

Notice of KEY Executive Decision

Subject Heading:	Authority to award a contract in relation to the construction of a SEND Nursery at the Forest Approach Academy
Cabinet Member:	Councillor Robert Benham – Cabinet Member for Education, Children’s and Families and Deputy Leader of the Council
SLT Lead:	Robert South – Director of Children’s Services
Report Author and contact details:	Ian Saxby – Head of Technical Services Telephone: 01708 433529 Email: ian.saxby@onesource.co.uk
Policy context:	<u>Communities</u> We want to help our residents to make positive lifestyle choices and ensure a good start for every child to reach their full potential. We will support families and communities to look after themselves and each other, with a particular emphasis on our most vulnerable residents.
Financial summary:	This report seeks authorisation to award a construction contract in the sum of £923,921.00. Further details are provided in the body of the report.
Reason decision is Key	Expenditure or saving (including anticipated income) of £500,000 or more.
Date notice given of intended decision:	28 th January 2021

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Relevant OSC:	Children & Learning Overview and Scrutiny Committee
Is it an urgent decision?	No
Is this decision exempt from being called-in?	No
Exempt Information:	Appendix 1 to this report is classified as not for publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 on the grounds that it contains information relating to financial or business affairs of a particular person (including the authority holding that information) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

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Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

That the SLT Member approve the award a contract for the design and build of the (Special Educational Needs and Disabilities (SEND) Nursery at the Forest Approach Academy, for the reasons set out within the body of the report, at a contract sum of £923,921.00, for a contract period of 50 weeks, with an estimated commencement date of February 2021. The proposed form of contract to be the JCT Design & Build Contract 2016 with the Council's Supplemental Amendments.

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.

Contract powers

(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.

STATEMENT OF THE REASONS FOR THE DECISION

The purpose of the contract which is subject to this decision is to provide a new SEND facility within the Forest Approach Academy to cater for SEND Nursery aged children. The London Borough of Havering has been successful in securing funding from the Education and Skills Funding Agency (ESFA) – SEND Bid. The particulars of the ESFA co funding are provided within the financial part of this report.

Since the Executive Decision to approve this procurement route, a tender has been carried out based on the principles of a MMC (Modern Methods of Construction – ie off site fabrication, or modular build) but this Tender returned only one priced offer way above expectation. Many clients (Schools, NHS trusts, and others) have opted to engage, often through frameworks, MMC contractors in the wake of the covid-19 emergency. It is deemed that the covid-19 emergency has added a strain to the MMC sector, and with companies extremely busy, tenderers were not incentivised to offer a competitive price or a price at all for a small development like the one in object of this report. Subsequently a further tender exercise has been run, on CapitaEsourcing, based on a tender list of traditional construction contractors. In line with the Council's Contract Procedure Rules (CPR), the list of tenderers was sought from Constructionline, and seven suppliers were invited to submit bids. The market for traditional construction remains competitive at this point in time.

During the first tender exercise, the market was engaged and seven tenderers were invited to bid. One bid only was returned. During the second tender exercise seven contractors were invited and two returned a priced offer. Two bidders declined to tender due to ongoing work commitments, and being unable to comply with the project timescales. The second exercise provides guarantees of efficacy of competition. The quality level of the bids in the second round was satisfactory. Further details of the tender process (including the price and scoring information) are set out in Appendix 1, attached to this report.

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OTHER OPTIONS CONSIDERED AND REJECTED

The option of undertaking an OJEU tender process was considered, but was rejected as the value of the contract was under the EU Threshold. Other suitable framework agreements were also considered, but rejected as it was considered better value for money to adopt the chosen route.

An option for temporary accommodation (both purchased, and rented) was considered and dismissed as this would lead to ongoing costs, planning concerns and building quality issues.

Design option appraisals for this specific site and design solution are available upon request.

E-Auctions have been considered and rejected.

Doing nothing would lead to the Council losing the approved departmental funding for the project.

PRE-DECISION CONSULTATION

Consultation has taken place with a number of relevant key stakeholders. In addition to this, consultation has taken place with the finance, legal and the Strategic Procurement Unit. Local residents were also consulted via the Planning Process and members were invited to approve the scheme as part of the Cabinet/ Full Council process.

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

Name: Ian Saxby

Designation: Head of Technical Services

Signature:



Date: 28th January 2021

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Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

As a Local Authority, the Council has a statutory duty to secure that sufficient schools for providing primary education, and secondary education are available for their area as set out in section 14(1) of the Education Act 1996, as amended. The described works contract is in accordance with the compliance of this duty.

The proposed contract value is below the EU threshold for Works contracts governed by the Public Contracts Regulations 2015. The Council was therefore under no obligation to advertise the contract opportunity in the Official Journal of the European (OJEU), as would otherwise have been required at that time.

In accordance with CPR 13, officers invited seven organisations from Constructionline to participate in the opportunity; and officers are satisfied that the conducted procurement process was sufficient to ensure genuine competition.

The Local Government Act 1999, requires the Council to make arrangements to achieve best value in the exercise of its functions. Officers have satisfied themselves that the selected bid represents the most economically advantageous tender for the Council overall.

Under the Children Act 1989 (as amended); and the Education Act 2002 the Council has a statutory duty to safeguard and promote the welfare of children within their area and to make to make arrangements to ensure that its functions are discharged having regard to the need to safeguard and promote the welfare of children. The Council must ensure that the terms of any contract include safeguarding provisions.

All Contracts with a value above £150,000 along with any collateral warranties must be executed under seal. The conclusion of the contract should be carried out by Legal Services.

FINANCIAL IMPLICATIONS AND RISKS

Estimated Project Costs & Source of Funding

Project Costs	
Contract Sum (to be Awarded under this ED)	£ 923,921.00
FF&E (Including ICT)	£ 42,000.00
Fees (Including Planning Fees, Tech. Services, Surveys etc)	£ 73,000.00
Project Contingency	£ 15,000.00
Total Project Cost	£ 1,053,921.00
Project Funding	
ESFA SEND Bid (Ministerial monies already approved)	£ 580,000.00
Forest Approach Academy contribution	£ 280,000.00
<i>Total of external funding</i>	<i>£ 860,000.00</i>
Remainder funding required	£ 193,921.00

The remainder of funding required will be covered from the Council's basic need allocation.

Risks

As with most capital schemes, there is a risk that the scheme could overspend due to issues arising during the build process, this risk is mitigated via a contract administration procedure as

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set out within the JCT Design and Build 2016 (with Amendments) that provides constant monitoring and final cost forecasting. Any issues arising can be funded from the client contingency sum.

There exists a risk of delays as with any major building project, but this will be mitigated by a scrutinised critical path programme issued to the Contract Administrator and all the shareholders and reviewed against the on-site progress at four weekly and ad hoc meetings.

As with all contracts there is a risk to contractor delivery/continued operation. However the contractor selection process has partly mitigated this risk, along with careful project management in the future.

Covid-19 constitutes a risk to the delivery of any construction contract (supply chain disruption).

Brexit constitutes a risk to the delivery of any construction contract (supply chain disruption).

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

There are no implications associated with this decision.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

An EqHIA (Equality and Health Impact Assessment) is usually carried out when a current or planned service/policy/activity is likely to affect staff, service users, or other residents. It is acknowledged that in emergency or urgent situations it will not always be possible to carry out an EqHIA in advance of a relevant activity, however, managers will undertake the required EqHIAs at the earliest opportunity. Where managers are already clear that protected groups/users will be impacted negatively by the intended activity, then this will be noted in the next paragraph and/or put into EqHIAs. Where the negative impact of the intended activity can be mitigated, this too should be set out in this report and/or the EqHIA.

In all situations, urgent or not, the Council will seek to ensure equality, inclusion, and dignity for all.

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As required during the School Expansion Statutory Process the Schools Organisation and Place Planning team, with advice from the Corporate Policy & Diversity Team, has carried out a consultation and an EIA which has outlined how all the protected characteristics shall be influenced either positively or neutrally by the proposed school expansion programme. Any recommendations arising from the consultation and the EIA have been included within the project subject of the present ED. Therefore no further EIA is carried out for the purposes of the present ED.

BACKGROUND PAPERS

None

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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

Details of decision maker

Signed



Name: Robert South, Executive Director of Children's Services

Date: 28th January 2021

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 _____

Signed _____