

Item No.	Classification: Open	Date: July 2017	Meeting Name: Strategic Director for Children's and Adults Services
Report title:	Gateway 3 – Variation Decision Approval The Charter School East Dulwich (TCSED) – Enabling works contract variation		
Ward(s) or groups affected:	East Dulwich		
From:	Head of Regeneration – Capital Works & Development		

RECOMMENDATION(S)

1. That the Strategic Director for Children's and Adults Services provides retrospective approval for the enabling works contract for The Charter School East Dulwich (TCSED) contract with Syd Bishop & Sons (Demolition) Limited (SB&S) for an additional cost of up to £553,000 for the enabling works which occurred between 6 January 17 and 8 July 17.

BACKGROUND INFORMATION

2. The Education Skills Funding Agency (ESFA) purchased 5.21 hectares of the Dulwich Community Hospital site from the National Health Service (NHS), which will be leased to The Charter School East Dulwich (TCSED) on a peppercorn rent for 125 years. The sale agreement with NHS will see the site area released to the ESFA in three parcels for the development:

- Parcels 1 and 2** (the north east and south west parcels) were released on contract completion in October 2015.
- Parcel 3** is expected to be released in April 2019, with a longstop date of April 2020, when the NHS clinical services are relocated to a new building on the south east corner of the site (the parcel of land being retained by NHS property services).
- Note that Parcel 4** is an area of the site to be retained by the NHS for the new build NHS clinical services.

Diagram 1:



3. The council developed the design and came out with the following layout of the scheme, as set out in Diagram 1, as follows:

Parcel 1 shall accommodate a teaching block which could be constructed as part of Phase 1.

Parcel 2 is suitable to accommodate the sports hall.

Parcel 3 shall accommodate a new a teaching block, Multi Use Games Area (MUGA) and the retained chateau with a school hub to the rear, constructed as part of Phase 2 post April 2019.

4. In June 2016, Cabinet approved the Gateway 1 for the procurement of the enabling works construction services through the council's EXOR list via a single stage procurement process.
5. On 21 December 2016 the Director of Children's and Adults approved the appointment of the contractor SB&S Ltd to deliver the enabling works for Parcels 1 and 2 of TCSED in the sum of £451,700 for a period of 12 weeks between 6 January and 7 May 2017.
6. On the 21 March Cabinet approved in principle the award of the main contract to Kier (London) for the sum of £25,325,000 in that report plus previous awards of £421,990 and £510,884 for PCSA fees on the 27 January 2017. This award was subject to the council's cost consultant's final report being approved by the Strategic Director of Children's and Adults' Services.
7. The scope of the enabling works package was commissioned to de-risk the project in uncovering any site issues prior to letting the contract to the main contractor bearing in mind the council was working in the grounds of Victorian hospital where the experience of the project team indicated that there would be a level of unpredictability in the ground conditions and the risk of contaminants. SB&S where commissioned to undertake further surveys, remove all asbestos and ensure utilities are decommissioned from parcels 1 and 2, create a new haul road into site, demolish the cottages on parcel 2 and remove all excess spoil and crush from site from site.
8. Only when the enabling works contractor started on site did the full extent of the ground condition risks emerge which far exceeded what had been predicted by surveys. There were particular issues relating to broken underground drainage, concrete obstructions and the source of the bituminous contamination. The project recognised that most cost effective way to manage the risks was for the enabling works contractor to undertake the works and then to handover to the main contractor as otherwise the main contractor would have had no alternative but to charge the council for any delays in running the site or hiring the plant.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

9. The variations listed below where due to unavoidable and an unforeseeable level of deleterious site conditions. A degree of contingency was held for the risks but the amount exceeded of what could reasonably be expected from a typical site. Overall, the instructions issued to the enabling works contractor helped to minimise the delay to the programme, mitigate the ground risks to the project and minimise the cost to the project.

10. The ESFA and Southwark Council signed up to a Development Agreement which contains a risk share agreement and it is anticipated that additional ground costs will be met by the ESFA.
11. The variations and changes to the scope of works which are broken down between site abnormalities and site improvements, as detailed below, were essential to the timely delivery of this project will result in additional costs of up to £553,000.

Site Abnormals:

- Underground flooding due to broken drain services on to the neighbouring hospital site in Parcel 1 which resulted in the need for drain diversions, additional testing and the removal of the contaminated water via specialist bowser truck. These contaminants delayed the works and led to additional cost and an extension of time.
- Additional deep level ground obstructions were found on Parcel 1 despite extensive site surveys. These obstructions relate to the foundations of the previous plant room and accommodation building which had only be removed to circa 1.5 meters below ground level and then back fill with made up ground (which was identified in the surveys). This led to the removal of an additional 5,000 tonnes of spoil and crush and an extension of time to the programme.
- Significant ground obstructions found in parcel 1 relating to the foundations of the previous building. This led to additional works and time to remove an additional 5,000 tonnes of spoil and crush.
- The amount of asbestos on site was higher than the original estimate due to packets of scattered asbestos that were not picked up in earlier site surveys
- The discovery of bats onsite in the houses on parcel 2 led to the ecologist to instruct that roofs removed by hand which resulted in an additional cost in relation to the demolition of the houses.

Site Improvements:

These were undertaken either to meet the requirements of the main contractor or to improve security and the logistics of the site so as to facilitate the main works and to allow for the construction sites to operate next to a functioning hospital. These costs are attributable to the main works but were most cost effectively done in the enabling works to avoid programme and cost delays to the main works:

- The haul road leading into the main site on Parcel 1 needed to be increased in size to accommodate a turning circle and better access for the main contractor.
 - Security costs related to additional security after fly tipping incident.
 - Changes to the hoarding line on Parcel 2 to improve access to the face of the dining and sports hall block – this led to the loss of 9 car park spaces. In order to facilitate this change in the boundary line, additional parking spaces were needed to be created by the main hospital entrance.
 - Additional highway works relating to the entrance crossovers of Parcel 2 and the haul road to Parcel 1.
12. These costs, which equate to £553,000, for these instructions delivered by SB&S are summarised in the table below.

Instruction to Syd Bishop & Sons	Total Cost (£)
Asbestos removal costs from site	172,282
Ground contamination costs and associated costs	108,261
Haul Road works to incorporate larger area	92,405
Site security costs related to improved security for the duration of the works.	52,640
Modifications requested by the NHS related to parking, surveys and other works	39,673
Other works including hoarding replacement, additional surveys	32,785
Highways works for cross over works for parcel 1 and 2	27,909
Removal of an additional of soil and crush to be taken from site as a result of the additional obstructions.	26,557
TOTAL	552,512

13. The additional cost of £553,000 for the all abnormalities and variations listed above is in addition to the previously approved enabling works sum at a cost of £451,700, making the total cost of SB&S's enabling works contract £1,004,700. The additional costs are expected to be met by the ESFA through the terms of the Development Agreement.
14. The sale agreement between with the ESFA and the NHS states that the NHS will fund the cost of the asbestos removal to parcel 1 and 2 and also make a contribution towards the cost of the haul road. The total contribution to the TCSED project from the sale agreement is £150,000 which translates that the actual increase of the project is actually £403,000.

Reasons for Variation

15. The proposed variations were reported to the Project Board meeting in May 2017. The proposal was supported by the director of regeneration, ESFA and TCSED and the senior stakeholder group who oversee the development of the entire East Dulwich regeneration. A programme delay would have impacted on the council's ability to provide school places and have reputational impact for the delivery of the scheme.
16. Overall, the additional scope and cost attributed to the works detailed in paragraph 11 enabled the project to be managed with a lower risk and enabled the main contractor to commence work on the sub structure and main build.
17. The proposed costs provide value for money for the council and costs have been benchmarked against similar schemes and tendered rates by the project's Quantity Surveyor who has provided a report to the Head of Regeneration.

Future Proposals for this Service

18. The variation includes all services and works undertaken by SB&S on the project and resulted in a revision to the programme to ensure that all works are completed.
19. The variation has helped to provide more assurance of the site being free for the contractor to commence works with more awareness onsite and reduce the risk to the council.

Alternative Options Considered

20. The alternative option of asking the main works contractor to undertake the additional works was not feasible as the enabling contractor was onsite and was able to undertake the variations listed in paragraph 12 and 13 immediately. If the project had waited until the main contractor was mobilised and arrived onsite it would have had considerable cost and programme implications as detailed in paragraph 21.
21. There was a substantial saving for undertaking the works with the enabling works contractor over the main contractor as the impact of the additional works has been a 15 week extension to the SB&S enabling works contract. For this period we have charged approximately £60,000 in site management costs by SB&S. As a comparison the main contractors time related preliminaries cost per week is would have been more than double the figure paid to Syd Bishop & Sons over the same period.

Identified risks for the extension

Risk	Risk Rating	Mitigation
Programme slippage due to increased scope	Low	The contractor was ready to undertake the works and held regular reviews of the programme to ensure minimal delays in the delivery of the project.
Financial assumptions incorrect	Low	Firm costs for the consultancy services and surveys were sought and robust project management was in place to ensure the cost was not exceeded.
Procurement challenge	Low	High level ground condition risks were unforeseeable and allowing the main works contractor to undertake the additional works would have caused substantial delay and inconvenience to the project as well as further increased costs to the council. The enabling works contract allowed for changes to be made to the contract.

Policy implications

22. The delivery of this project fits with the council’s objectives as outlined in the Fairer Future Promises, specifically:
 - Promise 1: Value for Money
 - Promise 6: A Greener Borough
 - Promise 9: Revitalised Neighbourhoods

Contract management and monitoring

23. Internal governance arrangements for the programme were run through a programme board overseen by the Head of Regeneration, which reviewed the project's progress and had representation from the ESFA and TCSED.
24. Monthly management meetings were held where the contractors' performance was measured against the quality method statements submitted through the mini-competition process.

Community Impact Statement

25. This variation has been judged to have no further impact on the community identified in the Gateway 2 report.

Sustainability considerations

26. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The social value considerations included in the tender (as outlined in the Gateway 1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

Economic considerations

27. This variation has been judged to have no further impact on economic considerations identified in the Gateway 2 report.

Social considerations

28. This variation includes SB&S Ltd commitment to the council's policy of paying the London Living Wage.

Environmental/Sustainability considerations

29. This variation has been judged to have no further impact on environmental and sustainability considerations identified in the Gateway 2 report.

Financial Implications

30. The approved budget for TCSED is £41.4m. This includes a capped contribution from the council of £5m.
31. SB&S Ltd original cost of £451,700, for which they were awarded the enabling works contract, has increased by £553,000. This is a maximum figure as the costs are awaiting substantiation by SBS to the satisfaction of the by project's Quantity Surveyor.
32. In addition to the £150,000 from the NHS through the sale agreement noted in paragraph 14, the highways works to parcel 1 and 2 was originally priced in the main phase 1 contract and was instructed due to the request from Highways and was pulled forward into SB&S contract which means that a sum of £27,909 has

been reallocated. This will result in the contract having an actual total additional cost to the project of £375,091.

33. The project is seeking additional funding from the ESFA for costs relating to the ground conditions and services. As part of the Development Agreement the ESFA will share the risk for specific site conditions and through a letter of agreement they have confirmed they will review the funding envelope.
34. The remainder of the costs will need to be constrained within the overall budget and Southwark Council's £5m contribution and can be delivered within the overall project budget of £41.4m.
35. The school will be responsible for the ongoing revenue implications as a result of the expansions.

Legal Implications

36. This report seeks the retrospective approval for the variation of the existing enabling works contract which is being performed by SB&S Ltd. This report sets out the extent of the required variation and the reasons why the variation is necessary.
37. Paragraph 17 of this report states that the proposed additional works ensures value for money for the council as "the costs have been benchmarked against similar schemes and tendered rates by the project's Quantity Surveyor".
38. Contracts Standing Orders 2.3 provides that a variation decision may only be made if the expenditure has been included in approved revenue or capital estimates or has been otherwise approved by, or on behalf of the council. The proposed variation is contained within the overall budget as set out in paragraphs 30-35 of this report.

Consultation

39. No further consultation is proposed.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance

40. This report seeks approval from the Strategic Director of Adults and Children's Services to a variation of the enabling works contract services agreement for The Charter School East Dulwich contract with SB&S Ltd for an additional cost of £553,000.
41. Paragraph 34 confirms that the cost of this contract, and the total estimated costs of the project can be contained within the total budget for the project of £41.4m.

Head of Procurement

42. This report seeks approval for the variation of The Charter School East Dulwich JCT contract with SB&S Ltd for an additional cost of £553,000 which will be contained within TCSED's existing budget.

43. The reasons for this variation are set out in paragraphs 15 and 16. The proposed fees provide the council with value for money as they have been benchmarked against similar schemes by the project's Quantity Surveyor.
44. The report confirms the monitoring and management arrangements which will be in place during the life of the contract.

Director of Law and Democracy

45. A legal concurrent is not required as the value of the enabling works including the variation is below the EU threshold for public works.

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

Under the powers delegated to me in accordance with the council's Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report.

Signature



Date 25 October 2017

DAVID QUIRKE-THORNTON

Designation STRATEGIC DIRECTOR, CHILDREN & ADULTS

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

- 1) All key decisions taken by officers
- 2) Any non-key decisions which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available.


1. DECISION(S)
As set out in the recommendations of the report.

2. REASONS FOR DECISION
As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION
Not applicable.

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION
Not applicable

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST
<i>If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.</i>
Not applicable

6. DECLARATION ON CONFLICTS OF INTERESTS
I declare that I was informed of no conflicts of interests.*
or
I declare that I was informed of the conflicts of interests set out in Part B4*
(* - Please delete as appropriate) David Quirke-Thornton  25 October 2017

BACKGROUND PAPERS

Background Papers	Held At	Contact
Gateway 2 - Contract Award Approval The Charter School East Dulwich (TCSED) – Procurement of contractors for Stage 1 (pre-construction services).	Chief Executive's Dept / Regeneration 5 th Floor Tooley Street	Omar Villalba 020 7525 5352

APPENDICES

No	Title
None	

AUDIT TRAIL

Lead Officer	Bruce Glockling, Head of Regeneration – Capital Works & Development	
Report Author	Omar Villalba, Project Manager	
Version	Final	
Dated	25 August 2017	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes/No
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes/No
Corporate Contract Review Board	N/A	N/A
Cabinet Member	N/A	N/A
Date final report sent to Constitutional/Community Councils/Scrutiny Team	N/A	

BACKGROUND DOCUMENT – CONTRACTS REGISTER UPDATE FORM – GATEWAY 3

Details	Original	Extension 1
Contract Name	The Charter School East Dulwich project	The Charter School East Dulwich project
Contract Description	Gateway 3 – Variation Decision Approval The Charter School East Dulwich (TCSED) – Procurement of enabling works contract.	Gateway 3 – Variation Decision Approval The Charter School East Dulwich (TCSED) – Procurement of enabling works contract.
Contract Type	JCT	JCT
Fixed Price or Call Off	Fixed Price	Fixed Price
Lead Contract Officer (name)	Omar Villalba	Omar Villalba
Lead Contract Officer (phone number)	020 7525 5352	020 7525 5352
Department	Chief Executive's Department	Chief Executive's Department
Division	Regeneration	Regeneration
Procurement Route	EXOR list	EXOR list
EU CPV Code (if appropriate)	N/A	N/A
Departmental/Corporate	Departmental	Departmental
Supplier(s) Name(s)	Syd Bishop & Sons	Syd Bishop & Sons
Contract Total Value	£451,700	£1,004,700
Contract Annual Value		
Contract Start Date	January 2017	January 2017
Initial Term End Date	April 2017	July 2017
No. of Remaining Contract Extensions	N/A	N/A
Contract Review Date	N/A	N/A
Revised End Date	N/A	N/A
SME/ VCSE (If either or both include Company Registration number and/or registered charity number)	N/A	N/A
Comments		
London Living Wage	Yes	Yes

This document should be passed to the member of staff in your department responsible for keeping your departmental contracts register up to date.