

<b>Item No.</b> 14.	<b>Classification:</b> Open	<b>Date:</b> 13 September 2017	<b>Meeting Name:</b> Audit, Governance and Standards Committee
<b>Report title:</b>		Report on retrospective contract-related decision	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Chief Executive	

## RECOMMENDATIONS

1. That the audit, governance and standards committee note the retrospective contract decision detailed in the report.
2. That the audit, governance and standards committee note the actions taken by the strategic director of children's and adult services and the director of regeneration as set out in paragraph 19 to ensure that the risk of future retrospective contract decisions is minimised for the future.
3. That the audit, governance and standards committee consider whether it would wish to make recommendations to help improve future decision-making.

## BACKGROUND INFORMATION

4. Where an approval to a contract decision has been sought retrospectively and has an estimated value of more than £100,000, there is a requirement under contract standing order 6.7 to submit a report to the audit, governance and standards committee. The report should set out the circumstances and manner in which the decision was taken, for the purpose of obtaining guidance to inform future decision making.
5. This requirement applies to decisions relating to the approval of a procurement strategy (Gateway 1 or GW1), decisions relating to the approval of a contract award (Gateway 2 or GW2) and decisions relating to the approval of a variation or extension to a contract (Gateway 3 or GW3) decisions.
6. On 22 February 2017, the strategic director of children's and adults' services approved the procurement strategy for construction works at a number of council-managed primary schools, including for early years landscaped playground works at Ivydale Primary School, comprising the invitation of competitive tenders from five contractors selected from the council's Approved List, in accordance with Contract Standing Order (CSO) 5.3 (July 2016 edition). Approval was also given to the strategy for procuring single-point professional services from Faithful and Gould under Option G of the SCAPE multi-disciplinary professional services framework.
7. The estimated value of the early years landscaped playground works at Ivydale Primary School was in the order of £340,000.
8. On 5 April 2017, the strategic director of children's and adults' services approved the appointment of Faithful and Gould as professional services provider.

9. A change of tendering strategy for works emerged from discussions with the consultant team who were appointed following the GW2 approval on 5 April 2017. A revised strategy of procuring the landscaped playground works through a single supplier negotiation from the council's approved list of contractors was made for the following reasons:
- Iterative discussions were required at an early stage on the specification of materials, components and lead-in periods to give certainty of timescale for project delivery
  - Identification of a single supplier enabled early consultation with the school on the timing and sequencing of works, allowing early communications and management of the school community's expectations
  - Single supplier negotiation provides the fastest route to site so that the most noisy and disruptive works can be undertaken over the summer holiday period, causing minimum adverse impact on school operations
10. Blakedown Landscapes (SE) Ltd was identified as the preferred landscape contractor from the council's approved list following consultation with the council's Parks Service and Faithful and Gould's consultant landscape architect. Significant factors for selection were Blakedown's safe trading limit, their approved list classification under both hard and soft landscaping, their capacity in August and September 2017 to undertake the work and their recent track record with the council on comparable work, which includes successfully bidding, winning in competition and delivering a number of hard/soft landscape contracts involving play areas, including Nelson Square Park (contract value: £540,000), St Mary's Churchyard phases 2 and 3 (contract value: £600,000) and Camberwell Green (contract value: £780,000). Blakedown also had previous experience of working in and around schools in other London boroughs.
11. At the Children's and Adults' Board (CAB) meeting on 14 June 2017, the strategic director of children's and adults' services approved exemption under CSO 6.8 from the tendering requirements of CSO 4.3 to enable a revised strategy for procuring the early years landscaped playground works at Ivydale Primary School from a single provider, Blakedown Landscapes (SE) Ltd ['Blakedown'] selected from the council's Approved List. Approval was also given to the appointment of Blakedown as main contractor for the early years landscaped playground works at Ivydale Primary School for a contract period of 10 calendar weeks commencing on 24 July 2017, subject to the final negotiated tender:
- not exceeding the quantity surveyor's cost estimate in the sum of £322,500;
  - being endorsed in the quantity surveyor's tender report as representing value for money; and
  - final sign-off by the director of education in consultation with the departmental finance officer.
12. Tender documents were issued to Blakedown on Tuesday 13 June 2017. The following timescale was indicated in the tender documentation:
- Return of tender 21 June 2017

- Construction start date 24 July 2017
  - Construction Completion 29 September 2017
13. Blakedown submitted their tender on 21 June 2017 and, following a detailed evaluation of the tender submission by the council's consultant team, a recommendation for acceptance was presented to the director of education on 6 July 2017, who confirmed her final sign-off on the same day. Works commenced on site at the start of the school summer holiday, on Monday 24 July, in accordance with the project programme.
  14. The referral of this procurement to the audit, governance and standards Committee is required because the revised procurement strategy was approved retrospectively, that is, the strategy had been initiated prior to it being formally agreed on 14 June 2017.

### **KEY ISSUES FOR CONSIDERATION**

15. The change in the tendering strategy for landscape works at Ivydale Primary School emerged from discussions on the design/specification and programme for the project with the professional services team, following their appointment in April 2017. Blakedown were identified as a potential single provider and exploratory discussions took place with them, without entering into any commitment, in May 2017. The development of the landscape design and specification proposals took place in April and May in consultation with the school and with the benefit of Blakedown's advice on buildability and delivery issues.
16. A full set of tender documents was produced in early June 2017 for issue to Blakedown on 13 June 2017. No contract had been entered into or commitment made to Blakedown at this stage, and no costs were incurred by the council prior to the approval of the revised works procurement strategy at the children's and adults' board meeting held on 14 June 2017. A letter of award dated 7 July 2017 was ultimately sent to Blakedown following receipt of formal approval to appoint.
17. CSO 6.7.1 states that "In the event of a contract having been entered into other than in compliance with these CSOs, it may be necessary to seek approvals retrospectively..." Although no contract had been entered into without authorisation, CSO 6.7.1 means that the commencement of the procurement strategy can only take place subsequent to the formal gateway 1 approval. The wording of CSO 6.7.1 is currently under review to provide greater clarity.
18. A contributory factor in this matter was the short timescale for delivering the project, which needed to commence on site at the beginning of the school summer holiday so that the new early years outdoor play facility would be available for use in the 2017/18 academic year. Implementation of the 2017/18 primary schools annual programme commenced in earnest in January 2017 which, in the case of the Ivydale project, resulted in a challenging programme for the design, procurement and approvals processes. An earlier start would have enabled a more relaxed programme to be adopted, with more time for sequential decision-making.
19. The main lesson learned from this is that the implementation of the annual programme of works to primary schools should start at an earlier stage so that more time is available for sequential decision-making. With this in mind, a start

on preparations for the 2018/19 programme is scheduled for September 2017. It would have been advisable to seek the strategic director's views as soon as a change in direction appeared necessary, i.e. in mid-May.

### **Summary**

20. Officers in the legal and procurement sections have discussed and agreed the conclusions set out above.

### **Policy implications**

21. There are no policy implications arising from this report.

### **Community Impact Statement**

22. This report is not considered to contain proposals that would have a significant impact on any particular community or group.

### **Resource implications**

23. There are no direct resource implications in this report.

### **Consultation**

24. There has been no consultation on this report.

## **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Constitution – Contract Standing Orders July 2017	Constitutional Team, Tooley Street, Second Floor	Constitutional Team 020 7525 7055

## **APPENDICES**

<b>No.</b>	<b>Title</b>
None	

## AUDIT TRAIL

<b>Lead Officer</b>	Bruce Glockling, Head of Regeneration (Capital Works)	
<b>Report Author</b>	Andy Brown, Programme Manager Capital Development, Chief Executive's Department	
<b>Version</b>	Final	
<b>Dated</b>	30 August 2017	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Corporate Contract Review Board	Yes	Yes
Director of Law and Democracy	N/A	N/A
Strategic Director of Finance and Governance	N/A	N/A
<b>Cabinet Member</b>	<b>No</b>	<b>No</b>
<b>Date final report sent to Constitutional Team</b>		31 August 2017