



Haringey Council

Agenda item:

[No.]

**Procurement Committee**

**16<sup>th</sup> October 2008**

**Report Title: Building Schools for the Future (BSF): Award of a Pre-Construction Agreement for Heartlands High School.**

Forward Plan reference number: N/A

Report of: **Director of the Children & Young People's Service**

Wards(s) affected: **Noel Park**

Report for: **Non Key Decision**

**1. Purpose**

1.1 To seek Procurement Committee approval to award a pre-construction contract, following a mini competition from the BSF Constructor Partners framework.

**2. Introduction by Cabinet Member**

2.1 Heartlands High School is one of the twelve schools in the Building Schools for the Future programme that has advanced to the pre-construction stage in its programme.

2.2 This project is of major significance to the Council and the local community; this new secondary school is required to meet the demand for secondary school places from September 2010.

**3. Recommendations**

3.1 The Procurement Committee award the preconstruction contract to the Constructor Partner in appendix 18.3 of this report.

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#### **4. Chief Financial Officer Comments**

- 4.1 The Chief Financial Officer has been consulted on the preparation of this report and notes that the cost of awarding the pre-construction contract is budgeted for within the overall BSF Construction Cash Limit.
- 4.2 Haringey Council have agreed a protocol with PFS/DCSF that enables funding payments to continue in advance of the Final Business Case being approved; this process has allowed Pre-construction contracts on various other BSF projects to proceed and, in principle, the approval of this report is no different to those other agreements.
- 4.3 However, Members should be aware that this report also refers specifically to enabling works amounting to c£4.64m which are considered necessary by the contractor to meet the timescales set out for the successful completion of this project.
- 4.4 The Chief Financial Officer has been assured that Members' agreement to this report will not fetter any later decisions presented to them about whether or not to proceed with the enabling works which are set out in the table contained within Section 18.3. Members will also want to specifically assure themselves on this point since any commitment either real or implied to the enabling works set out cannot, at this stage, be financed in advance of the Final Business Case being approved without very significant impact on the CYPs capital programme.
- 4.5 Members should also be aware of the specific risks/ caveats of all the tenderers set out in Section 18.2 and the fact that the proposed contract award is in favour of the second placed contractor out of three – a further contractor having withdrawn. Members will need to assure themselves that the proposed contractor can still provide value for money to the Council. In considering this point the performance of the proposed contractor against the scoring matrix, whether specifically they can be demonstrated to have achieved a minimum acceptable level of quality and cost and the conclusions set out in paragraph 10.1 of the report are particularly relevant.
- 4.6 Finally, given the financial risk identified at paragraph 12.3 members will need to assure themselves about the adequacy and robustness of the Parent Company Guarantee referred to.

#### **5. Head of Legal Services Comments**

- 5.1 Eversheds, the external legal advisers appointed to the BSF programme, have confirmed that the Constructor Partners Framework Agreement ("the Framework") to which this report relates has been established following the correct advertisement in accordance with the EU public procurement directive and UK regulations implementing the directive (i.e. the Public Contracts Regulations 2006).
- 5.2 On the 17<sup>th</sup> April 2007 the Cabinet Procurement Committee approved the appointment of six Construction Partners to the Framework.

- 5.3 The reports states that four of the contractors on the Constructor Partners Framework passed the financial criteria set to enter a mini-competition in relation to the proposed contract and were invited to tender for the contract but one of the contractors subsequently withdrew from the mini-competition, leaving three contractors in the competition.
- 5.4 Tenders for this mini-competition were invited on the basis that the contract would be awarded to the Contractor who submitted the most economically advantageous tender i.e the Contractor with the highest score applying the evaluation criteria.
- 5.5 The Evaluation Matrix at Appendix 18.1 shows that of the three mini-tenders submitted in relation to the proposed contract, the contractor with the highest score is contractor D.
- 5.6 The report states that due to caveats to Contractor D's tender (more particularly described in Appendix 18.2) which the Cost Consultant has advised should be taken to imply a likelihood of overrunning the Practical Completion date, contractor D has been excluded on the basis that time is of the essence of this contract.
- 5.7 The report is therefore recommending that the contract be awarded to the Contractor with the second highest score, Contractor A (named in Appendix 18.1)
- 5.8 The Public Contracts Regulations 2006 allow for the selection of a Constructor from a Framework Agreement for the award of a contract based on the outcome of a mini-competition held between the Constructors on the Framework Agreement capable of providing the services required under that contract on the basis of either lowest price, or the most economically advantageous tender.
- 5.9 There is a therefore limited risk of legal challenge from Contractor D against the Council for breach of EU public procurement rules, on the basis that as the highest scoring contractor it submitted the most economically advantageous tender therefore the contract should have been awarded to it.
- 5.10 In reaching a decision as to whether or not to approve the recommendation in Paragraph 3 of this report to award the contract to the second placed contractor, Members will need to balance the limited risk of challenge against the crucial requirement of awarding the contract to the contractor which has displayed the ability to meet the required construction deadline. .

## **6. Head of Procurement Comments**

- 6.1 The selection of the Constructors to compete using mini competition has been carried out in accordance with the BSF Framework Agreements for Constructors.
- 6.2 The mini competition was undertaken with those Constructors who are suitable to carry out the works based on a price/quality submission.
- 6.3 The price/quality evaluation was price (30%), quality assessment (70%) which included the tender written information (40%) and interview assessment (30%) and were applied in relation to the tenders received.
- 6.4 The first placed contractor has been excluded due to the reasons in Appendix A relating to the cost of accelerating the design and procurement of the works packages to achieve the programme.
- 6.5 Members should be aware that to enable the end date to be delivered that the intended contractor as stated in paragraph 18.3 of Appendix A will require an enabling works packages for piling and substructure and an order to be placed for the concrete

frame prior to agreement of AMP as noted in paragraph 18.3 of Appendix A.

6.6 A pre-construction agreement is required to move the design stage forward with the constructor and to subsequently tender the work packages for the compilation of the Agreed Maximum Price (AMP).

6.7 The Head of Procurement therefore states that the recommendations in this report will result in overall best value for the Council.

## **7. Local Government (Access to Information) Act 1985**

7.1 The following background documents were used in the production of this report:

- Haringey Council's BSF Construction Framework documentation.
- The Council's Standing Orders

7.2 This report contains exempt and non-exempt information. Exempt information is contained in the appendices and is not for publication.

7.3 The exempt information is under the following category

(identified in the amended Schedule 12A of the Local Government Act 1972):

*Information relating to the financial or business affairs of any particular person (including the authority holding that information).*

## **8. Background**

8.1 In April 2007, following an Official Journal of the European Union (OJEU) process, Haringey's Procurement Committee agreed a framework of six Constructor Partners (CP). These CPs would be used to source the twelve school projects in the BSF programme.

8.2 In May 2008 it was agreed with the Leader of the Council that, in order to give full Member involvement in the BSF Design and Build process, the pre-construction stage would be reported to Procurement Committee for approval. Subsequently the main award with an Agreed Maximum Price (AMP) would also be presented to Procurement Committee.

8.3 Four Constructors from the CP framework passed the financial criteria set to enter a mini competition for Heartlands High School. All four Constructors accepted to tender, (see Appendix 18.1 for the details), with tender opening taking place on Tuesday the 12<sup>th</sup> August 2008. Bidders responded with an indicative cost plan for the construction, site specific preliminaries and confirmed their fees to carry out the pre-construction stage of the project. Following Tender returns, tender clarification emails were issued to each bidder within the evaluation period. A formal tender clarification was issued to all four Constructors on Friday 12<sup>th</sup> September 2008 with a tender clarification opening taking place on Wednesday 17<sup>th</sup> September 2008. Further clarification emails were issued to each bidder on 19<sup>th</sup> September 2008 with individual specific clarifications with returns received on 22<sup>nd</sup> September 2008. A final clarification email was necessary and issued to all bidders on the 2<sup>nd</sup> October 2008 with returns received by 7<sup>th</sup> October 2008. The winning bidder being recommended for a contract for pre-construction services, and the opportunity to negotiate an Agreed Maximum Price.

8.4 The Heartlands High School project will cater for 1105 pupils age 11-16, including 25 pupils of KS3 & KS4 with Autism. It comprises a new build scheme of circa 9,937m<sup>2</sup> within a single building which ranges between two and five storeys across the site due to the topography of the old railway embankment. External works include an extensive landscaping scheme, three MUGA pitches, an amphitheatre and an external classroom.

8.5 Construction Procurement Group confirmed that all companies, from the CP framework, who tendered for Heartland High School meet the Councils financial criteria.

## 9. Evaluation

9.1 The submission was evaluated as follows:

### Price (30% of total score)

9.1.1 The Constructor that submitted the lowest bid in terms of site specific preliminaries based on the anticipated net value of construction scored 100 points. All other tenders scored 100 points less 1 for every percentage that their price exceeded the lowest bid. The point score was weighted by 30%.

### Quality of tender submission (40% of total score)

9.1.2 The following elements made up the quality score:

- A. Confirmation that the initial pricing response still stood and adjustment of it complied with any revised programme information.
- B. The Council are looking for comfort that the initial cost plan levels are appropriate and therefore the cost plan will be judged on the amount of consideration given to produce an accurate cost plan, the amount of back up provided on the individual rates and also the overall resulting £/m<sup>2</sup> rate. The actual final price of the cost plan will not be considered in this mini competition.
- C. Proposed management structure and details of any sub-consultants.
- D. CVs of the relevant individuals who will be involved day-to-day provision of the works including the on site management team and an indication of how the scheme Constructor would deal with fluctuations in the workload in terms of resources.
- E. Anticipated programme – The Council looked for comfort that the initial programme durations are acceptable and a statement was asked for to confirm that. Also the Council is also looking to use the Constructor's knowledge and experience and any innovative alternative programme solutions suggested will be welcome and will be reflected in the score for this part of the mini competition
- F. Responses to ten questions.

9.1.3 The Council also looked to use the Constructors' knowledge and experience; innovative alternative programme solutions were welcomed and reflected in the score for this part of the tender submission.

9.1.4 Scores were awarded for each of the categories above and then the total was weighted at 40%.

### Interview (30% of total score)

9.1.5 The Constructor Partners interviews were held on Tuesday 2<sup>nd</sup> September and Wednesday 3<sup>rd</sup> September 2008 at Haringey's Civic Centre, representatives from Haringey's Construction Procurement Group, Potter Raper Partnership (Cost Managers), TP Bennett (Design Team Partner), Mace (Construction Project Manager), a representative from the school and Haringey's BSF Transformation Team.

9.1.6 Each of the four Contractors who submitted a tender was interviewed. The personnel who would be working on the project were asked to provide a presentation against three key criteria decided by the schools and asked six further questions. A panel individually scored each response. Each Constructor Partner was scored out of 90 points, up to 10 points were allocated to each of the three criteria and the six questions. These were then weighted according to an agreed level of importance with 40% of the weighting going to the presentation and 60% to their response to questions. The overall average score was then weighted by 30%.

The three presentation criteria were as follows:

1. How you will meet your programme Tender A and/or Tender B to achieve or better the Practical Completion date of 27th July 2010 to ensure the school is open by September 2010
2. How you will move the detailed design forward in your programmed time to ensure a high quality school is delivered
3. How you will ensure we achieve BREEAM 'excellent' status and address the requirements of the project in terms of sustainability

9.2 The table in Exempt Appendices 18.1 shows the outcome of the initial evaluation and evaluations following the tender clarification.

9.3 Pre-construction services will include pre-construction design, change control management, supply chain management / works package tendering with full cost management, value engineering, open book accounting, quality assurance, setting up web based document management system, pre construction management, knowledge sharing / innovation, progress meetings, sustainability workshops, method statements, procurement of surveys, procurement of material samples insurances, warranties and bonds.

Although this is a generic list of services to be provided by the Constructor Partner, these services are covered by the Pre Construction Sum and many/all will be used to allow the Constructor Partner to build up their Agreed Maximum Price (AMP). The services to be undertaken by the Constructor Partner will only be known once the Constructor Partner is in receipt of the Council's Requirements.

9.4 Tender Clarification

Following Tender returns on 12<sup>th</sup> August 2008 tender clarification emails were issued to each bidder within the evaluation period. A formal tender clarification issued to Constructors on Friday 12<sup>th</sup> September 2008 and opened on Wednesday 17<sup>th</sup> September 2008 was to:

- confirm a price had been submitted for tender A

- confirm their programme to achieve practical completion by 27<sup>th</sup> July 2010 with a concrete frame solution,
- confirm the site specific preliminaries included all sums and those attributable to enabling works
- include a CV of their lead Architect.

Further clarification emails were issued to each bidder on 19<sup>th</sup> September 2008 with individual specific clarifications returns received on 22<sup>nd</sup> September 2008. The returned clarifications were rescored against Price and Quality of Tender Submission under the evaluation, in section 9 above, and the evaluation matrix amended accordingly.

A further qualification was necessary. The Cost Consultant sent an e-mail to all bidders on 2<sup>nd</sup> October 2008 seeking a response on several points. The most critical being:

- Clarifying when the Employers Requirements would be issued.
- Clarifying the scope of enabling works
- Confirmation they have resources for pre and post construction
- That if piling and substructure works are brought forward into the enabling works package an earlier date for practical completion may be suggested or current PC date confirmed
- Review of programme indicating the interaction of the enabling works with the "main works"

The tenders were rescored against programme and the evaluation matrix amended accordingly.

#### 9.5 Outcome

The table in Appendix 18.1 shows the outcome of the evaluation following the tender clarifications. Following the final tender clarification one of the bidders (Contractor B in 18.1) formally withdrew from the tender process due to their current workload on the BSF programme and in particular the requirement to successfully conclude the pre-construction process on their four current schemes.

#### 9.6 Risks/Caveats

**See appendix 18.2**

#### 9.7 Process for Approval

This report seeks approval for letting the Pre-Construction Agreement. Successful approval enables work to start, at the end of October 2008, culminating in work estimated to cost a total of £4.64m. A package of enhanced enabling works will be presented to the Procurement Committee between 25<sup>th</sup> November 2008 and 3<sup>rd</sup> March 2009. The finance comments in Section 12 of this report outlines the approach to funding this work in advance of FBC approval, although it is anticipated that the FBC will be approved by mid-November 2008, at which point funding for the projects will be confirmed.

## 10. Conclusion

10.1. Following the tender process agreed at the outset of the BSF Programme and through the evaluation and scoring the highest scoring was that submitted by the Constructor Partner D as can be seen from Appendix 18.1.

However having considered the risks we discounted Constructor Partner D for the following reasons:

- They have allocated the risk money refer Appendix 18.2 as they are not confident of completing the programme on time with a concrete frame solution.
- Within the tender clarifications it has been made very clear of the Clients intent to proceed with an in-situ Concrete Frame Solution it is apparent they would still wish to examine and possibly pursue a steel frame solution.
- If a steel frame solution is even viable with vibration isolation included, there is doubt that it can be designed in time and could have implications which would require the planning permission (once received) to be amended, specifically related to height of the building.

Therefore the second highest scoring Constructor Partner A see Appendix 18.1 is recommended as they are considered to give the most credible assurance that they could complete the programme on time. The Procurement Committee are advised that a certain level of financial risk will need to be accepted. The recommended Constructor Partner is named in Appendix 18.3.

The formal contract award is expected to take place in May 2009, at which point the pre-construction agreement will be superseded.

The Evaluation Matrix shows the highest Constructors' scores in each category and their overall score (in bold).

## 11. Sustainability

11.1 The Heartlands High School scheme is over 1,000 m<sup>2</sup> of new build and so is required to meet the London Plan in terms of 20% reduction in CO<sub>2</sub> from on site renewable energy requirements, it achieves this through photovoltaic panels on the façade and roof and an open-loop ground source heat pump system. Notwithstanding this the project exhibits a number of additional sustainability features such as rain water harvesting, green roofs & wall, measures to minimise water use, energy efficient lighting, energy sub-metering, lighting daylight sensing, lighting occupancy sensing, Integration with the school travel plan, Recycled construction materials, Use of certified timber Chain Of Custody (CoC), Reduced Volatile Organic Compounds (VOC) Materials, sustainable measures/energy use visible to students.

## 12. Financial Implications

12.1 The fee (see 18.2) for the pre-construction contract for the Heartlands High School BSF Project is budgeted within the overall Construction Cash Limited Budget of £33,852,000 (please note that an additional grant of circa £500,000 is available to fund sustainability work on this project, this application has recently been submitted and is expected to be confirmed by PfS shortly). The pre-construction element of this project forms an integral part of the overall project budget, and therefore allows for the main contract to be let in due course.



12.2 As the Heartlands High School project is subject to an overall cash limit of £33,852,000 commitment of the fee for pre-construction costs at this stage reduces the overall sum available for the main construction contract. The overall project cost plan prepared by Potter Raper Partnership based on fees incurred to date, pre-construction costs and projected main construction contract can be delivered within the Cash Limited Budget, based on plans at this point in time.

12.3 It is noted that award of this contract represents the fifth BSF project awarded to this construction company. This situation may add risk to the delivery process in terms of financial stability of the construction company, and additional resource risk in terms of delivery of the five contracts. This risk must be evaluated carefully by the client in awarding this contract to ensure that the school is available to the Council in September 2010, although it is noted that Parent Company Guarantees were agreed by all Constructor Partners when the BSF framework level was agreed.

12.4 The Council agreed in June 2008 funding cover to allow enabling works up to £1m to progress in advance of FBC Approval. If the FBC is not signed, C&YPS 2009/10 capital projects will be deferred to allow funding of Heartlands High School enabling works.

Current tender documents indicate an enhanced package of enabling works estimated to total £4.64m, commencing in early October 2008. Assuming that the extent of any commitment to the contractor is restricted to the identified enabling works package, C&YPS have identified further deferral of projects in their 2009/10 and 2010/11 capital programme totalling £4.64m that would allow the enabling works to be funded if the FBC is not signed off, or significantly delayed for some reason.

### **13. Legal Implications – Comments Provided by Eversheds**

13.1 The BSF Framework Agreements with the Construction Partners were established following the correct advertisement in accordance with EC procurement directives and regulations.

13.2 The framework incorporates a mechanism in order to score call offs and mini competitions.

13.3 The scoring matrix compiled for this mini competition was carried out by Haringey's Construction Procurement Group with the assistance of other professional advisers set out in paragraph 9.1.5 of this report.

### **14. Equalities Implications**

14.1 Heartlands High School project is being designed to be fully accessible to all levels of physical ability. As part of the vision for the school, some of the facilities will be open to provide access to sports, arts and cultural activities for students and the local community. The design has considered reducing bullying throughout all stages of development.

### **15. Consultation**

15.1 The designs have been made available throughout the process, for resident drop in sessions, Primary School road shows, Councillor drop-in sessions, information posted through the doors of local residents and available online for viewing.

15.2 Full consultation has been undertaken as part of the BSF Stage approvals; this had included consultation with Partnership for Schools, CABE enabler, development control and building control, the Fire Officer and the Police (Secured by Design).

15.3 Statutory consultation has taken place as part of the planning application process including a development control forum held on Thursday 17<sup>th</sup> July 2008.

**16. Recommendation**

16.1 The Procurement Committee award the preconstruction contract to the Constructor Partner in appendix 18.3. after considering this report and accepting the level of risk to the programme.

**17. Use of Appendices / Tables / Photographs**

17.1 Evaluation Matrix (18.1)

17.2 Risks/Caveats (18.2)

17.3 Recommended Constructor and sum (18.3)

17.4 Construction awards to date (18.4)