

Report title: Sourcing Strategy for Major Schemes – Eastern Highways Alliance	
Report to: Kevin Bentley, Deputy Leader and Cabinet Member for Infrastructure	
Report author: Paul Crick, Director for Performance, Investment and Delivery	
Date: July 2020	For: Decision
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County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 Following the decision taken by Cabinet on the 23 July 2019 (FP/400/03/19) for the re-procurement of the Eastern Highways Framework 3 (“EHF3”), this report seeks approval by the Deputy Leader and Cabinet Member for Infrastructure to approve entering into agreements related to EHF3, as delegated by Cabinet.

2. Recommendations

- 2.1 To approve the terms of the Inter Authority Agreements (“IAA”) and Joining Agreements (“JA”) to be entered into between Essex County Council (“ECC”) and the Eastern Highways Alliance (“EHA”) members and to delegate to Director, Performance, Investment and Delivery to enter into the IAA and JA.
- 2.2 To approve the terms of the Access Agreement (“AA”) to enable the EHA to make the Framework available to be used by other contracting authorities.

3. Summary of issue

About EHA

- 3.1 ECC is a founding member of the EHA which was established in 2012 and is a formal collaboration between ten local authorities across the East of England. Current EHA members are listed in Appendix 2. The purpose of the EHA is to share expertise, 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 (CCC) in 2016 on behalf of the EHA members. The framework expired on 31 March 2020.
- 3.3 On 23 July 2019, ECC Cabinet took a decision to go out to the market to re-procure an EHA Framework. The re-procurement is currently being undertaken.

Inter Authority Agreement and Joining Agreement

- 3.4 In readiness for the conclusion of the procurement exercise and in readiness for the new Framework Agreement commencing, it is necessary to review and update the arrangements between ECC and the EHA members in using the Framework. There are existing IAA's and JA's which have been in place since April 2016.
- 3.5 Both the IAA and JA require updating to reflect changes and updates needed including the change in lead authority from CCC to ECC. Under the existing framework there is no AA in place to enable other Authorities an opportunity to join the EHA.
- 3.6 The IAA will be a legally binding agreement between ECC and EHA members and covers all the obligations and liabilities of each Party. The EHA members confirm they have obtained all the necessary consents to enter into this agreement. The IAA and JA will protect ECC against any risks associated with the costs and contributions related to the Framework and operation of the same will be monitored to ensure independence from ECC activity is maintained.

Access agreement

- 3.7 In is intended that the EHF3 will be open to existing EHA members. The EHA are also proposing to make it available to use by other contracting Authorities. The current framework was intended to be available to other contracting Authorities but to date has not been utilised in this way. AA is needed to allow other contracting Authorities who are not EHA members to join and benefit.
- 3.8 With an AA other contracting Authorities will have the opportunity to join the EHA and benefit and utilise the EHF3.
- 3.9 Whether other contracting Authorities can access the EHF3 will be subject to the approval by EHA members. ECC will, as lead Authority have the overriding decision on approving other contracting Authorities to join. The terms of the AA will be approved by the Deputy Leader and Cabinet Member for Infrastructure if the recommendations are agreed by Cabinet.
- 3.10 The opportunity for other Authorities to call off contracts from the EHF3, up to the maximum advertised value of the EHF3, may make it more attractive to contractors when it is tendered. The tender costs for the framework are shared amongst the EHA members through the operation of a jointly funded combined budget currently held and managed by CCC. This budget will be transferred to ECC prior to the EHF3 going live.
- 3.11 The Access Agreement is the agreement between ECC and EHA members to allow call-off from the EHF3 by other EHA members ensuring the fee payment is made to the EHA for the use of the framework. The AA ensures that no EHA member uses the framework without the permission of the EHA.

4. Options

Option 1: Keep the current Inter Authority Agreement and Joining Agreement with no Access agreement

- 4.1 This would mean that the current IAA and JA would be out of date and impact on the legal set up of the EHA impacting on the EHA being able to function with possible funding limitations across the Authorities. With no AA this would result in no opportunity for other contracting Authorities to join the EHA.
- 4.2 The EHA and EHF3 could not continue without a revised IAA. The joint commissioning of the EHF3 is a key attraction for members to continue partnership working. The lack of an EHA and EHF3 could put at risk the value achieved from greater combined purchasing power.

This option is not recommended

Option 2: Proposed new Inter Authority Agreement and Joining Agreement together with an Access Agreement (preferred option)

- 4.3 Put in place a revised and updated IAA and JA together with an AA across the EHA. This would ensure the EHA could continue to operate with the agreement across the EHA in place to negate any future difficulties.
- 4.4 By using a revised IAA and JA with an AA this will ensure the EHA can continue to apply for funding for the works to be delivered within their Authority.

Option 2 is the preferred option.

Option 3: No Inter Authority Agreement, Joint Authority Agreement and no Access Agreement

- 4.5 Without either an IAA, JA and AA it would have implications to the EHA being able to continue across the Eastern Region and reduce funding opportunities and the collaborative approach.
- 4.6 Without an IAA, JA and AA the implications to ECC would result in an open market tender for every project individually as it arises or call off from a framework agreement organised by another party. This could add significant cost 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.

This option is not recommended

5. Issues for consideration

5.1 Financial implications

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- 5.1.1 As a result of the new IAA, ECC will become the new lead authority, taking this responsibility from Cambridge County Council (CCC) as the departing lead authority. Residual funds of £226,827 relating to the framework that CCC held have been transferred to ECC.
- 5.1.2 ECC will incur costs in relation to the administration of the alliance in respect of staff time and other fees, the estimated costs are set out in the table below. These costs will be funded from the fees payable as set out below. ECC may need to forward fund these costs if the alliance funding pot is insufficient to cover the costs incurred at any point in time.

	£
EHA Manager role	76,000
Staff training & development	20,000
Essex Legal Services fee	20,000
Hire of facilities	5,000
Licences	15,000
Subscriptions	30,000
Finance support	500
P2P support	500
Total	167,000

- 5.1.3 At the end of a financial year the balance on the alliance funding pot will be reconciled and agreement sought from members to roll forward any residual balance into the following year. On the expiry of the agreement any residual balance on the funding pot will be reconciled, applied to any unfunded costs incurred by ECC and the residual balance shared between members on a basis which is fair and equitable to all members.
- 5.1.4 Entering into the IAA will result in future member contributions being paid to ECC of between £5,000 & £10,000 pa., the amount has been previously determined by the size of the authority and historic use of the framework and is set out in schedule 2 of the IAA. In addition, any fees incurred as and when members utilise the framework will be managed through ECC. These fees are based on 1% of scheme value at tender, capped at £20,000.
- 5.1.5 Any costs incurred by ECC associated with the administration of the alliance is expected to be covered by the annual fee (£5,000/£10,000) and the additional fee payable on award of Call Off Contract (1% of scheme value at tender, capped at £20,000). There is not expected to be any risk of additional cost to ECC as a result of managing this alliance, as historically the fees have exceeded costs, as demonstrated by the excess funds transferred from CCC. A reconciliation will be performed at the end of the year on the account to ensure all costs incurred by ECC are being covered by the fees and the adequacy of the fee levels will be reassessed and amended as necessary subject to agreement of all members.

5.2 Legal implications

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5.2.1 To ensure arrangements between the EHA are complied with there is a requirement to enter into an IAA and JA.

5.2.2 There is no AA in place which would enable other contracting Authorities to access the EHF3 and generate more income for the EHA and make the EHF3 more attractive for potential suppliers to join. To enable other contracting Authorities outside of the EHA to access the EHF3 it is crucial to have an AA to allow them to do so and to formalise this arrangement to protect all parties.

6. Equality and Diversity implications

6.1 Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when ECC makes decisions it must have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act
- (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, race, religion or belief, gender and sexual orientation.

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

List of Background papers

Cabinet report FP/400/03/19

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Kevin Bentley Deputy Leader and Cabinet Member for Infrastructure	20.08.2020

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In consultation with:

Role	Date
Executive Director for Place and Public Health Mark Carroll	20.08.2020
Executive Director for Corporate and Customer Services (S151 Officer) <i>Please send to your Head of Finance/Finance Business Partner who will arrange S151 sign off.</i> Stephanie Mitchener on behalf of Nicole Wood	18.08.2020
Director, Legal and Assurance (Monitoring Officer) Laura Edwards on behalf of Paul Turner	09.07.2020