

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 28 December 2016	<b>Decision Maker:</b> Strategic Director of Children's and Adults Services
<b>Report title:</b>		Gateway 2: Contract Award Approval:- Charles Dickens Primary School Works – Main Contract	
<b>Ward(s) or groups affected:</b>		Cathedral	
<b>From:</b>		Director of Regeneration	

### RECOMMENDATIONS

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

1. Approves the award of the main works contract at Charles Dickens Primary School, to Morgan Sindall Construction and Infrastructure Ltd. ('Morgan Sindall') based on JCT 2011 Design and Build Contract with the council's standard amendments for a period of 53 calendar weeks commencing on 16<sup>th</sup> January 2017 and completing on 24 January 2018, for a total contract value of £4,076,379.
2. Approves a contingency sum for the main contract as set out in the closed report that fits within the total project budget.

### 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 Charles Dickens Primary 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. It was envisaged that the contractor for each Package would carry out pre-construction 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 expansion of Charles Dickens School falls within Package B.

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.

6. Full Planning permission was received for the Charles Dickens Primary School development in February 2015. The construction works undertaken will allow Charles Dickens Primary School to expand from a 1.5 Forms of Entry school to a 2 Forms of Entry school. The major works includes:

- Erection of a single storey building for the provision of 2 year olds;
- Redesign of the existing school entrance, reception and administrative areas and a new building to accommodate the dining and sports hall with roof play together; and
- The refurbishment of the existing halls to form new classrooms.

7. In order to progress with the programme for the works a number of enabling works contracts have been entered into, as approved by the Strategic Director Children's and Adults' Services, and are summarised in Table 1 below.

**Table 1 – Enabling Works Contracts**

<b>Contract Name</b>	<b>Parties</b>	<b>Initial Term</b>	<b>Approved Contract Value</b>
<b>Enabling Works 1</b> <ul style="list-style-type: none"> <li>• Form site access</li> <li>• Erection of hoardings</li> <li>• Demolition of former school keeper's house.</li> <li>• Asbestos removal</li> <li>• Site set up and preliminaries</li> </ul>	London Borough of Southwark and Morgan Sindall plc.	7 calendar weeks	£308,600
<b>Enabling Works 2</b> <ul style="list-style-type: none"> <li>• Traffic Management Plan</li> <li>• Groundworks – reduce level dig, piling mat and attendances</li> <li>• Piling works.</li> <li>• Site preliminaries</li> </ul>	London Borough of Southwark and Morgan Sindall plc.	7 calendar weeks	£487,529
<b>Enabling Works 3</b> <ul style="list-style-type: none"> <li>• Groundworks – reduce level dig, piling mat and attendances</li> <li>• Site preliminaries</li> </ul>	London Borough of Southwark and Morgan Sindall plc.	7 calendar weeks and 4 days	£438,080

### Procurement project plan (Key Decision)

8. The timetable of the procurement process for Charles Dickens Primary School is set out in the table below.

### Procurement project plan (Key Decision)

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	Jun 2016
Approval of Gateway 1 – Procurement Strategy Approval: Appointment of Contractors for Primary Expansion Programme	22 Jul 2014
Approval of Gateway 2 (Pre-Construction Services): Contract Award Approval	17 Nov 2014
Contract Award (Pre-Construction Services)	26 Nov 2014
Approval of Gateway 2: Award of Contract for Enabling Works	8 Jun 2015
Approval of Gateway 2: Award of Contract for Enabling Works 2	8 Oct 2015
Approval of Gateway 2: Award of Contract for Enabling Works 3	4 Feb 2016
CAB Review Gateway 2:	21 Dec 2016
Notification of forthcoming decision – Five clear working days	22 Dec 2016– 4 <sup>th</sup> Jan 2017
Approval of Gateway 2: Contract Award Report	4 <sup>th</sup> Jan 2017
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	4 <sup>th</sup> Jan -12 Jan 2017
Finalisation of contract terms	Sep 2016
Contract award	13 Jan 2017
Add to Contract Register and publish Contract Award Notice on Contracts Finder	14 Jan 2017
Contract start	16 Jan 2017
Contract date for completion	24 Jan 2018

### KEY ISSUES FOR CONSIDERATION

#### Description of procurement outcomes

9. This procurement will lead to the permanent expansion of Charles Dickens Primary School from 1.5 forms of entry to 2 forms of entry. The major works consist of the erection of a single storey building for the provision of 2 year olds, the redesign of the existing school entrance, reception and administrative areas and a new building to accommodate the dining and sports hall with roof play together with the refurbishment of the existing halls to new classrooms
10. The project will provide high quality learning and teaching environments for the staff and students.

### Key/Non Key decisions

11. This report is for a key decision.

### Policy implications

12. The expansion of Charles Dickens 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. There is a demand for primary school places in the north of the Borough, which the expansion of Charles Dickens Primary School forms part of the Borough wide strategy to deliver school places through the Primary Investment Strategy.

### Tender process

13. Morgan Sindall was appointed by way of a mini-competition, in line with the procedure prescribed by the iESE framework arrangements.
14. 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 (the variation to which is included in 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.
15. 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 report detailed the awards for Enabling Works 1, Enabling Works 2 and Enabling Works 3 as outlined in Table 1.
  16. 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.

17. 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.
18. Following the design development and packaging of the scheme proposals, the contractor submitted competitively tendered prices for the second stage tender which when combined with the PCSA, which was previously tendered and approved in a Gateway 2 dated 17 Nov 2014.
19. Morgan Sindall provided their final proposal, including a detailed scope and cost breakdown for the main works, in June 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**

20. Morgan Sindall's proposal 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 the approval criteria in terms of 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 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.
21. The approval to enter into the contract with Morgan Sindall plc for the Design and Build of Charles Dickens School is recommended.

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

22. Not applicable

#### **Plans for monitoring and management of the contract**

23. 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 & management arrangements to deliver the main works project.	Low	Ensure prior to appointment 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 plc. 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"> <li>• Hidden obstructions below ground; and</li> <li>• Contamination below ground.</li> </ul>	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 cover possible loss and expense claims arising

RISK		RISK LEVEL	MITIGATION ACTION
			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 completed in Jan. 2018.	Low	On going monitoring and forward programming to ensure works progress to programme. Completion of refurbishment works in summer 2016 to create additional teaching spaces.

#### Community impact statement

24. 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.

#### Economic Considerations

25. Morgan Sindall plc. will be expected to deliver direct benefits to the local community and local residents 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.

26. Morgan Sindall has declared the following statement: that they are 'committed to creating a sustainable, skilled workforce to achieve our corporate vision. Apprenticeships help to ensure we have the right skills for the future, and are vital not only to the success of our business but also for the wider construction industry'.

### **Social Considerations**

27. 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.
28. 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.
29. 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, victimization 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.
30. 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.
31. Morgan Sindall has made provisions to address Southwark Council's equalities obligation during the construction phase and has also 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 only has a slight impact on the existing pavement on one of the school's boundaries and Morgan Sindall has agreed to provide permanent site marshals to ensure all deliveries are managed safely and that the risk to the public, especially more vulnerable members, is reduced during the construction phase.



32. 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). As the procurement of the iESE framework pre-dates the introduction of this legislation, confirmation was not sought during the pre-qualification stage. However, in reviewing their record the council is satisfied Morgan Sindall has not engaged in blacklisting practices.

#### **Environmental Considerations**

33. 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.
34. The scheme will target a BREEAM rating of Very Good.

#### **Market considerations**

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

#### **Staffing implications**

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

#### **Financial implications**

37. 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 for Charles Dickens Primary School, to Morgan Sindall at a total cost of £4,076,379 within the total project budget of £8,963,891.
38. The refurbishment elements in the existing building are to be undertaken by other contractors and are subject to separate gateway reports, for which budget provision has been allowed.
39. A contingency sum, disclosed in the closed version of this report, has been allowed for additional unforeseeable costs for the main works at Charles Dickens School.
40. 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.
41. Non-works costs relating to the Charles Dickens School expansion project have been assessed in the sum of £583,130. This sum includes estimated capitalised salaries in the sum given in the closed version of this report, which equates to approximately 1.5% of works and PCSA costs. ICT costs relating to the Charles Dickens School expansion project have been assessed in the sum of £31,572. Both non-works and ICT costs also align with an up-to-date cost forecast for the overall

programme produced for setting the budget and will be the subject of a future gateway report.

42. The total estimated cost of the contracts in this report can be met from existing identified resources, as detailed in the closed report.

#### **Legal implications**

43. 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.
44. Please see the legal concurrent.

#### **Consultation**

45. The proposals have been subject to the decision making arrangements of the council's planning process, including consultation with relevant statutory consultees.
46. The head teacher and governors of Charles Dickens Primary School has been involved in the design development process.
47. 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**

48. Comments are set out in the closed report.

##### **Head of Procurement**

49. This report seeks approval for the award of the main works contract for Charles Dickens School, to Morgan Sindall Construction and Infrastructure Ltd for a total contract value of £4,076,379 for a contract period of 53 calendar weeks, commencing on 16<sup>th</sup> January 2017 and completing on 24<sup>th</sup> January 2018. This is based on JCT 2011 Design and Build Contract with the council's standard amendments and all requirements for the main works, including a contingency sum.
50. 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.
51. Morgan Sindall's final cost proposal has been reviewed against comparative market data and similar school expansion projects, and the council's cost consultants have confirmed that the project represents value for money.
52. 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**

- 53. This report seeks approval of the award of a design and build contract to Morgan Sindall in relation to the expansion of Charles Dickens Primary School.
- 54. On the basis of the nature 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 Construction (UK) Ltd 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").
- 55. 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 4 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.
- 56. 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 concurrent report for the Strategic Director of Finance and Governance in the closed report advises how this requirement is to be satisfied.

**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 QUORKE-THORNTON ..... *[Signature]* Date...12...01...17

Designation STRATEGIC DIRECTOR .....

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

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

<b>1. DECISION(S)</b>
As per report recommendations

<b>2. REASONS FOR DECISION</b>
As set out in report

<b>3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION</b>
None other than those set out in report

<b>4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION (IF APPLICABLE)*</b>
N/A

\*Contract standing order 4.5.1 states that for contracts with an Estimated Contract Value of over £100,000, the lead contract officer (LCO) must consult with the relevant cabinet member before a procurement strategy is implemented.

<b>5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST</b>
<i>If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.</i>
N/A

**6. DECLARATION ON CONFLICTS OF INTERESTS**

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

~~I declare that I was informed of the conflicts of interests set out in Part B4.\*~~

(\* - Please delete as appropriate)

*Janis* 12.01.19

**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 Enabling Works 1	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Susan Fuller – 0207 525 5037
Delegated report of 8 October 2015: Gateway 2 – award of contract Enabling Works 2	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 3	Capital Works, Regeneration, 160 Tooley Street, SE1 2QH	Susan Fuller – 0207 525 5037

**APPENDICES**

No	Title
None	

## AUDIT TRAIL

<b>Lead Officer</b>	Bruce Glockling, Head of Regeneration – Capital Works & Development	
<b>Report Author</b>	Alfred Akpo-Teye, Project Manager	
<b>Version</b>	Final	
<b>Dated</b>	21 December 2016	
<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>
Director of Law & Democracy	Yes	Yes
Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Cabinet Member	N/A	N/A
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	No
Corporate Contract Review Board	N/A	N/A
<b>Date final report sent to Constitutional Team</b>		28 December 2016