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Report title: Procurement of a Four-Year Framework Agreement for Construction Projects	
Report to: Cabinet	
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Date: 18 April 2023	For: Decision
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County Divisions affected: All Essex	

1 Everyone's Essex

- 1.1 This report seeks approval to procure a four-year framework agreement for construction services to replace the existing Essex County Council construction framework which expires in early 2024. The framework will provide design and construction services for education and other capital construction and major maintenance projects and will be available to other contracting authorities.
- 1.2 The provision of a framework for construction meets with all four strategic aims identified in Everyone's Essex – Our plan for levelling up the county: 2021 to 2025 and will support:
 - Delivering infrastructure to support new homes and communities. The school building and expansion programme will ensure that infrastructure will have the outcome of ensuring that high quality local educational facilities are provided to match new housing and growth
 - Achieving net zero. New buildings will aim to be net zero design, and so will have the outcome of generating renewable energy and using energy efficient construction methods to mitigate their carbon impact
 - Enabling healthy lifestyles. Providing local school places will have the outcome of enabling the inclusion of activity and exercise as part of the journey to and from school and include sport provisions where needed within school grounds
 - Supporting high quality education outcomes, enabling teachers to work with pupils in the most conducive environment for success

2 Recommendations

- 2.1 Agree to procure a four-year, multi-supplier Framework Agreement for the provision of design and build services and construction only services using the restricted procedure with 3 Lots as follows:

Lot 1: £0 - £750,000 (a maximum of 8 Contractors)

Lot 2: £500,000 - £4.5m (a maximum of 6 Contractors)

Lot 3: Over £4m (a maximum of 6 Contractors)

- 2.2 Agree that the high-level evaluation criteria for appointing Contractors to the Framework Agreement will be based on 30% price:70% quality, with 10% of the quality score for Lots 1 and 2 assessing Social Value. For Lot 3, social value can be assessed during the mini-competition process.
- 2.3 Agree that the Cabinet Member for Finance, Resources and Corporate Affairs is authorised to award framework agreements to the successful bidders following completion of the procurement process.
- 2.4 Agree that an Advanced Payment Rebate System may only be included in the contract documents if the Director, Legal and Assurance agrees.
- 2.5 Note that the Executive Director, Corporate Services will use her delegated powers to agree the terms on which the framework may be made available to other contracting authorities and that she will seek to ensure that such terms are in broad alignment with the Council's Fees and Charges Policy and recover the Council's contract management costs for non-ECC call-offs.

3 Background and Proposal

- 3.1 ECC delivers many construction projects connected with its statutory functions including building new schools and expanding or refurbishing existing schools, as well as other buildings. ECC currently procures a large proportion of the construction projects it delivers through its own competitively procured framework agreement which is called the Essex Construction Framework 2 (ECF2). ECF2 is performing well, with 48 projects awarded through the Framework to-date. However, it expires at the end of February 2024 meaning that no projects can be awarded after that date, although contracts entered into before February 2024 can continue after that date.
- 3.2 Construction relating to schools is currently the main project type procured through the ECF2. ECC has a statutory duty to ensure there are sufficient school places for children within its area. The current forward plan of new school places (including both mainstream and Special Educational Need) identifies a projected spend of c. £200m in the 4 years following expiry of the ECF2. Once the ECF2 expires, a replacement construction route is required to enable ECC to fulfil this statutory role and offer a best value route to market
- 3.3 A review of all ECC's construction requirements has been undertaken to determine the most appropriate scope for the replacement solution to the ECF2. The review has found that:

- 3.3.1 Education projects are generally completed through one of the three tiers of ECF2, usually on a two stage Design and Build (“D&B”) basis.
- 3.3.3 Major highways projects are typically procured on a construction only basis through the Eastern Highways Alliance 2 Framework (EHA2) or via open market tendering depending upon their scale. EHA2 is a partnership framework, offering scale benefits and management cost efficiencies. Alongside the other partnership authorities, ECC is already taking a leading role in preparing to replace EHA2, providing an opportunity to deliver improvements. This element is therefore outside the scope of this solution.
- 3.3.4 Minor highways projects (projects under £500,000) – are awarded on a Design and Build basis through ECC’s Essex Highways Contract with Ringway Jacobs. They are therefore adequately catered for and outside the scope of the required solution.
- 3.3.5 Capital maintenance of ECC maintained schools and its core estate is currently managed by MITIE Ltd through ECC’s Property and Facilities Management contract. There is potential for the replacement solution to ECF to provide flexibility for solutions for major ECC maintenance projects as well as providing an option for schools or other third parties to directly secure experienced contractors quickly.
- 3.3.6 Housing projects are currently procured on a project specific basis via open tender; however the housing service is currently investigating a number of options to expedite procurements. Discussions have taken place to assess options for jointly procuring a solution, however due to timescales, the nature of the contractors involved and the need for clarity over the solution, it is proposed that the two solutions are delivered independently. Essex Housing, a service within ECC will still have access to this framework if required.
- 3.3.7 Other built environment projects across the Council, such as those for Country Parks, Essex Outdoors, Libraries, Waste etc. are delivered in varying ways, including third party / government frameworks, open market tender or via the Mitie Ltd contract. These projects often align well with ECF2 and therefore should be within scope for the replacement solution, allowing it to become the ‘go to’ procurement route for ECC construction projects unless the projects are very specialist in nature.
- 3.4 The preferred option is to replace the ECF2 with a similar but improved framework (the proposed new framework), ECF3, taking the future project pipeline, lessons learned and latest best practice into account.
- 3.5 ECC has developed significant experience in procuring and managing construction frameworks and their call offs since 2008 including from ECF2, ECF and its predecessor, Smarte East.
- 3.6 A replacement framework will incorporate best practice, together with being tailored specifically to meet ECC’s requirements and is therefore considered to represent the best value option.

- 3.7 It is proposed to procure a multi-supplier framework since this would enable competition to be maintained thereby achieving best value. ECC's requirements will be competitively tendered within the proposed new framework via a mini-competition call-off process between suppliers on the relevant Lot.
- 3.8 The value estimated to go through the framework over the 4 year period is £400m.
- 3.9 Whilst there is no guaranteed volume of work to be let to contractors under the proposed framework, the current pipeline for education projects indicates that ECC is likely to award approximately eight contracts per year through the Framework, at least three of which are likely to have values above the Public Contracts Regulations 2015 (PCR 2015) financial threshold for Works (c. £5,336,937). The cost of an open market procurement of an above threshold construction contract is estimated at c. £30,000 per average project, with smaller contracts costing c. £5,000. Use of call-offs (via a mini competition) under the proposed new framework will be less resource intensive and deliver significant procurement cost reductions to ECC than undertaking an open market procurement outside of the Framework Agreement.
- 3.10 It is proposed that the new framework will be open to other contracting authorities (including other local authorities, schools, academies, Essex Police, Essex County Fire and Rescue Service) on a charged basis in line with ECC's Fees and Charging Policy. The opportunity for call off contracts from other authorities will make the proposed new framework more attractive to contractors when it is tendered. Contractors will be required to pay ECC a fee on each non-ECC call-off contract so that the Council can recover the costs incurred in managing such access. This will at the least cover ECC's framework contract management costs for non-ECC call-offs and, dependent on volumes, may generate a revenue surplus.
- 3.11 Three Lots will be created. Contracting authorities are able to limit the number of lots that are awarded to one tenderer provided the maximum number is stated in the procurement documents. In order to ensure sufficient competition and attract small companies and SMEs to Lot 1 it is proposed that:
- 3.11.1 Contractors can be appointed to a Framework for both Lots 2 and 3.
- 3.11.2 Contractors awarded appointed to a Framework for Lot 1 will not be appointed to a Framework under Lot 2 or 3.
- This configuration will enable a maximum of 12 Contractors and a minimum of 6 contractors across Lots 2 and 3.
- 3.12 Lot 1 is likely to be attractive to smaller contractors in Essex because of its value. As a result of this use of lot 1 is only likely to be attractive to other contracting authorities within or very close to Essex.

- 3.13 Lots 2 and 3 are likely to secure contractors of a size that are capable of covering the whole of Essex and beyond. These lots will be attractive to contracting authorities across a much wider area.
- 3.14 It is proposed that the evaluation ratio for appointing contractors to the proposed new framework is 30:70 price to quality split at a framework agreement level. This split recognises the importance of the qualitative aspects of bidders approaches to project delivery in maintaining predictable outcomes and driving cost efficiencies through their supply chains. Furthermore, as only certain prices/rates can be fixed at a Framework level, the value of price assessment at the Framework stage is limited, with price having a much greater impact on ECC budgets at call-off stage. Additionally, it is proposed that bidders are 'pre-qualified' on certain aspects of quality at the Framework stage in order to avoid the requirement to repeatedly answer certain competency-based quality questions at call-off stage. It is therefore felt that quality is of greater importance to assess bidders onto the new Framework. The intention is that for ECC projects the price/quality split for call offs would then be heavily weighted towards price considering the intention to pre-qualify on quality.
- 3.15 The qualitative aspects of each bidder's approach to project delivery will be critical in maintaining predictable outcomes and driving cost efficiencies through the supply chain and a higher than usual evaluation weighting of quality as against cost when appointing contractors to the proposed new framework is therefore justified.
- 3.16 The evaluation criteria for the award of individual call off contracts from the framework will be determined on a project specific basis to retain flexibility and ensure the framework remains attractive to external users. The price: quality ratio will vary depending on the type of contract being let, for example a fully designed project may have a higher price ratio than one that will require full design by the successful contractor. There will be an internal call-off policy developed for ECC projects which will outline the expectations for the price:quality ratio for standard projects. This policy will be agreed by the Director, Procurement after consulting the Director, Infrastructure Delivery and Procurement, and any deviations from this policy will need to be agreed by the Director, Procurement. Within Lot 3, 10% of the proposed quality score for ECC projects is also likely to also assess social value, as larger contracts offer more scope within the duration of the project to assess these elements.
- 3.17 The current ECF2 framework uses the NEC3 suite of Contracts, published by the commercial arm of the Institution of Civil Engineers, predominantly through the use of NEC3: Option A. The proposal in the new framework is to move to NEC4, which is a newer and up to date version of the same contract. This form of call-off contract is suitable for the type of works being procured under this Framework.
- 3.18 It is being considered whether an Advanced Payment Rebate System (APRS) will be included within ECF3 whereby the Council can pay less for paying more quickly. There are some outstanding queries around the inclusion of an APRS and its interface with the Housing Grants, Construction and Regeneration Act

1996. It is proposed that the Director, Legal and Assurance is authorised to agree its inclusion.

- 3.19 Recent global events have impacted construction particularly in the latter part of 2022 and into 2023. This has driven higher tender prices due to Covid, fuel cost increases, Brexit, war and high levels of inflation. These are project related risks and are not expected to have any additional requirements upon insurance levels as part of the procurement of the framework.
- 3.20 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.
- 3.21 To ensure a robust framework is established, the team will continue to review market stability and will remain open to amending the mini-competition approach if considered necessary for particular projects, especially for the higher value tier. Following award of the framework, contractors will be monitored regularly to ensure that no new work is awarded to those suppliers which are unable to demonstrate required financial stability.

4 Links to our Strategic Ambitions

4.1 This report links to the following aims in the Essex Vision:

- Provide an equal foundation for every child
- Develop our County sustainably
- Share prosperity with everyone

4.2 Approving the recommendations in this report will provide a framework to support the Council's ambition to be net carbon neutral by 2030. This will be achieved through the Scope and Employers Requirements set out in each Call Off Contract, typically including specifications for buildings to be efficient in operation along with measures such as solar photovoltaic cells, air source heat pumps and insulation. A Carbon Reduction Plan will also form a pass/fail requirement within the Standard Selection Questionnaire (SSQ) section of the tender in order for bidders to progress to the Invitation to Tender stage. Additionally, it is proposed that, at mini-competition stage, there will be a weighted question on environmental impact for ECC projects which will be detailed within the ECC internal call-off policy.

4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- A high quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow

- 4.4 In order to maximise efficiencies, whilst also taking account of existing effective delivery arrangements, the scope of the replacement sourcing solution should include education projects, major maintenance projects and any other built project requirements that may arise from time to time within ECC. The framework will also allow access from other local authorities and public sector bodies that wish to access a Construction Framework.

5 Options

Option 1: Do not replace the construction framework and rely on individual procurements of construction projects.

- 5.1 This would mean that upon expiry of the ECF2, ECC would not have its own framework in place to deliver capital construction projects. 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 (see below). This approach would add significant cost and delay to each project as well as potentially increasing risk in delivery. It could also prevent the development of working relationships with a consistent pool of contractors and the best practice improvements that result from this.

Option 2: Procure a Replacement Essex Construction Framework, ECF3 (recommended)

- 5.2 Procure a new non-exclusive 4-year framework agreement. This would ensure flexibility and competitiveness and would be tailored to ECC needs and aspirations. This option would not have the same economies of scale as other wider frameworks or a commitment to a single supplier, however it would enable relationships to be developed with a consistent pool of suppliers and framework performance management to maintain required standards.
- 5.3 By delivering its own framework, ECC also has the potential to offset some of the delivery and management costs by allowing access to other contracting authorities for a fee. This approach has already been adopted in ECF2. Any income achieved will be used to contribute to existing savings within the Medium-Term Resource Strategy.

Option 3: Do not replace the Essex Construction Framework and use Existing Framework Agreements commissioned by others

- 5.4 ECC could call off contracts from existing framework agreement(s) – via direct award or mini-competition. Whilst this option is suitable for occasional use, it is not recommended for use on a programme wide basis as those frameworks that are available often charge for access (directly or indirectly). A bespoke ECC framework would be tailored to ECC's pipeline of projects (project type and value), would be underpinned by ECC's specific requirements and would seek social value benefits specifically for Essex. Additionally, a period of familiarisation with the call off processes of each framework will be required in order to drive the best outcomes. This will require resource and could be worse than procuring our own solution.

- 5.5 Using an external framework may present difficulties in developing relationships with suppliers; performance management; understanding of ECC's employer requirements and consistency of deliverables and suppliers. There is also no guarantee that a framework will be available which will meet the requirements for an identified project and if one is not, a full procurement exercise will be required.

Option 4: Procure a Sole Supplier Contract

- 5.6 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 with a framework. The Council would be left with no supplier if the supplier failed and would need to make alternative arrangements. This solution would reduce competition and therefore risk higher cost. Capacity to deliver all of ECC's requirements could also be an issue.
- 5.7 The ongoing requirement for an efficient, accessible and fast access solution to deliver the Council's dynamic and varied capital investment programme supports the selection of option (2) above, which will also allow competitive tension to be maintained within a collaborative working environment.

6 Issues for consideration

6.1 Financial implications

- 6.1.1 The capability on the client-side to procure, mobilise and manage the contract is already in place. This is informed and enabled by the Council's experience in procuring and managing the existing construction framework.
- 6.1.2 The resources required to carry out the framework procurement are already in place within the existing procurement and infrastructure delivery teams. There will be associated legal fees to Essex Legal Services, which will be covered by existing budgets.
- 6.1.3 The ability to ensure ongoing value for money for the Council will be enabled by the originating framework tender testing rates for preliminaries, profit, and overhead as well as many quality aspects related to value. Projects called off from the proposed new framework will then be competitively tendered to all contractors on the relevant framework tier on the basis of a client generated target cost based on benchmarked pricing data.
- 6.1.4 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 as would be the case in the Do Nothing option.
- 6.1.5 The proposed replacement framework will be open for third party use with access fees payable to ECC in line with the Council's Fees and Charging Policy. The fee level will be determined as part of the market testing stage. Clearly, utilisation by third parties cannot be guaranteed and any income achieved will be used to

contribute to an existing saving within the Medium-Term Resource Strategy on top of the continued cost avoidance identified with this option.

6.2 Legal implications

6.2.1 ECC has a duty to secure best value in the delivery of its services. ECC is satisfied that procurement of the proposed new framework will achieve best value, using a competitive procurement process for the award of the Framework Agreement and running a mini-competition for each call-off.

6.2.2 ECC is a contracting authority for the purposes of the Public Contract Regulations 2015 and a procurement compliant with these Regulations will be required.

6.2.3 The framework procurement documents must specify clearly and in sufficient detail the process which will be required to award call-off contracts. When ECC calls off works from the Framework, it must follow the process defined in the framework agreement.

6.2.4 All contractors on the relevant lot of the Framework Agreement should be invited to compete in mini-competitions.

6.2.5 All contracting authorities who are to be eligible to access the framework must be clearly identified in the procurement documentation and will be required to sign an access agreement prior to accessing the framework. It is important that the value of the Framework Agreement set out in the procurement documents includes the value of these requirements.

6.2.6 The Public Services (Social Value) Act 2012 replaces a requirement on contracting authorities to consider, when procuring services, how the economic, environmental and social wellbeing of the local area may be improved and how this can be delivered through the procurement.

6.2.7 Contracts must be awarded on the basis of the most economically advantageous tender and qualitative, environmental and/or social aspects should be linked to the subject matter of the contract.

6.2.8 The use of an advanced payment rebate needs to be the subject of legal consideration given that construction law sets out how payments are to be made and when deductions are allowed.

7 Equality and Diversity implications

7.1 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.

7.2 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).

7.3 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.

8 List of Appendices

Equality Impact Assessment.

9 List of Background papers

None