

Subject:	Procurement of construction-related consultants		
Date of Meeting:	19 March 2020		
Report of:	Executive Director Economy, Environment & Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The objective of this report is to seek approval from Policy & Resources Committee to set up new procurement arrangements for construction related consultancy services.
- 1.2 The proposal is to use a purchasing system (which is also known as a 'dynamic purchasing system' under the Public Contracts Regulations 2015). This provides a route to market which is similar to a framework but it is open for new suppliers to join at any time and is run as a completely electronic process. This arrangement will be used to award contracts for construction related consultancy services across the Royal Institute of British Architects (RIBA) Plan of Work 2013 (stages 0-7) when Council expertise and/or resource to fulfil those services is unavailable.

2. RECOMMENDATIONS:

That Committee:

- 2.1 Grants delegated authority to the Executive Director Economy, Environment & Culture to:
 - 2.1.1 Set up a dynamic purchasing system for construction related consultancy services;
 - 2.1.2 Admit organisations who meet the selection criteria to the system referred to in 2.1.1 above;
 - 2.1.3 Enter into a framework agreement with each of the organisations who have been admitted to the system referred to in 2.1.1 with an initial term of four years and the option to extend by up to a further two years;
 - 2.1.4 Approve and enter into extensions to the framework agreement(s) for a period of up to two years following the initial term.

3 CONTEXT/BACKGROUND INFORMATION:

- 3.1 In 2016, following a decision by Policy Resources & Growth Committee on 3 December 2015, the Council's procurement team set up a dynamic purchasing system for construction related consultancy, to procure compliantly external consultancy across the Royal Institute of British Architects (RIBA) Plan of Work 2013 (stages 0-7) with a term of 4 years (1st September 2016 to 31st August 2020).
- 3.2 This arrangement was set up to help to address the following issues:
- The Council had an ongoing requirement for external advice relating to construction and there were not always available internal expertise and/or resources to fulfil certain roles.
 - Some services in the area of construction consultancy were covered by existing contracts, however this was often not the main scope of the contract and these services were frequently sub-contracted, therefore establishing an indirect relationship with these consultants.
 - In the past there were performance quality concerns and additional costs incurred (fees) when accessing external frameworks, together with a concern that they did not support the local economy, with many of the consultants on them being large, national companies.
- 3.3 The services provided under the current arrangements are as follows:
1. Architectural services including landscape architect
 2. Asbestos surveyor
 3. Building surveyor
 4. CAD technician
 5. Clerk of works
 6. Electrical engineer/designer
 7. Engineering services including structural engineer
 8. Financial viability assessor
 9. Health & Safety Advisor
 10. Mechanical engineer/designer
 11. Project manager
 12. Quantity surveyor/cost consultant/employer's agent
 13. Urban and regional planner
- 3.4 Within the last year (August 2018 – August 2019) ten contracts have been awarded by the Council using the system (mainly for building surveyor and engineering services).
- 3.5 As well as the Council, the following authorities have signed an access agreement to use the Council's system in order to procure their construction related consultancy requirements:
- Adur and Worthing Councils
 - Arun District Council
 - Crawley Borough Council

- East Sussex County Council
- Hastings Borough Council
- Horsham District Council
- Mid Sussex District Council
- Reigate & Banstead Borough Council
- Wealden District Council

3.6 Current position

- 3.6.1 The spend across the whole Council for construction consultancy services, procured through various routes, for the financial year 2019/2020 was £2.3 million.
- 3.6.2 The Council has an ongoing requirement for the provision of external construction consultancy services within short timescales and through a compliant route. It procures these services through various routes as follows:
- The construction related purchasing system referred to above.
 - Suitable central purchasing bodies' frameworks.
 - Subcontracting of construction consultancy services where a construction/works contract has been entered into. When this arrangement is put in place it requires a main contractor/subcontractor relationship rather than a direct Council relationship with the consultant.
- 3.6.3 There is a need for the Council to continue to tap into new entrants to this market, through which ever procurement route is chosen. This is to provide the Council access to the most relevant and recent consultancy expertise for any of the diverse construction related projects the Council undertakes.
- 3.6.4 There is still a demand from District, Borough and County level local government authorities in East Sussex, West Sussex and Surrey to access the current and any future Brighton & Hove City Council construction related consultancy services procurement arrangement.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 POSSIBILITY OF PROVIDING THIS CONTRACT IN-HOUSE

- 4.1.1 Officers will continue to seek to use in-house expertise e.g. architects, building surveyors and so on, where possible. However, there is not always the in-house expertise and/or the resource to fulfil certain roles/undertake certain tasks due to the fluctuation of the Council's need and the timescales in which the resource needs to be available to the Council.

4.1.2 Some of the Council's needs in relation to construction related consultancy are unable to be fulfilled by in-house resource as it's not always possible to recruit to these roles.

Alternative Routes to Market

4.1.3 Several procurement routes have been assessed. Details of each including the preferred option are explained below:

i. Existing contracts

4.1.4 The Council's highways and transport service area have a professional services framework which includes civil and structural engineering and other highways related roles. This framework is for transport and highways related works only and therefore not appropriate for other departments to use. It is proposed however that the highways and transport service will be able to access the Council's new purchasing system for construction related consultancy services as appropriate, providing an alternative route if required.

ii. Central Purchasing Body Frameworks:

4.1.5 Suitable frameworks have been identified, however in this instance there are several disadvantages to using frameworks:

- May not support the local economy with many being large, national suppliers
- May not be value for money as rates and margins may be larger than local SMEs who may have further to travel
- Suppliers on the framework are fixed for the duration of the frameworks so unable to accommodate the addition of any new suppliers entering the market place and/or maintain the necessary capacity required on the framework if a supplier is removed from the framework due to performance issues or if the supplier ceases to trade.
- Terms and conditions of framework may not satisfy all the Council's specific requirements.

4.1.6 There are several advantages of this option, and these are detailed below:

- Contract Standing Order compliance.
- Quick and simple - there's no need to run a full tender exercise in accordance with the Public Contract Regulations 2015.
- Established clear quality standards and pricing competitiveness.
- May be better value for money due to national framework economies of scale.

iii. Third party arrangements

4.1.7 Suitable third-party purchasing systems are available for the Council to access however there is no guarantee that these routes to market would support the

local supplier base as well as a Council managed arrangement can. In addition, there may be reduced commitments to social value which may not meet the Council's current priorities.

iv. Compliant council managed purchasing system – PREFERRED OPTION

4.1.8 A compliant procurement would be undertaken in accordance with the Public Contract Regulations 2015, which will follow the rules of the restricted procedure with the condition that all bidders satisfying the selection criteria been admitted to the purchasing system and the number of bidders admitted to the purchasing system is not limited.

4.1.9 There are several advantages with this option:

- Once in place it will provide a quick and compliant tender process adhering to Public Contracts Regulations 2015.
- Competitive rates can be secured following mini competition call offs for each requirement.
- Accommodates the addition of any new suppliers (who satisfy the selection criteria) entering the market place and provides the ability for the capacity of the system to be maintained if a supplier is removed from the system due to performance issues or if the supplier ceases to trade.
- Social value can be delivered in accordance with the Council's social value framework.
- Will enable trained Officers to self-serve resulting in reduced demand on the Procurement Team
- Terms and conditions used will satisfy the Council's specific requirements.

4.1.10 There are several disadvantages with this option:

- Resource intensive to draft documentation and to set up the arrangements for the system
- Ongoing officer resource to manage the arrangement once it is in place

4.1.11 The following services have been identified for inclusion under the new the arrangement for construction related consultancy services (but may change during pre-tender consultation):

1. Architectural services
2. Landscape architect
3. Asbestos surveyor
4. Building surveyor
5. CAD technician
6. Clerk of works
7. Electrical engineer/designer
8. Engineering services including structural engineer
9. Financial viability assessor
10. Health & safety advisor
11. Mechanical engineer/designer

12. Project manager
13. Quantity surveyor/cost consultant/employer's agent
14. Urban and regional planner

- 4.1.12 The new system for construction related consultancy services, which will be open for new suppliers to join at any time and is run as a completely electronic process, will be structured and run to enable the following:
- 4.1.13 Call-off's will be run through mini competitions once the necessary authority to procure and award has been obtained from the relevant officer in accordance with contract standing orders (CSOs). The mini competition will establish the consultant to be appointed for each work package. There will be no minimum or maximum value to the call-offs as the consultancy requirements will vary and the term will also vary from one day to potentially years.
- 4.1.14 The Council's e-sourcing portal (InTend) will be used to run the system. The high risk, high value (>£75,000) requirements will require procurement resource to support the call offs. For the low value (<£75,000), low risk requirements trained Officers will be able to self-serve to procure call off contracts using the system. This will reduce the procurement support needed for these activities in the medium-term enabling procurement resource to be utilised to address higher value higher risk activities within the Council.
- 4.1.15 As well as the Council, District, Borough and County level local authorities in East Sussex, West Sussex and Surrey (subject to access agreements) will be able to access it.
- 4.1.16 Break clauses can be included so that there is flexibility for the Council to continue employing the same consultant through several project/RIBA stages (usually based on funding and performance).
- 4.1.17 The evaluation of mini competitions will include consideration of social value through commitments to additional services such as apprenticeships, community initiatives and client training.
- 4.1.18 Bidders may be required to offer a discount should they be awarded more than two roles under one work package/mini competition.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Procurement Advisory Board (PAB) on 27th January 2020 considered this matter and agreed that a report setting out the proposals should progress to Policy & Resources Committee for a decision.
- 5.2 District, Borough and County level local authorities in East Sussex, West Sussex and Surrey who currently access the Council's purchasing system have advised they want to access the proposed new arrangement (subject to access agreements).

6. CONCLUSION

Value and Savings

- 6.1 The system will allow the Council greater control and flexibility to procure construction related consultancy work and may lead to greater value for money by channelling the Council's requirements through a consolidated route.

Potential Risks

- 6.2 The main risk associated with this activity is that the system is not utilised by the Council either through officer's lack of knowledge of its existence or perceptions the call off process is complicated, time consuming and cumbersome. In addition, the market may feel disillusioned with the Council if insufficient work is placed through the system.
- 6.3 The proposal to mitigate these risks is to produce a "Simple Guide to the dynamic purchasing system" in addition to publicising the benefits of using the compliant system on The Wave and making the template documents user friendly to both officers and bidders.

7. FINANCIAL & OTHER CONSIDERATIONS

Financial Implications:

- 7.1 A minimum contract value of £5,000,000 would be satisfactory as it will be open to other local authorities. The current spend in this financial year 2019/20 is estimated at circa £2,300,000. Costs are borne by the relevant capital and construction budgets.
- 7.2 The purchasing system will provide flexibility of spend as it does not guarantee orders and there will be no obligation to spend any value. The system will allow the council greater control and flexibility regarding the construction related consultancy work and may lead to efficiencies and greater value for money. The system will allow other Local Authorities to access it.
- 7.3 Value and savings with regards to the use of the system are identified within section 6. High value procurements will require some Procurement Officer support, and this will be met from within the existing budget resources.

Finance Officer Consulted: Rob Allen

Date: 11/02/20

Legal Implications:

- 7.4 In accordance with Part 4 of the council's Constitution, Policy & Resources Committee is the appropriate decision-making body in respect of the recommendations set out in paragraph 2 above. In addition, in order to comply with CSO 3.1, authority to enter into contracts with a value in excess of £500,000 must be obtained from the relevant committee.
- 7.5 Contracting authorities are permitted by Regulation 34 of the Public Contracts Regulations to set up a 'dynamic purchasing system'. This purchasing system is

similar to an electronic framework agreement, but new suppliers can join it at any time. It is run as a completely electronic process and should be set up using the restricted procedure and as set out in Regulation 34. The procurement involves a two-stage process. First, in the initial setup stage, all suppliers who meet the selection criteria and are not excluded must be admitted to the system. The Council must not impose any limit on the number of suppliers that may join. Unlike framework agreements, suppliers can also apply to join the system at any point during its lifetime. Individual contracts are awarded during the second stage. In this stage, the Council will invite all suppliers (who have passed the selection criteria) to bid for a specific contract.

- 7.6 Legal Services will advise during the procurement process to ensure compliance with all relevant public procurement legislation as well as the Council's Contract Standing Orders (CSOs).
- 7.7 The value of the call off contracts through the system will vary from project to project and therefore authority to procure and award each call off contract through the system must be obtained in accordance with the scheme of delegations.

Lawyer Consulted: Isabella Sidoli

Date: 03/02/2020

Equalities Implications:

- 7.8 In the first instance, officers will seek to use internal expertise e.g. architects, building surveyors and so on, where possible.
- 7.9 The system will provide greater access and visibility of Council opportunities for the provision of construction related consultancy as all suppliers satisfying the selection criteria area will be admitted to the system and invited all the mini competitions conducted through the system.

Sustainability Implications:

- 7.10 By the Council undertaking a tender process to set up the system, this may encourage more local supplier interest and potentially could lead to a greater number of contracts awarded to local suppliers which would contribute to the circular economy and community wealth of the City. The procurement documents will also be designed in a manner to encourage small to medium enterprise (SME) applicants, at both the selection and the call off stage

Brexit Implications:

- 7.11 The system would be flexible enough to accommodate the addition of new consultants (provided they satisfy the selection criteria) and so maintain capacity through the system in the event that, for example, a consultant on the system ceases to trade due to any negative impact caused by Brexit.

Social Value and Community Wealth Building Implications:

7.12 During the procurement process bidders will be asked how they can deliver social value in accordance with the Council’s social value framework. The benefits for each call off will be identified and evaluated at each mini competition.

7.13 In addition, the Council will ensure that the specific social value requirements such as encouragement of local employment, cascade of payment terms and Real Living Wage commitments will be agreed as part of gaining a place on the system.

Cost/Quality Weighting Considerations

7.14 The indicative call-off cost/quality ratios for the construction consultancy procurement are to be set within the following ranges:

Quality	Price	Social Value
10% - 70%	20% - 80%	minimum10%

7.15 The above range is to provide flexibility at call off stage when the specifics of a requirement will be known.

7.16 The evaluation of the bids for contracts will be based on most economically advantageous tender (MEAT) which combines qualitative and cost elements to identify the best offer and service provider for a specific contract requirement.

