

From: Peter Oakford, Deputy Leader and Cabinet Member for Finance,
Corporate and Traded Services

Rebecca Spore – Director of Infrastructure

To: Policy and Resources Cabinet Committee – 13th July 2021

Subject: Construction Partnership Framework Commission

Classification: Unrestricted

Future Pathway of Paper: Policy and Resources Cabinet Committee

Previous Pathway of Paper: Policy and Resources Cabinet Committee – 14 Jan 21

Electoral Division: Countywide

Summary: The Council's Principal Contractors Framework for construction projects expires in October 2021. Further to the report presented on 14th January 2021 to the Policy and Resources Cabinet Committee, further market engagement has taken place in preparation for the Construction Partnership.

This paper sets out the four options that have been considered and the next steps.

Recommendation(s):

The Policy and Resources Cabinet Committee is asked to **Note** and report and the proposed next steps.

1. Introduction

- 1.1 On 14 January 2021, a report presented at Policy and Resources Cabinet Committee set out the expiry of the current framework to deliver capital projects in the Council and the need to establish a replacement framework to deliver new construction schemes. Options were considered and a new delivery model was proposed to allow future schemes to be procured expediently and efficiently in line with modern best practice. The Committee supported the further exploration and market engagement to scope further the Construction Partnership Approach.
- 1.2 The proposed construction partnership is an approach whereby, a framework is established with a small number of Contractors to deliver the pipeline of work based on a rotation approach rather than individual mini competitions. If adopted, this will lead to significant change in the way that the Council delivers its construction projects.
- 1.3 Overheads, profit margin and key rates are agreed prior to the implementation of the framework. This will reduce resource duplication across all parties and streamline the route to market compared to the current position. There will be an opportunity to work directly with the reduced

supply chain in a partnership approach to deliver against the Council's outcomes.

- 1.4 There is no workload guarantee in the framework agreement. All schemes awarded to contractors will incorporate their own contract and projects will need to be taken through the appropriate governance process as they are now, where appropriate.

2. Market Engagement

2.1. Market engagement was progressed with a number of contractors to explore the following:

- Award of work
- Value for Money
- Key Performance Indicators (KPI)
- Contract terms
- Social Value
- Risks

2.2. Key themes from the market soundings were:

2.2.1. Tendering process with mini competitions can be costly. These take time and can cost up to £50k per procurement exclusive of the Council's own resources. Opportunities to negate this cost would result in better value schemes, but they identified there could still be a need to compete larger complex schemes.

2.2.2. Any costs evaluated at the Framework tender process should be locked into future work to ensure that Contractors are held to their submitted costs.

2.2.3. All contractors were keen that a robust evaluation process was implemented to measure performance based on time/quality/cost/carbon emissions/social value. A contractor not meeting the required performance level would lose the opportunity to be awarded work, unless they are able to demonstrate and meet an improvement plan to resolve any outstanding issues.

2.2.4. The majority of contractors were supportive to use the New Engineering Contract (NEC) terms which will allow for greater collaboration with the Council. Utilising the options within this suite of documents would allow flexibility dependent on the complexity of the individual scheme.

2.2.5. Contractors understood the importance of Social Value and wanted to be held accountable to their proposals. A local workforce (whether through the supply chain or directly employed) is imperative to their business model but can only be achieved with regular work that can be planned in advance.

2.3. A number of risk factors were discussed and should be considered for future schemes which includes the following:

- The use of a performance bond can cost up to £100k dependent on the scheme which the Council pays for within the rates.
- Retention clauses can keep money back until certain stages of the construction have been completed. This however can affect the contractor's cashflow.
- Pain/gain procedures will be priced on a risk-based approach. The risk of not being awarded work through the KPI process is more of a deterrent for poor performance.
- Professional Indemnity insurance is expensive and will be passed down through the supply chain which can add costs through the scheme delivery.
- There is currently a material shortage across timber, steel and cement. This is putting pressure on contractors and could affect future scheme delivery through delays and increased costs. It is estimated that a return to normal stock levels will return towards the end of 2021.

3. Procurement Principles

3.1. Given the projected pipeline, it is proposed that up to four contractors will be appointed to the new partnership framework. It is proposed that work will initially be awarded on rotation. As the framework develops, the Council will work in a collaborative approach with the contractors and identify who is best placed to deliver individual schemes, based on, but not limited to the following categories:

- KPI scores.
- Size, complexity and value of the scheme.
- Scheme location.
- Contractor capacity.

3.2. Should a contractor propose a scheme cost that is not within the 'market' rate, the Council reserves the right not to award the contract and can open dialogue with the next contractor. Alternatively other procurement routes, while not desired, could be utilised.

3.3. Whilst the primary method of work allocation is proposed to be based on rotation, a mini-competition process could be run, should it be required. This could be based on complex and high value schemes where all those contractors that reside on the framework would be invited to bid.

3.4. Overheads, profit margin and key rates tendered at the procurement stage will be applicable for all future work. Individual project proposals and ongoing costs will be reviewed on an open-book and collaborative basis.

3.5. The value of schemes procured through the framework will not be limited in value but will be for schemes over £1m. The Department for Education (DfE) have stipulated the use of their own central frameworks for any of their

funded works over £10m, but if the Council demonstrates best value, there is scope to use this proposed framework.

3.6. The framework will be in place for a minimum of four years, with scope for a potential two-year extension if permissible.

3.7. This approach will help create sustainable relationships which will keep bid costs down and lower project build costs. Furthermore, there will be increased flexibility and agility when commissioning new projects.

3.8. While the primary purpose of the framework is to deliver KCC future capital programme, other public sector organisations in Kent will be able to use the framework.

3.9. Social value and the contribution to the local Kent economy will be a key KPI.

4. Financial Implications

4.1. There is no workload guarantee in the framework agreement. All schemes awarded to contractors will incorporate their own contract (NEC 4 suite) and as such, projects will need to be taken through the appropriate governance and funding process.

4.2. The framework pricing structure will be open book, which will allow the Council's Commercial Team to review rates and evaluate whether they are in accordance with market conditions. Should the proposal not be within a suitable tolerance of market prices, the Council can move to the next contractor. This will encourage price competitiveness and ensure the Council is aware of current market forces. An example of this is the current material shortage (timber, steel, cement, etc.) affecting the UK market and further afield.

5. Legal implications

5.1. The award of any contracts will be in full compliance with all relevant procurement and governance regulations.

6. Equalities and Data Protection Implications

6.1. An Equalities Impact Assessment will be undertaken.

7. Conclusion and Next Steps

7.1. There was strong support from the market engagement for the construction partnership approach. The feedback from the market engagement will be fed

into the procurement process as set out in the paper. It is now proposed to progress with the establishment of a construction partnership framework with 4 suppliers.

7.2. The indicative key milestones are set out below:

<i>July – September 2021</i>
Procurement process commences with the Selection Questionnaire testing potential applicants on their capability and capacity to deliver future construction schemes. The project team will finalise the Invitation to Tender documentation prior to the shortlisting process.
<i>September – November 2021</i>
Those candidates that pass the Selection Questionnaire will be invited to submit a tender based on overheads, profit margin and key rates. There will be scope to negotiate with tenderers to clarify requirements and finalise price submissions.
<i>December 2021</i>
Complete the evaluation report and seek governance approval to award the Construction Partnership Framework. Commence the mobilisation period to ensure appointed contractors are ready to begin work in 2022.

7.3. A further update will be brought to the Policy and Resources Cabinet Committee in September 2021, prior to a key decision to award contracts following a procurement exercise.

8. Recommendation(s)

Recommendation(s):

The Policy and Resources Cabinet Committee is asked to **Note** and report and the proposed next steps.

12. Contact details

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