

## Notice of Non-key Executive Decision

<b>Subject Heading:</b>	Forest Approach Academy Primary School – Approval to Commence Tendering Process for an additional resource provision (ARP)
<b>Cabinet Member:</b>	Councillor Robert Benham, Lead Member for Children & Learning
<b>SLT Lead:</b>	Tim Aldridge, Executive Director of Children’s Services
<b>Report Author and contact details:</b>	Ian Saxby Head of Technical Services <a href="mailto:ian.saxby@onesource.co.uk">ian.saxby@onesource.co.uk</a> 01708 433529
<b>Policy context:</b>	The Council’s Commissioning Plan for Education Provision in Havering.
<b>Financial summary:</b>	It is estimated that the overall project cost will be £860,000. The project is to be funded by the EFSA and the academy with the ESFA contributing £580,000 and Forest Approach Academy contributing £280,000.
<b>Relevant OSC:</b>	Children & Learning Overview and Scrutiny Committee
<b>Is this decision exempt from being called-in?</b>	No

### The subject matter of this report deals with the following Council Objectives

Communities making Havering  
 Places making Havering  
 Opportunities making Havering  
 Connections making Havering

## Non-key Executive Decision

### Part A – Report seeking decision

#### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

1. That the SLT member approves the procurement strategy to undertake a tender exercise, to procure a works contract, at an estimated contract sum of £860,000. The proposed form of contract to be used is a JCT single stage design and build contract.
2. That the Executive Director for Children and Learning, in consultation with the Directors of Finance and Legal Services award the contract once the evaluation process has been completed.

#### **AUTHORITY UNDER WHICH DECISION IS MADE**

##### **3.3 Powers of Members of the Senior Leadership Team**

Members of the Senior Leadership Team (SLT) have delegated authority to act as follows within the assigned service/service/portfolio of responsibilities, subject to the general provisions and limitations set out in section 3.1 above.

##### **General powers**

(a) To take any steps necessary for proper management and administration of allocated portfolios.

(b) To exercise all the powers delegated to them personally and those powers delegated to Second Tier Managers and other staff members in their directorate where circumstances require and so far as legally permissible. Exercise of such powers should be recorded where appropriate. Where possible, a SLT member should give notice to a relevant staff member that he or she intends to exercise a specified power that is delegated to that staff member.

##### **Contract powers**

(a) To approve commencement of a tendering process for all contracts above a total contract value £500,000.

(b) To award all contracts with a total contract value of between £500,000 and £5,000,000 other than contracts covered by Contract procedure Rule 16.3.

(c) To sign contracts on behalf of the Council which do not require sealing under paragraph 4 of Article 10 of this constitution.

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### **STATEMENT OF THE REASONS FOR THE DECISION**

- I. The London Borough of Havering has a statutory duty to provide school places for children within the borough. This construction Contract aims at providing these. This present contract is to be funded by the ESFA and the Academy as per the breakdown provided below.

ESFA SEND Bid	£ 580,000
Forest Approach Contribution	£ 280,000
Total Contract Cost	£ 860,000

- II. The total project cost is estimated to be in the order of £860,000 (including professional fees, FF&E etc) and a breakdown is included within the financial section.
- III. The estimated contract cost is £ 730,000. This is below the threshold required by OJEU Regulations, it is therefore proposed to procure by a single stage selective tendering process with seven contractors selected from the ConstructionLine database in accordance with the Contract Procurement Regulations. Tenders received will be evaluated on a 70% cost/ 30% quality basis.
- IV. The project team will comprise staff from Technical Services, Educational Asset Management and Procurement.
- V. Community and social benefits will be part of the evaluation criteria including utilisation of local resources and personnel.
- VI. TUPE does not apply.
- VII. Project Risks
- a) Ability to procure main contract within timescale
  - b) Main contractor willingness/ availability to work in challenging circumstances including phasing to maintain normal school operations
  - c) Tender received may exceed financial allocation.
  - d) Programme may be unachievable given the need to maintain existing curricular activities.

### **OTHER OPTIONS CONSIDERED AND REJECTED**

The building works are relatively straightforward and comfortably within the competence and capability of local contractors. This procurement route has resulted in value for money as evidenced by the comparative costs being evaluated by the EFA to be in the lower quartile of bids received.

### **PRE-DECISION CONSULTATION**

Consultation has taken place with the schools and corporate procurement team.

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**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Ian Saxby

Designation: Head of Technical Services

Signature:



Date: 24.9.19.

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

1. Local authorities should have regard to sections 13, 13A and 14 of the Education Act 1996 which require local authorities to, ensure that efficient primary, secondary and further education is available to meet the needs of their population.
2. The Council also has the general power of competence under section 1 of the Localism Act 2011 to do anything an individual may generally do, together with the power under section 111 of the Local Government Act 1972 to do anything ancillary to or which facilitates any of its functions. The contract may be procured in accordance with these powers.
3. The Council's Contract Procures Rules 4 and 13 (Constructionline) set out the strategy for the procurement of Works contracts of below the EU threshold (currently **£4,551,413** as of January 2018) in value to be submitted to a Member of SLT for approval of such contracts. The details of the evaluation compliance with the CPRs, for the award of this contract are set out with the body of this report.
4. This report is seeking the SLT Member's approval to undertake a tender exercise, for the reason set out within the body of the report, at an estimated contract sum of £860,000.00, with an estimated start date in February 2020, for the Forest Approach Academy ARP project. The proposed form of contract to be a single stage JCT design and build contract.
5. The Council must procure these contracts in accordance with the Public Contracts Regulations 2015 ("**PCR 2015**") and the Council's Contract Procedure Rules ("**CPR**"). The use of a valid Framework Agreement is allowable under CPR 20, and will also be in accordance with those permitted under regulation 33 of the PCR 2015.
6. The SLT Member will be aware of the Public Sector Equality Duty (PSED) set out in section 149 of the Equality Act 2010. At each stage, in exercising its function (and in its decision making processes) the council must have due regard to the need to:
  - a) eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
  - c) foster good relations between person who share a relevant protected characteristic and those who do not share it.

The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation

7. The Legal and Governance officers are available to assist the client department in finalising the terms and conditions of the contract.

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### **FINANCIAL IMPLICATIONS AND RISKS**

Estimated Costs and Funding is set out below:

Build Cost (Contract)	£ 730,000
FF&E (incl ICT etc)	£ 42,000
Fees (Incl Planning Fees, Surveys etc)	£ 73,000
Project Contingency	£ 15,000
<b>Project Total</b>	<b>£ 860,000</b>

Funding:

ESFA SEND Bid	£ 580,000
Forest Approach Academy Contribution	£ 280,000
<b>Total Funding</b>	<b>£ 860,000</b>

There is a risk that actual tender costs will be significantly higher than estimated. However, a separate Key Executive Decision will be submitted prior to the award of tender which will reassess the financial implications of the project.

### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

There are none

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The new provision will have a positive benefit in facilitating opportunities for children to achieve their full potential.

Full Equality Impact Assessments will be carried out regarding this and all future development and expansion projects

### **BACKGROUND PAPERS**

There are none

Non-key Executive Decision

**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

*Delete as applicable*

~~Proposal NOT agreed because~~

**Details of decision maker**

Signed 

Name: Mark Butler, Director of Technical Services

Date: 24<sup>th</sup> September 2019.

**Lodging this notice**

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on 24/9/2019

Signed

