

Report of Chief Procurement Officer, PPPU

Report to Director of Children's Services

Date: 10th August 2016

Subject: Procurement Strategy for the delivery of Shakespeare Primary School expansion



Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Burmantofts and Richmond Hill	<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 checked="" type="checkbox"/> Yes	<input 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. Increasing birth rates across the city and particularly in Burmantofts, together with housing developments and families moving into the area has increased the demand for school places. The current Shakespeare Primary School site is not large enough to expand the existing school building to accommodate the number of primary school places needed in the area. If we do not provide additional places it would make it very difficult for local children to get a school place in Burmantofts.
2. It is proposed that Shakespeare Primary School increase its roll starting at reception level from 1.5FE to 3FE with effect from September 2018. The project is required to deliver the additional 315 pupil places in order for the school to accommodate this 45 place increase in intake. The proposal is to relocate the primary school to the former Primrose High School site off Dolly Lane and the new accommodation and external play areas etc. associated with the 3FE expansion is required for September 2018, with a high level indicative contract value of circa £10m.
3. The proposed expansion project will be delivered under the Learning Places Programme.
4. The 4 week statutory consultation period associated with the expansion was held between 29 February and 25 March 2016. Permission to publish the statutory notice was approved at June's Executive Board with final determination to be made by Executive Board in September 2016.

5. This report sets out the recommended procurement strategy to deliver this expansion scheme.
6. This decision is subject to the outcome of the statutory consultation process resulting in approval of the expansion of Shakespeare Primary, however due to timescales, the Governance process for this decision is being undertaken now to ensure that the scheme can commence straight away if the expansion is formally approved.
7. It is proposed that this scheme follows a new model of procurement recommended by the Cabinet Office and Constructing Excellence, Cost Led Procurement.

Recommendations

8. The Director of Children's Services is requested to:
 - Agree the procurement strategy in line with CPR 3.1.8 as a Cost Led Procurement, using the YORbuild2 framework, an existing supplier arrangement in line with 3.1.6. CPRs 3.1.4 and 3.1.5 do not apply as there is no ISP to undertake this work and there are no exclusive supplier arrangements;
 - Agree the waiver of CPR15.2 (tender evaluation) replacing the 40% price mark with a pass / fail price threshold;
 - Note that this decision is subject to the outcome of the statutory consultation process resulting in approval of the expansion of Shakespeare Primary, however due to timescales, the Governance process for this decision is being undertaken now to ensure that the scheme can commence straight away if the expansion is formally approved; and
 - Note that the Chief Officer, Projects, Programmes and Procurement Unit (PPPU) is responsible for the scheme delivery which is scheduled for completion September 2018.

- 1.1 The purpose of this report is to seek approval for the procurement strategy to deliver the Shakespeare Primary School Expansion project in line with CPR 3.1.8 which requires that a decision to undertake procurement is taken at the point the procurement route is chosen.
- 1.2 The procurement strategy, Cost Led Procurement, is set out below.
- 1.3 This report also seeks approval to waive CPR 15.2, replacing the 40% price mark with a pass / fail price threshold as set out below.
- 1.4 Approval of the Director of Children's Services is required to enable procurement to progress as set out in this report.

2 Background information

- 2.1 Increasing birth rates across the city and particularly in Burmantofts, together with housing developments and families moving into the area has increased the demand for school places. The current Shakespeare Primary School site is not large enough to expand the existing school building to accommodate the number of primary school places needed in the area.
- 2.2 The 4 week statutory consultation period associated with the expansion was held between 29 February and 25 March 2016. Permission to publish the statutory notice was approved at June's Executive Board with final determination to be made by Executive Board in September 2016.
- 2.3 It is proposed that Shakespeare Primary School, as part of the Learning Places Programme for Leeds, increase its roll starting at reception level from 1.5FE to 3FE with effect from September 2018. The project is required to deliver the additional 315 pupil places in order for the school to accommodate this 45 place increase in intake.
- 2.4 The proposal is to relocate the primary school to the former Primrose High School site off Dolly Lane. The new accommodation and external play areas etc. associated with the 3FE expansion is required for September 2018

3 Main issues

- 3.1 Nationally, there has been a general increase in construction costs driven primarily by the increase in demand for construction related services and a continuing skills shortage. Leeds has seen significant activity during 2015 and predictions are that this will continue through 2016 and beyond. As a result of the strong demand and skill shortages, leading contractors are being selective in the projects they choose to tender, resulting in a growth in output prices and less competitive tenders.
- 3.2 It is proposed that the expansion scheme for Shakespeare Primary School follows a new model of procurement recommended by the Cabinet Office and Constructing Excellence, Cost Led Procurement (CLP). This is a procurement method intended to allow the industry to use its experience and knowledge to develop innovative solutions through leveraging design, materials, subcontracting and direct labour to the advantage of the client.

- 3.3 Using their knowledge of costs, the client sets a challenging cost ceiling and output specification it requires for the scheme. The supply side responds by proposing design solutions and committing to a price and a set of rules under which that price can be achieved as the final contract sum.
- 3.4 It is proposed that potential contractors for this scheme are invited to tender for the design and construction of the new build through the YORbuild2 framework under a two stage tender.
- 3.5 Tender information will be developed by Children's Services and PPPU in partnership with NPS to include the cost ceiling, output specification for Learning Places, a School Specific Output Specification, Electrical and Mechanical Output Specifications, a Schedule of Accommodation and Room Data Sheets.
- 3.6 Contractors will be required to demonstrate that their submission complies with the tender information and that construction works can be delivered within the set cost ceiling. The cost ceiling set will be inclusive of construction costs, all fees and associated costs, external works and fixed furniture and equipment. Internal fees and authority / highways works will be excluded from the cost ceiling.
- 3.7 Initially, contractors will be requested to commit to match the set cost ceiling, to present a design solution that identifies areas for cost reduction and outline an approach which demonstrates an ability to work collaboratively. At the end of the first stage, one contractor will be selected to enter into the second stage when the cost and design will be developed.
- 3.8 Cost Led Procurement has been trialled by East Riding of Yorkshire Council with a Cabinet Office Mentor to ensure the principles of this new method were followed. The cost ceiling set by East Riding for a new 2FE primary school was met (£1,785/m²) and construction on site has commenced.
- 3.9 The general increase in construction costs seen in Leeds, and on recent Learning Places schemes means we anticipate this cost ceiling could not be achieved locally. Based on current EFA funding rates high level assumptions are leading to a cost ceiling of between £2,250/m² and £2,500/m² taking into account additional costs around site specific abnormalities and risks not included in EFA rates.
- 3.10 The use of the YORbuild2 framework is deemed the most efficient method of procurement in terms of timescales and resources. The alternative method would be to undertake a procurement exercise via OJEU, but this is estimated to take at least 2-3 months longer than via a framework and involve higher procurement resource and costs or utilise the EFA framework. The benefit of the YORbuild2 framework is that it includes contractors based in the Yorkshire region.
- 3.11 The YORbuild2 framework provides a procurement route for public sector bodies within the Yorkshire and Humber region and formal approval is in place for its use. The framework under the 2 stage tender route provides an integrated team of client, design team and contractors leading to more efficient design and construction, as well as added value from bespoke Employment and Skills plans and use of regional contractors and supply chains. Contractors from Lot 4 (£4m to

£10m) of the framework will be approached by the YORbuild2 framework manager to determine whether they would be interested in tendering this scheme.

- 3.12 The procurement route is in line with 3.1.6, there is an existing supplier arrangement (YORbuild2) which will be used for the procurement. CPR 3.1.4 does not apply as there is not an ISP that is able to provide the service; CPR 3.1.5 does not apply as there are no Exclusive Supplier arrangements.
- 3.13 Initially, the school expansion project will be progressed to the end of RIBA stage 0 – Strategic Definition with NPS, the Council's Joint Venture Partner to produce the cost ceiling and tender documentation. NPS will then be retained to act as Technical Advisers through to handover of the completed scheme in 2018.
- 3.14 A Cabinet Office Mentor will be engaged to ensure the principles of this new method are followed to gain full benefit from this procurement approach. There will be a cost associated to this engagement which will be minimal, circa £15k, but this will provide additional industry experience and access to a wider range of baseline information on which to set a robust cost ceiling.
- 3.15 Reason for contract procedure rules waiver
 - 3.15.1 The cost ceiling that has been determined for the tenders is based on knowledge of previous schemes and current market conditions, ensuring that it will offer value for money. This cost ceiling will be verified by our technical advisors.
 - 3.15.2 Using a pass / fail threshold with no score attached will give price certainty but does not mean that the price is unimportant. If bidders cannot meet the threshold they will be disqualified from the tender process.
 - 3.15.3 This is the first time that a Learning Places school expansion scheme has been developed using cost led procurement. Once this scheme has been delivered, a lessons learned exercise will be undertaken. If that exercise suggests a price evaluation could work on a cost led procurement this will be considered on future schemes. The request for waiver of CPR 15.2 for this scheme is not setting a precedent.
- 3.16 Risks associated with the waiver decision:
 - 3.16.1 If we incentivise bidders to submit a price below the set cost ceiling, there is a chance that they will (i) reduce quality to achieve the best mark for price and / or (ii) enter into a contract which they cannot realistically deliver for the contract price. This could lead to either their failure to deliver and meet the scheme requirements, or to constantly attempt to increase the price through claims. The key difference between the usual position on price / quality evaluations is that a maximum price will have been set (rather than a pre-tender estimate) which, if it has been set correctly, should already be a reasonable price to pay for the outputs that the council requires.
 - 3.16.2 There is a risk that an opportunity to further reduce the price below the cost ceiling is missed, but on this first use of cost led procurement (and taking into account

the risks set out at 3.16.1 above), the project team believes the risk of encouraging unrealistic under-priced bids is greater.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.3 Public consultation on the proposal to expand and relocate Shakespeare Primary School took place from 29 February to 25 March 2016. As well as on-line forums and surveys a number of drop in sessions were held for stakeholders and attended by, among others, parents and local residents. Consultation meetings were also held with the governors, staff and school council.
- 4.1.4 The publication of the Statutory Notice to expand and relocate Shakespeare Primary School was approved by Executive Board on 22 June 2016. Final determination is expected in September 2016.
- 4.1.5 The procurement strategy outlined in this report has been discussed with Children's Services Officers and support for this approach has been gained.
- 4.1.6 In accordance with the Basic Need Programme Approval by Executive Board in September 2014, this Procurement Strategy has been considered and supported by the Deputy Chief Executive and the Director of City Development at the School Places Programme Board on 25th July 2016.
- 4.1.7 The Chief Procurement Officer has been briefed on the waiver of CPR 15.2 (tender evaluation) and supports this approach.
- 4.1.8 The Executive Board Member for Children and Families has been made aware of this procurement strategy.
- 4.1.9 A communications plan for the Learning Places Programme has been developed which outlines the process for consulting with key stakeholders in relation to individual projects and this will be applied to the delivery of the expansion scheme for Shakespeare Primary.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality, Diversity and Cohesion Impact Screening has been undertaken for this scheme and determined that the proposals have a positive impact and that a full assessment is not required.

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 meet the Council's statutory duty to ensure there are sufficient school places for all the children in Leeds. Providing places close to where children live allows improved accessibility to local and desirable school places, is an efficient use of resources and reduces the risk of non-attendance, supporting the Best Council Plan priority to 'Improve educational achievement and close achievement gaps' as part of contributing to the wider Best Council Plan

outcome for everyone in Leeds to 'Do well at all levels of learning and have the skills they need for life'.

- 4.3.2 The procurement method proposed is in line with Corporate Procurement Regulations and Financial Procedure Rules.

4.4 Resources and value for money

- 4.4.1 The estimated cost of the contract at present is circa £10m. This is based on a cost ceiling of £2500/m² with the expectation that the procurement process will drive this cost downwards.
- 4.4.2 Following the Government Construction Strategy, analysis of Cost Led Procurement Trial Projects has provided evidence of the time and cost saved in the procurement process.
- 4.4.3 Early contractor involvement results in better risk management and more certainty in respect of cost and programme delivery.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The service agreement between Leeds City Council and NPS Leeds Limited states that NPS has exclusivity relating to the provision of all professional design services for the Council on respect of feasibility / concept work, pre and post contract services and other construction related services. NPS support the use of the Cost Led Procurement approach on this scheme.
- 4.5.2 This procurement strategy is in line with CPR 3.1.8, the decision to undertake a procurement (including a decision on what is being procured, the procurement route, the programme, the scope and the budget), will be taken at the point that the procurement route is chosen and, subject to any project specific issues, this will normally be the main decision that all subsequent decisions flow from.
- 4.5.3 The procurement route is in line with 3.1.6, there is an existing supplier arrangement (YORbuild2) which will be used for the procurement. CPR 3.1.4 does not apply as there is not an ISP that is able to provide the service; CPR 3.1.5 does not apply as there are no Exclusive Supplier arrangements.
- 4.5.4 This is a key decision and will be subject to call-in.

4.6 Risk Management

- 4.6.1 There is a risk that there will be insufficient interest from the market in this scheme under this procurement route. Soft market testing has been undertaken to brief potential contractors on this method and gauge levels of interest.
- 4.6.2 There is further risk that no contractor is able to meet the cost ceiling set for this scheme. Soft market testing has been undertaken to understand the level of cost that contractors anticipate, and detailed analysis of previous similar schemes, current market conditions and site specific information will be undertaken by NPS to determine a robust ceiling price.

- 4.6.3 If CPR 15.2 is not waived, and replaced with a pass / fail threshold, there is a risk that this will incentivise bidders to submit a price below the set cost ceiling. In this circumstance this could lead them to (i) reduce quality to achieve the price and / or (ii) enter into a contract which they cannot realistically deliver for the contract price. This could potentially risk either their failure to deliver and meet the scheme requirements, or to constantly attempt to increase the price through claims.
- 4.6.4 The Project Manager is responsible for identifying and managing risks via the project Risk Log. This is reviewed and updated regularly and risks closed out as appropriate.

5 Conclusions

- 5.1 The proposed procurement strategy for the delivery of Shakespeare Primary School expansion, utilising the YORbuild2 framework in line with CPR 3.1.8, will facilitate a route for a value for money scheme ensuring that costs are within a robust pre-determined cost ceiling.
- 5.2 Waiver of CPR 15.2 and replacing the 40% price mark with a pass / fail price threshold will remove the risk of bidders submitting an unrealistic price against which they cannot deliver.

6 Recommendations

The Director of Children's Services is requested to:

- Agree the procurement strategy in line with CPR 3.1.8 as a Cost Led Procurement, using the YORbuild2 framework, an existing supplier arrangement in line with 3.1.6. CPRs 3.1.4 and 3.1.5 do not apply as there is no ISP to undertake this work and there are no exclusive supplier arrangements;
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- Note that the Chief Officer, Projects, Programmes and Procurement Unit (PPPU) is responsible for the scheme delivery which is scheduled for completion September 2018.

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.