

Report of the Head of Service Learning Systems

Report to the Director of Children & Families

Date: 17th February 2017

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



Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Bramley and 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. 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 expansion of Bramley Primary.
2. In December 2016 the Executive Board approved the principal of expanding Bramley Primary from 280 places to 420 places with a funding envelope of £3.25m. The expansion will take effect from September 2017 and be delivered 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.
3. This proposal 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. The Council’s Learning Places Programme embeds the ‘one council’ approach that has achieved shared ownership of proposed solutions.
4. Following a thorough review of the site accommodation, internal alterations have provided sufficient accommodation for previous bulge years to meet the required capacity. The formal expansion will require new accommodation to meet the demand from September 2017 onwards as the school grows to its new capacity.
5. Considering the time pressures of this scheme and the subsequent accelerated programme for delivery, a delivery partner must be mobilised immediately ensuring the critical accommodation is available by September 2017. It is proposed 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 Children & Families is requested to:

1. Approve the waiver of the following Contracts Procedure Rule to enable the delivery of critical accommodation at Bramley Primary school, thus allowing the engagement of the Councils Strategic Partner (Leeds LEP Limited) to deliver the required works.
 - **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
2. 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.
3. Note that design and technical services have been procured utilising the City Council's preferred provider, Norfolk Property Services Leeds (NPS).

1.0 Purpose of this Report

1.1. The purpose of this report is:

- To seek approval for the expansion of Bramley Primary School to proceed using this procurement strategy, due to 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 required accommodation being deliverable within the £3.25m budget.
- To seek approval to a waiver of Contractor Procedure Rules 9.1 and 9.2.

2.0 Main Points

2.1. Bramley Primary school is to permanently expand from 280 pupils to 420 and will take effect from September 2017.

2.2. The school has previously accepted bulge cohorts to meet demand for pupil places in the local area. The required accommodation was generated through internal remodelling, this approach will not be sufficient to address the capacity issues from September 2017. Therefore a permanent solution is required to ensure critical accommodation is available for September 2017.

2.3. Considering the times pressures of this scheme and subsequent accelerated programme for completion, a delivery partner must be mobilised immediately, ensuring that the critical accommodation is available by September 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.

2.4. The LEP would be commissioned using a modified version of the Gateway Process utilised for all other Learning Places projects.

2.5. The design, project management and other professional fees quoted by the LLEP to progress the scheme to gateway / RIBA 3 have been approved by the Built Environment Programme manager under additional services.

2.6. The required accommodation at Bramley Primary School cannot be delivered by the Internal Service Provider (LBS) due to the timescales, scope and complexity of the project. Whilst the existing YORbuild2 framework is the preferred tender process, the now compressed programme for delivery by September 2017 also means that to procure using the YORbuild2 framework would not meet the proposed programme and thus the risk of non-delivery exceeds acceptable tolerances.

2.7. 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 critical accommodation by September 2017.

2.8. If the proposed waiver is not approved, engagement with an appropriate contractor would be via the YORbuild2 Framework. This process would exceed the critical delivery date to complete the required accommodation for September 2017. The

implications would be a critical shortfall in classroom and associated ancillary provisions. In this eventuality temporary accommodation would need to be implemented at an unknown, yet considerable, cost. This eventuality would result in the approved budget envelope being exceeded.

3.0 Programme

- 3.1. The programme 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 3rd October 2016
Planning submission	January 2017
Planning approval	March 2017
Start on Site- via early works	April 2017
Project Completion	September 2017

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1. A report to Executive Board on 9 March 2016 detailed the outcome of consultation on the proposal to expand primary provision at Bramley Primary School from a capacity of 280 pupils to 420 pupils with an increase in the admission number from 40 to 60 with effect from September 2017. Executive Board approved the recommendation to publish a Statutory Notice; the Statutory Notice took place between 29th March and 26th April. The final determination was granted at the 22nd June 2016 Executive Board meeting.

- 4.1.2. Throughout the design process consultation has taken place with senior 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 Procurement Unit.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1. An EDCI screening document is included with this report at Appendix A.

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. The LLEP and Interserve advise that they can deliver the required accommodation within the £3.25m budget and have supplied a cost plan supporting this. This cost plan will be reviewed via NPS (Barsnley) at the next stage to ensure 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. 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 September 2017, other procurement methods are not viable as the risk of non-delivery is too high, leading to a critical shortfall in accommodation at Bramley 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.

4.6. 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 critical accommodation for the start of the 2017 September term. Dialogue with PPPU colleagues has identified the potential risks associated with the waiver as identified above.

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 YORbuild2 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 September 2017, temporary accommodation will be required which places further significant pressure on revenue budgets and is further exacerbated by limited available space on a very constrained site.

5.0 Conclusions

- 5.1. Bramley Primary school is to permanently expand from 280 pupils to 420 and will take effect from September 2017 and as such, there is a need to mobilise a contractor quickly to ensure adequate accommodation is delivered.
- 5.2. The required accommodation at a Bramley Primary school cannot be delivered by the Internal Service Provider (LBS) due to the timescales, scope and complexity of the project. Whilst the existing YORbuild2 framework is the preferred tender process, the compressed programme for delivery by September 2017 means that to procure the relevant works using the YORbuild2 is not possible as the risk of non-delivery is too high.
- 5.3. 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 £3.25m funding envelope.
- 5.4. To do so, a waiver of CPR9.1 and 9.2 is requested so that the LLEP can be commissioned without further competition and reduce the risk of not delivering the appropriate level of accommodation by September 2017.

6.0 Recommendations

- 6.1. The Director of Children and Families is requested to:
 - 6.1.1. Approve the waiver of the following Contracts Procedure Rule to enable the delivery of critical accommodation at Bramley Primary school, thus allowing the engagement of the Councils Strategic Partner (Leeds LEP Limited) to deliver the required works.
 - **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
 - 6.1.2. 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.
 - 6.1.3. Note that design and technical services have been procured utilising the City Council's preferred provider, Norfolk Property Services Leeds (NPS).

7.0 Background documents¹

¹ The background documents listed in this section are available to download from the Council's

1.1. 7.1 None

website, unless they contain confidential or exempt information. The list of background documents does not include published works.