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| | <p>Policy and Resources Committee</p> <p>02 September 2016</p> |
| <p style="text-align: right;">Title</p> | <p>Aggregated Procurement</p> |
| <p style="text-align: right;">Report of</p> | <p>Chief Operating Officer</p> |
| <p style="text-align: right;">Wards</p> | <p>All</p> |
| <p style="text-align: right;">Status</p> | <p>Public</p> |
| <p style="text-align: right;">Urgent</p> | <p>No</p> |
| <p style="text-align: right;">Key</p> | <p>Yes</p> |
| <p style="text-align: right;">Enclosures</p> | <p>None</p> |
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| <p>Summary</p> |
| <p>The Council has a large, complex capital programme of £539m (including Housing Revenue Account spend). This report proposes the establishment of procurement process for an ‘aggregated procurement’ approach for a single contracted partner for design and build work, to secure value, reduce longer-term procurement cost and drive benefits in design, supply chain management and cost control.</p> |
| <p>This should achieve £1.5m cost avoidance in future procurements, but most importantly give us the partnership relationship we seek for contractors in this area. The paper also notes some similar work from the West London Alliance on creating a school build Project Management Office but noting the difference in scope, some of the limitations of their current focus and recommends we proceed with our own aggregated procurement.</p> |
| <p>It is recommended that the Council embarks on a procurement exercise to secure delivery of its future construction projects through a Strategic Partnering Agreement. In the first instance, focussing on the delivery of new Leisure Centres under the Sports and Physical Activity Programme and delivery of the Education Capital Programme.</p> |

Recommendations

That the Committee approve the procurement for a new Strategic Partner to deliver its Capital Programme for a period of [5] years with the option to extend up to a maximum of [2] years, with an estimated value of up to £150 million.

1. WHY THIS REPORT IS NEEDED

- 1.1** The Council has a pipeline of Capital Projects over the next 5 years which span across delivery and enhancement of Education, Community, Leisure and Operational assets. The total value of the works under the contract, that is to be procured and let, is currently expected up to £150m and with a guaranteed value of £50m. The guaranteed schemes being the 2 new leisure centres, Blessed Dominic and St James' Projects plus one further (to be decided).
- 1.2** The Council needs to ensure that it is procuring these types of works as competitively and efficiently as possible.

2. REASONS FOR RECOMMENDATIONS

- 2.1** The Council has previously used a large scale contract for school builds (Primary School Capital Investment Programme, using Kier). This completed before the setup of the Customer Support Group contract and we have left open the option for a longer-term, larger scale procurement of a supplier for large and complex design and build projects.
- 2.2** Most recently, we have procured our requirements through regional frameworks to ensure delivery in agreed timescales – particularly when benefiting from government grants with agreed delivery timeframes and conditions.
- 2.3** This approach to procurement has worked in terms of delivering individual schemes but there is now an opportunity for the Council to achieve greater long term value for money. More recently, our project teams have reported saturation in the market and therefore a difficulty in securing contractors to deliver projects within required timescales and to more transparent commercial models that are less of a risk for the council. In addition, our project teams have also experienced significant increases in costs due to London Construction Inflation, part of which has been managed through value engineering and cost control initiatives which does not always deliver value for money and quality.
- 2.4** While the tactical procurements are serving their purpose, the possible advantages of tactical procurement have been more than offset by the costs and logistical difficulties of repeated procurement exercises, estimated cost per procurement exercise (£25 to 35k) Moreover, the absence of a long-term relationship with a contractor precludes continuous improvement and risk sharing, thus making tactical procurement more costly and less effective.

- 2.5** In addition, with increasing demand for contractors, project teams across the country are reporting that existing frameworks are saturated, therefore, schemes either are not achievable within time constraints or premiums are paid to secure contractors with limited competition.
- 2.6** It is recommended that the Council embarks on an Aggregated Procurement Strategy to secure a strategic partner to deliver its future construction projects through a Strategic Partnering Agreement with NEC (ECC) contract for each capital scheme. In the first instance, focussing on the Delivery of New Leisure Centres under the Sports and Physical Activity Programme and delivery of the Education Capital Programme with estimated lifetime contract value of £100 to £150M.
- 2.7** Aggregated procurement offers advantages over alternative approaches as it will deliver the following benefits
- 2.7.1 Lower cost to market** – Aggregated procurement can be delivered with a one off cost to the Council of £500k for a total construction value of £100m to £150m. Continued use of tactical procurements through existing frameworks would see an uplift in construction contract sums to accommodate levy fees that enable use of those frameworks (typically between 1%-2%). Based on a total construction cost of £150m the Council would otherwise have spent £1.5m (at the lowest end) in the use of those existing frameworks. One exception to most other frameworks is the London Housing Consortium (LHC) Framework which the Council currently receives a 2% rebate from. However, this 2% is ultimately paid for through levy fees in contract sums and the 2% benefit is net to zero. Another consideration is that a single one off procurement provides a more efficient way of procuring the required services.
- 2.7.2 Better pipeline tracking** – While the use of the LHC Framework offers a close comparison to the cost to market, the fundamental issue currently experienced with use of all other frameworks is a lack of interest from the market due to saturation. Aggregated Procurement will effectively enable the Council to “pre-book” its pipeline projects and guarantee availability of its construction partners for delivery of its key schemes. In addition, with a Strategic Partner, it should be able to commence activities to deliver schemes earlier than other approaches where individual procurements are required.
- 2.7.3 Tighter cost control** – With rising Construction Cost Inflation, it is important that the Council, establishes the best control it can to avoid surprise rises in project costs. Through establishment of agreed cost control mechanisms linked to reference projects there will be less scope for negotiation from the selected contractor and the Council will be in a far stronger position on items which are available for discussion. In addition, the fact that the Council will have a long term partner should avoid the practice of contractors simply approaching commercials on a project by project basis and instead will be expected to provide better value in recognition that there is a pipeline of further projects to deliver without further competition as long as performance remains high.

- 2.7.4 **More efficient delivery times** – The use of a strategic partner enables efficiencies in design through the establishment of standardised design principles. This means that parameters for change are tighter resulting in improved management of stakeholder expectations, a faster route to starting on site and ultimately reduced project risk due to fewer differences and unpractised approaches between each scheme. Importantly, the Council will be able to test design element with its partner, prior to progressing elements of scheme design too far. This would not be achievable on any other approach until individual procurement exercises are complete, therefore the time and risk benefits are significant.
- 2.7.5 **Securing a partnership ethos** – Importantly, other methods of procurement will not be able to deliver a partnership approach to project delivery in recognition of the wider aims of the Council. It is expected that aggregated procurement will establish more of the right behaviours from the selected contractor and a shared ownership of risks and problem solving. Through the delivery of multiple schemes through a single partner, the Council should expect betterment on project approach, delivery, timescales and price as the partnership develops.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 Continued use of existing frameworks

- 3.1.1 The Council has experience of using existing frameworks to procure large construction contracts. This option has been discounted as each contract let through an existing framework attracts a cost for use of the framework, which is typically around 1%. Should the Council opt to continue using existing frameworks and subsequently deliver £150m of construction projects, this route would have cost the Council £1.5m, there are also dis-benefits of this option which relate to the need to carry out multiple procurements, engage in new ways of working with multiple contractors. Moreover, it is considered that the lack of a partnership ethos and prospect of pipeline projects for contractors, creates the wrong behaviours around project delivery commercial arrangements. This option would leave the Council in a position where there is no guarantee around availability of Contractors on each of its capital procurements.
- 3.1.2 London Borough of Barnet is an associate member of London Housing consortium Framework (LHC) which dependant on call off contract value can generate a rebate to the authority of 2% to 4%. This framework would require procurement to mini comp each scheme with contractor arrangements and does not offer the council an exclusive partnership arrangement.

3.2 WLA Model

- 3.2.1 The Council are currently engaging with the WLA, who are investigating opportunities around aggregated procurement from a different angle. While this option has benefits, its focus is more on staff and seeks to achieve efficiencies through pooling procurement and construction resources. The development of the WLA business case is still in its early days but it is

currently expected to utilise existing frameworks, therefore, while this option would provide some efficiencies, it would not provide any of the benefits required around control of costs and partnership ethos.

4. POST DECISION IMPLEMENTATION

4.1 Following authorisation, the project will embark on Official Journal of the European Union (OJEU) procedure to procure a construction partner to be used in the delivery of its Capital Programme. The project team are working with an appointed legal firm Bevan Brittan.

4.2 It is expected that the process will conclude in July 2016.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The Council's Corporate Plan 2015-20 states that the council, working with local, regional and national partners, will strive to ensure that Barnet is a place:

1. of opportunity, where people can further their quality of life
2. where people are helped to help themselves, recognising that prevention is better than cure
3. where responsibility is shared, fairly
4. where services are delivered efficiently to get value for money for the taxpayer.

5.1.2 This recommendation will help meet these objectives as this route will assist in the delivery of the Councils key construction projects including delivery of school places, leisure centres and community centres.

5.1.3 The route will provide increased efficiency in the use of public funds for procurement and subsequent delivery of capital projects.

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

5.2.1 This will require ongoing input from external advisers and consultants and will require an extension to the existing programme management team.

5.2.2 The procurement of the Strategic Partner will cost the Council £500k

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| Legal costs | £90,455* |
| Project & Programme Management | £140,000 |
| Procurement | £90,000 |
| Estates & Design | £150,000 |
| Contingency | £20,000 |

5.2.3 The Council previously allocated £1.1m to cover the cost of its previous Strategic Partnering Arrangement. The procurement cost of £1.1 million equated to approximately 1.2% of the capital value of Primary Schools Capital Investment Programme Wave 1. This is typical for procurements of this type

including other Frameworks already available, therefore, where the Council utilises existing frameworks, it is likely paying a premium to return the Framework Operators' set up costs.

- 5.2.4 Implementation of the strategic partnering agreement will cost £500k. It is likely that the Council will put between £100-£150m through the scheme, therefore the actual cost per project will be a highly attractive 0.3 to 0.5%. In practice, the implementation cost will be paid for from the first £50m of capital work, as a 1% additional fee (as already takes place when accessing a framework) but thereafter subsequent projects will access the scheme for free.
- 5.2.5 Continued use of tactical procurements through existing frameworks would see an uplift in construction contract sums to accommodate levy fees that enable use of those frameworks (typically between 1%-2%). Based on a total construction cost of £150m the Council would otherwise have spent £1.5m (at the lowest end) in the use of those existing frameworks. Therefore, after considering the £500k implementation cost, the Council should see a £1m reduction in framework related costs. This benefit increases with any expenditure over £150m. One exception to most other frameworks is the LHC Framework which the Council currently receives a 2% rebate from. However, this 2% is ultimately paid for through levy fees in contract sums and the 2% benefit is net to zero.
- 5.2.6 Another consideration is that a single one off procurement provides a more efficient way of procuring the required services as less time will be spent preparing and evaluating documentation for individual tenders and subsequently less time will be spent negotiating individual contracts.
- 5.2.7 It is however, expected that the largest financial benefit should come through greater control of costs through established contractual mechanisms and less dependence on ad-hoc availability of contractors.

5.3 Social Value

- 5.3.1 The Public Services (Social Value) Act 2013 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. This is a great opportunity to successfully deliver social value.
- 5.3.2 As part of this procurement, the Council will ask bidders how they will be able to contribute to delivering social, economic and environmental benefits. In procurements such as this in the past, contractors have committed to the use of local trades and have taken on local apprenticeships.
- 5.3.3 These benefits will be explored further through engagement with the market prior to publication of the procurement exercise in the OJEU. The Council will ensure that these benefits form part of the evaluation criteria. For other contracts the Council has a 10% weighting to social value which will likely be the case in this instance.

5.4 Legal and Constitutional References

- 5.4.1 Report authorisation will enable to proceed with the procurement exercise and publish the notice in the OJEU.
- 5.4.2 HB Public Law has commissioned external legal advisors to advise on the procurement of the Strategic Partner who shall provide the relevant legal and procurement advice up to the appointment of the Strategic Partner.
- 5.4.3 The council's Constitution - Annex A - Responsibilities for Functions, states that Policy and Resources Committee:
- To be is responsible for the overall strategic direction of the Council including Corporate Procurement (including agreement of the Procurement Forward Plan and agreeing exceptions to CPRs)
 - To authorise procurement activity within the remit of the Committee and any acceptance of variations or extensions if within budget in accordance with the responsibilities and thresholds set out in Contract Procedure Rules.
- 5.4.4 This report seeks authorisation in accordance with Contract Procedure Rules 7.2 and Appendix 1 Table A which requires acceptance by the Policy and Resources Committee.

5.5 Risk Management

- 5.5.1 Should the council continue to contract for works under its capital programme through existing frameworks and as individual projects and not aggregated, it will be exposed to the conditions of the construction market and could find that where demand for contractors has increased and supply is low, that it is unable to find a contractor willing to deliver a scheme. On a school places project, this could mean that the Council becomes unable to provide school places ready for new intakes. The Aggregated procurement approach provides better pipeline planning with contractors and improves assurance that contractors will have capacity to deliver projects when they are required.
- 5.5.2 Without any framework on cost control, the Council is exposed to cost risk on each of its projects, with a need to negotiate each contract sum individually. In a situation where the Council has an urgent need and the contractor market is saturated, the Council will be in a weak negotiating position and could end up paying above market rates for projects that are procured on an individual basis. The aggregated procurement approach will develop a cost model through comparator schemes which will enable the Council to ensure project costs are kept under control.
- 5.5.3 Should the council enter into a strategic partnering agreement with a single contractor, as is proposed, there is a risk that that single contractor may fail to perform. The inherent mitigation is that the council will not provide exclusivity to the whole £150m capital programme from the outset, but will retain the option to utilise other providers should the relationship hit difficulties. The

selected bidder would therefore be the preferred partner under normal circumstances but any guarantees are restricted to the first £50m worth of work only. Access to further work is therefore entirely dependent on their performance.

5.6 Equalities and Diversity

5.6.1 The 2010 Equality Act places a legal obligation on the council and organisations acting on our behalf to pay due regard to equalities. The pipeline of capital projects for community assets is intended to benefit all the diverse communities in the borough in accordance with the Community Asset Strategy. Each project will reflect the requirement of the Public Sector Equalities Duty by having due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between people from different groups;
- Foster good relations between people from different groups;

5.6.2 This will be done at design concept and prior to build by assessing the impact of our actions on different groups in Barnet including those identified in equality legislation as protected characteristics, namely: age, disability, gender, gender reassignment marriage, civil partnership, pregnancy, maternity, sexual orientation, religion or belief.

5.6.3 The council will encourage the successful bidder to include some commitments around employment of local labour.

5.7 Consultation and Engagement

5.7.1 The procurement will not include any formal consultation.

5.8 Insight

5.8.1 The recommendations within this report are a result of review of recent delivery of the Council's Capital Programme and the available contracting options for the delivery of its future programme.

5.8.2 The project team have looked at the history of contracting such work both within the borough and across other local authorities.

5.8.3 Importantly, the Council has considered the current utilisation and demand on existing frameworks as well as how this is continuing to influence the cost of project delivery.

6. BACKGROUND PAPERS

6.1 None