

CABINET

21 DECEMBER 2010

REPORT OF THE CABINET MEMBER FOR FINANCE, REVENUE AND BENEFITS

Title: Renewal of Construction Related Framework Agreements	For Decision
<p>Summary:</p> <p>The Council's current Construction Related Framework agreements are due to expire in August 2011.</p> <p>The existing Frameworks have produced shorter procurement timescales, cost efficiencies when benchmarked against similar projects, and employment and training initiatives that have led to the London Borough of Barking and Dagenham (LBBB) being one of the first councils to be awarded National Skills Academy For Construction status. These achievements need to be continued and developed to meet the pressures facing both the Council's construction investment programmes and the needs of the local economy over the next few years.</p> <p>Officers have also been working alongside East London Solutions (ELS), the London Borough of Haringey and other councils across London to develop a model for collaboration in the procurement and management of these Frameworks. It is proposed that LBBB will take the lead in East London and the London Borough of Haringey will do the same for North-east London that will allow sharing of good practice, market intelligence and efficiencies between these authorities.</p> <p>Wards Affected: None</p>	
<p>Recommendation(s)</p> <p>The Cabinet is recommended to agree:</p> <ul style="list-style-type: none">(i) To the procurement of the Construction Related Framework Agreements as detailed within this report.(ii) To the Council collaborating with East London Solutions (ELS) and Capital Ambition in order to secure additional funding for this project.(iii) To the Council leading on a collaborative procurement approach with other London boroughs, in order to procure a construction framework agreement that can be used by all.	
<p>Reason(s)</p> <p>The efficient procurement methods set out in this report will enhance the Council's performance and therefore will assist in achieving the Council's community priorities of Raising General Pride in the Borough and Regenerating the Local Economy.</p>	

Comments of the Chief Financial Officer		
The Corporate Director of Finance and Resources has confirmed the financial comments in Section 4 of this report.		
Comments of the Legal Partner		
The Legal Partner has confirmed the legal comments in Section 5 of the report.		
Head of Service: Sue Lees	Title: Divisional Director of Asset Strategy and Capital Delivery	Contact Details: Tel: 020 8227 3300 E-mail: sue.lees@lbbd.gov.uk
Cabinet Member: Councillor Cameron Geddes	Portfolio: Cabinet Member for Finance Revenue and Benefits	Contact Details: Tel: 020 724 2892 E-mail: cameron.geddes2@lbbd.gov.uk

1. Background

- 1.1 The Council's current Construction Related Framework agreements are due to expire in August 2011.
- 1.2 The existing Frameworks have produced reduced procurement timescales; cost efficiencies when benchmarked against similar projects and, employment and training initiatives that have led to the London Borough of Barking and Dagenham (LBBDD) being one of the first councils to be awarded National Skills Academy for Construction status. These achievements need to be continued and developed to meet the pressures facing both the Council's construction investment programmes and the needs of the local economy over the next few years.
- 1.3 When the Frameworks were first introduced their principal aim was to reduce the time and the cost associated with construction procurement and in particular, that procurement over the EU thresholds. The Council also wanted to develop a collaborative approach with the Framework Contractors so that it could look at cost and efficiency in more detail. It also wanted greater predictability and higher levels of customer satisfaction. In addition, it wanted to work with Contractors to encourage greater local employment and training opportunities.
- 1.4 The Frameworks are managed and monitored through the Council's Corporate Client Group that controls the procurement and delivery of the Council's construction capital programme. Regular meetings are held with the Framework Contractors to discuss performance (measured through KPI's), future construction programmes, project options, and other initiatives. As a result, the Frameworks have produced efficiencies through project partnering and innovative methods of construction.
- 1.5 The willingness of framework contractors to engage positively with the Council has also been enhanced by the fact that the majority of the current contractors are

located in East London, South East London and Essex; many are regional rather than national organisations and view the Council as an important Client. They are also the types of firms that provide these services to other council's in east London. There is a synergy between both the potential supply chain and councils involved with the East London Solutions group that makes a collaborative procurement arrangement attractive. The opportunities for extending the use of the Frameworks to other east London councils are being explored through East London Solutions group.

2. Proposal

- 2.1 The proposal is for the procurement of Construction related Framework Agreements for Housing New Build and Refurbishment Schemes, and Education and other Services works. These are replacements for existing Frameworks procured by the LBBB and which expire in August 2011.
- 2.2 Currently, there are three frameworks; one for local authority housing projects, the other for Education related and other works (this incorporates refurbishment and new build work on schools, corporate buildings and other council owned property) and the third for civil engineering and highways projects. It is proposed to re-tender the Housing and, Education and Other Services Frameworks. However, after an analysis of the projects carried out through the Civils and Highways Frameworks it is considered more appropriate to deliver those works through a term maintenance contract to be procured separately.
- 2.3 The Frameworks are easy to use and well understood by users. As a consequence it is proposed that the principles and processes embodied in the current documentation will be re-employed albeit modified where necessary to take into account any legislative changes. The overall objectives are to make efficiencies in construction procurement time through a well administered framework arrangement; through collaborative working with a small group of constructors to identify the potential cost savings through innovative design and work practices; to continue and develop training and employment initiatives for local school leavers and others; to continue and develop local supply chains and small / medium sized businesses.
- 2.4 The Council has also been in discussion with other London councils through the East London Solutions Group and with the London Borough of Haringey. It is the Council's intention to lead on the procurement of the Frameworks so that they can be used by other adjacent boroughs (through East London Solutions). London Borough of Haringey (LBH) have also expressed an interest in the Frameworks and it has been suggested that the Frameworks be developed using a collaborative approach with an east London hub (administered by LBBB) and another for north east London (administered by LB Haringey).
- 2.5 By working with other councils in the area and collaborating with Haringey in North London it is envisaged that the benefits and resources can be shared more widely, and good management practice agreed, developed and implemented through partnership with other London Authorities. There should be advantages that can be achieved through aggregation of demand and also through the sharing of market intelligence.

- 2.6 This collaborative approach to the procurement and management of construction investment is supported by Capital Ambition, which is the Regional Improvement and Efficiency Partnership (RIEP) for the London area. As a consequence, £10,000 has been secured from the RIEP via East London Solutions to develop the proposal. Capital Ambition have made it clear that more funding may be available if there is an appetite for council's in east London to work together on these issues and at their request, a more detailed business case has been prepared that sets out the rationale for such support should LBBD lead the process.
- 2.7 The value of the frameworks is such that they will be subject to the Public Contracts Regulations and an advertisement placed in OJEU. A timetable is attached at **Appendix B** that sets out the expected time frame for their implementation.

3. Benefits of this Approach

3.1 Benefits of the Frameworks

- Reduction in procurement time for contracts let under the Frameworks.

One of the obvious benefits from the use of Frameworks is the reduction in time taken to procure projects whose value is above the EU procurement thresholds. There are benefits in terms of hidden costs and time saving in not having to go to tender via OJEU. Typically a time saving of six to nine months can be achieved and to date, ten large projects have been let through the Frameworks that are over the EU procurement thresholds and which would have incurred these costs. It is also the case that the procurement time for smaller projects has been reduced and data provided by the Office of Government Commerce has suggested that cash savings of £2800 can be achieved each time a framework is used to let a lower value contract.

- Efficiency improvements

The existing LBBD Frameworks have had an impact upon construction cost through early contractor involvement in the design and feasibility stages of projects. This has resulted in clearer, better defined project briefs and led to a reduction in construction time through the introduction of modern methods of construction and project partnering arrangements. As an example, the Cannington Road School which utilised an industrialised construction method, was delivered for £1'600 per m², which compared favourably with £2'000 plus achieved on conventionally procured schools in other boroughs. The collaborative approach with other councils is intended to facilitate shared practice and market intelligence between the two hubs. Officers will ensure that there is a structured sharing of information to facilitate a comparison of project costs, construction innovation etc.

- Improved Cost and Time Predictability

The Corporate Client Group uses the Constructing Excellence KPI's to measure performance. These include the measurement of cost and time predictability for both the Design and Construction stages. These are used to inform the post-project reviews that are now carried out in conjunction with the Framework Contractors to identify those areas where both cost and time improvements can

be made on similar future projects. Working with a group of contractors both over a period of time and in collaboration with other Council's should facilitate the development of shared best practice leading to overall cost efficiencies.

- Customer Satisfaction

The LBBB Frameworks have achieved high levels of customer satisfaction. This will continue to be measured internally and compared across the Frameworks.

- Disputes and Differences

There have been no disputes or differences on any of the projects let through the current Frameworks. This is primarily because of their collaborative basis and the relationships that have been developed through the Framework Management Groups. This practice will continue when the replacement framework is put in place.

- Information Exchange and Development of Good Practice

LBBB has an advantage over other councils since it has a centralised performance management, procurement and delivery arrangement for construction projects, The Corporate Client Group, and is well placed to co-ordinate collection of information, and data for construction services. If the Frameworks are extended for use by other councils, it is proposed that LBBB will manage and facilitate information exchange through the East London Solutions hub. Although not as comprehensive as the LBBB arrangement, London Borough of Haringey has a centralised construction procurement section and will do the same for its partner north east London councils. It is not a simple process to assess the benefit of information sharing and exchange, although it may be possible to place a value if for example, a comparison of prices for similar works leads to a reduction in costs for one or more of the partners. At this stage, it is envisaged that the benefits will be measured through regular reviews of the framework operation by LBBB and LB Haringey.

- Training and Employment

A notable area of success for the existing LBBB Framework Agreement is the degree to which framework contractors have supported local small contractors and training initiatives for local people. Given current circumstances in the economy, any way in which the Frameworks can stimulate local economic activity will be crucial. A target for the use of local supply chain on projects will be incorporated into measurement of project success (e.g. 30% local labour); and arrangements will be continued to encourage participation in training initiatives.

3.2 Links to other initiatives / opportunities

- 3.2.1 The proposal is for the procurement of a Construction Framework that will also be available for use by councils in east London. These frameworks will have a sub-regional focus and are intended to attract interest from medium sized organisations. The existing LBBB framework has profited from a close working relationship between the contractors and the client. This has meant that the contractors have a

clearer understanding of the Council's investment plans and internal processes, which has produced a number of benefits that would not have arisen if the Framework had not been in place. This two-way process will be easier to develop and manage if the number of client organisations and contractors are limited.

3.2.2 The arrangement is designed to foster proper collaboration between the client councils and contractors so that innovation etc. can be actively shared. As a consequence, the proposal is for two hubs (one led by LBBB for east London and the other by the London Borough of Haringey for north east London) that are of a manageable size and which could develop the approach followed by LBBB over the term of its own Framework.

3.3 Impact of the project

3.3.1 In many respects the implementation of this Framework will be a continuation of existing arrangements which are well understood by staff in LBBB and, although there will be the inevitable process of relationship building with any new contractors, it is envisaged that LBBB will be able to build upon the existing achievements. It is also the case that existing documentation can be used as the basis for the replacement Frameworks. However, progressing the arrangement with other authorities will increase the burden on LBBB and, whilst it has a management structure for capital works that is better placed than most, resources will need to be made available to develop the proposed collaborative arrangements. It is for this reason that a business case has been submitted to Capital Ambition to apply for additional funding to support the additional costs of setting up the arrangement.

3.3.2 Even if the Frameworks resumed on the same terms as before with LBBB as the sole client, it would continue to have a beneficial impact in terms of improved efficiencies and added value. It is also the case that investment activity over the coming four year term is hard to predict and previous experience has shown that regular dialogue with a small group of contractors allows them to respond to a changing capital programme in a planned and systematic way that is beneficial to the Council.

4. Financial Issues

4.1. The cost of re-procuring the Frameworks for LBBB's use can be contained within the current resources of the Corporate Client Group.

4.2 East London Solutions has already provided £10,000 towards the cost of developing the Frameworks for use by other councils in east London. However, the proposal for collaborating with other councils across both east and north east London will require additional resources for liaison and co-ordination activities with those councils. A business case has been prepared and submitted to Capital Ambition setting out the financial support required.

5. Legal Comments

5.1 This report is seeking cabinet approval to re-procure two of the Council's three existing Construction-related framework agreements, which will expire in August 2011. The third framework agreement will not be re-procured because it has

been decided that it is more efficient for the works under it (i.e. civil works) to be delivered separately under a joint procurement initiative with Havering. A separate report has already been presented to cabinet in relation to this.

- 5.2 It is anticipated that education and other framework agreements, will be for a term of four years. It is anticipated that the housing framework agreement will be for a term of two years, extendable by a further two years. This approach will ensure that the council has the opportunity to consider whether the framework for housing improvements should be linked to the future provision of housing repairs, the contract for which expires in 2013.
- 5.3 The Council has power to enter into contractual agreements for the provision of 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. Furthermore the Public Contract Regulations 2006 empower the Council to establish framework agreements with duration of up to four years, and to select contractors to undertake specific projects from amongst those contractors with which it has concluded framework agreements.
- 5.4 It is anticipated that the respective values of the proposed framework agreements will be in excess of the threshold for application of the Public Contracts Regulations 2006 (the Regulations) of £139,893 and therefore subject to the full application of the Regulations. In compliance with the Regulations, the report states framework agreement will be tendered in the EU using the restricted procedure - two-stage tendering process which allows contracting authorities to draw up a short-list of interested parties by undertaking a selection / pre-qualification stage, prior to the issue of invitation to tender documents.
- 5.5 The report is also requesting that Cabinet approves a proposed collaboration between the Council, East London Solutions (ELS) and Capital Ambition, and to a proposal for the Council to take the lead in a collaborative procurement with other London boroughs of a framework Agreement that can be used by all.
- 5.6 The Government has for some time now been actively encouraging collaborative working between local authorities, and as far back as 2006, the Local Government White Paper – "Strong and Prosperous Communities" – encouraged joint commissioning of services by local councils and highlighted its potential benefits, including achieving economies of scale.
- 5.7 The Legal Partner (Property, Procurement and Planning) confirms that there are no legal reasons preventing the Cabinet from approving the recommendations of this report. Pursuant to Council Contract Rule 3.6 which requires the strategy for the procurement of contracts of above £400,000 in value to be submitted to the Cabinet for approval prior to procurement of such contracts, however, a further report will need to be presented to the Cabinet for approval prior to undertaking the procurement.

6. Risk Management

- 6.1 The main risks are those linked to the proposals for collaboration with other councils and are:

- A lack of commitment from other councils
- The availability of resources necessary to negotiate with potential partners, establish joint aims, targets and approaches; and simultaneously procure new arrangements
- Underestimation of time taken to liaise with other councils during the procurement of the Framework.
- Failure to put management processes in place for the duration of the Framework
- Lack of resources available to manage the Framework during its term.

6.2 The Council is capable of managing the Frameworks for its own use. However, coordinating their use by others is new territory and can only be implemented if there is sufficient support forthcoming from Capital Ambition for its implementation and sufficient commitment from participating councils through all stages of the arrangement. These risks will be closely monitored during the development of the process.

7. Contractual Issues

7.1 The proposed Frameworks are a replacement for existing arrangements that expire in August 2011. This is an agreement with a number of contractors that has been procured through an EU compliant process and allows the Council to tender individual contracts to those contractors. The Framework Agreements themselves do not commit the Council to carry out any specific amounts of work with those contractors nor do they guarantee that the contractors will be awarded any contracts.

7.2 It is anticipated that education and other framework agreement, will be for a term of four years. It is anticipated that the housing framework agreement will be for a term of two years, extendable by a further two years. This approach will ensure that the council has the opportunity to consider whether the framework for housing improvements should be linked to the future provision of housing repairs, the contract for which expires in 2013.

8. Staffing Issues

8.1 The current Frameworks are administered by the Corporate Client group who will continue this function when the Frameworks are re-let. If the proposals for greater collaboration with other Councils in east London and with the LB of Haringey develop in the way that it is anticipated then the level of co-ordination required should be supportable within the current establishment. However, if during the course of their procurement, it becomes apparent that other councils will require greater support, then the means to finance this will need to be incorporated into the arrangements through the introduction of an appropriate levy.

9. Customer Impact

9.1 In many respects the implementation of this Framework will be a continuation of existing arrangements which are well understood by staff in LBBD and, although there will be the inevitable process of relationship building with new contractors, it is envisaged that LBBD will be able to build upon the existing achievements, which includes high levels of customer satisfaction as described above.

9.2 As part of the award process, all contractors are required to demonstrate their commitment to customer consultation and involvement; and this will be monitored as part of on-going management processes.

10. Options Appraisal

10.1 LBBD has existing Framework Agreements in place that expire in August 2011. Prior to re-procuring the Frameworks on the same basis, an appraisal of other options was undertaken. A paper was prepared for the LAW board on this subject. See **Appendix A**.

10.2 As described above the current Frameworks have achieved a reduction in the transaction costs that might be expected from such an agreement. In addition, the cost benefits have been derived from innovative procurement, employment and training benefits etc. from the collaborative approach to management. Alternative external frameworks were considered but none met the requirements of the Council. Many had restrictions on procurement routes, contract types etc and all placed an interface between the Council and the Contractor. Any efficiency savings offered tended to be predicated on the buying power of national contractors and opportunities for standardisation. There is also a question about the legitimate use of such Frameworks since the recent advice on advertising the geographic limitations in OJEU notices.

14.3 The Council considers that greater savings can be achieved through a thorough analysis of costs and options on each project, and in particular, working with contractors directly to investigate more efficient construction methods that can reduce on site costs etc.

10.4 A do nothing option was not considered since a Framework or longer term strategic agreement is necessary to ensure that the Council is not subject to higher than necessary transaction costs associated with the tendering of individual projects. The alternative to this would be the use of other existing frameworks which the Council has already considered and rejected.

10.5 LBBD has experience in both procuring and managing long term framework agreements; and has the expertise, processes and documentation that make the re-procurement of its current arrangement a straightforward exercise.

10.6 The proposal assumes that LBBD will lead on the procurement of the Framework; liaising with other authorities on the procurement strategy, documentation, and evaluation processes. LB Haringey will take the lead on evaluation of submissions for those councils in the North East of London.

10.7 A programme has been devised that would allow the Framework to be implemented in October 2011.

11. Background Papers Used in the Preparation of the Report:

11.1 CMT Report - Construction Related Framework Agreements Re-Procurement
Dated 1 December

12. List of appendices:

Appendix A – LAW Board Procurement Options Report

Appendix B – Draft Implimentation Programme