

EAST AYRSHIRE COUNCIL

CABINET – 23 SEPTEMBER 2015

DESIGN DEVELOPMENT AND PROCUREMENT STRATEGY FOR KNOCKROON LEARNING AND ENTERPRISE CAMPUS

Report by the Depute Chief Executive: Safer Communities

PURPOSE OF REPORT

1. The purpose of this report is to advise Cabinet of the various design development and procurement strategies that can be adopted in respect of the proposed Knockroon Learning and Enterprise Campus project, and to recommend a preferred option based on an assessment of the relative merits of each.

BACKGROUND

2. Cabinet on 10 December 2014 approved for forward planning purposes a budget allocation of £63.500m in respect of proposals to merge Cumnock and Auchinleck Academies, with Greenmill and Barshare Primary Schools and Early Childhood Centres and Hillside School on to a new Learning and Enterprise Campus in the Knockroon / Broomfield area. The proposals also included the possibility of Further and / or Higher education together with Business Enterprise provision.
3. In accordance with statutory requirements, Cabinet on 28 January 2015 agreed to issue for formal consultation, three proposal documents which provided for separate consultations on the proposed closure and co-location of Hillside School either with a new Primary School, Supported Learning Centre and Early Childhood Centre, or new Secondary School, Primary School, Early Childhood Centre and Supported Learning Centre on the Broomfield Playingfields. These proposals were subject to public consultation which commenced on 12 February 2015 and ended on 27 March 2015. A number of public meetings were also held to discuss the proposals with all directly and indirectly affected schools.
4. Cabinet on 17 June 2015 subsequently approved the proposal to close and co-locate Cumnock and Auchinleck Academies, Greenmill and Barshare Primary Schools and Early Childhood Centres and Hillside School on to a new Learning and Enterprise Campus at the Broomfield Playingfields. This report was referred to the Governance and Scrutiny Committee on the 18 June 2015 who had no further views / recommendations to make with regards to the proposals.
5. In accordance with the Schools (Consultation) (Scotland) Act 2010, the proposals were referred to Scottish Ministers. Notification was subsequently received on 7 August 2015 that Scottish Ministers were satisfied the proposals did not require to be called-in. Accordingly, the Council can now proceed to the design, construction and delivery phases, subject to receiving the appropriate planning approval.

PROCUREMENT REFORM ACT AND REVIEW OF PROCUREMENT IN CONSTRUCTION

6. The Procurement Reform (Scotland) Act published in June 2014 places a statutory framework around the model of Scottish public sector procurement activity. The Act aims to increase transparency around procurement procedures and the award of public contracts, with particular emphasis on delivering social and environmental improvements including community benefits, supporting innovation and promoting public procurement processes and systems which are transparent, fair and business-friendly.
7. In response to the requirements of the Act, the Council has committed to preparing individual commodity strategies for each instance of major procurement activity. The main objectives of the commodity strategy are to ensure best value in terms of price, quality and service, and delivering benefits in terms sustainability and community engagement through a thorough assessment of procurement routes.
8. In addition to the Procurement Reform Act, the Scottish Government published a separate Review of Scottish Public Sector Procurement in Construction in October 2013. The review set out to make recommendations to support improvements in efficiency, delivery and sustainability of construction procurement across the Scottish public sector. Any assessment of options relating to the Knockroon Learning and Enterprise Centre therefore also reflects on the guiding principles and actions as set out within this review, with particular emphasis on procuring the most efficient and effective outcomes for the project based on best practice.

DESIGN DEVELOPMENT

Design Principles

9. The Scottish Government issued a policy statement on architecture and place for Scotland "Creating Places" in June 2013. The policy statement sets out the relationship between architecture and place, and recognises the significant role the public sector plays in embedding the principles of good building design and the impact this has on people and communities.
10. The design of the Knockroon Learning and Enterprise Campus is an integral part of the process and will therefore be intrinsically linked to all decisions that are made in terms of procurement and construction, and should be the collective responsibility of everyone involved in the commissioning and delivery of the new facility.
11. It is acknowledged that the new campus will become an important hub of activity for the community, and its success will be linked to connecting with local people at the earliest stages of design development; harnessing this wealth of skills and knowledge. Meaningful participation enables places to endure, fostering positive interaction and activity and ensuring that new facilities meet the needs and future aspirations of the people that will use them.

12. The design of the Knockroon Learning and Enterprise Campus also needs to respond to both the natural and cultural environment within which it resides. The quality of the building and landscaping proposals are therefore crucial to delivering 21st century educational facilities and outdoor learning experiences; promoting a positive image and attracting people to visit, live and invest in the area. It is therefore considered vitally important that the design responds appropriately to the built environment and heritage of the surrounding area.
13. It is important, irrespective of the design approach, to acknowledge the financial constraints within which the Council operates and therefore the need to deliver projects within a defined cost envelope. Whilst the funding for the project is being provided in full by the Council, the budget allocation for the project has been established using Scottish Future Trusts (SFT) cost and area metrics which are predominately used on projects financed by them. Delivering projects to SFT metrics does present significant challenges, however, the data is based on robust analysis undertaken by SFT, which has been used successfully across Scotland to deliver modern, innovative education facilities. By applying the metrics appropriately this presents the Council with a great opportunity to challenge function overall and to focus on needs rather than wants.

Design-led Procurement

14. The Scottish Governments “Creating Places” policy statement advocates that design be considered at the very outset of public procurement projects, and that the public sector overall set an example by ensuring high design standards are adhered to.
15. The importance of design is also reflected within the Scottish Government Review of Public Sector Procurement in Construction; with a particular emphasis on the need for design-led procurement activity where it is recognised that a consistent focus on achieving high quality in design processes and outcomes can deliver significant benefits in terms of reduced capital costs, maintenance and lifetime running costs, increased functionality and efficiency, better environmental performance and user satisfaction overall.
16. Design-led projects can be wrongly assumed to be more costly, focussed on unnecessary quality or more complex in construction. In reality, design-led projects begin from the very outset by fully understanding the needs of users; employing innovation and careful judgement to deliver the best product within budget.
17. Design-led procurement therefore requires that proper value is given to the quality of design proposals, and that design is afforded proper consideration throughout the delivery period. Design costs, whilst a fraction of the overall projects cost, can sometimes be compromised.
18. Given the importance of the new Learning and Enterprise Centre it is considered essential that the Council invest appropriately in design in order to stimulate innovation and efficiency overall; adopting best practice as defined by the Scottish Governments Review of Public Sector Procurement in Construction.

PROJECT DELIVERY ROUTES

- 19.** The careful choice of project delivery route can help overcome many challenges. The choice of any given project delivery route therefore varies depending upon a number of important factors such as the project goals / objectives, design principles, quality criteria, time and cost constraints, approach to risk etc. In general, the expectation is for projects to be constructed at the lowest cost, to the highest quality and completed within the shortest period of time. However, it is acknowledged that these factors are not naturally compatible and elements may need to take precedent over others.
- 20.** The choice of project delivery route also depends on the proposed funding route for a particular project e.g. prudential borrowing, Non-Profit Distributing (NPD), joint venture agreements etc. On the basis that this project is to be financed in full by the Council through prudential borrowing, the project delivery routes available can be consolidated into the following basic approaches :

Design, Bid and Build

- 21.** Design, bid and build is the traditional method for project delivery where the various elements for the design and construction of a project are delivered separately. The Council can either use their own professional staff or appoint consulting architects, engineers etc to design the building and prepare tender documents.
- 22.** Tender documents are issued at the point that construction drawings and technical specification are available for a properly costed bill of quantities to be prepared. On receipt of the tender documents, the contractors bidding on the project then place bids with multiple subcontractors for sub-components of the project such as concrete work, structural steel frame, electrical systems etc. From these elements, the contractor compiles a complete tender price for submission.

Advantages	Disadvantages
Client has full control design / construction quality	Require significant client expertise and resources
Design changes easily accommodated prior to start of construction	Client at risk to contractor for design errors and related costs
Shared responsibility for project delivery	Design and construction are sequential, therefore potentially leading to longer timescales
Design is complete prior to construction award	Construction cost unknown until contract award
Construction cost is fixed at contract award	No contractor input in design and planning
Low bid cost, maximum competition	
Relative ease of implementation	

Design and Build

- 23.** Design and Build is a project delivery route used in the construction industry where the design and construction services are contracted by a single entity. Design and Build relies on a single contractor to be responsible for all aspects of the design and construction, with the aim of minimising client risk and to reduce delivery timescales by overlapping the design and construction phases.
- 24.** Critics of the design and build approach claim that design and build limits a client's involvement in the design; resulting in contractors making design decisions that maximise their profits at the expense of the quality of materials, aesthetics or layout. It is also suggested that a designer, rather than a construction professional, is a better advocate for the client or project owner and that by representing different perspectives and remaining in their separate spheres, designers and builders ultimately create better buildings.

Advantages	Disadvantages
Single entity responsible for design and construction	Minimal owner control of both design and construction quality
Construction often starts before design completion reducing project schedule	Requires a comprehensive and carefully prepared performance specification
Construction cost known and fixed during design, price certainty	Design changes after construction begins are costly
Transfer of design and construction risk from owner to the DB entity	Potentially conflicting interests
Emphasis on cost control	No party responsible to represent owner's interests
Requires less owner expertise and resources	High bid costs therefore fewer bidders

Two-Stage Design and Build

- 25.** An alternative approach to the traditional Design and Build approach is a method of project delivery where the Council appoints a design team initially to develop the design and specification, known as the Employers Requirements, on a more conceptual basis or further if required.
- 26.** The Council then tenders the Employer's Requirements, with prospective contractors who offer a lump sum to both complete the design and construct the new building. The contractor may respond to the Employer's Requirements by submitting their own alternative Contractors Proposals which the Council has to accept or confirm that their Contractor Proposals are as per the original Employers Requirements.
- 27.** At tender stage, the Council would request for continuity purposes that the original design team to novate across to the successful contractor and / or for the contractor themselves to take on responsibility for particular design portions.

Advantages	Disadvantages
Client has a level of control over the design / construction quality	Client may be at risk to contractor for design errors and related costs
Shared responsibility for project delivery, including continuity in design team input and collaboration	Design and construction are sequential, therefore potentially leading to longer timescales
Two stage process allows for overlapping of design and procurement	Potential for increased costs dependent on extent of design risk transference
Contractors bid is based on a thorough understanding of design and requirements	Quality may be compromised if Employers Requirements lack appropriate detail
Ability to exploit contractor expertise to reduce costs or improve buildability	
Low bid cost, maximum competition	

Management Contract

- 28.** A Management Contract is a procurement approach whereby buildings are constructed by a number of different works contractors who are contracted to a management contractor. The Council would initially appoint a design team to develop the design and specification, but shortly thereafter would also appoint a Management Contractor to obtain their experience to improve the cost and buildability of proposals as they being developed; as well as advising on packaging (and the risks of interfaces).
- 29.** This approach enables some works contracts to be tendered earlier than others, and sometimes, even before the design is fully completed. This can shorten the time taken to complete the project, but does mean that there will be price uncertainty until the design is complete and all contracts have been awarded. Some design changes are possible during the course of the works, however, only where these do not affect work packages that have already been awarded. This option tends to suit projects where it is impracticable to complete the design prior to commencing works on site.

Advantages	Disadvantages
Time benefits where minimal design information is available at start	No cost certainty until final works package is let.
Construction may start before design completion, reducing timescales overall	Council retains all risks associated with design if not fully co-ordinated or fails to produce information on time
Ability to exploit Management Contractor expertise to reduce costs or improve buildability	Design changes after construction begins are costly
Single point of contact for contractual and payment arrangements	Potentially conflicting interests
Quality can be controlled by the design team	

Recommended Project Delivery Route

- 30.** The traditional Design and Build approach can provide potential advantages in terms of timescales, costs and overall risk profile, however, there are concerns that this approach is inflexible in terms of design; resulting in the Council having less involvement and control as the Architectural and Engineering Teams will be fundamentally representing the interest of the contractor.
- 31.** This approach also places significant responsibility on the Council to define upfront clear and unambiguous goals, objectives and requirements for the building in terms of function, appearance, quality, materials, operation etc. This can be extremely difficult to produce accurately at the very earliest stages due to the evolving nature of a project and where open to interpretation, can lead to conflict and disagreement. This can in some cases lead to contractors exploiting the design and specification by using products that are of substandard grade to achieve basic requirements overall. There may also be implications in terms of pricing where contractors believe they are being asked to take on an unreasonably high level of risk due to a lack of design clarity or requirements at the point of tendering.
- 32.** Given the emphasis placed on design and, in particular, the linkages with the local community and connections to the surrounding built environment it is considered essential that the Council maintain control over the initial design stages; as a minimum taking responsibility to develop designs at least to a conceptual stage, including consultation and engagement with stakeholders. On this basis, it is considered that a Design and Build approach is not a suitable Project Delivery Route for the Knockroon Learning and Enterprise Campus.
- 33.** Whilst the traditional Design, Bid and Build approach does provide the Council with the level of control and influence required over design proposals, there are risks associated with this; particularly in relation to the development of construction drawings, technical specifications and bills of quantities which for complex projects such as this can introduce unnecessary risk post design completion. This approach also almost completely precludes the possibility of deriving benefits through exploiting contractor expertise through the design process to reduce costs or improve buildability. These issues are very similar for Management Contracts, particularly in relation to design risk and as such it is not recommended either of these approaches are adopted for the Knockroon Learning and Enterprise Campus project.
- 34.** It is therefore recommended that to obtain the appropriate balance in terms of controlling the design process, together with the management of risks between the Council, design team and contractor that a Two Stage Design and Build approach be adopted. In the current market and for clients in certain business sectors, Two Stage tendering is increasingly the only option to secure serious contractor interest and well-resourced project teams within a fixed price cost envelope. Two Stage tenders are a relatively attractive option to contractors, not least because resource requirements and costs of abortive tendering are reduced but also that there is early involvement in decisions regarding buildability, planning and subcontractor selection. This approach also allows the Council, the community, pupils and teaching staff to have a meaningful and genuinely collaborative relationship with the design team during the development of the proposals.

35. It is acknowledged that the Two Stage Design and Build approach is not without its risks, particularly in relation to contractor's sensitivity to design development post award, and also the potential for timescales to become protracted during the tendering, award and novation stages. However, these risks can be mitigated through proper project planning / programming to minimise conflicts which may arise, and also through the clear separation of Council and contractor responsibilities by producing thorough, unambiguous Employer Requirements pre-tender issue.

COMMODITY STRATEGY

36. As outlined in paragraph 9 above, the Procurement Reform (Scotland) Act places a responsibility on Councils to prepare individual commodity strategies for each instance of major procurement activity. The Commodity Strategy aims to develop a procurement plan which optimises the benefits that can be achieved through co-ordinated and planned procurement activity. The Commodity Strategy should therefore encourage optimum uptake of a new contract by considering the type, size and complexity of the requirement and appraising all possible procurement options; taking full account of all applicable guidance, policies and legislation.
37. Having recommended a Two Stage Design and Build approach above it is essential thereafter to consider the options available to the Council for procuring the different aspects of the project; namely appointment of the Project Design Team and selection of a Main Contractor. To assist with the assessment process, contextual information including an analysis of the construction market place and supply chain in Scotland, together with an assessment of the risks associated with construction procurement activity is available as background information and can be found on the Members Portal.
38. In addition, an exercise was also undertaken to obtain market intelligence from contractors and other construction professionals representing a number of related disciplines regarding delivery of very large complex projects such as the Knockroon Learning and Enterprise Campus to better inform the decision making process. Market intelligence took the form of interview with senior representatives from each of the organisations who have significant experience in delivering complex construction projects across the UK and Europe.

Procurement Options

39. The options available to the Council in terms of procuring both appointment of the Project Design Team and Main Contractor as part of the Two Stage Design and Build approach can be summarised as follows :
- **Open Tender** – tenders are placed in OJEU and on the Public Contract Scotland portal and are open to anyone to submit a return. Whilst open tendering offers the greatest competition and has the advantages of offering new suppliers to bid for and secure work it has been criticised for being slow and costly.

- **Restricted Tender** – prior to issuing tender documents, prospective contractors are requested to submit a Pre-Qualification Questionnaire (PQQ) which are assessed to produce a shortlist of suitable contractors who are then invited to tender. Restricted tendering is appropriate for specialist or complex projects or where only a few suitable firms may exist. Restricted tendering tends to result in better quality tender returns but can be accused of introducing bias into the tendering process.
 - **Competitive Dialogue** – a PQQ process is undertaken and then shortlisted contractors are invited to participate in a dialogue process during which any aspect of the project may be discussed and solutions developed. The Council can continue the dialogue until it identifies one or more solutions that are capable of satisfying its requirements; after which the dialogue process closes and contractors are invited to submit final tenders. The benefit of using the Competitive Dialogue process is that it allows dialogue between parties which fosters good partnership working, however, it typically takes much longer than open or restricted processes and can be expensive to implement; as such it is only applicable for particularly complex projects.
 - **Negotiated Procedure** – negotiated procedure is where the Council approaches a single supplier based on their track-record or a previous relationship and the terms of the contract are then negotiated. Negotiating with a single supplier may be appropriate for highly specialist contracts (where there may be a limited number of potential suppliers), or for extending the scope of an existing contract. However, it is uncommon for Negotiated Tender to be permitted on large public contracts due to the perceived lack of accountability.
 - **Framework Agreements** – framework agreements establish contractual terms that apply to orders made for the goods, services or works covered by the framework over the period of time it is in force. Arrangements for supply of goods, services or works can either be award by 'call-off' or through mini-competition with suppliers on the framework. The use of frameworks can speed up the procurement of works by removing the requirement to undertake lengthy OJEU processes and also provide some reassurance that suppliers have been vetted in terms of capability. However, frameworks are criticized for being 'closed systems' i.e. restricted in terms of the suppliers and may not always provide a suitable platform for delivering value for money, particularly where a mini-competition is required.
40. In addition to the procurement options noted above the hub initiative, established by the Scottish Futures Trust (SFT), offers an alternative mechanism for delivering capital investment projects. The hub initiative provides an opportunity for public sector organisations across a hub territory to work in partnership with a private sector delivery partner with the aim of increasing joint working and delivering best value.
41. Hub South West, which services the South West Scotland territory, provide public sector partners with access to a range of construction services; including design and build services (supported by either public or private sector borrowing), and the provision of strategic support services with access to small, medium and large contractors and other professional services. The design and build services are offered on the basis of a capped rate model, with strategic support services operating on the basis of mini-tender to the Hub South West Supply Chain Network.

42. It is suggested that the hub model can deliver additional benefits relative to traditional public sector procurement processes in terms of timescales to market through the elimination of OJEU and other regulatory processes, and delivery of community benefits. However, with changes introduced through the Procurement Reform (Scotland) Act, and better understanding of the hub process relative to traditional public sector procurement processes, it is felt any benefits in this regard are not significant.
43. Any perceived advantages in terms of value for money offered by the hub initiative are also open to interpretation. It is acknowledged that the Design and Build model may provide opportunities to deliver value for money through the adoption of capped fees for professional fees, contractor profit, hubco portions etc. However, market intelligence suggests that the capped fees are restrictive and could have an effect on the quality of service external advisors are able to offer. This further compounds general concerns with the hub Design and Build approach which is based on a single contractor appointment at the initial stages of the project; with final costings for a project not known until Financial Close has been reached, which can be some 12 – 18 months after appointment. Whilst measures are put in place to define what the final cost should be (known as the Affordability Cap) this is not contractual, and therefore if not delivered is unlikely to result in the Council withdrawing at such an advanced stage of development.

Appointment of Design Team

44. During the early stages of a construction project it is important to ensure the best advice and assistance is obtained in order to ensure informed decisions are made. The appointment of a well-integrated project Design Team, including architects, engineers, etc is therefore seen as crucial to the successful delivery of the Knockroon Learning and Enterprise Campus, particularly in relation to the interpretation of a design which delivers not only on educational aspirations but is also informed by the natural heritage and architecture of the surrounding area; all within a very challenging and inflexible financial envelope.
45. Given these challenges, together with the general complexities associated with the proposals it is therefore recommended that a Restricted Tendering procurement route be adopted for the selection of a Design Team for the Knockroon Learning and Enterprise Campus. It is likely given the value and prestige of working on a project such as the Knockroon Learning and Enterprise Campus that interest will be shown from the very best Design Teams and architectural practices from across the UK and Europe; the Restricted Tendering procurement route supports this by being open to all.
46. The Council has experience of running restricted tendering exercises, however, it is felt that given the challenging aspirations of the project that there would be benefit in conducting this exercise in partnership with the Royal Incorporation of Architects in Scotland (RIAS) who have significant experience in the competitive selection process of design professionals. The RIAS can also provide the Council with assistance in preparing an appropriate brief and tender documentation for the project and by endorsing the process, bring credibility and rigour overall. It is anticipated that this service will cost approximately £0.030m. On the basis that the RIAS are the only professional body for chartered architects in Scotland, it is recommended that Cabinet approve officers to negotiate a contract with them to provide the services required to support the tendering exercise.

- 47.** Subject to Cabinet agreement, the evaluation model for the assessment of bids will be developed in partnership with the RIAS. Whilst final details have yet to be determined the selection process will be based on a two stage process :
- Stage 1: Pre-qualification Questionnaire – a pro-forma pre-qualification questionnaire (PQQ) will be issued for design teams to complete which will then be assessed by a panel and a shortlist selected. The PQQ's will be assessed by a panel consisting of 3 participants from within the Council; supported, where relevant, by non-scoring advisors representing appropriate professional disciplines.
 - Stage 2: Final submissions and Interview – shortlisted design teams will be invited to submit more detailed responses, including fee proposals which will be assessed on a price / quality criteria; weighted 30% price (or fee percentage) and 70% quality. Whilst price assessment it is relative easy to determine, assessment of quality can be more subjective, therefore, this will be based on a competitive interview approach; whereby Design Teams are invited to attend a panel interview. For continuity purposes the membership of the panel is required to include the same participants that completed the initial PQQ assessment, supported by a further 3 new participants. It is envisaged that the additional 3 participants could include members that will represent the interests of both internal and external stakeholders, together with an independent architect of standing to bring knowledge and experience to panel. Non-scoring observers will be able to attend the interviews but numbers are limited and attendance will be by invitation only.
- 48.** Due to the complexity of the project, the intention of the process is to select a design partner rather than determine the finalised design for the new campus. This will allow the necessary consultation and engagement to take place with all internal and external stakeholders such as pupils / parents, local community groups, local residents, sports clubs etc to prepare a comprehensive list of requirements for the project and to ensure functional, aesthetics and financial aspects are appropriately developed.
- 49.** It is important to acknowledge that alternative approaches to tendering on the open market to appoint a suitable design team do exist such as the use of National Frameworks or the hub Initiative. However, it is felt that neither offer any significant benefits in terms of procurement timescales or value for money, and indeed are seen as being too restrictive in terms of market access due to the restricted number of available suppliers.
- 50.** The hub approach in terms of Strategic Support Services also introduces contractual restrictions which are not conducive with normal Council arrangements, in so much as the Council will not have a direct contractual relationship with the design team (the contractual relationship is with hub South West) and that the Council does not hold the casting vote overall relating to any appointment. Market intelligence with consultants and contractors were also not supportive of using hub South West Strategic Support Services, with all interviewed suggesting that the use of traditional procurement routes would represent better value for money for the Council and secure a more appropriate solution.

51. It should be noted that it is the intention of the Project Team to appoint external cost consultants for the project independent of the appointment of the Design Team. The appointed cost consultants will remain with the Council beyond the novation of the Design Team to the Main Contractor, and will also act as the Employers Agent in terms of any contract administrative responsibilities. This arrangement will ensure the clear separation of responsibility and impartiality between cost control and design development.

Appointment of Main Contractor

52. Whilst open tendering can also be used to appoint a main contractor, it is not appropriate for larger, more complex projects such as the Knockroon Learning and Enterprise Campus given the undue burden the open process places on contractors in terms of the costs required to prepare a tender submission. This is likely to result in a poor response from the market overall and may cause contractors to price the risks associated with an open tendering approach accordingly.
53. A competitive dialogue procedure may also be used for complex construction projects. However, the process lends itself to arrangements where the project requirements are not suitably clear at the outset of a project and where open or restricted tender procedures are unlikely to result in a contract award. Given the recommended approach to work in partnership with a Design Team to develop the design and specification to an advanced stage, and also the general concerns with the time and costs associated with undertaking a Competitive Dialogue process, it is felt not to be appropriate for this project.
54. On this basis, it is therefore recommend that the Council adopts a Restricted Tendering procurement route for appointing a main contractor for the Knockroon Learning and Enterprise Campus project. This approach is likely to have significant advantages in terms of the quality of response received from contractors on the understanding they are competing on a restricted basis; and is more suitable for contracts of this size and complexity given the high costs required to submit a bid. The restricted tendering process is initially open to all contracting organisations to submit a PQQ.

CONTRACTUAL ARRANGEMENTS

55. Traditionally, the Council uses Joint Contracts Tribunal (JCT) standard form contracts to form the contractual relationships between itself and contractors for the delivery of construction projects. Given the complexity of the project it is important to ensure all forms of contract are considered to ensure the correct solution is applied. Many different forms of construction contract exist, however, the main contract forms suitable for the Knockroon Learning and Enterprise project are as follows :
- JCT – the JCT offer a suite of standard form contracts to support a wide range of construction activity. These include contract forms covering traditional, design and build, management and integrated team partnering arrangements. The intention of the JCT is that the contract forms are flexible and represent a balanced allocation of risk between parties. Under the terms of a JCT contract, certification for payment is usually made by an independent third party (such as an architect, an employer's agent or a contract administrator), with interim payments at regular intervals as the works progresses. This is most popular form of contract used by the Council.

- The New Engineering Contract (NEC) – NEC is a suite of standard form construction contracts created by the Institution of Civil Engineers, with the most recent edition known as NEC3 published in June 2005. The use of NEC in construction projects has become more common, and was the contract of choice for the 2012 Olympics and the Crown Commercial Service recommends NEC3 for use on all public sector construction projects. It has the advantage that disputes which arise during the construction phase may be dealt with timeously; with all variations / relevant events agreed at the point they occur in terms of the impact on cost and contract period. This form benefits from a good relationship and partnership working between contracting parties; with the successful delivery of the project being in both parties interests.

56. Whilst NEC3 has many attractive features, this approach does carry with it significant risks. In particular, the adoption of NEC3 places significant demands on administration, and requires good understanding of the procedures from both the Council and the contractor. Where not resourced or understood correctly, any unresolved events can have a significant bearing on progress on site; leading to extensive delays and complications where there is time pressure to reach a financial settlement. There is also a lack of experience within the Council of using NEC3 on complex projects.

57. On this basis it is therefore recommended that a JCT form of contract is adopted for the project; with the appointment of the Design Team contracted under the terms of a JCT Consultancy Agreement (Public Sector) with the appointment of the main contractor, including the novation of the Design Team, contracted under the terms of a standard form JCT Design & Build Contract. Notwithstanding the experience the Council has with using the JCT form of contracts, the relative formality of the contractual terms are believed to offer greater protection for the Council overall.

PROJECT TIMESCALES

58. On the assumption that the Design Development and Procurement Strategy as set out in this report is approved by Cabinet, it is anticipated that the following timescales will be applicable to the project :

Key Milestone	Anticipated Completion
Issue Pre-Qualification Questionnaire	End October 2015
Issue Tender Documentation for Professional Services	December 2015
Geotechnical, Environmental and Transport Investigations	December 2015
Appointment of Design Team (including Competitive Interview)	Mid-February 2016
Consultation and Engagement over Design	March 2016
PQQ Issued for Main Contractor Selection	August 2016
Finalised Concept Design and Employers Requirements	Mid-September 2016
Issue Tender Document for Main Contractor	October 2016
Planning Approval	February 2017
Appointment of Main Contractor	March 2017
Construction Start	July 2017
Construction Finish	July 2019

Note - dates are provisional and make no allowance for unforeseen issues such as delays in decision making process, procurement difficulties, site contamination, adverse weather etc.

59. Cabinet should note that whilst the project is being delivered primarily through external Design Teams, there will be a need for East Ayrshire Council to commit a considerable amount of internal resource to assist with delivering the project. This will include representation from Facilities and Property Management, Education, Planning, Roads, Legal & Procurement, Finance, and other central support functions.
60. The demands on staff time from certain sections such as Facilities and Property Management, Education, Planning, Roads, Legal & Procurement will be particularly challenging during the various development stages of the project. This project will therefore be given the highest level of priority; with key individuals within each of the disciplines identified to provide direct support to the project when required.
61. In order to expedite early development stages, the Project Team is progressing the tender and award of separate contracts for geotechnical and environmental engineering services to determine the soil and environmental characteristics of the proposed site, together with the appointment of a space planning consultant to assist with the development of a strategic accommodation brief deliverable within the prescribed area metric. It is anticipated that these appointments will be concluded by the end of October with the intention that all relevant works are completed by January / February 2016 to coincide with the appointment of the Design Team.

FINANCIAL IMPLICATIONS

62. The Council's 10 Year Capital Investment Programme approved by Cabinet on 10 December 2014 includes an affordability cap of £63.500m in respect of the construction of the new Knockroon Learning and Enterprise Campus based on the SFT cost and area metrics. The affordability cap for the project was therefore calculated taking account of the projected pupils roll for the combined schools provided by the Head of Schools, an area allocation per pupil, an 'all in' construction cost per square metre (adjusted for the appropriate Building Cost Information Service (BCIS) indexation factor) and adding in further allowance of £1.000m to ensure safe walking routes.
63. The funding for the project will be through Prudential Borrowing. It should be noted that alternative funding options such as the SFT Non-Profit Distributing (NPD) model are determined to not represent value for money to the Council and have been discounted.

RISK IMPLICATIONS

64. Irrespective of the project delivery / procurement route chosen, construction projects by their very nature are inherently risky, given the complexity of co-ordinating activities across various activities. Management of risk therefore plays an important role in the success of a construction project to deliver key objectives in terms of time, cost and quality.
65. It is therefore considered essential that risk management forms an integral part of the overall project management methodology adopted for the project, whereby risks are identified from the very earliest stages of the project, evaluating the effects of each based on the possibility of occurrence, severity of impact and mitigation. Recognised risks, together with any new risks identified need to be monitored and closely evaluated thereafter.

66. A robust approach to risk management needs to be supported with the adoption of robust project management arrangements. It is therefore recommended that the project is managed on a basis consistent with the PRINCE2 approach which has been successfully implemented on a number of major schemes over the last few years.

LEGAL IMPLICATIONS

67. Both the Legal and Procurement Services have been fully engaged with relevant colleagues in the development of the procurement strategy for this significant development and it is considered that adoption of the suite of recommendations set out within the report should ensure full compliance with both external legal (i.e. European and domestic) and internal governance requirements in respect of the proposed approach to the tendering of the project.

POLICY IMPLICATIONS

68. The East Ayrshire Council vision for its school estate is consistent with the vision articulated in the East Ayrshire Community Plan in that they both seek to provide choice, high quality services, maximise opportunity and promote inclusion.
69. The development of the new Knockroon Learning and Enterprise Campus would specifically contribute to achieving the Strategic Priorities and Local Outcomes of East Ayrshire Community Plan and associated Single Outcome Agreements under all of the four priority themes.
70. It should also be noted that the Employers Requirements prepared as part of the tender issue package will include specific requirements for the successful contractor to deliver Community Benefits as required for all projects over £2.000m in value under the Procurement Reform (Scotland) Act.
71. The Council is committed to maximising Community Benefits from all of its procurement activities; with aim of building in a range of economic, social and environmental conditions into the delivery of the Knockroon Learning and Enterprise Campus project. The Community Benefits conditions allowed for could include but not be restricted to, learning and community focused requirements, targeted recruitment and training and supply chain development of SME's and Social Enterprises.

RECOMMENDATIONS

72. It is recommended that Cabinet :
- i) Approve the adoption of a design-led procurement approach for the project.
 - ii) Approve the adoption of a Two Stage Design and Build project delivery route for the project.
 - iii) Approve the adoption of a Restricted Tendering approach for the appointment of a Design Team for the project.
 - iv) Approve the negotiation of a contract with the RIAS to assist with the development of a quality assessment exercise to support the selection of a Design Team at a cost of approximately £0.030m.

- v) Note the appointment of cost consultants will be undertaken independently of the appointment of the Design Team.
- vi) Approve the adoption of a Restricted Tendering approach for the appointment of the Main Contractor for the project.
- vii) Approve the adoption of the JCT form of contract for the appointment of both the Design Team and Main Contractor.
- viii) Note the proposed Project Timescales and the commitment required from Internal Resources.
- ix) Note the early engagement with Geotechnical and Environmental Engineers, together with Space Planning Consultants to expedite the earlier development stages.
- x) Note the proposals to manage the project on a basis consistent with the PRINCE2 Project Management methodology.
- xi) Note the proposals in respect of maximising Community Benefits through the proposed design development and procurement strategy.
- xii) Otherwise note the contents of the report.

Chris McAleavey
Depute Chief Executive (Strategic Lead: Safer Communities)
15 September 2015

BACKGROUND PAPERS

Commodity Strategy for the Design and Construction of Knockroon Learning and Enterprise Campus

Implementation Officer – Andrew Kennedy, Head of Facilities & Property Management

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