

**Report of: Built Environment Programme Manager**

**Report to: The Director of Children's Services**

**Date: 12/05/2016**

**Subject: The Waiver of Contracts Procedure Rule 9.1 and 9.2 – To Support the Delivery of the 2016 Bulge Cohort Accommodation.**



Are specific electoral wards affected? If relevant, name(s) of ward(s): Alwoodley, Wetherby, Armley, Roundhay, Weetwood, Kirkstall, City and Hunslet. Kippax and Methley.	<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. The purpose of this report is to seek approval from the Director of Childrens Services to waiver Contract Procedure Rule 9.1 and 9.2 to ensure the delivery of essential accommodation to support the 2016 Bulge cohorts in specific areas of need across Leeds.
2. As a consequence of rising birth rate, new housing developments and the growth of population in Leeds it is necessary to implement a temporary increase in the pupil admission number for a selected number of schools across the city of Leeds for the 2016/17 Academic year. As such, supplementary classroom space, to be delivered in a variety of forms, is required to accommodate the increase in pupil numbers. The additional accommodation required will be delivered via a programme of 'bulge works' that includes internal remodelling, minor building extensions or the provision of modular accommodation via an existing Framework Agreement.
3. Within the 2016 Bulge Cohort programme of works, a number of schemes have been identified that cannot be delivered via the Internal Service Provider or tendered through an existing Framework Agreement in time for the start of the September term 2016. These specific schemes can however be delivered by the LLEP (Leeds Local Education Partnership) via the existing Strategic Partnering Agreement identified under the Additional Services Agreement.
4. The utilisation of the existing Strategic Partnering Agreement Leeds City Council has agreed with the LLEP, would facilitate immediate engagement with an appropriate contractor and significantly reduce the time required to meet the tender process as identified in the Leeds City Council CPR's. This would greatly reduce the risk of none delivery for the start of the September term 2016.

## Recommendations

The Director of Children's Services is requested to:

5. Approve the waiver of the following Contracts Procedure Rule to enable the delivery of essential accommodation at a selected number of schools identified within this report to support the 2016 Bulge Cohorts Programme.
6. **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.*
7. **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.*
8. To approve the engagement of the LLEP via the existing Strategic Partnering Agreement and generate a programme of works that will be delivered at selected schools that cannot be met by the Internal Service Provider or an existing Framework Agreement in time for the start of the 2016 September term.

## **1.0 Purpose of this report**

1.1. The purpose of this report is:

- To provide background information and detail to the Director of Children's Services to approve the engagement of the LLEP via the existing Strategic Partnering Agreement and generate a programme of works that will be delivered at selected schools that cannot be met by the Internal Service Provider or an existing Framework Agreement in time for the start of the 2016 September term.
- Seek authority to waiver CPR 9.1 and 9.2 to enable the delivery of essential accommodation at a selected number of schools to support the 2016 Bulge Cohorts..

## **2 Background information**

- 2.1 The Learning Places programme represents the Council's response to the demographic growth pressures in primary school provision. The increasing birth rate in Leeds has required Leeds City Council to approve an increasing number of new reception places since 2009 in order to fulfil its statutory duty to ensure sufficiency of school places.
- 2.2. The scale of the response cannot be met through the existing estate; therefore the expansion of existing schools or the creation of new schools has been required in many instances. The capital school building solutions to the demographic need is managed via Children's Services Basic Need Programme.
- 2.3. For the upcoming academic year (September 2016 to July 2017) it was projected that at least 14FE (420 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. A programme of 'bulge' works has been developed to provide the necessary accommodation to meet this demand. Parental preference data has been used to determine the need in the pressure areas and site specific solutions have been developed as a result. These will be tailored to each specific site where a 'bulge' cohort is to be accommodated but includes; utilising extra capacity within existing buildings (where appropriate), internal remodeling, minor extensions and additional modular accommodation provided through an existing Framework Agreement. Scheme specific DCR's will be submitted for these individual projects at a later date once the schemes have been fully developed.
- 2.4. These proposals form part of the Council's Learning Places Programme that embeds the 'One Council' approach in terms of shared ownership of proposed solutions across the various departments involved.

## **3 Main issues**

### **3.1 Reason for Contracts Procedure Rules waiver**

- 3.1.1 The required accommodation at a selected number of schools within the Bulge Cohort programme cannot be delivered by the Internal Service Provider (LBS) due to existing resources being already committed beyond September 2016. The compressed programme for delivering the required 2016 bulge cohorts does not support the notional time required to tender the services of an appropriate contractor through the existing YORbuild 2 Framework Agreement in line with LCC's procurement guidelines and will exceed the date required to deliver the additional accommodation thus impacting on the Bulge Cohort programme and increase the risk of not delivering the appropriate level of accommodation for September 2016.

- 3.1.2 Having liaised with LCC Projects, Programmes & Procurement Unit (PPPU) regarding the above matters, it was identified that whilst the existing YORbuild 2 framework is the preferred tender process the existing Strategic Partnering Agreement between LCC and the LLEP would (in this instance) support the delivery of the required work at the specific schools set out below. 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 via the LLEP without further competition and reduce the risk of not delivering the appropriate level of accommodation for the start of the 2016 September term.
- 3.1.3 It should be noted Children's Services have liaised with colleagues from the LLEP to discuss the required work at the identified schools below. The LLEP have reviewed each site and confirmed resources would be available 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, engagement with an appropriate contractor would be via the YORbuild 2 Framework. This process would exceed the critical delivery date to complete the required accommodation for the start of September 2016, The implications of this would be a deficit of the required accommodation at the school identified below.

### **3.3 Design proposals and scheme description**

- 3.3.1 The proposal consists of the following element:
- Allerton C of E Primary School - A bulge cohort of 30 additional pupils will be accommodated by the installation of an additional classroom to form a third reception classbase and the minor extension of the existing hall.
  - Bramham Primary – The school is temporarily increasing its admission number from 20 to 30 to ensure there are enough pupil places in the local area. To achieve this additional accommodation and internal works will be required, this work will also resolve a historic sufficiency issue the school has experienced in recent years.
  - St Bartholomew's Primary School – The school has accepted bulge cohorts in three previous years with minor alterations to the existing building. For September 2016 two additional key stage 2 classrooms and supporting internal works will be delivered to support the transition of the existing pupils from key stage 1.
  - Talbot Primary - A bulge cohort of 30 additional pupils will be accommodated by the installation of an additional classroom to form a third reception classbase and the re-provision of two existing modular units that have reached the end of their design life.
  - Hawksworth Wood Primary - A bulge cohort of 30 additional pupils will be accommodated by minor internal refurbishment of internal areas within the existing building footprint.

## **4 Corporate Considerations**

### **4.1 Consultation and engagement**

- 4.1.1 The bulge cohort expansion programme required for 2016 has been subject to consultation with Children's Services' officers, school representatives, Highways, Planning, Procurement and senior elected members. Specific discussions relating to the engagement of the LLEP to support the delivery of the required accommodation has taken place with key stakeholders including, senior officers within Children's Services and LCC Corporate Procurement Unit. Children's Services will continue to brief elected members at key stages throughout the project development.
- 4.1.2 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 within 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. A screening document has been prepared to this effect and an independent impact assessment is not required for the approvals requested. The screening document has been sent to the Equality Team to be approved, publishing and held on-file. A copy is included with this report as appendix A.

### **4.3 Council policies and Best Council Plan**

- 4.3.1 This scheme is due to be delivered under the City Council's Learning Places 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 An objective in the Best Council Plan 2013/2017 is to build a child friendly city with a focus on: our three Children's Trust partnership obsessions (looked after children, NEET and attendance); ensuring the best start in life; raising educational standards; and ensuring sufficiency of school places. The programme seeks to deliver a supply of good quality accessible local school places which can contribute to these objectives.
- 4.3.3 A further objective of the Best Council Plan 2013/2017 is to become a more efficient and enterprising council by improving how we're organised and making best use of our assets. As part of this scheme, the council are ensuring value for money is achieved and costs are minimised through the effective procurement and delivery of projects, whilst also ensuring that we promote choice and diversity for parents and families and deliver additional school places in the areas where families need them. 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 LLEP has currently reviewed the specific sites as noted above and identified that the relevant works can be delivered within the notional programme constraints. The approval of the waiver will allow further engagement with the LLEP in order to generate the appropriate designs solutions that will generate the most cost effective programme of works in line with the existing Strategic Partnering Agreement. Once the schemes have reached design freeze budget cost will be identified in the individual Design Cost Report.

4.4.2 As a shareholder, LCC also retains an element of control over the LEP's activities and shares in any dividends produced as a result of any activities. The LEP fees generated are being produced from first principles (reflecting actual costs). This provides LCC with clear visibility and confidence that they reflect value for money.

#### **4.5 Legal implications, access to information and call in**

4.5.1 The proposal forming the subject of this report constitutes an 'Executive Decision' (Significant Operational) and as such will not be 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 Advice from PPPU regarding the award of a contract directly to the LLEP 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.

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 Strategic Partnering Agreement between the LLEP and LCC complies with the OJEU process and procurement policies of LCC. The OJEU procurement of the LEP was an expensive process for LCC, and as such it is envisaged that the Authority would want to maximise the commercial and delivery advantages that this can provide.

4.5.5 The Director of Children's Services has considered the above 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.

4.5.6 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.

4.5.7 Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 & 9.2, the above comments should be noted by the Director of 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 2016 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 2016/17 academic year. A temporary admission increase at the specified primary schools within this report has been identified as part of the 2016 bulge cohort programme.
- 5.2 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 2016 September term. It should be noted the LLEP is currently providing support to identify the required work at the specified primary schools and the approval of the waiver would enable the completion of a design freeze with the budget cost being identified in the individual Design Cost Report.

## 6. Recommendations

- 6.1 The Director of Children's Services is requested to:
- 6.2 Approve the waiver of the following Contracts Procedure Rule to enable the delivery of essential accommodation at a selected number of schools identified within this report to support the 2016 Bulge Cohort Programme.
- 6.3 ***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.*
- 6.4 ***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.*
- 6.5 To approve the engagement of the LLEP via the existing Strategic Partnering Agreement and generate a programme of works that will be delivered at selected schools that cannot be met by the Internal Service Provider or an existing Framework Agreement in time for the start of the 2016 September term.

## 7 Background documents<sup>1</sup>

- 7.1 None.

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<sup>1</sup> 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.