	ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 27th July 2015
Title	Selection of Construction Partner for 2015 School Schemes
*Report of	Commercial and Customer Services Director
Wards	Brunswick Park
Date added to Forward Plan	
Status	Public (with separate exempt report)
Enclosures	N/A
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Summary

This report seeks approval to accept the tendered sum for pre-construction works from Farrans Construction and to enter a pre-construction agreement in relation to the 2015 Schools Expansions at Monkfrith Primary School Expansion Project

Decisions

1. That, subject to the completion of all necessary legal and other documentation, the quotation in the sum of £120,463.00 (plus VAT) from Farrans Construction for the supply of pre-construction services (RIBA Stage 4 Technical Design) for and of production of Contractors Proposals in relation to the 2015 expansions at Monkfrith Primary School Expansion be accepted.

2. That, the Council enters in to a Pre Construction Agreement with Farrans Construction to develop the design for each primary school expansion up to RIBA Stage 4 including Contractors Proposals
3. The contractor will utilise their own design team with experience of providing similar projects to develop the detailed design RIBA stage 4 at the start of the second stage of the procurement process.
4. That, subject to the Contractors Proposals being containable within the budget, meeting defined requirements and acceptance from the Council's appointed technical advisors, separate authority will be sought to enter into NEC Design and Build Contracts with Farrans Construction for Monkfrith Primary School Expansion.

1. WHY THIS REPORT IS NEEDED

- 1.1 There has been a significant increase in the number of children born into the London borough of Barnet since 2003, this coupled with both regeneration and migration has led to an extremely high demand for school places at both Primary and Secondary School level in Barnet. 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 Monkfrith Primary School will provide a new primary school with from 1 form of entry (210 pupil places) to a 2 form of entry Primary School (420 pupil places) using the existing school site.
- 1.3 –The Council has a statutory duty to provide a school place for every child, therefore the London Borough of Barnet are investing circa £18million in three primary schools to enable them to expand by 1 form of entry each ensuring sufficient capacity for the Council to meet rising demand for pupil places. The Cabinet Report (3 November 2011) gave authority to proceed with this primary school investment programme
- 1.4 This report is seeking authority to enter into a Pre-Construction Agreement with the selected contractor. The Agreement will enable the contractor to develop the proposals into a detailed design and present a fixed fee proposal for the construction of the schemes.

2. REASONS FOR DECISIONS

- 2.1 The procurement route follows that proposed in the Procurement Strategy for Monkfrith Primary School, which in turn builds on the Strategy for Procurement of New Education Projects as set out in Section 5 of Capita's Corporate Capital Programme Review report from September 2013.
- 2.2 The Procurement Strategy considered options for procurement taking into account the programme, cost and quality constraints of the proposed expansion projects. It recommended use of an existing framework

arrangement for procuring a contractor, a design and build form of contract, retaining the design team throughout RIBA stages 1-4 and early contractor input on design and costs.

- 2.3 The chosen framework LHC Framework has been used successfully by the Council in the past, the preference was to use iESE but it was saturated at the time and the LHC Framework was seen as a suitable alternative, it has the option to use the NEC form of contract and a Pre-Construction Services Agreement / Professional Services Contract prior to the main construction contract.
- 2.4 The selected form of contract (NEC3) is designed to be procured and managed through collaborative working and is recommended as the most appropriate contract for the current proposals. It includes procedures aligned to management of cost, quality and programme, with methods available to both parties to give early warning if there is likely to be deviation on these elements. It also has a defined method of resolving ambiguities, which are arguably expensive and onerous to manage in other forms of contract.
- 2.5 Farrans Construction has been chosen as the preferred contractor because they were the only contractor to submit an expression of interest, they demonstrated the relevant experience and after consideration and recommendations, Procurement and the Education Capital Programme Board (ECPB) approved proceeding with this single contractor.
- 2.6 On this occasion the contractor will utilise their own design team to deliver a RIBA Stage 4 detailed design as they have demonstrated they have worked together to deliver similar Primary school new build and refurbishment projects in London. The Capita Lead Designer will utilise the skills from the RIBA stage 1 – 3 (part 4) design team in a Technical Advisor capacity that will ensure quality standards are maintained.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 Alternative frameworks were considered the preference was to use iESE however it was saturated at the time and the LHC Framework was seen as a suitable alternative to minimise the impact of delays to the programme.
- 3.2 The LHC framework allows for other contracts besides the NEC contract. JCT contracts were considered less appropriate than NEC on the basis that they can be confrontational and have less contract procedures to drive collaborative working. They often require multiple contract amendments to the standard contract which could be viewed as a risk. The Project Partnering Contract (PPC) 2000 was rejected because it is not as tried and tested as the other contracts and little case law exists for it, so it was considered a more risky option.

- 3.3 Alternative contractors on the LHC framework were not considered during the tender process as there was only one expression of interest that being from Farrans Construction.
- 3.4 Procuring the contractor via a single stage tender process or via full design and tender were both rejected as procurement options because they would require full design to RIBA stage 4 prior to seeking tenders, and there is insufficient time for this within the programme.

4. POST DECISION IMPLEMENTATION

- 4.1 Under the Pre Construction Agreement, the successful contractor will develop the design further to produce a detailed design and will present a fixed fee proposal for the construction of the schemes.
- 4.2 Following receipt of the Contractor's Proposals and subject to an assessment of the Contractors Proposals by the technical advisors appointed by the Council, the proposed fee and level of cost certainty provided, the Council will enter into a NEC3 Design & Build Contract with the contractor under separate authority, in line with the process set by the LHC Framework.
- 4.3 The separate authority for the design and build contract for construction works will be sought via report to Children, Education, Libraries and Safeguarding (CELS) Committee. The report is scheduled for submission to CELS in September 2015, after review of the decision by Education Capital Programme Board and Assets and Capital Board. A pro-forma for this committee report has been submitted to LBB Governance.

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' under which the Council will invest £65 million to provide additional primary school places to meet demand and provide targeted support for young people who most need it.
- 5.1.2 As a Local Authority, the Council has a statutory duty to offer a school place to every child of school age in the Borough who requests one.

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

- 5.2.1 The budget approved in the Education Capital Programme for Monkfrith Primary School Expansion is £4m. £2m is funded from government grant from the Targeted Basic Need Programme, which needs to be fully expended by March 2016 to prevent reclaim by the Department for Education

5.2.2 The total pre-construction contract value for the project within scope is **£120,463.00** plus VAT. This figure covers pre construction activities, including the design team detailed design delivery sufficient for production of and including the submission of Contractors Proposals, and can be contained within the overall project budget of £4,000,000, when taking into consideration construction costs and fees for technical team, surveys and legal and planning costs.

5.2.3 The total value of each pre-construction agreement is detailed in the table below:

Project	Contractor Resource and Management Fees (incl OHP and Insurance)	Design Fee Part of 6% of the final CP Nett construction value as per the LHC SCB1 framework. (Incl OHP and Insurance)	Pre-Construction Agreement Value
Monkfrith Primary School	£ 62,850.00	£57,613.00	£ 120,463.00

The total RIBA Stage 4 / 5 are 6% of the final Contractors Proposals Nett construction value as per the LHC SCB1 framework. The balance of the design fee will be included in the main contract as the 6% less the PSC Design Fee value as noted above. The balance of circa £112,000k will form part of the contractor's proposals tender price.

5.2.4 The Council's Contract Procedure Rules detail that an approved tendering process is required for any works projects in excess of £500,000. The mini competition that has been undertaken within the LHC 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 will be achieved and LHC have confirmed they can benchmark this against similar projects.

5.2.5 Authority to use the LHC for Major Projects was granted on 6 August 2012. Authority to seek quotes for the pre-construction services was granted via inclusion on the Forward Plan submitted to CRC on 4 November 2013.

5.2.6 Procurement for construction services was undertaken via the LHC Framework. Five 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.

5.2.7 The LHC 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.

5.2.8 Of the Five firms on the framework only one submitted a Part 1 return, lack of interest was due to the market being saturated at the time of tender.

5.2.9 Under the LHC framework a single award tender was approved and a Part 2 tender developed with the contractor benchmarking against the PQS cost plan. Under section 8 of the Contract Procedure Rules, the Commercial and Customer Services Director has authorised an appointment via a Single Tender Action process

5.2.10 In accordance with the LHC framework, a result of the evaluation of the submissions, Farrans Construction has been chosen as the recommended supplier.

5.2.11 It is recommended that Farrans Construction provide pre-construction services up to RIBA Stage 4 sufficient to produce Contractors Proposals for the scheme, at which point the Council will enter into separate NEC3 Design & Build Contract, subject to the Contractors Proposals meeting defined requirements of the LHC framework and being containable within the budget via a further Officer DPR at completion of RIBA Stage 4 / Contractor Proposals submission.

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, 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. This is the Pre Construction Agreement.
- 5.3.5 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 officers(s) for this purpose.
- 5.3.6 Council Constitution, Contract Procedure Rules, 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.
- 5.3.7 HB Public Law has been consulted in this matter and HBPL shall prepare the Pre Construction Services Agreement between the Council and Farrans Construction.

5.4 Risk Management

- 5.4.1 Project 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 will be 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 project team 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 It is considered that any issues involved in the Pre-construction Agreement 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 LHC 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 ongoing engagement with the relevant project stakeholders. Education Capital Programme Board has been consulted on the proposed procurement approach 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.
- 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.
- 6.3 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.
- 6.4 Delegated Powers Report 1840 of the Deputy Chief Executive: 26 October 2012, authorised acceptance of pre-construction agreement for secondary school expansions.
- 6.5 Delegated Powers Report 1894 of the Cabinet Member for Resources and Performance and the Cabinet Member for Education, Children and Families: Deputy Chief Executive: 17 January 2013, authorised acceptance of pre-construction agreement for primary school expansions.
- 6.6 Cabinet Resources Committee: 4 November 2013 approved the Annual Budget and Annual Procurement Forward Plan.

7. DECISION TAKER'S STATEMENT

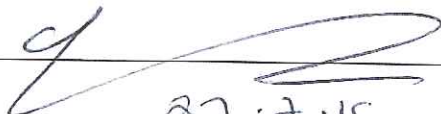
- 7.1 *I have the required powers to make the decisions documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which 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 the completion of all necessary legal and other documentation, the quotation in the sum of £120,463.00 (plus VAT) from Farrans Construction for the supply of pre-construction services (RIBA Stage 4 Technical Design) for and of production of Contractors Proposals in relation to the 2015 expansions at Monkfrith Primary School Expansion be accepted
- 8.2 That, the Council enters in to a Pre Construction Agreement with Farrans Construction to develop the design for the primary school expansion up to RIBA Stage 4 including Contractors Proposals
- 8.3 That the contractor will utilise their own design team to deliver a RIBA Stage 4 detailed design.
- 8.4 That, subject to the Contractors Proposals being containable within the budget, meeting defined requirements and acceptance from the Council's appointed technical advisors, separate authority will be sought to enter into NEC Design and Build Contracts with Farrans Construction for the school.

Signed



Date

27.7.15
