

## CABINET

15 September 2015

<b>Title:</b> Re-Procurement of the Education and Built Environment Framework Agreement	
<b>Report of the Cabinet Member for Finance and Central Services</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> None	<b>Key Decision:</b> Yes
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<b>Accountable Divisional Director:</b> Jeremy Grint, Divisional Director, Regeneration	
<b>Accountable Director:</b> Chris Naylor, Chief Executive	
<b>Summary:</b>  This report seeks approval to proceed with the re-procurement of a Framework Agreement for the delivery of the Council's capital construction works projects valued over £500,000.  The focus of the Framework Agreement will be for the delivery of education and built environment construction projects and will be made available for use by other councils within the East London Solutions network and other local public sector bodies.	
<b>Recommendation(s)</b>  The Cabinet is recommended to:  (i) Agree that the Council proceeds with the procurement of a Framework Agreement for the delivery of construction works in accordance with the strategy set out in the report;  (ii) Indicate whether Cabinet wishes to be further informed or consulted on the progress of the procurement and /or the award of the contract; and  (iii) Delegate authority to the Divisional Director of Regeneration to award the Framework Agreement to the successful bidder(s) once a compliant procurement tender exercise has been conducted, in accordance with the strategy set out in the report	
<b>Reason(s)</b>  Approval of this proposal will enable the Council to appoint contractors for construction contracts with a value in excess of £500,000 more easily and obtain additional benefits from contracts awarded under the Education and Built Environment Framework Agreement.	

The Education and Built Environment Framework Agreement will ensure that the Council more easily meets its wider requirements and statutory obligations such as the delivery of school places and supports the Council's priorities of 'Encouraging Civic Pride', 'Enabling Social Responsibility' and 'Growing the Borough'.

## **1. Introduction and Background**

- 1.1 The Capital Commissioning and Delivery section has used framework agreements for the delivery of the Council's construction projects, for example the refurbishment of and new build schools through the Education and Other Services Framework and general building works through the General Construction (Lower value) Framework, since 2007.
- 1.2 The current Education and Other Services Framework and General Construction (Lower value) Framework are due to expire in April 2016.
- 1.3 The Education and Other Services Framework was set up for the delivery of projects in excess of £1.5million and the General Construction (Lower value) Framework for projects between £50,000 and £1.5 million. Both frameworks have an overlap so that contractors on the General Construction (Lower value) Framework could bid for projects up to £2 million and contractors on the Education and Other Services Framework can bid for projects with a value over £1.5 million.
- 1.4 The Construction Framework Agreements were introduced with the principle aim to reduce the time and cost associated with construction procurement, especially procurements over EU Procurement Directive thresholds. The Frameworks also allow for a collaborative approach to contracting that enables the Council to look at costs and efficiencies in greater detail. Additionally the Framework Agreements encourage contractors to invest in greater employment and training opportunities for residents of the borough.
- 1.5 The Frameworks have also produced efficiencies through project partnering and innovative methods of construction, resulting in reduced construction costs and the ability to ensure projects are delivered to time and budget, which will become more critical in the current political climate or client departments being put under considerable pressure to spend grant funding in short timescales. This would not be achievable if projects had to be procured through more traditional tendering processes.
- 1.6 The success of the Frameworks has also led to other East London (ELS) local authorities to use the frameworks, subsequently increasing the scope and value of the frameworks. Consequently this has resulted in the frameworks realising increased income generating opportunities through levies charged through the Frameworks.
- 1.7 Due to a huge increase in construction activity within London and the South East since mid 2013 contractors have become more selective on the size of project that they are willing to bid for. Only smaller contractors are now interested in projects below £500,000 and to address this the Capital Commissioning and Delivery

section is currently preparing a tender for a Low Value Works Framework for works between £50,000 and £500,000. But this selectivity has continued across the range of project values with some main contractors indicating that they are now no longer interested in bidding for projects below a value of £10 million and even medium sized firms declining to bid for projects valued at under £5million.

- 1.8 This in part is due to the fact that during the recession contractors downsized and trades people left the industry. The increase in the volume of available work, a shortage of materials and the restricted availability of trades has led contractors being more selective in projects that they bid for and has also led to an increase in construction costs for both materials and labour. Research and surveys undertaken by construction cost consultants EC Harris identified that brick costs had risen by 16% in the twelve months to October 2014; day rates for bricklayers and carpenters had increased annually by 6.2% and 3.8% respectively with bricklayer day rates circa £180. A survey conducted by the Royal Institute of Chartered Surveyors (RICS) stated that the number of firms reporting a shortage of bricklayers increased from 59% to 71% from Q2 to Q3 in 2014. In spite of these and other shortages the construction sector continues to grow, buoyed by the increase in the housing sector. A report published by the London Chamber of Commerce and CITB has indicated that 19% of construction workers aged 55+ are set to retire over the next 5-10 years, this amounts to circa 400,000 people in addition to those workers who have left the industry, also estimated at 400,000 people.
- 1.9 In light of these changes in the construction sector the Capital Commissioning and Delivery section proposes to amend the value bands, increase the number of contractors appointed to the Framework and expand the number of lots.

## **2. Proposed Procurement Strategy**

### **2.1 Outline specification of the works, goods or services being procured.**

- 2.1.1 The Education and Built Environment Framework Agreement will be used for the procurement of construction contracts valued from £500,000 upwards, potentially split between three lots each covering a specific contract value band. The contracts will include works to Educational premises both new build and refurbishment; general building works to Council corporate property; works in the built environment and other ad-hoc works to Council assets as required under the scope of the Framework Agreement.
- 2.1.2 The Framework will be a replacement for the current Education and Other Services Framework and the General Construction (Lower value) Frameworks both of which expire 22 April 2016.
- 2.1.3 The Framework will also be made available for use by other East London Solutions contracting authorities; L B Greenwich and L B Bexley have also expressed an interest in the Framework; local authorities in Essex could potentially be included as Essex County has no current similar arrangement; academies and free schools or similar within the identified areas and other public sector organisations would also be mentioned in the contract advertisement.

## **2.2 Estimated Contract Value, including the value of any uplift or extension period.**

2.2.1 The Framework Agreement commits the Council to no expenditure in itself.

2.2.2 Construction contracts let under the Framework will vary in value from a minimum value of £500,000 through to no upper threshold ceiling. Based on the Council's expenditure through the current Framework Agreement and use by other ELS authorities the current frameworks have to date delivered circa £200 million of construction projects. This figure does not include potential projects for the coming year.

2.2.3 In addition to Barking and Dagenham and the other ELS boroughs, both L B Greenwich and L B Bexley have expressed an interest in the Framework; local authorities in Essex could potentially be included as Essex County has no current similar arrangement; academies and free schools or similar within the identified areas and other public sector organisations would also be mentioned.

2.2.4 Based on current and projected use by the Council and ELS and the potential use by other local authorities the Framework could potentially realise an expenditure of over £100 million per annum equating to over £400 million over the life of the Framework. But it should be noted that it is notoriously difficult to estimate exact future figures over the duration of a framework.

## **2.3 Duration of the contract, including any options for extension.**

2.3.1 In accordance with the provisions of the Regulations, the Framework will be for a maximum period of four years with no option to extend.

## **2.4 Recommended procurement procedure and reasons for the recommendation.**

2.4.1 The Framework will be subject to the provisions of the Public Contracts Regulations 2015. The Framework will be for Works and subject to Part A of the Regulations.

2.4.2 The Framework will be procured using the two stage Restricted Procedure, advertised in the Official Journal of the European Union (OJEU) in accordance with the Regulations.

2.4.3 From previous experience it is anticipated that the Framework will generate a very high level of commercial interest and subsequently receive a large number of expressions of interest. It is therefore in the Council's interests to reduce the number of expressions to a suitable, manageable level to be invited to tender.

## **2.5 The contract delivery methodology and documentation to be adopted.**

2.5.1 The Framework Agreement will be for the delivery of a significant number of contracts, which could range in value from £500,000 to over £10 million with no upper limit, each of which will require a specific form of contract and will be individually specified. The Framework will therefore operate on the basis of

mini-competition through a qualitative / commercial evaluation appropriate to each project.

- 2.5.2 The current Frameworks have evolved over a number of years and are based on the principle of being easy to use and understood by procuring Officers both within the Council and other ELS authorities. Therefore it is proposed that the current principles and processes employed in the current Framework Agreements are re-employed on the proposed Framework Agreement if somewhat modified where necessary to take into account changes in legislation or the construction sector.

## **2.6 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract.**

- 2.6.1 A reduction in procurement time and costs for contracts let under the framework

The most obvious benefit of utilising framework agreements is the reduction in time taken to procure construction contracts for both sub-threshold and above threshold procurement exercises. An OJEU compliant tender exercise will generally take in the region of six to nine months to procure, involve a large number of stakeholders at a high cost and resources. Eleven OJEU compliant contracts have so far been delivered under the current Framework Agreements.

Additionally, the Frameworks have enabled the Council to deliver urgent works to schools where time is of the essence to ensure that works are completed in short timeframes, such as school holiday periods, with little notice. Under a more traditional procurement route, this may not have been achievable.

The Frameworks have also allowed the Council to appoint contractors at relatively short notice where grant funding deadlines have been imposed that may not be achievable through more traditional procurement routes.

- 2.6.2 Contractual Disputes and Differences

There have been no contractual disputes on any of the projects let through the current construction Frameworks. This is in no small part due to the Council and contractors working collaboratively and the relationships developed between Capital Commissioning and Delivery and appointed contractors. It is intended that this practice will continue through the next generation Framework.

The Capital Commissioning and Delivery section has been administering construction framework agreements since 2008 and there has not been a single dispute under these; however, previous to the first iteration of the frameworks it was not uncommon for contractual disputes and issues to occur.

Consequently this means that the time, costs and resource of both Capital Commissioning and Delivery Officers and other departments such as the client or Legal can be better employed on other matters instead of acting on matters of contractual dispute.

### 2.6.3 Employment and Skills

The Council sets employment and skills targets in line with the National Skills Academy for Construction guidance issued by ConstructionSkills. Through the current Framework Agreements contractors have actively supported the Council's aspirations to support local supply chains, support apprentices and apprenticeships, and by advertising job opportunities for construction trades through the Council's Job Shop.

Employment and Skills plans are a contractual obligation on each project let through the current Frameworks and this will continue in the proposed Framework Agreement. The actual numeric targets are set in relation to the size of the project and will be set out on a contract by contract basis.

### 2.6.4 Revenues and Opportunities

The current Framework Agreements generate income from levies charged to contractors through contracts awarded to contractors by both the Council and other ELS boroughs. It is intended that the proposed Framework Agreement will be expanded to include other London boroughs that have expressed an interest in using the Framework and also councils in the county of Essex. The Framework will also include scope for academies and free schools within the named areas to use the Framework as these educational establishments often do not have the experience to procure and deliver large construction projects.

Expansion of the Framework will, if utilised, generate further levels of income which is used in part to support the management and delivery of the Council's Framework Agreements. It is estimated that levies raised from the current framework arrangements could be in the region of £200,000 by the conclusion of the frameworks.

### 2.6.5 Framework Structure

From recent conversations with the Council's Framework contractors, it has become clear that many have become disillusioned with other framework agreements that they are appointed to. Some are too rigid in their structure or too narrow in scope and are no longer an attractive option. This includes major national frameworks and is leading to contractors not submitting tenders under mini-competition or responding to requests for quotes on alternative frameworks.

It is also the case that contracting authorities are now less inclined to use large national frameworks as little consideration has been given to localism issues within their scope.

The Council's construction framework agreements have, however, always been set up to be as flexible as possible without restriction on forms of contract, procurement route or scope. One large national main contractor stated that they are promoting the way our frameworks are structured as they are flexible and allow construction projects to be procured in the most appropriate manner, which in the current climate is two-stage Design and Build for large construction projects and traditional fully designed for lower value projects.

## 2.6.6 Efficiency Savings

Nationally, £300m efficiency savings have been achieved through the use of framework agreements, or 4.1% average efficiency savings per project (source: NIEP for the Built Environment).

Pre-tendered framework agreements free-up a procurement/project team from managing the time-consuming OJEU process for construction by utilising mini-competition; are easy to implement and are understood by users and also support construction project KPIs.

## 2.6.7 Local Contractors and SMEs

One of the most important things that councils can do to improve local life is to support the local economy. However with the introduction of the new Public Contracts Regulations 2015, central government has determined that any procurement exercise that is over £25,000 and below EU thresholds must, if advertised at all, be advertised, nationally, on Contracts Finder. Effectively under the Council's Contracts Procedures Rules this means that contracts over a value of £50,000 must be advertised on Contracts Finder. It is difficult to determine how this will enable local businesses when they will be required to bid against any number of contractors.

As previously mentioned, the Regulations only state that below threshold procurements need be advertised, if they are advertised at all. Therefore call-offs from a framework agreement do not need to be advertised. By working with contractors appointed to the framework, there is greater scope for enabling local supply chains than through an open tender exercise where bidding contractors will generally price their tender submission based on utilising pre-determined contractual arrangements.

By splitting into three value bands the structure of the new Framework will also ensure that the right size firm will tender for the lot most attractive to their size and capacity. Additionally the new Regulations also allow for contracting authorities to limit the number of lots a firm can win. Therefore firms will need to make a choice about which band / lot is most appropriate to their size and capacity.

## **2.7 Criteria against which the tenderers are to be selected and contract is to be awarded**

2.7.1 The Framework Agreement itself will be evaluated on a qualitative / cost basis and awarded on the basis of Most Economically Advantageous Tender (MEAT).

2.7.2 As there are no real cost commitments attached to the Framework itself, the emphasis will be placed on the qualitative element of tenderers submissions through evaluation of submitted method statements. However case law has determined that all publicly tendered contracts must have a priced element which, in terms of the framework, will be measured through contractors proposed overheads and profit rates which will be applied to all projects let through the Framework. It is therefore proposed that the Framework Agreement will be evaluated on a qualitative / cost ratio of 70% / 30%.

- 2.7.3 Contracts let through the Framework will be evaluated on the basis of MEAT with cost / quality ratios applicable to each project. This will be intrinsically linked to the value, scope, risk and procurement route of each project. Low value, low risk projects may be suitable for traditional, single stage, lump sum tendering; however in the current market contractors are looking to minimize exposure to riskier, more complex or high value projects and have made it clear that they will only be prepared to tender under two stage design and build or partnering type contracts.
- 2.7.4 These are models that the Council has used for some time and allows appointed cost consultants to work with contractors on an open book basis. This route also means that much of the risk is placed onto contractors. Contractors have also intimated that they are unwilling to consider single stage design and build or other complex tendering processes, which can be demonstrated through their responses to mini-competitions undertaken by other authorities.

## **2.8 How the procurement will address and implement the Council's Social Value policies.**

- 2.8.1 The Framework Agreement will incorporate a requirement for all appointed contractors to meet specific training and skills proposals in all contracts that they bid for. Tenderers proposals will become contractual requirements. The contractors on the current arrangement had an agreement with Barking College to support skills training and it is envisaged that a similar arrangement will be able to be incorporated into the new Framework Agreement.
- 2.8.2 Contractors will be expected to work with the Council's Employment and Skills section in order to meet their training commitments, for example apprentices, work placements and support through schools.
- 2.8.3 Contractors will also be obligated to advertise all employment vacancies for projects undertaken in the borough through the Council's job shop or other preferred employment portal.
- 2.8.4 The Council will also look to contractors to develop local supply chains and promote opportunities for local business to sub-contract on projects.

## **3. Options Appraisal**

### **3.1 Do nothing.**

This option was rejected because as previously set out in this report, construction contracts would have to be procured under the application of the Public Contracts Regulations 2015 and both sub-threshold and above threshold contracts would require a full tender process that often would not meet the necessary timeframes to conclude the projects. This is especially important with regard to works in schools and the Council's obligations for providing school places. Notwithstanding that any efficiency savings in terms of both cost and time procuring through mini-competition under a framework agreement will no longer be realised.

### **3.2 Use other framework agreements.**

This option was considered and disregarded as there are few frameworks that meet the aspirations and requirements of the Council. For instance the Education Funding Agency (EFA) framework was procured by the Department for Education but has substantially failed to deliver and there have been calls for it to be scrapped by Government Minister Francis Maude, notwithstanding the Cabinet Office has declared it non-compliant. There is also the LCP Framework, which was procured at a pan-London level, but this is populated with main national contractors that give little consideration to how the Social Value Act can be considered at a local level and in the current climate appears to have the wrong size firms appointed to value bands, meaning firms will be unlikely to bid for work. These frameworks also do not allow for direct management of the arrangements. In addition alternative framework arrangements generally incur a relatively high joining fee and the Council would no longer enjoy the levies raised through the Council's own Frameworks.

### **3.3 A long term single supplier contract.**

This option was not considered as in the current climate it cannot be demonstrated that a single supplier can provide value for money for the range and scope of construction projects undertaken by the Council and it is unlikely that prices tendered at the present time would be sustainable through the life of a long term arrangement, such is the uncertainty and higher costs associated with appointing sub-contractors and trades, plus the rising prices of construction materials. This option would also mean putting all the Council's eggs in one basket with the potential risk that if the contractor ceases to exist or the arrangement is no longer appealing to the contractor the contract could become a white elephant. This option would also mean the Council making up front commitments in terms of works in order for this to be a contractual arrangement, which the Contractor may not be able to deliver down the line for cost reasons explained earlier. It should also be considered that if the construction market changed considerably, there would be no demonstration that future projects represented value for money, especially if there were to be a fall in the market sector costs.

## **4. Equalities and other Customer Impact**

- 4.1 Tenderers will have their Equalities and Diversity processes and procedures examined as part of the tender process and will be expected to comply with all legislative and statutory requirements. Tenderers shall be obliged to comply with the Council's policies in relation to these matters.

## **5. Other Considerations and Implications**

### **5.1 Risk and Risk Management**

#### **5.1.1 The application of the Public Contracts Regulations 2015**

The Public Contracts Regulations 2015 were transposed into UK Law in February 2015. These Regulations introduced new requirements over the old 2006 Regulations, it is therefore essential that the tender process is carried out in accordance with the obligations of the 2015 Regulations. The Capital Commissioning and Delivery section employs professional Officers fully conversant with the new Regulations and will be responsible for overseeing the procurement process. Any issues arising from the new Regulations will be referred to the senior Legal Officer or Head of Procurement for advice.

### 5.1.2 **Challenge from an unsuccessful applicant**

The Capital Commissioning and Delivery section has successfully carried out a number of large procurement exercises both for framework agreements and other contracts that are subject to the full application of the Public Contracts Regulations. The section will ensure that a compliant tender process is put in place to mitigate against this risk.

### 5.1.3 **Unsustainable Bids**

It is important that tendering contractors submit sustainable bids that ensure that contractors return a profit through contracts let through the Framework but also provides value for money for the Council. The Capital Commissioning and Delivery section has previous experience of utilising specialised price evaluation models to ensure that cost submissions are sustainable and viable.

### 5.1.4 **Framework Management**

Capital Commissioning and Delivery manage and procure a number of Framework Agreements including the Education and Other Services Framework and General Construction (Lower Value), for which this Framework Agreement will be a replacement of; Housing New Build; Housing Refurbishment; Construction Related Professional Services and the proposed Low Value Works Framework. In order to manage these frameworks; collaborate with other ELS boroughs and potentially widen their usage; support Project Managers to tender projects under the Frameworks and recoup levies from contractors the Capital Commissioning and Delivery section employs a Framework and Contracts Manager supported by interim appointments. The cost for these is met through levies raised and is therefore self financing. In order to fully explore greater opportunities it may be prudent to employ additional resource in the future.

## 5.2 **TUPE, other staffing and trade union implications.**

5.2.1 Not applicable

## 5.3 **Property / Asset Issues**

5.3.1 The Framework Agreement will provide an efficient vehicle for the delivery of works to improve the Council's property assets including schools and public buildings.

## 6. **Consultation**

6.1 The proposals in this report were endorsed by the Procurement Board on 24 July 2015 and all relevant consultation with Portfolio Holders and officers has taken place.

## 7. **Corporate Procurement**

Implications completed by: Francis Parker – Procurement Manager

7.1 A framework is likely to be the most efficient route to market in this instance, the method has been well tested for procurements of this type and allow for a variety of different projects to be procured over the life of the framework.

- 7.2 The restricted procedure is the more suitable choice as there is likely to be a lot of interest in this contract. Including a pre qualification stage will enable the number of tenderers to be reduced to only the most suitable, and this will help reduce the time and resource needed to manage this procurement.
- 7.3 The price/quality split is sensible. It will not necessarily be the most suitable for all projects that are competed under this framework, but it is likely to be the most suitable mix across all the services competed under the framework.

## **8. Financial Implications**

Implications completed by: Carl Tomlinson, Finance Group Manager.

- 8.1 The Frameworks themselves do not commit the Council to any contractual obligation to purchase or deliver construction works. They are a mechanism by which specific contracts can be let to a selected group of contractors at the Council's discretion.
- 8.2 The cost of creating and formalizing the framework contracts will be met from existing Capital Commissioning and Delivery budgets. The cost of services procured through these frameworks will be met from capital budgets in accordance with the Council's budgetary controls and financial regulations.
- 8.3 The likely spend over the proposed four year contract period has been estimated at £400m. It is, however, difficult to accurately estimate the actual value as this will obviously depend on the size and scope of the Authority's capital programme over forthcoming financial years and the potential use by other local authorities of the framework contracts. Due to the high value nature of these framework contracts this expenditure is likely to be charged to the Authority's capital programme, and particularly to school projects, but it is highly likely that Leisure and Adult Services areas will also benefit.
- 8.4 It is proposed that the Framework will be made available for use by the Councils that are part of the East London Solutions group and a levy will be charged for the use of this Framework in line with present arrangements for the use of the council's other construction frameworks. This arrangement currently generates income for the Authority based on a percentage of the value of each contract let. However, without knowing the likely uptake of this new framework by these neighbouring Councils it is not possible to estimate exactly how much income this arrangement is likely to generate. Notwithstanding this point, the Capital Commissioning and Delivery Group have an annual revenue budget of £75,000 for this income which is on target to be achieved in the current financial year.

## **9. Legal Implications**

Implications completed by: Bimpe Onafuwa, Contracts and Procurement Solicitor

- 9.1 The Public Contracts Regulations 2015 allows local authorities set up Frameworks from which appointed providers can be selected to provide goods, works or services.

- 9.2 The estimated value of the Contract is in excess of the works threshold for application of the Public Contracts Regulations 2015 (the Regulations) of £4,322,012 and therefore subject to the full effect of the Regulations. Accordingly, there is a requirement for the contract to be tendered in the EU, and that the process be transparent, non-discriminatory and ensure the equal treatment of bidders submitting tenders to join the framework.
- 9.3 In compliance with the procurement principles, this report states in paragraph 2.7 that the award will be made to the most economically advantageous tender, while the evaluation criteria will be a 70:30 quality: cost ratio. Paragraph 2 provides the timetable within which this procurement exercise will be undertaken, following advertisement in the Official Journal of the EU (OJEU).
- 9.4 In considering whether or not to approve the recommendations of this report, Cabinet should consider if the procurement will achieve best value for the Council.

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

**List of appendices: None**