

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	14 th June 2016
Report of:	Chief Operating Officer
Subject/Title:	Procurement of Strategic Partner to Develop Modular Build and Funding Framework Agreements for Cheshire East Council
Portfolio Holder:	Cllr Peter Groves, Portfolio Holder for Finance and Assets Cllr Paul Findlow, Portfolio Holder for Corporate Policy and Legal Services

1. Report Summary

- 1.1. Cheshire East is currently in the process of considering how it can address the current deliverability issues that are arising out of the need to provide both Affordable and Start- up homes within the Borough.
- 1.2. Within the development industry, there is currently a lack of capacity within the construction industry, and developers are delaying site construction .
- 1.3. A new model of delivering Housing units is required, particularly around the Affordable and Start Up Homes, and following research into this issue, modular homes appear to offer a quick, and affordable solution to housing provision within these sectors.
- 1.4. As part of the process to address the lack of development, the Council are seeking to set up a framework for Modular Build, and to compliment this, a possible Funding Framework which will capture the current funding opportunities that exist from third party sources such as UK pension funds. The medium term ambition is for EotN to use such a framework, developing Affordable Housing on Council owned land. This will not only increase supply and will also encourage developers to start development on sites which have existing planning approvals in place.
- 1.5. In considering the above, it is apparent that any framework should have the ability to be available nationally, and in order to facilitate this, the Council will need to work with a nationally recognised procurement partner to shape and deliver such a significant set of frameworks.
- 1.6. Due to the levels of rebate that could be achieved with the creation of such frameworks, there could be a possibility this will exceed £1m, which will require the use of OJEU procedures and Cabinet approval to the process.

- 1.7. This report seeks approval to progress with the appointment of a strategic partner to assist the council in developing out such frameworks identified in this report.

2. Recommendation

- 2.1. Cheshire East Council to proceed with a suitable OJEU procurement as detailed in Option 2 of this report , to enable the appointment of a strategic delivery partner, to progress the development and delivery of a framework for Modular Build and Funding for Cheshire East Council, any of its subsidiary's and other Local Authority's to access.
- 2.2. Once the appointment is made , approval is sought for the procurement partner to progress the development Modular Construction and Funding frameworks for the Council and to make the Frameworks available to other contracting authorities. The procurement process will comply with the Public Contract Regulations 2015 (the Regulations).
- 2.3. Subject to this work being completed, a further report will be presented which will scope out the Framework requirements for the Modular Build and Funding opportunities that will follow a separate procurement process.
- 2.4. Delegate authority to The Chief Operating Officer, in consultation with the Portfolio Holder for Finance and the Portfolio Holder for Corporate Policy and Legal Services to undertake the procurement exercise and to identify and appoint a delivery partner.
- 2.5. Delegate authority to the Director of Legal Services to enter into the necessary legal documentation to appoint a partner and all incidental legal agreements.

3. Other Options Considered

- 3.1. The Council could use its in-house procurement service to set up the Framework agreements , however, if such frameworks are to be National in their scope, which will bring financial and reputational benefits to Cheshire East Council , it is considered that at present , there would be insufficient resource with the service to facilitate the project management of procuring and delivering the framework agreements.
- 3.2. A strategic procurement partner will have the resource available to deliver procurement support, framework format knowledge, marketing expertise and contract management support. The risk and costs associated with developing the frameworks, will sit with the procurement partner .
- 3.3. Frameworks for the manufacturing, design and build of Modular Houses are available in the market place but do not address the Council's and EoTN's

objectives and policies for housing within Cheshire East, alongside workforce development and inward investment opportunities.

4. Reasons for Recommendation

- 4.1. The Council is currently in a position where it is seeking an innovative solution to address the Affordable Housing and Starter Home shortages of accommodation that exist within the Borough which has been created due the lack of supply currently coming forward via the traditional development route .
- 4.2. As part of the process to address the lack of development, the Council are seeking to set up a framework for Modular Build, and to compliment this, a possible Funding Framework which will capture the current funding opportunities that exist from third party sources such as UK pension funds. The medium term ambition is for EotN to use such a framework, developing Affordable Housing on Council owned land it will also encourage developers to start development on sites which have existing planning approvals in place.
- 4.3. To address this challenge, consideration is being given to the creation of a Modular construction framework and a complimentary Funding Framework.
- 4.4. At present there are limited Frameworks of this nature in the market place, and non that will have specific local requirements for addressing Housing within Cheshire East, alongside workforce development and inward investment opportunities.
- 4.5. Although there are alternative Modular Frameworks available, one of the main being LHC; these have a limited number of approved suppliers for modular meaning competition could be restricted. The development of a Cheshire East framework would open the market to new suppliers and provide extra competition and capacity.
- 4.6. The Council and EoTN anticipates not only for the awarded supplier to apply their expertise to build the framework approach, but offer a unique selling point in the framework solution, to other councils and to market these selling points appropriately.
- 4.7. Key Objectives of the Delivery Partner and Modular Framework ultimately:
 - Potential to capture any modular suppliers / manufacturers / installers that have not been captured on the LHC and other available frameworks where exclusivity agreements had previously ruled these suppliers out.
 - Capturing and supporting Local Suppliers, Manufacturer's and SME's, where the alternative available frameworks do not.
 - To not only create jobs in the Cheshire East Area in relation to manufacturing of modular, but to shape the market in terms of demand management by attempting to secure factories and supply warehousing, logistics sites and more within Cheshire East to add social value and play a part to improving the carbon footprint.

The Council and EoTN are recommending this approach due to the market expertise required to build the framework and to investigate areas other frameworks cannot offer.

- 4.8. Due to the potential levels of rebate that could be involved, it is considered appropriate that an OJEU procedure takes place to select the Procurement partner

5. Background/Chronology

- 5.1. Cheshire East is currently in the process of considering how it can address the current deliverability issues that are arising out of the need to provide both an Affordable and Start- up homes within the Borough.
- 5.2. As part of this process, the Council are seeking to set up a framework for Modular Build, and to compliment this, a possible Funding Framework which will capture the current funding opportunities that exist from third party sources such as UK pension funds.
- 5.3. In considering the above, it is apparent that any framework should have the ability to be available nationally, and in order to facilitate this, the Council will need to work with a nationally recognised procurement partner to shape and deliver such a significant set of frameworks.
- 5.4. There are several options open to the Council in how it should wish to select such a partner, and these are set out below.

Option 1: Joint Venture / OJEU Procurement

Joint Ventures have various definitions and in this case if the Council answers yes to the factors below, would establish the need for a **JV Procurement** following EU Public Contracts Rules and CEC CPR's.

- If the Private Sector 3rd party would be benefitting financially as a result of the partnership?;
- If the Council would be utilising the partnerships product of outcome?;
- If the Council would be benefitting financially as a result of the partnership.
- If the procurement of a delivery partner does not have a direct value, for the purposes of categorising this procurement following CPR's would use the potential value that would derive as a result of the partnership. I.e. greater than £1m?

Option 2: Concession Procurement

A concession is a partnership between the public sector and a private organisation where the contracting authority entrust the provision and management of services to the private sector organisation. In a concession

a company is remunerated through being permitted to exploit the work or service and is exposed to a potential loss on its investment.

A concession contract is subject to the new Concession Regulations 2016 which are coming into force for procurements starting from Monday 18th April.

- A concession contract must meeting the following requirements the award of the contract shall involve the transfer to the concessionaire of an operating risk in exploiting the works or services encompassing demand or supply risk or both; and
- The part of the risk transferred to the concessionaire shall involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible.
- The concessionaire shall be deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession contract.

The value of the concession contract will be the total turnover generated over the duration of the contract, net of VAT. The value for this contract will be the share in the rebate received.

Cheshire East Councils social value objectives will be considered in both this and the modular housing framework. This will include potential apprenticeships for young people within Cheshire East, new job opportunities for Cheshire East and opportunities for suppliers to become part of a larger supply chain.

Cheshire East Councils social value framework will be used as part of the tender process and will be monitored and reported through the contract.

6. Wards Affected and Local Ward Members

- 6.1. The selection of a procurement partner to facilitate the frameworks will affect All Council Wards.

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. The proposal will create the necessary frameworks for the Council to contribute to the deliverability for the Affordable Housing and Starter Homes issues within Cheshire East.

7.2. Legal Implications

- 7.2.1. At this point the procurement exercise is for a partner to develop and deliver a framework for Modular Construction together with the Council.

Given the potential value of the partnership an OJEU compliant procedure should be undertaken.

7.2.2. In relation to the framework itself the benefit of a framework is that it will enable the need for a particular service to be met for a set period of time, which is set at 4 years under the Public Contracts Regulations 2015, without the need to undertake a wide competitive process in relation to each individual procurement whilst complying with EU requirements and the Council's Contract Procedure Rules. Suppliers can be appointed directly based on the pricing and/or other information established in the original tender process or if the price cannot be directly determined or in order to ensure best value a mini-competition can be held between the suppliers appointed to the framework in order to make an award.

7.3. Financial Implications

7.3.1. The process of selecting an appropriate Procurement partner will be met from existing resources.

7.3.2. CEC and EoTN will need to consider the approach and structure required to administer and control the various necessary frameworks. It will be important for the Council to consider the contracting authority requirements as part of this procurement and it will be important that appropriate consideration will need to include the Council's responsibilities, any costs that could be associated with the use of the framework locally and the approach to the recording and utilisation of the income streams. These considerations will need to be incorporated into the procurement requirements and approach and agreed with the procurement partner.

7.3.3. It is good practise that where Contracting Authorities are part of such an arrangement, a shared rebate agreement is reached where a small percentage, which is typically 50/50 but would be subject to discussion and agreement between the contracting authority and the procurement partner.

7.3.4. Should this project prove successful nationally, this could create a significant rebate for the Council or EoTN if that is considered appropriate.

7.3.5. With regards to the proposal to subsequently set up the necessary frameworks, CEC / EotN will be required to be the Contracting Authority. Any procurement partner will develop the necessary documentation at their cost and risk, and a rebate fee will be set within the framework to recoup the costs. A further report will then be brought forward setting out the framework options.

7.4. Equality Implications

7.4.1. This proposal will assist CEC deliver part of its Affordable Housing and Start-up homes provision, providing equality in housing to the residents of Cheshire East.

7.5. Human Resources Implications

7.5.1. The proposal will use existing resources, in line with 2016/17 work plans.

7.6. Public Health Implications

7.6.1. The project will facilitate the delivery of quality housing to the Borough at affordable prices

7.7. Other Implications (Please Specify)

8. Risk Management

8.1 By taking this proposal through the OJEU process the Council are mitigating any challenge that may be presented as we develop out the frameworks with a selected Procurement partner.

9. Access to Information/Bibliography

9.1. There are no background documents to this paper

10. Contact Information

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