

North Lanarkshire Council Report

Policy and Strategy Committee

approval noting

Ref JH

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Interim Procurement Strategy – School Estate

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Executive Summary

The current procurement in place for the delivery of the Schools investment programme terminated at the end of January 2019.

The council has approved capital funding for the delivery of new build projects within the Phase 2 and Phase 3 Schools and Centres 21 investment programmes, and this report proposes a replacement procurement route in order to continue the delivery of Schools projects and seeks approval for that procurement strategy.

Recommendations

It is recommended that the Policy and Strategy Committee, as detailed in the report

1. approve the procurement strategy for the Schools major investment programme to provide a route for the council to procure a range of relevant current and future projects until a future alternative procurement is implemented;
 2. approve the immediate commencement of the procurements and contracts with Hub South West Scotland for the preconstruction design development stages for the projects listed in Appendix 1, subject to any project scope and educational consultation approvals by committee where required, noting that appropriate delegated authority was obtained to progress to a limited value, two of the projects as set out in Appendix 1;
 3. approve an application to be made to the current Scottish Procurement Alliance Framework for Schools and Community Buildings to provide a backup procurement route as set out in section 2.2.1 b);
 4. to note that all projects procured using this procurement strategy, will be subject to a report to the Finance and Resources Committee (once the statutory consents, construction price and negotiated set of commercial risks are finalised) seeking approval to enter into each agreement for construction.
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Supporting Documents

Council business ...
plan to 2020

Appendix 1 Schools and Centres 21 Projects approved for Phase 2 and 3

Appendix 2 Procurement Options Appraisal for Schools and Centres 21

1. Background

- 1.1 The key approvals for the Schools and Centres 21 investment programme were as follows:-
- 14 February 2013 approval by Council to continue the Schools and Centres 21 programme with revenue investment to generate £100 million of capital investment;
 - 30 April 2013 approval by Learning and Leisure Services Committee to procure a £200 million capital design and build framework for Schools and Centres 21 Phase 2 but with a £100 million internal funding cap to align with council budget approvals at that time;
 - 16 March 2017 approval by Policy and Resources Committee to remove the £100 million internal funding cap and approval of strategic budget forward commitment of £20 million from the council's future 5 year capital investment programme in order that the Phase 3 projects approved by the Education Committee meeting on 1 March 2017 could be progressed.
- 1.2 The council entered into design and build framework agreements on 23 January 2015 with three contractors for the delivery of phase 2 of the Schools and Centres 21 programme. This framework agreement ended on 23 January 2019 after delivering the procurement for almost all of the Phase 2 projects.
- 1.3 The EU Procurement Regulations do not permit framework agreements to exceed 4 years duration, other than exceptional circumstances, and a procurement route needs to be put in place which meets the regulatory compliance required to permit the council to continue to procure and deliver the Phase 3 projects.

2. Report

2.1 Summary of Procurement Options

- 2.1.1. The option appraisal set out three possible procurement routes all of which were compliant with current regulations.

Option 1 Undertake a procurement of a NEC 3 Design and Build Framework
Option 2 Procure through the existing Hub South West Scotland partnership
Option 3 Procure through Scottish Procurement Alliance Framework

- 2.1.2 The principles for the procurement route were based upon a requirement for a procurement route:-

- to be in place after January 2019 in order to continue progress on the approved projects
- that provides an efficient, consecutive design and build process with key stage / break points for the council to be able to review the affordability, compliance with objectives and deliverability of a project;
- which allows the council the flexibility to procure a range of projects;
- which offers flexibility and efficiency to procure when projects are ready;
- that demonstrates value for money;
- that does not prohibit the council from procuring projects using future alternative procurement routes.

2.1.3 Appendix 2 provides a copy of the Options Appraisal.

2.2 **Proposed Procurement Routes**

2.2.1 The outcome of the option appraisal recommends that the Council:-

- a) utilise the existing Hub South West Scotland partnership agreement as the 'preferred' procurement route for the Schools Investment Programme where those projects comply with the qualifying criteria set out in the Territory Partnering Agreement and subject to a check against the prevailing regulations to ensure compliance.
- b) provide the council with a backup procurement route by utilising the current Scottish Procurement Alliance Framework for Schools and Community Buildings, when appropriate to do so; agreement to progress any project using this back up to be sought from the Strategic Capital Delivery Group prior to any call-off procurement being started.

This approach provides a beneficial position for the council that should incentivise the procuring organisations and their main contracting partners to deliver the required quality of performance and value for money for our projects.

2.2.2 Key Benefits

The council is a shareholder in the twenty year public private partnership agreement with Hub South West Scotland (HubSW). HubSw is a development partner for public sector partners to deliver strategic services and community based infrastructure including schools. This partnership agreement was procured and formed following approval at the Policy and Resources Committee in September 2012. The council does not require to undertake any further procurement of Hub for the foreseeable future. Projects are progressed through the submission of 'New Project Requests' – detailed authority requirements. Hub will undertake the call off procurement between the tier 1 contractors with the council participating to satisfy itself on fairness, relevance, quality, performance and transparency in accordance with the method statements set out in the agreement.

Utilising Hub South West Scotland (HubSW) as the 'preferred' route for the delivery of the Schools and Centres 21 investment programme, at this time, provides the council with:

- a) Best flexibility

The council can progress projects as it needs to over the next 20 years, without running lengthy and resource intensive procurement activities every three years; this does not tie the council to HubSW for this period as the council can stop using HubSW at any point if an alternative better value procurement is in place.

If the council succeeds in obtaining funding from the 2020 Scottish Government funding announcement for school projects, any such project if revenue funded would generally require us to deliver it through hub.

b) Beneficial efficiency

The Hub method statement process is a two stage process almost entirely similar to the gateway process on the existing framework but without the issue of two separate contracts. Their four appointed tier 1 main building contractor organisations are organisations who have been previously appointed through the council's two previous schools framework. This means that the continuous improvement on projects from the transfer of lessons learnt will not be lost; collaboration to secure supply chain discount will be more effective, shared resources with HubSW bring benefits to the public purse and continuity through the pipeline should bring efficiency in delivery to reduce timescales in project development.

c) Cost certainty

HubSW and their supply chains are subject to capped fees and transparent pricing.

d) Robust performance

HubSW must operate to around 80 Key Performance Indicators. Their performance is reviewed not only through contract management but there are two additional oversights possible i) through the Territory Partnering Board, which the council has a representative on; and ii) through the council's shareholding.

e) Added value

Hub SW have a full range of community benefits that they must procure and in addition, project specific community benefits have been procured and will continue to be secured. These support the Council Plan.

2.3 Key Contracting Principles with Hub South West Scotland

2.3.1 The projects listed in Appendix 1 will be progressed (subject to any committee approvals where required for scope and statutory consultation) as 'New Project Requests' to Hub South West Scotland to reflect the methodology set out in the Territory Partnering Agreement.

2.3.2 The underlying contract used for design and build projects is the Design and Build Development Agreement (DBDA). It is intended to revise this to include some best practice contract provisions from our current framework and the standard schools DBFM agreement (Design, Build, Finance, Maintain) as follows:-

- Add obligations onto the contractor to seek approval from the council's authority representative under the contract, prior to any change in subcontractor or supply chain after a construction price has been agreed. This prevents a contractor re-procuring on more favourable pricing terms for themselves and risking quality of construction.
- Add in any specific mandatory council required procurement clauses that post-date the 2012 Hub Agreement; e.g. fair payment charter.

- Replace 'Practical Completion' as the construction contract completion target by 'Completion Criteria'. The use of the latter is used in every DBFM project and provides a stronger basis for the council to insist that a project cannot simply be handed over on construction completion simply because an occupation certificate has been obtained. Completion Criteria sets out a contract schedule of activities and documentation that requires to be met by the building contractor. This ensures that the specific list of activities, quality compliance, test and certifications have also been achieved.
- Add obligation for HubSW to confirm to the authority's representative that they have satisfied themselves that the Completion Criteria has been met. Currently the Scottish Future Trusts' standard DBDA puts the onus on the council to issue the completion certificate (thereby satisfying themselves that Hub's building contractor has properly achieved construction completion) without any responsibility to the Hub. This change does not change the risk profile; it simply ensures that HubSW will have to make a statement directly to the council that they believe their building contractor has met the criteria. This should give the council a greater confidence in DBDA contracts and mitigate some of the recent issues in Eastern and Southern Scotland.

2.3.3 It is recommended to use an Independent Tester, as a joint appointment between HubSW and the council, to focus on critical areas such as civils, structural, fire integrity, mechanical and electrical ensuring that construction is complying with both design and construction drawings, witnessing critical tests and formal reporting of installation defects prior to completion. The first three areas have had a significant profile with significant reputational damage to the public sector as commissioner of the construction projects. Mechanical and electrical design and installations are increasingly sophisticated due to the legislative requirements to meet both sustainability and energy efficiency. These areas of expertise no longer sit within the council and have proven difficult to recruit and retain.

2.3.4 The hub model in our territory provides access to a diverse range of technical and quantity surveying (QS) project resource all of which are subject to transparent fee caps, procurement and quotations. This provides a flexible and experienced resource pool to support the technical and cost scrutiny on projects being delivered using the hub model which does not add revenue burdens to the council.

This also saves public money; for example, it is mandatory for HubSW to procure a QS independent from the appointed building contractor. The QS scrutinises the construction costs, reviews work packages and reviews allowances against industry benchmarks. There are no hub costs to review.

A joint QS and technical appointment between the council and HubSW, using HubSW to procure, was trialled very successfully on the Cumbernauld Academy DBFM project and it is intended to repeat this for future projects, on a value for money basis. This also helps to mitigate against internal resource conflicts with competing priorities so that the delivery of the council's investment programme is not compromised.

- 2.3.5 The Programme Manager will continue to act in the capacity as authority's representative under each of the HubSW relevant contracts in all commercial and contract undertakings.
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3. Equality and Diversity

3.1 Fairer Scotland

The Fairer Scotland Duty is intended to reduce the inequalities of outcomes caused by socio – economic disadvantage. There is no direct impact as a result of this report, the focus of which is to put in place a procurement route to allow the council to procure and deliver infrastructure projects.

3.2 Equality Impact Assessment

There is no direct impact as a result of this report.

4. Implications

4.1 Financial Impact

- 4.1.1 Without a procurement route in place, the delivery of identified and future projects within the Schools Investment Programme cannot continue to be progressed.

4.2 HR/Policy/Legislative Impact

- 4.2.1 There are no HR/Policy/Legislative Impacts.

4.3 Environmental Impact

- 4.3.1 There are no environmental impacts.

4.4 Risk Impact

- 4.4.1 The procurement strategy mitigates against the risk of the delivery of projects within the Investment Programme being unable to be delivered or being delayed and at risk of inflation increases.
- 4.4.2 The procurement strategy complies with current regulations. To ensure the council complies with any change in relevant regulations any future project to be progressed will be subject to a check against prevailing regulations.
- 4.4.3 The proposed preferred procurement route is currently well within its estimated contract 'threshold' levels and the current Phase 3 projects identified can be progressed at no risk. To ensure the council complies with its General Contract Standing Orders any future project to be progressed will be subject to a review of contract threshold levels for the procurement route proposed.

- 4.4.4 The procurement strategy (and use of either proposed procurement routes) does not bind the council contractually nor financially to have to use Hub South West Scotland. The council will always retain control of how and when it elects to procure projects.
 - 4.4.5 The underlying hub contracts for design and build and design, build, finance and maintain are industry recognised Scottish standard contracts put in place by Scottish Futures Trust through the Scottish Government hub procurement initiative.
 - 4.4.6 The hub fees for the comprehensive range of professional services needed for the development of each project, overheads, profit, risk, prelims and management are capped and are not subject to increase by the private sector over the life of the 25 year hub agreement.
 - 4.4.7 Where additional professional services such as technical surveys are required, these are procured by hub through a competitive value for money process.
 - 4.4.8 The construction price for the direct works cannot be capped. Generally no less than 80% of the work packages that represent construction direct works will be competitively priced at market at the appropriate stage in the development of the project. Where elements of construction pricing that can only be priced with allowances, these cost allowances will be benchmarked using the appropriate cost databases. This is in accordance with the hub method statements that formed part of the original hub procurement.
 - 4.4.9 The council is a shareholder of Hub South West Scotland with representation on the Territory Partnering Board. This provides an additional level of influence and scrutiny in terms of hub performance and governance as a delivery partner which is not possible on traditional or framework procurements.
 - 4.4.10 Both procurement routes have pre-qualified and pre-appointed relevant professional experienced contracting organisations and supply chains to call off from to ensure continuity of service.
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5. Measures of success

- 5.1 The procurement strategy is based upon procurement routes that demonstrate Best Value is capable of being achieved
- 5.2 The procurement is specific to the design and build of public infrastructure for schools and community facilities.
- 5.3 The procurement strategy provides a most efficient procurement route as the procurement is in place, is regulatory compliant and does not require a major re-procurement undertaking within the next 15-20 years.
- 5.4 The procurement route is time flexible which do not need the council to undertake separate full procurement exercises for each project within the investment programme but allows the council to progress and award contracts when it suits the council to do so (that is, when projects are identified, funding available and project approvals are in place).

- 5.5 The form of contract is appropriate, for the proposed preferred procurement route and for the backup procurement route, relevant to the nature of the professional services and works and which includes and can be negotiated to include North Lanarkshire terms and conditions, strong performance mechanisms including key performance indicators and options for sharing value engineering savings.
- 5.6 The strategy supports We Aspire, specifically, the priority of The Plan for North Lanarkshire to Support all children and young people to realise their full potential.
- 5.7 The procurement route will deliver added value through both the existing Hub Territory community benefits and the wide range of additional community benefits negotiated for each project. These benefits will support other We Aspire ambition statements of The Plan for North Lanarkshire.

A handwritten signature in black ink that reads "James McKinstry". The signature is written in a cursive style with a long, sweeping tail on the final letter.

James McKinstry
Head of Asset and Procurement Solutions

Appendix 1

Projects with approved funding

Phase 2 Carnbroe/Sikeside Primary campus with Calder Community Centre

The timeline for this project was revised due to strategic house building requiring a re-scoping and variance of the project. Stage 1 and part of Stage 2 was completed in the framework. The residual Stage 2 and construction would be progressed through Hub South West Scotland. The design and construction partners will be transferred across as legacy to ensure continuity. (Morgan Sindall are the same contractor for the council and for HubSW).

The Executive Director of Enterprise and Communities gave delegated authority to procure the second stage of the preconstruction design development through Hub South West Scotland, capped at £500,000 for the Carnbroe/Sikeside and Calder Community campus project to ensure progress could be maintained.

This delegated approval and its limit will be replaced upon approval of this report.

Phase 3 Newmains and St Brigid's Primary Schools shared campus

The Executive Director of Enterprise and Communities gave delegated authority to put in place to procure the first stage of the preconstruction design development through Hub South West Scotland, capped at £500,000, for the Newmains and St Brigid's shared campus project to ensure progress could be maintained.

This delegated approval and its limit will be replaced upon approval of this report.

Phase 3 Sacred Heart and Lawmuir Primary Schools shared campus

Phase 3 Chryston Primary School (subject to consultation approval)

Phase 3 Gartcosh Primary School

Phase 3 St Stephen's Primary School

Appendix 2 Procurement Options Appraisal

Procurement Options Appraisal

1. Option 1 NEC 3 Framework

- 1.1 Whilst the last two frameworks have been successful, the procurement of these were based on strategies of the projects being clearly identifiable (Phase 1) or the value of capital investment being limited at that time (Phase 2).
- 1.2 A framework is limited to a maximum of 4 years, which means the cost of resourcing and taking time out to run a new procurement at year 3 of the framework if other projects come up unexpectedly and require to be delivered. *Note that the nature of these infrastructure projects means that delivery on average of a project involves a 3-5 year timescale.*
- 1.3 The current environment for planning for the development of infrastructure with population growth, boundary commission changes, strategic housing developments, the continued need to consolidate and share buildings to manage council assets as well as the need to replace assets and respond to financial budgets suggests it is more prudent to put in place a procurement that has great flexibility than a framework can provide at this time.
- 1.4 The opinion of the Schools and Centres 21 Project Board was that there was a high probability that future projects, in addition to those identified already, would arise and that it was not possible at this stage to plan for the scope or the timing of those. The board therefore supported the recommendation not to proceed with the option of procuring a framework at this time.

2. Option 2 Hub South West Scotland

- 2.1 Following approval at the Policy and Resources Committee in September 2012, North Lanarkshire Council entered into a twenty year institutional Public Private Partnership with Hub South West Scotland. The council is also a shareholder in this partnership. The partnership has a 5 years extension provision.
- 2.2 Hub South West Scotland (HubSW) act as a development partner for those public sector partners to deliver strategic services and community based infrastructure including schools.
- 2.3 This partnership through its procurement demonstrated value for money, a set of method statements through a Territory Partnering Agreement for progressing projects and procured a set of main building contractors. Clyde Valley 3-18 Campus and Greenfaulds High School have been delivered by HubSW and Cumbernauld Academy and Cumbernauld Theatre Campus is currently in construction.
- 2.4 This agreement therefore permits the council to procure infrastructure and services through Hub South West Scotland, without any additional procurement for the next 20 years (this includes the 5 year extension period) insofar as the projects fit the qualifying criteria for the Territory Partnering Agreement (schools and community facilities do comply).
- 2.5 This procurement route does not bind the council to use this procurement (except where a project is already under contract). Therefore the council can

continue to use HubSW or discontinue to use HubSW to procure projects. The HubSW procurement programme value limits are £1billion excluding inflation. Its current take up across the territory is circa £649 million.

- 2.6 The fees used for HubSW, the third party range of professional services, the building contractor's overhead, profit and risk are capped for the whole of the 20 year agreement. Over 80 key performance indicators are embedded including community benefits similar to those obtained from our previous frameworks. The hubco fee portion is 0.56% of the value of only the building costs and builders prelims (not the total of the development cost).
- 2.7 The threshold limits are therefore capable of coping with the council's Phase 3 programme, the basis provides for a diverse range of school and community projects, the four building contractors are those which have already delivered community and school projects for this council, community benefits and a performance regime are in place, the hub model assists with conversion from council funded projects to Scottish funded school projects (should any future funding being awarded) and the council can move away from hub if an alternative procurement is in place in the future or if performance drops off
- 2.8 This procurement route therefore provides the council with significant flexibility.

3. Option 3 Scottish Procurement Alliance Framework SCB2 (for Schools and Community Buildings)

- 3.1 The SPA frameworks have been established in compliance with the Scottish public sector procurement rules and are available to all publicly funded contracting authorities to procure works, goods and services to construct, refurbish and maintain social housing, schools and public buildings. LHC is the not-for-profit central purchasing body who develop OJEU-compliant frameworks in Scotland, on behalf of the Scottish Procurement Alliance. (The Enterprise and Housing Committee meeting of 10 May 2018 gave approval for Project Registration forms to be submitted for the Housing framework so it is not unfamiliar to the council).
- 3.2 A range of framework suppliers, linked to procurement value, are appointed to the framework by SPA and then either subject to a direct award or a call off 'mini' procurement. This process is facilitated and supported by SPA for each project. However SPA do not have any direct management of the framework supplier once engaged. The council would then engage directly with the framework supplier for the build process. SPA would support any performance monitoring. The framework suppliers that apply to Schools and Centres 21 are reputable in the industry. A number of them are the same as our past and current framework partners who have performed well.
- 3.3 SPA is funded via a levy paid by the appointed framework supplier when projects are 'called-off' on the various frameworks. The levy applied varies and is a percentage of the procurement value which is added to the price of the job to the public sector once the construction price has been tendered. Any surplus, after SPA support costs is returned to the public sector contracting authority to support social value initiatives in their local communities.
- 3.4 The SPA has a specific Framework in place for Schools and Community Buildings which is valid until 30 June 2021.

- 3.5 The levy for this new framework that would apply to the scale of Schools and Centres 21 projects is 1% of the value of the procurement.
- 3.6 Reliance on this framework only provides a relatively short term procurement route and therefore the Schools and Centres 21 Project Board supported the recommendation to consider use of the SPA framework (SCB2) for schools and community buildings as a backup procurement route, until its termination. This would provide the council with an alternative procurement route placing the council in a stronger position to incentivise performance from Hub South West Scotland. It is therefore proposed that a non-binding application is made to the SPA.