

**Cabinet Member Delegated Decision xx xx 2018****Report title: Construction of a SEND Resource Base at Archbishop Sumner Primary School****Wards:** Prince's**Portfolio:** Councillor Jane Edbrooke, Cabinet Member for Children and Schools**Report Authorised by:** Sue Foster: Strategic Director for Neighbourhoods and Growth**Contact for enquiries:** Helen Wordsworth, Assistant Director Capital Delivery, Major Capital Programmes, 020 7926 9839, E-Mail: [HWordsworth@lambeth.gov.uk](mailto:HWordsworth@lambeth.gov.uk)**Report summary**

In June 2016 Kier Construction Ltd provided a tender offer for the delivery of the proposed special educational needs and disability (SEND) Resource base at Archbishop Sumner Primary School in the sum of £923,085 which, after the addition of consultant fees, capitalisation and programme contingency, set an overall projected cost of £1,092,953. The previously confirmed overall project budget is £783,837. Despite extensive discussions and subsequent value engineering exercises, Kier was only able to reduce its tender proposal to £905,421 and an overall projected cost of £1,072,146. In the light of this the Council pursued with the Southwark Diocese Board of Education (SDBE), it being one of their schools, other more affordable and better value for money options.

The cost incurred up to this point, was £95,610.83 which comprised the value of design and pricing work undertaken by Kier and the work undertaken by the Council's technical team and technical advisor, William Martin.

Following negotiations it was proposed that the SDBE would deliver the project for the Council via a development agreement, for a maximum sum not exceeding £800,000 inclusive of VAT, plus a fixed design and management fee of 15%, to be paid for by the Council in instalments.

The total cost of the project would amount to £903,610.83. This sum of money comprises the £95,610.83 spent up to when the 'initial strategy' was halted plus the £800,000 'capped' cost and a provision of £8,000 for capitalised costs of Major Capital Programmes (MCP) staff in validating the successful delivery of the project by the SDBE. Even with the £95,610.83 of abortive costs this represented a saving to the Council of over £168,000.

A Cabinet Member Decision Report was drafted and consulted upon to reflect this proposal but due to officer oversight the correct publication required by the constitution did not take place. The construction phase of the project nevertheless commenced which necessitated a payment to the SDBE totalling £377,500, towards works being undertaken by the SDBE's contractors.

This report sets out the extent of Council's financial resources that have already been expended so that they can be duly noted. It also seeks approval for the sum of £422,500 to fund the SDBE to complete the construction of the SEND resource base on the site of Archbishop Sumner Primary School as an agent of the Council. This amount is the remainder of the monies set out in the development agreement between what the Council has already paid and what it will owe the SDBE upon the project's completion.

## Finance summary

The funding for this project is reported within the Capital Investment Programme (CIP). The overall available allocation for the Archbishop Sumner project is £783,837. Of this budgeted sum, £688,226 remained available to spend at the beginning of the 2017/18 financial year, £377,500 has been paid to the Diocese leaving £310,726 available at the start of February 2018. The prior year's spend of £95,611 is abortive costs resulting from a failed procurement referred to in the finance comments below.

The total funding required for the project is £808,000 comprising a 'capped' sum of £800,000 to SDBE and a provision of £8,000 (1%) for capitalised costs of MCP staff in validating the successful delivery of the project by the SDBE. There is insufficient funding available on the budget line at present to complete these works and so it has been agreed that additional funding will be moved from elsewhere within the monies allocated for capital building projects to improve Special Educational Needs resource provision.

## Recommendations

1. To note that payments totalling £377,500 have been made to the SDBE in respect of this project without formal council approval.
2. To note that officers have exchanged a draft Development Agreement with the SDBE for them to provide a Special Educational Needs and Disabilities resource base on the site of Archbishop Sumner Primary School. The development agreement will be formalised before any further payments are made.
3. To note that the cost identified within the development agreement is comprised of the sum of £757,625.70 for the appointment of to the Southwark Diocesan Board of Education (SDBE) via an agency agreement to provide a 'SEND resource base' at Archbishop Sumner Primary School to meet the needs of fifteen pupils and inclusive of the appointment of Raybridge Total Construction Limited to carry out the work in the sum of £527,265.70 exclusive of VAT [£632,718.84 inclusive of VAT ] and a £30,000 provisional sum for temporary classroom accommodation.
4. To note that officers have retained a project contingency of £42,374.30 to cover any unforeseen liabilities up to the negotiated 'capped' figure of £800,000 in respect of the development agreement with the Diocese.
5. To approve funding of £422,500 to the SDBE for the completion of works in progress at Archbishop Sumner Primary School. This figure is the maximum amount that will be payable to the SDBE under the development agreement. It represents the difference between the total cost of the development agreement (£800,000) and the payment of £377,500 set out above.
6. To note that on completion the Council will review the land ownership at the site of the School

## 1. **Context**

- 1.1 In 2015, as part of the overall Special Educational Needs and Disabilities (SEND) strategy review, it was agreed to support the provision of a new SEND resource base on the site of the Anglican Diocese of Southwark's Archbishop Sumner Primary School. Officers from the Council worked closely in partnership with their SDBE colleagues about the most cost-effective approach to delivering this new provision. The leadership of the school was also consulted.
- 1.2 Initial consideration was given to the use of a local authority owned 'single-supplier framework' through which the construction of the SEND resource base would be procured. A single-supplier framework is a method of reducing the cost of an individual contract by using the pricing efficiencies available through procuring a much greater volume of work through a single supplier, who in their turn have won the opportunity to be awarded the contract via the 'framework' by offering defined performance standards in respect of time, quality, cost and community benefits including meeting public sector social value objectives. The single supplier that is successful will also have gone through a rigorous tender process with meets procurement best practice and the requirements of relevant legislation including European Union procurement rules.
- 1.3 The SCAPE Group was selected by the Council because they are a local-authority owned single-supplier framework capable of delivering the project. SCAPE Group is a public sector organisation that have made a commitment to securing socio-economic value, including facilitating high levels of local labour, local spend, waste reduction, training and apprenticeships, as well as community engagement opportunities within each of the projects that they undertake. Scape Group's National Minor Works framework is designed to deliver single construction projects up to a value of £4 million and is available to any public body in the United Kingdom.
- 1.4 Kier is a leading property, residential, construction and services and are the supplier available via the SCAPE Group's framework for projects within this price band (less than £4 million). In order to agree work packages, the contractor (Kier) conducts surveys to allow them to design and specify the works and to allow tendering to sub-contractors. This then makes it possible to agree a fixed price within the total contract sum.
- 1.5 The initial procurement route set out in a procurement strategy 'Gateway 2' report approved in December 2014 provided for the delivery of a number of SEND Resource Bases including the one located at Archbishop Sumner Primary School to be undertaken utilising Kier construction via the SCAPE Group 'procurement framework'. Technical advice services across this programme of projects were to be provided by William Martin Property Consultants Limited.
- 1.6 William Martin Property Consultants Limited was appointed following a tender process and a 'Gateway 3' Officer Delegated Decision Report (ODDR) dated on 17 February 2015. The finance summary of the ODDR identifies £62,540 as a fixed fee for technical advice in respect of the delivery of these 'resource bases'.
- 1.7 Kier was appointed following a 'Gateway 3' ODDR dated 26 May 2015 to undertake the surveys and design development in the sum of £81,969 to enable finalisation of a construction contract sum for the delivery of the project.

1.8 In this case Kier failed to achieve this and were unable to provide a value for money proposal that could be cost-effectively progressed from design stage into construction. The sum it proposed to the Council was significantly above what the Council and its key stakeholders considered was reasonable. The failure to achieve a cost-effective proposal for the construction was in part due to a change of the pre-construction team and their approach to pricing.

## **2. Proposal and Reasons**

2.1 Following the appointment of Kier in 2015, the Council and its partners commenced a two-stage process of engagement with Kier to reach a lump sum contract price. The first stage determines the design and an indicative costs via a cost plan. The next stage uses this information to tender the project and arrive at a price for the contract that Kier would submit to the Council for acceptance before proceeding.

2.2 During initial cost planning an overall project budget was confirmed by William Martin in conjunction with Kier's estimators in the sum of £783,837. In June 2016 Kier provided a tender offer in the sum of £923,085 which after the addition of consultant fees, capitalisation and programme contingency set an overall project budget of £1,092,953. This being directly comparable with the overall project budget of £783,837. Despite extensive discussions and subsequent value engineering exercises Kier was only able to reduce its tender proposal to £905,421 and overall project budget of £1,072,146.

2.3 The Council and its partners felt that the above tender proposal offered poor value. A decision was therefore taken by the project team not to proceed with Kier. The cost incurred, payable to Kier, in reaching this point amounted to £60,986.07. Costs were also incurred associated with technical advice which amounted to £19,714.45 which were payable to William Martin Property Consultants Limited and capitalisation of the wider technical team (£14,910.31).

2.4 Officers then considered alternative arrangements. In order to commence work as soon as practicable and ensure that facilities are available for pupils in 2017, an exception route was explored. This route provided for the project to be procured and managed by the SDBE via a Development Agreement with the Council, a draft of which has been exchanged but is yet to be formalised.

2.5 The development agreement outlines that the SDBE will act as the authority's agent and project manager at a negotiated charge amounting to 15% of the sum tendered by the contractor selected by the Diocese. This sum being comparable with market levels for the size of project. It was further agreed that the SDBE would tender the works against the design originally commissioned and paid for by the authority as these had been previously agreed, thereby both avoiding what would otherwise have been abortive costs as well as mitigating cost risk from unnecessary design development by a successful contractor.

2.6 In line with this development agreement, SDBE undertook a tender exercise to five contractors from their local supply chain and following evaluation by SDBE's cost consultants, appointed Raybridge Total Construction Limited to carry out the work in the sum of £527,265.70 exclusive of VAT [£632,718.84 inclusive of VAT] with a construction contract period of 38 weeks. The cost to the Council is comprised of SDBE's tendered construction costs inclusive of VAT, SDBE's professional fees of 15% and a provisional sum of £30,000 for temporary classroom accommodation amounts to £757,625.70 and the Council has also negotiated a cap of £800,000 whereby should the fees exceed this sum, the Diocese will assume the burden of risk. The total 'capped' figure plus staff capitalised costs and other cost to date is circa 20% less than the Council would now be looking to fund, had it

progressed Kier's offer. The reduced overall costs justify the commercial judgement made by the Council.

- 2.7 The Diocese took a decision, in the light of discussions about the proposed route, to start at risk in the second week of the Easter holidays, even though it had not received a formal instruction, in order to utilise the week when the pupils were not in school to enable the contractor, who was working on site on another project, to undertake their site set up. The Diocese confirmed that it made this decision in the knowledge that it had a commitment of £25,000 in taking this decision, which would be the limit of its forward funding prior to conclusion with Lambeth.
- 2.8 Officers in the Major Capital Project Team made a payment of £377,500 against the figure of £800,000 without formal approval. This report is seeking to note the spend to date and approve funding for the remainder of the project,
- 2.9 The project is now well underway, the SDBE is monitoring the progress of work and the project is being regularly inspected and reported on by Diocesan staff.
- 2.10 Post the initial tender and contract award to Raybridge Total Construction the school have sought to vary the contract period of the works to enable the incorporation of other works directly funded by the school to take place in parallel with these contracted works. These additional works taking place at no cost, quality or availability of places for the children being delivered under the Council funded works. The result being a revised completion date no longer than 71 weeks from commencement on site.
- 2.11 The finalisation of the report was delayed whilst the terms and conditions contained in the development agreement were redrafted and agreed with the SDBE to incorporate the revised programme of Works and Finance comments which then had to be further consulted upon.

### **3. Finance**

- 3.1 The Capital Investment Programme (CIP) provides a budget of £783,837 for the provision of a 'SEND Resource Base' on the site of Archbishop Sumner Primary School. £95,610.83 had been spent prior to the cessation of the arrangement utilising the SCAPE Group 'procurement framework', consisting of £60,986.07 for work undertaken by Kier, £19,714.45 for work undertaken by William Martin, the Council's technical advisor; and £14,910.31 in respect of capitalisation of the wider technical team leaving a balance remaining on the CIP at the beginning of the 2017/18 financial year of £688,226.17.

The project is subsequently to be delivered by the SDBE on behalf of the Authority with the SDBE tendering the works and managing the delivery within an overall 'capped' budget of £800,000 inclusive of VAT and a further provision of £8,000 for capitalised costs of MCP staff in validating the successful delivery of the project by the SDBE. These works to be funded from the balance of funds retained in the CIP for the delivery of the resource base at Archbishop Sumner Primary School (£688,226.17) with the additional funds coming from other available funds from within the SEND capital building programme. £377,500 of the £688,626.17 has been spent with regard to the first payment made to the Diocese per the report summary above.

#### **4. Legal and Democracy**

- 4.1 The Council has delegated the authority to enact this report's recommendations to the Cabinet Member for Children and Schools.
- 4.2 The Contract Standing Orders require that all contracts with a value of £100,000 and greater are put out to competitive tender. This is the case for this project, however the tender process was carried out by the Southwark Diocesan Board of Education using processes that are not inconsistent with those that would have been followed by the Council.
- 4.3 In the arrangement described in this report, the SDBE will effectively be acting as the Council's agent and would be obliged to comply with the Public Contracts Regulations 2015 as if they were a public body. Under these Regulations the full application of the Regulations apply but the Council only has a duty to publish a contract notice in the official journal if the estimated value of a service contract exceeds £181,302 or if it is a contract for works, £4,551,413.
- 4.4 When considering whether to adopt the recommendations of this report, the decision maker will be exercising discretion within the constraints of the duties referred to above and should therefore have in mind the following principles of administrative law:
- the decision must be within the Council's powers;
  - all relevant information and consideration, including the Council's fiduciary duty to the Council Tax payer, must be taken into account; and,
  - all irrelevant considerations, including unauthorised purposes, must be ignored.
- 4.5 This proposed key decision was entered in the Forward Plan on 17 February 2017 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires that all key decisions be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during that period must be considered by the decision-maker before the decision is taken. This decision was implemented without proper approvals in place and this report seeks to standardise the project and formally approve additional funding as set out in the recommendations.

#### **5. Consultation and co-production**

- 5.1 The Major Capital Projects team has carried out extensive consultation with colleagues in the Southwark Diocesan Board of Education both on the existing demographic of the school and the needs of the children.
- 5.2 There has also been consultation with the leadership of the school including the Governing board, Headteacher, senior leadership team and pupils.
- 5.3 There have also been detailed discussions with the Council's Director of Education, Learning and Skills and specialist staff within their team including Lead Officers for Special Educational Needs and Disability Service, Inclusion, Educational Psychology and School Admissions.

#### **6. Risk management**

- 6.1 Lambeth Officers will attend meetings to be held with both the contractor and consultant(s) to ensure the programme timetable is agreed and understood by all parties.

- 6.2 A Risk Assessment and Management plan relating to the pre-construction surveys has been submitted by the contractor to SDBE and the Council.
- 6.3 A full risk matrix and risk register compiled prior to start on site and is reviewed at monthly progress meetings as well as regular communication with the key stakeholders and the contractor, about any issues arising that may impact on project progress.

## **7. Equalities impact assessment**

- 7.1 A 'light touch' EIA report has been written for all SEND resource base extensions and the risk and impact to the different user groups are low. The project will deliver positive outcomes for the community.

## **8. Community safety**

- 8.1 No impact on community safety is anticipated. The survey work will be carried out in isolated and secured areas.

## **9. Organisational implications**

- 9.1 **Environmental**  
None

- 9.2 **Staffing and accommodation**  
None.

- 9.3 **Procurement**  
Procurement Board's approval was not sought in this instance as the Council is not procuring the contract itself but rather engaging the Southwark Diocesan Board of Education as its agent.

- 9.4 **Health**  
Not applicable

- 9.5 **Process and procedures**  
In conjunction with the drafting of this report the process and procedures in consulting and advising on the Council's governance processes has been locally reviewed and measures reinforced to ensure that similar processing errors are unlikely to reoccur.

## **10. Timetable for implementation**

- 10.1 The project is due to be carried out under an agency agreement by SDBE. The works are expected to take a period of not exceeding 71 weeks from commencement on site. Worked commenced on the 18 April 2017.
- 10.2 Under the agreement between the Council and the SDBE, the project to deliver the contract and all building works associated with it will be monitored by chartered building surveyors employed by SDBE through monthly site progress meetings and financial review meetings.

<b>Audit Trail</b>				
<b>Consultation</b>				
<b>Name/Position</b>	<b>Lambeth directorate/department or partner</b>	<b>Date Sent</b>	<b>Date Received</b>	<b>Comments in para:</b>
Councillor Jane Edbrooke	Cabinet Member for Children and Schools			
Rachel Sharpe	Director of Strategic Programmes	26/02/18	27/02/18	
Sue Foster	Strategic Director for Neighbourhoods and Growth	26/02/18	06/03/18	
Helen Wordsworth	Assistant Director Capital Delivery	15/03/18	20/03/18	
Andrew Ramsden Finance	Corporate Resources	22/02/18	23/02/18	
Andrew Pavlou Legal Services	Corporate Resources	13/03/18	15/03/18	
Michael O'Hora Legal Services	Corporate Resources	22/02/18	23/02/18	
Democratic Services	Corporate Resources	20/03/18		
Procurement Services	Corporate Resources	23/02/18	28/02/18	

<b>Report History</b>	
<b>Original discussion with Cabinet Member</b>	28 February 2017
<b>Part II Exempt from Disclosure/confidential accompanying report?</b>	No
<b>Key decision report</b>	Yes
<b>Date first appeared on forward plan</b>	17 February 2017
<b>Key decision reasons</b>	financial implications and community impact
<b>Background information</b>	Lambeth SEN Review April 2014 Cabinet <a href="https://Update%20Cabinet%20April%202014.pdf">https://Update%20Cabinet%20April%202014.pdf</a>
<b>Appendices</b>	None

**APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION**

**I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Post:** Helen Wordsworth, Assistant Director Capital Delivery, Major Capital Programmes

**I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Post:** Councillor Jane Edbrooke, Cabinet Member for Children and Schools

**Any declarations of interest (or exemptions granted):**

**Any conflicts of interest:**

**Any dispensations:**