

## CABINET

4 August 2014

<b>Title:</b> Re-Procurement of the Construction Related Professional Services Framework	
<b>Report of the Cabinet Member for Regeneration</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Divisional Director:</b> Jeremy Grint, Divisional Director of Regeneration	
<b>Accountable Director:</b> Steve Cox, Director of Growth	
<b>Summary:</b> <p>The Council has a Framework for construction related professional services that is due to expire in March 2015. This covers such disciplines as Architectural Services, Cost Consultancy, Structural and Mechanical Engineers, Construction Project Management and a number of other associated professionals.</p> <p>This Framework has provided an efficient method of commissioning those skills required to design and manage construction projects and meets the public procurement requirements; it is proposed that a similar arrangement be re-procured to commence on the conclusion of the existing Framework.</p> <p>This Framework will be offered for use by those councils that are members of the East London Solutions (ELS) procurement group.</p>	
<b>Recommendation(s)</b> <p>Cabinet is recommended to:</p> <ul style="list-style-type: none"><li>(i) Approve the procurement of a new Construction Related Professional Services Framework Agreement for the provision of the services in accordance with the strategy set out in this report; and</li><li>(ii) Indicate whether Cabinet wishes to be further informed or consulted on the progress of the procurement and /or the award of the contract, or is content for the Director of Growth, in consultation with the Cabinet Member for Regeneration, the Chief Finance Officer and the Head of Legal Services, to conduct the procurement and award the contract to the successful bidders.</li></ul>	
<b>Reason(s)</b> The reasons this recommendation should be accepted are as follows :	

- a) The arrangement will support the aim of being a well run organisation through efficient procurement practice and achieving value for money via market-competitive pricing and collaborative working with selected construction professionals
- b) Construction Related Professional Services are required for the Council to deliver its construction capital investment programme and will support the Community Strategy in the following areas :
  - (i) Improve health and well being by providing and maintaining schools, homes and other community assets
  - (ii) Create thriving communities by maintaining and investing in new and high quality homes.

## **1. Introduction and Background**

- 1.1 The Council let a Construction Related Professional Services Framework in March 2011. This established fourteen separate lots covering a range of construction related disciplines. These were identified after consultation with Officers across a number of sections and covered those professions where either the Council has to supplement the limited in-house resources (such as Project Management and Design) or where there is no in-house resource (such as Cost Consultancy, Mechanical and Electrical Engineering, Structural Engineering and Construction Health and Safety specialists). It also included some specialisms such as Urban Planning and Landscape Architecture. This Framework ends in March 2015.
- 1.2 The Framework focused on individual disciplines rather than multi-disciplinary lots for a number of reasons. Partially to attract smaller specialist firms for whom the Council is a more important client than the large multi-disciplinary organisations and also because for many smaller projects only specific support by one or two disciplines is required to supplement internal resources.
- 1.3 Framework arrangements are governed by the Public Procurement Regulations and contractors can either be selected via call off or mini-competition. The former can only be used where all of the terms of the contract are settled (e.g. volume of work, prices etc.) and where this is uncertain or where flexibility is required then individual contracts are let through the mini competition bidding process. The current Construction Related Professional Services Framework utilises both call off and mini-competition. Where activities are defined and pre-priced (particularly in project management services) call off is used; where arrangements bespoke to a particular project are required then mini-competitions are employed.
- 1.4 The use of a Framework means that the Council can meet its obligations under the Public Procurement Regulations; these govern the procedures for letting services contracts over the EU thresholds (currently £172,514). The rules also apply to individual contracts that are below the threshold. Even where the requirement is below the threshold, it has been established through case law that the obligation for public authorities to be fair and transparent obliges the majority of contracts to be advertised. This effectively means that many professional services commissions for capital projects have to go through an advertisement, pre-qualification and tender process, which is time consuming and expensive if applied to each and every project. The use of a Framework avoids this repetition since the process of advertisement and pre qualification only occurs when the Framework is let and the

contracts let within the Framework can be let quickly; usually with a one to four week tender period depending upon the size of the contract.

- 1.5 In addition to the procurement time savings, the Frameworks have offered benefits from working with a small group of consultants over a period of time. They become familiar with the type of work required, the Council's standards, and contract and procurement strategies. Also as the consultants were sure of a reasonable stream of projects, the tendered rates were highly competitive when compared with similar firms on some larger regional arrangements where the number of commissions was less certain.

## **2. Proposed Arrangements**

- 2.1 The general approach for the replacement Framework will mirror that of the current arrangement. Generally, it was successful in attracting smaller regional firms that have been receptive to the Council's requirements and easier to engage with than some of the larger national and international companies. Unlike the latter, Partners and Directors of the firms have been directly involved in projects and have offered a high level of expertise. As a consequence, the Framework will focus on individual disciplines with the aim of attracting small and medium sized practices to tender.
- 2.2 Nonetheless, with the experience of operating these arrangements for over three years it is apparent that some of the disciplines are not commissioned as regularly as others. Some are of such a specialist nature that it would be more appropriate to tender and engage such services on the basis of each individual project rather than through the Framework. As a consequence, on this basis it is recommended that the lots for Urban Design, Landscape Architecture and Planning Consultant on the current Framework are not re-procured. Similarly, sustainability issues are now key elements of architectural and, mechanical and electrical design so it is recommended that the separate lot for Building Sustainability and Advice is not to be re-procured.
- 2.3 It has also been found that some Lots could be combined without detriment to the Framework's overall aims. It is proposed that the separate Lots for General Architectural Services(General) and Education Architectural Services be combined; the firms providing schools design usually provide design services for other corporate buildings, leisure etc. The duties of Employer's Agent are synonymous with those of the Project Manager albeit under a different form of contract and can be combined.
- 2.4 As a consequence, it is proposed that proposed Framework will consist of a number of separate lots which are set out below.

Architectural Services (Education and Other)
Architectural Services (Housing)
Building Services Engineers
CDM Coordinator
Cost Consultant
Project Manager
Structural Engineer
Civil Engineer
Surveying Services
Multi Disciplinary

2.5 The current Framework was procured for the use of this Council although the OJEU advert did allow its use by other adjacent Councils. The Council's Construction Frameworks were procured for the express use of the ELS councils and charge a commission for their use in order to support the cost of management. It is suggested that this Framework utilise a similar mechanism and that an appropriate Management Charge be attached to the use of the Framework by organisations other than this Council. There has been an interest in the use of the Council's Frameworks from organisations in Essex and other adjacent areas, and it is proposed that this potential will be explored prior to the placement of the OJEU advertisement.

### 3. Draft Implementation Programme

3.1 A draft programme setting out a proposed procurement timetable is as set out below:

Task	Date
Report to Cabinet	4 August 2014
OJEU advert placed	22 August 2014
Expressions of Interest to be received	3 October 2015
PQQ's Returned	10 October 2014
Evaluate PQQ's	7 November 2014
Agree Tender Lists and issue debriefs	5 December 2014
Issue Tenders	9 January 2015
Tender Return	20 February 2015
Tender Evaluation	3 April 2015
Moderation and tender finalisation	10 April 2015
Preparation of Debriefs and Contract Decision Notices	30 April 2015
Standstill Period	11 May 2015
Approvals	29 May 2015
Contract award and mobilisation	5 June 2015

This programme has been designed to take account of the procurement of new housing frameworks, which is planned to take place in parallel.

### 4 Risk and Risk Management

4.1 The main risks are those linked to this proposal are as set out in the table below:

Challenges and Risks	Opportunities and Mitigating Factors
Unsustainable bids by large suppliers	The tender evaluation process will be designed to emphasise the quality of staff being offered rather than rewarding less experienced personnel attracting lower fees
Lots uncompetitive and exclude suitable suppliers	The lots will be designed to encourage small and medium firms to apply rather than large multi-disciplinary organisations.
Over-reliance upon suppliers	Lots will be designed to attract competition but not be overly large to discourage tendering. Procurement and performance will be monitored by Corporate Commissioning and Delivery
Challenge from Unsuccessful Supplier	Procurement will follow well established and compliant Framework tendering procedures to mitigate risk

## **5. Consultation**

- 5.1 Consultation with key internal clients and relevant Cabinet Members has taken place as part of the preparations for this procurement.

## **6. Financial Implications**

Implications completed by: Carl Tomlinson, Group Manager H&E/CEX Finance

- 6.1 The Frameworks themselves do not commit the Council to any contractual obligation to purchase or deliver construction related professional services. They are a mechanism by which specific contracts can be let to a selected group of consultants at the Council's discretion.
- 6.2 The cost of procuring services under this framework will be met through either capital budgets or operational revenue budgets of user areas in accordance with their own budgetary controls
- 6.3 The time table set out in paragraph 3.1 indicates that the new framework contracts will not be in place until the early part of the 2015/16 financial year. The likely spend on these contracts will be dictated by the size of the capital programme going forward and, where possible, these services will be provided by in-house resources.
- 6.4 As an indication, however, the amount of expenditure incurred with the Professional Services Framework Consultants in 2013/14 was in the region of £2.5m all of which was funded from the Authority's capital programme.

## **7. Legal Implications**

Implications completed by: Daniel Toohey, Principal Corporate Solicitor

- 7.1 The Council has power to enter into contracts for professional construction services under section 1 of the Local Government (Contracts) Act 1997 on the basis that such services are properly required for the discharge of the Council's duties. In addition, section 1 (1) of the Localism Act 2011, grants Local Authorities with a general power of competence and whilst subject to certain limitations, permits the Council to enter into arrangements anticipated by this report".
- 7.2 It is anticipated that the estimated value of the Contract will be in excess of the threshold for application of the Public Contracts Regulations 2006 (the Regulations) for services contracts of £172,514 and therefore subject to the full application of the Regulations.
- 7.3 The conditions of contract to be entered into between the Council and the successful tenderer(s) are yet to be agreed and Legal Services shall advise on the implications thereof upon receipt of instructions.
- 7.4 In deciding whether to award a contract, the Council must comply with the principles of administrative law including taking into account all relevant considerations, the outcome of the valuation of each of the tenders and their financial implications. In particular in order to comply with the Council's fiduciary duty and duty to ensure

Best Value, the Council must be satisfied that the tenders represent value for money for the Council.

7.5 Additionally, prior to the commencement of any procurement The Public Services (Social Values) Act 2012 requires the Council to consider:

- (a) How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
- (b) How, in conducting the process of procurement, it might act with a view to securing that improvement.

7.6 When undertaking construction related projects the Council has legal obligations that must be met such as the appointment of CDM Coordination services for reporting notifiable projects to the Health and Safety Executive (HSE).

7.7 The procurement procedure anticipated by this report would appear to be following a compliant tender exercise and LBB legal will be available to assist and advise upon further instruction.

## 8. Other Implications

8.1 **Contractual Issues** - The Frameworks themselves do not commit the Council to any contractual obligation to purchase or deliver construction related professional services. They are a mechanism by which specific contracts can be let to a selected group of consultants at the Council's discretion. They will be procured through a process that complies with the Public Contracts Regulations by the Corporate Commissioning and Delivery section that has considerable experience in procuring similar framework arrangements.

8.2 **Staffing Issues** - There are no specific staffing issues. The Frameworks themselves can be managed within the Corporate Client and Delivery Unit establishment.

8.3 **Corporate Policy and Customer Impact** - This proposal will support the Community Strategy by maximising post-16 training through apprenticeships and other initiatives; improve health and well-being by ensuring that homes provide healthy environments for living; contribute to the creation of thriving communities by maintaining and investing in existing homes and providing new high quality homes; maximise growth opportunities and increase the household income of the Borough residents through initiatives to engage local suppliers.

8.4 **Safeguarding Children** - This proposal will indirectly safeguard children through minimising the risks consequent with living in unsuitable or low standard properties and the surrounding communal areas.

8.5 **Health Issues** - This proposal may have a positive impact upon health issues ; for example, in bringing existing properties up to the Decent Homes Standard, risks of asbestos and / or other detrimental health issues such as damp and condensation will be reduced.

- 8.6 **Crime and Disorder Issues** - This proposal will reduce the risks of crime and disorder by renewing or refurbishing run down or unsuitable properties, thus improving the overall environmental standards of the surrounding area.
- 8.7 **Property / Asset Issues** - The proposal will have a positive impact upon the property or assets, raising the standard and value of the properties, reducing the need for incrementally expensive remedial work at a later date, and making sale and letting of the properties in future more attractive. The Council assets will be protected from dilapidation and degradation and all brought to the Decent Homes standard, protecting the property assets functionality and value.

**Public Background Papers Used in the Preparation of the Report:** None

**List of Appendices:** None