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CABINET SUPPLEMENT

Date: Tuesday 21 February 2012
Time: 2.00 pm
Venue: COUNCIL HOUSE, PLYMOUTH

Members:
Councillor Mrs Pengelly, Chair
Councillor Fry, Vice Chair
Councillors Ball, Bowyer, Jordan, Michael Leaves, Sam Leaves, Monahan, Ricketts and Wigans.

I attach an updated report on the Marine Academy Plymouth, referred to in item 6 on the agenda for the above meeting.

Barry Keel
Chief Executive

CABINET

AGENDA

PART I – PUBLIC MEETING

CABINET MEMBER: COUNCILLOR SAM LEAVES

6. CAPITAL INVESTMENT DELIVERY FOR MARINE ACADEMY, PLYMOUTH (Pages 1 - 8)

The Director for Place will submit a written report on the confirmed bidder and delegation arrangements for letting the construction contract for works to the Marine Academy Plymouth.

PLYMOUTH CITY COUNCIL

UPDATED

Subject:	Capital Investment Delivery for Marine Academy Plymouth
Committee:	Cabinet
Date:	21 February 2012
Cabinet Member:	Councillor Samantha Leaves
CMT Member:	Director for Place
Author:	Gareth Simmons (Programme Director for Learning Environments)
Contact:	Tel: 01752 307161 : gareth.simmons@plymouth.gov.uk
Ref:	
Key Decision:	Yes
Part:	I

Executive Summary:

On 18 October 2011 Cabinet gave approval for the Council to act as procurement agent for the Marine Academy and All Saints Academy. Seventy one academies were given allocations by the Department for Education (DfE) on 20 December 2010. The Marine Academy Plymouth (MAP) was allocated £8.6 million. The academy sponsors (of which Plymouth City Council are co-sponsor) appealed against the allocations and these were revised following submissions to Ministers. The capital allocated was approved in May 2011 and increased to £9.4 million.

Ministers have signed off the allocation on the basis that the delivery of this capital investment is procured through the Partnership for Schools (PfS) Academies Framework. In the discussions between PfS and sponsors of MAP in May 2011 it was indicated that the funding allocated is reliant on the procurement being through this route and managed through the Local Authority.

Technical Advisors were appointed through the Office of Government Commerce (OGC) advisor framework to project manage the procurement.

A feasibility study was developed that considered the building options and set out a control scheme that met the objectives of the Academy. This feasibility study has also been through a pre-application planning process. The control scheme had also been evaluated to ensure that it is deliverable and within the allocated budget. This feasibility was submitted to PfS and approved on the 24 November 2011. This report deals with the Marine Academy. A later report will come to Cabinet dealing with that of All Saints Academy.

The project was put out to the PfS construction framework through a Provisional Invitation to Tender (PITT) where all regional framework contractors were invited to express an interest in tendering. Only two contractors, Bam and Leadbitter, chose to respond. Both contractors were short-listed for the next ITT stage. The PITT includes the option to also use the successful contractors to deliver the University Technical College (UTC) at a later stage should the Council wish to do so. This would save a considerable amount of procurement time.

Full Invitations to Tender (ITT) were sent out on the 12 December 2011 and a formal design engagement process has been concluded with both contractors' design teams being offered equal time allotted to the Academy and building end users. The contractors submitted ITT's on the 6 February 2012 which have been evaluated for quality and value for money using the PfS agreed evaluation criteria. This evaluation demonstrates that BAM Construction Ltd would be recommended as the selected panel member (preferred bidder). This recommendation has been endorsed by the Academy, and by the Academy's main sponsors who are the University of Plymouth.

The capital investment into the city will have an important impact the local economy. It is estimated that as much as 80% of this value will be spent in Plymouth and the demand for skilled trades will also allow the council to negotiate that the contractor will take on apprentices as part of the proposal.

Corporate Plan 2011 - 2014:

This programme aligns with and supports the following corporate priorities:

- Deliver growth and promote Plymouth as a thriving growth centre by creating the conditions for investment in quality new homes, jobs and infrastructure. The academy investment will improve education infrastructure that supports the growth of the city, by supplying good quality education provision that meets need; it makes the city an attractive place to live and work. This paper brings to Cabinet opportunities for substantial investment into the city.
- Raise aspiration and the skills and expectations of Plymouth residents to ensure our young people achieve better qualifications and find high quality jobs. The investment this paper describes will significantly improve the secondary school infrastructure in the city.
- Reduce inequalities by reducing the large economic and health gaps between different areas of the city by improving the educational offer in these parts of the city. The proposals in this paper are targeted at narrowing the gaps in inequality of education that exists in the city.
- Provide value for communities and to become more efficient and joined up with partners and local residents to deliver services in new and better ways. These proposals seek to support the academies that are the Local Authority's partner organisation brokered to achieve the maximum value for the communities they serve.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

The sum of £9,372,967 has been approved by Partnership for Schools (PFS) as the investment budget which is to be allocated in the following way:

- Construction Costs £5,509,073 External Works and Abnormal Costs £766,496
- Fees £672,356
- FFE £1,215,542
- ICT Infrastructure £265,500
- **D&B Contract sub-total £8,428,967**
- ICT Hardware £944,000

Under the terms of the PfS framework the contract budgets above are fixed contractual sums. The scope of the works delivered by the design and build contractor is a variable throughout the procurement and the quality and quantity of the offer is what has been evaluated using PfS's strict procurement process.

Whilst the contracting risks are small, it should be understood that acting as procurement agent, the Council will take on liability for the project should there be a legitimate claim. However PfS have devised a client

biased contract that offers a considerable amount of comfort that much of the risk is transferred to the contractor. The procurement will also be undertaken with some rigour therefore the onward risk is very small.

Within the fee element for both academies, the sum of £300,000 was top sliced for the Council to use for procurement costs. Based on analysis of costs, this top slice is unlikely to be sufficient to fund the full costs of managing a project. However, the academy sponsors have agreed to meet procurement costs above this provision, based on the view that reduced expenditure in this area would be a false economy.

The Authority's time in gaining internal approvals, letting and monitoring the building and technical advisors contracts was assessed to be a total of 210 days of work. As these expenses cannot be recovered against the allocated funding, this represents the Council's contribution in support of the two academy projects.

The ongoing operation and condition liability of MAP falls to the Academy and the Government, so there are no direct costs falling to the Council.

Other Implications: eg Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

Schools are a key facility in their local communities and support wider cohesion in the area. An Equality Impact Assessment has not been completed as the investment in school buildings would be designed to current building regulations which are fully DDA compliant. In addition, these are community facilities which are open to all; therefore issues surrounding discrimination on the basis of age, faith, gender, race, or sexual orientation are not applicable.

Capital investment into schools offers the opportunity for them to resolve many issues of health and safety and community safety that have become long-standing in schools. The capital investment will resolve building condition issues that in the long term improve the building fabric that could lead to Health & Safety breaches.

A fully compliant risk register has been developed for the project.

Recommendations and Reasons for recommended action:

Recommendations

1. That Cabinet approves the appointment of BAM Construction Ltd as the selected panel member to deliver the capital improvements to the Marine Academy Plymouth and that expenditure of the design fees is awarded to this contractor.
2. That the final approval to agree the scope and quality of works be delegated to the Director for Place.

Reasons for these recommendations are to comply with PfS approval process that contractual decisions should be made with speed and efficiency. Also to fully comply with the Council's constitutional arrangements and to ensure that this centrally allocated investment is delivered through the PfS construction framework process and procedure.

Alternative options considered and reasons for recommended action:

The project undertook a detailed feasibility study that considered a number of building options before a control scheme was chosen as a preferred design. Through the procurement process two contractors have developed alternative options that have been carefully evaluated for design compliance and value for money.

Consideration of different procurement routes were considered in the 18 October 2011 Cabinet.

Background papers:

1. [Plymouth City Council Children's Services Strategy for Change Investment for Children](#)
2. Capital investment delivery for Marine Academy Plymouth and All Saints Academy, Plymouth. Cabinet 18 October 2011.

Sign off:

Fin	ChS0 370.	Leg	DS	HR	NA	Corp Prop	CJT/0 93/020 212	IT	NA	Strat Proc	
Originating SMT Member: Gareth Simmons and David Draffan											

Background

Seventy one academies were given allocations by the Department for Education (DfE) on 20 December 2010. The Marine Academy Plymouth (MAP) was allocated £8.6 million. The academy sponsors (of which Plymouth City Council are co-sponsor) appealed against this allocation and these were revised following submissions to Ministers. The capital allocated was approved in May 2011 and increased to £9.373 million.

Ministers have signed off the allocations on the basis that the delivery of this capital investment is procured through the Partnership for Schools (PfS) Academies Framework. In the discussions between PfS and sponsors of MAP in May 2011 it was indicated that the funding allocated is reliant on the procurement being through this route and managed through the Local Authority. This was reinforced through a direct contact with the Local Authority (LA) through a meeting with the Director for Services for Children and Young People and the Director for Corporate Support on 21 May 2011.

Cabinet took the decision to proceed with the procurement on the 18 October 2011 and Technical Advisors were appointed through the Office of Government Commerce (OGC) advisor framework to project manage the procurement.

A feasibility study was developed that considered the building options and set out a control scheme that met the objectives of the Academy. This feasibility study has also been through a pre-application planning process. The control scheme had also been evaluated to ensure that it is deliverable and within the allocated budget. This feasibility was submitted to PfS and approved on the 24 November 2011. This report deals with the Marine Academy. A later report will come to Cabinet dealing with that of All Saints Academy.

The project was put out to the PfS construction framework through a Provisional Invitation to Tender (PITT) where all regional framework contractors were invited to express an interest in tendering. Only two contractors, Bam and Leadbitter, chose to tender so no formal evaluation of the tenders was necessary, as the PfS procurement route requires two contractors to be short-listed for the next ITT stage. The PITT included the option to use the procurement to batch the University Technical Project (UTC). This means that the delivery of this additional project can be undertaken by the same successful contractor saving a considerable amount of procurement time.

Full Invitations to Tender (ITT) were sent out on the 12 December 2011 and a formal design engagement process has been concluded with both contractors' design teams being offered equal time allotted to the Academy and building end users.

Both Contractors submitted ITT's on the 6 February 2011 which have been evaluated for quality and value for money using the PfS agreed evaluation criteria. This evaluation demonstrates that BAM Construction Ltd would be recommended as the selected panel member. This recommendation has been endorsed by the Academy, and by the Academy's main sponsors who are the University of Plymouth.

Proposed scope of the project

The feasibility control scheme included the demolition of the old part of the school, built in the 1930's. It also allowed for the demolition of a small proportion of the 1980's building. The remainder of the 1980's buildings, including the sports hall and gym would have been refurbished and remodelled. The Esher Building, built in mid 2000's, would have remained with no works proposed. The balance of new build to refurbishment was as follows:

New build 2961m²
Refurbishment and Remodelling 4286m²
No work 1853m²
Demolition 3087m²

The proposed work by the recommended selected panel member was similar to the control scheme in that it made the same judgments about the quality of the existing buildings. It also made the same proposals to demolish the old school and approximately the proportion of the 1980's building.

The balance of new build to refurbishment of the recommended selected panel member is as follows:

New build 3679 m²
Refurbishment and Remodelling 1814 m² (refurbished) & 997 m² (remodel)
Minimal work 1256 m²
No work 1520m²
Demolition 3500 (circa) m²

Financial position

VAT – Academies

The treatment of VAT has been simplified following a change in VAT legislation in April 2011, which means that all academies are now able to reclaim any VAT which they incur.

VAT – Plymouth City Council

Although a Tenancy at Will (TAW) has been granted to MAP, this TAW will be amended during the construction period, so that the Council will retain an interest in the land. It will contract with the contractor and incur all the design and build costs. The Council will make contract payments and receive funding in the form of a capital grant from the Department of Education. Once the works are completed, the TAW will expire and 125-year peppercorn lease granted to the Academy.

Provided that the lease granted to MAP is a true peppercorn, ie a lease granted for no consideration in money or kind, then the Council is able to fully recover the VAT relating to the construction contract. If the lease does not represent a true peppercorn lease, however, then the grant of land would be made in the course of business. The default liability of a supply of land is exempt from VAT, but this could result in a proportion of the Council's VAT becoming irrecoverable, potentially at a cost of more than £1 million.

The Council will opt to tax the MAP site as an insurance to protect the Council's ability to recover input tax, should it be deemed by HM Revenue & Customs that the lease is not a true peppercorn lease.

Legal position

Whilst changes have been introduced by the Academies Act 2010, the Council does retain power to act as a procurement agent in the type of arrangements proposed.

As the academies are now separate organisations to the Local Authority, there will be the need to transfer collateral and other warranties from the consultants, contractors and manufactures of the works. The Council would not hold a residual role following the completion of the works as the Academy will retain responsibility for the ongoing repair and maintenance of the property as set out in the standard 125 year academy lease.

At the completion of the works contract the responsibility of the ongoing contractual obligations are transferred in a standard Development Agreement between the Authority and the Academy Trust, this agreement, drafted by PFS, will clearly set out the transfer of the completed building works to the Academy Trust.

Partnership for Schools has also set out a standard Memorandum of Understanding (MOU) between the Council and themselves that formally sets out the agreement that the council will follow PFS processes and use all of their standard documents including the frameworks design and build contract.

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