

	<p>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER</p> <p>In consultation with the Chair of Children, Education, Libraries & Safeguarding Committee and the Chair of the Assets, Regeneration and Growth Committee</p>
Title	Awarding of the construction contract for the 2015 School Expansion Scheme at Monkfrith Primary School.
Report of	Chief Operating Officer
Wards	Brunswick Park
Status	Public
Enclosures	None
Officer Contact Details	<p>Mark Ratcliff - Project Manager, Corporate Programmes, 07798865837, mark.ratcliff@capita.co.uk</p> <p>Alex Morris - Design Lead Corporate Programmes, 07876707574, alex.morris@capita.co.uk</p>

Summary

This report seeks approval to accept the fixed fee proposal for construction works from Farrans Construction and to enter into an NEC contract for construction works in relation to the 2015 Schools Expansion at Monkfrith Primary School.

Decisions

1. That subject to completion of legal and all other documentation, the fixed fee proposals in the sum of £4,214,680.32 (plus VAT) from Farrans Construction for the construction works at Monkfrith Primary be accepted.

2. That the Council enter into an NEC3 Design and Build contract with Farrans Construction to undertake the construction works at the school.
3. Increase the PSCA by £134,566.71 this amount taken from the construction contract value noted above (see item 5.2.2 below)

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 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 The Council and its technical team have worked with the contractor, 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 Farrans Construction for acceptance by the Council.
- 1.5 This report is seeking authority to accept the fixed fee proposal from Farrans Construction for the construction works at the school and to enter into an NEC Design and Build Contract with them. The Contract will enable the contractor to proceed with the works and construct the required expansions on site.

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 agreed procurement route requires appointment of a contractor via the LHC 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 once the fee proposals have been agreed.
- 2.5 Farrans Construction is the appointed contractor 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. The decisions above are needed to enter into contract and proceed with the construction phase of the works.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 The Council is not obliged to accept Farrans Construction proposals and the alternative would be to re-tender the construction works. This option has been rejected as it would have serious programme implications and it would not be possible to achieve the targeted completion for the school. Furthermore, the TBN Grant Funding of £2,010,340 has to be expended by the extended deadline of the End of July 2016. If the proposal is not accepted and the works retendered this would not be achieved and the Grant would no longer be available.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the recommendations have been approved the Council will instruct HB Public Law to prepare the NEC3 Design and Build contract with Farrans Construction and construction works can 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 2015-2020, invest in extra school places, building on the £116 million invested over the past five years, to ensure the borough's schools remain amongst the best and that demand is met
- 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 This project is funded from the Education Capital Programme which included provision for creating new Primary School places. The Education Capital Programme accounts for £195m within the Council's Capital Budget.
- 5.2.2 The fixed fee construction contract value for Monkfrith is **£4,214,680.32** 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, and fees for technical team, surveys and legal and planning costs.

In order to achieve the programme an advance order is required by 22nd January 2016 in the sum of £134,566.71 which is a 15% deposit for the Modular design and to secure a factory slot. Therefore we also request authorisation to increase the PSCA by this amount taken from the construction contract value noted above.

- 5.2.3 The works contract, NEC3 Design and Build, provides for changes to be instructed if necessary during the contract. The nature of construction works means that changes may be required as works progress, with associated costs, resulting in reductions or increases in the contract value. The project team includes commercial leads that will be able to provide assessment and appropriate scrutiny of cost where an event occurs. Any changes would be subject to appropriate project governance and adequate contingency funding remaining in the approved project budget.
- 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 has been achieved.
- 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. Authority to enter into the pre-construction services agreement was granted via Officer DPR on 1st June 2015.
- 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 Due to the nature of the NEC Professional Services contract (PSC) in place with Farrans Construction they have worked with the Council's technical team to produce a fixed contract sum for these projects. It should be noted that through the tender Farrans Construction have fixed their level of overhead and Profit and have priced for both the project preliminaries and for the PSC. The formulation of the agreed contract sum associated with the project 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.

5.3 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, equal 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 quality. 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 NEC3 Design and Build contract.

5.3.5 Council Constitution, Contract Procedure Rules, Appendix 1 Table A sets out authorisation and acceptance thresholds for works, supplies and services. This table states the "Acceptance Process" for tenders with a procurement value of £172,514 and over, if within budget, is an Officer in consultation with Chairman of relevant theme or Policy and Resources Committee.

- 5.3.6 HB Public Law has been consulted in this matter and with Capita's cost consultants; HBPL shall prepare the NEC3 Design and Build contract between the Council and Farrans Construction.

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 the Education Capital Programmes Board and Assets and Capital Board. There are no risks considered to be significant at this stage.
- 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 has appointed a technical advisory team. 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 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 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 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 27 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 Farrans Construction for Expansions at the Monkfrith Primary.

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 fixed fee proposals in the sum of £4,214,680.32 (plus VAT) from Farrans Construction for the construction works at Monkfrith Primary be accepted.**
- 8.2 **That the Council enter into an NEC3 Design and Build contract with Farrans Construction to undertake the construction works at the school.**
- 8.3 *Increase the PSCA by £134,566.71 this amount taken from the construction contract value noted above*

Signed



Date

14 January 2016
