	<p align="center">ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER</p> <p align="center">In consultation with the Chairman of Children, Education, Libraries & Safeguarding Committee</p>
<p align="center">Title</p>	<p>Awarding of construction contracts for 2015 School Expansion Schemes</p>
<p align="center">Report of</p>	<p>Commercial and Customer Services Director</p>
<p align="center">Wards</p>	<p>Edgware and Woodhouse</p>
<p align="center">Status</p>	<p>Public</p>
<p align="center">Enclosures</p>	<p>N/A</p>
<p align="center">Officer Contact Details</p>	<p>Mike Harris - Project Manager, Corporate Programmes, 020 8359 2441, Michael.Harris@barnet.gov.uk</p> <p>Emma Francies - Project Manager, Corporate Programmes, 07765 220883 emma.francies@barnet.gov.uk</p>

Summary

This report seeks approval to

- accept the fixed fee proposal for construction works from Morgan Sindall and to enter into an Engineering and Construction Contract (NEC) for construction works in relation to the 2015 Schools Expansion at the London Academy.
- enter into a Development Agreement with London Academy to enable the Council and the Contractor to enter on to site and carry out the works.
- enter into a Development Agreement with the Wren Academy Trust to enable the trust to accept the fixed contract price proposals for construction works from Willmott Dixon Construction and to enter into a Joint Contracts Tribunal (JCT) Contract for construction works in relation to the 2015 Schools Expansion at the Wren Academy.

Decisions

- 1. That subject to completion of legal and all other documentation, the maximum contract sum of £8,918,256.31 (plus VAT) from Morgan Sindall for the construction works at London Academy be accepted. The maximum contract sum includes contribution from the London Academy of £228,000, for additional elements of the building requested by them, which include the costs to retain the proposed roof-lights, canopies and mirrored wall.**
- 2. That the Council enter into a Development Agreement to allow the construction contractor on site to carry out the works.**
- 3. That the Council enter into an NEC 3 Design and Build contract with Morgan Sindall to undertake the construction works at London Academy.**
- 4. That subject to completion of legal and all other documentation, the Council enter into a Development Agreement with the Wren Academy Trust to enable the trust to
 - a) accept the fixed price contract sum of £7,919,270.00 (plus VAT) from Willmott Dixon for the construction works at the Wren Academy.
 - b) enter into a JCT Design and Build 2011 contract with Willmott Dixon to undertake the construction works at the Wren Academy**
- 5. That the Council issue any early orders necessary for works to commence in order to achieve delivery of pupil places by September 2015.**

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, and in line with the overall increase in demand. The proposed expansions form part of the Council's 2015 School New Build and Expansions Programme, designed to increase capacity to help meet the rising demand.
- 1.2 The proposed works at London Academy and the Wren Academy will provide a new primary school at each site, with 420 pupil places per school. The Council needs to respond to the rising demand for places in order to meet its statutory duty to provide sufficient school places.
- 1.3 The delivery of the primary provision at the London Academy is being managed directly by the council. The delivery of the primary provision at the Wren Academy is being managed by the Wren Academy Trust, with the support of the London Diocesan Board for Schools. The arrangement for delivery at the Wren Academy is set out in a jointly agreed Development Agreement between the Council and the Wren Academy Trust.

- 1.4 For the London Academy project, the Council and its technical team have worked with Morgan Sindall, through a Professional Services Contract for pre-construction services, to achieve the best value for money solution possible. This solution and associated costs have now been presented by the contractor Morgan Sindall for acceptance by the Council.
- 1.5 A similar process has been undertaken by the Wren Academy Trust and its technical team. This solution and associated costs have now been presented by the Wren Academy Trust for acceptance by the Council to form the basis of a Development Agreement between the Council and the Trust.
- 1.6 This report is seeking authority to accept the fixed fee proposals from Morgan Sindall for the construction works at London Academy and to enter into NEC Design and Build Contract and also to enter into a Development Agreement with London Academy. The report is also seeking authority to enter into a Development Agreement with the Wren Academy Trust to enable the Trust to accept the fixed fee proposals from Willmott Dixon for the construction works at Wren Academy and for Wren Academy Trust to enter into a JCT Design and Build Contract 2011.
- 1.7 The Contracts will enable the contractors to proceed with the works and construct the required works at both sites.

2. REASONS FOR DECISIONS

- 2.1 The agreed procurement routes require appointment of contractors via the IESE framework, to undertake pre-construction services. These services include production of detailed designs and fixed fee proposals for construction. This is to be followed by construction works on site under an NEC Design and Build contract at London Academy and a JCT Design and Build contract at the Wren Academy, once the fee proposals have been agreed.
- 2.2 Morgan Sindall is the appointed contractor at London Academy for the pre-construction services and they have worked with the Council and its technical team via a Professional Services Contract (PSC) to achieve the best value for money solution for the proposed works. They have fulfilled the pre-construction services requirement to provide detailed designs and a fixed fee proposal for construction, and the project team are satisfied with the proposals following Gateway Review on 5th December 2014.
- 2.3 Willmott Dixon is the appointed contractor at Wren Academy for the pre-construction services and they have worked with the Academy's technical team via a Professional Services Contract (PSC) to achieve the best value for money solution for the proposed works. They have fulfilled the pre-construction services requirement to provide detailed designs and a fixed fee proposal for construction, and the project team are satisfied with the proposals following Gateway Review on 10th December 2014.

- 2.4 The decisions above are needed for the Council and Wren Academy to enter into contract and proceed with the construction phases of the works.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 The Council is not obliged to accept Morgan Sindall or the Wren Academy Trust's proposal to accept Willmott Dixon's and the alternative in both cases would be to re-tender the construction works. This option has been rejected for both schools as it would have serious programme implications. Both projects are partially funded by government grant with associated conditions that new pupil places are available by September 2015 and the grant expended by the end of August 2015. It would not be possible to fulfil these conditions for either school should the works be re-tendered.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the recommendations have been approved the Council will enter into
- a) an NEC3 Design and Build contract with Morgan Sindall for works at the London Academy and
 - b) A Development Agreement with the Wren Academy Trust to enable the Trust to enter into a JCT Design and Build Contract 2011 with Willmott Dixon.

Construction works can then proceed on site, subject to necessary planning and building control approval.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2013-16 has a priority outcome 'To create better life chances for children and young people across the borough'. Barnet's Education Strategy sets out how the Council will work in partnership with schools to maintain and improve Barnet's excellent education offer. Including ensuring sufficient school places for Barnet's growing population. The Council has a statutory duty to ensure there are sufficient places available to offer a school place to Barnet children of a statutory school age.

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

- 5.2.1 Both projects are funded from the Education Capital Programme which includes provision for creating new primary school places. The Education Capital Programme accounts for £185m within the Council's Capital Budget.
- 5.2.2 Financing for the Wren and London Academy projects includes government grant from the Targeted Basic Need Programme totalling £ 8.8m . Funding is dependent on the number of pupil places being delivered and available by

September 2015. The grant needs to be fully expended by 31 August 2015 in order to prevent reclaim by the Department for Education.

- 5.2.3 Morgan Sindall's maximum contract sum for London Academy is **£8,918,256.31** plus VAT. This figure covers construction activities, and can be contained within the allocated funding from the Education Capital Programme Budget capital when taking into consideration Professional Services Contract costs, construction costs and fees for technical team, surveys and legal and planning costs.
- 5.2.4 London Academy has agreed to contribute a sum of £228,000 to the construction contract maximum sum to contribute towards their specific requirements. The maximum contract sum is therefore inclusive of the contribution from London Academy. These terms are included in the Development Agreement with London Academy.
- 5.2.5 A sum of **£9,200,000.00** has been agreed with the Wren Academy which includes funding for the Academy's fixed price contract with Willmott Dixon. Willmott Dixon's fixed price contract sum for Wren Academy is £7,919,270.00 plus VAT. The amount of £9.2 million covers construction activities, and can be contained within the allocated funding from the Education Capital Programme Budget capital when taking into consideration construction costs and fees for technical team, surveys and legal and planning costs.

London Academy

- 5.2.6 The Council's Contract Procedure Rules detail that an approved tendering process is required for any works projects in excess of £10,000. The mini competition that has been undertaken within the IESE Framework complies with this requirement. All companies on the Framework potentially have the capacity and expertise to meet the Council's requirements and the project team are satisfied that value for money has been achieved.
- 5.2.7 Authority to use the IESE (Improvement & Efficiencies Social Enterprise) South East and London Construction Framework for Major Projects was granted on 6 August 2012. For the London Academy works authority to seek quotes for the pre-construction services was granted via inclusion on the Forward Plan submitted to CRC on 4 November 2013, and Authority to enter into the pre-construction services agreement was granted via Officer DPR on 14 July 2014.
- 5.2.8 Procurement for construction services was undertaken via the IESE Framework. Eight firms were sent an Invitation to Quote (ITQ) in line with the Council's Contract Procedure Rules and the Framework requirements. The award criteria were selected as 45% cost and 55% quality, in line with the requirements of the Framework Agreement and to ensure a value for money solution.
- 5.2.9 The IESE ITQ process was conducted in two parts. Contractor selection was by mini competition in which tendering companies offered pre-construction services on a fee basis including open book sub contract tendering. Part one

was designed to assess the supplier's proposed team and appreciation and understanding of the project and service proposals. Part 2 tested the supplier's project specific approach, understanding and engagement with the project. This part also tested the suppliers' financial response to Overhead and Profit, Insurance and London Weighting percentage uplifts, project specific pre-construction and construction management resources and costs and indicative preliminaries costs. Evaluation was undertaken by a team consisting of technical staff from Barnet's appointed Commercial Services provider (Capita) and Specialist Construction Consultants.

5.2.10 Of the eight firms on the framework five elected to quote and four were invited to proceed to Part 2., this is due to a saturated construction market with a massive demand for contractors to provide Educational Buildings, in the south east of England, particularly in London. A summary of scores for both parts are given below:

	Supplier A	Supplier B	Morgan Sindall	Supplier D	Supplier E	Maximum Score
Part 1	18.5%	17%	19%	13%	14%	30%
Part 2	39.2%	46.5%	51.8%	n/a	39.5%	70%
Total	57.7%	63.5%	70.8%	n/a	53.5%	100%

5.2.11 As a result of the evaluation, Morgan Sindall were chosen as the recommended supplier for pre-construction services and awarded the Professional Services Contract (PSC) to provide these services. A breakdown of the scores for both parts were published in the public Delegated Powers Report dated 14 July, which gave approval to enter into the pre-construction services agreement with Morgan Sindall, and the identities of the unsuccessful firms referred to in the table above were detailed in the exempt report of the same date.

5.2.12 Due to the nature of the NEC Professional Services contract (PSC) in place with Morgan Sindall they have worked with the Council's technical team to produce a maximum value contract sum for these projects. It should be noted that through the tender Morgan Sindall have fixed their level of overhead & Profit and have priced for both the project preliminaries and for the PSC. The formulation of the agreed contract sum associated with both projects has been dealt with in an "Open Book" method; this has ensured transparency and has provided Capita's cost consultants with total visibility of the formulation of the sum to assess the price for all construction works.

5.2.13 It should also be noted that employing this method of working has ensured that the market has been fully tested. Each element of work provided by Morgan Sindall or their sub-contractors must be competitive, with at least three quotations obtained. As part of this "Open Book" method of working, Morgan Sindall have provided this documentation to Capita's cost consultants as proof that this has been carried out which has enabled Capita to undertake any required benchmarking to ensure that value for money is being achieved.

5.2.14 The Council's appointed technical team have reviewed Morgan Sindall's

proposals for London Academy and conclude they comply with the approved planning and quality criteria, conform to the agreed programme and are in alignment with the current costs for this style of project, though they are higher than that indicated December 2013, this can be explained by the greater level of Inflation In November 2013 the BCIS tender Price Inflation nationally indicated an increase of 5.1% by October 2014 this had increased to 11%, information provided by the IESE framework indicates in the region of 15%, due to the current level of construction projects, in the south east of England and particularly in London, together with the site abnormalities.

Wren Academy

5.2.15 The procurement of the contractor to deliver the new primary provision at the Wren Academy has been led by the Wren Academy Trust with support from the London Diocesan Board for Schools

5.2.16 The Wren Academy used the IESE Framework agreement as the London Academy to meet the Councils procurement rules

5.2.17 Procurement for construction services was therefore undertaken via the IESE Framework. Eight firms were sent an Invitation to Quote (ITQ) in line with the Framework requirements. The award criteria were selected as 40% cost and 60% quality, in line with the requirements of the Framework Agreement and to ensure a value for money solution.

5.2.18 The IESE ITQ process was conducted in two parts. Contractor selection was by mini competition in which tendering companies offered pre-construction services on a fee basis including open book sub contract tendering. Part one was designed to assess the supplier's proposed team and appreciation and understanding of the project and service proposals. Part 2 tested the supplier's project specific approach, understanding and engagement with the project. This part also tested the suppliers' financial response to Overhead and Profit, Insurance and London Weighting percentage uplifts, project specific pre-construction and construction management resources and costs and indicative preliminaries costs. Evaluation was undertaken by a team consisting of Academy Representatives including the Principal, appointed technical consultants (Sawyer & Fisher and NBF Partnership) and Representatives from the London Diocesan Board For School's

5.2.19 Of the eight firms on the framework only two elected to quote and to proceed to Part 2, this is due to a saturated construction market with a massive demand for contractors to provide Educational Buildings, in the south east, particularly in London. A summary of scores for both parts are given below:

	Supplier A	Willmott Dixon	Maximum Score
Part 1	21%	24%	30%
Part 2	48%	53%	70%
Total	69%	77%	100%

5.2.20 As a result of the evaluation, Willmott Dixon were chosen as the recommended supplier for pre-construction services and awarded the Pre – Construction Agreement (PCA) to provide these services.

5.2.21 Through the PCA in place, Willmott Dixon have worked with the Wren Academy's technical team to produce a fixed price value contract sum for this project. It should be noted that through the tender Willmott Dixon fixed their level of overhead & Profit and have priced for both the project preliminaries and for the PSC. The formulation of the agreed contract sum associated with this projects has been dealt with in an "Open Book" method; this has ensured transparency and has provided Wren's Academy Cost consultants with total visibility of the formulation of the sum to assess the price for all construction works.

5.2.22 Wren Academy's appointed technical team have reviewed Willmott Dixon's proposals and conclude they comply with the approved planning and quality criteria, conform to the agreed programme and are in alignment with the current costs for this style of project, though they are higher than that indicated December 2013, this can be explained by the greater level of Inflation. In November 2013 the BCIS tender Price Inflation nationally indicated an increase of 5.1% by October 2014 this had increased to 11%, information provided by the IESE framework indicates in the region of 15%, due to the current level of construction projects, in SE England and particularly in London, together with additional the site abnormalities.

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.

Under the Council's Contract Procedure Rules, the Council and the successful tenderer will need to enter into a written contract to document the terms for the provision of the works/services. The NEC3 Design and Build

contract will be used for the works at London Academy and the JCT Design and Build Contract 2011 will be used for the works at Wren Academy.

- 5.3.4 Council Constitution, Responsibility for Functions, Section 3 – Where a function has been delegated to an officer(s) (“delegated officers”), the decision may be taken in the name of (but not necessarily personally by) such delegated officer(s) by another officer(s) in accordance with arrangements made from time to time by such delegated officer(s) for this purpose.
- 5.3.5 Council Constitution, Contract Procedure Rules, Appendix 1 Table A – sets out authorisation and acceptance thresholds for works, supplies and services. For tenders with a procurement value of £172,514 and over, if within budget, Officer in consultation with Chairman of relevant theme or Policy and Resources Committee.
- 5.3.6 Legal representatives for the respective projects shall prepare the contract with Morgan Sindall for the London Academy project and the Development Agreements with both London Academy and Wren Academy.

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.
- 5.4.2 If works are not carried out to accommodate additional classes for the coming academic years, there is a significant risk that the council will not be able to meet its statutory duty to ensure that sufficient schools for providing primary and secondary education are available in its area.
- 5.4.3 The Council and Wren Academy Trust have appointed technical advisory teams. The project teams will monitor all aspects of the build to ensure continued assessment of the finances, appropriate design and health & safety through design and from construction start to completion.
- 5.4.4 In order to avoid risk to the delivery dates of either project, it may be necessary for both the Wren Academy and London Academy projects to place early orders prior to entering into the respective contracts, with the recommended suppliers to enable resources and materials to be secured in good time. In circumstances where this is required, the Council and Wren Academy's exposure risk will be limited by ensuring that any early order confirms the required deliverables and sets a not to be exceeded cost cap.
- 5.4.5 It is considered that any issues involved are unlikely to raise significant levels of public concern or give rise to policy considerations.

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 IESE 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 To inform the decisions set out above there has been on-going engagement with the relevant project stakeholders and further advice has been sought from the Council's appointed advisors in relation to procurement and legal issues.

6. BACKGROUND PAPERS

- 6.1 Cabinet: 3 November 2011, (Decision Item 6), Resolved to note (i) the continuing pressure on primary school places for Reception aged children and other year groups, the methodology used to determine the current investment programme and the progress made to date to permanently expand primary provision and (ii) the need for a second phase of primary investment (for 2014/15 to 2016/17) of £24m for permanent expansions and £2.8m for temporary expansions which will be considered when finalising the medium term financial strategy.
<http://barnet.moderngov.co.uk/Data/Cabinet/201111031900/Agenda/Document%204.pdf>
- 6.2 Cabinet on 20 February 2012, (Decision Item 6), Cabinet received the Corporate Plan, Budget, Council Tax and Medium Term Financial Strategy proposals for the period from 2012/13 to 2014/15 and recommended them to

Council for adoption, and resolved that considering conscientiously the consultation outcomes and giving due regard to the statutory equality duties, recommend to Council the approval of the Business Planning documents as set out in the report.

<http://barnet.moderngov.co.uk/Data/Cabinet/201111031900/Agenda/Document%204.pdf>

- 6.3 14 July 2014: Delegated Powers Report of the Commercial and Customer Services Director in consultation with the Chair of the Children, Education, Libraries and Safeguarding Committee gave approval to enter into a Pre-Construction Agreement with Morgan Sindall for Expansions at the London Academy and Oak Lodge School.

<http://barnet.moderngov.co.uk/documents/s16320/Selection%20of%20Construction%20Partner%202015%20School%20Schemes%20Public.pdf>

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.*

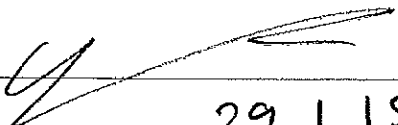
8. OFFICER'S DECISION

I authorise the following action

- 8.1 That subject to completion of legal and all other documentation, the maximum contract sum of £8,918,256.31 (plus VAT) from Morgan Sindall for the construction works at London Academy be accepted. The maximum contract sum includes contribution from the London Academy of £228,000, for additional elements of the building requested by them, which include the costs to retain the proposed roof-lights, canopies and mirrored wall.
- 8.2 That the Council enter into a Development Agreement to allow the construction contractor on site to carry out the works.
- 8.3 That the Council enter into an NEC 3 Design and Build contract with Morgan Sindall to undertake the construction works at London Academy.
- 8.4 That subject to completion of legal and all other documentation, the Council enter into a Development Agreement with the Wren Academy Trust to enable the trust to
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- a) accept the fixed price contract sum of £7,919,270.00 (plus VAT) from Willmott Dixon for the construction works at the Wren Academy.
- b) enter into a JCT Design and Build 2011 contract with Willmott Dixon to undertake the construction works at the Wren Academy
- 8.5 That the Council issue any early orders necessary for works to commence in order to achieve delivery of pupil places by September 2015.

Signed

Date



29.1.15