

<b>Subject:</b>	<b>Coast Protection and Highway Structures Maintenance Framework Agreement</b>		
<b>Date of Meeting:</b>	<b>19 March 2015</b>		
<b>Report of:</b>	<b>Executive Director Environment Development and Housing</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Martin Eade</b>	<b>Tel: 29-4568</b>
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report seeks approval for the tendering of a framework agreement to provide for the structural maintenance of the city's coast defences and highway structures.
- 1.2 The continued maintenance of coastal and highway structures is essential to maintain the attractiveness of the City's seafront and to communications around the City.

**2. RECOMMENDATIONS:**

That Policy and Resources Committee:

- 2.1 Approves the procurement of a framework agreement for maintenance works with a term of four years from 1 October 2015 to 30 September 2019; and
- 2.2 Grants delegated authority to the Executive Director Environment, Development and Housing -
  - (i) to carry out the procurement of the framework agreement referred to in 2.1 above including the award and letting of the framework agreement; and,
  - (ii) to enter into any subsequent call-off contracts to the framework agreement referred to in 2.1 above should he/she consider it appropriate at the relevant time.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The Council is a coast protection authority and a highway authority.

### Coast Protection

- 3.2 The powers under the Coastal Protection Act 1949 are 'permissive', ie. the Council has no statutory obligation to carry out works to defend the coast. However, the City's beaches and promenades are a fundamental part of the attractiveness of Brighton & Hove.
- 3.3 As a coast protection authority the Council can use its powers to carry out work to our coast defences. The defences consist of beaches, groynes, seawalls and the Undercliff Walk. Maintaining these defences prevents erosion of our coastline and supports and enhances the attractiveness of the City.
- 3.4 The Transport Division is very active in maintaining the City's coast defences. The seawalls and groynes that maintain our beaches and defend the City require continuous maintenance to combat the daily attrition of the sea.

### Highway Structures

- 3.5 As highway authority the Council carries out a range of activities under a number of different contracts. 'Highways structures' is the collective term given to the bridges, retaining walls and subways that support or cross the public highway. Highway structures provide physical support to parts of the highway network and require regular maintenance and repair to ensure their effectiveness and safety. As a highway authority, the Council is required to maintain the public highway free from danger.
- 3.6 The Transport Division currently carries out repairs, reconstruction and general maintenance of our coast defences and highway structures under a maintenance contract with C.J.Thorne that is due to expire on 30 September 2015.
- 3.7 It is necessary to procure a new framework agreement for 4 years from 1 October 2015.
- 3.8 The new framework agreement will be made available to Brighton Marina and Shoreham Port Authority so that they may use the contractor and choose to call off contracts for works under the framework. This will increase the attractiveness of the contract to tenderers, increase competitiveness and result in better value for money for the Council.

## **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The Council views the city's beaches and promenades as a fundamental part of the attractiveness of Brighton & Hove and wishes to continue to maintain them to an acceptable standard. However, if the Council were to decide to withdraw from coast defence activities then in all probability the Environment Agency would provide only a minimum level of defence.
- 4.2 There were no other frameworks run by other neighbouring authorities that were applicable for the Council to use. The Council always looks for ways of collaborating with adjacent authorities when tendering work. In this instance Lewes DC and Adur and Worthing councils were asked if they would like to have access to the Framework but have declined.

## ***Intention of Environment, Development and Housing to develop new framework***

- 4.3 A new framework agreement will enable the Council to carry out works of repair, reconstruction and maintenance to the city's coast defences and highway structures. The framework agreement will be between the Council and one contractor who will complete all work on the coast defences and highway structures. As it will be a framework agreement, it means that the appointed contractor has no guarantee of any work over the 4 year period of the agreement. The value of any individual contract called-off under the framework is unlikely to exceed £90,000 but given that the work is often in response to extreme weather this can only be an estimate.
- 4.4 Shoreham Port and Brighton Marina have been invited to join the Council in this framework. Both these organisations have requirements for coast defence work. The Council will therefore be collaborating with both organisations enabling closer working relationships and a more coherent strategy for the whole stretch of coastline, as well as potentially achieving greater economies of scale due to the amount of work being greater between the three organisations than just from the Council's own requirements. Over the 4 years of the framework agreement the combined value of works is likely to be in the order of £2.6m which puts the framework arrangement under the EU procurement threshold. It will not be necessary to advertise it in OJEU but it will still need to be subject to a competitive procurement process.
- 4.5 Various procurement options have been discussed with Strategic Finance and Procurement and this form of framework, procured through a rigorous tender process is considered most suitable. The use of a framework agreement with "call-off" arrangements and a Schedule of Rates, allows market tested competitive rates to be utilised for any civil engineering projects within the scope of the documentation.

## **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 Not Applicable as this framework only enables individual works and projects to be undertaken, each of which will undergo its own engagement and consultation process as required.

## **6. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 6.1 It is anticipated that expenditure related to the proposed tender for coast protection and highway structures framework agreement will be funded from existing revenue budgets and approved capital budgets within the Transport service.
- 6.2 The financial implications of the recommendations will depend on the outcome of the procurement process and the works required. Any variation between contract costs and approved budgets will be reported as part of the monthly budget monitoring process.

Legal Implications:

- 6.3 Under the Highways Act 1980, the Council has a duty to maintain the public highway and a general power to undertake improvements to the highway, including the maintenance of any structures on the highway.
- 6.4 The powers given to Coast Protection Authorities under the Act are permissive, i.e. the Council is not obliged to protect the coastline but chooses to do so in Brighton & Hove.
- 6.5 The Policy & Resources Committee is the appropriate decision-making body in respect of the recommendations at paragraph 2 above, given that the value of the contracts arising under the framework is likely to have corporate financial implications.
- 6.6 Further, the Council's Contract Standing Orders require that authority to enter into a contract valued at £500,000 or more be obtained from the relevant committee, which in this instance is the Policy and Resources Committee due to the total value involved of the proposed call-off contracts over the term of the framework agreement.
- 6.7 As this framework agreement relates to public works contracts, the value of the proposed framework means that the UK Public Contracts Regulations will not apply to the procurement of the framework agreement as it is below the EU procurement threshold. However, the procurement process must be run in accordance with EU Treaty Principles and be subject to adequate advertising and fair competition. The tender will be scored on the criteria of quality and price as part of the evaluation process.

*Lawyer Consulted: Elizabeth Culbert Date: 23 February 2015*

Equalities Implications:

- 6.8 The Council's Code of Practice on Equalities and Workforce Matters is enforced in all procurement and is incorporated within the framework.

Sustainability Implications:

- 6.9 Sustainability is promoted in all highway engineering contract procurement. Specifications allow for recycling and development of sustainable processes. Contractors are required to have current ISO14001 certification or a recognised equivalent.
- 6.10 The contractor will be required to demonstrate the sustainable use of timber in line with Government requirements
- 6.11 Living wage: it is Council policy that the Outer London Living Wage (OLLW), set by the Living Wage Foundation, be paid as a minimum salary to the Contractor's staff employed to carry out any call-off contracts under this framework.

- 6.12 OLLW increases will be implemented and paid immediately and recharged to the Client accordingly.

Crime & Disorder Implications:

- 6.13 There are no Crime & Disorder implications arising directly as a result of this report.

Risk and Opportunity Management Implications:

- 6.14 There are risks involved in failing to fulfil the Council's statutory duty as Highway Authority to maintain the public highway in accordance with the Council's approved Highway Maintenance Plan. Failure to maintain highway structures could adversely affect the highway asset leading to increasing rates of structural deterioration and associated risk of increasing claims in relation to health and safety, and other types of damage, such as damage to vehicles, which will mean increased insurance claims.
- 6.15 Failure to adequately manage coast defences may lead to coastal erosion, property damage, service disruption, risk to life and potential insurance claims against the Council. It will also harm the visual aspect and attractiveness of the city, together with the tourism value of the city's beaches. The Council therefore wishes to continue to maintain its coast defences and to have control over the standards and appearance of its beaches and promenades.

Public Health Implications:

- 6.16 The maintenance of the City's beaches and promenades for public access encourages outdoor activities such as walking, jogging, swimming etc. and addresses the negative issues outlined in 6.15 above.

Corporate / Citywide Implications:

- 6.17 Approval to procure this framework agreement will enable coast protection and highways structure maintenance works to be undertaken throughout the city without the need to undertake further individual tendering procedures.

Any other significant implications

- 6.18 None

## **7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1 In approving the procurement and award of this framework agreement, the Council will have the means not only to fulfil its statutory duties but also help deliver corporate priorities.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

None

### **Documents in Members' Rooms**

None

### **Background Documents**

None