



**Report of the Head of Projects & Programmes**

**Report to the Director of Childrens & Families**

**Date:** 13<sup>th</sup> April 2021

**Subject: Waiver of Contract Procedure Rules (CPR's) for the utilisation of Authority owned modular accommodation at Horsforth School**



Are specific electoral wards affected? If yes, name(s) of ward(s): Horsforth	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open 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**

**1. Main Issues**

- The purpose of this report is to seek approval from the Director of Childrens & Families to waiver Contract Procedure Rule 9.1 and 9.2 to facilitate the installation of Authority owned modular accommodation, currently placed in long-term storage at Portakabin Ltd's Leeds hire yard, at Horsforth School. This will include any refurbishment, remodelling and upgrade works necessary to integrate the building on site and bring the units back into operational condition. Utilisation of this accommodation at Horsforth School is necessary to support the 2021 'bulge' cohort, due to be placed there from September 2021 as part of the Learning Places Programme.
- Following removal of the modular building from Allerton Church of England Primary School in 2019 the units have been held in storage at Portakabin Ltd's Leeds depot, until such a time as a new permanent location could be sought which aligned with the Authority's aims. Due to the proprietary nature of the modular building design it is essential to utilise Portakabin for these works to ensure continuity of any warranties and guarantees. In addition, access for recovery from Portakabin's yard would not be granted to third parties so a 'turnkey' package to remove the buildings from storage and installation is the most appropriate procurement route in this instance.
- Following submission and approval of planning permission the accommodation would be installed on site with a view to being available for occupation from 28<sup>th</sup> August 2021. With a view to being available for curriculum usage from September 2021.

- Appointment of Portakabin Ltd. to facilitate this removal and relocation is based on; the competitive quotation provided, provision of skilled expertise, protection of all warranties and guarantees associated with the Council owned modular building (being a proprietary product purchased from Portakabin Ltd. in 2017).

## 2. Best Council Plan Implications

- 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.
- This contributes to the 2019/2020 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 2018-23, 'Leeds to be the best city in the UK and the best city for children and young people to grow up in. We want Leeds to be a child friendly city'. The programme seeks to deliver a supply of good quality accessible local school places which can contribute to these outcomes.

## 3. Resource Implications

- This project seeks to generate efficiencies and value by re-using legacy assets for future Authority priorities. Being a proprietary volumetric modular building system it is critical that the original installer is re-commissioning to facilitate any removals or relocations to ensure the integrity of the product, maintenance of all associated warranties and guarantees and to prevent damage and replacement conflicts if a third party was to relocate the building.
- Portakabin Ltd. have provided a budget cost estimate for removal of the building from storage and placement of the units at Horsforth School only. Noting that the units have been in storage at Portakabin's Leeds depot since 2019.

## 4. Recommendations

The Director of Children and Families is recommended to:

- 1) Approve the waiver of the following Contracts Procedure Rule to allow the installation of a Council owned proprietary modular build system teaching block, currently in long-term storage at Portakabin Ltd. Leeds yard, at Horsforth 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.
- 2) Award the tender to Portakabin Limited based on the initial cost submission of £320,964.89. Noting that this is subject to further design development and survey information. The contract will be put forward for award following completion of this design development exercise and approval of a future design cost report for the works.
- 3) Note; installation costs of the Council owned modular teaching block will be funded from existing financial provision held within the Learning Places programme; any further financial

approvals that may be required will be sought as part of the final account resolution process.

- 4) Note that the officer responsible for implementation is the Head of Service Learning Systems.

## **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 & Families for the proposed installation of a Council owned modular teaching block, currently in long-term storage at Portakabin Ltd's Leeds depot, at Horsforth School in support of the 2021 'bulge' cohort project.
- 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 Ltd to install an existing Authority owned Portakabin branded modular building at Horsforth School. Noting that the unit is currently in storage at Portakabin Ltd. Leeds depot since its removal from Allerton CE Primary School in 2019, the free storage period for which has now elapsed and it's continued presence in the Portakabin depot is attracting a fee.

## **2.0 Background information**

- 2.1. The Learning Places programme represents the Council's response to the demographic growth pressures in school place provision. The increasing birth rate in Leeds has required Leeds City Council to approve an increasing number of new school places since 2009 in order to fulfil its statutory duty. 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 Childrens & Families Learning Places Programme. Project management of schemes arising from this process are delivered by City Development's Projects & Programmes Team.
- 2.2. This proposal for a 'bulge' cohort of 60 pupils has been brought forward to meet the projected demand for secondary school places within Horsforth, current demographic data suggests that there is a need for additional secondary places within the vicinity of Horsforth School. The proposed works outlined in this report is a response to this demand and will ensure there are sufficient school places available for local children. This 'bulge' cohort proposal will precede the permanent expansion of Horsforth School by one academic year, being effective from September 2021, and will immediate demand for pupil places within the locality. The permanent expansion, subject to a separate project, will then come into effect from September 2022.
- 2.3. Following completion of the permanent expansion of Allerton CE Primary in 2019 the temporary accommodation on-site, purchased by the Authority under preceding year's 'bulge' cohorts projects, was removed from site and placed in long-term storage until a new home could be identified. Removal and storage of these units was subject to a waiver to appoint Portakabin Limited to complete the works. This was on the basis of the units being a proprietary build system still within its warranty period, removal by a third party would have resulted in all outstanding warranties and guarantees being void. Following removal the units were placed in long-term storage within Portakabin's Leeds depot, located off Geldard Road. Initial storage was free of charge, however this grace period ended in summer 2020 and now a monthly storage fee is being charged.

## **3.0 Main Issues**

### **3.1. The works covered by this waiver are as follows:**

- Installation of the Authority owned five bay modular building, providing two teaching spaces and welfare, at Horsforth School to facilitate the 2021 'bulge' cohort project. Includes for co-ordination with Morgan Sindall Limited, who are delivering the

permanent expansion of Horsforth School (subject to separate previously acquired approvals).

- The new modular block will then be connected to the legacy accommodation (also of Portakabin design), which in-turn will be remodelled to allow for provision of the remaining classroom allocation required to facilitate the 'bulge' cohort.
- Completion of the identified package of refurbishment works necessary to the Authority owned modular buildings, including for connection onto the existing accommodation on-site and the associated remodelling necessary to integrate the two buildings and provide the necessary volume of accommodation.

3.2. A full detailed programme of works is awaited from Portakabin Ltd. However, it is essential to deliver the accommodation in its final form for the 28<sup>th</sup> August 2021. In order to allow school to accommodate the additional 60 pupils under the 'bulge' cohort from September 2021 and the start of the 2021/22 academic year. It is anticipated that the planning application will be submitted circa April 2021 with a view to works starting on-site from June 2021.

3.3. The internal service provider cannot provide these services, having declined work of this nature historically on the following grounds;

3.3.1. The internal service provider 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.

3.3.2. The modular accommodation is an Authority owned asset currently located within Portakabin's Leeds depot. As such permissions would need to be acquired to allow a third party to collect the units from their site. This would no doubt be difficult to acquire and would presumably being result in Portakabin delivering the units to an alternative storage depot at cost, which would be better utilised delivering them to the final location.

3.3.3. To carry out an open competition through the use of an existing Framework Agreement, such as Construction Line, 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 prohibit delivery for September 2021 due to the scale of the works and the need to secure planning permission. An external consultant would be required to complete this process at further cost and time.

3.4. As the previous installer of the building Portakabin Limited have been approached to provide a cost for relocating the building, on the premise all warranties are maintained. Portakabin have confirmed their availability to undertake this work-stream and have provided the necessary expertise to scope and complete the project.

#### **Consequences if the proposed action is not approved**

3.5. If the proposed waiver is not approved, a full tender process will have to be undertaken which would exceed the critical date to remove the modular unit from storage and install it on-site. A tender access could only take place if Portakabin granted permission to allow a third party into their depot to retrieve the disassembled units. For insurance reasons this would not be viable. Alternatively, the units could be delivered to another storage facility by Portakabin at cost, however this again introduces further time delay, the loss of any pre-existing Portakabin guarantees and warranties as well as increasing the risk of damage in transit.

3.6. A full tender will require a significant amount of time which would prohibit delivery of the accommodation for September 2021, namely; advertise the requirement, liaise with

potential contractors unfamiliar with the school site, co-ordination with Morgan Sindall Ltd. over access via their construction site, vet responses prior to undertaking a tendering exercise, tender evaluation and commissioning.

- 3.7. This process will increase the risk of failure to for the placement of the 'bulge' cohort at Horsforth School. In addition, it will maintain the revenue implication of these units being stored at cost without a home.
- 3.8. In the event that a waiver cannot be granted then the 'bulge' project at Horsforth School will need full re-appraising, this will undoubtedly double the total cost as the Council would need to purchase new modular accommodation rather than relocate assets it currently owns. This would result in not only a capital sum in excess of £500k being assigned to the project, the timeline would not be achieved due to the length procurement and planning process and the units the Council own would continue to be unused and retained in storage at a revenue cost.

## **Advertising**

- 3.9. No advertising has been undertaken to date due to the following reasons:
  - 3.9.1. The project programme does not allow sufficient time to appoint a technical consultant to specify and scope the project to an extent where a tender package could be completed and fully tendered. The accommodation has a hard delivery deadline of September 2022, which would not be viable if fully tendered. Completion of a competition would take between two to three months and would result in failure to deliver in-time.
  - 3.9.2. The existing units, currently located within Portakabin's Leeds depot, retain a number of warranties and guarantees associated with the various components, e.g. roof, structure etc. Utilisation of a tendered third party to retrieve the units and install them will result in these warranties and guarantees being wholly voided.
  - 3.9.3. The pre-existing modular units are constructed using Portakabin Ltd's proprietary build system. As such any failure or damage to the units in transit or installation would require the original manufacturers input to advice and repair, if the integrity of the buildings are to be maintained and safe to occupy following completion of the works.
  - 3.9.4. The project is predicated upon utilising a modular building owned by Leeds City Council that is currently dismantled into five sections and located within Portakabin's Leeds depot. The units are mothballed for long-term storage, at cost to the Authority. Utilisation of these units for the Horsforth School project requires recovery from the Portakabin yard, which can only be facilitated by Portakabin Ltd. due to insurance and indemnities.

## **4.0 Corporate considerations**

### **4.1. Consultations and engagement**

- 4.1.1. Consultation has been undertaken with the 'end user' and Morgan Sindall Ltd., with respect to the critical path dates. Portakabin have tailored their proposal to reflect the requirements of the wider construction project at Horsforth School, this will be reflected in their construction health & safety documentation.

### **4.2. Equality and diversity / cohesion and integration**

- 4.2.1. The recommendations contained in this report do not have any direct nor specific impact on any of the groups falling under equality legislation and the need to

eliminate discrimination and promote equality. A screening document has been prepared for this scheme (attached at Appendix A) and the outcome of the screening is that an independent impact assessment is not required for the proposals set out in this report.

#### **4.3. Council policies and the 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. This contributes to the 2019/2020 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 2018-23, 'Leeds to be the best city in the UK and the best city for children and young people to grow up in. We want Leeds to be a child friendly city'. The programme seeks to deliver a supply of good quality accessible local school places which can contribute to these outcomes.

#### **4.4. Resources, procurement and value for money**

4.4.1. Portakabin Ltd's estimated cost to transport the units from local storage, install on site at Horsforth School and complete the necessary integration / remodelling / connection to the legacy accommodation is £320,964.89. Noting that this is a high level figure and is both subject to further development and refinement. It is noted here for context only, as the final price is subject to completion of surveys and design, funding approval for which will be sought via a dedicated design cost report.

4.4.2. The tender will be awarded as a single contract and the cost will be met through the Learning Places programme.

4.4.3. Value for money is being achieved through relocating and reusing existing Council owned modular units, which negates the requirement to purchase new units to support future projects 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 advertising both within and outside the UK. 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 Director of Children and Families has considered this and, due to the nature of the specialist works being delivered, and the relatively low value of the works to be

undertaken is of the view that the scope and nature of the works is such that it would not be of interest to other providers in UK or overseas.

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 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 Childrens & Families the authority to commission an appropriate contractor without further competition and reduce the current risk of not delivering the Horsforth School 'bulge' project within the critical path programme.

4.6.2. The bulge cohort programme of works will be managed through the application of 'best practice' project management tools and techniques.

#### **5.0 Conclusion**

5.1. As a consequence of the increased pressure on school places within Leeds it is necessary to deliver additional secondary school places at Horsforth School in the form of a 'bulge' cohort project. This will place an additional 60 pupils at Horsforth School with effect from September 2021. In order to deliver this increase in pupil numbers it is necessary to provide additional accommodation, as identified by the 'end user'. The most cost effective way to deliver the combination of remodelling and new accommodation is to appoint Portakabin Limited to complete the works utilising a pre-existing five bay modular unit, owned by Leeds City Council, currently in storage within their Geldard Road depot.

5.2. Portakabin Limited have been identified as the most appropriate contractor for this work as they are currently storing the required accommodation within their depot and have the knowledge, expertise and skills to deliver the scheme whilst maintaining all necessary guarantees and warranties on the stored unit. Furthermore, the building the Authority owned modular building will be connected to is of Portakabin origin. As such they have knowledge of the proprietary modular build system utilised for both buildings and will ensure effective integration as a consequence.

5.3. A high level tender sum of £320,964.89 has been submitted by Portakabin for completing the works. Which includes installation of the legacy asset on-site, connection to the existing building at Horsforth School, essential remodelling to provide the additional teaching and welfare provision required and associated external ground works. This is in-line with previous benchmarked costs for activities of this nature undertaken as part of the Learning Places Programme.

5.4. Completion of a full tender exercise will take up to three months to complete and require additional professional services to compile the tender documents. This will result in considerable extra cost to the Authority, result in the loss of all warranties & guarantees associated with the Portakabin building and will result in the additional accommodation required not being in place for the start of the 2021/22 academic year. This is not a viable process and as such a single source contract is recommended in this instance.



- 5.5. Re-use of a legacy Council asset will significantly reduce the value of the proposed works, thus reducing the capital burden on the Learning Places Programme and removing the revenue implication of ongoing storage costs for these units.
- 5.6. Commissioning of an appropriate contractor without further competition will reduce the risk of not delivering the Horsforth School 'bulge cohort' project, remove the associated financial risk, remove the need for additional professional fees and loss of time attributable to full tender exercise.

## **6.0 Recommendations**

6.1. The Director of Children & Families is requested to:

6.1.1. Approve the waiver of the following Contracts Procedure Rule to allow the installation of a Council owned proprietary modular build system teaching block, currently in long-term storage at Portakabin Ltd. Leeds yard, at Horsforth 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.

6.1.2. Award the tender to Portakabin Limited based on the initial cost submission of £320,964.89. Noting that this is subject to further design development and survey information. The contract will be put forward for award following completion of this design development exercise and approval of a future design cost report for the works.

6.1.3. Note; installation costs of the Council owned modular teaching block will be funded from existing financial provision held within the Learning Places programme; any further financial approvals that may be required will be sought as part of the final account resolution process.

6.1.4. Note that the officer responsible for implementation is the Head of Service Learning Systems.

## **7.0 Background documents<sup>1</sup>**

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.