

Report of the Head of Programme (PPPU)

Report to the Director of Children’s Services

Date: 30 August 2016

Subject: Hollybush Primary School Expansion – Revised Procurement Strategy and Waiver of Contracts Procedure Rule 9.1 and 9.2



Capital Scheme Number: 32274/HOL/000

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Bramley & Stanningley	<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. Hollybush Primary School expands from a 2 Form Entry with 420 pupil places, to a 3 Form Entry with 630 pupil places from September 2016. This revised scheme will still be completed under the City Council’s Learning Places Programme which aims to ensure its statutory duties are met with respect to ensuring a school place for every child within the city.
2. The proposal for the extension to the school forms part of the on-going work to address capacity and sufficiency across all of Children’s Services, which includes provision for primary and secondary school places, early years, as well as specialist provision. These proposals form part of the Council’s Learning Places Programme that embeds the ‘one council’ approach that has achieved shared ownership of proposed solutions.
3. The expansion of places was approved by Executive Board on 19th November 2014 following public consultation and the publication of statutory notices for the expansion in May 2014. This proposal is for an increase in school places to serve the area and does not replace any existing schools or places within the community.
4. The original procurement strategy to deliver the expansion at Hollybush Primary School via a two stage tender approach was previously approved by the Director of Childrens Services in July 2015.

5. At Stage 4, post market testing and a level of value engineering, it became evident that the scheme was undeliverable within the available £4m budget. A value engineering exercise did not generate significant savings and as such, a decision was made to pursue a more cost effective design solution.
6. In April 2016, the contractor was briefed to produce a new outline design as well as ensuring it could be delivered within a £3million construction envelope. The new Gateway process was also introduced, whereby it was explained that in order to proceed beyond the Gateways, it must be demonstrable that the project could be delivered within budget, on time and meet quality criteria.
7. The Gateway 1 submission was received in August 2016. The cost plan demonstrated that the contractor could not deliver the project within the £3m construction funding envelope. As such, they were advised that they did not pass Gateway 1, and the project would not proceed with them moving forward.
8. Irrespective of the issues detailed above, Hollybush Primary School becomes a 3FE in September 2016. Summer works are being undertaken at present to ensure there is enough space within the school to accommodate the increased pupil numbers in September. The school can accommodate the increased number of pupils in September 2016 and 2017, however the September 2017 proposal is a short term measure and it is imperative that the school is fully expanded no later than December 2017.
9. For this reason, a delivery partner must be mobilised immediately, ensuring that the full expansion of the school is complete by December 2017. It is proposed therefore, that the Leeds LEP Limited (LLEP), using Interserve as its construction partner, is procured to deliver the scheme, on the basis that they have demonstrated a willingness and ability to deliver the scheme within the agreed time and cost parameters.

Recommendations

The Director of Childrens Services is requested to:

- i. Note that the two stage process with the original contractor has been abandoned due to failure on their part to submit an affordable scheme based on the original design proposals and also a revised contractor-led design at Gateway 1 of the revised scheme.
- ii. Approve a revised procurement strategy, allowing the Councils Strategic Partner- Leeds LEP Limited, to be commissioned to deliver the expansion to Hollybush Primary School as it cannot be delivered by the Internal Service Provider or through an existing Framework Agreement, by December 2017.
- iii. Approve the waiver of the following Contracts Procedure Rule to enable the delivery of essential accommodation at Hollybush Primary School:
 - 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.

1. Purpose of this Report

1.1. The purpose of this report is:

- To seek approval for the expansion of Hollybush Primary School to proceed using a different procurement strategy to that originally agreed for the scheme, due to issues with the original contractor and subsequent challenging time constraints. It is proposed that the Leeds Local Education Partnership, (LLEP) with their construction partner, Interserve, is commissioned to deliver the new scheme, subject to the build element of the scheme being deliverable within £3m, and will require a waiver of Contractor Procedure Rules 9.1 and 9.2.

2. Main Points

- 2.1. Hollybush Primary School becomes a 3FE in September 2016. Following a recommendation by PPPU, the original procurement strategy to deliver the expansion at Hollybush Primary School via a two stage tender approach was previously approved by the Director of Childrens Services in July 2015.
- 2.2. The chosen contractor developed the scheme from RIBA stage 2 to Stage 4. At Stage 4, post market testing and a level of value engineering, it became evident that the scheme was undeliverable within the available £4m budget. This was due to a number of reasons, primarily that the contractor considered the design solution to be overly complex consisting of three separate extensions which created a disproportionate amount of fixed costs and an extended period of disruption for the school. A value engineering exercise did not generate significant savings and as such, a decision was made to pursue a more cost effective design solution.
- 2.3. In April 2016, the contractor was briefed to produce a new outline design which simplified the footprint of the proposed extension as well as ensuring it could be delivered within a £3million construction envelope, which would in turn ensure that the overall scheme could be delivered within the original Authority to Spend of £4m. The new Gateway process was also introduced, whereby it was explained that in order to proceed beyond the Gateways, it must be demonstrable that the project could be delivered within budget, on time and meet quality criteria.
- 2.4. The Gateway 1 submission was received in August 2016. The cost plan demonstrated that the contractor could not deliver the project within the £3m construction funding envelope with costs significantly above what would be expected for a revised design submitted by the contractor and which the contractor perceived to be of a less complex nature. As such, they were advised that they did not pass Gateway 1, and the project would not proceed with them moving forward.
- 2.5. Summer works are being undertaken at present to ensure there is enough space within the school to accommodate the increased pupil numbers in September. The school can accommodate the increased number of pupils in September 2016 and 2017, however the September 2017 proposal is a short term measure and it is imperative that the school is fully expanded no later than December 2017.
- 2.6. The school, Governing Body and local ward members will not accept delays beyond Christmas 2017 and as such, the school expansion must be complete by December 17 at the latest.

- 2.7. For this reason, a new delivery partner must be mobilised immediately, ensuring that the full expansion of the school is complete by December 2017. It is proposed therefore, that the Leeds LEP Limited (LLEP), using Interserve as its construction partner, is procured to deliver the scheme.
- 2.8. In the two weeks since the LLEP were approached to ascertain if they would be interested and assess whether they had the capacity to deliver within the project constraints, they have held a design workshop attended by architects and M&E and steel consultants to produce detailed designs which the school support. The plans have also been shared with ward members and school governors. The LLEP and Interserve have advised they are keen to work with LCC to deliver this scheme and advise they can deliver within the funding envelope and programme available.
- 2.9. If this revised procurement strategy is approved, the Leeds LEP plan to submit a planning application in September 2016 and advise that the scheme will be complete for December 2017.
- 2.10. The LEP would be commissioned using the Gateway Process utilised for all other Learning Places projects
- 2.11. The design, project management and other professional fees quoted by the LLEP are in the process of being assessed to ensure these are competitive with the current market.
- 2.12. The required accommodation at Hollybush Primary School cannot be delivered by the Internal Service Provider (LBS) due to the timescales, scope and complexity of the project. Whilst the existing YORbuild 2 framework is the preferred tender process, the now compressed programme for delivery by December 2017 also means that to procure using the YORbuild 2 is not possible as the risk of non-delivery is too high.
- 2.13. There is an established relationship with the LLEP and they have advised they can mobilise quickly, resource the project and not surpass the cost ceiling. Therefore, a waiver of CPR9.1 and 9.2 is requested so that the LLEP can be commissioned without further competition and to mitigate the risk of not delivering the appropriate level of accommodation by December 2017.
- 2.14. 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 December 2017. The implications of this would be a deficit of the required accommodation at the school identified below.
- 2.15. There are abortive costs associated with the redesign of the scheme and the subsequent change of procurement strategy, however the project will be delivered within the original overall Authority to Spend budget of £4m

3. Programme

- 3.1. The programme that the LEP has submitted, demonstrates that their proposal can be delivered within the timescales required. The key milestones to achieve this programme are detailed below:

Milestone	Date
Design development	w/c 15 Aug 2016
Planning submission	w/c 6 September 2016
Planning approval	05 December 2016
Start on Site	05 January 2017
Project Completion	December 2017

4. Corporate Considerations

4.1. Consultation and Engagement

4.1.1. The proposal to expand the school was subject to statutory process issued 3rd September 2014 including public consultation. The expansion of the school was subsequently approved by the Executive Board on 19th November 2014.

4.1.2. Throughout the design process the school and the governing body have been consulted with, to ensure that the final design meets expectations. A further 'show and tell' event will be held in September to showcase the revised design to parents and pupils.

4.1.3. Local Councillors have also been kept abreast of developments.

4.1.4. In accordance with the Basic Need Programme Approval by Executive Board in September 2014, this scheme has been considered and supported by the Deputy Chief Executive and Director of City Development, and the Executive Member has been briefed.

4.2. Equality and Diversity / Cohesion and Integration

4.2.1. An EDCI screening document is included with this report.

4.3. Council Policies and Best Council Plan

4.3.1. The recommendations are being brought forward to meet the Council's statutory duty to ensure there are sufficient school places for all children living in Leeds. Providing places local to where children live improves accessibility, reduces the journey to school and reduces the risk of non-attendance.

4.3.2. This contributes to the 2016/17 Best Council Plan outcomes for everyone in Leeds to 'Do well at all levels of learning and have the skills they need for life'; 'Be safe and feel safe' and 'Enjoy happy, healthy, active lives'. It also supports the vision in the supporting Children and Young People's Plan 2015-19 to build a child-friendly city with a focus on ensuring all children and young people are safe from harm; do well at all levels of learning and have the skills for life; enjoy healthy lifestyles; have fun growing up; are active citizens who feel they have a voice and influence. The programme seeks to deliver a supply of good quality accessible local school places which can contribute to these outcomes.

4.4. Resource and Value for Money

- 4.4.1. To date, the scheme has not been deliverable within the £3m construction envelope, and the £/m² submitted by the original contractor on both the original scheme and subsequent contractor-led re-design did not represent value for money for a scheme of this nature.
- 4.4.2. The LLEP and Interserve advise that they can deliver within the £3m budget and have supplied a cost plan supporting this. The cost plan was very robust, especially considering the short timescale available to develop this. The cost plan at present is slightly over the £3m funding availability, although it contains a number of off market positions which we will be addressing at the next stage around level of OH&P, preliminaries, design and LLEP fees; these are in the process of being negotiated down, which will bring the cost within the funding envelope.
- 4.4.3. Interserve, when developing the cost plan, wanted to assure themselves that the scheme could be delivered within budget, and as such, over engineered some elements of the build and priced some construction elements higher than would be expected. This provides scope for a value engineering exercise that will assist with reducing down the scheme costs.
- 4.4.4. NPS (Leeds) have reviewed these costs and confirmed they were above what the market and BCIS suggest is appropriate for a build of this nature. Moving forward, Interserve will be in a position to apply best value construction methodology in order to address the issues raised by NPS and reduce scheme costs.
- 4.4.5. There is a level of abortive costs associated with the original scheme and subsequent contractor-led re-design, resulting from fees incurred through the original contractor, NPS Leeds and PPPU, and there are potential costs associated with the re-design by the original contractor. However, the revised/new scheme to be delivered by the LEP will enable the overall expansion project to be delivered within the original ATS.

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. Award of a contract directly to the LLEP could leave the Council open to a potential challenge from other providers, to whom this contract could be of interest to, claiming that it has not been wholly transparent as the opportunity is not being advertised. However, advice has been sought from the Council's Procurement Unit who consider that the risk is low, as all procurement routes have been carefully considered and due to the now compressed programme for delivery by December 2017, other procurement methods are not viable as the risk of non-delivery is too high, leading to a deficit of the required accommodation at the Hollybush Primary School.
- 4.5.3. 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.

4.5.4. The LEP would be commissioned using the NEC3 contract and the Gateway Process utilised for all other Learning Places projects.

4.6. **Risk Management**

4.6.1. The project to deliver the expansion of Hollybush Primary School is subject to Risk Management processes within Public Private Partnership and Procurement Unit.

The keys risks are:

- i. Risk of a procurement challenge because of awarding the contract directly to the LLEP, as detailed in 4.5.2 above. However, the risk is considered to be low. All procurement routes have been carefully considered. There is no requirement to use Yorbuild and the value is below the EU works threshold so there is no risk of challenge for not following either of these routes. Additionally, there is a lot of work in the industry at present reducing the likelihood of challenge from contractors. Furthermore, contractors are keen to develop relationships with LCC moving forward to take advantage of the work that the Council provides, and again would therefore be unlikely to challenge.
- ii. If this scheme is not delivered by December 2017, temporary accommodation will be required which places further significant pressure on revenue budgets.
- iii. As the scheme is already delayed, further delays will have reputational impact for LCC if the revised programme deadline cannot be met.
- iv. The cost plan at present is slightly over the £3m funding envelope available. However, there is scope within the specification to undertake a value engineering exercise that will reduce the cost down to within the funding envelope.
- v. The school have also been able to carry forward an element of budget on the basis that this will be spent once the new build and nursery refurbishment is complete. If this is delayed further, there is a significant risk that this funding will be clawed back from the school.

5 **Conclusions**

5.1 The two stage tender process with the original contractor has been abandoned due to failure on their part to submit an affordable scheme at Gateway 1

5.2 Hollybush Primary becomes a 3FE in September 2016 and as such, there is a need to mobilise another contractor quickly, to ensure adequate accommodation is delivered by December 17 at the latest

5.3 The required accommodation at a Hollybush Primary School cannot be delivered by the Internal Service Provider (LBS) due to the timescales, scope and complexity of the project. Whilst the existing YORbuild 2 framework is the preferred

tender process, the now compressed programme for delivery by December 2017 also means that to procure using the YORbuild 2 is not possible as the risk of non-delivery is too high.

5.4 It is proposed that the Leeds LEP, with Interserve as their construction partner, is procured immediately to deliver the scheme, so long as they can do so within the £3m construction funding envelope.

5.5 To do so, a waiver of CPR 9.1 and 9.2 is requested so that the LLEP can be commissioned without further competition and to reduce the risk of not delivering the appropriate level of accommodation by December 2017.

6 Recommendations

6.1 The Director of Childrens Services is requested to:

- i. Note that the two stage process with the original contractor has been abandoned due to failure on their part to submit an affordable scheme based on the original design proposals and also a revised contractor-led design at Gateway 1 of the revised scheme.
- ii. Approve a revised procurement strategy, allowing the Councils Strategic Partner- Leeds LEP Limited, to be commissioned to deliver the expansion to Hollybush Primary School as it cannot be delivered by the Internal Service Provider, or through an existing Framework Agreement, by December 2017.
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 - 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.

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.