

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	9 th February 2016
Report of:	Executive Director of Economic Growth and Prosperity
Subject/Title:	Low Value Construction Services
Portfolio Holder:	Councillor D Stockton, Regeneration and Assets

1. Report Summary

- 1.1. Cheshire East Council has ambitious growth plans and continues to take a pro-active approach to development, construction and strategic use of its assets. The local plan strategy sets out the Council's overall vision and planning strategy for sustainable economic growth, including 36,000 new homes and identifies 3,080 hectares of strategic employment land across the Borough for development by 2030.
- 1.2. Specifically in relation to construction, it is undertaking some major schemes to enhance Public Services, such as developing the Lifestyle concept to provide integrated services that citizens need in relation to their Lifestyle all in one place. This is exemplified in the £15m Lifestyle Centre in Crewe and the development of similar facilities in Congleton.
- 1.3. Within the current Capital and Major Change programmes for 2015-2016, Assets are supporting the delivery of smaller value projects, across the whole spectrum of the Council's property Portfolio, ranging in scale and complexity from minor adaptation works within an existing Day Centre of £30,000 through to refurbishment and extensions to the existing Crematorium in Crewe of £1.5m. The current value of construction projects managed by the team is in excess of £30m.
- 1.4. In this fast moving environment, it is essential that key enabling systems are maintained to ensure that effective, value for money, compliant and controlled project delivery mechanisms are in place. Current arrangements for the delivery of construction and development projects includes the commissioning of external contractors via a range of both regional and bespoke in-house frameworks agreements. The Council's own Framework agreement for low value construction services expires on 6th January 2017 and cannot be extended within EU Procurement Rules.
- 1.5. An analysis of the options has been undertaken (Appendix 1), with the conclusion that a replacement Framework Agreement would be the preferred option, with a clear procurement strategy that continues to promote the social value aspects of local economic growth, spending, supply chain, employment, training and apprenticeships, through the contractor selection process,

together with any lessons learnt from the current arrangements and review the numbers of lots and bandings and enhance performance mechanisms ensuring greater value-for-money.

- 1.6. The value of the services procured means it will be subject to EU Procurement Rules requiring a contract notice to be published in the OJEU (Official Journal of the European Union). The project plan (Appendix 2) requires an OJEU Notice to be placed in March 2016.

2. Recommendation

- 2.1. That Cabinet

- 2.1.1. Approve the establishment of a Framework of contractors through which to commission low value construction services.
- 2.1.2. Delegate authority to the Director of Economic Growth and Prosperity, in consultation with the Portfolio Holder for Regeneration and Assets to award and enter into Framework Agreements with providers meeting the requirements of the Framework.

3. Other Options Considered

- 3.1. A wide range of alternative options for the future delivery of low value construction services have been considered, following the consultation process with key stakeholders within the Council, ranging from the creation of an 'in-house' contractor provision through to the procurement of a single service provider. The full details are outlined in (Appendix1) including the advantages and disadvantages.

4. Reasons for Recommendation

- 4.1. To ensure that the commissioning of low value construction services complies with the Public Contracts Regulations 2015 and the Council's Finance and Contract Procedure Rules
- 4.2. To explore all options for securing value for money in the delivery of low value construction services.
- 4.3. To avoid the need for time-consuming and costly individual procurements that would otherwise be required for each construction contract and each property project.

5. Background/Chronology

- 5.1. The current arrangements for the delivery of property projects includes commissioning construction works from a range of regional and bespoke in-house Framework Agreements, including :-
 - 5.1.1. North West Construction Hub (NWCH) Frameworks:-
 - 5.1.1.1. Low Value £0.5million to £2million (go live date December 2015)
 - 5.1.1.2. Medium Value £2million to £9million (go live date February 2015)

- 5.1.1.3. High Value £9million plus (go live date August 2014)
- 5.1.2. Cheshire East Council's own Framework for low value construction services (works up to £500,000).
- 5.1.3. Salford City Minor Building Works Framework has been used for projects with a value between £0.5million and £1million although the use of this Framework will cease once the NWCH Low Value Framework goes live.
- 5.2. The various NWCH frameworks are operational up to four years from the respective go live dates. The Council's own low value construction services framework expires on the 6th January 2017.
- 5.3. Approximately £11.4m per year is spent through the various frameworks, £6.7m via the NWCH and £2.7m via the low value construction services framework and in the absence of a framework that complies with the European Procurement Rules, the Council would need to procure each individual construction project in accordance with procurement thresholds adding cost and delay to the process.
- 5.4. A new responsive and maintenance contract has been procured with Cofely Workplace Limited which allows orders to be placed direct for construction projects up to a maximum of £250,000. Although this provides a solution to some smaller schemes as there is only one provider competitive tension does not exist beyond any contract rates/percentages.
- 5.5. Following consultation with key stakeholders within the Council, and adopting lessons learnt, procurement best practice, a number of options for the future delivery of low value construction services have been considered (Appendix1) including:-
- 5.5.1. In-house provision – effectively the 'insourcing' of a 'contractor' team to undertake the project works directly.
- 5.5.2. Individual tendering – the individual procurement and tendering of construction works on a project by project basis.
- 5.5.3. CEBC Framework – the procurement and tendering of a bespoke, Cheshire East framework to appoint contractors as and when required on a 'call-off ' basis to undertake project works. (The framework will cover construction projects between £ 0 and £ 800,000 in value.)
- 5.5.4. External Frameworks – utilising all of the available external frameworks to procure construction works on a project by project basis.
- 5.5.5. Single Service provider – the procurement and tendering of one contractor to undertake the entire construction project works.
- 5.5.6. Programme of Works under Higher Value Framework - the procurement and tendering of one framework contractor from a Higher Value Framework to undertake an agreed programme of construction projects.

- 5.6. On analysis, taking the advantages and disadvantages of each option into account, it has been concluded that whilst the above options may provide some flexibility for the procurement of construction works, the future delivery of low value construction services would be best met by the establishment of a replacement low value construction services framework agreement (Option 3).
- 5.7. The anticipated aggregate financial value of the services to be procured through the proposed framework, in the order of £10million (including allowances for ASDV's, Third Parties, Schools and Academies, Town and Parish Councils), means that it will be subject to EU Procurement Rules and will require a contract notice to be published in the OJEU (Official Journal of the European Union). The project plan for procurement (Appendix 2) requires an OJEU notice to be placed in March 2016 to ensure that the new arrangements are in place when the existing framework expires.
- 5.8. Whilst we commission significant construction works through the framework, there is no contractual obligation to procure work through the arrangement. This means the Council is not contractually 'locked in' to this arrangement. It should also be noted that whilst the OJEU procurement process needs to be commenced immediately to ensure continuity of service, the recommended OJEU procurement processes for low value construction services can be terminated at any time, the only loss being abortive officer's time.

6. Wards Affected and Local Ward Members

- 6.1. All

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. The recommendations in this report support the delivery of the council's priorities by ensuring that key compliant mechanisms are in place to enable the controlled delivery of construction projects.

7.2. Legal Implications

- 7.2.1. The aggregate value of the requirement for low value construction services is such that these services must be procured in accordance with the Public Contracts Regulations 2015 ('The Regulations') and the Council's Finance and Contract Procedure Rules
- 7.2.2. A Framework enables the Council to meet its need for a service, supply of goods or works for a set period of time in order to obviate the need to undertake a wide competitive process in relation to each individual procurement. It complies with the Regulations and the Council's rules.
- 7.2.3. The Regulations allow local authorities to enter into Framework Agreements with a number of service providers, following a competitive tendering process, and to thereafter select from those service providers

particular services, as and when required for a maximum period of four years. The Council can choose to call-off contracts under the Framework by appointing a supplier directly (direct award) based on the pricing and / or other selection criteria established in the original tender process or, if the price cannot be directly determined or in order to ensure best value, it can hold a mini-competition between the suppliers appointed to the framework in order to award a call-off contract.

7.2.4. In order to evidence value for money, the Economic Growth and Prosperity service will engage with Legal Services to ensure the Framework Agreements contain provisions such that the Framework Agreements can be terminated in the event that the service cannot be provided on the terms that remain acceptable to the Council. The Framework Agreements do not contain any guarantee of work volumes to the appointed providers and can be utilised with other options.

7.2.5. The Economic Growth and Prosperity Service have been advised and will engage with Legal Services to ensure that the duties under the Public Services Social Value Act, as it applies to the framework agreements, are fulfilled. The Act requires the Council to:

7.2.5.1. Consider how what is proposed to be procured might improve the social economic well-being of the relevant area, with a strong focus on increasing and improving local spend, local employment, training and apprenticeships and skills development,

7.2.5.2. How in conducting a procurement process it may well act with a view to securing that improvement, through the framework contractor and supply chain partners selection process,

7.2.5.3. Whether to undertake any community consultation on their proposals,

7.3. Financial Implications

7.3.1. The recommendations within this report support the delivery of property projects and ensure that low value contractors selected for the Framework satisfy the requirements of the Council's Financial Rules and comply with EU requirements.

7.3.2. Value for money will be assured by taking into account tendered rates for directly awarded call-offs or by undertaking mini competitions to all the Contractors within the Framework.

7.4. Equality Implications

7.4.1. The formal OJEU procurement process will ensure that consideration is given to all equality implications.

7.5. Human Resources Implications

7.5.1. The proposed OJEU procurement process will be undertaken by Property Projects officers support by Procurement and Legal Services colleagues,

therefore there are no external costs for undertaking this procurement other than nominal costs for local advertising. However, there is an 'opportunity cost' of undertaking this task in officer time which has been estimated at a maximum of £60,000 including oncosts. Significant officer time will not be required until May – August 2016, when the 2 stage tendering process is undertaken.

7.6. Public Health Implications

7.6.1. None

7.7. Other Implications (Please Specify)

7.7.1. None.

8. Risk Management

8.1. A failure to establish a replacement Framework Agreement for Low value construction services through which construction services can be purchased will mean that the construction services for each project will need to be tendered individually. This is prohibitive both in terms of time and cost.

9. Access to Information/Bibliography

9.1. The background papers relating to this report can be inspected by contacting the report writer.

10. Contact Information

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