



**Havering**  
LONDON BOROUGH

## Notice of Non-key Executive Decision

<b>Subject Heading:</b>	<b>Waiver to CPRs in relation to the tender for the construction of a new Special School at Balgores Field (MEAT and Platform)</b>
<b>Decision Maker:</b>	Councillor Oscar Ford Lead member for Children and Young People
<b>Cabinet Member:</b>	Councillor Oscar Ford Lead member for Children and Young People
<b>SLT Lead:</b>	Tara Geere, Strategic Director of Starting Well
<b>Report Author and contact details:</b>	Nicola L Prandini RIBA Design and Architecture Manager Capital Delivery and Corporate Estate. 01708 432142 <a href="mailto:Nicolalorenzo.prandini@havering.gov.uk">Nicolalorenzo.prandini@havering.gov.uk</a>

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<b>Policy context:</b>	<p>The Council's Children and Young People Education Place Planning Plan, sets out ambitious and realistic objectives to ensure Havering's provision is the first choice for children and young people with high needs and their families. The Strategy also recognises that children with Social, Emotional and Mental Health difficulties (SEMH), alongside those with Autistic Spectrum Disorders (ASD) are increasing in numbers and requires the establishment of a new 300 place Special School, catering for children aged 4-19.</p> <p>The local authority has a legal duty to meet the Special Educational Needs of those children for whom it is responsible. The needs of pupils who require provision additional to or different from that generally available is determined by a formal assessment pursuant to the Children and Families Act 2014.</p>
<b>Financial summary:</b>	Changing the weighting and choosing a higher quality specification should have minimal financial impact on the capital budget.
<b>Relevant Overview &amp; Scrutiny Sub Committee:</b>	Places
<b>Is this decision exempt from being called-in?</b>	Yes, this is a non-key decision

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

People - Things that matter for residents

Place - A great place to live, work and enjoy X

Resources - A well run Council that delivers for People and Place.

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

For the reasons detailed in this report the lead Cabinet Member and Portfolio Holder is asked to waive Contract Procedure Rule 18.4 and use weightings of 20% price 80% (including social value), instead of the standard procurement scoring weighting of 70% price, 30% quality; and to authorise officers to utilise the chosen framework's own procurement portal.

### AUTHORITY UNDER WHICH DECISION IS MADE

**Part 3, section 2.5 of the Constitution**  
**Individual Cabinet members' responsibilities for functions**

(g) To approve an exception to the Contracts Procedure Rules set out in Part 4 of this constitution, in accordance with Rule 14(1) of those Rules.

### STATEMENT OF THE REASONS FOR THE DECISION

The establishment of a new SEND (Special Educational Needs and Disabilities) School in Gidea Park, on the site of the Balgores Field, has been agreed by full Council on the 8th of November 2023 (link here below, Art.3.4.3).

Subsequently a procurement strategy was endorsed by the Director of Children's Services (Link below), in particular, the report states:

#### *Procurement Strategy*

*It is proposed to procure these works using a JCT 2016 Design and Build Contract, with the Council's Supplemental Amendments. The estimated contract cost is £33,410,000. This is above the threshold required by Contract Procurement Regulations; it is therefore proposed to procure by a call off from a framework subject to a two-stage tender exercise. It is envisioned that the preferred framework provider for this is: Southern Construction Framework.*

*The procurement approach has been endorsed by the (Procurement) Gateway Review Group on the 13.12.2023.*

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Within this context, this report seeks authorisation to adopt a different price quality ratio.

### **(1) To adopt a different price quality ratio**

The project is extraordinarily complex and so receiving a high-quality bid is imperative to the successful delivery.

As we are using the SCF (Southern Construction Framework) Framework, the fixed rates provided at Tender by the Framework Tenderers have already been set. Changing the price quality ratio to focus more on price will not provide the procurement benefits or outcomes we need to achieve as the rates are the rates.

Cheapest price does not guarantee most economically advantageous tender or value for money especially as this project deliverables are focused on quality and programme, so we are able to deliver the school for the proposed intake year and to the quality levels expected under the BB104 design requirements.

As we are using the SCF Framework they have already utilised and enforce an 80 quality and 20 price evaluation ratio in their mini competitions, to change this ratio will also potentially cause Tenderers to decide not to Tender if they believe their fixed rates will not translate into a successful overall bid.

The project is guided by an experienced project delivery team comprising LBH staff members, associated in the Project Board (BSSPB) and external consultants in the form of Playle and Partners who are acting as Project Managers, Quantity Surveyors and Employers Agents for this scheme.

There is sufficient competition on the market to ensure that bids are still highly competitive, but the weighting change ensures that contractors are focussed on delivering a high-quality bid.

The Councils Corporate Procurement team have led this review on behalf of CDCE and support the recommendations listed above.

### **(2) To utilise the chosen framework's own procurement portal**

Normally Havering tenders are run via the Council's portal which is Fusion.

Given the complexity of the two-stage procurement route which is selected for this exercise, and the limits imposed by the Fusion portal itself, officers recommend that this tender is run on the Southern Construction Framework's own procurement portal.

Individual LBH technical and procurement officers along with external consultants, will be granted access to this platform to oversee the operations of the tender

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exercise. This will enable sufficient oversight to the process along with allowing a fit for purpose platform to be used for this complex tender exercise.

Additionally, all tender materials, submissions, clarifications and notices will be archived on the Council's own systems for audit purposes.

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

1. **APPLYING A DIFFERENT PRICE QUALITY RATIO.** This could be considered and there are diverse options such as e.g. 40/60, and whereas most of the comments included in this report under the section of reasons for the decision would still apply, it is to note that the 20/80 split being recommended is the mandated split under the chosen framework (Southern Construction Framework - SCF). Therefore, this option was discounted.
2. **DOING NOTHING** The standard 70/30 weighting was considered but this cannot be implemented as it is contrary to the mandated SCF ratio. Therefore, this option was discounted.

#### **PRE-DECISION CONSULTATION**

N/A

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

Name: Nicola L Prandini RIBA

Designation: Design and Architecture Manager, Capital Delivery and Corporate Estate

Signature:

Date:

## Part B - Assessment of implications and risks

### **LEGAL IMPLICATIONS AND RISKS**

Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that an individual can do subject to other statutory provisions limiting or restricting its use of such power. The recommendation in this report is compatible with this statutory power.

The Public Contract Regulations confirm that contracting authorities have flexibility of choice in selecting their price/quality evaluation model.

Contract Procedure Rule 14 provides that a waiver of the Rules is permissible if all relevant law is complied with the contract falls within one of the exceptions listed in CPR4.4. The most relevant exception is that the waiver is in the best interests of the Council.

Officers have satisfied themselves that the requirements for a waiver have been met in this instance and that this decision will result in the value for money for the Council, overall.

### **FINANCIAL IMPLICATIONS AND RISKS**

The companies on the framework have been through an open market competitively tendered exercise which has resulted in similar rates, reducing the risk of paying a much higher amount due to the application of an 80% quality 20% price ratio.

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

The recommendations made in this report do not appear to give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

### **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;

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(iii) Foster good relations between those who have protected characteristics and those who do not.

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

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 proposed or planned activity is likely to affect staff, service users, or other residents.

The Council seeks to ensure equality, inclusion, and dignity for all in all situations.

There are no equalities and social inclusion implications and risks associated with this decision.

## **ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

There are no environmental or climate change implications arising from this report.

## **BACKGROUND PAPERS**

<https://democracy.havering.gov.uk/documents/s71412/7.0%20Update%20to%20Phase%205%20expansion%20programme%20Final.pdf>

<https://democracy.havering.gov.uk/documents/s72664/24.%20NON-Key%20Authority%20to%20procure%20a%20contract%20for%20the%20construction%20of%20a%20new%20Special%20School%20at%20Balgores.pdf>

<https://democracy.havering.gov.uk/documents/g7676/Decisions%2008th-Nov-2023%2019.30%20Cabinet.pdf?T=2>

## **APPENDICES**

**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

A handwritten signature in black ink, appearing to be 'Oscar Ford', written over a horizontal line.

Name: Cllr Oscar Ford

Cabinet Portfolio held: Children and Young People

CMT Member title:

Head of Service title

Other manager title:

Date: 14/03/2024

**Lodging this notice**

The signed decision notice must be delivered to Committee Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_