

Item No.	Classification: Open	Date: 1 November 2023	Decision Taker: Strategic Director of Children and Adult Services
Report title:		GW2 The Charter School East Dulwich phase 2 construction contract stage 2	
Ward(s) or groups affected:		Goose Green	
From:		Head of Sustainable Growth	

RECOMMENDATION

1. That the Strategic Director of Children and Adult Services approve the award for the main works contract for Phase 2 of The Charter School East Dulwich to Neilcott Construction Limited for a contract sum of no more than £11,450,000 for a period of 50 weeks commencing on 27 November 2023, subject to the Department for Education confirming the funding.

BACKGROUND INFORMATION

2. On 8 December 2015, cabinet approved the council entering into a development agreement with the Secretary of State for Housing, Communities and Local Government and The Charter Schools Educational Trust (TCSET) for the council to procure delivery of the construction of a new eight form entry secondary school, The Charter School East Dulwich (TCSED) on the site of the Dulwich Community Hospital, East Dulwich Grove.
3. The majority of the capital funding for the school is coming from the Department for Education (DfE), from Education Skills Funding Agency (ESFA) funding. The DfE owns the freehold and is responsible for funding abnormal site costs, including asbestos remediation, for which it retained monies from the land purchase from the NHS. The council is contributing £6.55m towards the total development costs, £5m agreed in the development agreement and £1.55m agreed later for inclusion of an Autism Spectrum Disorder (ASD) resource. Total development costs are currently estimated at £48.2m.
4. The completed school will deliver 1,700 places, including 480 sixth form places and a 20 place ASD resource. Planning consent was granted in 2016 for new build plans conditional upon retention and refurbishment of the hospital main entrance block referred to as 'the chateau'. Construction of the school was split into two phases to co-ordinate with the NHS hospital programme for the relocation of services from the hospital. Phase 1 of the school opened in January 2019. It provided the school's main teaching

accommodation with art and science classrooms, sports hall and temporary main entrance. Phase 2, which includes 'the chateau', will provide the permanent school main entrance, additional office and teaching space, music and sixth form facilities, ASD resource and external play space.

5. Gateway 1 approval was given on 30 March 2023 for a two-stage tender process using Workstream 4 of the London Housing Consortium PB3 Public Buildings Construction and Infrastructure framework agreement to procure a contractor to deliver construction of the remaining phase 2 works: a new build hall, refurbished chateau, and landscape works.
6. This Gateway 2 report relates to the stage 2 award which is for the main works contract for the construction works. This is the second attempt to procure a contractor for the phase 2 main works contract. A PCSA was awarded in February 2021, however the contractor Equans withdrew from the process in July 2022, before the award of the stage 2 construction contract. This explains the need for the retendering of the contract.
7. Some phase 2 works have been procured separately in advance of the main works contract and have either been completed or are in the process of delivery:
 - In July 2021, demolition, clearance and enabling works were completed by John F Hunt Regeneration Ltd. to prepare the phase 2 site for the main contractor. Gateway 2 approval was granted on 8 September 2020.
 - In October 2021, the early installation of the MUGA was completed by Engie Regeneration Ltd to provide the school with more play space. Gateway 2 approval was granted on 23 June 2021.
 - In July 2023, early landscape works on part of the site to provide urgent improvements to the walkway link between existing school buildings and more external space for pupils. Approval was given on 10 May 2023 to let the contract to Blakedown Ltd in a Gateway 2 report.
 - In September 2023, supply and installation of temporary accommodation to provide the school with additional space until the permanent facilities are available has been completed and in use on site. The contract to let to REDS10 Ltd. was approved on 15 March 2023 in a Gateway 2 report.
8. One of the recommendations from the Gateway 1 dated 1 February 2023 was for the approval of the Stage 2 construction contract to be delegated from the Cabinet Member to the Strategic Director of Children and Adult Services.

Procurement project plan (Key Decision)

9.

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	01/11/2022
Briefed relevant cabinet member (over £100k)	16/10/2023
Approval of Gateway 1: Procurement Strategy Report	30/03/2023
Invitation to tender	12/12/2022
Closing date for return of tenders	15/03/2023
Completion of evaluation of tenders	10/04/2023
DCRB Review Gateway 2:	27/09/2023
CCRB Review Gateway 2:	12/10/2023
Notification of forthcoming decision – Five clear working days	24/10/2023
Approval of Gateway 2: Contract Award Report	01/11/2023
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	10/11/2023
Debrief Notice and Standstill Period (if applicable)	13/11/2023
Contract award	27/11/2023
Add to Contract Register	27/11/2023
Contract start	04/12/2023
Publication of award notice on Contracts Finder	04/12/2023
Contract completion date	18/11/2024

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

- The procurement will provide the remaining permanent facilities needed to complete the school: permanent main entrance, additional office and teaching space, music and sixth form facilities, ASD resource and external play space. Works include construction of a new hall, refurbishment of the chateau, fitting out and landscape works. These facilities will enable the school to increase its intake.

Key/Non-Key decisions

11. This report deals with a key decision.

Policy framework implications

12. Southwark Council is committed to providing a fairer, Greener, Safer future for all. This project will help to achieve this vision by delivering on the following commitments:
 - Transforming our Borough
 - A healthy environment
 - Investing in communities
 - Supporting Families
13. This award supports the aspirations and commitments of the Council. The refurbishment of 'the chateau', proposed new extension building and external landscape works have been designed and developed to provide improved facilities, in support of the council's policies for supporting the best start in life for the borough's children. The new buildings will be more sustainable.
14. 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

15. The procurement process followed what was approved in the GW1 Procurement Strategy Approval which was a mini competition using Workstream 4 of the London Housing Consortium (LHC) PB3 Public Buildings Construction and Infrastructure framework agreement. Workstream 4 includes seven contractors.
16. Expressions of Interest were received from all seven contractors in the Work Stream, but only five subsequently confirmed their interest. However, three of the five latterly withdrew during the tender period because of other tender commitments. Two tenders were received by the deadline.
17. Following the tendering process, the recommendation was that Neilcott Construction are the most suitable contractor for this scheme, and the contract for the Main Works at The Charter School East Dulwich School project was awarded to them for the reasons set out in the tender evaluation section below.

Tender evaluation

18. The full tender evaluation results are held in a non-key chief officer decision, GW2 for the stage 1 PCSA which was awarded to Neilcott.
19. Neilcott initially submitted their detailed stage 2 proposals and price which included extra risk items and furniture, fixtures and equipment (FF&E) items which were not part of the budget.
20. Following analysis of the price, further negotiations with Neilcott and a value engineering exercise in conjunction with stakeholders, Neilcott submitted their revised price of £11,450,000 which equates to the stage 2 works contract sum after deduction of the extra risk items.
21. Officers have identified the following additional works currently outside the current contract scope and Neilcott's price:
 - Repairs to the phase 1 brick boundary wall
 - Capping of decommissioned well

Plans for the transition from the old to the new contract

22. The plans for the transition is not applicable for this report. There is no existing main contract as this is new contract for this phase of works.

Plans for monitoring and management of the contract

23. The form of contract will be the Joint Contracts Tribunal (JCT) Design and Build 2016 with Southwark Council specific amendments. The Employer's Agent will be external consultants, acting on behalf of the Sustainable Growth, Capital projects team.
24. Quantity surveying service has been procured separately for the effective cost control of the contract.
25. Progress of construction will be formally monitored via monthly progress meetings, attended by Project Managers from Sustainable Growth, the Employer's Agent, the Contractor, the architects, the quantity surveyor, and other members of the project team as appropriate.
26. The project will be resourced through the Sustainable Growth, Capital Projects team. The performance of the project team will be subject to formal monthly reviews, including reviews on cost, programme, and quality. In addition, the officer client team will use several mechanisms for monitoring and controlling the financial and programme performance of the contract, including:
 - Strategic cost plan, which will be regularly reviewed and updated;
 - Monthly financial statements by the consultant quantity surveyor and contractor;

- Monthly appraisals of progress against the contract programme;
- Monthly progress meetings on site;
- Tracking and chasing actions on critical issues
- ‘Look ahead’ meetings with principals/directors;
- Period project team ‘look ahead’ workshops covering key phases of work and risks;
- Risks and issues logs;
- Annual performance reviews as required by the council’s Contract Standing orders.
- Regular updates to Children’s Services Capital Programme and Place Planning Board.

27. 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.

Identified risks for the new contract

28.

Risk No.	Identified Risk	Likelihood	Risk Control
1	Financial risk - inflation rates higher than projected in the cost estimates	Medium	The cost estimate has factored in inflation at current Building Cost Information Service (BCIS) rates.
2	Financial risk – the DfE is unwilling to provide the funding required to let the stage 2 construction contract	Low/ Medium	This risk is being managed in stages. The cost presented in this report currently meets the budget parameters set by the DfE. No additional funding is required from the council. As stated in recommendation 2, the contract will only be awarded once the DfE confirm the funding.
3	Programme risk - material and labour shortages	Medium	This was tested through the tender evaluation process. Neilcott were asked how they will manage their supply chain to achieve the programme and what measures they have put in place to mitigate supply chain disruption. Post-

			contract, the risks are transferred to the contractor.
4	Problems in the ground on site	Low	Ground investigations have been carried out and no problems were identified.
5	Unforeseen works in the chateau during refurbishment	Low	The chateau has been fully stripped out, so all areas are visible to Neilcott for inspection and pricing purposes.
6	Delay to Practical Completion of the works	Medium	Temporary modular accommodation has been installed to provide the school with additional teaching space until the permanent accommodation is completed. However, if the hire period for the temporary accommodation has to be extended because of the delay to the completion of the permanent facilities, additional project costs may arise.
7	Procurement Challenge	Low	The procurement has followed a compliant PCR2015 and council CSO process via use of an existing public sector framework - Workstream 4 of the London Housing Consortium (LHC) PB3 Public Buildings Construction and Infrastructure.
8	Contractor goes bankrupt	Low	Fame credit check has been undertaken and it is believed to be secure company. We have contract management in place to foresee any potential issues.

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

Community impact statement

29. The project will increase the capacity of Southwark's secondary schools in the East Dulwich catchment area which will positively impact families.

Equalities (including socio-economic) impact statement

30. An Equality and Health Analysis completed in May 2021 identified 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

31. An Equality and Health Analysis prepared for the project in May 2021 identified no adverse health impacts from the project on people possessing protected characteristics. The project will have a positive health impact on young people by increasing and improving Southwark's secondary school offer for children with special needs.

Climate change implications

32. Neilcott provided a satisfactory response demonstrating their commitment to promoting sustainability and net zero carbon. On this project they are improving the existing building's energy performance by increasing insulation, adding air source heat pumps and achieving BREEAM excellent across the scheme. By effectively retrofitting the chateau, this saves the embedded carbon which assists us in our overall carbon reduction target for the build. Trees will also be planted which will assist in reducing carbon and increasing biodiversity.

Social Value considerations

33. 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

34. Neilcott Construction Limited committed to delivering the following local economic benefits which are a planning obligation for phase 2:
- 14 x jobs,
 - 14 x short courses
 - three x apprenticeships/ non-vocational qualification

Social considerations

35. 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 and the council's Fairer Futures Procurement Framework asking tenderers to certify their commitment to deliver on the actions in the checklist should they be awarded the contract.
36. When asked to explain how their company promotes sustainability through its procurements e.g., use of local supply chains, requirement for sub-contractors to operate low/zero emission vehicles, certifications, Neilcott have provided satisfactory responses. Demonstrating their commitment to promoting sustainability and net zero carbon in paragraph 32.
37. The tender included the council's standard documentation in relation to blacklisting. The council's contract conditions will include an express condition requiring compliance with the blacklisting regulations and include provision to allow the contract to be terminated for breach of these requirements.
38. The draft contract included in the tender included the council's requirement for the contractor to pay the London Living Wage.

Environmental/Sustainability considerations

39. Neilcott were asked to demonstrate how they promote sustainability through their procurements e.g., use of materials, use of local supply chains, requirement for sub-contractors to operate low/zero emission vehicles, certifications e.g., Carbon Trust Standard for Supply Chain or equivalent. They have provided satisfactory responses.
40. The proposed LHC framework agreement requires applicants to show evidence of environmental management accreditation, UK Accreditation Service or independent third-party certificate of compliance in accordance with British Standard EN ISO 9001 or equivalent.

Market considerations

41. Neilcott is a private company with between 50 and 250 employees. It is a regional contractor, primarily operating in all London Boroughs and the Southeast. Its Head Office is in Orpington, Kent.

Staffing implications

42. No staffing implications arise from this procurement.

Financial implications

43. Neilcott Construction's price for stages 1 and 2 combined is within the estimated costs approved at Gateway 1 stage.

44. For construction (works) contracts, the council is not the end user in relation to Domestic Reverse Charge (DRC) and notification of this will be included in the letter of award to the successful contractor.

45. The contract value including and excluding VAT is:

	Cost excluding VAT	Cost inclusive of VAT
Original total cost	11,450,000	13,740,000

46. Sufficient funding remains in the budget to meet the cost of this contract.

47. The current total estimated cost of the project, including the cost of this contract is £48.2m for which an additional £4.3m is being sought from the DfE.

48. Funding for the project currently stands at:

Source	£m
DfE/EFA Grant Funding (excluding payments made directly to the school for ICT and temporary accommodation)	35.405
DfE - asbestos funding from NHS land sale agreement	1.799
Council funding – Development Agreement	5.000
Council funding for ASD resource	1.050
Council funding additional	0.500
Third party contributions (NHS/TCSET)	0.147
Total	43.901

49. Spend to the end of March 2023 was £33.93m of which the DfE has repaid £24.4m to date and claims for a further £9.57 are being prepared.

Investment implications

50. There are no investment implications for this contract.

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

51. A second stage financial/credit appraisal for Neilcott Construction confirmed they are secure.

Legal implications

52. The form of contract is a two stage JCT Design & Build 2016. Draft contract documentation, including Southwark's standard amendments, was included in the tender pack.
53. Please see concurrent from the Assistant Chief Executive of Governance and Assurance.

Consultation

54. The School, TCSET and DfE have participated in the development of this proposal.
55. A stakeholder Project Steering Group including representatives from the DfE, TCSED and TCSET meets at least monthly to oversee delivery of the project and coordinate activities.
56. Extensive public consultation was carried out on for the planning application granted consent in 2016.
57. A parents' meeting was held in October 2022 to update parents on the programme, on plans to re-tender the main works and to provide more landscaping and temporary accommodation until the permanent facilities are available. Project updates are published on the school web site.

Other implications or issues

58. There are no other implications or issues for this contract.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance REF: [CAS23-33]

59. The Strategic Director of Finance notes the contents of this report and is aware of the financial, investment and legal implications.
60. Further funding from the DFE requires confirmation for funding to meet current forecast spend.
61. Robust risk and project management are both required to limit inflationary and other pressures on expenditure.

Head of Procurement

62. This report seeks approval of contract award to Neilcott Construction Limited for a main works contractor at The Charter School East Dulwich (Phase 2). Approximate cost estimates associated are for a contract sum of no more than £11,450,000 for a period of 50 weeks commencing on 27 November 2023. The proposed procurement route (via the London Housing

Consortium PB3 Public Buildings Construction and Infrastructure, Workstream 4 - £7m to £14m category) is consistent with the Public Contracts Regulations 2015 (PCR2015) and council Contract Standing Orders (CSOs) as applicable to these services and the related value threshold. Details of the procurement process undertaken are contained within paragraphs 15 – 17. The report is also aligned with the council's Contract Standing Orders (CSOs) vis a vis governance, which dictate that decision must be taken by the Strategic Director of Children and Adult Services (as formerly delegated) following review at DCRB and CCRB.

63. Headline risks associated with progression are contained at the end of paragraph 28 and note the reliance on continuation of DfE funding.
64. Alignment with the Fairer Future Procurement Framework (FFPF) is evidenced, and references aspirations re: use of local supply chains, payment of the London Living Wage (LLW), and non-discriminatory employment (“Blacklisting”) within paragraphs 35 – 38. Specific local economic benefits are detailed at paragraph 34.
65. Proposed methodology for performance/contract monitoring is detailed within paragraphs 23 – 27. In recognition of the intended duration of the contract, a requirement for annual performance review at DCRB and CCRB, as consistent with council CSOs, is considered discretionary.
66. The Community, Equalities and Health Impact Statements are set out in paragraphs 29 - 31.
67. The Climate change, Social Value, Economic and Environmental / Sustainability statements are set out in paragraphs 32 – 40.

Assistant Chief Executive – Governance and Assurance

68. The Assistant Chief Executive – Governance and Assurance notes the contents of this report which seeks the approval of the Strategic Director of Children and Adults Services to the award of the phase 2 main works contract to Neilcott Limited, as set out in paragraph 1 of this report.
69. On the basis of information contained in this report it is confirmed that this procurement was carried out in accordance with the council's Contracts Standing Orders and the Public Contracts Regulations 2015.
70. CSO 5.1.4 provides that any procurement involving the use of a framework agreement is subject to usual Gateway 2 procedures and this report seeks the appropriate approval.
71. As this procurement is based on a two stage tender, this GW2 report seeks approval for stage 2 of the tender process, that is, approval for the main building works contract.

72. The Strategic Director of Children and Adults Services attention is drawn to the Public Sector Equality duty (PSED General Duty) under the Equality Act 2010, which requires public bodies to have regard, when making decisions, to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not share it. The Strategic Director is specifically referred to the community, equalities (including socio-economic) and health impacts at paragraphs 29 to 31 setting out the consideration that has been given to equalities issues which should be considered when approving the recommendations in this report.
73. CSO 2.3.1 provides that a contract 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. Paragraphs 43 to 49 of this report confirms the financial implications of this award.

Director of Children and Families

74. As indicated in the Keeping Education Strong strategy agreed by Cabinet on 13 June 2023, ‘the council has made an investment in school buildings that has resulted in a beautiful transformation of buildings and vastly improved learning environments that lift the eyes and aspirations of everyone in them’. This contract award builds on this commitment.

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  Date **1 November 2023**
David Quirke-Thornton
 Designation: **Strategic Director of Children and Adult 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).

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

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.....Date **1 November 2023**

David Quirke-Thornton

Designation: **Strategic Director of Children and Adult 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.....Date **1 November 2023**

David Quirke-Thornton

Designation: **Strategic Director of Children and Adult 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

Background documents	Held At	Contact
Gateway 1 Procurement Strategy Approval The Charter School East Dulwich – Phase 2 Main Contractor	Sustainable Growth Capital Works, Environment Neighbourhoods and Growth, Directorate Southwark Council 160 Tooley Street London SE1 2QH	Claire Boadu 07938740285
Link: https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7848		
Fairer, Greener, Safer Southwark's Council Delivery Plan	Sustainable Growth Capital Works, Environment Neighbourhoods and Growth, Directorate Southwark Council 160 Tooley Street London SE1 2QH	Claire Boadu 07938740285
Link: https://www.southwark.gov.uk/council-and-democracy/fairer-future/fairer-greener-safer-southwark-s-council-delivery-plan		

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APPENDICES

No	Title
None	

AUDIT TRAIL

Lead Officer	David Quirke-Thornton Strategic Director, Children and Adult Services	
Report Author	Claire Boadu Assistant Project Manager	
Version	Final	
Dated	16 October 2023	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Director of Children and Families	Yes	Yes
Cabinet Member	No	No
Contract Review Boards		
Departmental Contract Review Board	Yes	No
Corporate Contract Review Board	Yes	No
Cabinet	No	No
Date final report sent to Constitutional Team		1 November 2023