

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 13 December 2021	<b>Meeting Name:</b> Strategic Director of Children's and Adults' Services
<b>Report title:</b>		<b>Gateway 2 - Contract Award Approval</b> to award the main works contract to deliver phase 2 of The Charter School East Dulwich	
<b>Ward(s) or groups affected:</b>		Goose Green	
<b>From:</b>		The Head of Regeneration Capital Works and Development	

## RECOMMENDATIONS

1. That the Strategic Director of Children's and Adults' Services approve the award of the main works contract for phase 2 of The Charter School East Dulwich (TCSED) to Engie Regeneration Limited for a contract sum not exceeding £9,896,055 (including £160,000 for provisional sums and allowances at £165,000) for a contract period of 60 weeks subject to the following before the contract is let:
  - a) Provisional sums detailed in paragraph 34 being fixed at a sum not exceeding £160,000.
  - b) Allowances detailed in paragraph 35 being fixed at a sum not exceeding £165,000
  - c) Confirmation that the Department for Education (DfE) will cover the funding shortfall by not less than £1,526,728 outlined in paragraph 68.
2. That the Strategic Director of Children's and Adults' Services approve the Works Funding Agreement as detailed in paragraph 17 to release the Education and Skills Funding Agency and asbestos removal funding.
3. That the Strategic Director of Children's and Adults' Services note the multi-use games area (MUGA) works contract award was brought forward from the main contract and approved under a separate Gateway 2 report dated 23 June 2021 for £382,266 as outlined in paragraph 13.
4. That the Strategic Director of Children's and Adults' Services note the proposal to place early orders for materials estimated at £417,725 through Engie Regeneration Limited under a separate Gateway report as detailed in paragraph 39.

5. That the Strategic Director of Children's and Adults' Services note the proposal to vary the pre-construction services agreement (PCSA) contract to add re-design fees at £189,635 as detailed in paragraph 34.

## **BACKGROUND INFORMATION**

6. On 8 December 2015, Cabinet approved the council entering into an agreement with the Education Funding Agency, since renamed the Education and Skills Funding Agency (ESFA) for the council to oversee and manage the procurement and construction of a new eight form entry, 1700 place secondary school, The Charter School East Dulwich (TCSED) on the site of the Dulwich Community Hospital, East Dulwich Grove, SE22. Cabinet approved a £5m contribution from the council's capital programme to address a projected funding shortfall and improve the design quality of the building. The council is also contributing £900k to the project for construction of an Autism Spectrum Disorder (ASD) resource.
7. Planning consent was granted in 2016. The Secretary of State for Communities and Local Government, acting through the DfE, entered into a sale agreement with the NHS to purchase 5.21 hectares of the hospital site. Delivery was split into two phases to fit around the decanting of the hospital and construction of a new NHS health centre on another part of the site. On completion of each phase, the school is granted a 125 year lease. Phase 1 has been built and opened to pupils in January 2019. It includes the main teaching accommodation including art and science classrooms, temporary reception, a sports hall and external play area.
8. The DfE acquired full vacant possession of the phase 2 site in June 2020. Phase 2 will deliver the permanent main entrance, administration areas, sixth form centre, music facilities, 20 place ASD resource and multi-use games areas. It will enable the school to increase its intake to 240 pupils a year.



9. Phase 2 consists of site preparation works involving the demolition of the remaining hospital wings, strip out of the central ‘chateau’ block which is being retained for refurbishment; the construction of a new hall and three court multi-use games area (MUGA) and general landscaping.
10. Gateway 1 approval was given on 23 December 2019 to procure demolition, asbestos removal and site enabling works to prepare the site for the main contractor. Gateway 2 approval was given on 8 September 2020 to award the contract to John F Hunt Regeneration Ltd. Gateway 3 approval was given on 19 March 2021 to extend John F Hunt Regeneration Limited’s contract sum to add soft strip works inside the chateau brought forward from the main contract. The works were completed in July 2021.
11. Gateway 1 approval was given on 27 May 2020, to invite tenders for phase 2 main works using the London Construction Programme Major Works Framework Agreement Lot 2.2 and a two stage tender process: award of a pre-construction services agreement (PCSA) to the successful tenderer to develop detailed designs, contractor’s proposals and firm up their price (stage 1) followed by award of a JCT Design and Build works contract (stage 2). A separate Gateway 2 approval is required for each stage.
12. On 3 February 2021, the Strategic Director of Children’s and Adults’ Services gave Gateway 2 approval to award the stage 1 PCSA contract to Engie Regeneration Limited (Engie). Engie’s tender scored the highest and their price was the lowest of the three tenders returned.

13. In order to provide the school with much needed external play space for the start of the new school year, Gateway 2 approval was given on 23 June 2021 to award of Engie a contract to install the MUGA in advance of the main works. The MUGA was completed within budget and handed over to the school on 6 October 2021.
14. On 20 August 2021, Engie submitted their stage 2 proposals and price which exceeded the project budget. Following evaluation by the council's cost consultant, negotiations with Engie and a value engineering exercise, Engie have reduced their price.
15. This report seeks approval to the award of the stage 2 works contract for the value of £9,896,055 which is the reduced tender price less the MUGA costs plus allowances totalling £165,000 for additional works now considered necessary.
16. Whilst significantly reduced, Engie's stage 2 price still exceeds the project budget. In parallel with the negotiations with Engie to reduce their price, officers have been working with the DfE and the Trust to find additional funding to enable the works to proceed (see the risk and financial implication sections below).
17. Since the cabinet report of 8 December 2015 which gave approval to enter into a development agreement for the ESFA funding , the DfE has recently introduced a new requirement for the council to enter into a Works Funding Agreement (WFA) before it will release the remaining ESFA and asbestos removal funding. This report requests approval to enter into the WFA.

### **Procurement project plan (Key Decision)**

18.

<b>Activity</b>	<b>Completed by/Complete by:</b>
Forward Plan for Gateway 2 decision	30/09/2021
Briefed relevant cabinet member (over £100k)	29/09/2021
Approval of Gateway 1: Procurement Strategy Report	27/05/2020
Invitation to tender	05/10/2020
Closing date for return of stage 2 proposal	20/08/2021
Completion of evaluation of stage 2 proposal	08/10/2021
DCRB Review Gateway 2:	27/10/2021
CCRB Review Gateway 2:	N/A

<b>Activity</b>	<b>Completed by/Complete by:</b>
Notification of forthcoming decision – Five clear working days	23/11/2021
Approval of Gateway 2: Contract Award Report	01/12/2021
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	10/12/2021
Voluntary Standstill Period (if applicable)	N/A
Contract award	15/12/2021
Add to Contract Register	16/12/2021
Contract start	31/01/2022
Publication of award notice in Official Journal of European (OJEU)	31/01/2022
Publication of award notice on Contracts Finder	31/01/2022
Contract completion date	31/03/2023

## **KEY ISSUES FOR CONSIDERATION**

### **Description of procurement outcomes**

19. The procurement will deliver a permanent main entrance, administration areas, sixth form centre, music facilities, hall, a 20 place ASD resource and landscaping. The three court multi-use games area included in the original procurement has been delivered. These facilities will enable the school to increase its intake to 240 pupils a year.
20. The procurement process, through the LCP Major Works Framework Agreement, delivered three competitive tenders.
21. Negotiations with Engie and a value engineering exercise involving the DfE, school and Trust have reduced Engie’s initial stage 2 price.

### **Key decision**

22. This report deals with a key decision.

### **Policy framework implications**

23. The project contributes to the delivery of the Borough Plan 2020-22 priority to give every child and young person a great start in life, to grow up in a safe, healthy and happy environment where they have chance to reach their potential.

24. Phase 2 will increase TCSED's capacity to a total of eight form entry of secondary school places which will help the council meet its statutory responsibilities for the provision of secondary school places within the borough and provide an element of choice for parents. Projections in 2015 showed that, without the school, the authority risked being short of secondary places by 2021.
25. The provision of the ASD resource meets the council priority to provide more ASD places for children living in the borough in order to reduce the need to place children outside the borough.

### **Tender process**

26. The procurement process followed that in the approved Gateway 1 report, a two stage tender award through a mini-competition using the London Construction Programme Major Works Framework Agreement Education & Leisure Lot 2.2; stage 1 being the award of a pre-construction services agreement (PCSA) to the successful tenderer to develop detailed designs, contractor's proposals and firm up their price followed by the stage 2 award of a JCT Design and Build works contract.
27. Eight companies were invited to bid. Of the six who confirmed their intention to bid, three withdrew during the tender period and three submitted tenders by the closing date.
28. The details and outcome of the stage 1 process were reported in the Gateway 2 report dated 3 February 2021. The PCSA contract was awarded to Engie Regeneration Limited in February 2021. Engie submitted their stage 2 proposals and price on 20 August 2021.

### **Tender evaluation**

29. The stage 1 PCSA tender evaluation process by which Engie Regeneration Limited was selected was reported in the Gateway 2 report dated 3 February 2021. Tenders were assessed on the basis of 70% price and 30% quality. Following evaluation, Engie received the highest total score (86.05%). In line with the Gateway 1 approval, the quantitative (cost) score for each tender was calculated on the total normalised tender price. Engie's normalised tender price was the lowest so they scored the maximum 70% for price. The stage 1 PCSA contract was awarded to Engie Regeneration Limited.
30. On 20 August 2021, Engie submitted their detailed stage 2 proposals and price which was higher than their stage 1 normalised tender price.
31. The council's cost consultants have analysed the price. A significant factor in the price increase is the unprecedented increase in the price of building materials, including steel, timber and plaster, resulting from supply problems due to Covid-19 and Brexit.

32. Following analysis by the council's cost consultants, further negotiations with Engie and a value engineering exercise in conjunction with stakeholders, Engie have reduced their price.
33. Whilst significantly reduced, the price still exceeds the project budget. This point is addressed in the risk and financial implications sections below.
34. It should be noted that the reduced price includes provisional sums and fees for detailed redesign work resulting from the value engineering exercise. The contractor has been asked to firm up the provisional sums. A separate approval will be sought regarding the redesign element.
35. Officers have identified additional works currently outside the current contract scope and Engie's price:
- Repairs to the phase 1 brick boundary wall
  - Removal of gas meter
  - Installation of temporary informal play space
36. The allowance for these items is subject to negotiation with Engie,
37. Consideration has been given to retendering the works or negotiating with the second lowest tenderer however this would incur a 4-6 month delay with no guarantee of a better price. The school may be able to work around a short delay but a significant delay would necessitate temporary accommodation for the new pupils.
38. Engie's programme is 60 weeks.

### **Early orders**

39. There is a time pressure for the project in relation to both the price and the school's need for more space. The construction market has seen considerable cost fluctuations since the project was tendered. The general demand for materials combined with both material and labour shortage is pushing all tender prices up and prices only remain open for acceptance for a short period. For the school, a further intake is expected in September 2022. Also, the council needs the ASD places as soon as possible to meet demand and ease cost pressures. To mitigate the risk of further cost increases and delay, officers propose placing orders for materials (including bricks, structural steelwork, pre-cast flooring), through Engie in advance of the main contract award.

### **Plans for the transition from the old to the new contract**

40. There are no specific implications because the contract is not replacing an existing contract.

## Plans for monitoring and management of the contract

41. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.
42. The project is managed by a Project Manager in the Regeneration Capital Works team, reporting to a Programme Manager and the Head of Regeneration Capital Works.
43. Technical and cost advice is provided by CJA Property Consulting and RPP respectively, reporting directly to the Regeneration Capital Works team.
44. The Regeneration Project Manager, DfE Project Manager and CJA Property Consulting meet at least fortnightly to monitor and manage detailed project matters.

## Identified risks for the new contract

45.

Risk No.	Identified Risk	Likelihood	Risk Control
1	Further increases in Engie's price before the contract award is formalised. Because of the recent unprecedented rise in price of many building materials, including steel and timber, suppliers and sub-contractors are unwilling to hold their prices for longer than four weeks.	High	<p>1. It is proposed to place early orders for materials through Engie as detailed in paragraph 39.</p> <p>2. Ask the DfE to agree a contingency sum on top of the gap funding or</p> <p>3. Go back to the DfE for further additional funding if the situation arises.</p>
2	Further delays to the construction programme because of shortages of many basic building materials including steel and timber.	High	it is proposed to place early orders for materials through Engie as detailed in paragraph 39.



3	Early order scope creep	Low	Any contractual arrangement needs to be clear as to the scope of the early orders and any parameters around the same.
4	Accommodation pressures for the School because the construction programme means the new facilities will not be handed in time for the new intake of pupils in September 2022.	High	<p>1. The temporary walkway in phase 1 will be widened to create more space and make it easier for pupils to move between the main teaching blocks and the sport halls/ dining room block.</p> <p>2. Works will be sequenced to deliver the chateau first.</p> <p>3. The school is aware of the delayed programme and making contingency plans to accommodate the new pupil intake however these arrangements will only be sustainable over a short period.</p> <p>4. Let the contract as soon as possible to avoid further delay.</p>
5	DfE is unable to make up the funding gap in whole or part	Medium	<p>1. Look for further savings</p> <p>2. Working with the school, Trust and DfE, review the design again to see whether elements can be removed to bring the project within budget e.g. the hall.</p>
6	Further cost increases arise during the construction period as a result of unforeseeable works or disruption to the	Medium	<p>1. Fix provisional sums and allowances before the contract is let.</p> <p>2. Extensive strip out works inside the chateau have</p>

	supply of materials and labour arising from Brexit or lockdowns due to the ongoing pandemic.		<p>reduced the risk of unforeseeable costs.</p> <p>3. The development agreement makes provision for ESFA funding to cover the cost of specific additional unforeseeable items that cannot be met by the approved funding.</p> <p>4. Ensure the contractor's proposals are comprehensive and potential risks transferred to the contractor under the JCT contract.</p> <p>5. Ensure the price captures any known potential changes to DfE standards or agree a contingency</p> <p>6. Seek a contingency sum from the DfE to the gap funding.</p> <p>7. Monitor costs closely during the construction period.</p>
7	Programme slippage causes further delay to delivery of the ASD places for young people and cost pressures for the council.	Medium	Ensure the Director of Education and SEN Team are briefed on progress regularly and included in meetings of the stakeholder Project Steering Group.
8	Deterioration of the chateau	Medium	Arrange for windows and other openings to be boarded up to protect it from the weather and unauthorised entry.

9	Unauthorised site entry	Medium	Maintain 24/7 security on site until the contractor takes possession.
10	Cost increases and programme delays because of additional asbestos	Low	<p>1. The asbestos removal and strip out works carried out by John F Hunt were extensive and Engie have had opportunity to inspect the site and chateau to satisfy themselves on the elimination of asbestos risks.</p> <p>2. Under the development agreement, the council can reclaim asbestos removal costs from the DfE who have retained money from the land payment to the NHS for this purpose.</p>
11	Cost increases and programme delays risks relating to structures.	Low	Council procured surveys have been shared with Engie and they were consulted on the strip out scope and have had opportunity to inspect the site and chateau building since completion of the strip out works to satisfy themselves on any structures risks.
12	Statutory risk to the council resulting from failure to deliver sufficient secondary school places by summer 2021	Low	Minimise delay to delivery of the school places being delivered by this project. Through efficient project resourcing, planning and management, clear governance structure and timely decisions.
13	Risk of the contractor failing	Low	1. Financial checks will be updated before the contract award is updated.

			2. Engie Regeneration Limited have confirmed they will provide a performance bond and the cost was included in the tender.
14	Risk of the DfE not approving the Works Funding Agreement and withholding the ESFA and asbestos funding.	Low	1. The signed development agreement already in place commits the DfE to paying the ESFA funding and reimburse the council for asbestos removal costs.  2. Delay the contract award letter until the signed WFA is received from the DfE.
15	Refusal of planning consent for the revised designs following value engineering	Low	1. The revised designs are not significantly different from those approved under the original planning consent. A Non Material Amendment approval may be required from Planning.  2. Engie will be contractually responsible for obtaining any planning consents.
16	Slippage due to inadequate project control	Low	The council to ensure that internal and external resources are in place to deliver the project in a timely manner.

**Other considerations (For Housing Department works contracts only)**

46. There are no specific implications because the contract is not a Housing Department works contract.

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

47. Southwark has given due consideration to the Public Sector Equality Duty to consider the promotion of equality.

### **Equalities (including socio-economic) impact statement**

48. An Equality and Health Analysis is appended to this report. It identifies no adverse impacts from the project or current procurement on people possessing protected characteristics. The project will have a positive equalities impact on young people by increasing the capacity and quality of Southwark's secondary school offer and of services for children with special needs through the inclusion of 20 place ASD resource.

### **Health impact statement**

49. An Equality and Health Analysis is appended to this report. It identifies no adverse health impacts arising from the project. It will have a positive health impact on young people by increasing the capacity and quality of Southwark's secondary school offer and of services for children with special needs through the inclusion of 20 .place ASD resource.

### **Climate change implications**

50. The tender considered the impact of the project on climate change. Tenderers were asked to explain how their company promotes sustainability through its procurements. Engie Regeneration Limited demonstrated a strong corporate commitment to the promotion of sustainability. Engie signs up to the Fleet Operating Recognitions Scheme and looks to reduce carbon emissions which is a key KPI for company carbon reports. Engie promotes a sustainable travel plan during construction wherever possible, encouraging use of public transport and reducing car use.

51. The scheme will enhance the environment by adding green space / landscaping. The project is registered for BREEAM (Building Research Establishment Environmental Assessment Method) 2014 level 'Very Good'

52. In terms of sustainable energy, Engie has put a proposal to the school to install PV panels thus using renewable energy. The PVs would be part of a separate lease agreement that the Trust would need to sign-up to. The school has a travel plan in place.

## **Social Value considerations**

53. 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 wellbeing 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.

## **Economic considerations**

54. Engie Regeneration Limited's stage 2 proposal includes:

- 8 x paid placements
- 8 x short courses
- 2 x trade apprenticeships/NVQ starts

## **Social considerations**

55. The tender pack included the council's equality and diversity policy 'Delivering a Fairer Future for All' setting out the council's approach to equality and expectations. Engie Regeneration Limited's tender submission included a signed copy of the Fairer Futures Procurement Framework certifying their commitment to deliver on the actions in the checklist should they be awarded the contract.

56. Quality questions asked tenderers to explain how their company promotes sustainability through its procurements including use of local supply chains.

57. Engie Regeneration Limited completed the council's standard documentation in relation to blacklisting and confirmed they had not been in breach of the blacklisting regulations or any other offences set out in the document. Contract conditions also include an express condition requiring compliance with the blacklisting regulations, and include a provision to allow the contract to be terminated for breach of these requirements.

## **Environmental/Sustainability considerations**

58. The procurement considered local supply chains. Tenderers were asked to explain how their company promotes sustainability through its procurements, including the use of local supply chains. Engie Regeneration Limited demonstrated a strong commitment to local labour, use of local supply chains and support for SMEs.

59. Payment of the London Living Wage is a condition of the council's contract which was supplied to tenderers.

60. Health and safety aspects of the demolition, traffic, and noise and dust nuisances are the primary concern. The contractor will be required to produce an environmental management plan compliant with planning, environmental and other legal requirements and good practice, including communications plan for local residents, businesses and other stakeholders.

### **Market considerations**

61. Engie Regeneration Limited is a private company with approximately 2500 employees. It is part of the Engie Group which it has confirmed can be called on for parent company guarantee purposes. Engie Regeneration Limited's principal activities include new build construction, refurbishment and maintenance of social housing, new build public buildings, refurbishment and extension of educational buildings. The company operates nationally but has a local office in Southwark to support its work in and around the borough.

62. Engie Regeneration Limited is one of the council's partnering contractors for major works and listed in the Council's Major Works Framework Agreement for contracts over £3.5m. It is currently delivering six new build housing projects for the council, ranging from 13 to 44 units in size.

### **Staffing implications**

63. This contract has no staffing implications

### **Financial implications**

64. The Engie Regeneration Limited Stage 2 price, including the PCSA cost approved in February 2021 at £426k and the outturn MUGA cost at £356,377, is £11.121m. This report seeks approval for the remaining contract value of £9,896,055 including provisional sums and adding allowances at £165,000.

65. The council budget for the project is £41.315 million:

66. ESFA payments to date total £24.364m.

67. Asbestos removal costs to be reclaimed total £1.869m. The DfE pays for them from monies retained through the land sale agreement with the NHS specifically for this purpose.

68. Total expenditure to date is £32.708m. Total projected expenditure less asbestos removal and other costs to be reclaimed costs and the Trust contribution is £42,842m. This leaves a funding shortfall of £1.527m. The DfE has been approached for additional funding to cover the shortfall.

69. Costs exclude VAT. This is based on HMRC advice in 2019 on a very similar construction project, Spa School, that VAT was reclaimable.

70. The DfE requires the council to enter into a WFA before it will release both the ESFA funding and the asbestos funding, some of which relates to phase 1 costs. This new requirement post-dates the project development agreement.

71. See the Strategic Director of Finance and Governance commentary below for additional comments.

### **Investment implications**

72. There are no specific implications because the contract is not a Housing & Modernisation Department works contract.

### **Second stage appraisal (for construction contracts over £250,000 only)**

73. There are no specific implications because the approved list was not used.

### **Legal implications**

74. Please see concurrent from the Director of Law and Governance below.

### **Consultation**

75. A stakeholder Project Steering Group including representatives from the DfE, TCSED and The Charter Schools Education Trust meets monthly to oversee delivery of the project and coordinate activities.

76. The School, Trust and DfE participated in the development of detailed designs during stage 2 through a series of client engagement meetings and have participated in discussions on value engineering and programme.

77. Education and SEN officers have been consulted in relation to the ASD provision on the design proposals and programme.

78. Extensive public consultation was carried out on for the planning application granted consent in 2016.

### **Other implications or issues**

79. The Director of Education

The contents and recommendations of this report are noted. We remain committed to the programme and project. It is clearly understood by all parties that the council contribution will remain at its current level.



## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance REF: [CAS21/019]**

80. The Strategic Director notes the contents of this report in particular the Financial Implications section. As noted in the report, there is a funding shortfall of £1.527m. Since the council has capped its contribution at £5m, the approval of the Mains Works contract is dependent this additional funding being agreed by the ESFA.
81. The £1.527m does not include any allowance for contingency and so if the council goes ahead with this contract, there is the additional financial risk that the council could be liable for any overspend, unless the ESFA agrees to further additional funding.
82. The current forecast total expenditure excludes £2.016m to be to be reclaimed from the ESFA and other external sources. This should be reclaimed as soon as possible.
83. In addition, there is currently the additional risk of delays to deliveries and the impact this has on the works. Although the financial risk should fall on the contractor, the project should be closely monitored to ensure that the delays to deliveries does not cause any additional expenditure for the council.

### **Head of Procurement**

84. This report seeks approval from the Strategic Director for Children's and Adults' Services to award main works contract for phase 2 The Charter School East Dulwich (TCSED) to Engie Regeneration Limited. The proposed contract is for the sum not exceeding £9,896,055 (which includes £160,000 for provisional sums and £165,000 additional allowance) for a contract period of 60 weeks subject to the conditions stated in paragraph 1(a) to 1(c) of this report being satisfied.
85. This report also requests that the Strategic Director of Children and Adults' Services approve the Works Funding Agreement as detailed in paragraph 17 to allow access to the Education and Skills Funding Agency and asbestos removal funding.
86. In granting the approval to award the proposed contracts, the Strategic Children's and Adults' Services is to give consideration to the procurement process duly followed in selecting the successful bidder and ensuring that best value is achieved.
87. The procurement process followed in selecting the successful bidder is stated in paragraphs 18, 19, 20, 21 and 26 to 37 of this report and within the Gateway 2 report dated 3 February 2021 (appended).

88. The contract management and monitoring is detailed in paragraphs 41 to 44, risks are detailed in paragraph 45, impacts for equalities, health and climate are detailed in paragraphs 47 to 52, social value commitments are detailed in paragraph 54 and confirmation of the payment of London Living Wage is detailed in paragraph 59.

### **Director of Law and Governance**

89. The Director of Law and Governance notes the contents of this report which seeks the approval of the Strategic Director of Children and Adults' Services to the award of a two stage design and build contract for the delivery of phase 2 of the Charter School East Dulwich to Engie Regeneration Limited for the contract sum not exceeding £9,896,055 (which includes £160,000 for provisional sums and £165,000 additional allowance) for a contract period of 60 weeks subject to the conditions in paragraph 1(a) to 1(c) of this report being met.

90. The Strategic Director of Children and Adults' Services is also requested to approve the Works Funding Agreement as detailed in paragraph 17 to release the Education and Skills Funding Agency and asbestos removal funding.

91. In addition, the Strategic Director of Children's and Adults' Services is required to note the following:

- That the multi-use games area (MUGA) works contract award was brought forward from the main contract and approved under a separate Gateway 2 report dated 23 June 2021 for £382,266 as outlined in paragraph 13.
- The proposal to place early orders for materials estimated at £417,725 through Engie Regeneration Limited under a separate Gateway report as detailed in paragraph 39 of this report; and
- The proposal to vary the pre-construction services agreement (PCSA) contract to add re-design fees at £189,635 as detailed in paragraph 34

92. Contract Standing Order (CSO) 5.1 provides that any procurement involving the use of a third party's Framework contract is subject to usual Gateway 2 procedures and this report seeks the appropriate approval. A mini competition process was conducted using the Major Works Framework Agreement Lot 2.2 and involving a two stage tender process (as detailed in paragraph 11 of this report) in accordance with the Public Contracts Regulations 2015. This resulted in the award of a PCSA Engie. This report deals with the second part of the procurement process to award the main works contract to Engie.

93. Paragraph 26 to 34 of this report details the tender process and the tender evaluation. As a result of the value engineering to reduce Engie's contract price, it is reported that there is now a need for detailed redesign works to the value of £189,635. The additional design services may be included in

the PCSA by way of a variation, approval to be sought through a Gateway 3 report. The resultant contract by way of a deed of variation to the PCSA. The report author has also highlighted the need for additional works in the sum of £165,000 as detailed in paragraph 35 of this report.

94. Paragraph 39 of this report highlights the need for early orders and the reasons why the early orders are necessary. The early orders will be subject to a separate Gateway approval.

95. Under CSO 2.3.1 contracts may only be awarded if the expenditure has been included in approved revenue or capital estimates or has been otherwise approved by, or on behalf of the Council. Paragraph 64 to 67 of this report confirms how the proposed contract will be funded. Paragraph 68 also highlights that there is a shortfall of £1,575 million and that the council will approach the DfE for additional funding to cover the shortfall. In the circumstances, the award of the main works contract is subject to the DfE additional funding as outlined in paragraph 1(c) of this report.

**Director of Exchequer (for housing contracts only)**

96. There are no specific implications because the contract is not a housing contract.

**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 (and as otherwise recorded in Part B below).

Signature:.....**David Quirke-Thornton**      Date:.....**13 December 2021**

Designation   **Strategic Director of Children’s and Adults’ Services**

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

- 1) All key decisions taken by officers
- 2) Any non-key decisions that are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see ‘FOR DELEGATED DECISIONS’ section of the guidance).

<b>1. DECISION(S)</b>
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**

None.

**5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST**

*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.*

None.

**6. DECLARATION ON CONFLICTS OF INTERESTS**

**I declare that I was informed of no conflicts of interests.\***

Signature:....**David Quirke-Thornton**      Date:.....**13 December 2021**

Designation **Strategic Director of Children's and Adults' Services**

**7. CONSIDERATION GIVEN TO WHETHER, AS A NON-KEY DECISION, THIS SHOULD BE FORWARDED TO THE CONSTITUTIONAL TEAM FOR PUBLICATION IN ACCORDANCE WITH REGULATION 13(4)\***

*The decision taker should consider whether although a non-key decision, the decision is sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available. Where there is any doubt, having considered the importance and/or sensitivity of a decision, it should be deemed that Regulation 13(4) would apply.*

**I consider that the decision be made available for publication under Regulation 13(4).\***

Signature:....**David Quirke-Thornton**      Date:.....**13 December 2021**

Designation **Strategic Director of Children’s and Adults’ Services**

\* Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the council is required to put in place a scheme for recording and publishing some officer executive decisions. This process is sometimes referred to as “Regulation 13(4)”.

**BACKGROUND DOCUMENTS**

<b>Background documents</b>	<b>Held At</b>	<b>Contact</b>
Equalities Act 2010	Regeneration - Capital Works & Development Chief Executives' Department Southwark Council 160 Tooley Street London SE1 2QH	Yvonne Shaw Project Manager  07734 779652
Link: <a href="https://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/1">https://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/1</a>		
Southwark Borough Plan 2020-2022	Regeneration - Capital Works & Development Chief Executives' Department Southwark Council 160 Tooley Street London SE1 2QH	Yvonne Shaw Project Manager  07734 779652
Link: <a href="https://www.southwark.gov.uk/council-and-democracy/fairer-future/council-plan">https://www.southwark.gov.uk/council-and-democracy/fairer-future/council-plan</a>		

## APPENDICES

No	Title
Appendix 1	Equality and Health Analysis 2021

## AUDIT TRAIL

<b>Lead Officer</b>	David Quirke-Thornton, Strategic Director of Children's and Adults' Services	
<b>Report Author</b>	Yvonne Shaw, Project Manager, Regeneration - Capital Works and Development	
<b>Version</b>	Final	
<b>Dated</b>	29 November 2021	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Director of Exchequer (for housing contracts only)	N/A	N/A
Cabinet Member	Yes	None received
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	N/A	N/A
<b>Cabinet</b>	No	No
<b>Date final report sent to Constitutional Team</b>		13 December 2021

