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|  | ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER {08/11/2017} |
| Title | New Barnet and Barnet Copthall Leisure Centres – Authorisation to enter into New Engineering Contract (NEC) |
| Report of | Strategic Director, Adults, Communities and Health |
| Wards | All |
| Status | Public |
| Enclosures | None |
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Summary

In October 2016 John Graham Construction Ltd (GCL) was appointed as the Council's Strategic Construction Partner for a period of 5 years. The Strategic Construction Partner Agreement supports an estimated £150 million of construction activity in Barnet, which includes the building of leisure facilities, subject to project pricing.

In January 2017, the Council approved planning applications to develop a new leisure facility at Victoria Recreation Ground, New Barnet, in addition to the redevelopment of Barnet Copthall Leisure Centre. The total construction costs are now confirmed following the completion of RIBA stage 4 in September 2017, in addition to the completion of all pre-commencement planning conditions required in order to initiate construction.

John Graham Construction Ltd (GCL) have confirmed a total fixed construction price of £35,890,000 to deliver the two leisure developments at Victoria Road Recreation Ground, and Barnet Copthall.

This specific agreement will be delivered through a New Engineering Contract (NEC).

The new facilities will enhance and diversify leisure provision to enable opportunities for residents of all ages and ability.

Decisions

- 1. To approve award of the NEC Contract to John Graham Construction Ltd for the development of Barnet Copthall Leisure Centre and New Barnet Leisure Centre, for a fixed total construction fee of £35,890,000**
- 2. To provide authority to officers to implement the required NEC contract requirements and monitoring arrangements to be delivered**
- 3. To provide authority to the Strategic Director, Adults, Communities and Health to approve and instruct changes in accordance with the NEC contract.**

1. WHY THIS REPORT IS NEEDED

- 1.1 In 2012/13 as part of its Medium Term Financial Strategy (MTFS), the Council embarked on a review of its leisure services, which was defined through the establishment of the Sport and Physical Activity (SPA) Project Outline Business Case. Following extensive research and stakeholder engagement, the project took a strategic and methodological approach in defining and shaping the future of a leisure offer.
- 1.2 On 17 February 2015, Policy and Resources Committee agreed the Revised Outline Business Case, enabling the project to be defined by outputs, which included the development of two new leisure centres and the procurement of a new leisure management contract.
- 1.3 In October 2016 John Graham Construction Ltd (JGCL) was appointed as the Council's Strategic Construction Partner for a period of 5 years. This report requests approval to 'call-off' its Strategic Construction Partnership Agreement with JGCL and enter into an NEC contract for a total construction value of £35,890,000 in respect of the construction of Barnet Copthall Leisure Centre and New Barnet Leisure Centre, Victoria Recreation Ground.

2. REASONS FOR DECISIONS

- 2.1 The Revised Outline Business Case included the commission of a Feasibility Study (2015), analysis of building condition and revised business modelling (2016), which all indicated revenue projections that the Council could reasonably expect from the estate, which included capital investments at Barnet Copthall and the replacement of Church Farm Leisure Centre.
- 2.2 The creation of new facilities seeks to support a sustainable leisure offer, whilst enhancing and diversifying leisure provision to enable opportunities for residents of all ages and ability.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3.1 None

4. POST DECISION IMPLEMENTATION

4.1. It is anticipated that following authorisation, the construction programme for both developments will commence on the 27th November 2017. The programme will comprise 87 weeks (Barnet Copthall) and 78 weeks (New Barnet Leisure Centre) respectively.

4.2. In advance of the construction start date enabling works are required; this is scheduled to start from the 13th November 2017.

4.3. The subsequent timetable will be implemented;

| Programme Activity | Anticipated Period |
|-----------------------------|------------------------------------|
| RIBA Stage 5 (construction) | November 2017 – up to July 2019 |
| RIBA Stage 6 (close out) | April (NBLC)/July (BCLC) |
| RIBA Stage 7 (in use) | May 2019 (NBLC) August 2019 (BCLC) |

4.3 A Technical Assurance Group (TAG) has been established to ensure programme delivery, cost assurance and risk monitoring. This will comprise stakeholder representation from the Council, CSG Corporate Programmes, JGCL, Sport England, Gardiner & Theobald LLP and Greenwich Leisure Limited.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The new leisure centre developments align with the Corporate Plan 2015-2020, which is based on the core principles of fairness, responsibility and opportunity to make sure 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, and;
- Where services are delivered efficiently to get value for money for the Taxpayer

5.1.2 Strategically, it is anticipated that the project will contribute to a 1% (minimum) increase in leisure attendances

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

5.2.1 On 02 September 2015 Policy and Resources Committee approved the procurement of a new strategic partner (John Graham Construction Ltd) 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. The aims of which are to:

- Reduce procurement cost;
- Improve value for money;
- Secure a partnership ethos;
- Achieve tighter cost control; and
- Achieve more efficient delivery times

- 5.2.2 On 05 September 2017 Policy and Resources Committee approved the increased budget allocation of £5.596m in respect of the SPA Project capital programme. This brought the total development cost for the full scheme to £41.586m, which will be funded via prudential borrowing, community infrastructure levy, capital receipts, Sport England investment funding and the remaining leisure budget.
- 5.2.3 The total cost of the NEC contract with JGCL is £35,890,000. The cost presented by GCL has been independently assured by Gardiner and Theobald in accordance with the Strategic Partnering Agreement.
- 5.2.4 There is no constitutional requirement to undertake further procurement for individual projects within the Strategic Partnering Agreement. This report seeks authorisation to call off that Agreement, and as such there is no need to return to committee.
- 5.2.5 The NEC3 Design and Build contract, 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 who will be able to provide assessment and appropriate scrutiny of cost where an event occurs. Any changes would be subject to appropriate project governance (via the Technical Assurance Group and Sports and Physical Activity Board, where necessary) and adequate contingency funding remaining in the approved project budget.
- 5.2.6 At handover, warranties will be transferred to the Leisure Operator, and any subsequent defects monitored and resolved as per the terms and conditions in the NEC contract. This will be monitored by the Council and Leisure Operator, and reported through the Technical Assurance Group and SPA Board.
- 5.2.7 All decisions regarding the project will be escalated via Technical Assurance Group (as outlined above), and where necessary, Sport and Physical Activity Board (SPA). A scheme of delegation has been set out to agree the different tiers of escalation.
- 5.2.8 JGCL will have a dedicated project manager for each construction site, who will be responsible for communicating all issues back to the CSG Project Manager, reporting on progress, as well as ensuring the construction management plan is adhered to.

5.3 Legal and Constitutional References

- 5.3.1 HB Public Law commissioned external legal advisors (Bevan Brittan LLP) who have provided legal and procurement advice in relation to the procurement of the Strategic Partner Agreement.
- 5.3.2 The procurement process was conducted using the Competitive Procedure with Negotiation following the Public Contracts Regulations 2015 (the "Regulations"), Regulation 29 of the Public Contracts Regulations 2015.
- 5.3.3 The authorisation and acceptance of the Strategic Partnering Agreement procurement was in accordance with the Council's Contract Procedure Rules.
- 5.3.4 The draft terms and conditions for the Strategic Construction Partnering Agreement (SCPA) were released with the tender documents.
- 5.3.5 Bevan Brittan has also been instructed to advise on and prepare the legal documentation required in order to place a call-off Contract for the sites under the SCPA
- 5.3.6 As the SCPA has been procured in accordance with Regulations, where the Council uses the SCPA to call-off a works contract in accordance with the terms and scope of the SCPA, such a contract would be in compliance with the Regulations.
- 5.3.7 This report elsewhere, explains the process undertaken by the Council in using the SCPA to achieve best value in order to meet the Council's requirements
- 5.3.8 These and other work requirements together with values were specifically identified within the Full Delegated Powers Decision of the 14th October 2016 to award the SCPA (see background papers). Accordingly, within their general set of delegations each relevant Chief Officer has the delegated authority to agree to enter into the call-off contract. In the case of Leisure Services the relevant person is the Commissioning Director for Adults, Communities and Health who has considered it appropriate to consult with the relevant committee chairmen.

5.4 Risk Management

- 5.4.1 The NEC contract highlights the process of risk management and mitigation. JGCL will take all reasonable steps to minimise risks that could have an adverse effect on cost, programme or quality of works, and will report to the CSG Project Manager and Technical Lead all possible areas of risk.
- 5.4.2 A risk register will be produced by JGCL as per the monitoring requirements and circulated to core staff for review. The risk register will include; new risks, steps taken to prevent/mitigate these (and previously identified) risks, and those which have been successfully prevented and mitigated against (which can be

removed from the risk register).

- 5.4.3 JGCL will provide LB Barnet with an early warning notice, outlining the details of any risk and its potential impact.
- 5.4.4 As outlined above, a Technical Assurance Group (TAG) has been established to ensure programme delivery, cost assurance and risk monitoring. This, and the project team will monitor all aspects of the build to ensure continued assessment of the finances, appropriate design and health and safety through design and from construction start to completion.
- 5.4.5 Liquidated and Ascertained Damages (LADs) have been agreed in advance of the start of construction. These are specified in the contract and will be applicable (payable by the contractor) if there is a delay to completion. The agreed amounts are as follows:
- New Barnet Leisure Centre- £15,000 per week
 - Barnet Copthall Leisure centre- £20,000 per week
- 5.4.6 As outlined under Resources, JGCL is responsible for ensuring that a Construction Management Plan (CMP) for both sites is in place to minimise the impact that construction has on the site and nearby traffic arrangements. This will be monitored by the Technical Assurance Group.
- 5.4.7 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 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
- 5.5.2 There are no equalities and diversity issues that have been identified, the design of the new leisure facilities considers the Equality Act 2010 in addition to the Disability Discrimination Act.
- 5.5.3 Further assessments have been undertaken 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.

5.6 Consultation and Engagement

5.6.1 Between 2014 and 2016, Barnet residents took part in a formal consultation and drop in engagement sessions, which helped to develop and inform the leisure centre proposals. Through the consultations we engaged directly with residents to gather their views on:

- the facilities to be included in both new leisure centres;
- the location of the new facility in the north of the borough;
- and alternative services that people would consider receiving from their local centre, e.g. library services.

A report on the results of this consultation can be found on the following [page](#).

5.6.2 Engagement has also been carried out with Sport England throughout the process.

5.6.3 The decisions included within this report have been taken in consultation with the Chairman of Policy & Resources Committee.

6. BACKGROUND PAPERS

6.1 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>

6.2 The Award of Contract to John Graham Construction was authorised by the Council's Chief Executive via Delegated Powers on 14 October 2016

<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=6423>

6.3 On 17 February 2015 the Policy and Resources Committee agreed the revised SPA programme Outline Business Case:

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=7865&Ver=4>

6.4 On 25 January 2017 Planning Committee approved the planning applications for New Barnet Leisure Centre (Victoria Recreation Ground) and Barnet Cophall Leisure Centre.

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=703&MId=8614>

6.5 On 5th September 2017, Policy and Resources Committee approved additional capital funds for the leisure centre programme:

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=8737&Ver=4>

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

To approve award of the NEC Contract to John Graham Construction Ltd for the development of Barnet Copthall Leisure Centre and New Barnet Leisure Centre, for a fixed total construction fee of £35,890,000.

To provide authority to officers to implement the required NEC contract requirements and monitoring arrangements to be delivered

To provide authority to the Strategic Director, Adults, Communities and Health to approve and instruct changes in accordance with the NEC contract

Signed



Date

17/11/2017

REPORT CLEARANCE CHECKLIST

(Removed prior to publication and retained by Governance Service)

Report authors should engage with their Governance Champion early in the report writing process and record the date below. If the decision/report has been reviewed

at an internal board please record the date and name of the meeting (e.g. SCB). Otherwise enter N/A.

All reports must be cleared by the appropriate Director/AD, Legal, Finance and Governance as a minimum.

Legal, Finance and Governance require a minimum of 5 working days to provide report clearance. Clearance cannot be guaranteed for reports submitted outside of this time.

AUTHOR TO COMPLETE TABLE BELOW:

| Who | Clearance Date | Name |
|--|-------------------|-------------------------------------|
| Director / AD / Lead Commissioner | 17/11/2017 | Dawn Wakeling |
| Enabling Board / Delivery Board | | |
| Commissioning and Policy | | |
| Equalities & Diversity | | |
| HR Business Partner | | |
| Strategic Procurement | | |
| HB Public Law | 01/11/2017 | Clinton Bensusan |
| Finance | 08/11/2017 | Farhana Begum/Mohammed Ahmed |
| Governance | 14/11/2017 | Jan Natynczyk |