

	<p><b>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 26 September 2016</b></p>
<p><b>Title</b></p>	<p>Award of Contract for Strategic Construction Partner contract ref 701462 to John Graham Construction Ltd.</p>
<p><b>Report of</b></p>	<p>Chief Operating Officer</p>
<p><b>Wards</b></p>	<p>All</p>
<p><b>Status</b></p>	<p>Public (with separate exempt report)</p>
<p><b>Enclosures</b></p>	<p>None</p>
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<p><b>Summary</b></p>
<p>Authorisation to award the contract for Strategic Construction Partner (SCP) contract ref 701462. This requirement covers the provision of construction and related technical services for major projects over a period of five years, with option to extend for a further two years subject to budget and performance. The Strategic Construction Partner contract will support an estimated £150m of construction activity, subject to specific project pricing over the full seven year contract period.</p> <p>This Strategic Procurement was authorised by the Council's P&amp;R Committee 2<sup>nd</sup> September 2015.</p>

<b>Decisions</b>
<p><b>1. To award John Graham Construction Ltd. the contract for the Strategic Construction Partner (SCP) (ref 701462) – to deliver the Council’s 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.</b></p>
<p><b>2. To authorise Officers to enter into some form of initial engagement arrangement with John Graham Construction Ltd. to carry out some advance work (within the scope of the aggregated procurement requirement) prior to the formal completion of the SPA if required to enable the Council to allow commencement of partnership services within the scope of the aggregated procurement requirement)during October 2016 following expiry of the standstill period and contract award.</b></p>

## **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 to be awarded is currently expected up to £150m and with a guaranteed value of £50m. The guaranteed schemes being the two new leisure centres, Blessed Dominic and St James’ Projects, plus Tarling Road community centre.
- 1.2** The Council needs to ensure that it is procuring capital works as competitively and efficiently as possible.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1** Following completion of the final stage of a competitive tendering process the identified supplier has successfully scored highest of all of the 5 (shortlisted to 2) tendering suppliers.
- 2.2** It is anticipated that following the competition of the standstill period, the Strategic Partnering Agreement (SPA) will be entered into to commence the partnership with scheme specific documentation being enacted in accordance with the terms of the SPA. However, if during this period, there is delay in entering into the SPA, it may be necessary to enter into some form of initial engagement arrangement to carry out some advance work (within the scope of the aggregated procurement requirement) prior to the formal completion of the SPA. The partner’s support will be required urgently to begin reviews of projects for delivery in the first year and begin pricing works for the project specific NEC construction contracts.
- 2.3** In recommending appointing the strategic partner we recognise historic successful construction partnerships that the Council has used, and the relative weaknesses of more recent tactical procurements which have resulted in a more transactional relationship with suppliers.



- 2.4** 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.
- 2.5** Future construction projects will be delivered through a Strategic Partnering Agreement with NEC (Engineering and Construction Contract) 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. The estimated lifetime contract value is £150M.
- 2.6** The Strategic Construction Partner contract also referred to as aggregated procurement offers advantages over alternative approaches as it will deliver the following benefits:
- 2.6.1** 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 upto £150m. The one off cost to the Council being additional project team costs and legal services. 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, an equivalent sum is ultimately paid through levy fees in contract sums and hence 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.
- 2.6.2** 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.
- 2.6.3** 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 the contractor 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. The council has a demonstrable pipeline of capital projects in place and through negotiation this procurement has secured meaningful commitments to apply discounts based on the volume of

work to be delivered by the partner. On the basis of the five specified schemes forming the initial work bank, the successful supplier has made a commitment for reductions in bulk materials costs across all projects. This commitment is over and above the discount secured during the pricing review at the Final Tender stage.

2.6.4 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 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. This betterment may take the form of year on year discounts, efficiency in delivery reducing programmes and hence costs of site preliminary charges.

2.8 The strategic construction partnership requirement and delivery has been identified in line with the delivery of the Council's Corporate Plan 2015-2020 which includes the core principles of fairness, responsibility and opportunity. Namely that the Council will work with local, regional and national partners to ensure that Barnet is a place:

- of opportunity, where people can further their quality of life
- where people are helped to help themselves
- where responsibility is shared, fairly
- where services are delivered efficiently to get value of money for the taxpayer.

The award of the strategic construction partner contract responds to the Council's aims and objectives as defined in the Corporate Plan.



### **3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

#### **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 through mini competition for each scheme with separate contractor arrangements per scheme and does not offer the Council an exclusive partnership arrangement.

3.1.3 The continued use of frameworks and standalone procurements per scheme has been considered as detailed above but has been rejected on the basis it will not deliver best value and the benefits of a partnership ethos.

### **4. POST DECISION IMPLEMENTATION**

4.1 Following authorisation, the supplier will be appointed and formal contracts put in place by appointed lawyers for this exercise, Bevan Brittan.

4.2 It is anticipated that following the competition of the standstill period, the Strategic Partnering Agreement (SPA) will be entered into to commence the partnership with scheme specific documentation being enacted in accordance with the terms of the SPA. However, if during this period, there is delay in entering into the SPA, it may be necessary to enter into some form of initial engagement arrangement to carry out some advance work (within the scope of the aggregated procurement requirement) prior to the formal completion of the SPA. The partner's support will be required urgently to begin reviews of projects for delivery in the first year and begin pricing works for the project specific NEC construction contracts.

4.3 It is expected that the SPA will be in place by the end of November 2016.

## **5. IMPLICATIONS OF DECISION**

**5.1** 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:

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

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

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

## **6. RESOURCES (FINANCE & VALUE FOR MONEY, PROCUREMENT, STAFFING, IT, PROPERTY, SUSTAINABILITY)**

**6.1** The expenditure relating to subsequent projects to be delivered under the SPA will be completely contained within the current and future budgets for the relevant projects.

**6.2** The value of the contract has been calculated based on the value of previous contracts and expenditures required to meet school places need and sport and leisure provision.

**6.3** All projects to be delivered through the strategic partnering agreement will have their own separate contracts NEC form of contract. As is the nature of these projects, there is often a requirement for contract adaptations. Where adaptations are required the appropriate forms of contract have relevant sections to deal with this. Required adaptations will be managed through agreed specific project governance; on the basis that;

- The impact of adaptations can be contained within existing allocated budgets and,
- The overall strategic construction partnership contract value (£150m) is not exceeded,
- The adaptation procedure from the appropriate form of contract is followed.



## 7. PROCUREMENT

7.1 A Competitive Procedure with Negotiation, procurement exercise, was undertaken in accordance with Regulation 29 of the Public Contracts Regulations 2015. . This procedure was released to market through an advertisement placed in the Official Journal of the European Union with reference number 2016/S 008009188 (published 13 January 2016). The procurement exercise comprised four stages as follows:

- **Stage 1 - Engagement and PQQ:** OJEU advertisement was released and 39 suppliers expressed an interest through Barnet's e-portal with 6 Pre Qualification Questionnaires (PQQs) submitted. These were evaluated and in accordance with the procedure the top five submissions were long listed to the next stage. OJEU.
- **Stage 2 - ICPN 1:** Five invitations to participate in the first stage of the Invitation to Competitive Procedure with Negotiation (ICPN) were released. One bidder withdrew from the process at this stage. Four Stage 1 Initial Tender submissions were received. These were evaluated and the top two submissions were shortlisted to Stage 2 the negotiation stage.
- **Stage 3 – ITN:** Two Invitations to participate in the second stage of the Invitation to Negotiate (ITN) were released. This stage involved the shortlist of two bidders attending a series of negotiation meetings. The meetings concluded and the exercise moved forward into the final stage 4.
- **Stage 4 - ISFT:** Two Invitations to Submit Final Tender (ISFT) were released with two submissions received in accordance with submission deadline. Evaluation of the submission has been undertaken in accordance with the tender document evaluation criteria. The outcome of the evaluation identifies the award of the Strategic Construction Partner contract.

7.2 An OJEU advertisement (Reference: 2016/S 008-009188) was released and 39 suppliers expressed an interest through Barnet's e-portal with 6 Pre Qualification Questionnaires (PQQs) submitted. These were evaluated and in accordance with the procedure the top five submissions were long listed to the next stage.

7.3 Five invitations to participate in the first stage of the Invitation to Competitive Procedure with Negotiation (ICPN) were released. One bidder withdrew from the process at this stage. Four Stage 1 Initial Tender submissions were received. These were evaluated in accordance with the tender evaluation criteria for ICPN stage, quality 60%, price 40% and the top two submissions were shortlisted to Stage 2, the negotiation stage.

7.3.1 The results of the ICPN Stage 1 are demonstrated below in Table 1:

<b>Supplier</b>	<b>Quality (60%)</b>	<b>Price (40%)</b>	<b>Shortlist (100%)</b>
John Graham Construction Ltd.	42.42	34.41	76.83
Bidder B	41.93	34.55	76.48
Bidder C	36.12	40.00	76.12
Bidder D	33.19	36.50	69.69

*Table 1: ICPN Stage scoring summary*

**7.4** Two Invitations to participate in the second stage of the Invitation to Negotiate (ITN) were released. This stage involved the final shortlist of two bidders attending a series of negotiation meetings. The meetings concluded and the exercise moved forward into the final stage 4.

7.4.1 Negotiations sought to exploit opportunities for improvement of tender submissions, obtain reliable commitments for the Council, and to clarify partnering expectations to the bidders.

**7.5** After addressing formal clarification requests from both suppliers, officers deemed that negotiations had been satisfactorily concluded, and final tenders were invited. Two Invitations to Submit Final Tender (ISFT) were released with two submissions received in accordance with submission deadline. Evaluation of the submission has been undertaken in accordance with the tender document evaluation criteria for ISFT stage, quality 50%, price 50% The outcome of the evaluation identifies the award of the Strategic Construction Partner contract.

7.5.1 The results of the ISFT tender evaluation process are summarised in the table below:

<b>Supplier</b>	<b>Quality (50%)</b>	<b>Price (50%)</b>	<b>TOTAL (100%)</b>
John Graham Construction Ltd.	36.88	50.00	86.88
Bidder B	36.55	49.404	85.95

*Table 2: IFT Stage scoring summary*

7.5.2 The outcome of the evaluation identified in 7.1.6 is to award the contract to John Graham Construction Ltd.

## **7.6** Legal and Constitutional References

7.6.1 HB Public Law has commissioned external legal advisors (Bevan Brittan LLP) who have provided legal and procurement advice in relation to the procurement of the Strategic Partner.

7.6.2 The procurement process has been conducted using the Competitive Procedure with Negotiation following the Public Contracts Regulations 2015 (the "Regulations"), Regulation 29 of the Public Contracts Regulations 2015.

7.6.3 The authorisation and acceptance of this procurement is in accordance with the Council's Contract Procedure Rules Appendix 1 Table A (Constitution Item 22



Contract Procedure Rules, Appendix 1 Table A - Award of contract by a Full Delegated Powers report in consultation with the relevant Committee Chairman

7.6.4 <http://barnet.moderngov.co.uk/ecSDDisplay.aspx?NAME=SD350&ID=350&RPID=553501038&sch=doc&cat=13581&path=13581>).

7.6.5 The draft terms and conditions for the Strategic Construction Partnering Agreement were released with the tender documents.

## **8. RISK MANAGEMENT**

**8.1** Should the Council continue to contract for works under its capital programme through existing frameworks, and as individual projects not aggregated together, 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.

**8.2** 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 contracting 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 has developed a cost model through comparator schemes which will enable the Council to ensure project costs are kept under control.

**8.3** 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, access to further work beyond the initial five schemes is entirely dependent on their performance.

**8.4** Following the issue of the notification letters to bidders, there is a risk that the unsuccessful bidder may challenge the outcome. This could delay appointment of the strategic construction partner until the challenge is concluded. In arriving at the recommendation in this report, officers have conducted a due diligence exercise on all elements of the evaluation and bidding process to ensure that the procurement has been conducted in a robust manner, therefore reducing the risk of any challenge being successful.

## **9. EQUALITIES AND DIVERSITY**

**9.1** The 2010 Equality Act outlines the provisions of the Public Sector Equality duty which requires public authorities to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

**9.2** There are no equalities and diversity issues that have been identified through this open procurement procedure.

**9.3** Further assessments will be undertaken at design concept stage and prior to build by assessing the impact of our actions on different groups within 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.

## **10. CONSULTATION AND ENGAGEMENT**

**10.1** Officers did not consider that there was any need to consult on this issue

## **11. INSIGHT**

**11.1** 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.

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

**11.3** 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.

## **12. BACKGROUND PAPERS**

**12.1** The Policy and Resources Committee agreed at the 2 September 2015 meeting, under item Agenda 8: Aggregated Procurement.

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MID=8347>

Documents:

<http://barnet.moderngov.co.uk/documents/s20193/Procurement%20Forward%20Plan%202015-16.pdf>



**12.2** The Policy and Resources Committee agreed on the 13 January 2015, under Agenda item 10, Procurement Forward Plan 2015-16.

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MID=7864>

Documents:

<http://barnet.moderngov.co.uk/documents/s20193/Procurement%20Forward%20Plan%202015-16.pdf>

**12.3** The Policy and Resources Committee agreed on 16 December 2015 under Agenda item 9 the Annual Procurement Forward Plan 2016-17

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MID=8349>

Documents:

<http://barnet.moderngov.co.uk/documents/s28058/Annual%20Procurement%20Forward%20Plan%202016-2017.pdf>

### 13. DECISION TAKER'S STATEMENT

*13.1 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.*

### 14. OFFICER'S DECISION

I authorise the following action:

1. To award John Graham Construction Ltd. the contract for the Strategic Construction Partner (SCP) (ref 701462) – to deliver the Council's 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.
2. To authorise Officers to take appropriate interim measures if required to enable the Council to allow commencement of partnership services with the SCP during October 2016 following expiry of the standstill period and contract award.

~~Signed~~  
DESIGNATION CHIEF OPERATING OFFICER

Date 26/09/2016