

Item No.	Classification: Open	Date: 07 December 2015	Decision Maker: Strategic Director of Children's and Adults Services
Report title:		Gateway 2: Contract Award Approval: The Belham Free School Works	
Ward(s) or groups affected:		All	
From:		Director of Regeneration	

RECOMMENDATIONS

1. That the strategic director of children's and adults' services approves the award of the design and build contract and documents outlined in Table 2, for the Belham Primary School to Morgan Sindall plc, for the contract period of 75 calendar weeks and one day commencing on 01 February 2016 and completing on 10 July 2017, subject to:
 - The total financial implications for the council, including pre-construction services and enabling works, being no more than the value as disclosed in the closed version of this report;
 - Confirmation from the council's Cost Consultant, following further financial negotiations with Morgan Sindall, that the project represents value for money;
 - The submission from Morgan Sindall plc satisfying the council's requirements.
 - Confirmation of an agreed funding contribution from the Education Funding Agency towards the delivery of the project.
2. That the strategic director of children's and adults' services notes that the contract will not be awarded to Morgan Sindall should the requirements listed in paragraph 1 not be met.
3. That the strategic director of children's and adults' services approves the award of the contracts and documents outlined in table 3 of this report, to Dulwich Hamlet Educational Trust, subject to the requirements listed in paragraph 1 being met.

BACKGROUND INFORMATION

4. On 16 July 2013 Cabinet approved a primary school investment programme to address the shortfall in primary school places for a number of schools and sites which included the site at Old Bellenden. It was envisaged that the works would be procured through the Improvement and Efficiency South East construction and management framework (IESE) and that the projects would be split into two packages.
5. On 22 July 2014 Cabinet approved the procurement strategy to appoint 2 contractors, one for Package A and one for Package B, using IESE. It was envisaged that the contractor for each Package would carry out preconstruction

services, the works and, where necessary, enabling works and these services and works would be approved in a number of gateway 2 reports. It was approved by Cabinet that the decision maker for these Gateway 2 reports would be delegated to the Strategic Director of Children's and Adults Services (irrespective of their estimated value).

6. The development of Belham Primary School at the Old Bellenden School site falls within Package B. The existing building is Grade 2 listed.
7. On 17 November 2014 the Strategic Director of Children's and Adults Services approved the appointment of Morgan Sindall plc to carry out the pre-construction services for Package B, under the Improvement and Efficiency South East (iESE) regional framework arrangements for construction and management using the two-stage Design and Build method.
8. The development of Old Bellenden School includes the demolition of the existing three storey addition and the erection of a new part one, part three storey extension, and associated raised playspace and landscaping. The building will be used to accommodate the new Belham Primary School under a lease arrangement with the Dulwich Hamlet Educational Trust.
9. The new Belham Primary School opened in September 2015 for 1 year 1 class and 2 reception classes, in temporary accommodation at the Faith Chapel across the road from the permanent school site of Old Bellenden.
10. Planning permission and Listed Building Consent was received for the Belham Primary School development in April 2015. In addition, and in order to progress with the programme for the works, a number of enabling works contracts have been entered into with Morgan Sindall plc, as approved by the Strategic Director (Children's and Adults' Services, and are summarised in table 1 below. The Enabling Works Contract for Demolition and associated works is still progressing and these works have not yet been completed.

Table 1 – Enabling Works Contracts

Contract Name	Parties	Value of Contract	Initial Term
Enabling Works 1 - Strip Out Works	London Borough of Southwark and Morgan Sindall plc	£157k	10 weeks
Enabling Works 2 - Demolition and Associated Works	London Borough of Southwark and Morgan Sindall plc	£499,154	13 weeks

11. In August and September 2015 respectively, the Strategic Director for Children's and Adults' services approved variations to Enabling Works 1 to be issued to Morgan Sindall plc. These included urgent works for scaffolding and a temporary roof to be installed on the existing building, which is suffering from extensive water ingress and needs to be made watertight. The second variation was for further investigatory and repair works required to rectify the damp problems.

12. A number of further variations were also required to the Pre-Construction Services Agreement and Enabling Works contracts, following further survey and investigatory works undertaken by the main contractor. The total value of these variations is subsumed by the overall sum for approval given in this report and a breakdown of these are included in Appendix 1 of the closed version of this report.
13. The strip out works under Enabling Works 1 have now been completed. Following these works, it has been identified that the structural condition of the existing building is worse than previously identified in the original surveys.
14. The main works contract is expected to complete on 10 July 2017. In order to provide accommodation for the additional 2 forms of entry for September 2016, it is the intention that 3 classrooms on the ground floor of the Belham School building, plus ancillary spaces, are completed for handover to the school in August 2016, with the remaining 2 classes being located in the existing temporary accommodation at the Faith Chapel. This has resulted in additional costs to the programme, relating to sectionalising the mechanical and electrical installations, and additional preliminary costs.
15. The project has obtained approval for partial funding from the Education Funding Agency, to be opened as a Free School managed by the Dulwich Hamlet Educational Trust.
16. The contracts to be entered into at contract award are outlined in table 2 and are based on JCT 2011 Design and Build Contract with the council's standard and special amendments. This documentation has been subject to detailed review by Southwark Legal Services, with advice from external legal advisors (Sharpe Pritchard).

Table 2: Contracts to be signed

Contract	Contract purpose	Parties	Initial term	Extension
Design and Build Contract – Belham Primary School	Detailed design work and build of the Belham Primary School	London Borough of Southwark and the Morgan Sindall plc	No term – dependent on completion of build and defects period (approx.. 3 years)	N/A
Associated documents and agreements	Other linked and associated documents and agreements relating to the headline contracts, e.g. collateral warranties	Various Parties	Various	Various

17. In order to secure agreement by the school counterparty to their obligations under the contract, the council will also enter into a series of school interface agreements (see table 3), the drafting of which has been undertaken by the council's legal

advisors and property department. The Development Agreement outlines the obligations of both the council and the school counterparty for the duration of the works, and secures agreement by the governing body of the school.

Table 3: School interface/governing body agreements

School interface agreements		
Agreement	School counterparty:	Agreement purpose
Development Agreement	Dulwich Hamlet Educational Trust	Agreement covering the construction period.
Lease for the Belham Primary School for a term up to 125 years	Dulwich Hamlet Educational Trust	The Lease of the existing Old Bellenden School building to the Dulwich Hamlet Educational Trust, to be executed following completion of the works
Associated documents and agreements	Various	Other linked and associated documents and agreements relating to the headline contracts, e.g. collateral warranties

Procurement project plan (Key Decision)

18. The timetable of the procurement process for the Belham Primary School is set out in the table below, and shows that the construction of the primary school is programmed to be completed in Contract Sections with overall completion in July 2017.

Procurement project plan

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	December 2015
Approval of Gateway 1 – Procurement Strategy Approval: Appointment of Contractors for Primary Expansion Programme	22 July 2014
Approval of Gateway 2 (Pre-Construction Services): Contract Award Approval	17 November 2014
Contract Award (Pre-Construction Services)	26 November 2014
Approval of Gateway 2: Enabling Works at Old Bellenden School	April 2015
Approval of Gateway 2: Award of Contract for the demolitions and associated works at Old Bellenden	24 June 2015

Activity	Completed by/Complete by
CCRB Review: Gateway 2: Contract Award Approval: The Belham Free School Works	3 December 2015
Notification of forthcoming decision – Five clear working days	15-21 December 2015
Approval of Gateway 2: Contract Award Report	22 December 2015
Scrutiny Call-in period and notification of implementation of Gateway 2 decision (5 clear working days)	23 – 31 December 2015
Finalisation of contract terms	18 December 2015
Contract award (subject to sign-off by the Strategic Director)	04 January 2015
Add to Contract Register	December 2015
Contract start	01 February 2015
Section 1 date for completion	August 2016
Section 2 date for completion	December 2016
Contract date for completion	10 July 2017

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

19. This procurement will lead to the delivery of the new two Form of Entry Belham Primary School. The works consist of a new build extension and extensive internal remodelling and refurbishment works and associated external landscaping.
20. The project will address the condition and sustainability issues of the existing building, which has been left to decline into a significant state of disrepair, and will provide high quality learning and teaching environments for the staff and students of the new school.
21. Paragraphs 36 and 37 of this report outline the positive impact that the new school will have on the local community.

Key/Non Key decisions

22. This report is for a key decision.

Policy implications

23. The new Belham Primary School will help to fulfil Southwark's on going commitment to its community, helping to encourage improved educational attainment for the borough's children, and assist with the council's statutory duty to provide additional school places for September 2016.

Tender process

24. Morgan Sindall plc was appointed by way of a mini-competition, in line with the procedure prescribed by the iESE framework arrangements.
25. The procurement for Stage 1, pre-construction services followed the standard IESE two-stage approach, in which the contractor has the following core responsibilities:

Stage 1 (pre-construction)

- Fully developing the design proposals from RIBA Work Stage E onwards
- Packaging and competitively tendering the works on an open book basis
- Submitting contractor's proposals and pricing document, including the proposed contract sum, for decision by the council (this report).

Stage 2 (construction) – subject to a separate gateway 2 approval (this report)

- Carrying out and completing the works in compliance with the contract documents
26. The Gateway 2 report for the award of the contractors for Stage 1 (pre-construction services) was approved in November 2014. That report detailed the evaluation method followed to award the most economically advantageous tender. From the Stage 2 process, the gateway 2 reports as outlined in table 1 were awarded for Enabling Works 1 and Enabling Works 2.
27. With this two stage approach to procurement, there is an expectation and likelihood that the contractor appointed for pre-construction services would be appointed for the works contract, subject to the formal decision of the contracting authority to proceed. Value for money is obtained through the application of competitively tendered framework rates for main contractor's core costs (i.e. management, design, certain preliminaries and overheads and profit) and by competitive tendering of the works packages by the main contractor.
28. This report deals with the third Gateway report to appoint Morgan Sindall plc for the main works. The design and specification for the project was developed by the consultant team under the direction of the council's Project Management consultants, Mace Limited, which together with the overall scheme proposals were issued to Morgan Sindall plc in the form of Employer's Requirements.
29. Following the process of design development and packaging of the scheme proposals, the contractor has obtained competitively tendered prices for the various packages which, together with their construction phase core costs (previously tendered and reported in the Gateway 2 for pre-construction services) combine to make up the proposed contract sum for the main works.

30. Morgan Sindall plc provided a detailed scope and cost breakdown for the main works in October 2015. This is being reviewed by the consultant project manager, client design advisor and quantity surveyor to ensure that the works are those that are required and that the price is representative of the works being carried out.

Tender evaluation

31. Discussions have been held between the contractor, council officers from Regeneration, Capital Works, and the design team to clarify a number of items in the proposed scope. These continue to be worked through to ensure that the council is satisfied before the main works can be awarded.
32. The submission from Morgan Sindall plc will continue to be considered by the Capital Projects team, the council's external legal advisor and external Cost consultant, against the council's requirements in order to ensure that it meets these and the approval criteria in terms of value for money.
33. The approval to enter into the contract with Morgan Sindall plc for the Design and Build of the Belham Primary School (this report) is recommended subject to the council's requirements (as outlined in paragraph 1 of this report) being met. This approval is being sought now to ensure that the programme can remain on target, enabling construction to commence immediately following finalisation of the contract documentation and the requirements of the council being satisfied. This will enable the overall date for completion of 11 July 2017 to be achieved.

Plans for the transition from the old to the new contract

34. Not applicable

Plans for monitoring and management of the contract

35. The project clienting, including the management and administration of the consultant and contractor appointments, will be run and resourced through the Regeneration - Capital Works team. Progress with the contract works and performance of the consultant team will be subject to constant scrutiny and monthly formal review, including reviews on cost, programme and quality. The experienced officer client team will use a number of 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/contractor
 - Monthly appraisals of progress against the contract programme
 - Monthly progress reports by:
 - The project manager/Employer's Agent
 - Main contractor
 - Other design consultants
 - Monthly progress meetings on site
 - Tracking and chasing actions on critical issues
 - Weekly 'look ahead' meetings with principals / directors

- Periodic project team 'look ahead' workshops covering key phases of work and risks
- Risk and issues logs

Identified risks for the new contract

RISK		RISK LEVEL	MITIGATION ACTION
1.	Contractor has inadequate resources and management arrangements to deliver the main works project	Low	Ensure prior to appointment – (1) that the contractor plans to deploy adequate resources and is willing to supplement additional resources to the project, if required. (2) that the contractor proposes to put adequate management arrangements in place to deliver the project.
2.	Insolvency of framework contractor	Low	An up-to-date financial check was obtained and this found the contractor to be at 'very low risk'. Morgan Sindall plc to provide a parent company guarantee as a condition of contract. Closely monitor performance of firms once appointed.
4.	Construction delays on site due to: <ul style="list-style-type: none"> • Hidden obstructions below ground • Contamination below ground 	Low	Desktop studies and non-intrusive surveys have been undertaken to anticipate and plan for potential hazards on site. Investigation and remediation works undertaken in enabling works contract have de-risked the site in readiness for the main contract works.
5.	Delay by UKPN in re-providing the electricity sub-station	Medium	An early order has been placed with UKPN for the diversion, installation and connection of electricity supply to a new replacement sub-station, to prevent delay to the main contractor's sub-structure works and overall contract completion.
6.	Construction delays on site and additional costs	Medium	Pre-order components with long delivery period. Ensure that site operations are thoroughly and realistically planned by the

	RISK	RISK LEVEL	MITIGATION ACTION
			contractor, prior to commencement of the works.
7.	Delay to approval of planning conditions	Medium	Ensure effective forward planning and regular communication with the planning officer and relevant parties to the decision making process. Information to be submitted for planning approval in a timely manner to allow for approval periods.
8.	Existing damp issues in the building require extensive drying out periods, resulting in delay to the completion of the works.	Medium	Sufficient allowances included in the programme to allow for drying out period. Specialist damp consultant appointed to ensure the most effective drying out methods are taken forward, which respect the listed nature of the building. Temporary roof to be installed to make the building watertight for the duration of the works.
10.	Default by key subcontractor/supplier.	Low	A select list of well established sub-contractors by trade maintained by the main contractor, which includes financial health checks and performance monitoring.
11.	Delay to final agreement of contractor's proposals and contract documents, leading to a delay in contract award.	Medium	Ongoing monitoring and forward programming to ensure close can be achieved.

Community impact statement

36. Generally the provision of additional school places, which this contract will ultimately provide, will have a positive impact on communities with increased provision of places in areas where they are in need. The proposals are consistent with promoting the safeguarding and well being of all local children and young people by providing sufficient school places to meet forecast need.
37. The project will provide a newly refurbished building and extension for the borough's children.

Economic Considerations

38. Morgan Sindall plc will be expected to deliver direct benefits to the local community and local residents. It is proposed that these benefits will be delivered through some or all of the following possible means:
- Supply chain and procurement with local businesses;
 - Use of local labour and training initiatives, including a construction employment, skills and training scheme linked to the council's Building London Creating Futures programme, which aims to match local residents with construction vacancies especially where these are linked to key development sites and regeneration activities;
 - A commitment to construction apprenticeships in proportion to the size and scale of the development as agreed in the Partnering Agreement; and
 - Corporate social responsibility and sustainability.
39. Discussions have commenced to ensure that there is a coordinated approach to provide a number of apprentice positions across the expansion programme. The Contractor has had meetings with the supply chain to ensure this is implemented and a number of apprentices have already been appointed. Monitoring information will be required quarterly, to a standard format including basic equalities data.

Social Considerations

40. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors and subcontractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. Morgan Sindall plc will meet LLW requirements and contract conditions requiring the payment of LLW will be included in contract documents, which will result in quality improvements for the council. These should include a higher calibre of multi-skilled operatives that will contribute to the delivery of works on site and will provide best value for the council.
41. Pursuant to section 149 of the Equality Act 2010 the council has a duty to have due regard in its decision making processes to the need to:
- (a) Eliminate discrimination, harassment, victimisation or other prohibited conduct.
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not.
 - (c) Foster good relations between those who share a relevant characteristic and those that do not share it.
42. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The Public Sector Equalities Duty also applies to marriage and civil partnership, but only in relation to (a) above. This report sets out the considerations which have been given to the PSED General Duty, which the Strategic Director of Children's and Adult's Services should consider when making this decision.

Environmental Considerations

43. The completion of this procurement will create a new school which will demonstrate commitment to the carbon reduction measures required by Southwark council, through the application of design principles to manage the use of energy most efficiently.
44. The scheme will be achieving a BREEAM rating of Very Good in the New Build element of the works.

Market considerations

45. Morgan Sindall plc has over 250 employees and a national area of activity.

Staffing implications

46. There will be no direct impact on staffing as a result of the award of this contract.

Financial implications

47. This report is seeking approval from the strategic director of children's and adults' services to award the contract for the development works for Belham Primary School, to Morgan Sindall plc at a cost not exceeding the value disclosed in the closed version of this report, including the cost of pre-construction services and enabling works packages 1 and 2.
48. The council will seek to confirm the funding contribution from the EFA in light of building abnormalities not identified in the planning stage.
49. Officers will continue to work with its external cost consultants to ensure that the works packages are competitive and represent value for money to the council.
50. The on going running costs of the expansion programme will be met from the Dulwich Hamlet Educational Trust school budget.
51. Staffing and any other costs connected with this contract will be contained within existing departmental revenue budgets.
52. The total estimated cost of contracts in this report can be met from existing identified resources.

Legal implications

53. Pursuant to the Cabinet Report dated 22 July 2014 the decision maker for this report is the Strategic Director of Children's and Adults Services.
54. Please see the legal concurrent.

Consultation

55. The proposals have been subject to the decision making arrangements of the council's planning process, including consultation with relevant statutory consultees including English Heritage.
56. The headteacher of the Belham Primary School has been involved in the design development process. Consultation has been carried out locally ahead of the statutory consultation being conducted through the planning process.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (CAP15/168)

57. This report is seeking approval from the strategic director of children's and adults' services to award the contract for the development works for Belham Primary School, to Morgan Sindall plc at a cost not exceeding the value disclosed in the closed version of this report, including the cost of pre-construction services and enabling works packages 1 and 2.
58. The strategic director of finance and governance notes that the award of the contract is subject to the conditions being met as outlined in paragraph 1 and detailed in the closed version of the report to confirm that the contract offers value for money
59. Officers should ensure that budgets for the contract are established and profiled on the Council's financial information system for effective monitoring and reporting.
60. It is also noted that the on going running costs of the expansion programme will be met from the Dulwich Hamlet Educational Trust school budget.
61. Staffing and any other costs connected with this contract to be contained within existing departmental revenue budgets.

Head of Procurement


62. This report is seeking approval for the award of a design and build contract for the Belham Primary School.
63. The report confirms that the procurement strategy set out in the previously approved Gateway 1 report has been followed namely the use of the IESE framework. The report describes the evaluation process that was carried out and that the contractors tender submission has been evaluated but is subject to a number of conditions being met before the council can proceed with entering into a contract.
64. The timetable for completing these works in time for a September school intake in 2017 is very tight but achievable if sufficient resources are applied by the contractor and the council ensures that robust monitoring mechanisms are established.
65. Paragraph 35 describes how the contract will be managed and monitored with regard to cost, programming and quality throughout the life of the contract.

Director of Law and Democracy

- 66. This report seeks the approval of the strategic director of children's and adults' services to the award of the contracts for the Belham Primary School as further detailed in paragraphs 1 -3.
- 67. As the contracts relate to construction and are over the relevant EU threshold, they are subject to the full application of the EU procurement regulations. However the IESE framework agreement (through which this appointment has been procured) was set up following an EU compliant tendering process, and therefore tendering through this framework satisfies those EU requirements. Morgan Sindall have already been appointed for pre-construction services and enabling works following a mini-competition in line with the IESE framework arrangements. When using the 2 stage procurement approach, there is an expectation that the chosen contractor for pre-construction services will be appointed for the main works. However, this remains subject to value for money being achieved. These awards are therefore subject to a number of conditions being met which are noted in paragraph 1.
- 68. Contract Standing Order 2.3 requires that no steps may be taken to award a contract unless the expenditure involved has been included in approved estimates, or otherwise approved by the council. The closed version of this report confirms the resource implications for this appointment, and award is subject to confirmation of the EFA contribution.
- 69. The strategic director will be aware of the public sector Equality duty (PSED) under the Equality Act 2010, and when making decisions to have regard to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct, and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion, religion or belief, sex and sexual orientation. The duty also applies to marriage and civil partnership but only in relation to the elimination of discrimination. The strategic director is referred to the community impact statement at paragraphs 41-42 setting out the consideration that has been given to equalities issues which should be considered when agreeing these awards.

FOR DELEGATED APPROVAL

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  D. QUAKE-FITZROY Date..... 22/12/15

Designation STRATEGIC DIRECTOR

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Listed Building Consent Application: Strip Out Scope of Works Report	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Rebecca McTier – 020 7525 4808
Cabinet report of 16th July 2013 – Primary Investment Strategy	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Rebecca McTier – 02 7525 4808
Cabinet Report of 22nd July 2014: Gateway 1 Procurement Strategy Approval Appointment of Contractors for Primary Expansion Programme	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Rebecca McTier – 020 7525 4808
Cabinet Report of 17 th November 2014 : Gateway 2: Appointment of Contractors for Primary Expansion Programme for Pre-Construction Services	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Rebecca McTier – 020 7525 4808

APPENDICES

Appendices
None

AUDIT TRAIL

Lead Officer	Bruce Glockling, Head of Regeneration – Capital Works	
Report Author	Rebecca McTier	
Version	Final	
Dated	7 December 2015	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Head of Procurement	Yes	Yes
Cabinet Member	No	No
Contract Review Boards		
Departmental Contract Review Board	Yes	No
Corporate Contract Review Board	Yes	No
Date final report sent to Constitutional Team		8 December 2015

BACKGROUND DOCUMENT – CONTRACT REGISTER UPDATE - GATEWAY 2

Contract Name	Gateway 2: Contract Award Approval for the Design and Build of the Belham Primary School
Contract Description	To award a contract to Morgan Sindall plc, in the sum of £[x], for the Design and Build of Belham Primary School
Contract Type	Design and Build
Lead Contract Officer (name)	Bruce Glockling
Lead Contract Officer (phone number)	020 7525 0138
Department	DCE
Division	Regeneration
Procurement Route	iESE Framework
EU CPV Code (if appropriate)	
Departmental/Corporate	Departmental
Fixed Price or Call Off	Fixed Price
Supplier(s) Name(s)	Morgan Sindall pics
Contract Total Value	£
Contract Annual Value	£
Contract Start Date	
Initial Term End Date	
No. of Remaining Contract extensions	n/a
Contract Review Date	n/a
Revised End Date	n/a
SME/ VCSE (If either or both include Company Registration number and/or registered charity number)	
Comments	

London Living Wage	Yes

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