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|  | <h2>CHIEF OFFICER IN CONSULTATION<br/>WITH COMMITTEE CHAIRMAN<br/>DELEGATED POWERS REPORT</h2>  |
| <p style="text-align: center;"><b>Title</b></p>                                   | <p>Pavilion Study Centre – Authorisation to vary the NEC Professional Services Contract (PSC) with John Graham Construction Limited (JGCL)</p>  |
| <p style="text-align: center;"><b>Report of</b></p>                               | <p>Executive Director of Children and Young People</p>  |
| <p style="text-align: center;"><b>Wards</b></p>                                   | <p>Oakleigh</p>   |
| <p style="text-align: center;"><b>Status</b></p>                                  | <p>Public</p>   |
| <p style="text-align: center;"><b>Enclosures</b></p>                              | <p>N/A</p>  |
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## Summary

The London Borough of Barnet has started a project at The Pavilion Study Centre PRU to provide new fit for purpose accommodation and enable the Council's Alternative Provision to be broadened to meet emerging needs in the borough. The project is being delivered and funded through the Education Funding Agency's (EFA) Priority School Building Programme under the Direct Delivery (with EFA Funding) model.

A previous decision gave approval to enter into a Professional Services Contract (PSC) with John Graham Construction Ltd to proceed with design and costing works to the end of Stage 3. The original intention was for Stages 4 onwards to be contained within the main contract. As a result of reviewing the programme following the delays caused by the pandemic and obtaining planning consent, it has been identified that there are time and financial benefits including de-risking the scheme by bringing forward Stage 4 and some

Stage 5 orders to be contained within the PSC rather than main contract. This decision purely deals with the contract that these activities sit within rather than any change in the overall project costs.

The variation will include Stage 4, the appointment of Energeyes to design and install new incoming services, to mobilise groundworks, welfare and Stage 5 design, to confirm the temporary school order and associated preliminary costs.

This report seeks approval to vary the existing PSC contract with John Graham Construction Ltd for re-provision of the PRU to allow for the completion of all pre construction contract design including the acceleration of Technical Design and installation of new services (electricity, water and BT) to the temporary and new school. This will enable reduction of risk on the programme, reduction of risk on cost and provide a final cost for the construction element of the works.

## Decisions

1. **To approve a variation to the existing NEC Professional Services Contract between the Council and John Graham Construction Ltd for re-provision of the Pavilion Study Centre PRU, to include**
  - **Stage 3 variations to detailed design and costs**
  - **Stage 4 technical design and costs**
  - **Stage 4 technical design and installation of incoming services**
  - **Stage 5 design mobilisation**
  - **Temporary school order**
  - **Groundworks mobilisation**
  - **Additional prelims**
  - **Welfare mobilisation**

**from the previously approved contract value of £1,171,426.76, to a revised value of £ 2,240,091.03**

### 1. WHY THIS REPORT IS NEEDED

- 1.1 The re-provision of The Pavilion PRU (Pupil Referral Unit) facility is a project being undertaken as part of the Council's Education Capital Programme. The facility offers a range of educational programmes for young people unable to attend mainstream schools for a variety of reasons, and the project will provide new fit-for-purpose facilities to meet the borough's widening needs.

- 1.2 The design and costing works are being delivered via a NEC Professional Services Contract (PSC) with John Graham Construction Ltd (JGCL). Approval to enter into this PSC, at a cost of £1,171,426.76, was gained via DPR in June 2019, as referenced in clause 6.2 below. The initial approval was for works up to Stage 3 (Detailed Design and Costing).
- 1.3 Since the initial approval there have been design changes needed, with associated cost implications, requiring a variation to the contract.
- 1.4 The contract also needs to be varied to include Stage 4 (Technical Design), to allow the design to be fully worked up and a construction cost provided for Council approval and to allow the technical design and installation of new incoming services to the site.
- 1.5 These variations have been discussed and approved by Education Capital Board, most recently at a Gateway on 31 July 2020. This report is seeking approval to vary the contract in line with the recommendations set out above. The variation will allow the contract value to be increased to a revised value of **£ 2,240,091.03**, the Stage 3 design to be amended to meet requirements and for the contractor to proceed to Stage 4 and fully cost the works ahead of the construction phase and to instruct Energyeyes to design and install new incoming services.
- 1.6 In addition, the variation will include the temporary school order, additional prelim costs, stage 5 design mobilisation, welfare and groundworks mobilisation.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 The Council has a Strategic Partnering Agreement with JGCL following a competitive tendering exercise, and under this entered into a contract for the PRU works to end of Stage 3 for an agreed fixed fee. The Council wishes to proceed further with this project and to do this needs to vary the existing contract and fee to include changes to the agreed Stage 3 Design and to cover Stage 4 to enable JGCL to instruct Energyeyes to design and install new services.
- 2.2 The changes to Stage 3 design have been raised by the Council, not the contractor, and have arisen from amended requirements of various stakeholders including the school, neighbouring residents and Sport England.
- 2.3 The scope of design changes have been discussed with relevant stakeholders and agreed at Education Capital Board. Costs have been subject to rigorous review by the Council's Technical team and can be contained within the overall programme budget
- 2.4 Energyeyes have a 13 week design and mobilisation period, so it is essential that they are instructed now to ensure that new incoming services are available in a timely manner for the construction of the temporary school.
- 2.5 The additional costs also include for the mobilisation of welfare, groundworks and the Stage 5 design, associated preliminary costs and the temporary school order

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

- 3.1 If this contract is not varied as per the recommendation the design will not meet requirements or be fully costed, and the Council will not have a viable proposal to take forward for approval and construction.
- 3.2 In addition, the temporary school building will not have essential services (electricity, water and BT) available when required for the occupation of the building in accordance with the construction programme, which will have cost and programme implications for the project.
- 3.3 Not undertaking the works is not an option, as the facility is needed to allow a new fit for purpose building to facilitate alternative provision and meet emerging needs in the borough.
- 3.4 Alternative procurement options have not been considered as the variation is in relation to an existing live contract with our strategic construction partner John Graham Construction Limited (JGCL) and covers the acceleration of activities originally planned to be delivered within the main construction contract.

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

- 4.1 Following approval to vary this contract the Stage 3 design revisions will be completed, and the contractor will proceed to Stage 4 and will appoint Energeyes.
- 4.2 JGCL will also implement the mobilisation of the Stage 5 design, the welfare and groundworks, with associated preliminary costs plus the temporary school order.
- 4.3 By the end of Stage 4 Design and Cost exercise, JGCL will provide a final cost of the works for the construction element of the works and request approval to proceed to Stage 5.

### **5. IMPLICATIONS OF DECISION**

#### **5.1 Corporate Priorities and Performance**

- 5.1.1 The Corporate Plan 2019-24 has an outcome 'A pleasant, well maintained borough that we protect and invest in' under which one of the priorities is 'Investing in community facilities to support a growing population, such as schools and leisure centres'.
- 5.1.2 The Corporate Plan 2019-24 has an outcome 'Our residents live happy, healthy, independent lives with the most vulnerable protected' under which one of the priorities is 'Ensuring we have good schools and enough school places so that all children have access to a great education'.
- 5.1.3 The project to redevelop the PRU helps support both these priorities.

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

- 5.2.1 The value of the revised NEC PSC contract is a maximum of £2,240,091.03 plus VAT, This figure covers pre-construction activities up to the end of Stage 4 and can be contained within the overall project budget when taking into consideration construction costs, PM and technical team fees, IT costs, legal and statutory fees, relocation costs and a contingency sum. This is funded from the Alternative Provision budget total. If this scheme was not to go ahead these costs will need to be treated as revenue.
- 5.2.2 The revised PSCA total is £ 2,240,091.03 which includes an additional cost of £1,068,664.27 when compared to the originally approved PSC cost of £1,171,426.76. The additional costs relate to Stage 3 redesign costs and undertaking Stage 4, the appointment of Enegeyes to commence their design, Stage 5 design mobilisation, mobilisation of groundworks and welfare, the temporary school order and associated additional preliminary costs.
- 5.2.3 The original intention was for Stages 4 onwards to be contained within the main contract. As a result of reviewing the programme following the delays caused by the pandemic and obtaining planning consent, it has been identified that there are time and financial benefits including de-risking the scheme by bringing forward Stage 4 and some Stage 5 orders to be contained within the PSC rather than the main contract.
- 5.2.4 The Stage 3 redesign costs relate to alternative requirements for roof design, metal detectors and temporary playground, and inclusion of IT design, playing field requirements and tree screening. Some of these have been requested by the school, some are requirements needed to satisfy external stakeholders such as neighbours and Sport England. The value for money of the amendments/additions have been confirmed by the cost consultant. The technical team have also confirmed that some design amendments attracting additional cost at Stage 3 will result in savings at the point of construction in Stage 5.
- 5.2.5 Stage 4 covers technical design and is impacted by the Stage 3 design changes for which approval is being sought in this report and which will feed through into Stage 4. For this reason some of the Stage 4 costs are still being finalised between JGCL and the Council's technical team and the costs shown include the maximum cost for Stage 4 including contingency. Approval is sought for the full cost, but the final cost may be lower than the total shown.
- 5.2.6 These works fall under the Strategic Partnering Agreement (SPA) that the Council has with JGCL to deliver its Capital Programme during 2015-2020. The SPA procurement was approved by Policy and Resources Committee on 02 September 2015. This PRU project was given approval to be placed under the SPA via Chief Officer DPR in consultation with the Chairman dated 25.6.19 and a further procurement at project level was not required.
- 5.2.7 Varying the contract is not expected to change implications for staffing, IT, property or sustainability issues when compared to entering into the contract.

### 5.3 Social Value

5.3.1 The strategic partner procurement was carried out in accordance with the Public Services (Social Value Act) 2012.

### 5.4 Legal and Constitutional References

5.4.1 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.

5.4.2 Under the Council's Contract Procedure Rules, clause 11.4, contracts may only be varied provided all the following conditions are met:

- *the initial contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;*
- *the value of the extension or variation added to the value of the original contract does not exceed the original Authorisation threshold as defined in Article 10 of the Constitution, Table B;*
- *the extension or variation has an approved budget allocation;*
- *the extension or variation is in accordance with the terms and conditions of the existing contract;*
- *if the initial contract was subject to EU regulated tender procedure, that the extension option was declared within the OJEU notice and the original Acceptance (Delegated Powers Report/relevant Committee Report); and*
- *the contract has not been extended before;*

The conditions above have been met.

5.4.3 Thresholds for Contract Extensions and variations are set out in Constitution, Article 10 Table B of the Constitution. For contract variations where the total value of the contract including variation is £500,000 and above, if within budget, acceptance documentation is Full DPR (Chief) Officer Decision in consultation with Theme Committee Chairman.

### 5.5 Risk Management

5.5.1 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 LBB Project manager and technical Lead all possible areas of risk.

5.5.2 A risk register will be maintained 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).

5.5.3 JGCL will provide the London Borough of Barnet with an early warning notice, outlining the

details of any risk and its potential impact.

5.5.4 As outlined above, ECPB will monitor 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 throughout.

5.5.5 It is considered that any issues involved are unlikely to raise significant levels of public concern or give rise to policy considerations.

## 5.6 Equalities and Diversity

5.6.1 There are no equalities implications arising directly from the decision set out in this report and the awarding this contract does not compromise the Council in meeting its statutory equalities duties.

## 5.7 Corporate Parenting

5.7.1 N/A

## 5.8 Consultation and Engagement

5.8.1 A formal consultation is not required in relation to this contract variation.

5.8.2 Engagement has taken place with the schools to develop the design to define and confirm requirements in relation to the proposed works. In addition, engagement has taken place with the Education Funding Agency (EFA) and Sport England throughout.

5.8.3 An engagement event has been held at the school to invite residents within close proximity to the site to review the designs prior to the planning submission.

5.8.4 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.

## 5.8 Insight

5.8.1 N/A

## 6. BACKGROUND PAPERS

6.1 The Policy and Resource Committee agreed at the 02 September 2015 meeting under item Agenda 8: Aggregated Procurement.  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CIId=692&MIId=8347&Ver=4>

- 6.2 Delegated Powers Report dated 25 June 2019, published 22 May 2020, gave authorisation to enter into an NEC Professional Services Contract (PSC) with John Grahams Construction Limited  
<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7490>



## 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. The decision is compliant with the principles of decision making in Article 10 of the constitution.*

## 8. OFFICERS DECISION

To approve acceptance of variation to NEC Professional Services Contract to John Graham Construction Ltd to allow for amendments to Stage 3 Design and inclusion of Stage 4, to appoint Energeyes to commence their design, to mobilise welfare, groundworks and Stage 5 design, to confirm the temporary school order and associated preliminary costs, at a total revised cost of £ 2,240,091.03

Chairman:

Has been consulted

David Longstaff – Children, Education and Safeguarding Committee Chairman

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Date: 11<sup>th</sup> August 2020

Chief Officer:

Decision maker having taken into account the views of the Chairman

Signed



Date: 11<sup>th</sup> August 2020