
Meeting	Cabinet
Date	24 th June 2013
Subject	Development and Regulatory Services (DRS): Selection of the Preferred and Reserved Bidder as the council's Strategic Partner to form a Joint Venture to deliver the DRS Services
Report of	Cabinet Member for Resources and Performance Cabinet Member for Environment Cabinet Member for Housing Cabinet Member for Safety and Resident Engagement Cabinet Member for Customer Access and Partnerships; and Cabinet Member for Planning and Regulatory Services
Summary	Appendices A, B, C and D provide the Cabinet with the Full Business Case for the Development and Regulatory Services (DRS) along with the Equalities Impact Assessment and List of Principal Legislation affecting the DRS services

Officer Contributors	Pam Wharfe, Director for Place John Hooton, Deputy Chief Operating Officer Martin Cowie, DRS Service Lead Jason Walton, DRS Commercial Lead Suzanne Crouch, DRS Project Manager
----------------------	---

	Nick Faint, DRS Project Manager
Status (public or exempt)	Public (with separate exempt report)
Wards Affected	All
Key Decision	Yes
Reason for urgency / exemption from call-in	N/A
Function of	Executive
Enclosures	Appendix A – Full Business Case Appendix B – Equalities Impact Assessment Appendix C – List of Principal Legislation Appendix D – Evaluation Report (exempt report)
Contact for Further Information:	Martin Cowie, DRS Project Director Martin.Cowie@barnet.gov.uk Tel: 020 8359 4514

1. RECOMMENDATIONS

- 1.1. That Cabinet note the outcome of the evaluation stage of the Development and Regulatory Services project and accept Capita Symonds' final tender (including subsequent clarifications) as the preferred bid, with reference to the Full Business Case (Appendix A), Equalities Impact Assessment (Appendix B), List of Principal Legislation (Appendix C) and Evaluation Scores (Appendix D exempt);**
- 1.2. That Cabinet approve the recommended reserve bidder (including subsequent clarifications), as EC Harris;**
- 1.3. That Cabinet consider and respond to the comments raised by the Budget and Performance Overview and Scrutiny Committee – (to be published DATE TBC);**
- 1.4. That Cabinet instruct the officers to take all necessary action to complete the formalities for the finalisation and execution of the contract;**
- 1.5. That Cabinet approve the formation of a Joint Venture Company with Capita Symonds Ltd and instruct officers to take all necessary actions; and**
- 1.6. That Cabinet approve the addition of £6.4m of investment to the capital programme.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1. Cabinet Resources Committee 14 December 2011 (Decision Item 5) – resolved that:
 - The Cabinet Resources Committee approve the recommended Development and Regulatory Services (DRS) shortlist of two bidders for stage 2 of the competitive dialogue process;
 - The recommended shortlist was: Capita Symonds Ltd and the EC Harris / FM Conway consortium. They achieved the highest two scores from the evaluation of the outline solutions provided at the end of the first stage of competitive dialogue; and
 - The updated Development and Regulatory Services Business Case be noted.
- 2.2. Cabinet Resources Committee 28 March 2011 (Decision Item 5) – resolved that:
 - that the Committee approve the Development and Regulatory Services business case, in order for the council to begin the competitive dialogue process, following the previously approved placing of the OJEU notice.
- 2.3. Cabinet, 10 January 2011 (Decision item 8) – following the referral back by the Business Management Overview and Scrutiny Committee on 16 December 2010, resolved that:
 - decision 7 taken by Cabinet on 29 November 2010 on Development and Regulatory Services be reaffirmed (as stated in 2.5 below).
- 2.4. Cabinet, 29 November 2010 (Decision item 6) – resolved that:
 - the One Barnet Programme Framework is approved; and

- the funding strategy for One Barnet implementation costs, as set out in paragraph 6 of the Cabinet Member's report, is approved.

2.5. Cabinet, 29 November 2010 (Decision item 7) – resolved that:

- the Commercial Director be authorised to commence the procurement process to identify a strategic partner for the delivery of the Development and Regulatory Services project.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1. The Corporate Plan 2013/16 has defined the following objectives:

- promote responsible growth, development and success across the borough.
- Support families and individuals that need it – promoting independence, learning and well-being.
- Improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study.

The DRS project supports the corporate plan aims by: protecting a good environment through maintaining all existing service standards in an era of significant financial reductions; and encouraging growth by introducing new technology, skills and commercial ideas to encourage and support sustainable growth in the borough.

Closer working with other service providers including Barnet Homes, the police and health authority in addition to the business sector and the community is key to the delivery of DRS as are accelerating the regeneration programme and encouraging healthier and independent lifestyles.

4. RISK MANAGEMENT ISSUES

4.1. Severe resource constraint represents the most significant risk to the council achieving its strategic objectives. The Development and Regulatory Services Full Business Case demonstrates that by proceeding to contract signature and entering into a contract with the Preferred Bidder, the council will through the lifetime of the contract secure the savings it needs to meet the demands of the current Medium Term Financial Strategy and help to meet the challenge of additional cuts which will impact on local government for the rest of the decade whilst achieving significant operational and strategic benefits.

4.2. The risks to the council associated with entering into a contract with the Preferred Bidder, along with the contractual protections and other mitigations, are fully documented within section 6 of the Business Case, but are also listed in summary here:

Risk Area	Causes	Control
Financing	Insolvency	There are financial distress provisions in the contract and a parent company guarantee
	Change in ownership	There are restrictions in the contract on the types of organisation that are allowed to take on the contract, plus rights in the joint venture agreement
	Inability to source investment capital	The preferred bidder has been financially vetted. Financial standing tests from Pre-Qualification Questionnaire stage were re-run, showing no material change. A parent company guarantee will be in place.
	Provider is unable to effectively manage its costs or secure sufficient income	The Company is required to top up any shortfall in guaranteed financial benefit. If it fails to then the council will reduce payments to the preferred bidder accordingly. A parent company guarantee will be in place.
Core Service Performance/ Availability	Inadequate specification	Extensive work and review was carried out on the specifications
	Inadequate design / Inadequate resourcing / Inadequate methods	Performance deductions can be applied as a result of key performance indicator failures. A rectification process, step-in or termination if severe.
Resilience	Force majeure event	A Business continuity plan has been developed and included in the contract.
	Inadequate business continuity arrangements	The provider is responsible for delivering the Service continuity. These are monitored through KPIs and the council has the right, where appropriate, to step-in where there is failure
	Inadequate transition arrangements	A Performance deduction can be applied as a result of key performance indicator failures.
	Inadequate exit arrangements	Provision has been made in the contract for an Exit Plan. CSL have an obligation to maintain this throughout the contract's life
Ongoing VFM of core service	Inflexible design	There are change provisions within the contract. Performance deductions can be applied as a result of key performance indicator failures.
	Change in council priorities/policies	There are change provisions within the contract.
	Provider does not remain at the forefront of developments	There will be benchmarking at three times throughout the contract plus annual service reviews
Volume / change in demand	Demographic Changes, or policy changes requiring focus on certain activities e.g. more Trading Standards	Volume related payments have been agreed in the contract. Increased costs will be offset in some instances by increased income

Risk Area	Causes	Control
	inspections	
Joint venture	Joint venture could have an increased risk of facing financial difficulties as it has lower capital reserves than the commercial partner	The joint venture agreement ensures that: a) The Preferred Bidder would fund the joint venture capital and business development costs; and b) The Preferred Bidder will provide a Parent Company Guarantee.
	Joint venture (JV) arrangement would transfer less risk to a partner than a standard contract.	The contract with the joint venture would contain the same performance and financial requirements and guarantees as a direct contract with the bidder.
	Primary bidders compete with joint venture (JV).	Included in the joint venture agreement is a clause which prevents competition within a pre-agreed geographical area for DRS services.
	Joint Venture raises unsustainable levels of debt	The Council has the right of veto on debt over the value of £1m.
Financial Probity	Lack of transparency in partnership finances	Open book accounting and audit rights are part of the contract. The council will also have a Director on the JV Board.
	Uncertainty over what is in or outside the core price	The Agreement specifically includes in price all items in output specifications within agreed volume parameters.
	There are weak elements within the commercials of the project	The commercial elements have been developed during detailed and lengthy negotiations and have been reviewed by both internal and external specialists.
	Unilateral use of intellectual property by partner	There is a position in the contract which is clear on ownership and use of intellectual property rights between the parties. The council also has open book accounting and audit rights, plus rights as a joint venture company Director and shareholder
Non-delegable Statutory Functions	A number of statutory functions within the DRS cluster carry out non-delegable statutory functions	There are a number of functions within the DRS services that can only be performed by an Officer employed by the Authority. A joint employment contract between the employee, the council and the new provider will enable these elements to be performed post transfer to the new provider.

- 4.3. The mobilisation and transition phase that can commence as soon as the Alcatel (standstill) period has concluded must also be robust, and contract management arrangements need to be effectively structured and resourced to ensure that the benefits set out in the Business Case can be realised, and exceeded, throughout the

life of the relationship. These issues are addressed in more detail in section 9 and section 12 of the Full Business Case (Appendix A): 9 Project Approach and 12 Approach to Benefits Realisation and Contract Management.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1. Equality and diversity issues are a mandatory consideration in decision making in the council pursuant to the Equality Act 2010. This means the council and all other organisations acting on its behalf must have due regard to the equality duties when exercising a public function and such an obligation is on-going. The Equality Duty should be applied before a decision is made and be part of the decision-making process.

Section 149 of the Equality Act 2010 provides that: "(1) A public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it"
- (known as the Public Sector Equality Duty and for the purposes of this report henceforth referred to as the Equality Duty).

- 5.2. The "protected characteristics" are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 5.3. The Equality Duty applies to the council. In addition, Section 149(2) provides that "a person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1)". Section 150(5) provides that "a public function is a function of a public nature for the purposes of the Human Rights Act 1998".
- 5.4. The Government has recently announced its intention to bring forward a review of the Equality Duty. Until there is any change in the law, the Equality Duty remains a basis for legal challenge to decisions by any public authority. The council recognises that the time and cost of dealing with litigation and the risk of decisions being quashed is not something that can be treated lightly.
- 5.5. Members should be aware of the special duties the council owes before they take these decisions. In making their decisions, members must accord due regard to all of the goals within the Equality Duty and in the context of the function which is being exercised.
- 5.6. Elected Members have been briefed on the Equality Duty and how equality considerations must be integrated into day to day business when formulating policies and decision-making. Members are mindful of the need to consider what impact, if any, a particular proposal will have on one or more protected groups, whether there will be any cumulative impact and what mitigating steps must be put in place. The council believes the duty has been exercised in substance with rigour and with an

open mind.

- 5.7. The Equality Duty has been and will continue to be considered at all stages of decision making on the Development and Regulatory Services project and subsequent contract management.
- 5.8. A key strategic objective for this procurement has been to secure a strategic partner who will enable a new relationship with citizens. This requires understanding citizens better in order to design and commission intelligently for their needs, finding ways to involve citizens more in service design and delivery, and better integrating local community groups into service delivery. This theme has featured strongly throughout the process, in the evaluation criteria and in both Final Tenders received.
- 5.9. The evaluation criteria for the Outline Solution, Detailed Solution and Final Tender stage included several criteria related to effective delivery against the public sector equality duty and have therefore influenced the content of dialogue and bidder proposals throughout the procurement process. These criteria were:
 - Capturing financial, economic and social benefits of major regeneration projects and return to borough (8%)
 - High and measured customer satisfaction (7.5%)
 - Compliant, high quality service delivery (5.7%)
 - Effective consultation and engagement (4.6%)
 - Effective HR practices and professional development (4.6%)The exempt report contains the evaluation scores that Capita Symonds received on these criteria.
- 5.10. The pre-qualification stage of the procurement process included an evaluation of the applicants' procedures for equalities and diversity to ensure that they were in accordance with equalities legislation.
- 5.11. The council has undertaken thorough equalities impact assessments identification of the impact on employees with protected characteristics who work for the eleven services in scope, and external customers with protected characteristics served by these services which all have public-facing responsibilities.
- 5.12. The Employee Equalities Impact Assessment has been updated at key milestones throughout the procurement process.
- 5.13. These assessments demonstrate that Capita Symonds has committed, as documented in its Final Tender, to continue those aspects of good equalities practice already undertaken by the council, but also that Capita Symonds will enhance existing practice in a number of ways.
- 5.14. Significant changes that Capita Symonds intends to make to service design and delivery, which have been assessed for their impact on customers with protected characteristics include:
 - introducing a number of service improvements that will enable better data about customers to be collected, analysed, and shared so that services can be better designed and targeted to customers.
 - training staff on equalities which will help support more appropriate service delivery methods

- greater use of automated and web self-service channels and social media may negatively affect certain groups with protected characteristics. These would include older people who might not be IT literate, disabled people who cannot use a computer/phone, and people whose first language is not English.

For all of these changes, there are mitigations in the form of commitments that Capita Symonds has made to ensure that customers receive a high quality service and to avoid detrimental impacts on individuals with protected characteristics. For example, Capita Symonds has committed to introduce multi-channelled delivery and the ability to bundle services in ways that relate to customer need and put that at the heart of service delivery. Capita Symonds has also committed to retaining activities or measures currently undertaken by the services which promote the public sector equalities duty.

Having considered these issues in detail, it is the council's view that the overall impact on all groups with protected characteristics in the borough in terms of their access to and use of these services, the council's ability to tackle discrimination and advance equality of opportunity, is likely to be neutral with a potential to be positive in time. There is also likely to be a neutral impact on good relations between those sharing and those not sharing protected characteristics. However, these assessments will be kept under review throughout the mobilisation and contract period.

- 5.15. Significant changes that Capita Symonds intends to make to staffing, which have been assessed for their impact on staff with protected characteristics include:
- redundancy
 - new structures
 - new working practices
- 5.16. For all of these changes, there are mitigations in the form of commitments that Capita Symonds has made to ensure that staff are treated fairly, including:
- full transition communication and engagement plan to integrate staff into new organisation quickly and effectively
 - minimising the impact of redundancy through growth into other partner organisations, redeployment throughout other Capita Symonds businesses, managing vacancies, temporary staff and through natural shrinkage
 - occupational Health and Employee Assistance Programme
 - comprehensive training and development opportunities
 - undertaking a staff satisfaction survey within 6 months of the Service Transfer Date and annually thereafter, and putting in place a remediation plan with the staff forum to address issues identified where satisfaction decreases by more than 5%
- 5.17. The contract requires Capita Symonds to observe equalities legislation and the council's own equalities policy requirements.
- 5.18. Throughout the life of the contract, all service change proposals from Capita Symonds will need to be properly considered to ensure that due regard has been given to the Equality Duty, including appropriate publicity and consultation and equalities impact assessments, prior to any changes being implemented, with the results informing council approval and any subsequent decision whether to put them into effect or not.

The council intends to monitor the delivery of the services during the transition to "go live" and following "go live" with its partner in order to continue to satisfy its Equality Duty.

The council will maintain proper supervision over its partner to ensure that it does comply with the Equality Duty. There are already numerous contract provisions, including reporting, monitoring, intervention and assistance to ensure that this takes place.

- 5.19. In addition, whilst the council recognises that its compliance with the Equality Duty cannot itself be outsourced or delegated, the partner is required by the contract to produce an annual report on its performance in delivering against the contract equalities clauses. As part of its contract monitoring arrangements, the council will rigorously monitor the partner's adherence to equalities requirements and commitments.
- 5.20. Should the scenario arise in which the council may wish to proceed with EC Harris as its Preferred Bidder (for example in the event of Capita Symonds withdrawing) then EC Harris' Final Tender would be subject to a full EIA prior to the decision to proceed.
- 5.21. The full equalities impact assessments can be found in Appendix B.

6. USE OF RESOURCES IMPLICATIONS (FINANCE, PROCUREMENT, PERFORMANCE & VALUE FOR MONEY, STAFFING, IT, PROPERTY, SUSTAINABILITY)

Finance

- 6.1. The baseline budget for the services in scope for Development and Regulatory Services is £14.5m (expenditure). £0.3m is allocated to retained client functions, leaving a baseline of **£14.2m** attributable to the DRS contract. This is set out in the table below:

Expenditure baseline	£m
Baseline for in scope services	14.5
Retained client	(0.3)
DRS baseline	14.2

- 6.2. The services in scope for Development and Regulatory Services include income budgets totalling £9.7m per annum. Income growth is key to Capita Symonds' bid. The offer commits to net income growth of 34% over the contract term (£97m to £130m).
- 6.3. The Medium Term Financial Strategy (MTFS) agreed by the council in March 2012 included savings attributable to DRS totalling £2.78m per annum. This reflected the prudent estimate of benefits from the DRS business case. Since that point, Cabinet on 25 February 2013 set out additional savings requirements of £0.4m for DRS for the years 2014/15 and 2015/16, reflecting the likely further cuts to public expenditure that will follow from the existing 2010 spending review settlement. So when taken together,

the total savings requirement for DRS over the period 2013 to 2016 is £3.18m.

- 6.4. The guaranteed financial benefits arising from the Preferred Bidder recommendation include savings on the core transferring services (reduction in expenditure and increases in income). These financial benefits are as follows:

Guaranteed savings (cumulative)	2013/14 (£m)	2014/15 (£m)	Contract term Total (£m)
December 2011 savings target on core transferring services	1.53	2.78	26.5
Capita Symonds guaranteed savings	1.54	2.80	39.1
Target exceeded by:	0.01	0.02	12.6

- 6.5. The table above demonstrates that the original savings target derived from the Outline Business Case (£26.5m) has been exceeded in Capita Symonds' offer by £12.6m and that the target for 2013/14 and 2014/15 as per the existing council budget is also met.
- 6.6. The additional savings target included in the Cabinet report of 25 February 2013 relating to DRS amounts to a further £0.4m saving required by 2015/16, i.e. £3.18m. Capita Symonds' offer includes guaranteed savings of £4.06m by 2015/16, exceeding the target by £0.88m.
- 6.7. The savings on core services as set out above (£39.1m over 10 years) exceeds both the current MTFS target and the additional MTFS targets out for consultation. Any additional savings to the council both through guaranteed financial benefit over and above the target and further commercial development will not be directly factored into the MTFS at this stage, but if realised will help the council to meet their additional savings targets beyond 2015.
- 6.8. The key proposals from the Preferred Bidder are outlined in the Full Business Case (Appendix A) and the evaluation scores are shown in the Exempt Report.

Procurement

- 6.9. The council has undertaken a competitive dialogue process as outlined in Section 7 of this report.
- 6.10. The detail of the evaluation process is articulated in Appendix D;

Staffing

- 6.11. The council has obligations to its staff both under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and the council's additional TUPE Transfer Commitments which it made to staff through its recognised Trade Unions.
- 6.12. The council will fulfil its TUPE duties to inform and consult staff through tripartite meetings between the council, the new partner and the Trade Unions, which will begin post Alcatel. In addition to the statutory processes, these tripartite meetings will

manage the implementation of the TUPE Transfer Commitments.

- 6.13. Permission to implement the TUPE transfer of staff from the council to the Joint Venture will be sought from the General Functions Committee.
- 6.14. The pensions implications will be put to the Pension Fund Committee Post Alcatel with a recommendation for the new partner to receive Admitted Body Status to the London Borough of Barnet Local Government Pensions Scheme. This request will be supported by a pension bond and admissions agreement.
- 6.15. Details of FTE reductions are contained within the Full Business Case (Appendix A), and are based on data provided to bidders in July 2012. Updated figures will be provided to the new partner at the start and the end of the mobilisation period.
- 6.16. Details of the employee equalities impact assessment are summarised above in section 5, and in full detail in Appendix B.
- 6.17. During the scoping of the Development and Regulatory Services (DRS) project and exploration of options it was acknowledged that there were a number of statutory duties and powers that were non-delegable under the relevant service specific legislation.
- 6.18. Throughout the competitive dialogue process the statutory functions were discussed with bidders and the council decided to consider the option of joint employment. The employees identified as providing non delegable statutory functions will be working under joint employment contracts with the council and the new JV in order to continue to provide the non-delegable statutory duties.

Pre-mobilisation period

- 6.19. The council has provided support to managers and staff throughout the procurement period through the provision of workshops covering the TUPE process, and the personal change process ('Change and Me'). In the period up to June 2013 the council has put the following arrangements in place to support staff:

Emotional support

- Counselling
- Employee Assistance Programme – Workplace Options – available 24/7
- Change and Me workshops

Practical Support

- Line manager and employee 1-1s with a template to collect issues and concerns. These will be held centrally and passed onto the Preferred Bidder when they arrive on site.
- TUPE Answers 1-1, run by HR, 2 hours every day
- Single intranet page under DRS (Development and Regulatory Services) for all support matters, with TUPE FAQs reviewed weekly
- Email address for comments and concerns: employee.support@barnet.gov.uk

Mobilisation of the Contract

- 6.20. The council has a full staff mobilisation plan to ensure that all of the TUPE obligations with regard to informing and consulting are properly discharged.
- 6.21. Post Alcatel the council will start working with the Preferred Bidder to merge plans, agree key milestones, and implement the staff mobilisation and transition plan set out in their Final Tender.
- 6.22. An important part of mobilisation is the release of staff from their duties to attend informative briefings, induction's, one-to-one meetings, and pre-contract training on new systems and processes, so that they can start to understand the culture and working processes of their new employer. The council recognises that release at the early stages of mobilisation will contribute to a smooth transfer of staff, and the process will be managed to ensure minimum disruption to the services supporting the council and the residents of Barnet.

Performance and Value for Money

- 6.23. Capita Symonds has committed 10% of its annual core services fee to the achievement of Key Performance Indicator (KPI) targets. This means that fee deductions can be made by the council up to this level if performance targets are not hit. The basket of KPIs covers all eleven service areas in scope, as well policy adherence and a number of 'Super KPIs' covering overarching objectives.
- 6.24. Capita Symonds has committed to report performance against both KPI targets on a monthly basis (noting that some KPIs have a less frequent reporting cycle) and in addition a broader set of Performance Indicator (PI) targets (which have no direct impact on payment but can be escalated to be KPIs on repeated failure).
- 6.25. The council can require that new KPIs or PIs are introduced and current ones are reprioritised. If the council wishes to make targets more ambitious, it can use the change mechanism within the contract to facilitate this, where Capita Symonds is obliged to provide options to the council to consider.
- 6.26. In years 4 and 7 respectively, the partnership will commission external benchmarking of the services linked to a more fundamental service review. The results of this will inform a partner requirement to develop options and an implementation plan for reducing cost and/or developing services further in line with the council's strategic objectives at the time. This can extend to an obligation for the partner to conduct an external market testing exercise. In addition to the year 4 and 7 benchmarking the council can, after year 2, request one further benchmarking of each service.

Sustainability

- 6.27. The council's contract has a sustainability clause, requiring (amongst other things) that the partner supports the council in meeting its environmental targets and obligations, and adherence to a written environmental management strategy setting targets for carbon emissions, water usage, increased recycling rates and procuring sustainability and sustainable transport usage.

- 6.28. Capita Symonds sets out significant investment proposals to stimulate and drive forward borough-wide growth, enterprise and renewal, by:
- forming a joint venture with the skills, capacity and leadership to co-ordinate the delivery of local services, focus on areas of need and achieve better outcomes for residents. As part of this, Capita Symonds will invest £250,000 in a Barnet Observatory to understand social and economic trends and use this to best meet local needs. Barnet Observatory will provide Borough-wide economic and socio economic information through Middlesex University's Centre for Enterprise and Economic Research (CEEDR). This information will be used to inform the prioritisation of projects and provide opinion on key major projects.
 - offering new business support and advisory services to help local traders, give support to local town centre forums, and leading initiatives to reduce the number of vacant high street properties across compared to other comparables boroughs
 - finding new ways to secure funding, including setting an overarching performance measure to increase the success of Barnet in winning Central Government funding
 - maximising the financial and economic benefits of new developments including increase receipts of New Homes Bonus, Community Infrastructure Levy, Business Rate report to fuel re-investment and deliver key infrastructure
- 6.29. In addition, Capita Symonds have expressed an intention to use Barnet as the base for the provision of development and regulatory services and using Barnet as the base to grow business in the wider region.

7. LEGAL ISSUES

- 7.1. The council has been advised throughout this procurement by its external legal advisers Trowers & Hamlins LLP and, in relation to authority policies, authority policy clauses within the contract, property and third party contracts that will novate, by its in-house legal services department.
- 7.2. In accordance with the provisions of Regulation 18 of the Public Contracts Regulations 2006 (the Regulations), the council has undertaken a thorough competitive dialogue with bidders for the DRS contract. The project team and project advisers have undertaken detailed negotiation of all elements of the Partnering Agreement clauses and schedules, including the financial and technical schedules, with the goal of obtaining the most economically advantageous proposals for the provision of the DRS services.
- 7.3. The competitive dialogue procedure concluded with the receipt of final tender submissions from EC Harris and Capita Symonds on 2 January 2013. Council officers and project advisers have undertaken a thorough evaluation of the submissions in accordance with the published evaluation criteria.
- 7.4. At Preferred Bidder stage, the Regulations state that the council may only request the bidder to clarify or confirm commitments contained in the final tender but further detailed negotiation is no longer permitted.

- 7.5. The services to be included within the DRS contract include statutory functions under a wide range of legislation set out in Appendix C of this report.
- 7.6. The council has established legal powers to enter into a contract with an external service provider to deliver these services by virtue of Section 1 of the Local Government (Contracts) Act 1997, its duty to secure economy, efficiency and effectiveness in the provision of its services under section 3 of the Local Government Act 1999 ("best value"), its general power of competence under section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and the powers contained within the Principal Legislation List in Appendix C to this report. The council also has the power under the Localism Act 2011 to enter into the joint venture agreement.
- 7.7. Upon confirming all outstanding elements of the Preferred Bidder's proposals, and approval of the Preferred Bidder recommendation, the council will enter into a Partnering Agreement with the Preferred Bidder for a 10 year period for the provision of the DRS services. The parties will also have an option to extend the contract term by a period of up to an additional five years.
- 7.8. The contract contains detailed provisions to enable the council to monitor the quality of the services, and the partner will be incentivised under a payment and performance mechanism to deliver to the standards set out in the detailed output specifications for every service and through KPIs during the contract period and any period of extension.
- 7.9. The council is protected against a number of potential risks by indemnities and the contractual obligations are reinforced by a parent company guarantee from Capita Group, a company listed on the London Stock Exchange whose financial strength has been subject to assessment by the council's finance team. Should the parent company's financial standing fall below the required levels set by the council then they are obliged to put in place other forms of guarantee, such as a performance bond.
- 7.10. The partner will enter into an Admission Agreement in relation to the Local Government Pension Scheme. A bond will back up the partner's obligations with regard to staff pensions under the Local Government Pensions Scheme.
- 7.11. There are provisions within the contract which allow the council to terminate early for a number of grounds of Service Provider Default as well as provisions which address early termination due to force majeure.
- 7.12. The council also has the option to terminate the DRS contract voluntarily on six months' notice subject to having to compensate the partner for agreed contractual heads of compensation. These heads of compensation would also apply if the council was in breach of the contract and the partner had grounds to terminate. This is usual in all contracts requiring major investment.
- 7.13. The council has a legal duty as a public authority to continue to have regard to its obligations under the Human Rights Act 1998 (HRA). These duties (like the Public Sector Equality Duty) cannot be outsourced or delegated. Where the partner proposes any changes to the services during the term of the contract the council will ensure that it considers any potential implications any change in service will have on service

users, residents or other individuals and will have due regard to such considerations in any decision it takes as to whether to bring such change(s) into effect.

8. CONSTITUTIONAL POWERS

- 8.1. Council Constitution, Part 3, Responsibility for Executive Functions – Paragraph 3.7 states the Cabinet may discharge any executive functions whether or not they are also delegated to officers.
- 8.2. This decision constitutes a key decision as it involves expenditure or savings in excess of £500,000 and has an effect on two or more wards.

9. BACKGROUND INFORMATION

- 9.1. In March 2011 Cabinet Resources Committee approved the Outline Business Case for the Development and Regulatory Services (DRS) project. This recommended that the council undertake a procurement process to identify a strategic partner to deliver:
 - Building Control
 - Environmental Health
 - Hendon Cemetery & Crematorium
 - Highways Network Management
 - Highways Traffic & Development / Highways Strategy
 - Highways Transport & Regeneration
 - Land Charges
 - Planning Development Management
 - Regeneration
 - Strategic Planning
 - Trading Standards & Licensing
- 9.2. A 'competitive dialogue' procurement process has since been completed to identify the best partner for these services. Final Tenders have been received from two bidders – Capita Symonds and EC Harris. The outcome of the evaluation is a recommendation that the council proceed with Capita Symonds as preferred bidder, to form a joint venture with the council to deliver DRS services.
- 9.3. The Full Business Case demonstrates how the Final Tender from Capita Symonds enables the council to:
 - meet the unprecedented financial pressures it is facing;
 - invest in these services; and
 - preserve and improve on existing service levels.
- 9.4. Capita Symonds' Final Tender contains a range of contractual guarantees to deliver or exceed the targeted benefits from the Outline Business Case Update approved by Cabinet Resources Committee in December 2011. The offer and key benefits are described below.

9.5. Financial benefits

In total, the guaranteed cashable financial benefit from entering into a joint venture arrangement with Capita Symonds would be £39.1m over a 10 year period. This exceeds the business case target by £12.6m.

9.6. Contract savings

The Outline Business Case Update (December 2011) set out an expectation of financial benefits from the core services totalling £26.5m over a 10 year period. Capita Symonds' offer includes guaranteed financial benefits of £39.1m over the contract term, delivered by a combination of cost reductions (£5.3m) and net income growth (£33.8m).

This results in bringing the net cost of these services to the council down from £45m to £6m over the 10 year contract term (£4.5m to £600,000 per annum).

9.7. Impact on the council's Medium Term Financial Strategy

The Medium Term Financial Strategy set DRS services a target of a £2.78m reduction in the current council base budget for the first two years of the contract. Capita Symonds' offer amounts to £2.80m for the first two years of the contract (2013/14 and 2014/15) and therefore meets the target.

As part of the council's annual budget planning, the Medium Term Financial Strategy has now been updated to include proposed savings up to 2015/16. This resulted in an additional savings target for DRS of £0.4m. This makes the new target £3.18m of savings in the first three years of the contract. Capita Symonds' offer includes savings of £4.06m by 2015/16, which comfortably exceeds the expected target.

9.8. Guaranteed investment

Capita Symonds' proposal also includes (within the financial offer described above) approximately £8.2m investment in areas such as information technology (computer hardware and software), building infrastructure and training. This investment not only enables Capita Symonds to deliver the transformation it is proposing, but also avoids the council having to find money in the future to fund replacement technology for systems that are at or nearing the end of their useful life.

9.9. Additional financial benefits

In addition to these guaranteed financial benefits on core services, the Capita Symonds offer includes additional commercial proposals that potentially generate further financial benefits to the council over the contract term. The council's view is that this could potentially generate further financial benefits of several million pounds over the contract term. In practice this may result in additional business cases being presented to Members for approval. There is no obligation on the council to approve specific business cases and there is no impact on the guaranteed financial benefit.

9.10. Benefits for residents

Capita Symonds commit to providing Barnet's residents with an improved and more efficient range of development and regulatory based services. Key examples of how this will be achieved are as follows:

- establishing a dedicated customer services team across all DRS services, supported by new technology, to provide quicker access to services and

information. As part of this Capita Symonds will invest in new online services and self-service including case work tracking, reporting of local issues and complaints monitoring;

- forming a joint venture with the skills, capacity and leadership to co-ordinate the delivery of local services, focus on areas of need and achieve better outcomes for residents including employment and health prospects. As part of this, Capita Symonds will initially fund £250,000 in a Barnet Observatory to understand social and economic trends and use this to best meet local needs. The total investment in the Barnet Observatory will be £1.04m over ten years; and
- significant investment in best-in-class technology and staff capability to enable more efficient and responsive delivery and a customer focused working culture.

9.11. Benefits for Members

Capita Symonds will provide Members with support in their functions as required, including a dedicated Member liaison service. This team will act as a single point of contact for Members for DRS services, answering enquiries, tracking cases and keeping Members informed. This does not preclude direct contact with service officers or planners as necessary for Members.

Members will receive regular and directly relevant information about their wards and a wider summary of borough-wide trends in relation to DRS services. Cabinet Members will be able to monitor performance specific to their portfolios. Evidence of progress against objectives, projects and financial plans will be available to support scrutiny and governance processes.

Full policy and budgetary control and democratic oversight will be maintained.

9.12. Benefits for community organisations

Capita Symonds will commit to a range of initiatives to support community and voluntary sector organisations. This includes establishing local user forums to engage with communities, supported by the appointment of Community Liaison Officers. Capita Symonds will also create a Barnet Revolving Fund with an initial investment of £200,000 and revenue of £40,000 per annum, aiming to make the most of available funding such as New Homes Bonus and Business Rates (NNDR) to benefit local communities.

9.13. Benefits for the local economy

Capita Symonds sets out significant investment proposals to stimulate and drive forward borough-wide growth, enterprise and renewal, by:

- offering new business support and advisory services to help local traders, giving support to local town centre forums, and leading initiatives to reduce the number of vacant high street properties across Barnet compared to comparable boroughs;
- finding new ways to secure funding, including setting an overarching performance measure to increase the success of Barnet in winning Central Government funding;
- maximising the financial and economic benefits of new developments including increase receipts of New Homes Bonus, Community Infrastructure Levy, Business Rate rebate to fuel re-investment and deliver key infrastructure;
- providing new capacity to accelerate project delivery and unlock stalled projects; and

- In addition, Capita Symonds have expressed an intention to use Barnet as the base for the provision of DRS services and using Barnet as the base to grow business in the wider region.

9.14. Benefits for transferring staff

The preferred Tender incorporates a significant number of commitments covering HR matters and organisational and professional development. These also include activities during the transition period to ensure that staff are welcomed and integrated into the joint venture in an appropriate way. All transferring staff will benefit from the TUPE Transfer Commitments which is a preservation of contractual terms and conditions for the first year post contract, and on-going access to their Local Government Pension Scheme, whilst working on the Barnet contract.

9.15. There remains the option of discontinuing the procurement process. However, if the council chose not to complete this procurement, it would have to:

- make significant cuts to customer and support services in 2013/14 in order to meet immediate budget pressures;
- attempt to replicate the investment, technology and other solutions being proposed by Capita Symonds in order to drive out the future savings required; and
- at the same time attempt to maintain service levels in existing areas and develop further its own analytical capability to shape future commissioning.

The council does not currently have sufficient capacity or expertise to guarantee that all of this can be achieved concurrently. Capita Symonds is offering these guarantees.

Therefore, the recommendation is to enter into a joint venture with Capita Symonds for the delivery of DRS services, with the intention of Capita Symonds commencing services following Cabinet decision / Post Decision Scrutiny and a transition period.

10. LIST OF BACKGROUND PAPERS

- 10.1. Budget and Performance Overview and Scrutiny Committee minutes dated 11th June 2013 – to be published

Cleared by Finance (Officer's initials)	MC/JH
Cleared by Legal (Officer's initials)	Trowers and Hamlin