

	<p>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 8th October 2014</p>
<p>Title</p>	<p>Contract Variation for 2013/14 Secondary School Expansions</p>
<p>Report of</p>	<p>Commercial and Customer Services Director</p>
<p>Wards</p>	<p>Woodhouse Ward, Garden Suburb Ward, Mill Hill Ward</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>N/A</p>
<p>Officer Contact Details</p>	<p>David Farr- Senior Project Manager, Corporate Programmes, 07702923903. David.farr@barnet.gov.uk</p>

Summary

This report seeks approval to vary an existing consultancy contract with Mott MacDonald Ltd for Cost Consultancy Services In relation to expansions at Christ’s College, The Compton School and Copthall School.

Decisions

- 1. To approve the variation to the consultancy contract between the Council and Mott MacDonald Ltd from £72,600.00 to £122,600.00. This is due to an increase in the tendered scope of works and also prolongation costs.**

1. WHY THIS REPORT IS NEEDED

- 1.1 There is currently a high volume of demand for school places in the Borough both at Primary and Secondary level. To help address this demand the Council is investing approximately £15m in three Secondary Schools located within the Borough for them to expand. These projects are now on site and progressing.
- 1.2 The expansion works are being delivered under Design and Build contracts, with separate appointment of technical consultants to provide cost consultancy services to the Council. Several factors including an increase in the scope, sequencing and costs of the construction works have resulted in consultant services fee increasing from the originally agreed contract sums which has resulted in a contract variation.
- 1.3 A contract extension is required to enable payment to be made to the cost consultants in accordance with the revised fee structure.

2. REASONS FOR DECISION

- 2.1 Mott MacDonald Ltd were appointed at an early stage of the project to provide advice on cost, contract administration and value for money of the design and construction and to provide cost assurance through the life of each project. They were appointed on a percentage fee, based on the original expected construction costs of £9.65m, in line with the requirements of the NLSA framework agreement under which they were procured. Mott MacDonald have submitted an increased fee request due to the following matters:
 - Additional budget estimate reviews associated with cost reduction re-design measures.
 - Change in construction project sequence of works against the tendered process.
 - Increased construction costs.
- 2.2 Mott MacDonald sought an increase in fees for an increased scope of their work, based on the revised costs of the main JCT contract, and a revised fee has been negotiated and agreed. The contract with Mott MacDonald is to be varied to allow for the revised fees and payments to be made against them.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3.1 No alternative options are available

4. POST DECISION IMPLEMENTATION

4.1 The decision will facilitate the payment of outstanding consultancy fees.

5. IMPLICATIONS OF DECISION

5.1 To enable the payment of Mott MacDonald's increase fee.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 The school expansion projects covered by this report are Christ College, Compton and Copthall school secondary schools. The works are being funded from the Secondary School Places, Capital Investment Programme which has a total budget of £12.6m for the three schools. The additional costs required to fund the variations is £50,000 and this can all be contained within the budget when taking in to consideration construction costs, consultancy and project management fees, legal and planning costs plus contingency sums.

5.2.2 The agreed revised fee for cost consultant services from Mott MacDonald, is £122,600.00. This is an increase of £50,000 from the previously approved £72,600. This has been negotiated down from a higher potential fee claim and the Employers Agent is satisfied this provides value for money.

5.2.3 The original contract with Mott MacDonald was procured via the NLSA framework in line with Contract Procedure Rules. The CPRs require that for variations where the revised contract value is between £25,001 and £172,514 approval to the variation needs to be by full DPR.

5.3 Legal and Constitutional References

5.3.1 Under Section 14 of the Education Act 1996, the Council must ensure that sufficient schools for providing primary and secondary education are available in its area

5.3.2 Procurement processes must comply with the European public procurement rules and the European Treaty obligations of transparency, equality of treatment and non-discrimination as well as the Council's Contract Procedure Rules.

5.3.3 A framework agreement is an agreement between one or more clients and one or more contractors, the purpose of which is to establish the terms governing particular call-off contracts that may be awarded during the term of

the framework, in particular terms relating to price and quantity. The advantage of establishing framework agreements is that as long as the original framework agreement has been advertised and let in accordance with the EU public procurement rules, subsequent call-off contracts can be let under the framework agreement without further advertisement even where those call-off contracts exceed the stipulated financial threshold for works and services.

5.3.4 Under the Council's Contract Procedure Rules, clause 14.3, contracts may be varied provided all the following conditions are met:

- *the initial contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;*
- *the value of the extension or variation added to the value of the original contract does not exceed the original Authorisation threshold as defined in Appendix 1, Table A;*
- *the extension or variation has an approved budget allocation;*
- *the extension or variation is in accordance with the terms and conditions of the existing contract;*
- *if the initial contract was subject to EU tender procedure, that the extension option was declared within the OJEU notice and the original Acceptance (Delegated Powers Report/relevant Committee Report); and*
- *the contract has not been extended before;*

The conditions above have been met

5.3.4 Council Constitution, Contract Procedure Rules, Appendix 1 Table A – sets out authorisation and acceptance thresholds for works, supplies and services. For contract variations where the total value of the contract including variation is between £25,001 and £172,514.

5.4 Risk Management

5.4.1 Risk registers are maintained by the Capital Programmes Team. Risks are monitored by the Project Team and the risk register updated as required. Any significant risks are reported to Education Capital Programmes Board and Assets and Capital Board. There are no risks considered to be significant at this stage.

5.4.2 If approval is not given to vary the contracts the council will not be able to meet its contractual obligations and pay invoices when due. This risks damaging the council's reputation and exposes the council to risk of legal action.

5.4.3 It is considered that any issues involved are unlikely to raise significant levels of public concern or give rise to policy considerations.

5.4.4 The main project works are already on site and progressing therefore it is

important measures are taken to ensure delivery is not jeopardised.

5.5 Equalities and Diversity

- 5.5.1 Pursuant to the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.5.2 The proposed works will enhance the Borough's reputation as a good place to live and work and will assist in delivering a first class education to all pupils as well as providing a safe environment for staff and pupils.
- 5.5.3 The Borough's schools provide a service to diverse communities covering a wide range of backgrounds.
- 5.5.4 The successful tenderer has equal opportunities policies in place which meet the Council's equalities standards. In addition, Framework members are required to provide details of their equal opportunities policies as part of the pre-qualification process, including how the policies are implemented, maintained and continuously improved and any training in place. There are no areas of concern in relation to equalities within the submissions as part of the tendering process.

5.6 Consultation and Engagement

- 5.6.1 The Council have been consulted in order to make provision within the budget for this increased cost.

6. BACKGROUND PAPERS

- 6.1 Cabinet: 3 November 2011, (Decision Item 6), Resolved to note the projected shortfall in secondary provision and consider the inclusion of an outline secondary expansion investment programme when finalising the medium term financial strategy for 2014/15 to 2016/17.
- 6.2 Business Management Overview & Scrutiny Committee: 9 January 2012, (Decision Item 11), resolved that: (1) the findings and recommendations of the Supply of Secondary School Places Overview and Scrutiny Panel be agreed by the Committee and forwarded to the meeting of the Cabinet on 20 February 2012 for consideration, and (2) the Supply of Secondary School Places Overview and Scrutiny Panel be recommended to reconvene one year

after reporting to Cabinet to review progress made in implementing recommendations.

- 6.3 Cabinet: 20 February 2012, (Decision Item 9), Resolved to agree the recommendations made by the Supply of Secondary School Places Overview and Scrutiny Panel, as referred to Cabinet by the Business Management Overview & Scrutiny Committee.
- 6.4 Report to Commercial Director 29 February 2012, Approval to Utilise The NLSA Framework Agreement for Construction Related Consultancy
- 6.5 6 August 2012: Report authorised by the Commercial Services Director to approve use of the Improvement and Efficiency South East (IESE) Framework Agreement for Construction.
- 6.1 Delegated Powers Report 1768 of the Cabinet Member for Resources and Performance and the Cabinet Member for Education, Children and Families: 7 August 2012, gave approval to accept the quotation from Pick Everard for the supply of architectural services in relation to the Secondary Schools Expansions Programme.
- 6.2 Delegated Powers Report 1792 of the Cabinet Member for Resources and Performance and the Cabinet Member for Education, Children and Families: 17th August 2012, gave approval to accept the quotation from Mott MacDonald for the supply of quantity surveying services in relation to the Secondary Schools Expansions Programme.]
- 6.3 Delegated Powers Report 1840 of the Deputy Chief Executive: 26 October 2012, authorised acceptance of pre-construction agreement for secondary school expansions.
- 6.4 Cabinet Resources Committee on 25 February 2013 (Decision Item 14), approved that,
- i) subject to acceptance of the Contractors Proposals, the proposed fee and level of cost certainty provided, entering into separate JCT Design & Build Contracts with Morgan Sindall for the construction works in relation to the permanent secondary school expansions programme
 - ii) where required, the Council enters into enabling works agreements for each scheme with Morgan Sindall

- 6.5 Cabinet Resources Committee: 4 November 2013 approved the Annual Budget and Annual Procurement Forward Plan.

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

8. OFFICER'S DECISION

- 8.1 I authorise the following action

To approve the variation to the consultancy contract between the Council and Mott MacDonald Ltd from £72,600.00 to £122,600.00. This is due to an increase in the tendered scope of works and also prolongation costs.

Signed

Date

8th October 2014
