

Members' Library Service Request Form

Date of Document	28/09/16
Originator	Head Of Development
Originator's Ref (if any)	
Document Title	PPP Project - Procurement of Phase 2 of Dunbar Grammar School's Expansion Project

Please indicate if access to the document is to be “unrestricted” or “restricted”, with regard to the terms of the Local Government (Access to Information) Act 1985.

Unrestricted	<input checked="" type="checkbox"/>	Restricted	<input type="checkbox"/>
--------------	-------------------------------------	------------	--------------------------

If the document is “restricted”, please state on what grounds (click on grey area for drop-down menu):

For Publication

Additional information:

Authorised By	Douglas Proudfoot
Designation	Head of Development
Date	28 th September 2016

For Office Use Only:	
Library Reference	185/16
Date Received	05/10/16
Bulletin	Oct 2016

REPORT TO: Members' Library Service

MEETING DATE:

BY: Depute Chief Executive – Partnerships and Community Services

SUBJECT: PPP Project – Procurement of Phase 2 of Dunbar Grammar School's Expansion Project

1 PURPOSE

- 1.1 To set out the procurement options considered in respect of the construction and facilities management of the expansion of Dunbar Grammar School to provide the additional accommodation and services required to meet the needs of the projected rising roll.

2 RECOMMENDATIONS

- 2.1 It is recommended that the procurement of Phase 2 of the Dunbar Grammar School expansion be by a Change Control Proposal through the current PPP Project Agreement (The existing PPP contract is due to expire in year 2035). The main reasons for this recommendation are as follows:

- Confidence in achieving the timescale for completing the new classroom extension which is required by August 2018.
- Risk for design and build and future maintenance remains with Innovate during the contract period: Hub SE have advised that they would not be able to indemnify Innovate against operational failure of the school and associated deductions under the PPP Project Agreement, arising from an act or omission on the part of Hubco during the contract period.
- Innovate's proposal provides best value on cost as benchmarked against Hub South East Scotland

3 BACKGROUND

- 3.1 Dunbar Grammar School requires to be expanded from its current capacity of 849 to 1199 to accommodate the pupils arising from housing developments already committed in the Dunbar cluster, as shown in the following table. The

table also shows the pupil roll projected to result from the proposed LDP housing developments, some of which have already received 'minded to consent' planning approval from the Council:

Year Expansion Required	Projected Dunbar Grammar School pupil roll arising from committed and housing developments	Projected Dunbar Grammar School pupil roll arising from committed and proposed LDP housing developments
2018	1004	1024
2019	1054	1098
2020	1111	1173
2021	1172	1247
2022	1191	1282

This report addresses the school expansion required for the committed housing developments only, for a peak roll of 1191 pupils. It is planned to deliver this as a single contract. Developer contributions will be sought for further expansion to extend the school to provide the required additional accommodation in due course: this is likely to be needed by 2021, when the capacity of 1199 is anticipated to be breached, based on current house development programmes and associated pupil roll projections.

- 3.2 The Design Brief, Authority's Requirements and outline design for the school's expansion to 1191 have been developed in consultation with Education, the HT and staff ND Parent Council at Dunbar GS.
- 3.3 An initial Phase 1 of the project, which included expansion of the pupils' Social Space and the provision of a classroom sized temporary modular unit, was procured through a PPP Project Agreement Change Control Proposal at a cost of £380,000.00 and was completed in August 2016.
- 3.4 This Phase 2 is the major expansion of the school, comprising a large two-storey extension to the east, providing new-build teaching and ancillary accommodation, significant alterations to various areas within the existing school and associated external works. This work is programmed for completion and occupation by the school in August 2018.
- 3.5 The high level budget for the expansion has been estimated at a total of £10.33 million, and is included in the Gross General Fund Capital Spend of the General Services Budget Proposals 2016-2019. This budget figure includes an estimate for the new build, alteration and external works received from Innovate, professional and statutory fees, surveys, fixed IT equipment, furniture, fittings and equipment. A cost plan has been prepared by FES, which has been favourably benchmarked with Hub South East Territory Partner to demonstrate value for money as detailed in section 6 of this report. Competitive tendering of all work packages between now and November 2016 will confirm the overall tender figure for the contract.

3.6 There are three possible procurement options for the expansion of the PPP schools which have been discussed with the Council's Legal and Procurement Team, and with Infrastructure Managers Ltd, Innovate's management agents for the PPP Project, as follows:

1. A Supplemental Agreement to the existing PPP Project Agreement would be required for the expansion project, with a Change Control Proposal issued through the existing PPP Project Agreement. A separate agreement would be made to govern the continuing facilities management and life cycle of the expansion.
2. Procurement through Hub South East Scotland Ltd via New Project Request and Stage 1 and 2 submissions and Council approvals.
3. Procurement through an OJEU process as a Design and Build contract.

3.7 Given the programme delivery requirements to complete the classroom expansion of Dunbar Grammar School by 2018, at this stage, the option to procure through any mechanism other than the Council's PPP provider is not viable. However, this report sets out the advantages and disadvantages of each procurement route, to demonstrate that for this project, this is the most cost effective vehicle and carries the lowest risk for the Council.

3.8 *REVIEW OF PROCUREMENT OPTIONS*

3.8.1 *A Supplemental Agreement to the existing PPP Project Agreement*

The advantages of this procurement route are summarised below:

- If the extension is procured through Innovate, all risk associated with the design and building and future maintenance of the project is transferred to Innovate, who would continue to be liable to pay deductions under the Project Agreement, arising from failure of design or construction, which resulted in any part of the school being unavailable or underperforming at any stage, whether during the build period or after this for the duration of the PPP contract. This relates mainly to those areas or elements of the existing building which would require to be altered, such as heating plant, fire and security systems, electrical installations, and other areas which interface with the school leased to Innovate under the PPP contract. Innovate, as Principal Contractor for the expansion, would retain full responsibility for the existing school building including any internal areas which had been altered and not just the new build, e.g. heating plant, fire alarm and security system.
- Innovate can meet the timescale of August 2018 for the completion of the new classroom extension. Following this, the internal alterations required to the existing school building will be carried out in phases programmed to minimise disruption to the school.
- Innovate can be appointed directly through the PPP Project Agreement, reducing the lengthy period required to procure through open OJEU tender process

- Innovate is responsible for all project management, meeting the terms of the Project Agreement, obtaining consents, interface issues, defects and latent defects
- A cost plan/target cost is set ensuring cost certainty and 100% work packages will be tendered competitively.
- The appointment of a main contractor at a stage early enough in the process to provide valuable project management expertise.
- Innovate are familiar with the requirements of the operational services specifications, thus mitigating potential maintenance liability and facilities management issues.
- PPP Lender approval is anticipated to be straight forward where procured through Innovate.
- The proposed fee element of the expansion project is approximately 7.2% of the construction cost, found to be competitive when benchmarked against other projects and Hub South East.

3.8.2 The disadvantages of this procurement route are summarised below:

- ELC would be liable for Innovate's legal fees, estimated at £25,000 for the Supplemental Agreement and the Lenders' Fees of around £25K - £30K in addition but these latter fees are likely regardless of which option is taken.

3.8.3 Procurement through Hub South East Scotland Ltd

The advantages of this procurement route are summarised below:

- An affordability cap is set ensuring cost certainty and 80% of work packages are tendered competitively.
- The legal process is quick with the contract documentation in standard form
- The Council has a partnering agreement with Hub South East Scotland whereby Hub can be appointed directly, avoiding the need to procure through a more lengthy OJEU process
- The appointment of a main contractor at an early stage, thereby providing valuable project management expertise

The disadvantages of this procurement route are summarised below:

- Hub SE have advised that they would not undertake full risk associated the project, which would require them to be liable to pay deductions under the Project Agreement, arising from failure of design or construction, which resulted in any part of the school being unavailable or underperforming at any stage, whether during the build period or after this for the duration of the PPP contract.
- The Council's Legal and Procurement team have advised that even if Hub SE were willing to accept transfer of risk as above, the timescale associated with negotiating and drawing up the Supplemental Agreement for this would be lengthy and would not be completed within the timescales required for the expansion of Dunbar GS.

- The legal costs for PPP partners and the PPP Lenders to ensure new school extension interfaces with existing PPP Contract and the Project's Operational Services Specification will be borne by the Council.
- The timescale for Hub SE to deliver on this expansion project by 2018 is not a realistic option.

3.8.4 Procurement through an OJEU process as a Design and Build contract

The advantages of this procurement route are summarised below:

- The opportunity to obtain full competitive tenders through open market procurement, under the Public Contracts (Scotland) Regulations 2015.

The disadvantages of this procurement route are summarised below:

- The timescale for a contractor which has still to be procured, to deliver on this expansion project by 2018, is now not a realistic option.
- The arrangements and agreements for transfer of risk arising from failure of design or construction, which resulted in any part of the school being unavailable or underperforming at any stage, whether during the build period or after this for the duration of the PPP contract would need to be in place, ensuring that the Council carried no liability for this.
A significant in-house Project co-ordination resource would be required - architectural, mechanical, electrical and quantity surveying – to prepare Authority's Requirements in advance of the Tender process. Significant in-house resource would be also required to manage the OJEU tendering process, including preparing and evaluating Pre-Qualification Questionnaires submitted
- The legal costs for PPP partners and the PPP Lenders to ensure new school extension interfaces with existing PPP Contract and the Project's Operational Services Specification will be borne by the Council.

3.9 *LEGAL*

3.9.1 ELC Legal and Procurement has advised that this expansion project at an estimated value of £10 million can be considered within the scope of the original PPP contract provided that no more than £16.7 million has been spent to date on additional PPP capital project costs, as such amounts to less than 50% of the original contract value of £54.5 million. Therefore, the recommendation is in accordance with the Public Contracts (Scotland) Regulations 2015.

3.9.2 A Supplemental Agreement to the Project Agreement is required to capture the impact of the Change Control Proposal for Phase 2 of the expansion project, regardless of the procurement route. The Council and Infrastructure Managers Ltd, acting on behalf of Innovate East Lothian Ltd, have discussed this process and a draft document has been prepared.

3.9.3 This recommendation is for the expansion of Dunbar Grammar School and should not be used as a precedent for future expansion of other secondary schools. The procurement of future expansion of other secondary schools requires further discussion with the Council's Legal and Procurement team in order to agree how this will be achieved whilst ensuring compliance with the Public Contracts (Scotland) Regulations 2015.

3.10 VALUE FOR MONEY BENCHMARKING AND COST CONTROL

3.10.1 *Benchmarking Exercise*

East Lothian Council undertook a benchmarking exercise in August/September 2016 to ensure that procuring through Innovate was delivering value for money for the Council. The Council has compared costs prepared by both FES (for Innovate) and Hub South East Scotland for the new build extension, this being the most significant part of the Phase 2 project, and the element which can be used most effectively to demonstrate a 'like for like' comparison. The costs received are as follows and include construction costs, contractor's preliminary costs, overheads and profit and management cost.

- Hub South East Scotland	£7,411,006.00
- FES (for Innovate)	£7,321,765.00

It is demonstrated that the costs prepared by FES (for Innovate) for the construction of the new build extension at Dunbar Grammar School provide best value for East Lothian Council.

3.10.2 *Competitive Tendering of Work Packages*

The FES Tender will be built up by inviting competitive tenders from selected lists of suitable contractors for each of the building element work packages. The results of this developing process will be presented to the Council's Quantity Surveyor for review and authorisation to accept the lowest compliant tender in each case. This process is carried out for all work packages until the final tender for the entire Phase 2 project, incorporating agreed main contractors overheads and profit, is agreed. Value for money for the Phase 2 expansion works is achieved through the process of competitive pricing. A final Tender Report will be submitted to the Council for approval early in 2017 and following its acceptance, the works will be managed by the Council's Capital Projects team post contract, under the terms of the building contract.

3.10.3 *Generally – Control of the Budget*

As individual works packages are tendered and agreed and actual costs unfold, the developing costs are benchmarked against the original budget estimate to ensure that outturn total costs do not exceed the overall budget. If an overspend is anticipated in any aspect of the works, a Value Engineering

exercise will be carried out to manage the design in relation to the available budget to ensure the overall budget is not exceeded.

3.11 *QUALITY CONTROL*

3.11.1 The Phase 2 Works will require a jointly appointed Independent Certifier.

3.11.2 Authority's Requirements form part of the original PPP Project Agreement. Any additional project-specific requirements will be prepared, in conjunction with Education, the school and Innovate as part of the contract regardless of the procurement route.

3.11.3 A Clerk of Works will be appointed from the Council's Capital projects team to carry out regular inspections during the construction phase and report to the Team Manager: Design and Programme Management, accordingly. Innovate, as the Principal Contractor will be responsible for ensuring that the quality of construction and finishes are consistent with the construction and operational specifications.

3.12 *FUTURE DELIVERY OF FACILITIES MANAGEMENT AND LIFECYCLE SERVICES*

It is proposed that, a benchmarking exercise be undertaken to establish whether, on completion of this expansion Works in August 2018, best value is provided for the Council by including the additional facilities within the PPP Project for the delivery of the facilities management and lifecycle services, by the current facilities management contractors, FES FM Ltd. This will be processed through a Change Control Proposal which will identify ongoing facilities management costs for Council approval, whether through FES SM Ltd, or another provider.

3.13 *PROJECT GOVERNANCE*

Regular Progress Meetings will be held throughout the duration of the project, attended by Council representatives. Monthly Reports will be prepared and issued to key Education and Finance officers in the Council, highlighting the status of project quality, cost and programme.

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial - Capital Cost: The Council's Capital Plan includes the sum of £10.33 million, with a spread of spend in years 2015/16 to 2019/20 inclusive. This sum includes new build and alteration works, external works (including floodlit all-weather sports pitch), professional and statutory fees, surveys, fixed IT equipment, furniture, fittings and equipment.

Revenue Cost – additional revenue costs will be incurred on completion of the expansion of the school. A separate report will be submitted for the procurement of the facilities management service, following the benchmarking exercise referenced in paragraph 8 above.

Additional costs for supply/maintenance of IT equipment, school resources, staffing and other costs will also be required.

6.2 Personnel - The expanded school will have a capacity of 1150 pupils with an additional 21 teaching spaces, as well as a considerable addition to the non-teaching and ancillary accommodation. There will be a requirement for additional teaching and non-teaching staff.

6.3 Other - None

7 BACKGROUND PAPERS

7.1 None

AUTHOR'S NAME	Douglas Proudfoot
DESIGNATION	Head Of Development
CONTACT INFO	Tel: 01620 827541 Extension: 7541 email: dproudfoot@eastlothian.gov.uk
DATE	28 th September 2016