

CABINET

18 October 2016

Title: Procurement of a Modular Building Systems Framework Agreement	
Report of the Cabinet Member for Finance, Growth and Investment	
Open Report	For Decision
Wards Affected: None	Key Decision: Yes
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Accountable Strategic Director: John East, Strategic Director, Growth and Homes	
Summary: This report seeks approval to proceed with the procurement of Framework Agreements for the supply and installation of Modular Building Systems and will be made available for use by other public sector bodies.	
Recommendation(s) The Cabinet is recommended to: (i) Agree to proceed with the procurement of Framework Agreements for the supply and installation of modular building systems in accordance with the strategy set out in this report. (ii) Delegate authority to the Strategic Director, Growth and Homes, in consultation with the Cabinet Member for Finance, Growth and Investment, the Strategic Director Finance and Investment and the Director of Law and Governance, to award the Framework Agreements to the successful tenderer(s) once a compliant procurement tender exercise has been conducted, in accordance with the strategy set out in the report.	
Reason(s) The Modular Building Systems Framework Agreements will ensure that the Council more efficiently meets its wider requirements and statutory obligations such as the delivery of school places. This proposal will also create a possible income generating opportunity for the Borough. The Modular Building Systems Framework Agreements will support the Council to deliver three priorities set out in the Corporate Delivery Plan: Encouraging Civic Pride, Enabling Social Responsibility, Growing the Borough.	

1. Introduction and Background

1. Background

- 1.1 The Council has used framework agreements for the procurement and delivery of the Council's construction projects since 2007, which have enabled us to procure construction projects more efficiently and achieve additional benefits through a more collaborative arrangement with appointed contractors.
- 1.2 Children's Services and in particular the Schools Estates section has historically had a requirement to procure modular buildings, often at short notice, to enable schools to meet their requirements to provide school places. The borough also has one of the fastest growing requirements for school places in London and this framework will allow flexibility to accommodate this need.
- 1.3 The Council previously procured Modular Buildings generally through the Crown Commercial Service (CCS) Modular Building Systems Framework Agreement either through direct call-off for a standard specification or via mini-competition for a bespoke specification.
- 1.4 In September 2015, the CCS Modular Building Systems Framework expired as it had reached the end of its maximum allowed term of four years as set out in the Public Contracts Regulations.
- 1.5 Following conversations with the CCS, the CCS could not confirm at that time that they will be renewing the framework agreement. At the time of writing this report there still appears to be no appetite or notification given by the CCS that the framework agreement will actually be renewed: <http://ccs-agreements.cabinetoffice.gov.uk/procurement-pipeline>
- 1.6 The Southern Modular Building Framework (Hampshire County Council) has been recently launched. It covers similar buildings intended for school, community use etc. as the CCS framework, and is available for use in Southern England and London. It does not however cover those areas to the North or East of London where LBBB partnering authorities are based i.e. Essex. The LHC also currently operates a framework agreement for modular housing only, although this can be somewhat limited in its scope.
- 1.7 It was proposed and accepted at Procurement Board that the Capital Commissioning and Delivery Group investigate the possibility of setting up a framework for the procurement of modular buildings.
- 1.8 The Council has a number of existing construction framework agreements which were introduced with the principal aim of reducing the time and cost associated with construction procurement, for both low value and high value projects.
- 1.9 The Frameworks have also produced efficiencies through collaborative 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 economic and political climate. Client departments are also 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.

- 1.10 The success of the construction frameworks has also led to other East London Solutions (ELS) local authorities using 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.
- 1.11 It is therefore proposed that the Modular Building Systems Framework Agreements should be expanded to allow use by a number of other local authorities, including partner organisations and free schools and academies within the identified geographical areas. In particular those areas not covered by the Southern Modular Building Framework e.g. Essex which do not have access to a modular framework agreement.
- 1.12 The expansion of a framework agreement would potentially allow the Council to take advantage of greater additional revenue in terms of levies raised through the framework agreement. Although the framework agreement itself will be free at the point of use for other Council's and public sector bodies, it is proposed that the successful contractors will be charged a framework levy fee percentage for each of the projects that they win through the framework thus returning income to the Council.

2. Proposed Procurement Strategy

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

- 2.1.1 The Modular Building Systems Framework Agreements will be procured using the two stage Restricted procedure in accordance with the Public Contracts Regulations 2015 (the Regulations).
- 2.1.2 It is proposed that the Modular Building Systems Framework Agreements will be used for the procurement of a range of standard modular buildings; bespoke modular buildings and buildings of a modular construction type both demountable and permanent.
- 2.1.3 This could include classrooms, laboratories, nursery schools, community centres, offices, studios, temporary accommodation, whole schools, catering units, community centres, medical facilities and housing.
- 2.1.4 The frameworks will be split into separate agreements. These will cover a variety of the aforementioned different building requirements and will be awarded as either a standard or bespoke specification depending on the building type. It is anticipated that a standard modular requirement could be called-off directly without mini-competition, whilst bespoke requirements would require further mini-competition. The mini competition would be awarded on a price/quality ratio of a range between 80/20 to 20/80, which mirrors the current range of construction frameworks and allows an element of flexibility dependent upon the cost and complexity of the specific contract(s).

2.1.5 The indicative timetable for the procurement of the proposed Framework is set out as follows:

Report to Procurement Board	January 2016
Report to Cabinet	October 2016
Draft Documents	On going
Advertise Opportunity & Issue documents	October 2016
Expressions of Interest / PQQ Deadline	November 2016
PQQ Evaluations	December 2016
Invitation to Tender	January 2017
ITT Evaluations	March 2017
Cabinet / Delegated Authority Award Report	April 2017
Draft & Issue Tender Award Notification Letters	April 2017
10 day mandatory Standstill	May 2017
Award Contract	May 2017

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

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

2.2.2 Contracts or call-offs let under the Framework will vary in value from a minimum value of £5,000 through to no upper threshold ceiling. It is difficult to predict the volume of work that could be procured through the framework agreements; however the CCS Modular Buildings Framework Agreement was advertised nationally at a value of £200million in 2011. It is proposed that this framework will be advertised in excess of this amount.

2.2.3 Children's Services, who would probably be the primary user in the Council, has spent approximately £500,000 on modular buildings in the previous financial year, this however does not include the new school currently being constructed at Barking Riverside which has an estimated cost of circa £40million being delivered through the LEP partnership, but does give an indication of project costs.

2.2.4 In addition to Barking and Dagenham and the other ELS boroughs, which we have worked closely with on other construction framework agreements, it is proposed that the framework agreements should be advertised nationally for use by all public sector organisations.

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 Agreements will be for Works.

- 2.4.2 The procurement route will be the two stage Restricted Procedure, advertised in the Official Journal of the European Union (OJEU) in accordance with the Regulations, ContractsFinder and the Council's website
- 2.4.3 From previous experience it is anticipated that the Framework will generate a high level of commercial interest and subsequently receive a large number of expressions of interest. It is therefore in the Council's interest to reduce the number of tenders being issued to a suitable, manageable level.

2.5 The contract delivery methodology and documentation to be adopted.

- 2.5.1 The Framework Agreements will be for the delivery of a significant number of contracts, which could range in value from £5,000 upwards. It is intended that the Framework will operate on the basis of both direct call-off for a standardised modular specification and mini-competition through a qualitative / commercial evaluation for bespoke requirements appropriate to each project.
- 2.5.2 The current construction Frameworks Agreements 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 local authorities. Therefore it is proposed that the current principles and processes employed through the current Framework Agreements are re-employed on the proposed Framework Agreements if somewhat modified where necessary to take into account changes in legislation, the construction sector and specific contract requirements.

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 modular building contracts that will be let under the framework

The most obvious benefit of utilising framework agreements is the reduction in time taken to procure 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.

Framework Agreements allow 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.

By having the option to directly call-off standardised specification modular buildings, this will allow schools to procure modular requirements where time is of the essence to ensure that classroom places are provided, meeting their statutory requirements.

2.6.2 Employment and Skills

Through the current construction Framework Agreements contractors have 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 Agreements where the proposed contract is such that Employment and Skills opportunities exist based on the size and scope of the project or call-off.

2.6.3 Revenues and Opportunities

The current construction Framework Agreements generate income for the Council from levies charged to contractors through contracts awarded to contractors by both the Council and other boroughs and public sector organisations.

It is envisaged that the proposed Framework Agreements will, if utilised by other public sector bodies, generate further levels of income which is used in part to support the management and delivery of the Council's Framework Agreements, supports the section financially and return income into the Council.

2.6.4 Framework Structure

The framework will be split into lots covering different modular building requirements and whether the requirement is a standard or bespoke specification. It is anticipated that a standard requirement would be called-off directly without mini-competition, whilst bespoke requirements would require further mini-competition.

The Council's construction framework agreements have always been set up to be as flexible as possible without restriction on forms of contract, procurement route or scope. This methodology should be adopted for this framework agreement.

2.6.5 Efficiency Savings

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

The LGA National Construction Category Strategy for Local Government report (January 2016) states that:

"Effectiveness of Frameworks" indicated that for NACF (NIEP) frameworks at the time of that report had, by using framework agreements to procure construction -

- A total £300m of savings had been achieved
- Construction costs saved 7% at contract sum compared to normal contracting
- 95% of projects were completed within 5% of the target time

The Government Construction Strategy 2016-20 sets out a coordinated approach towards collaborative procurement, including framework development, operation and best practice. The strategy sets out ambitions for smarter procurement, fairer payment, improving digital skills, reducing carbon emissions, and increasing client capability. These themes are consistent with the wider ambitions for industry in Construction 2025.

Additionally Modern Methods of Construction (MMC), of which modular building systems are one of a number of types of MMC, are considered the most efficient way of delivering efficiency savings in the construction sector.

2.6.6 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.

The modular building systems market is a somewhat specialised sector and it is unlikely that the opportunity will attract local suppliers or SMEs to express an interest, however there may be scope for appointed contractors to enable a local supply chain of installers, but the nature of modular building systems is that the systems are pre-fabricated off-site and installed on site, which means that any potential supply chain will be required to meet the main contractors' stringent selection criteria to be accepted on to their supply chain.

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

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

2.7.2 It is anticipated that Contracts let through the Framework will either be awarded by direct call-off for standardised specifications or will be evaluated on the basis of MEAT with cost / quality ratios applicable to each project for mini-competition.

2.7.3 Mini-competition 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. 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.

2.7.4 As the framework will be a mix of both direct award and mini-competition it is proposed that the Framework Agreements will be evaluated on a qualitative / cost ratio of 60% quality / 40% cost.

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

2.8.1 Contractors will be expected to work with the Council's Employment and Skills section in order to meet anticipated training commitments, for example apprentices, work placements and support through schools.

- 2.8.2 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.
- 2.8.3 The Council will also look to contractors to develop local supply chains and promote opportunities for local business to sub-contract on projects where they demonstrate meeting the main contractors' selection criteria.

3. Options Appraisal

3.1 Do nothing.

- 3.1.1 This option was rejected as the procurement of modular buildings contracts would have to be procured under the application of the Public Contracts Regulations 2015 for supply and installation and both sub-threshold (£50,000) 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 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.

- 3.2.1 As stated earlier in the report, the CCS Modular Building Systems framework agreement has expired. There is a framework agreement for modular housing solutions provided by LHC, however this framework does have limitations especially where smaller housing projects are concerned and is only for the supply of modular housing. The Southern Modular Building Framework (Hampshire County Council) has recently been tendered but does not allow for a direct call-off which is often a requirement when there is an urgent requirement for standard modular buildings, for instance a demountable classroom. It is proposed that the Council's Modular Building Systems Framework Agreements address this shortcoming to allow public bodies the opportunity to directly call-off standard requirements.

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

- 3.3.1 This option was not considered as in the current commercial climate it cannot be demonstrated that a single supplier can provide value for money for the range and scope of projects that could be required by the Council.
- 3.3.2 There is also little to suggest 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.
- 3.3.3 A single supply 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 would become a white elephant. This option would also mean the Council making up front commitments in terms of on going requirements 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 delivered from a single source represents 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, it is therefore essential that the tender process is carried out in accordance with the obligations of the 2015 Regulations (as amended). The Capital Commissioning and Delivery section employs professional Officers fully conversant with the Regulations and will be responsible for overseeing the procurement process. Any issues arising from the 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 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); Housing New Build; Housing Refurbishment; Construction Related Professional Services and the Low Value Construction Projects 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 both permanent and 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 Agreements will provide an efficient vehicle for the procurement of modular buildings to improve the Council's property assets including schools, housing and public buildings.

6. Consultation

6.1 The proposals in this report were endorsed by the Procurement Board on 19 January 2016 and all relevant consultation with Portfolio Holders and officers has taken place.

7. Corporate Procurement

Implications completed by: Euan Beales – Head of Procurement and Accounts Payable

7.1 The framework has the potential to ensure the Council achieves value for money as the most utilised open framework through Crown Commercial Services has now expired.

7.2 The Council is required to tender all spend over £50k and requires Cabinet approval on all spend over £500k as detailed in the current Contract Rules.

7.3 The framework will reduce time spent procuring each individual project and will save Officer Time in terms of evaluation, board approval etc. However I recommend that an annual benchmark in the open market and/or in the event an alternative open framework is developed this is used to baseline the Council's in terms of the VFM aspect of the standard specification.

7.4 Where possible mini competition should be used to ensure competition is achieved and direct award should only occur if only one provider can offer the specifics requirement at that time.

7.5 Having the Framework open for other LA's and Public Bodies is a good concept, but consideration will need to be made on the value stated in the OJEU notice, as this could restrict the ability to generate income, but more importantly if the value is too low and the demand is good, it may restrict the Council's ability to procure through its own framework.

7.6 As stated the Schools estate is the predominant user, and as such the target audience for re-selling should be schools as well LA's.

8. Financial Implications

Implications completed by: Carl Tomlinson, Finance Group Manager.

- 8.1 The Framework itself will not commit the Council to a contractual obligation to purchase or deliver works. It is 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 formalising the framework contract will be met from existing Capital Commissioning and Delivery budgets. The cost of services procured through these frameworks will be met in the main from capital budgets in accordance with the Council's budgetary controls and financial regulations. Much of the spend is likely to be incurred on school expansion projects although it is likely that other departments will also benefit.
- 8.3 The likely spend over the proposed four year contract period has not been estimated as it is not possible to accurately determine the actual value of activity. This will depend on the resulting need by both ourselves and potential use of the framework by other local authorities.
- 8.4 It is proposed that the Framework will be made available for use by various other Councils and where this is the case a levy will be charged. This is 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 other 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 income budget of £75,000 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 This report is seeking approval to procure a framework agreement for the provision of Modular Buildings. The procurement will be led by LB Barking & Dagenham (the Council) and it is intended that other public organisations and education bodies be able to call-off the resultant framework, via an access agreement.
- 9.2 Due to the potential value of contracts to be called off the Modular Buildings framework agreement, this procurement is subject to the Public Contracts Regulations 2015 (PCR 2015). Regulation 33 of the PCR 2015 permits the setting up of framework agreements for a period of four years, and allows the call-off of contracts from framework agreements by organisations clearly identified in the advertisement notice.
- 9.3 This procurement is also subject to the EU procurement principles and the Council's Contract Rules. There is therefore a requirement that it be tendered competitively and that the process be transparent, non-discriminatory and ensures the equal treatment of bidders. In compliance with the principles, there is also the expectation that the procurement will be advertised widely enough for interested bidders to be aware of the contract.

- 9.4 This report sets out the procurement strategy for this framework agreement in clause 2 and states that it will be advertised in both the OJEU and Contracts Finder in accordance with the PCR 2015. The report also gives details of the procurement procedure, evaluation criteria, award criteria (for both the framework and call-off contracts) and the timetable for the procurement exercise. All the above show evidence of a fair tender exercise in accordance with the PCR 2015.

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

List of appendices: None