



# Cabinet Member Report

- Decision Makers:** Cabinet Member for Economic Development, Education and Skills.
- Date:** 23 January 2020
- Classification:** For Publication with Partial exemption – Part B.
- Title:** Award of Contract - construction of a new building for St Marylebone Bridge C.E Special School (SMBSS).
- Wards Affected:** Queen’s Park
- City for All/:** The proposed new SMBSS will meet the following Council’s City for All objectives:
- Choice – a choice of excellent schools for Westminster residents
  - Heritage – a well maintained school buildings portfolio
  - Aspiration – high performing schools
  - Building cohesive mixed neighbourhoods
- Key Decision:** Yes
- Financial Summary:** The award for the Design and Build contract enables the Council to enter into a Pre-Construction Services Agreement (PCSA) to complete the design and agree packages of work for the main Design and Build contract of up to a Total estimated scheme costs £9.185m.
- The scheme is funded by the Department for Education. Procurement Assurance Board (Gate 3) has recommended approval for:
- Pre-Contract Services Agreement - £0.384m
  - Design and Build contract - £8.796m
  - Performance Bond Fee - £0.004m.
- The sum of this works contract is within the Department for Education funding offer of £9.701m.
- Report of:** Sarah Newman, Bi Borough Executive Director for Children’s Services

## **1. Executive Summary**

- 1.1. SMBSS is a co-educational Church of England Special Free School. The school provides a high-quality education for statemented pupils aged 11-16, whose primary needs are related to their Speech, Language and Communication. SMBSS is currently sited on Third Avenue in Westminster, the site is currently underperforming with regards to the requirements of the school, especially space requirements, falling short of BB104 requirements. SMBSS is therefore to re-locate to part of the undersubscribed Wilberforce Primary School of Beethoven Street.
- 1.2. Following confirmation of grant funding together with the approval of a Self-Delivery Business Case from the Department of Education (DfE), a Pre-Construction Services Agreement and a Design and Build Contract was procured and the award of the contract is subject to Cabinet Member Approval, as per the Council's Procurement Code.
- 1.3. Planning permission was granted for the new special school to be built at the site of Wilberforce Primary Academy on 12 November 2019. The Council has entered into a Self-Delivery Agreement with the DfE to construct the school within the DfE's budget. Tenders have been invited and a contractor has been selected. The Council has agreed the terms for a surrender of that part of the existing Wilberforce Primary Academy site required for the special school, and for two new 125-year leases, one for Wilberforce Primary Academy and the other for St Marylebone Bridge Special School. Approval is sought for a series of actions required to give effect to the project.
- 1.4. The report also seeks approval for the Director of Law to negotiate and sign a funding agreement with the DfE.

## **2. Recommendations**

- 2.1. That Part B of this report be exempt from disclosure under s100B(2) and Schedule 12 A of the Local Government Act 1972, (as amended) in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 2.2. That the Cabinet Member for Economic Development, Education and Skills:
  - Grant approval to enter into a Pre-Construction Services Agreement (PCSA), for the development of St. Marylebone Bridge Special School with Galliford Try Building Limited, for the value of £384,285.55; and
  - to delegate to the Bi Borough Executive Director of Children's Services authority to award the second stage (construction phase) contract to Galliford Try Building Limited for the value of £8,796,015.09,

- and for Galliford Try to provide a performance bond for the value of £4,268.84 at the Council's expense.

2.3. Approval for the Director of Law to be **given delegated authority** to negotiate and sign an Agreement for Lease with the DfE and any other agreements necessary to give effect to the decision set out at 2.2, including but not limited to the PCSA, the build contract and performance bond.

### **3. Reasons for the Decision**

3.1. The Council has reached agreement with the Department for Education to build a new special school to replace the interim accommodation at 17-23 Third Avenue.

3.2. The tender evaluation report (Gate 3) was presented to the Procurement Assurance Board (PAB) on the 26 November 2019. PAB approved the recommendation of the Executive Director of Children's Services to award the contracts to Galliford Try Building Limited.

3.3. The Gate 3 paper and the cost consultant commercial tender review are attached as Appendices A and B respectively.

3.4. The proposed contract value is within the programme budget negotiated with the Department for Education. Overall expenditure is in line with the Pre-Tender Estimate and has been verified by Finance (please see the Financial Implications slide in the Gate 3 paper - slide 9 of Appendix A below).

### **4. Background**

4.1. The project will deliver a brand-new building to accommodate the full cohort of 70 pupils at St Marylebone Bridge Special School. The school is currently only able to enrol 60 pupils due to the limitations on space at 17-23 Third Avenue. The school is an academy but is a major element of the Council's provision for SEN. The Council entered into a 'self-delivery' agreement with the DfE and is using the DfE framework for the selection of a contractor.

4.4. Planning permission for the new school was granted on 12th November 2019

### **5. Financial Implications**

5.1. The Council has budgeted for the project within its capital strategy. The total contract envelope is £11.833m comprising:

£9.701m – DfE grant

5.2. The proposed contract award to Galliford Try is within the grant offer from the DfE and within the Council's budgeted resources for this project.

- 5.3 The costings submitted by Galliford Try were part of a competitive tendering process through an approved DfE Framework. The use of the Framework was a condition of the grant from the DfE. Galliford Try were the sole bidder from a pool of seven.
- 5.4 As such, value for money assurances are limited to a comparison of the bid against the cost plans prepared for the Council by the project's retained cost consultants, Gleeds. As the bid was within the cost plan, it represents value for money insofar as it remained within project resources whilst delivering the required designs.
- 5.5 Additional risks may arise from the wider economic environment subject to the UK decision to exit the European Union. Uncertainty arising from future trading relationships could contribute to rising prices and/or increased scarcity of both materials and labour. The Council has a comprehensive risk register and ameliorating actions, however there is a need to ensure this project is robustly managed to mitigate all financial risks as much as possible. Appropriate provisions can be drafted into the PCSA and the design and build contract to mitigate this risk.
- 5.6 The delivery of additional spaces at St Marylebone Bridge Special School may provide for efficiencies or increased costs on Passenger Transport in the General Fund. The final impact will only be understood when the Children's Services Executive Directorate has finalised the school place planning for the academic year beginning September 2021.
- 5.7 The delivery of 10 additional places at St Marylebone Bridge Special School from September 2021 will enable more pupils with more complex levels of SEN to be placed within the borough rather than outside the borough which could entail higher transport costs or independent placement costs. This increased provision will help to manage the placement expenditure pressure within the High Needs Block of the Dedicated Schools Grant, which is separate to the General Fund.

## **6. Legal Implications**

- 6.1 The contract value, at £9,180,300.64 for the PCSA and the design and build contract requires a procurement that complies with Part 2 of the Public Contracts Regulations 2015 either by carrying out an EU compliant process or by calling off under a Framework which itself has been the subject of an EU compliant procurement. This report confirms that the Council called off under The Department for Education Construction Framework by carrying out a mini-competition. The weighting given to price and quality was 40:60. This requires a waiver because the Council's Contract Procedure Rules require the reverse which was obtained from the Chief Procurement Officer. It is noted that the successful tenderer was the only tenderer and the Council should be satisfied that the tender is nonetheless value for money. The Council must use one of the prescribed JCT forms of contract and include Department for Education standard amendments.

- 6.2 The Council is also entering into a Bond with Galliford Try at the Council's cost. Legal Services will approve the final draft of the Bond.

**7. Staffing Implications**

- 7.1. All staff associated with this appointment will be direct employees or sub-contractors to Galliford Try Building Limited. Project management and commercial oversight will be provided to the Council by Fusion Project Management.

**8. Consultation**

- 8.1. The Council has carried out all necessary consultation including community engagement as well as statutory public consultation for the planning application.

**Background Papers**

None

**For completion by the Cabinet Member for Economic Development, Education and Skills**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: Councillor Tim Barnes, Cabinet Member for Economic Development, Education and Skills

State nature of interest if any.....

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendations in the report entitled **Award of Contract - construction of a new building for St Marylebone Bridge C.E Special School (SMBSS)** and reject any alternative options which are referred to but not recommended.

Signed .....

Councillor Tim Barnes, Cabinet Member for Economic Development, Education and Skills

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, Director of Finance and Resources and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.