

Report of: The Built Environment Programme Manager**Report to: The Deputy Director (Learning), Children's Services****Date: 18/06/2015****Subject: The waiver of Contracts Procedure Rule 9.1 and 9.2 – To support the prompt relocation of existing modular accommodation to alternative educational sites.**

Are specific electoral wards affected? If relevant, name(s) of ward(s):Bramley, Harewood	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. As a consequence of the increased pressure on school places within Leeds it is necessary to deliver additional primary school places for the 2015/16 academic year. As in previous years, this has been achieved by a temporary increase in admission numbers at the relevant schools. A projection of 12FE (360 places) would be required across the city as temporary cohorts to meet bulges in demand or in advance of permanent solutions being secure for the longer term need.
2. The additional accommodation required will be delivered via a programme of 'bulge works' that includes internal remodelling or the provision of modular accommodation via a framework agreement. As part of the current rationalisation of existing modular accommodation on school sites, two modular units have been identified at St Oswald's Primary and Little London Primary that require relocation to support the Basic Need bulge cohort programme.
3. The two modular units mentioned above have previously supported expansion schemes at the respective schools and are programmed to be decommissioned prior to the start of the 2015 summer break. However, there is an increasing risk, due to pressures within the 2015 bulge cohort programme (highlighted below), that key dates for their relocation may be exceeded and thus impact on the timely delivery of vital accommodation over multiple school sites.
4. Reducing the time that is required to meet the tender process as identified in the Leeds City Council CPR's (to commission an appropriate contractor for the relocation of the two existing modular units) would significantly reduce the risk described above and allow immediate engagement with an appropriate contractor.
5. Children's Services are already working with a modular contractor who has been procured in competition via use of the Crown Commercial Services (CCS) national framework to deliver modular accommodation as part of the 2015 Bulge Cohort programme, and there would be

economies of scale and programme benefits in utilising the contractor to undertake this workstream.

Recommendations

6. The Deputy Director (Learning), Children's Services, is recommended to approve the waiver of the following Contracts Procedure Rule:
7. **CPR 9.1** *Where no appropriate internal provider, Exclusive Supplier, existing provider, LCC Approved Framework Agreement or Approved Framework Agreement exists, competition is required for procurements valued over £100k.*
8. **CPR 9.2** *Where there are sufficient numbers of providers at least four written tenders will be invited. Tenders must be invited by publishing an open opportunity on the YORtender portal or inviting tenders from suppliers using Constructionline (if applicable, please see the construction and housing category team for advice). Authorised Officers should consider CPR 1.1.3 when deciding which approach to take.*
9. To approve the invitation of a single tender from Portakabin Ltd in order to remove the units from St Oswald's Primary and Little London Primary and relocate to alternative educational sites to support the Basic Need bulge cohort programme. Subject to the satisfaction at the rates submitted, acceptance of the single tender for the sum of £188,460.00. It is perceived the contract shall commence on the 21st July 2015 and expire on the 28th August 2015 [with the option to extend for a period of 3 months, such option not to be taken up more than twice].

1. Purpose of this report

- 1.2. The purpose of this report is:
- 1.3. To provide background information and detail to the Director of Children's Services for the proposed relocation of existing modular units at St Oswald's and Little London Primary Schools. Their relocation will provide essential classroom accommodation to support the 2015 Bulge Cohort programme at Bramley and Scholes Primary Schools.
- 1.4. Seek authority to waiver CPR 9.1 and 9.2 and allow the commissioning of an appropriate contractor through the invitation, receipt, evaluation and award of a single tender from Portakabin to relocate the existing modular units at St Oswald and Little London Primary without further competition.

2 Background information

- 2.1 As a consequence of the rising birth rate, new housing developments and the growth of population into Leeds, there is a requirement to provide additional temporary accommodation. This accommodation will support a one off 'bulge cohort' of pupil places which are not currently available within particular pressure areas across Leeds. The temporary accommodation is to be delivered under the City Council's Basic Need Programme, which aims to ensure the Local Authorities statutory duties are met with respect to ensuring a school place for every child within the city.
- 2.2 To support the above statutory duty, Leeds City Council has approved a key development programme at St Oswald Primary and Little London Primary; the development programme will see both schools permanently expand by an additional 1FE at each site. Modular classroom accommodation was provided as 'decant provision' at both sites to allow the schools to continue delivering the curriculum and the expansion works to progress.
- 2.3 The requirement for these units at both St Oswald's and Little London Primary will cease prior to the 2015 summer break and their relocation to support the Bulge Cohort programme at Bramley Primary and Scholes Primary is essential. These units are viewed as a vital asset that will reduce the capital burden for new accommodation being procured via the Crown Commercial Services Framework Agreement to support the 2015 bulge cohorts.
- 2.4 The contractual arrangement at both St Oswald's and Little London Primary expansion schemes only acknowledge the decommissioning of the modular unit and not its relocation. Despite negotiation via experienced LCC project managers, both contractors at the relevant schools are reluctant to engage in additional works at new sites (such as; ground works, strip out, and their reinstallation).
- 2.5 The rationale behind their reluctance is the perceived risk of unknown complications at the new sites impacting on the contractor's resources and ability to deliver their contractual obligations at Little London and St Oswald's respectively. The contractors are willing to liaise with a third party and support its removal off site, but it should be noted the contractors in this instance would purely be acting as an agent on behalf of the Council. For the work to proceed via this procurement route LCC would be paying a management fee, overheads and profit for a service the Council could procure directly themselves and does not demonstrate value for money.

3 Main issues

3.1 Reason for contracts procedure rules waiver

- 3.1.1 Due to protracted negotiations with the relevant contractors at Little London and St Oswald's Primary, and the compressed programme for delivering the required 2015 bulge cohorts, the notional time required to tender the services of an appropriate contractor in line with LCC's procurement guidelines will exceed the date required to remove the modular units from each site thus impacting on both the expansion works and the Bulge Cohort programme.
- 3.1.2 A request to Leeds City Council's internal service providers (CEL) to relocate existing modular units has been declined for the following reasons:
- CEL does not have direct access to the equipment required for relocating modular accommodation and this type of work would notionally be tendered to an external contractor.
 - Due to the current commitment of existing resources, CEL would not be able support this request.
 - To carry out an open competition through the use of an existing Framework Agreement, such as Constructionline, would require specific tender documents to be produced. This process, in addition to the competition itself, is estimated to take a minimum of 2 – 3 months. This would have major implications on delivery for September 2015.
- 3.1.3 Having liaised with LCC Projects, Programmes & Procurement Unit (PPPU) regarding the above matters, it was identified the existing Framework Agreement (CCS) does not allow the movement / relocation of existing modular units. The advice offered in this particular instance (waiver of CPR9.1 and 9.2) would allow LCC Children's Services to commission an appropriate contractor without further competition and reduce the risk of not delivering the appropriate level of accommodation for the start of the 2015 September term.
- 3.1.4 Children's Services are already working with Portakabin to deliver modular accommodation solutions as part of the 2015 Basic Need Bulge programme, utilising the Crown Commercial Services framework. Portakabin have confirmed their availability to undertake this workstream within the programme constraints previously noted.

3.2 Consequences if the proposed action is not approved

- 3.2.1 If the proposed waiver is not approved, a full tender process will have to be undertaken. This process would exceed the critical date to remove and relocate the modular units due to the time required to complete tasks such as, but not limited to; advertise the requirement, liaise with potential contractors unfamiliar with the school sites, vet responses prior to undertaking a tendering exercise, tender evaluation and commissioning.
- 3.2.2 This process will increase the risk of failure to deliver the necessary accommodation at Bramley Primary and Scholes Primary before the start of the 2015 September term. It will also have an impact on the current expansion programmes at St Oswald's and Little London as the modular units current location will impede the progress of the build.

3.3 Advertising

- 3.3.1 No advertising has been undertaken to date, as the original proposal was for the contractors at St. Oswald's and Little London Primary Schools to undertake the relocation works, or failing that, the ISP, CEL, would undertake the work. However, as noted earlier in this report, both parties have been reluctant to undertake this workstream and a further requirement for external competition would take between 2 – 3 months and would have a significant impact on the programme delivery..
- 3.3.2 The Council is already working with Portakabin to provide modular accommodation where required under the 2015 Bulge Cohort Programme and there is a synergy in utilising them to relocate the existing modular units, both in terms of existing working relationships, economies of scale and ability to meet the tight programme. Portakabin have confirmed that they are able to undertake this workstream if required.

4 Corporate Considerations

4.1 Consultation and engagement

- 4.1.1 The relocation of the existing modular units will require a planning application to be submitted. This will engage with local residents and other appropriate stakeholders in the usual manner.
- 4.1.2 Internal consultation with PPPU colleagues managing the St Oswald's and Little London projects has also taken place and identified that the current contracts do not cover the relocation of the modular units hence the requirement to seek a waiver of CPRs in order to contract directly with Portakabin Limited for the provision of this service.
- 4.1.3 Outside of this consultation process, the wider population of Leeds will not be affected by the outcome of this decision.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 The recommendations with this report do not have any direct nor specific impact upon any of the groups falling under the remit of the equality legislation and the need to eliminate discrimination and promote equality.

4.3 Council policies and Best Council Plan

- 4.3.1 The 2015 bulge cohort scheme is due to be delivered under the City Council's Basic Need programme and is required to fulfil the Local Authority's statutory responsibility to provide sufficient school places. In providing places close to where the children live, the proposals will improve accessibility of local and desirable school places, and thus reduce any risks of non-attendance.
- 4.3.2 A key objective within the Best Council Plan 2013-2017 is to build a child friendly city. The delivery of pupil places through Basic Need is one of the most baseline entitlements of a Child Friendly City. A good quality school place contributes to the achievement of targets within the Children and Young People's Plan such as our obsession to 'improve behaviour, attendance and achievement'.
- 4.3.3 A further objective of the Best Council Plan 2013-2017 is to become an efficient and enterprising council by improving how we're organised and making best use of our assets. As part of the 2015 bulge cohort scheme, Children's Services is ensuring value for money is achieved and costs are minimised through the rationalisation and relocation of existing

modular accommodation where appropriate. Meeting this expectation while demonstrating the five values underpinning all we do is key to the basic need programme

4.4 Resources and value for money

4.4.1 The estimate cost to relocate the modular units is:

- **St Oswald's Primary** - £84,357.00
- **Little London Primary** - £104,085.00

The above cost will cover the dismantling, transportation, associated ground works at the relevant sites and fit out of the modular units. The tender will be awarded as a single contract and the cost will be met through the Basic Need Programme.

4.4.2 As highlighted at 4.3.3, value for money is being achieved through relocating and reusing existing council owned modular units, which negates the requirement to purchase additional units at considerable additional cost.

4.5 Legal implications, access to information and call in

4.5.1 The proposal forming the subject of this report constitutes a significant operational decision and therefore is not subject to Call In. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

4.5.2 Awarding a contract directly to Portakabin Limited in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest that it has not been wholly transparent as the opportunity is not being advertised and at least three written tenders invited.

4.5.3 Case law suggests that the Council should consider whether contracts of this value should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising is appropriate but consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc) and the geographical location of the place of performance.

4.5.4 The Deputy Director (Learning) Children's Services has considered this and, due to the nature of the services being delivered and the fact that the services have to be physically performed in Leeds, is of the view that the scope and nature of the services is such that it would not be of interest to contractors in other EU member states

4.5.5 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.

4.5.6 Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 & 9.2, the above comments should be noted by the Deputy Director (Learning) Children's Services in making the final decision as to whether to award this contract and be satisfied that to do so represents best value for the Council, against the context of the Council's requirement to meet its statutory duty to ensure a school place for every child within the city.

4.6 Risk management

- 4.6.1 The waiver of CPR 9.1 & 9.2 would allow LCC Children's Services to commission an appropriate contractor without further competition and reduce the current risk of not delivering the appropriate level of accommodation for the start of the 2015 September term. Continuous dialogue with PPPU colleagues has identified the potential risks associated with the waiver as identified above.
- 4.6.2 The bulge cohort programme of works will be managed through the application of 'best practice' project management tools and techniques via the City Council's 'Delivering Successful Change' methodology.

5.0 Conclusions

- 5.1 As a consequence of the increased pressure on school places within Leeds it is necessary to deliver additional primary school places for the 2015/16 academic year. A temporary admission increase at both Bramley Primary and Scholes Primary has been identified as part of the bulge cohort requirements.
- 5.2 The relocation of existing modular accommodation that will no longer be required at St. Oswald's and Little London Primary has been identified as a vital resource that will reduce the capital burden on the Basic Need Programme.
- 5.3 Contractual limitation within the respective expansion schemes does not support LCC's request to relocate the units via the contractor's onsite. A full tender process to enable their relocation would increase the risk of exceeding key dates in both the expansion and bulge cohort programmes.
- 5.4 Having liaised with PPPU colleagues regarding the above matters, the advice offered in this particular instance (waiver of CPR9.1 & 9.2) would allow Children's Services to commission an appropriate contractor without further competition and reduce the risk of not delivering the appropriate level of accommodation for the start of the 2015 September term. It should be noted the contractor (Portakabin) is currently providing support through the provision of modular accommodation. The contractor has been procured through a competitive exercise through CCS.

6. Recommendations

- 6.1 The Deputy Director (Learning) Children's Services is recommended to approve the waiver of the following Contracts Procedure Rule(s):
- 6.2 **CPR 9.1** *Where no appropriate internal provider, Exclusive Supplier, existing provider, LCC Approved Framework Agreement or Approved Framework Agreement exists, competition is required for procurements valued over £100k.*

CPR 9.2 *Where there are sufficient numbers of providers at least four written tenders will be invited. Tenders must be invited by publishing an open opportunity on the YORtender portal or inviting tenders from suppliers using Constructionline (if applicable, please see the construction and housing category team for advice). Authorised Officers should consider CPR 1.1.3 when deciding which approach to take.*

- 6.4 To approve the invitation of a single tender from Portakabin Ltd in order to remove the units from St Oswald's Primary and Little London Primary and relocate to alternative educational sites to support the Basic Need bulge cohort programme. Subject to the satisfaction at the rates submitted, acceptance of the single tender for the sum of £188,460.00. It is perceived

the contract shall commence on the 21st July 2015 and expire on the 28th August 2015 [with the option to extend for a period of 3 months, such option not to be taken up more than twice].

7 Background documents¹

7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.