
Report To:	Education & Lifelong Learning Committee	Date:	2 November 2010
Report By:	Head of Legal & Democratic Services	Report No:	LA/604/10
Contact Officer:	Elaine Paterson	Contact No:	01475 712139
Subject:	Procurement Process Port Glasgow Joint Campus		

1.0 PURPOSE

- 1.1 The purpose of this report is advise members with regard to the governance issues relating to the appointment of the Design Team in connection with the Port Glasgow Joint Campus.

2.0 SUMMARY

- 2.1 Questions were raised in relation to the appointment of Archial Architects Ltd as the Design Team for the Port Glasgow Campus. The appointment was approved by Education & Lifelong Learning Committee at its meeting on 16 March 2010.
- 2.2 The Head of Legal & Democratic Services in her role as Monitoring Officer undertook to report back to Committee in relation to the corporate governance issues in connection with the tendering and award procedures (Para 303 of Council Minutes). Subsequently, the matter was reported to Audit Scotland and referred to the Chief Internal Auditor.
- 2.3 In the circumstances outlined in Paragraph 2.2, it was not appropriate for the Head of Legal & Democratic Services to report back to this Committee until the Chief Internal Auditor had concluded her investigation. That investigation has now concluded and a Report from the Chief Internal Auditor will be considered at the Audit Committee on 11 January 2011.
- 2.4 As outlined in the body of this report, the Head of Legal & Democratic Services is satisfied that the Council's Standing Orders & Scheme of Administration, Standing Orders Relating to Contracts, Financial Regulations and European Procurement Regulations have been properly followed and there are no material breaches of corporate governance or legislative requirements in respect of the award of contract to Archial Architects Ltd.

3.0 RECOMMENDATION

- 3.1 Members are asked to note:-
- (i) the terms of this report; and
 - (ii) that the Chief Internal Auditor will present her Report to the Audit Committee at its meeting on 11 January 2011.

Elaine Paterson
Head of Legal & Democratic Services

4.0 BACKGROUND

- 4.1 On 3 March 2009, the Council agreed to procure a new school in Port Glasgow to replace the Saint Stephen's and Port Glasgow High Schools (the Project).
- 4.2 An initial step in the Project involved the appointment of a Design Team. The value of the services being procured exceeded the European Procurement Threshold and consequently the European Procurement Regulations applied to the procurement process.
- 4.3 Where a procurement is subject to the European Procurement Regulations (the Regulations), stringent legal requirements apply throughout the procurement process, including the evaluation of bids and award of contract.
- 4.4 In terms of both the Regulations and subsequent case law, the methodology by which a contracting body proposes to evaluate bids received in respect of any project must be disclosed to bidders before they prepare and submit their bids. This includes the evaluation criteria and sub-criteria and the weightings (if any) to be applied thereto. It is not permitted to deviate from this once bids have been invited, except in very limited circumstances. As members of the Committee will appreciate, deviation from the disclosed evaluation methodology once bids have been received is very rarely justifiable.
- 4.5 A contracting authority is obliged to award the contract to the bidder whose tender is deemed to be the most economically advantageous in terms of the evaluation methodology disclosed at the commencement of the tendering process, unless of course the contracting authority has chosen to procure on the basis of lowest price.
- 4.6 Following completion of the evaluation process and before the contract is formally awarded in terms of the Regulations, a contracting authority is bound to notify all bidders who the successful bidder is. There follows a period of 10 days during which the contract cannot be awarded. Also during this period, those bidders who were unsuccessful and who are unsatisfied with the result may challenge the outcome and the process. This 10 day period is known as the 'standstill period'.
- 4.7 During the standstill period the successful bidder is referred to as 'the preferred bidder'.
- 4.8 It is important to note that bidders who believe that there has been a flaw in the tendering process or who believe that the Regulations have been breached have rights to challenge the process in the Sheriff Court. In recent years since the advent of the Remedies Directive, which has been incorporated into the Public Contract (Scotland) Regulations 2006, it has become easier, cheaper and quicker for an unsuccessful bidder to challenge a procurement process during the standstill period. The consequences for a local authority that does not properly follow the Regulations can be punitive, both in respect of monetary penalties and delay to its project.

5.0 PROCESS ADOPTED BY EDUCATION SERVICES

- 5.1 As noted in paragraph 4.1 hereof, the Council approved the Project in broad terms on 3 March 2009.
- 5.2 As required by the Council's Standing Orders Relating to Contracts, Financial Regulations and Scheme of Administration, the Acting Director of Education Services sought approval to advertise for the Design Team. This was dealt with by use of Emergency Powers on 11 June 2009 and was duly reported to this Committee on 8 September 2009.
- 5.3 The formal Notice seeking expressions of interest was placed in the Official Journal of

the European Union (OJEU) on 24 June 2009.

- 5.4 All those who expressed an interest in the project completed a pre qualification questionnaire and following evaluation of the questionnaires, a shortlist of six who would be asked to tender was drawn up. It should be noted that the pre qualification process is also subject to the Regulations, and the process adopted by the Council complied therewith.
- 5.5 The Acting Director of Education advised this Committee of progress in this regard on 3 November 2009.
- 5.6 Invitations to tender, together with the tender documentation and evaluation methodology were dispatched by Legal Services on 26 November 2009, with a specified return date of 19 January 2010.
- 5.7 All six who were invited to tender submitted tenders by the due date and those tenders were duly evaluated in terms of the disclosed criteria and as outlined in the Evaluation Report which was presented to this Committee at its meeting on 16 March 2010.
- 5.8 In terms of that evaluation and as outlined in the Evaluation Report presented to this Committee on 16 March 2010, Archial Architects Ltd was identified as having submitted the most economically advantageous bid, scoring 0.25 points more than the second placed bidder.
- 5.9 The Evaluation Team, which was composed of a number of officers, including teachers, felt that the gap between Archial Architects Ltd and the second placed bid was so close as to warrant a further interview. Both bidders were invited to attend on 22 February 2010 to answer some further questions which had been disclosed to them.
- 5.10 Following this interview, the Evaluation Team was of the opinion that the initial evaluation had correctly identified the most economically advantageous tender.
- 5.11 As is required by the Regulations, the 'standstill' letters were dispatched on 25 February 2010. As outlined in paragraph 4.6 hereof, these letters simply identify the preferred bidder in terms of the completed evaluation process and give the other bidders a period of 10 days to challenge the process.
- 5.12 Following the elapse of the standstill period with no challenge having been intimated, as is required by the Council's Standing Orders Relating to Contracts, the Acting Director of Education reported the outcome of the procurement exercise to this Committee on 16 March 2010 and sought authority to award the contract to the bid which had been identified as most economically advantageous.
- 5.13 After the Committee had authorised the award of contract, the formal contract documentation was prepared and the letter of acceptance of the tender was duly dispatched on 21 May 2010 by Legal Services.

6.0 ASSESSMENT OF TENDER PROCEDURES

6.1 The Head of Legal & Democratic Services comments as follows:-

(i) I have reviewed all of the paperwork relative to the procurement process and award of the contract to Archial Architects Ltd, from a corporate governance perspective. In this regard, I have taken note of the Council's internal corporate governance arrangements as well as the European Procurement Regulations;

(ii) I would advise members that at all times, the officers involved in the Project have complied with the Council's Standing Orders & Scheme of Administration, Standing Orders Relating to Contracts and Financial Regulations;

(iii) It is noted that there has been an assertion that the decision to award to Archial Architects Ltd had been announced prior to the decision of the Committee. Whilst I was not present when statements were made in this regard, it appears to me that confusion has arisen due to the legal requirement to identify a preferred bidder before the decision to award the contract but as a matter of fact, the contract had not been awarded when the meetings at which the statement is alleged to have been made took place;

(iv) I am able to give a categorical assurance to members that no formal award of contract was made until after the decision of this Committee since the letter of acceptance was dispatched under my name and by a member of my staff on 21 May 2010 and only after she had double checked that the relevant approval had been granted; and

(v) I can further confirm that the Council has complied with the European Procurement Regulations. The only criticism I have, and I would stress that it is a very minor criticism, is in relation to the decision to ask a further set of questions. In terms of the evaluation framework, the most economically advantageous tender had been identified at the conclusion of the initial evaluation. Archial Architects Ltd were ahead of its nearest rivals, albeit by a narrow margin. By asking a further set of questions, officers introduced an unnecessary risk to the process. Had this additional step led to the contract being awarded to the second lowest bidder, Archial Architects Ltd would have had a very good case to challenge the process. However, in the event, this step did not alter the results of the initial evaluation and was accepted by both bidders. If anything, this tends to underline the good faith and objectiveness of the Evaluation Team.

6.0 IMPLICATIONS

6.1 This report has no financial implications.

Financial Implications – One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

6.2 Personnel: None

6.3 Legal: As outlined in the body of the report.

7.0 CONCLUSIONS

7.1 It is concluded that the procurement of the Design Team for the Project complied with the Council's Standing Orders & Scheme of Administration, Standing Orders Relating to Contracts, Financial Regulations and the European Procurement Regulations and that there are no material breaches of corporate governance or legislative requirements in respect of the award of contract to Archial Architects Ltd.