

Item No.	Classification: Open	Date: 27 July 2016	Decision Maker: Strategic Director of Children's and Adults Services
Report title:		Gateway 2: Contract Award Approval - Robert Browning Primary School Works - Main Contract	
Ward(s) or groups affected:		East Walworth	
From:		Director of Regeneration	

RECOMMENDATIONS

That the Strategic Director of Children's and Adults' Services

1. Approves the award of the main works contract for Robert Browning School, to Morgan Sindall Construction and Infrastructure Ltd ('Morgan Sindall') for the total contract value including variation costs for the enabling works, main works and a contingency sum as set out in the closed report for a period of 63 calendar weeks commencing on 21 November 2016 and completing on 26 February 2018. This is based on JCT 2011 Design and Build Contract with the council's standard amendments.
2. Approves the variation costs to the Pre-Construction Services Agreement (PCSA) contract (awarded 17 Nov 2014) which includes variation costs and a contingency sum as set out in Appendix 1 of the closed report

BACKGROUND INFORMATION

3. 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 Robert Browning School. 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.
4. On 22 July 2014 Cabinet approved the Gateway 1 procurement strategy to appoint two contractors, one for Package A and one for Package B, using the IESE Framework. 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).
5. The development to allow the expansion of Robert Browning School falls within Package B. The development is on the site of the existing school building.

6. On 17 November 2014 the Strategic Director of Children’s and Adults Services approved the appointment of Morgan Sindall 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. Whilst Morgan Sindall were engaged in the delivery of pre-construction services the following variations were required:
 - a) A number of surveys to minimise the risk profile of the project and to sharpen their logistic plans, namely M&E surveys and swept path analysis;
 - b) Appointment of a consultant for furniture, fittings and equipment (FFE);
 - c) Engagement with statutory authorities to place orders for long lead-in service diversions, and disconnections; and
 - d) Draw-down design fees from the Main Works to complete construction level drawings for the groundwork’s package and protect the programme.

7. An itemised breakdown of variations to the PCSA package in the total sum included in Appendix 1 of the closed version of this report.

8. Full Planning permission was received for the new Robert Browning School development in March 2015. The construction works undertaken will allow Robert Browning School to expand from a 1.5 Form of Entry school to a 2 Forms of Entry school and includes:
 - a) The demolition of the existing two storey extension;
 - b) The erection of a new part two part three storey building with the provision of rooftop play space; and
 - c) The demolition of the school keeper’s house to provide additional play space for the nursery children.

9. The main works contract is expected to complete in December 2017. The existing Robert Browning School will accept an additional half form of entry in September 2016.

10. In order to progress with the programme for the works, an enabling works contract has been entered into, as approved by the Strategic Director of Children’s and Adults’ Services, and is summarised in Table 1.

Table 1 – Enabling Works Contracts

Contract Name	Parties	Initial Term	Approved Contract Value
Enabling Works 1 The main activities included in the enabling works package is summarised as follows:- <ul style="list-style-type: none"> • Form site access • Erection of hoardings 	London Borough of Southwark and Morgan Sindall.	95 calendar days	£422,073

Contract Name	Parties	Initial Term	Approved Contract Value
<ul style="list-style-type: none"> • Demolition of existing hall and dining area, former school keeper's house. • Asbestos removal • Site set up and preliminaries 			

11. Under the Enabling Works Agreement, Morgan Sindall had to remove a substantial amount of debris, loose fittings and heavy kitchen equipment to enable the soft-strip and demolition works to be started. Whilst undertaking the demolition of the hallway and associated area, Morgan Sindall encountered difficulties identifying and surveying the M&E services routes. These services were required to be isolated and capped off in areas to allow the demolition to progress, however, owing to the age and the nature of the service infrastructure that existed in the school, Morgan Sindall encountered significant unanticipated delay in identifying these services and were instructed to rectify them accordingly. This was made more difficult owing to the fact the school remained in operation throughout and these issues had to be rectified whilst keeping the schools systems running in the heating season. Whilst these works were being undertaken, Morgan Sindall encountered loose asbestos insulation in a service void that was buried in a slab in the hallway that was being demolished. This had to be removed under controlled conditions whilst the school was in operation. This caused the contractor additional delay.
12. Further works were also drawn forward from the Main Works Contract to protect and advance the programme, including partial removal of a canopy, stripping out a toilet block, and undertaking substantial additional re-design to value engineer the scheme. A number of temporary accommodation units have also been installed at the school to enable the works to progress and the school to grant possession of certain areas to the contractor. This has included temporary kitchen accommodation, temporary toilet blocks as well as portable cabins for staff rooms and administration, ensuring that classroom/teaching space is made available throughout the school as a priority.
13. An itemised breakdown of variations to the enabling works package in the total sum included in Appendix 1 of the closed version of this report. The cost of the enabling works, including these variations, is included in the overall contract sum given in paragraph 1 of the closed version of this report.

Procurement project plan (Key Decision)

14. The timetable of the procurement process for Robert Browning School is set out in the table below.

Procurement project plan

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	June 2016

Activity	Completed by/Complete by:
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: Award of Contract for Enabling Works	18 June 2015
CAB Review Gateway 2:	27 July 2016
Approval of Gateway 2: Contract Award Report	27 July 2016
Notification of forthcoming decision – Five clear working days	28 July 2016
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	8-12 August 2016
Finalisation of contract terms	August 2016
Contract award	15 August 2016
Add to Contract Register and publish Contract Award Notice on Contracts Finder	15 August 2016
Contract start	21 November 2016
Contract date for completion	26 February 2018

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

15. This procurement will lead to the permanent expansion of Robert Browning School from one and a half forms to two forms of entry. The works include the demolition of the existing two storey extension and the erection of a new part two part three storey building with the provision of rooftop play space. The school keeper's house is also to be demolished to provide additional play space for the nursery children.
16. The project will provide a high quality learning and teaching environment for the staff and pupils.

Key/Non Key decisions

17. This report is for a key decision.

Policy implications

18. The expansion of Robert Browning 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. There is a demand for primary school places in the south of the Borough, which the expansion of Robert Browning School forms part of the Borough wide strategy to deliver school places through the Primary Investment Strategy.

Tender process

19. Morgan Sindall was appointed by way of a mini-competition, in line with the procedure prescribed by the iESE framework arrangements.

20. The procurement 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; and
- 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.

21. 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. This report deals with the appointment of Morgan Sindall for the main contract works.

22. 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.

23. 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 in the form of Employer's Requirements.

24. 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.

25. Morgan Sindall provided a detailed scope and cost breakdown for the main works in May 2016. This has been 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

26. The submission from Morgan Sindall has been reviewed by the Capital Works team, the council's external legal advisor and external cost consultant, against the council's Employer's Requirements as set out in the contract documents in order to ensure that it meets these and provides value for money. The following key requirements have been met:

- **Confirmation from the council's Cost Consultant that the project represents value for money** - The council's cost consultant has raised clarifications regarding the tender submission which have been worked through with Morgan Sindall. The council's external cost consultant has also reviewed comparative data with other providers, to ensure that the submitted rates are on market and are justified. The report on the final submission by the consultant quantity surveyor is included in Appendix 2 of the closed version of this report, for information.
- **The submission from Morgan Sindall satisfying the council's requirements** - The Employer's Requirements (ER's) form a key document to be included in the contract, and the contractor's proposals respond to these requirements to ensure that they are met.

Plans for the transition from the old to the new contract

27. Not applicable

Plans for monitoring and management of the contract

28. The project client, including the management and administration of the consultant and contractor appointments, will be run and resourced through the Regeneration - Capital Works team. MACE will act as the Employers Agent on day to day issues with implementing the contract and reporting on the contractor's performance to 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	The project team has ensured that the Contractor plans to – (1) deploy adequate resources and is willing to supplement additional resources to the project, if required. (2) 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. to provide a parent company guarantee as a condition of contract. The Council shall closely monitor performance of firm once appointed.
3.	Construction delays on site due to: <ul style="list-style-type: none"> ● Hidden obstructions below ground; and ● 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.
4.	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 contractor, prior to commencement of the works. Allow appropriate contingency provision in the programme to

	RISK	RISK LEVEL	MITIGATION ACTION
			cover possible loss and expense claims arising from delay and disruption of the works. Include Liquidated Damages for non-completion of contract by the contractor.
5.	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.
6.	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.
7.	Delay to final agreement of contractor's proposals and contract documents, leading to a delay in contract award.	Medium	On going monitoring and forward programming to ensure close can be achieved.
8.	Delay to programme such that the building cannot be occupied in September 2017.	Low	On going monitoring and forward programming to ensure works progress to programme. Provision of temporary classrooms on main school site to provide accommodation for additional pupils.

Community impact statement

29. 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.

Economic Considerations

30. Morgan Sindall. will be expected to deliver direct benefits to the local community and local residents through some or all of the following possible means:

- a) Supply chain and procurement with local businesses;
 - b) 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;
 - c) A commitment to construction apprenticeships in proportion to the size and scale of the development as agreed in the Partnering Agreement; and
 - d) Corporate social responsibility and sustainability.
31. 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

32. 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. 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.
33. Under promise 8 Education, employment and training of the Fairer Future Promises, the council has made a commitment to create 2,000 new apprenticeships by 2018. Taking in to account the value of this contract, the council will be seeking six apprenticeship places from Morgan Sindall throughout the term of this contract. These will be included within the contractual obligations and will be monitored in accordance with council policy.
34. 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.
35. 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.

36. The contractor made provisions to address Southwark council's equalities obligation during the construction phase. The contractor has reviewed all safety aspects of site management including logistics of deliveries and site traffic. Provisions have been made to ensure that the impact of the contractor's construction phase on vulnerable people by way of age and mobility will be catered for. The site has slight impact on the existing pavement on one boundary of the school and East Street market. The contractor has agreed to provide a permanent site marshals to ensure all deliveries are managed safely and that the public have dedicated marshals during site deliveries to reduce any risk to the public, especially more vulnerable members of the public, during the construction phase.
37. As part of the procurement process and in line with recently introduced legislation the council now requires tendering firms and companies to confirm that they have not engaged in blacklisting (meaning the systematic compilation of information on individual trade unionists and their use by employers and recruiters to discriminate against those individuals because of their trade union membership or because of their involvement in trade union activity). However, it should be noted that the procurement of the iESE framework pre-dates the introduction of the legislation and therefore the requirement had not been included at the pre-qualification stage blacklisting

Environmental Considerations

38. The completion of this procurement will create new accommodation 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.
39. The scheme will be achieving a BREEAM rating of Very Good.

Market considerations

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

Staffing implications

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

Financial implications

42. This report is seeking in paragraph 1, approval from the Strategic Director of Children's and Adults' Services to award the contract for the main contract works including the enabling works, for Robert Browning School, to Morgan Sindall at a total cost given in the closed version of this report.
43. The refurbishment elements in the existing building are to be undertaken by other contractors and will be subject to separate Gateway Reports.
44. A contingency sum, disclosed in the closed version of this report, has been allowed for additional unforeseeable works costs at Robert Browning School which is equivalent to 3.5% of total works cost, including the PCSA.

45. A breakdown of total works costs, including variations, being provided by Morgan Sindall, is given in Appendix 1 of the closed version of this report.
46. The construction cost for the project given in this report align with an up-to-date cost forecast for the overall programme produced for setting the budget.
47. The total estimated cost of contracts in this report can be met from existing identified resources.

Legal implications

48. 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.
49. Please see the legal concurrent.

Consultation

50. The proposals have been subject to the decision making arrangements of the council's planning process, including consultation with relevant statutory consultees.
51. The head teacher and governors of Robert Browning School has been involved in the design development process.
52. 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

53. The comments from the Strategic Director of Finance and Governance are shown in the closed version of this report.

Head of Procurement

54. This report seeks approval for the award of the main works contract for Robert Browning School, to Morgan Sindall Construction and Infrastructure Ltd for a total contract value including variations to the enabling works, the main works and the provision of a contingency sum for a contract period of 63 calendar weeks, commencing on 21 November 2016 and completing on 26 February 2018. This is based on JCT 2011 Design and Build Contract with the council's standard amendments.
55. This report also seeks approval for a variation to the existing Pre-Construction Services Agreement (PCSA) contract.
56. This procurement was the second part of the award of the contract following the pre-construction services and enabling works on the project as a result of a mini-

competition run through the iESE construction and management framework in line with the EU Regulations and the council's Contract Standing Orders.

- 57. Morgan Sindell's final cost proposal was reviewed against comparative market data and has assured the council that it achieves value for money.
- 58. The report confirms the monitoring and management arrangements that will be in place during the life of the contract including how apprentices taken on by the contractor as a result of this contract will receive the necessary skills training.

Director of Law and Democracy

- 59. This report seeks approval of the award of a design and build contract to Morgan Sindall Construction and Infrastructure Ltd ("Morgan Sindall") in relation to the main works at Robert Browning School.
- 60. On the basis of the nature and value of the contract its procurement has been subject to the application of the Public Contracts Regulations 2015 ("the EU Regs"). The report advises that Morgan Sindall had been appointed under the iESE construction and management framework which had been procured in line with the EU Regs and that the proposed contract award forms part of the second stage of a two-stage process prescribed under the terms of that framework. As noted in the Gateway 1 report the procurement process is also in line with the requirements of the council's Contract Standing Orders ("CSOs").
- 61. The report further advises that the proposed contract award is consistent with the council's various statutory duties and powers and with corporate policy. Paragraph 5 notes that the decisions to approve the award of this and other contracts associated with the iESE packages had been delegated previously by cabinet to the Strategic Director of Children's and Adults Services.
- 62. CSOs provide that no contract may be awarded unless the expenditure has been included in approved revenue or capital estimates, or has been otherwise approved by or on behalf of the council. The financial implications section of this report advises how this requirement is to be satisfied

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 Date.....

Designation

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet report of 16 July 2013 – Primary Investment Strategy	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Rebecca McTier – 02 7525 4808
Cabinet Report of 22 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 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
Delegated report of 18 June 2015 Gateway 2 – Award of Contract: Enabling Works 1	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Susan Fuller – 0207 525 5037
Delegated report of 4 February 2016: Gateway 2 – Award of Contract: Enabling Works 2	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Susan Fuller – 0207 525 5037

APPENDICES

Appendices
None.

AUDIT TRAIL

Lead Officer	Bruce Glockling, Head of Regeneration - Capital Works and Development	
Report Author	Susan Fuller, project manager	
Version	Final	
Dated	27 July 2016	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	No
Corporate Contract Review Board	N/A	N/A
Date final report sent to Constitutional Team		