

For General Release

REPORT TO:	Cabinet Member for Children, Young People and Learning
SUBJECT:	Variation to the Pre-Construction Services Agreement (PCSA) stage 1 for St Nicholas SEN Primary School as part of the Primary School Expansion Programme for 2017
LEAD OFFICER:	Shifa Mustafa, Executive Director of Place Barbara Peacock, Executive Director of People
CABINET MEMBER:	Councillor Alisa Flemming, Cabinet Member for Children, Young People and Learning and Councillor Simon Hall, Cabinet Member for Finance and Treasury
WARDS:	<i>Kenley</i>

CORPORATE PRIORITY/POLICY CONTEXT

The Homes and School Improvements Team has a remit to deliver the 2017 Primary Schools Expansion Programme to increase the school places capacity on behalf of the People Department. The programme will deliver new school facilities to satisfy the growing permanent capacity requirements by providing new primary schools, new build expansions at existing schools and the refurbishment & improvements to existing schools.

AMBITIOUS FOR CROYDON & WHY ARE WE DOING THIS:

The delivery of this project is critical in ensuring the Authority is able to meet its statutory obligations to provide sufficient school places to meet increasing demand and will support the Authority in meeting the Policy Objectives of:

- Promoting choice, diversity and high standards, ensuring that every child fulfils their educational potential.
- Achieving better outcomes for children and young people
- Promoting economic growth and prosperity

FINANCIAL IMPACT:

There is a revised Capital budget for St Nicholas SEN Primary School which is part of the updated 2017 Primary Schools Expansion Programme of £22,345,031 approved by Cabinet on 18th October 2017 (ref: 74/17).

KEY DECISION REFERENCE NO.: 4517CYPL

The decision may be implemented from 1300 hours on the expiry of 5 working days after it is made, unless the decision is referred to the Scrutiny & Strategic Overview Committee by the requisite number of Councillors.

The Leader of the Council has delegated to the nominated Cabinet Member the power to make the decisions set out in the recommendations below

1. RECOMMENDATIONS

- 1.1 The Cabinet Member for Children, Young People and Learning, in consultation with the Cabinet Member for Finance and Treasury, is recommended, in accordance with Regulation 29 of the Council's Tenders and Contracts Regulations, to approve a variation to the Pre Construction Services Agreement to Willmott Dixon Ltd for the services associated with the detailed design of St Nicholas Primary School, by an additional sum of £946,219, giving a total PCSA sum of £1,277,590.

2. EXECUTIVE SUMMARY

- 2.1 This report outlines the rationale for a variation to the previously agreed Pre-Construction Services Agreement (PCSA) Stage 1 contract for St Nicholas SEN Primary School awarded to Willmott Dixon as part of the delivery of the 2017 Schools Expansion Programme.
- 2.2 The previous contract award for £331,371 was approved by the Director of Commissioning and Improvement on 6 April 2016 (ref: CCB1122/16-17) and was notified to Cabinet on 25 April 2016 (ref: A47/16).
- 2.3 The report sets out the background to this contract variation which has arisen due to a change in scope to the original project. The need to provide an increased number of SEN school places in the borough to meet growing demand has resulted in a proposal to increase the expansion at St Nicholas Primary School from 1 Form of Entry (FE) to 2 FE, which was approved by Cabinet on 23 January 2017 (Ref A10/17). Furthermore, the initial investigatory surveys have identified that the proposals for modification and refurbishment of the existing buildings would not be feasible nor economically viable.
- 2.4 This change in scope has resulted in a need to vary the PCSA Stage 1 contract. The variation recommended for approval by the Lead Member is an additional sum of £946,219, resulting in the new contract value of £1,277,590.
- 2.5 The content of this report has been endorsed by the Contracts and Commissioning Board.

CCB Approval Date	CCB ref. number
08/12/2017	CCB1305/17-18

3. DETAIL

- 3.1 At the Cabinet meeting held on 18 January 2016, the budget of £22.068m to deliver the 2017 School Expansion Programme was agreed (Ref A7/16). An increase of the programme budget to £22.345m was approved by Cabinet on 18th October 2017 (insert ref: 74/17).

3.2 Cabinet approved the procurement strategy for the Education Expansion Programme 2015-17 on 17 November 2014 meeting (ref: A105/14) agreeing that such contracts be by way of call off from the Southern Construction Framework Lot 3 (London) due to the expiry of the previous iESE framework. Following a competitive tendering exercise conducted in accordance with the procurement strategy, Willmott Dixon Construction Ltd were appointed to undertake Pre-Construction Services Agreement (PCSA) stage 1 for St Nicholas SEN Primary School as part of the Primary School Expansion Programme for 2017. The PCSA sum is determined by i) the Construction Value, and ii) the Surveys and other Investigatory Work required.

3.2 The original scope was to deliver a 1 Form Entry (FE) expansion to St Nicholas SEN Primary School. This has now changed from a 1FE expansion to a new 2FE expansion as reported to Cabinet 23 January 2017 (Ref A10/17). This requires the demolition of the existing legacy buildings on site and rebuilding one main school block to house the original 2FE school, plus the new 2FE expansion. This further change of scope was presented and agreed at the Education Estates Delivery Board on the 13 July 2017.

3.3 The change in scope came about for the following reasons:

- There was a further requirement after the original award to provide an increased number of SEN school places in the borough to meet demand.
- Intrusive surveys of the existing buildings after the original award evidenced that they would not be suitable for renovation as originally proposed based on the building fabric and internal layout and the cost to bring them up to current building standards and then on-going life cycle costs to maintain after the works.
- The benefits of one main new block will be that it has centralised new servicing and plant and built to current building standards ensuring reduced lifecycle costs to run the estate.

3.4 This resultant change to scope has led to a significant increase in the construction value and investigatory surveys for the project therefore increasing the PCSA fees.

3.5 This additional fee does not alter the agreed process for subsequent associated contracts awarded for this project, which has been delegated to relevant officers, in consultation with the Lead Cabinet Member and Cabinet Member for Finance and Treasury (ref 28/17/LR).

4. CONSULTATION

4.1 The change of scope to the project was presented at Cabinet in January 2017 and at the Education Estate Delivery Board on the 13 July 2017.

4.2 The Head Teacher and Business Support Manager of St Nicholas Primary School have been consulted through-out the process as part of the on-going design process.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 There is an overall budget allocation for the 2017 Primary Schools Expansion Programme of £22,345,031 and additional fees associated with this contract variation will be funded from this approved programme budget.

1 Revenue and Capital consequences of report recommendations

	Current year	Medium Term Financial Strategy – 3 year forecast		
	2017/18	2018/19	2019/20	2020/21
	£1,521	£13,425	£7,399	£0
Revenue Budget available				
Expenditure				
Income				
Effect of decision from report				
Expenditure				
Income				
Remaining budget				
Capital Budget available	1,521	13,425	7,399	
Expenditure	946			
Effect of decision from report				
Expenditure	946			
Remaining budget	244	13,425	7,399	0

- 2 **The effect of the decision** Approval of the recommendations would commit the Council to an additional £946,219 to give a maximum PCSA sum of £1,277,590 from the approved 2017 Primary Schools Expansion Programme budget of £22,345,031. The costs of the scheme can be met from the existing budgets and budget allocation has been approved by Cabinet on the 18th October 2017.
- 3 **Risks** If there is further changes in scope to the project then this could result in additional fees for the PCSA Stage of the project. This is a low risk as the scheme has already gone through a series of design options with the most preferable now been selected.
- 4 **Options** As this was a competitive tender calling off from a multi supplier framework, no other options were considered.
- 5 **Future savings/efficiencies** None associated with the award of the Stage 1 PCSA, however through the scheme designs for each school

future saving options will be considered for the construction methods and whole life-cycle costs

(Approved by: Felicia Wright, Head of Finance (Place))

6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

6.1 The Solicitor to the Council comments that in respect of the recommendation to vary the current contract to extend the term consideration must be given to Regulation 72 of the Public Contract Regulations (PCR) 2015. A contract may be modified i.e. varied where the modifications are not considered 'substantial' (Reg.72 (1)(e)).

6.2 In terms of what might be considered a "substantial change" is defined in Regulation 72(8) as any change, irrespective of value, which meets one or more of these conditions:

- Materially alters the character of the original contract/framework;
- Would have allowed other potential suppliers to participate or be selected, or another tender to be accepted;
- Changes the economic balance in favour of the contractor;
- Extends the scope of the contract/framework "considerably";
- A new contractor replaces the original contractor, other than where the change arises from a review or option clause in the original contract or from corporate changes such as merger, takeover or insolvency.

6.3 There is a risk that in varying the original contract to increase its value from £331,371 to £1,277, 590 is significant and on this basis alone, could be argued to:

- materially altering the original contract/framework
- extend the scope 'considerably'
- change the economic balance in favour of the contractor

6.4 If challenged by a third party in this respect there is a risk that the contract extension might be found to be ineffective. The risk of challenge may be mitigated by publishing a VEAT notice in which the Council sets out why it considers the award of the contract, without prior publication of a contract notice, to be permitted by Part 2 PCR 2015, and then waiting at least 10 days before entering into the contract variation. However, a VEAT notice is only effective in providing protection where the legal justification for the direct award is sound and able to withstand any increased scrutiny that may be brought about by its publication.

(Approved by: Sean Murphy, Head of Commercial and Property Law & Deputy Monitoring Officer on behalf of the Director of Law & Monitoring Officer.

7. HUMAN RESOURCES IMPACT

7.1 There is no human resources impact arising as a result of the recommendations set out in this report.

(Approved by: Jennifer Sankar, Head of HR (Place)).

8. EQUALITIES IMPACT

- 8.1 An equality analysis has been conducted which shows that the strategy is designed to maintain and improve an equal access to educational opportunity for protected groups. These are children from BME and Faith Groups who are more highly represented in areas of demand pressures for additional places. Also disproportionately affected are children with SEN, for whom the strategy delivers additional specialist facilities in both mainstream and SEN schools that are located within local communities. An impact assessment was conducted and submitted in January 2016 cabinet with the Education Consultation paper identify the expansion schemes for 2016 to 2018. The outcome of which and any mitigating actions will be contained in the report to decision makers.

9. ENVIRONMENTAL IMPACT

- 9.1 There is no impact on the environment during the design phase. The design of the scheme will ensure that the environmental impact of the strategy has positive elements and potential risks which must be managed. All buildings within the programme must meet the BREAAAM excellent standard which ensures high quality sustainable buildings and which promotes other environmental agendas such as green travel. The potential environmental impact of having additional school places on transport and traffic is managed through the traffic impact assessment of each school project. Sustainable travel plans are undertaken on each scheme by the schools.

10. CRIME AND DISORDER REDUCTION IMPACT

- 10.1 There are no direct Crime & Disorder impacts as a result of these recommendations

11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 11.1 The uplift in the PCSA fee is directly related to the agreed framework percentages that the contractor has been appointed to and the requirement for further more detailed and extensive surveys to be undertaken.

12. OPTIONS CONSIDERED AND REJECTED

- 12.1 The option to re-tender the scheme for a new contractor under the SCF Framework has been rejected due to the following reasons:
- minimum 6 month delay to the programme to re-tender the project. This delay would result in the Council not being able to provide the required school places in the new build and temporary classrooms would need to be constructed adding on additional cost.
 - loss of knowledge by the contractor and their design team of the scheme and relationship with stakeholders already gained.
 - unlikely that cost efficiencies would be gained as the contract would be tendered through the same framework.

- additional internal and external fees accrued against the project if there was a delay and a potential rework of the proposals.
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BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972

None

APPENDIX

None