



Cabinet Member Report

Decision Makers:	Cabinet Member for Children's Services
Date:	16 June 2020
Classification:	For Publication with Partial exemption – Part B.
Title:	Award of Contract - expansion works at King Solomon Academy (Older Years Site) and Nursery (Younger Years Site)
Wards Affected:	Church Street and Little Venice
City for All/:	The proposed expansion works at both the Older Years and Younger Years sites will meet the following Council's City for All objectives: <ul style="list-style-type: none">• Choice – a choice of excellent schools for Westminster residents• Heritage – a well maintained school buildings portfolio• Aspiration – high performing schools• Building cohesive mixed neighbourhoods
Key Decision:	Yes
Financial Summary:	The award of the Design and Build Contracts enables the Council to enter into separate contracts for each site. ARK Schools to contribute £1.10m to the scheme The Council's share is funded by Basic Need Grant and s106 monies
Report of:	Sarah Newman, Executive Director for Children's Services

1. Executive Summary

- 1.1. Westminster City Council (WCC) has recently undertaken a competitive tender exercise seeking contractors for the expansion of the King Solomon Academy (KSA) at both the Older Years Site and Younger Years Site (formerly Ark Paddington Green Primary), following the termination of a previous contract with Morgan Sindall.
- 1.2. The report also seeks approval for the Director of Law to negotiate and sign the following agreements:

With Neilcott Construction Limited

- i) Two Design and Build Contracts

With ARK Schools

- i) Two Development Agreements, one for each site

2. Recommendations

2.1. That Part B of this report be exempt from disclosure under s100B(2) and Schedule 12 A of the Local Government Act 1972, (as amended) in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).

2.2. That the Cabinet Member for Children's Services

- Grant approval to enter into a Design & Build contract with Neilcott Construction Limited, for construction of a new Nursery at the Younger Years Site, for £2.373m, and
- Grant approval to enter into a Design & Build contract with Neilcott Construction Limited, for construction of a new dining hall and refurbishment works at the Older Years Site for £1.809m.

2.3. That the Cabinet Member for Children's Services authorises the Director of Law to negotiate and sign with Neilcott Construction Limited two Design & Build contracts and, with ARK Schools, a Development Agreement for each site.

3. Reasons for the Decision

3.1. As part of the Council's approved Secondary School Expansion programme, King Solomon Academy is subject to a building project. This will enable the Council to fulfil its statutory duty to provide a school place for every child who needs one in its area.

3.2. The tender evaluation report (Gate 3) was presented to the Commercial Gateway Review Board (CGRB) on 12 May 2020. CGRC endorsed the recommendation of award to the Bi-Borough Executive Director of Children's Services to award the contracts to Neilcott Construction Limited, Registered Company Number 1151561.

The Gate 3 paper and the cost consultant commercial tender review are attached as Appendices A and B respectively.

3.3. The proposed contract value is within the programme budget negotiated with the School and ARK. Overall expenditure is in line with the Pre-Tender Estimate and has been verified by Finance (please see the Financial Implications slide in the Gate 3 paper - slides 10 &11 of Appendix A below).

4. Development Agreement

- 4.1 King Solomon Academy is an all-through three-form entry (90 places per year group) school, which includes an Older Years Site and a Younger Years Site (formerly Ark Paddington Green Primary) which are maintained by ARK Schools. The Council is obliged to enter into a Development Agreement with ARK Schools in order to ensure that ARK Schools' commitment to contributing to the cost of the build is set out in an enforceable contract and to give ARK Schools a contractual commitment from the Council that the Council will ensure that the works are carried out in accordance with the design and build contract.

5. Background

- 5.1 The objective of the project is to deliver an additional secondary form of entry (30 places) per year group from Year 7 to Year 11 at this all-through academy as part of a programme of secondary school expansions initiated in 2015 to meet increasing demand for secondary places locally. Since the programme began, King Solomon Academy merged with Ark Paddington Green Primary (now known as the Younger Years Site) in September 2018. Due to spare capacity in the primary sector, it was agreed that the ARK Paddington Green Primary would reduce by one form of entry at the point of merger.

This two-site project enables a more holistic solution which includes the better use of the primary school site with improved facilities, including a new wider entrance for the school, as well as investment at KSA, in line with ARK Schools' intention that the school should be a three-form entry all-through school. This also includes the creation of a new nursery facility at the Younger Years Site. ARK Schools' strategy was developed in collaboration with the Council and the local community and has delivered a high-performing all-through school across two sites in north Westminster. The number of children on free school meals attending the school is well above the national average.

- 5.2 The architects responsible for bringing the scheme up to the point of planning submission (RIBA Stage 3) are 3BM Spaces. The designs were developed from Stage 1 to 3, with input from the Children's Services Department, ARK Schools, and ARK Academies Trust.
- 5.3 In January 2019, the Council entered into contract with Morgan Sindall to deliver the programme in four phases:
1. Phase 1 – refurbishment of the Younger Years Site,
 2. Phase 2 – New Nursery at the YYS,
 3. Phase 3 – Refurbishment at KSA OYS to provide improved teaching space in the former primary school block,
 4. Phase 4 – Construction of a new dining hall at KSA OYS.
- 5.4 Phase 1 has been completed. However, for commercial reasons it was decided in September 2019 to re-tender the remaining phases of work, as was permitted within the provisions of the previous contract with Morgan Sindall.

6. Financial Implications

- 6.1. The financial recommendations within this report are based upon the current capital position for the project. The Pre-Tender Estimates totalled £6.33M plus the allowance for the ramp (providing the new wider entrance at the Younger Years Site) of £220,000 (total £6.55M). ARK Schools have agreed to make a contribution of £1.100m for the expansion project. This would bring the budget to £7.649m. This contribution includes £55,000 for a previous element of the scheme which is now complete (YYS Refurbishment).
- 6.2. A breakdown of what has already been spent and the future budget allocation for this project is below.

LA Funding	2018/19 Spend	2019/20 Spend	2020/21 Budget	Total per Funding Stream
Basic Need	0.537m	0.833m	2.058m	3.428m
S106	0.496m	0.761m	1.884m	3.141m
Total per Year	1.033m	1.594m	3.942m	6.549m
Schools Contribution			1.100m	1.100m
Total Project Budget				7.649m

- 6.3. The successful bid by Neilcott Construction Limited for the dining hall and refurbishment package is £1.809m. This falls within the Gleeds estimate of £2.930m and so represents a saving of £1.121m on the project cost.
- 6.4. At the same time of procuring for the dining hall and refurbishment package, a tender bid for the nursery build was accepted with final cost being £2.372m. This also comes within the Gleeds cost estimate of £3.400m and so represents a further saving to the Council and on the overall project cost of £1.028m.
- 6.5. The overall project cost (originally estimated as £9.720m) is now £7.572m. Therefore, the project is within budget and can go ahead without obtaining additional funding.
- 6.6. The below table is a comparison between the pre-tender cost estimate and post-tender cost estimate.

Work Type	Gleeds Cost Estimate December 19 £m	Tender Costs £m
PCSA	0.077	0.077
KSA YYS Refurb	1.217	1.217
KSA YYS New Build - Nursery	3.400	2.372
KSA OYS New Build - Dining Hall	2.930	1.809

Sub total	7.624	5.476
Design & Development Risk	-	-
Construction Risk	0.317	0.317
Fee & Survey Budget	1.171	1.171
Omit Stage 5 Consultant Fees	(0.158)	(0.158)
Other Development costs	0.473	0.473
10% Contingency for Package 2	0.293	0.293
	-	
Total	9.720	7.572

Amit Mehta, Senior Finance Manager, Schools and Education, tel: 07857 696822, email: Amit.Mehta@rbkc.gov.uk

7. Legal Implications

7.1 Younger Years Site

This report recommends an award to Neilcott Construction Limited of a contract for the construction of a nursery at King Solomon Academy Younger Years site in the sum of £2.372M.

Public Contracts Regulations 2015

The contract is a contract for 'works' under the Public Contracts Regulations 2015 ('PCRs'). The contract value is not at or above the threshold (£4,722,252) for works contracts. When the Council conducted a procurement in 2018 (awarding the contract to Morgan Sindall and later terminating it without the works having started), the works were procured in accordance with Part 4 of the PCRs ie there was an OJEU notice etc. At that stage, the works were part of a larger project which included works for the construction of a dining hall and refurbishment at the Older Years site. On this occasion the works have been split – one contract is for the construction of a nursery and the other is for a dining hall and refurbishment. The joint estimated value of both contracts, if procured as one contract, would normally trigger a full Part 4 EU procurement. However, no such EU procurement was conducted. Under regulation 6(6) of the PCRs, splitting procurements is permissible provided there are objective reasons for doing so and it was not done with the intention of preventing the procurement from falling within the scope of Part 4. So long as that test is satisfied and the Council also complies with the following requirement for below threshold procurements, the award can be made:

(i) The contract opportunity must be published on ContractsFinder if the opportunity has been advertised elsewhere. Since the opportunity was advertised in capitalesourcing, the Council was required to also publish it on ContractsFinder. This report confirms that this was done.

WCC's own Contract Procedure Rules

The Procurement Code within the Contract Procedure Rules states that:

- (i) The procurement (being for a contract of £100,000+) must be competed. The procurement was completed within the UK so this requirement is satisfied.
- (ii) The award must be made by the appropriate Cabinet Member following a recommendation to approve from the appropriate Executive Director and the Procurement Assurance Board (Gate 2, as was). The Executive Director approved the award on [] so this requirement is satisfied.
- (iii) All contracts with a value of over £175,000 must be signed by at least 2 authorised officers of the Council or made under the Common Seal attested by the Chief Executive, Director of Law or authorised Solicitors in accordance with the correct Standing Orders in the Council's Constitution.

Covid-19

The contract should include appropriate wording that deals with delays to the work, if any, specifically caused by COVID-19.

7.2 Older Years Site

This report recommends an award to Neilcott Construction Limited of a contract for the construction of a dining hall and internal refurbishment at King Solomon's Academy Older Years site in the sum of £1.809m. The legal implications for this award are exactly the same as set out for the Younger Years site.

7.3 Development Agreement/s

This report also seeks authority to enter into a Development Agreement for each of the sites. The purpose of the Development Agreement is to contractually bind both parties to take the necessary steps to ensure that the works are executed, including in the case of ARK Schools that it makes its capital contributions. In essence, this recommendation is a reconfirmation of the previous Cabinet Member's decision of 21st December 2018 to approve entering into a Development Agreement for 4 phases, of which the current works are phases 2, 3 and 4 (Phases 3 and 4 are both King Solomon Academy OYS and are combined into one contract).

Angela Hogan, Senior Solicitor (Interim), tel: 07825 237494, email: ahogan@westminster.gov.uk

8. Staffing Implications

- 8.1. All staff associated with this appointment will be direct employees or sub-contractors to Neilcott Construction Limited, with commercial oversight being provided by 3BM Spaces/Fusion Project Management.

9. Consultation

- 9.1. ARK Schools and King Solomon Academy have carried out the necessary consultation relating to the expansion in accordance with statutory provisions.

Part B

10. Commercial Matters

- 10.1. That Part B of this report be exempt from disclosure under s100B(2) and Schedule 12 A of the Local Government Act 1972, (as amended) in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).

11. List of Appendices

Appendix A – King Solomon’s Academy (KSA OYS) and ARK Paddington Green (YYS) Gate 3 Paper

Appendix B – Cost Consultant (Gleeds) commercial tender analysis

For completion by the Cabinet Member for Children's Services

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: Councillor Tim Barnes, Cabinet Member for Children's Services

State nature of interest if any.....

.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendations in the report entitled **Award of Contract - expansion works at King Solomon Academy (Older Years Site) and Nursery (Younger Years Site)** and reject any alternative options which are referred to but not recommended.

Signed

Councillor Tim Barnes

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

.....

.....

.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the

criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix A - King Solomon's Academy (KSA) and ARK Paddington Green Gate 3 Paper

Appendix B – Cost Consultant (Gleeds) commercial tender analysis



Gleeds Commercial
Tender Analysis Repo