



CABINET - 20 OCTOBER 2020

EXCEPTION TO THE CONTRACT PROCEDURE RULES FOR DIRECT AWARD OF A CONSTRUCTION CONTRACT

REPORT OF THE DIRECTOR OF CORPORATE RESOURCES

PART A

Purpose of the Report

1. The purpose of this report to advise the Cabinet of a contract recently awarded for the refurbishment of the former Oakfield School site, which whilst valid and awarded properly did not follow the Council's usual process. The Director of Law and Governance has requested that the item be brought to the Cabinet's attention in order to provide assurance to the Contractor already undertaking works on site and to the Academy Trust to whom the site is to be transferred.

Recommendation

2. It is recommended that the Cabinet notes that the contract award for the refurbishment of the former Oakfield School site should have been the subject of an Exception Report to the Cabinet, notwithstanding which the contract is considered to be valid and was entered into in good faith by both parties.

Reasons for Recommendation

3. To advise the Cabinet of the procedural error which has come to light during the transfer of the site and, by way of this report, to provide clarification and assurance for the Academy Trust.

Timetable for Decisions (including Scrutiny)

4. The contract was awarded in July 2020 and work has commenced.

Policy Framework and Previous Decisions

5. Not applicable.

Resource Implications

6. There are no resource implications arising from the recommendation in this report.

7. The Director of Law and Governance has been consulted on this report.

Circulation under the Local Issues Alert Procedure

8. None.

Officers to Contact

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PART B

Background

9. The construction contract relates to the former Oakfield Pupil Referral Unit in Blaby which is being refurbished to provide a 50-place Social, Emotional and Mental Health Needs School. The land and buildings are to be transferred to an academy trust.
10. A Minor Works [Procurement] Framework had been put in place but there was a misunderstanding between the officers involved with this contract as to how the Framework should be used.
11. In November 2019 the Council's Project Management Office (Property) concluded that it was not possible for the contract award to be a call off from the Minor Works Framework (i.e. an individual contract falling under the Framework) and that the contractor should be appointed by way of a direct award. This meant that an exception to the Contract Procedure Rules was required.
12. The project was delayed because of the COVID-19 pandemic; it was originally intended that the contract be completed in April. The construction contract was not progressed until late June 2020 and was completed in a short timeframe to ensure works could start on site in July. The contract was completed and signed in July but unfortunately approval to award by exception was not obtained in advance in accordance with the Council's usual practice and as set out in the Contract Procedure Rules.
13. In accordance with the Council's Contract Procedure Rules, exceptions should only be made with the agreement of the Chief Officer or the Executive (depending on the value of the contract).
14. The lack of a documented Exception Report has only come to light through progressing the transfer of the site to the academy trust and to regularise the position and provide assurance to the trust it was considered appropriate that this procedural error be put on record for the Cabinet to note.

Comments of the Director of Law and Governance

15. The Director has advised that although the necessary approvals were not obtained prior to the award of the contract, the contract is valid, noting that it was entered in good faith by both parties and that the work has already been in part performed. Subject to the relevant Chief Officers and the Cabinet being made aware of the situation, and reassurance being provided to the academy trust no further action with regard to the contract is needed.

Risk Assessment

16. Fortunately there are no serious consequences arising from the technical error. However the Department's processes for the drafting and award of contracts will be reviewed in light of the oversight and further staff training will be carried out as necessary.

Equality and Human Rights Implications

17. There are no equality or human rights implications arising from the recommendations in this report.

Background Papers

None.