

Agenda Item 9

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Report title: Sourcing Strategy for Major Schemes – Eastern Highways Alliance	
Report to: Cabinet	
Report author: Paul Crick, Director for Capital Investment and Delivery	
Date: 23 July 2019	For: Decision
Enquiries to: Ben Finlayson, Head of Infrastructure Delivery, email ben.finlayson@essex.gov.uk	
County Divisions affected: All Essex	

1 Purpose of Report

- 1.1 The Eastern Highways Alliance is a group of local authorities who work together to create a framework agreement which makes it easy for them to buy highways works at lower cost by using bulk buying power. The current framework agreement expires on 31 March 2020. This report asks the Cabinet to agree that ECC can procure a new framework agreement on behalf of the Alliance.

2 Recommendations

- 2.1 Approve the procurement of a four-year multi-supplier framework agreement for the provision of major highway project design and construction services on behalf of the Eastern Highways Alliance and to do so using the restricted procedure.
- 2.2 Agree that ECC will act as lead authority for the alliance on the basis that it will hold money for the alliance and the cost of doing so will be met by members of the alliance
- 2.3 Delegate the approval of the number of lots to be procured to the Deputy Leader and Cabinet Member for Infrastructure.
- 2.4 Delegate approval of the detailed evaluation methodology to the Deputy Leader and Cabinet Member for Infrastructure.
- 2.5 Delegate to the Deputy Leader and Cabinet Member for Infrastructure the authority to award the framework agreement to the successful bidders following the outcome of evaluation based on a high-level evaluation criteria split of 60:40 price: quality.
- 2.5 Delegate to the Deputy Leader and Cabinet Member for Infrastructure the approval of the terms upon which the Eastern Highways Alliance (referred to in this report as the 'Alliance') may make the framework available to be used by other contracting authorities that are not Alliance members via an Access Agreement.

- 2.6 Delegate to the Deputy Leader and Cabinet Member for Infrastructure the approval of the terms of an Inter Authority Agreement to be entered in to between the Alliance members.

3 Summary of issue

About the Alliance

- 3.1 ECC is a founding member of the Eastern Highways Alliance which was established in 2012 and is a formal collaboration between eleven local authorities across the East of England. Current Alliance members are listed in Appendix 2. The purpose of the Alliance is to share know-how, achieve best value through leveraging combined spending power with resulting economies of scale and to further support and embed partnership working across the member authorities.

About the Current Framework

- 3.2 The existing framework was procured by Cambridgeshire County Council in 2016 on behalf of the Alliance members. ECC has been the principal user of this framework, with seven major schemes delivered to date and four more that it is presently considering calling off under the existing framework. These eleven schemes have a total value of £21.5 million. The current framework expires on 31 March 2020 and no new schemes can be awarded after that date, although schemes awarded prior to 31 March 2020 can continue to be delivered.
- 3.3 ECC undertook a recent review of the use of the current framework and membership of the Alliance and identified that:
- The main use by ECC is for capital delivery programmes
 - Remaining a member of the Alliance helps ECC to secure additional/external funding opportunities by enabling it to demonstrate evidence of partnership working.
 - ECC benefits from sharing best practice and being able to identify common issues with a wide network to help resolve them.
 - ECC benefits from the vast amount of training available through the Alliance that aids the work being undertaking within the Infrastructure team.
 - The framework gives a lawful route to market without the need to run a separate procurement exercise for each scheme, giving savings in staff time.
 - There are opportunities for savings across the Alliance i.e. sharing of depots/assets/equipment etc although these have not been realised to date.
- 3.4 The Alliance provides evidence of partnership working which is often requested when we submit bids for external funding, particularly for cross-border schemes. ECC has also been the main user of the current framework to call off its requirements and so has benefited greatly from having an efficient and compliant route to market.

Proposal

- 3.5 The procurement of a framework supports the Alliance members by securing a legally compliant and cost-effective route to market for their requirements and to

achieve better quality highway, public realm and infrastructure schemes at a lower cost by sharing resources and gaining competitive pricing through combining their potential spend.

- 3.6 The proposed framework would be the third such framework procured by the Alliance. In August 2018 the Highways and Transportation Board (comprised of representatives from the Alliance members) agreed that Essex County Council should take the lead in procuring the framework, subject to ECC Cabinet approval. ECC will act as lead authority for the alliance on the basis that it will hold money for the alliance and the cost of doing so will be met by members of the alliance.

Proposed new framework:

- 3.7 The overall estimated value of the current Alliance members requirements is in the region of £310-£400 million. It is estimated that ECC could spend around £50 million on the framework over its lifetime.
- 3.8 The Alliance members each have different requirements that they would look to use the framework for, with some planning to use it exclusively for major schemes, while others are planning to use it for smaller, maintenance-based work. ECC is planning to deliver both major schemes and, if required, maintenance work through this new framework.
- 3.9 Although this is a large overall estimated value for the requirements of the Alliance members there is no guarantee of any work to successful bidders appointed to the framework. ECC will take no risk on individual construction projects commissioned by other Authorities as the other Authorities will contract directly with the successful bidders.
- 3.10 Although it is proposed that ECC will procure the framework it is proposed that there will be an agreement between the members of the Alliance which will set out the risks and responsibilities associated with using the framework. If there is a challenge to the award of the framework then the cost of defending will be met by partners.

Relationship with Essex Highways Contract

- 3.11 ECC discharges much of its highways work under the Essex Highways Contract with Ringway Jacobs (RJ) which undertakes the highways maintenance works across Essex. Some elements of capital works are also undertaken such using the contract such as resurfacing programmes and the installation of LED lighting.
- 3.12 The RJ contract doesn't include the ability for ECC to source major highway project design and construction services through it and therefore other options need to be procured to enable ECC to deliver these works. The framework will provide the appropriate mechanism for ECC and the Alliance members.

4 Options

Procurement Options

Option 1: Do Nothing

- 4.1 This would mean that upon expiry of the current framework ECC would not have access to a framework to deliver major highway project design and construction services. ECC would need to either undertake an open market tender for every project individually as it arises or call off from a framework agreement organised by someone else if available (option 3 below). This could add significant cost (see estimated costs in 4.9) and delay to each project as well as increasing risk in delivery. It would also prevent the development of working relationships with a consistent pool of contractors and the best practice improvements that result from this.
- 4.2 The Alliance could continue without a new framework, but the joint commissioning of the framework is a key attraction for members to continue partnership working. The lack of a framework could put at risk the value achieved from greater combined purchasing power.

Option 2: Procure a replacement framework agreement for the Eastern Highways Alliance (recommended option)

- 4.3 Procure a replacement four-year framework agreement and continue with membership of the Alliance. This would ensure flexibility and competitiveness across the eastern region and be more attractive to the market as an Alliance with greater opportunities. By using this type of framework there will be a consistent pool of suppliers across the eastern region and framework performance management to maintain required standards.

Option 3: Use another framework procured by another Authority

- 4.4 There is a potential saving of procuring via another framework if another framework from another Authority/Alliance was available. One such framework has been identified although it can only be used for requirements in excess of £1m only and is not focussed on Eastern England.
- 4.5 There would be some work involved in setting up this framework.
- 4.6 Officers consider that the loss of an Eastern region framework and a framework for works under £1m would increase procurement costs overall. Whilst use of existing frameworks is something that ECC would usually seek to do this is not recommended as there is no suitable framework for these works.

Option 4: Procure a Sole Supplier Contract

- 4.7 This has the potential to achieve economies of scale given that the supplier would receive significant work but means that there would be no ongoing price competition (as there would be within a framework through the mini competition process). The Council would be left with no supplier if the supplier failed and

would need to make alternative arrangements if the supplier failed or if the work proved poor value.

Option 5: ECC procures its own framework

- 4.5 ECC could procure its separate framework tailored entirely to its needs. However, this option wouldn't achieve the same economies of scale as the proposed Alliance framework and would potentially be less attractive to the market.

Preferred Option (Option 2)

- 4.6 The ongoing requirement for an efficient, accessible and fast access solution to deliver the Council's capital investment programme supports the selection of option (2) above as the recommended option, which will also allow competitive tension to be maintained within a collaborative working environment.
- 4.7 The preferred option is to replace the current framework with a similar framework, aiming to improve the overall framework by considering the future project pipeline, lessons learned and latest best practice.
- 4.8 A multi-supplier framework enables ongoing competitive tension to be maintained between successful suppliers through the mini competition process, thereby achieving best value.
- 4.9 Whilst there is no guaranteed volume of work to be let to contractors under the framework the estimated total pipeline value across the Alliance for major highway project design and construction services is estimated at £400 million, with ECC projecting to award approximately £50 million through the framework. Several schemes individually are likely to have values above the Public Contracts Regulations 2015 (PCR 2015) financial threshold for Works (c. £4.55m). The resource cost of an open market procurement of an above threshold construction contract is estimated at approximately £30,000 per average project, with smaller contracts costing approximately £5,000. The use of the proposed new framework enables a significant procurement cost reduction across the Alliance for each requirement and will therefore be less resource intensive with an estimated time saving of around 3 months compared to using a separate OJEU process for each project.
- 4.10 The new framework will to be open to existing Alliance members. We are also proposing to make it available for use by others. The current agreement was intended to be available to other Authorities but it has not to date been used in this way. If the new framework is made available to others, then it would be on the basis that the Authority paid for access in accordance with the framework agreement terms and conditions. This would be via an Access Agreement, subject to approval of the Alliance members. The terms of the Access Agreement would be approved by the Deputy Leader and Cabinet Member for Infrastructure if the recommendations are agreed by Cabinet. This charge will cover the Alliance costs of managing the framework and, dependent on volumes, may generate a revenue surplus. If a surplus does arise then the Alliance will review the requirements across the local authorities and assess how this can be

used, such as for training to further upskill staff. The opportunity for other Authorities to call off contracts from the framework, up to the maximum advertised value of the framework, may make it more attractive to contractors when it is tendered. The tender costs for the framework are shared amongst the Alliance members through the operation of a jointly funded combined budget currently held and managed by Cambridgeshire County Council: the budget will be transferred to ECC prior to the framework going live.

4.11 ECC's standard high-level evaluation criteria split is 70:30 price to quality. The framework is seeking a deviation from the approved ECC high level evaluation criteria policy to move to a 60:40 price to quality split. Due to this being an Alliance framework each member has differing views and requirements for their own Authorities approach to the price and quality ratio. Consideration was given across the Alliance to the following in order to reach agreement:

- Variant types of schemes being sourced with different levels of complexity being delivered across the Alliance from cycle maintenance to major schemes
- Alliance members have a different preference of the price:quality ratio with some seeking a complete balance for price and quality and others requiring a higher reflection on price than quality
- Accommodate the needs of the Alliance members to ensure the framework is utilised as a first option approach for sourcing this type of work.
- Therefore, this is evidenced to the Alliance of the need to deviate from the current ECC high-level evaluation criteria. The price:quality split is proposed to be undertaken as follows:
 - The 60:40 price and quality is for assessment onto the initial framework
 - As it is a framework contract, the weighting for quality is the lead factor at this stage, this is in part because price will be tested again at each call off.
 - It is harder to test price at this stage because, the bidder would only be able to price a "scenario" rather than a real project and this may lead to unrealistic bidding.
 - The price and quality ratios can be adjusted at call off stage to suit each of the Alliance members individual requirements.
 - ECC could revert to the current policy of price and quality for the future ECC proposed schemes to be issued via this framework.

5 Issues for consideration

5.1 Financial implications

5.1.1 The ability to ensure ongoing value for money for the Council will be enabled by the framework tender testing rates for preliminaries, profit, and overhead as well as many quality aspects related to value. Projects/schemes called off from the framework will be competitively tendered through the operation of a mini competition with all tenderers appointed to the Lot being asked to bid. The overall

estimated value of the current Alliance members requirements is in the region of £310-£400 million. It is estimated that ECC could spend around £50 million on the framework over its lifetime.

5.1.2 The proposal to continue a managed framework approach to delivery will allow ECC to continue to deliver projects with minimal procurement costs compared to running a full procurement for each requirement as would be the case in the 'Do Nothing' option 1.

5.1.3 The annual membership fee is under review given the change in lead authority, ECC will contain their fee within existing resources (the current fee for ECC is £10,000). In addition, each individual scheme has fees payable that will form part of the scheme cost: as part of the framework the Alliance members pay a scheme fee in to the combined budget of 1% of the tendered scheme value but up to a maximum cap of £20,000 on each scheme. The combined budget is ring fenced for use and is not intended to make a surplus: in the event of a surplus the Alliance will review the requirements of the member authorities and assess how this can be used. The annual membership fee will be set on a full cost recovery basis, which will more than cover the costs of the role of Eastern Highways Alliance Manager and ECC's overhead costs of being lead authority.

5.1.4 As part of ECC being lead authority, the costs and contributions from the Alliance will go through ECCs accounts. The current Joint Authority Agreements and proposed Inter Authority Agreements will protect ECC against any risks associated with this and operation of the same will be monitored to ensure independence from ECC activity is maintained.

5.1.5 The costs of re-procuring the framework will be covered by the balance of the combined budget which is to be transferred from Cambridgeshire County Council following the closure of their account and handing over of the role of Lead Authority to ECC, subject to Cabinet's approval. Any further costs will be met from an additional charge levied to members in the first year.

5.2 Legal implications

5.2.1 The restricted procurement process to establish the framework will need to be run in compliance with the requirements of the Public Contracts Regulations 2015. Once established the framework would enable members of the Alliance to individually call off contracts to meet their requirements in accordance with the mini competition process contained within the framework.

5.2.2 The proposal to make the framework available for use by contracting authorities that are not Alliance members is to be further explored, but it is envisaged that this would be pursuant to an Access Agreement.

5.2.3 As well as the framework agreement and call off terms it is envisaged that the Alliance members will enter into a separate Inter Authority Agreement.

5.3 Market Considerations

5.3.1 Recent events in the construction industry, such as the collapse of Carillion, have led to a concern over the stability of key contractors in the market. This is exemplified by the issues currently being faced by some of the top UK construction companies that have recently suffered decreasing share prices.

5.3.2 Insurance firms are also reflecting the volatility of the construction industry, with many firms withdrawing from the Professional Indemnity insurance market, and those remaining are increasing premiums significantly. Experts are warning that premiums could more than double in the next round of renewals which may impact on the cost of these services. The mini competition process at call off will include evaluation of price: it is hoped that this further competition tension will mitigate against this, but officers will keep this under review.

5.3.3 Procuring a framework means that there is no guarantee given to successful bidders that requirements will be called off. To seek to best protect the Council officers will continue to review market stability throughout the life of the framework and will remain open to amending the route to market if considered necessary for particular projects, especially for the higher value tier projects.

5.3.4 General skills shortage of Civil Engineers across the UK with a significant pull in the south east with rail projects such as High Speed 2.

6 Equality and Diversity implications

6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

7 List of appendices

1. Equality Impact Assessment

2. List of Alliance members

8 List of Background papers

None