


Individual Mayoral Decision 8 th June 2017	 TOWER HAMLETS
Report of: Corporate Director, Place	Classification: Unrestricted
Smoke ventilation replacement project for Swanlea School	

Lead Member	Councillor David Edgar, Cabinet Member for Resources
Originating Officer(s)	Steven Girling, Head of Facilities Management Sam Brown, Planned Maintenance Manager
Wards affected	Whitechapel
Key Decision?	Yes
Community Plan Theme	One Tower Hamlets

Executive Summary

The smoke ventilation system in Swanlea School, an essential requirement of fire safety regulations, has failed and is currently non-operational. The replacement of the system is an extremely complex project and one that the council and the school are keen to have completed by the end of the summer holidays.

This report sets out the background to the issue and seeks Mayoral approval for the waiver of the council's Procurement Procedures to allow the direct appointment of Oakray as the principal contractor on the project, with Colt UK (the smoke ventilation contractor) working as a sub-consultant.

Recommendations:

The Mayor is recommended to:

1. Approve the waiver of the council's Procurement Procedures to allow the appointment of Oakray (with Colt UK as a sub-contractor) to carry out this Work;
2. Authorise the Corporate Director of Place (or in the Corporate Director's absence the Divisional Director, Property & Major Programmes) after consultation with the Corporate Director and Monitoring Officer, Governance, to agree the final terms and conditions of any agreement to implement this decision; and

3. Authorise the Corporate Director and Monitoring Officer, Governance, to execute all necessary contract documents to implement this decision.
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1. REASONS FOR THE DECISIONS

- 1.1 The decision is being sought to allow the school to reopen for the 2017/18 academic year in compliance with the requirements of Fire Safety Regulations.

2. ALTERNATIVE OPTIONS

- 2.1 The council could go back to the market and look to carry out another procurement exercise. However, given the length of time this would take and the outcome of the most recent procurement exercise, this is not recommended. Any delay to the Works would mean they would have to be carried out during term time and around the operation of the school, prolonging the building's continued non-compliance and putting the health and safety of students at risk.
- 2.2 The council could decide not to carry out the proposed Works. However, the smoke ventilation system is an essential requirement of Fire Safety Regulations and required for the safety and wellbeing of students, staff and visitors to the building.

3. DETAILS OF REPORT

- 3.1 Swanlea School is a maintained/community school in the Whitechapel ward, which opened in 1993, and currently has over 1000 students on roll. The school's smoke ventilation system has failed and is currently non-operational.
- 3.2 A smoke ventilation system is an essential part of a building's safety systems as it ensures that, in the event of a fire, low level escape routes are kept clear of smoke, thereby aiding the safe and quick evacuation of people from the building.
- 3.3 The failure of the system means the school is currently non-compliant with fire safety regulations.
- 3.4 This is a complex project requiring the erection of a large area of scaffolding along the double height atrium area of the school which is 102 metres in length. This area needs to be fully scaffolded throughout the works, the smoke ventilation system replaced and scaffold struck during the 6-week holiday period.

- 3.5 The council carried out a procurement exercise to secure a contractor for the Works but only one bidder responded. The project team did not have much confidence in their ability to deliver this work and their delivery programme made it clear that they could not deliver the project in the timescales required, i.e. by September 2017. The council made it clear to all bidders during the tender process that time was of the essence.
- 3.6 The council are now proposing to use the Council's mechanical measured term contractor, Oakray, to act as the principal contractor. It should be noted that while Oakray are the measured term contractors, these works are not being undertaken through the measured term contract (MTC) as the value of the works exceed that allowed under the MTC.
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- 3.7 Colt UK (the smoke ventilation contractor) working through this contract, as a sub-contractor to Oakray. This is what the original bidder intended to do.
- 3.8 The expected total cost for the project is £400k of which £190k is for the Colt UK work and the balance for the Oakray works and costs. This has been benchmarked against the estimated costs submitted by the bidder in the aborted procurement exercise to demonstrate value for money.
- 3.9 In order to manage the lead times for manufacture of the ventilation systems the project team need to place the relevant orders in the first week of June. If the orders are not placed by this time, there is a significant risk that the Works cannot be completed before the school reopens in September 2017.
- 3.10 In order to award the contract, the procurement procedures must be waived. The procedures require the use of a compliant framework or procured through an open tendering process. However, as this would be a works contract, it is significantly below the OJEU threshold for works of £4.1m.
- 3.11 While Corporate Directors have authority to waive the procurement procedures for contracts up to the value of £164k, this contract exceeds that amount and so Mayoral approval is being sought for the waiver.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report seeks Mayoral approval to waive the council's procurement procedures to allow Oakray (with Colt UK as sub-contractor) to be appointed to replace the smoke ventilation system in Swanlea School.
- 4.2 The costs of the works are estimated at £400,000. Under the Council's Financial Regulations and Procurement Procedures, a compliant framework

or open tendering process should be used, but, for the reasons set out in the report, approval is sought to directly appoint Oakray (with Colt UK as sub-contractor).

- 4.3 A capital estimate of over £400,000 is already in place within the Children's Services capital programme for Fire Protection Works on Swanlea School, therefore the costs of these works will be funded from that capital budget.

5. LEGAL COMMENTS

- 5.1 This report concerns the proposal to directly award a contract for Swanlea School Atrium Ventilation and Smoke Control (Works).
- 5.2 The Purpose of the Contract is to ensure compliance with the Regulatory Reform (Fire Safety) Order 2005 which require that schools must undertake risk assessments to identify the general fire precautions needed to safeguard the safety of occupants in case of fire, including their safe means of escape. This will include ensuring procedures are in place to reduce the likelihood of fire, maintaining fire detection and alarm systems.
- 5.3 The Council has power to enter into contracts for a third party to deliver the Works and Services which arises by virtue of section 111 of the Local Government Act 1972, providing the power enabling the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Under section 1 of the Localism Act 2011, the Council has the power 'to do anything that an individual may do' 'for the benefit of the authority, its area or persons resident or present in its area'. The Council may be satisfied that it has the enabling power(s) to initiate procurement exercises for the Works and Services and award any subsequent contracts pursuant to those tendering activities.
- 5.4 For the purposes of the Works, it would be anticipated that there may need to be a range of tendering activity to meet the requirements as a whole. The total value of the anticipated Works is under the £4,104,394 threshold contained in the Public Procurement Regulations 2015 (Regulations) and therefore below the OJEU threshold and strict compliance with it will not be required. However, the Council would be required in any event, to demonstrate compliance with the principles of equal treatment, transparency and non-discrimination as required by the Treaty of the Functioning of the European Union.
- 5.5 The award of the contract to Oakray would likely be regarded as a 'direct contract award' which could expose the Council to legal proceedings in

respect of that illegality. In particular, a claim might be brought by an organisation claiming damages in respect of the lost opportunity and an application to have any direct award contract annulled. A decision of the Council not to procure the Works may also lead to allegations that the Council is failing to comply with European law in relation to public procurement, particularly principles such as equal treatment and transparency and non-discrimination under the Treaty on the Functioning of the European Union as explained in paragraph 5.4. This may expose the Council to scrutiny from the Cabinet Office and further, to the imposition of financial penalties by the European Commission. If the Council decided not to procure the Works and engage a different contractor to carry out work to satisfy its statutory duties, this would also likely be regarded as a direct contract award and expose the Council to the risks highlighted in this paragraph.

5.6 Directly awarding the contract would require a specific waiver of the Council's Procedures and the Council should be satisfied that one of the grounds for waiving them under section 12 of the Procedures is acceptable. The ground which could be relied upon is 12.1(a) of the Procedures which states that a waiver is permissible where "the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and has demonstrated that only a single source of supply is available, or it is otherwise clearly in the Council's interest to do so".

5.7 Reasons are provided in the report as to why it may be considered appropriate to deviate from the Council's Procedures, which may be summarised as follows:

- The Council has undertaken a competitive procurement exercise revealing only one contractor is available;
- The winning bidder has confirmed that they will not be able to meet the timescales stipulated within the tender requirements which emphasised that time is of the essence;
- The school has a statutory obligation under the Fire Safety Regulations to ensure that the school is compliant with respect to Fire Safety and must carry this work out immediately as they are currently not compliant with those Regulations;
- it would be disproportionate and unviable to conduct a competition for in such short notice and complete the Works within the school's holiday period; and
- it is arguably in the Council's best interests to award the contract so as to meet the school's timescales and ensure the school is compliant as of the academic year 2017/18.

- 5.8 There is a risk of challenge to the proposed contract awards for alleged non-compliance with the duties outlined in 5.5 and 5.6 above. The risk is lessened as the Council has, arguably, a pragmatic reason for directly awarding the contract and has some basis, by reason of the competitive procurement exercise undertaken which shows the Council took steps to procure the contract and it was not the Council's intention to avoid competition.
- 5.9 The Council has an obligation as a best value authority under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness." The Council would also need to be satisfied that entering into a contract would represent best value.
- 5.10 When considering its approach to contracting, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). Officers are expected to continuously consider, at every stage, the way in which procurements conducted and contracts awarded satisfy the requirements of the public sector equality duty. This includes, where appropriate, completing an equality impact assessment which should be proportionate to the function in question and its potential impacts.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 There are no immediate One Tower Hamlets considerations arising from this report.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The council's property maintenance team have benchmarked the costs proposed by Oakray against the estimated costs that were quoted as part of the procurement exercise and have determined that the proposed costs represent value for money.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no immediate sustainability implications arising from this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There is a risk that the school may be unable to open in time for the 2017/18 academic year. This will be managed by ensuring the contractors are proactively managed by the council's in-house property maintenance team.
- 9.2 Not carrying out these works swiftly means the school continues to be in breach of fire safety regulations. This needs to be regularised as soon as possible through the delivery of these works.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no immediate crime and disorder implications arising from this report.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are no immediate safeguarding implications arising from this report as the works will be carried out during the summer holiday, when there are no students in the school.

Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

- None.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None.

Officer contact details for documents:

N/A