



*Mowden Federation of Schools
Basic Need Project*

Procurement and Contracts Strategy

Version: 01

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Nr	Recipient	Organisation	Date	Status
001			13 th March 2012	Draft
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1 Introduction

1.1 Purpose

This Procurement and Contracts Strategy has been developed to provide a definition for the procurement route and the form of contract(s) for the project. The Procurement and Contracts Strategy is used to demonstrate how the procurement will be undertaken. It should be noted that the procurement strategy is consistent with Darlington Borough Council's overarching commissioning strategy and Corporate Procurement Rules.

1.2 Project Background

Since 2008 the authority has been experiencing a shortage of primary school places across the Borough with particular hot spots in certain areas of the town. The Primary Capital Programme directed funding to address some of these areas of concern at the time, but other areas of the town are now becoming a priority.

The Local Authority was allocated £2,417,374 Basic Need funding in 2011-12 to support the need for additional school places across the Authority. Cabinet agreed the release of £27,800 of this funding in July to enable feasibility work to be undertaken in considering the most appropriate schools in which to provide additional places.

The feasibility work concluded that current pupil projections and demand for places clearly identify an immediate need for school places in the west end of Darlington. The schools in this locality, Mowden Infant and Junior School Federation and The Federation of Abbey Schools are both heavily oversubscribed each year due to their popularity and demand for places from parents living in the immediate area.

The feasibility work also took into consideration that the Local Authority was challenged on its admission criteria from the Office of the Schools Adjudicator for the 2011/12 admission arrangements. The challenge centred on unsuccessful applications from parents living in rural locations who were unable to obtain a place at any of their preferred local schools. As a result of the investigation, a number of schools on the fringe of the town have been named as the most appropriate alternative school should a rural family not be able to gain a place in their local village school. Mowden Infant and Junior School Federation have been named as the appropriate school to take children from the rural approaches to the west of the town, particularly from the Merrybent/High Coniscliffe area. This admission requirement places additional pressures on places which are already in demand in this area of the town.

It has been identified that there is an immediate need to consider options to expand a school in the west side of the town. Having considered size of existing schools, the size of available sites and

suitable locations to meet the challenge set by the Office of the Schools Adjudicator, the study identified Mowden Infant and Junior School Federation as most suitable for the initial focus of expansion.

1.3 Project Scope

The initial feasibility study will consider the following options:

1. Expansion to 75 children per year group (Infant: 2 new class bases, Junior: 2 new class bases)

- a. Keeping Pre School where they are
- b. Relocating pre-school - maintaining some link to Foundation Area

2. Expansion to 90 children per year group (Infant: 3 new class bases, Junior: 4 new class bases)

- a. Keeping Pre School where they are
- b. Relocating pre-school - maintaining some link to Foundation Area

1.4 Project Objectives

The project sets out to expand the Federation of Mowden Schools to meet the need for primary school places in the highest priority area of the town.

By providing additional school places the Local Authority will meet its statutory duty to provide a school place for every child in its area.

Corporate Objective Links:

- Putting the Customer First – The project will put the school's customers first by ensuring more high quality teaching spaces are available for the towns pupils.
- Ensuring Access For All - Works will be designed to meet and where possible exceed accessibility standards.
- Shaping a Better Darlington – Through the creation of additional school spaces more children will benefit from the good level of education the schools provide.
- Enhancing Our Capacity to Improve – Through the creation of additional places more pupils will benefit from the good level of education the schools offer.
- Providing Excellent Services – The improved facilities will enable the school to strive for excellence.

2.1 Project Manager

The Project Board will need to appoint a Project Manager to deliver the project from the CP2 stage to CP5. The project manager's terms of reference are as defined in the project execution plan.

Design Team

The project will require a design team to turn the clients requirements into a workable scheme. The Design team will include the roles of Design Manager and Cost Control Manager as defined in the Project Execution Plan.

CDM Coordinator

A CDM coordinator should be appointed to ensure the client complies with his responsibilities under the Construction Design Management Regulations.

Contract Administrator

A Contract Administrator role for the main contract will be required. The responsibilities of the role will be dependent on the form of contract chosen.

Principle Contractor

Required to deliver the works to the agreed specification.

Supervisor/Clerk of Works

A clerk of works/supervisor will be required to oversee the main contract works in accordance with the design specification.

3 Consideration of Options

3.1 **Outline of Options**

Project Manager

The AM and CPRB have determined that the project will be managed by the Capital Projects Office. A fee charge of 2% will apply.

Design Team

The design services for the scheme will be provided in house by the Building Design Services section.

Construction Design and Management Co-ordinator (CDMC)

Capacity issues surrounding the Corporate Health and Safety Unit have been resolved and there is an option for internal resources to be used

for the role of CDMc. The CDMc role is covered under the Highways Framework and has been used to good effect by members of the project team, however response lately has been poor. A Request for Quotation would be issued via the pro-contract portal – One week duration.

Contract Administrator

If a CA is required options for delivery include using internal resource from the Capital Projects Team or appointing from the framework.

Principle Contractor

- Internal Resources (DLO). Reasons for: Grant circulation. Local Knowledge. Reasons against: Capacity of workforce, Potential outcomes from Strategic Options for Place.
- External Appointment. Reasons for: procurement exercise will identify the most competent contractor for this type of work. Competitive price. A formal contract. Reasons against: Lack of school specific experience.

The Principle Contract decision will follow the Scheme Delivery Options process as shown on the flowchart in Appendix A. The DLO will be given the opportunity to undertake internal tests of their compatibility for the scheme, assessing their skills, capacity, specialism's and value for money for the authority.

A report will be produced and assessed by the AM & CPRB at which stage a decision will be made as to award the contract to the DLO or tender to the open market.

3.2 Type of Contract

Project Manager

No contract - Internal agreement and Scope of Service with Fee Charge to be agreed. Terms of reference as defined in the Project Execution Plan.

Design Team

No contract – Internal agreement and scope of service to be agreed. Terms of reference as defined in the Project Execution Plan

CDMC

Appointments to the CDMc role from the framework in the past have been made under the DBC Standard Terms and Conditions. There is no reason to warrant changing this approach for this size of this contract, however appointments under the NEC3 suite of contracts would follow best practice. If work is retained then an internal agreement would be made and a fee charge agreed with the Health & Safety Unit.

Contract Administrator

Internal agreement of a Scope of Service or a brief to framework consultants

Principle Contractor

The following examination of available contract forms assumes for a decision by the AM & CPRB that the works be tendered to the open market. Should the AM&CPRB determine that work be retained then an internal agreement would be made with Building Design Services.

Design and Build

Advantages of Design and Build

- There is certainty of out-turn costs from contract award through to completion of the project
- There is less opportunity for a Contractor to benefit from changes/variations as the detailed design develops to an agreed Client brief. The brief will require appropriate wording. The design is the Contractor's responsibility therefore any deficiency in the design must be rectified at the Contractor's cost.
- The Contracting organisation will maximise their experience and take buildability and methodology into account in their design.
- The Employer only has to manage one project team and does not have to co-ordinate interfaces between the designers and the constructor
- There is only one procurement round rather than the two procurement procedures necessary to appoint a separate designer and contractor.
- Value Engineering and Management is included within the tender Process.
- The measurement and monitoring of performance using key performance indicators is used.
- The contractor would be permitted a greater degree of flexibility in design and construction methods compared with more traditional contracts, allowing for preferred methods of working to be adopted, overall costs to be minimised within a specified timescale and best value be obtained.

Disadvantages of Design and Build

- Less opportunity for the Employer to influence the design without adding to the cost of the scheme. The Employer will need to decide the requirements in advance and accept the outputs. Changes will incur additional time and cost.

- The tendered accepted design may be subject to major changes as the project goes through the various approval processes (e.g. planning). This may cause a significant increase in costs. Negotiating additional costs after contract award is less efficient than in a competitive tender situation; however this can be mitigated by transferring risk to the contractor to ensure he is required to obtain necessary approvals.
- A long tender period is required to enable the development of the design to allow a firm price to be estimated.
- Contractors have to put in a lot of time and effort in to the tender process and may consider the opportunity to be not attractive to them.
- The process requires detailed specifications and clear definitions of the requirements and constraints to enable control of the Contractor's design to an acceptable level. This will add further time to the overall procurement process.
- Contractors can always submit tenders on the basis of first past the post, lowest tender could win.
- DBC can be exposed to negative impacts in relation to loss of reputation caused by delays or changes by the contractor.
- Projects may become excessively cost focussed to the detriment of quality.
- Design and build procurement is likely to achieve a low cost functional design. This is not always appropriate, especially for high profile public works. Higher focus on quality is required.
- The fundamental requirement of a design and build contractor is to produce a compliant product with less concern for long term durability and maintenance.
- It is the norm for tenderers to submit alternative bids which are usually tailored to their capabilities. It will therefore be very difficult to make comparisons between competing bids which can lead to uncertainty in the final product.

Traditional Approach

Advantages

- A well understood and used form of contract with the apportionment of risks well defined between employer and contractor.
- Enables the Employer to maximise his influence on the design as it is being developed.

- Ensures that the individual stages of the project (design and construction) are awarded to competent organisations at the most cost effective costs. Awarding a contract to a joint venture or alliance does not necessarily mean that the component organisations within the JV are the most efficient individual companies for the proposed scheme.
- Having a detailed design available for the construction activities encourages tenderers to develop innovative efficient construction proposals to ensure the best whole project value for the project. Awarding on the basis of construction costs based on only an outline design may mean that the successful bid may be the one with the least allowance for risk rather than the best quality, most efficient proposal.
- The construction activities account for the majority of costs, As the competitive tender process for the construction activities is based upon a detailed design which has gone through the planning approval process there is less likelihood of significant increases in costs as the project is better defined at tender stage than if the design is only partially developed in a D&B process.
- Once the construction contract has been awarded on a detailed design and given the level of Employers input into the design, there is less chance for variations and changes which will affect the out-turn costs and out-turn duration of the project.
- Detailed design by independent engineer and design incorporated the fundamental requirements as to longevity, quality and maintenance.
- Absolute certainty in final form of structure.
- Independent supervision and inspection of construction.

Disadvantages

- Whole project costs cannot be ascertained until the completion of the construction tendering process
- There are fewer opportunities for risk transfer from DBC
- The development of detailed design may take longer than a D&B procurement approach.
- Tendering contractors will almost certainly include alternatives which may need significant input to assess.
- No Contractor input in the design stage

- High Risk for employer with programme and cost overruns, unforeseen ground conditions etc.
- Tenders usually assessed on price alone – no quality element.
- The contractor is not available during design to influence build ability.

Forms of Contract

NEC3 Engineering and Construction Contract (ECC)

The NEC3 is designed to be as flexible as possible and can be used across the range of traditional disciplines. It accommodates the Contractor having full, part or no design responsibility. It provides all current options for types of contract such as competitive fixed price tenders, target contracts, cost reimbursable contracts and management contracts. The two most applicable options for the works are:

Option A : Priced Contract with Activity Schedule

Option B : Priced Contract with Bill of Quantities

Priced contracts are normally used when the Employer is able to provide the Contractor with a definitive description of what is required. This does not necessarily mean a complete design, but a clear statement of what is required e.g. as a scope design, performance specification and a statement of the purpose of the project.

The Capital Projects Office have experience of this contract but for more complex projects.

JCT (Joint Contract Tribunal)

The JCT suite of contracts is generally associated with the building sector. The JCT is a contract with similarities to the ICE conditions and therefore, generally perceived as being prone to adversarial behaviours.

The form is published in three versions for use with quantities, without quantities, or with approximate quantities.

The With Quantities version should only be used where the Employer, through its professional consultants, has provided at the time of tender a full set of drawings and bills of quantities. An Information Release Schedule is part of the documentation in an attempt to identify responsibility for any further information which might be necessary to amplify the contract during the carrying out of the Works.

The Without Quantities version also requires preparation of a full set of drawings to be accompanied either by a Specification or Schedules of Work. In order to give valuation of variations and fluctuations a

substantive basis the contractor is also required to submit a Schedule of Rates or a Contract Sum Analysis; this should be provided, and the measure of detail required of the contractor is often stipulated at tender stage by the Employer.

All three versions now incorporate sectional completion and a Contractor's Designed Portion, both optional provisions. The first allows for phased commencement and completion of the Works, and for setting separate rates for liquidated damages for each section. The second allows for the contractor to design an identified part or parts of the Works, and includes a new procedure for submitting its developing design information for comment. The parties should be careful to set out any requirements as to scope, format and timing of such submissions in the Contract Particulars.

Work needs to be fully documented at tender stage, and is for completion within a stated period. The contractor may be required to design an identified part of the Works, in which case it must be provided with detailed Employer's Requirements at tender stage. Otherwise, the contractor is to be provided with fully detailed design information, ideally at tender stage, as any information provided later may give rise to claims. The Employer is required to appoint a contract administrator and a quantity surveyor.

3.3 Procurement Route

Principle Contractor Appointment (Assuming tender to open market as opposed to a direct award to Building Services)

Open procedure - means that the Invitation to Tender must be sent to all suppliers that express an interest in response to the Contract Notice. This procedure is most appropriate when there are a small number of suppliers expected to request an ITT.

Restricted Procedure - This is a two-stage process which would allow DBC to draw up a short-list of interested parties by undertaking a pre-qualification stage, prior to the issue of invitation to tender documents. This is most appropriate route when many suppliers exist within a market and it is not feasible to issue an Invitation to Tender to each.

In a Open Procedure the ITT is issued to all suppliers that request it whereas in a Restricted Procedure this is only issued to the short-listed suppliers.

CDMC

The CDMC role is covered under the Highways Framework. Project Brief required to be uploaded to the NEPO portal for RFQ – One week duration.

Clerk of Works/Supervisor

Options available to the project are for an approach to the Highways and Architectural Framework with a detailed Brief requesting a

quotation for undertaking the supervisor/clerk of works role. This procurement approach will be fast and will allow the project to appoint a suitably qualified person.

4 Recommended Contract and Procurement Approach

Design Team

The project manager recommends that internal resource continues to be used to deliver the design element of the project.

Transport Assessor

The Project Manager recommends that a request for quotation be issued to the framework

CDMC

The project manager recommends that a CDMC be appointed from the council's own Health and Safety unit.

Supervisor/Clerk of Works

The project manager recommends that a project brief be written and a quotation requested from the Architectural and Highways Framework. The contract would fall under the DBC Standard Terms and Conditions and will be administered by the project manager

Principle Contractor

The AM&CPRB will determine whether the works are delivered by Building Services or whether the works are to be externally tendered. The decision on whether to retain the works in-house will depend on Building Services being able to demonstrate the following;

- Specialist nature – Consider whether the works are of a specialist nature which is defined as those projects which do not match Building Services skill set;
- Skill Set – Consider whether the requirements of the work match Building Services skill set;
- Programme compatibility – Consider whether the work will fit into the current Building Services programme or whether there is flexibility to allow the project to into the programme;
- Evidence of Value for Money (VFM) – Can VFM be demonstrated on the project in relation to current market prices or from bench marking exercise.

Should the decision be made for the works to be tendered externally the Project Manager recommends that a traditional procurement route be followed with Design work remaining with the DBC.

Due to the likely number of interested companies a Restricted Tender procedure would be followed.

If the decision is a made to tender the works externally the recommended contract would be New Engineering Contract (NEC3) Engineering and Construction Contract.

5 Plan

Highways Consultant (Transport Assessment)

- RFQ to Highways Framework: 1 Week
- Evaluation: 1 Week
- Appointment and Mobilisation: 1 Week

Principle Contractor

Please refer to attached programmes demonstrating Pre Contract tasks for internal and external appointment. A third option, allowing Building Services to assess their compatibility once all production information has been completed, would add at least 5 weeks on to the programme and would risk Phase 1 not being complete by the 2013/14 Academic year.

6 Resources

The procurement process will be managed by core team members of the Project Team led by Richard Storey. It is envisaged that additional support will be required from DBC procurement and legal teams.

7 Risks.

The largest risk with a traditional procurement route is that we will have an 'Employer's design' which will mean as far as the Contractor is concerned DBC will be responsible for errors and omissions in that design. This risk will be offset by the fact that we have the opportunity to tightly control the design process. However, this mitigation action can only be successful if the right level of DBC management resource is available during the design process.

The Federation of Mowden Schools transition to Academy status should be highlighted as a key risk to the project and its deliverability. The client should seek legal advice to ensure that the Legal Agreement between the Authority and the Academy contains agreement to the project and it's delivery by the Local Authority.