framework. A review of responses will enable the Council to determine the shortlisted companies; no more than four potential contractors will then be invited to proceed to the next stage, Mini-Competition (MC2).
4. Following a review of tenders, the successful contractor will be appointed via a Pre-Construction Service Agreement. A PCSA is used to appoint a Design and Build main contractor to carry out pre-construction related services while the project is still in the design stages. Based on a recent cost plan, this is estimated to be £600k and the contract will be awarded by the Executive Director of Corporate and Commercial upon the recommendation of the Commissioning Governance Board, in accordance with the Contract Regulations.
5. It is possible that there may be a need for further contract awards prior to the main works contract, for example Enabling Works, Provision of Temporary facilities and early orders which may be necessary to secure factory slots. Such contracts are anticipated to be valued below £1m and will be awarded in accordance with the Council's Contract Regulations, subject to the relevant decision making being satisfied that the proposals meet required standards in respect of time, cost and quality. The relevant decision maker will be determined as per the delegations set out in the Contract Regulations and Financial Regulations.

6. Following completion of the PCSA works, the main contractor will, with a full package of design and specifications, submit a final price proposal for the main build contract. Based on the recent cost plan, this is estimated to be circa £10m.
7. Subject to the outcome of due diligence, application of value engineering and negotiations, the final approval of the main building contract will be determined and recommended to the relevant Committee.
8. The services and works contracts will be managed by RBK's Project Manager in Property, supported by the appointed consultant who will be carrying out the contract administrator role to ensure compliance with the agreed programme and the building control regulations. Strategic Project Board meetings will be held monthly and will include elected councillors and senior staff from all Organisations. The Project Manager will be quality assured by reporting against the contract Key Performance Indicators and ensure the project is delivered within the budget required. The principles will follow the RBK Contract Management scorecard process.

### **Proposal and Options**

9. The design and build strategy (CB171 and CB178) is proposed as it was deemed that this would enable early involvement of the contractor to contribute to the design, enabling value engineering and equivalent quality considerations to be applied, ensuring buildability and efficient delivery of the programme within the existing budget provision of £13.16m. This model works well where there are programme constraints which necessitate an early start on site to ensure practical completion by 28th August 2023.
10. The project team considered a range of commissioning options and it was determined that the recommended route to market is to commission via the Southern Construction framework for the appointment of a Contractor. This was due to the framework having appropriate contractors with relevant sector experience and cost levels. Three other options were considered and discounted due to the Council's requirement to proceed with the necessary procurement to ensure sufficient school places are provided under section 14 of the Education Act 1996.
11. Third party provision is required as the Authority has no in-house capability to undertake the required specialist works and services. As the estimated contract value is £10m which is above the Public Contract Regulation 2015 threshold for works, the project team did consider the option of issuing an invitation to tender directly to the market via the Restricted procedure. However, with the programme constraints and requirement to ensure practical completion by 28 August 2023, it was deemed that this would not be viable.

## **Procurement Strategy to deliver the project**

12. The Southern Construction Framework consists of three lots and is valid from April 2019 - April 2023. This was implemented in compliance with Public Contract Regulations 2015, with Hampshire County Council and Devon Council as the contracting Authorities, and it is open for all public sector authorities to use. Lot 3 (London) has a two stage mini-competition (MC1 & MC2) procurement process and consists of eight reputable contractors with the relevant experience to deliver school related expansion projects with appropriate contract value bands. Also, they are compliant with the Government Construction Playbook (December 2020).
13. In accordance with the framework agreement, it is recommended to apply 70% quality and 30% price weightings and the potential contractors will be informed of the Council's requirement for the price proposals to be within the construction budget of circa. £10m. The framework enables the Council to apply its own conditions of contract and it is proposed to apply the Council's own conditions. An invitation to Mini-Competition 1 will be issued to all eight companies on the framework and the outcome of the assessment will determine the shortlisted companies to proceed to the next Mini-Competition 2.
14. The MC2 stage invitation to tender (ITT) is then due to be issued to the shortlisted contractors on 14th September 2021 with a return deadline of 12th October 2021. The Contractors will be given the opportunity to visit the site to enable them to submit good quality tender submissions.
15. Following a review of tenders, subject to the contractor engaged at Stage 1 for the PCSA has demonstrated satisfaction of the Authority and its cost consultants that any Stage 2 proposals meet Time, Cost and Quality requirements:
  - a. Within the Construction Budget;
  - b. Will be completed by the specified deadline, or to a timescale acceptable to the Council;
  - c. Of an agreed, accepted design and quality;
  - d. And, in the case of the Main Construction Works, that Planning Permission has been secured.
16. Any recommendations for subsequent early works, temporary facilities, early orders or main works will be agreed by the relevant Executive Director in consultation with the Lead Portfolio Holder.

## **Consultations**

17. A comprehensive community engagement programme has been undertaken and completed since March 2019 that included questionnaires, presentations and engagement with the governors, staff and parent/carers of pupils at the school, also other local residents living within close proximity of the school. As

reflected within the original committee report (CACE 12th November 2019), the result led to the committee approving the statutory proposal to expand the physical capacity of Burlington Junior school from four to five forms of entry.

18. Burlington Junior School Project Board include representatives from AfC, RBK Property, RBK Procurement, RBK Finance, Councillors and school Headteachers (Infant and Junior). RBK Project Manager is leading the delivery of the programme with the appointed consultants and formal project management arrangements with regular reporting in place. Regular consultation and engagement of all key stakeholders will continue throughout this project.

19. A soft market exercise has taken place via the Southern Construction Framework agreement and a high level of interest has been received from all 8 framework approved contractors.

20. The timescales for the procurement of the contractor are set out below.

<b>Milestone</b>	<b>Target Completion Date</b>
Deadline for MC1 (mini competition) Responses in accordance with Southern Construction Framework.	31/08/21
MC2 Shortlist confirmed	31/08/21
MC2 Issue ITT	14/09/21
MC2 Tender returns	12/10/21
Approval to appoint main contractor under PCSA	03/11/21
Compile PCSA and Novation agreement	01/12/21
Notify main contractor of contract award	01/12/21
Main contractor proposal submission (contract cost)	04/04/22
Approval to proceed with main contractor	25/04/22
Main contractor mobilisation	30/05/22
Main contractor start on site	30/05/22
Completion	August 23

21. To meet the funding deadlines the procurement programme is very challenging and any significant delay could impact negatively on this programme. The need to expedite the early appointment of the main contractor will allow the selected main contractor to liaise with the workspace operator to refine any fit out specifications and ensure that materials and equipment are pre-ordered before the programmed start on site. Early indications are that there is an ongoing spike in building materials and lead in times for their delivery.

### Resource Implications

22. In accordance with the agreed procurement strategy (Ref:CB178), TPM Studio was initially appointed to complete RIBA Stage 1 which then enabled Pick Everard (Ref:CB171) to be commissioned to provide a project cost estimate of £13.16m. This enabled a suitable project budget to be established and helped evaluate potential design options. It was agreed for TPM Studio to progress to provide RIBA Stage 1-3 Architectural services and Principal Designer role to support the efficient delivery of the project and enable smooth transition between the different project stage interfaces, at a maximum value of £330,800.

23. In addition, Pick Everard continues to provide Project Management and Cost management services (RIBA Stage 1-6) at a maximum contract value of £189,500 for a contract term up to September 2023. Additional professional services are provided from legal (SLLP); Finance; Health and Safety; and procurement to support the delivery of this programme. The potential bidders will include the SCF's levy of 0.25% within their total contract sum.

24. The project will be funded through Department for Education grant funding that has been received by the Council specifically for this programme.

	2019/20 & 2020/21 £	2021/22 £	2022/23 £
Allocated Fund	£335,000	£3,795,000	£9,030,000
TOTAL £13,160,000			
Expenditure	£335,000	£3,795,000	£9,030,000
Balance	£0	£0	£0

25. The current expenditure of £335k leaves funding of £12.825m. The Junior School project code also includes current works relating to the CLASP building.

Once these costs are fully established and deducted the funds reduce to £12.8m.

## Legal Implications

26. The Public Contracts Regulations (PCR 2015) and the Council's Contracts Regulations allow the Council as a Contracting Authority to call-off services from an established framework agreement.
27. The Council has undertaken relevant framework tests and due diligence in accordance with its internal processes and is satisfied that the framework agreement was properly procured under PCR 2015 and that the framework agreement (i) has not expired,(ii) may be used by all public bodies including the Council and (iii) the Council's requirements fall within the scope of the framework agreement.
28. The Council intends to run a mini competition under the framework agreement. The proposed procurement strategy presents no risks to the Council in so far as the requirements of the framework agreement for running mini competitions are followed to the letter and the relevant requirements of PCR 2015 are adhered to.
29. It is important that a proper audit trail is maintained through-out the procurement process to evidence the process followed and compliance with legal and other requirements.

## Risk Assessment

30. The key external and internal risks rising from the commissioning exercise are outlined in a Risk Assessment Framework. Risks will be monitored and managed by the project board on an ongoing basis. The current strategic risks assessed for this project are as follows:

Strategic Risk to RBK	Impact (H/M/L)	Likelihood (H/M/L)	Mitigating action
Tight programme timescales in order to achieve Practical Completion date of 28/08/23.	H	M	<p>Lead Consultant appointed which will also include the provision of contract administrator role to ensure delivery of project is monitored and compliance with building control regulations.</p> <p>Work with the contractor to best phase the works to enable end date completion.</p> <p>Formal contract management arrangements to be applied for the appointment of consultants as well as the main contractor.</p>

Key decisions: Potential delays to project	H	M	Ensure RBK governance key meeting dates are entered into the project programme. Decision by Exception may need to be considered at various stages although will be considered as a last resort.
Labour shortage in industry	M	M	Early identification and engagement with potential framework contractors via a public sector approved Framework.
Contractual disputes during construction	M	L	Risk reduced with 2 Stage D&B contract via PCSA. This utilises contractor input to the design and should assist with buildability and logistics.
Insufficient allocated funds. Materials Inflation affects the construction industry which may add costs to the original project cost estimate.	H	M	Continual monitoring of design and revised cost estimates at the end of each RIBA stages 2, 3 and 4  Utilising a 2 Stage D&B contract benefitting from contractor design input.
Performance Management	M	L	Robust contract management arrangements to be put in place both for the appointment of professional services as well as the main contractor. Performance will be assessed based on progress of the project within the agreed programme timescales and key outputs/outcomes being delivered. Also, ensure good quality of work is maintained.

## Equalities Analysis

31. An equalities impact needs assessment (EINA) was undertaken in spring 2017 on the Council's School Place Planning Strategy, prior to the strategy's approval by the Council's Growth Committee in June 2017. The Strategy was principally designed to provide a sufficiency of school places within the borough. It identified opportunities for expansion, establishing new secular mainstream schools, new SEND schools and resource provisions, including any expansion of existing schools (secular mainstream and SEND) to meet the greater demand for placements. In this context, it includes Burlington Junior School and notes that the placements are allocated without any reference to applicants' faith or religious practice.
32. The proposed design and build will be delivered in accordance with CDM (Construction Design Management) Regulation 2015, which include equality considerations to ensure the construction complies with the Equality Act 2010

and consultation with AfC, the school and children. The EqIA will be reviewed and updated as part of the project management process.

### **Health Implications**

33. The proposed expansion of Burlington Junior school will enable more children in New Malden to attend school within a walkable distance of their homes, rather than travel further afield for their education.

### **Road Network Implications**

34. The expansion of the school will enable more children and families living in New Malden to attend a local school with the expectation that this will support sustainable travel options and minimise care usage.
35. The appointed lead consultant will monitor and provide CDM related advice to the Authority at various stages throughout the project. They will also carry out unannounced site visits to undertake Health and Safety inspections, and advise on any deficiencies, ensuring corrective actions are implemented. Site access and associated logistics will be planned by the appointed main contractor in accordance with CDM Regulation 2015, taking into account the safe uninterrupted operation of the Nursery, Infant and Junior schools during the works. The school including staff and families will be given prior notice with regards to road network and site access arrangements.

### **Sustainability Implications**

36. There is no impact on the environment during the design phase. The design of the scheme will ensure that the environmental impact of the strategy has positive elements and potential risks which must be managed. The proposed expansion must meet the BREEAM excellent standard which ensures high quality sustainable building and which promotes other environmental agendas such as green travel. The potential environmental impact of having additional school places on transport and traffic is managed through the traffic impact assessment of each school project. Sustainable travel plans are undertaken on the scheme by the school.
37. The Southern Construction Framework includes social value and the potential bidders will be required to put forward their social value commitments as part of their overall offer in accordance with the Council's social value framework which can include improving the sustainability of the community and environment, employment and training opportunities provided for local residents and possible supply chain opportunities for local SMEs.

**Background papers:** None

**Author of Report:** Robert Shankland (Project Manager)