

Notice of Meeting



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Special Executive

Thursday 25 April 2019 at 5.00pm

**in the Council Chamber, Council Offices,
Market Street, Newbury**

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Date of despatch of Agenda: Thursday 18 April 2019

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Democratic Services Team on (01635) 519462

e-mail: executivecycle@westberks.gov.uk

Further information and Minutes are also available on the Council's website at www.westberks.gov.uk



WestBerkshire
C O U N C I L

To:	Councillors Dominic Boeck, Graham Bridgman, Anthony Chadley, Jeanette Clifford, Hilary Cole, Lynne Doherty, James Fredrickson, Graham Jones, Rick Jones and Richard Somner
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Agenda

Part I

- 1. Apologies for Absence**
To receive apologies for inability to attend the meeting (if any).
- 2. Declarations of Interest**
To remind Members of the need to record the existence and nature of any personal, disclosable pecuniary or other registrable interests in items on the agenda, in accordance with the Members' [Code of Conduct](#).

Items not timetabled in the Forward Plan

	Pages
3. Highwood Copse Project (Urgent Item) Purpose: To seek approval for an exception to be granted to the Council's Contract Rules of Procedure.	5 - 18

Andy Day
Head of Strategic Support

West Berkshire Council Strategy Aims and Priorities

Council Strategy Aims:

- BEC** – Better educated communities
- SLE** – A stronger local economy
- P&S** – Protect and support those who need it
- HQL** – Maintain a high quality of life within our communities
- MEC** – Become an even more effective Council

Council Strategy Priorities:

- BEC1** – Improve educational attainment
- BEC2** – Close the educational attainment gap
- SLE1** – Enable the completion of more affordable housing
- SLE2** – Deliver or enable key infrastructure improvements in relation to roads, rail, flood prevention, regeneration and the digital economy
- P&S1** – Good at safeguarding children and vulnerable adults
- HQL1** – Support communities to do more to help themselves



Agenda - Executive to be held on Thursday, 25 April 2019 (continued)

MEC1 – Become an even more effective Council

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.



West Berkshire
C O U N C I L

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Highwood Copse Project

Committee considering report:	Special Executive on 25 April 2019
Portfolio Member:	Councillor Lynne Doherty
Date Portfolio Member agreed report:	18 April 2019
Report Author:	Bill Bagnell
Forward Plan Ref:	Urgent Item

1. Purpose of the Report

- 1.1 To seek approval for an exception to be granted to the Council's Contract Rules of Procedure.

2. Recommendation

- 2.1 The Executive resolves to grant an exception to the Council's Contract Rules of Procedure under Paragraph 11.11.7(c) for the retender of the Highwood Copse Construction Contract by way of issuing an Invitation to Tender document to two identified contractors and to award the contract to the successful bidder.

3. Implications

- 3.1 **Financial:** There is a risk that the total project outturn will now fall outside of the agreed funding within the Capital Programme. Where practical, the project team will seek value engineering within the mechanical and electrical engineering services within the present design. This will be considered during the proposed retender process.
- 3.2 **Policy:**
- 3.3 **Personnel:**
- 3.4 **Legal:** The proposals in this report will result in a construction contract which falls below the OJEU threshold for construction contract.
- 3.5 **Risk Management:** It is important to acquire again a new contractor for the Highwood Copse project in order to fully secure the site and partially completed building and at the same time prevent their deterioration.
- 3.6 **Property:** Though the Highwood site is covered by 24hr security, the site remains vulnerable in the absence of a new contractor.

4. Other options considered

- 4.1 Full tender starting with advertisement. Longest timescale to deliver with no prospect of achieving a competitive price.

Highwood Copse Project

- 4.2 Select a framework. Quick timescale but where the two identified contractors most likely to provide value for money are not on the same framework.
- 4.3 Revisit contractors who tendered the contract during 2018. Long timescale and where, with the exception of one contractor, there is no prospect of achieving a competitive price. The one competitive contractor in this previous process is one of the two contractors from whom it is proposed to seek a tender price.
- 4.4 Direct award to one contractor. Quickest timescale and but with no competition.

Executive Summary

5. Introduction / Background

- 5.1 Dawnus Construction, the contractor delivering the Highwood Copse project, has gone into administration. Works stopped on site 14th March and the Council received official notification from the Administrators on the 25th March. In order to fully secure the site, to prevent deterioration of the partially built school and A339 access road and avoid escalating costs, the Council needs to secure a new contractor to complete works as soon as possible.
- 5.2 Construction cost inflation is a material factor, however, the situation is not an emergency and prospective new school children have secure places elsewhere. As a result, it is proposed to re-procure a new contractor with all speed, but where the Council will seek a new contractor price based on a reasonable element of competition.

6. Proposals

- 6.1 Having looked at a number of options, it is proposed that the Council seek prices from two identified contractors who have substantial prior knowledge of the Highwood Copse project.
- 6.2 Though the project is approximately half completed, the process to reprice remaining works will require identified contractors to still expend significant time and resource while preparing their prices. However, recent market engagement has confirmed that identified contractors are prepared to make this commitment and where they have a 50/50 chance of winning the work based on effectively a mini competition.
- 6.3 Should the Executive grant an exception, it is proposed to complete the contractor selection process by mid-June, thus allowing the new contractor to mobilise in July and with physical works starting again in August. It is estimated that Practical Completion can now be achieved by the end of January 2020.

7. Conclusions

- 7.1 A new contractor should be found quickly in order to restart the Highwood Copse project in order to fully secure the site, to mitigate against construction cost inflation and to deliver an important Council scheme. However, the situation is such that the Council can allow some time to be spent on a limited competitive tender exercise which will also better protect Council funding in the circumstances.
- 7.2 Going out to tender to the two identified contractors is the most effective route for the Council to take, but where such action is contrary to the Council's Contract Rules of Procedure.
- 7.3 By granting an exception to the Council's Contract Rules of Procedure, the Executive will ensure a new contractor is found as soon as possible but via a process that still involves competition, thereby reasonably protecting Council funding.

8. Appendices

- 8.1 Appendix A – Data Protection Impact Assessment
- 8.2 Appendix B – Equalities Impact Assessment
- 8.3 Appendix C – Options Appraisal & Recommendations, Ridge & Partners and MTP Consultants

Appendix A

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	Resources
Service:	Finance & Property
Team:	Property Services
Lead Officer:	Bill Bagnell
Title of Project/System:	Highwood Copse Primary School
Date of Assessment:	17 th April 2019

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p>Will you be processing SENSITIVE or “special category” personal data?</p> <p>Note – sensitive personal data is described as “<i>data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation</i>”</p>	<input type="checkbox"/>	X
<p>Will you be processing data on a large scale?</p> <p>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</p>	<input type="checkbox"/>	X
<p>Will your project or system have a “social media” dimension?</p> <p>Note – will it have an interactive element which allows users to communicate directly with one another?</p>	<input type="checkbox"/>	X
<p>Will any decisions be automated?</p> <p>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</p>	<input type="checkbox"/>	X
<p>Will your project/system involve CCTV or monitoring of an area accessible to the public?</p>	<input type="checkbox"/>	X
<p>Will you be using the data you collect to match or cross-reference against another existing set of data?</p>	<input type="checkbox"/>	X
<p>Will you be using any novel, or technologically advanced systems or processes?</p> <p>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</p>	<input type="checkbox"/>	X

If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.

Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; this includes the need to:**
 - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
 - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

What is the proposed decision that you are asking the Executive to make:	The Executive grants an exception to the Council's Contract Rules of Procedure, ref Paragraph 11.11.7(c)
Summary of relevant legislation:	N/A
Does the proposed decision conflict with any of the Council's key strategy priorities?	No
Name of assessor:	Bill Bagnell
Date of assessment:	17 th April 2019

Is this a:		Is this:	
Policy	No	Proposed	Yes
Strategy	No	Already exists and is being reviewed	Yes
Function	No	Is changing	No
Service	No		

1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To restart the Highwood Copse construction project.
Objectives:	To secure the site and asset and complete the new school and A339 link road.
Outcomes:	To provide new first class primary school places and improve local infrastructure connectivity both in relation to the new school and future new housing.
Benefits:	To maintain high quality education within West Berkshire and maintain good local connectivity as Newbury and its immediate environs grows.

2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.		
(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age	None	

Disability	None	
Gender Reassignment	None	
Marriage and Civil Partnership	None	
Pregnancy and Maternity	None	
Race	None	
Religion or Belief	None	
Sex	None	
Sexual Orientation	None	
Further Comments relating to the item:		
Completing the Highwood Copse project will be of benefit to the wider Newbury community.		

3 Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	No
Please provide an explanation for your answer: Completing the Highwood Copse project will be of benefit to the wider Newbury community.	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	No
Please provide an explanation for your answer: Completing the Highwood Copse project will be of benefit to the wider Newbury community.	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

4 Identify next steps as appropriate:	
Stage Two required	Not required
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

Name: Bill Bagnell

Date: 17th April 2019

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) (rachel.craggs@westberks.gov.uk), for publication on the WBC website.

HIGHWOOD COPSE PRIMARY SCHOOL – RE-START PROCUREMENT

08 APRIL 2019

Points Under Consideration	Single Source – Contractor A.	Single Source – Contractor B.	Twin Source – Contractor A & B.	Re-tender to 2018 Tenderers (originally 5 others excluding Dawnus, one of whom has now gone into liquidation)	Open Tender	Comments
TIMESCALE	Quickest – circa 8 weeks to restart	Quickest – circa 8 weeks to restart	Quickest – circa 12 weeks to restart	Slowest – circa 16 weeks to restart	Slowest – circa 16 weeks to restart	Longer the delay, higher risk of deterioration of works in place and loss of original sub-contractors
COMPETITION	None, except between sub-contractors.	None, except between sub-contractors	Profit & Overheads; Preliminary Costs & Premium between Principal Contractors; Price between sub-contractors	Fully competitive between knowledgeable tender list	Fully competitive	Higher level of competition likely to preclude Contractor A & B. With the exception of one, original tenderers were over £500k above Dawnus (lowest)
CONTRACT	JCT Design/ Build	Scape preferred	JCT Design/ Build	JCT Design/ Build	JCT Design/ Build	Contractor B preference is to use Scape contract which is likely to be the most expensive option.
COST	Potentially high, but availability of staff may sharpen interest	Higher than others	Likely to be cheaper than single source, probably higher than open	Potentially cheapest, but if Contractor A drop out then could be very high	Potentially cheapest, but if both Contractor A & B drop out then could be lowest re-start premium wins	Contractor A were 2nd lowest tenderer

Points Under Consideration	Single Source – Contractor A.	Single Source – Contractor B.	Twin Source – Contractor A & B.	Re-tender to 2018 Tenderers (originally 5 others excluding Dawnus, one of whom has now gone into liquidation)	Open Tender	Comments
RE-START PREMIUM	Negotiable	Negotiable	Negotiable	Tendered	Tendered	Competitive tenderers more likely to drop original sub-contractors because of potential premium additions
FINANCIAL RISK	Contractor A has appropriate resource available now – why?	Contractor B has appropriate resource available now – why?		Unknown	Unknown	WBC to undertake financial check on proposed tenderers
KEY SUB-CONTRACTORS	Could be re-appointed by agreement	Could be re-appointed by agreement	Could be re-appointed by agreement	No guarantee, due to competitive element	No guarantee, due to competitive element	Crucial to ensure smooth re-start, particularly M&E and Roofing. Cannot be assumed due to unknown programme & cost implications
STAFFING AVAILABILITY	Known to have staff available now.	Known to have staff available July / August – to be checked		Unknown	Unknown	
TENDERERS ORGANISATIONAL SKILLS	Unknown	High	Unknown	Unknown	Unknown	Needs to be explored by interviews & written submissions
GUARANTEE BOND	Necessary	Necessary	Necessary	Necessary	Necessary	Only an ABI Bond

Points Under Consideration	Single Source – Contractor A.	Single Source – Contractor B.	Twin Source – Contractor A & B.	Re-tender to 2018 Tenderers (originally 5 others excluding Dawnus, one of whom has now gone into liquidation)	Open Tender	Comments
						will be offered, 10% of Contract Value in lieu would be rejected. Financial checks recommended upon all parties.
COLLATERAL WARRANTIES	Most likely to be provided across whole project	Most likely to be provided across whole project	Most likely to be provided across whole project	Unlikely to be offered across whole project if original sub-contractors dropped, except at high cost of investigation works	Unlikely to be offered across whole project if original sub-contractors dropped, except at high cost of investigation works	If original sub contractors re-employed, should reduce need for extensive conditions surveys and increase chance of securing warranties, but cannot be guaranteed
BREEAM EXCELLENT	Most likely to be achieved	Second most likely to be achieved	Second most likely to be achieved	Unlikely to be achieved	Unlikely to be achieved	Contractor A originally claimed to be able to achieve BREEAM Excellent. BREEAM Consultant confident we may yet achieve Excellent Rating. Competition most likely to result in failure to achieve Excellent rating due to cost cutting

Points Under Consideration	Single Source – Contractor A.	Single Source – Contractor B.	Twin Source – Contractor A & B.	Re-tender to 2018 Tenderers (originally 5 others excluding Dawnus, one of whom has now gone into liquidation)	Open Tender	Comments
FOCUS ON A MESSY PROJECT	Likely to be highest if a reasonable premium is agreed	Likely to be highest if a reasonable premium is agreed	Likely to be highest if a reasonable premium is agreed	Likely to be lower dependent upon premium achieved	Likely to be lower dependent upon premium achieved	

NOTES:

1. Assumes that the limited number of students affected does not qualify the situation as an ‘emergency’.
2. Original tenderers all familiar with the scheme.

RECOMMENDATION:

1. Both MTPC and Ridge & Partners would recommend an approach be made to both Contractor A & B, to establish levels of Profit & Overheads, anticipated preliminaries costs, programme an indication of any Re-start Premium (including that from key sub-contractors if available) and their approach to the procurement. Further outline information could be requested such as an indication of their assessment of the likelihood of achieving BREEAM Excellent at Construction Stage, provision of warranties, proposed design team and staffing. After consideration and an interview, proceed with only one of those Contractors to ensure they fully engage with their commitment to this difficult project.