

**RE-PROCUREMENT OF THE SOUTH EAST WALES, SCHOOLS
AND PUBLIC BUILDINGS (SEWSCAP3) COLLABORATIVE
CONSTRUCTION FRAMEWORK**

**FINANCE, MODERNISATION AND PERFORMANCE
(COUNCILLOR CHRIS WEAVER)**

AGENDA ITEM: 7

Reason for this Report

1. The Cardiff Council's Schools Organisational Planning (SOP) team has been successfully utilising the South East Wales, Schools and Public Buildings (SEWSCAP2) Construction Framework as the procurement vehicle in support of Welsh Government's 21st Century Schools programme (Band A).
2. Cardiff Council is looking to re-procure the existing collaborative framework arrangement, previously let by RCT, which ends on the 31 March 2019 in order to have a compliant procurement vehicle for Welsh Government's 21st Century Schools Programme (Band B) commencing from April 2019.
3. This report requests delegated authority be granted to the Corporate Director of Resources in consultation with the Cabinet Member for Finance Modernisation and Performance to deal with all aspects of the procurement relating to the re-procurement of the SEWSCAP3 framework, including setting the tender evaluation criteria, the award of suppliers to the framework and subsequent operation of the Framework.

Background

4. Rhondda Cynon Taf Borough Council (RCT) procured the current South East Wales, Schools and Public Buildings Collaborative Framework (SEWSCAP2) in May 2015, following the success of the first iteration of the framework which ran from May 2011. The second iteration extended to Mid Wales and provides pre-qualified and suitably experienced contractors to deliver Welsh Government's 21st Century Schools programme, and other public buildings relating to both new build and refurbishment projects over £1.5 million.
5. Sixteen Local Authorities are named as participating authorities in the framework but it is open to all public sector organisations in Wales. The

hosting of the SEWSCAP2 framework moved to Cardiff Council's Commissioning and Procurement team in April 2017.

6. The SEWSCAP2 framework offered a swift route to market that is compliant with EU Procurement directives and the Wales Procurement Policy Statement including delivering on many of the requirements within The Wellbeing of Future Generations Act. The framework has been supported by Welsh Government organisations including Value Wales and Construction Excellence in Wales (CEW) with SEWSCAP2 winning CEW's client of the year award in 2016.
7. Key to the success of the framework is the option for a flexible approach for clients, encouraging early contractor involvement, focusing on long term client/contractor relationships that improve value for money through reduced time to market and duplication of processes, while supporting the development of common standards and sharing of best practise that seeks to drive innovation.
8. Cardiff Council is the second largest user by spend in terms of value on the current SEWSCAP2 Framework. In November 2017 the council indicatively secured £284 million under Band B of the Welsh Government's 21st Century Schools, programme (2019-2024) in order to address sufficiency of demand and address the condition and maintenance backlog. This will be the largest 21st Century Schools programme in Wales and the single biggest capital investment to date in Education Infrastructure. Therefore having a collaborative procurement vehicle in place is of prime importance to avoid any delays to the successful delivery of the Band B programme.

Authority (SEWSCAP2)	Indicative Spend
RCT Council	£ 95,428,465
Cardiff Council	£ 70,472,236
Torfaen Council	£ 52,037,653
Powys Council	£ 45,753,878
University of Wales Trinity Saint David	£ 40,449,714
Newport Council	£ 37,590,732
Swansea University	£ 25,780,795
Cardiff University	£ 24,500,000
Bridgend Council	£ 16,804,261
Monmouthshire Council	£ 16,102,983
Coleg y Cymoedd	£ 15,775,579
Swansea Council	£ 13,689,909
Pembrokeshire Council	£ 10,631,312
University of South Wales	£ 10,151,181
Caerphilly Council	£ 10,126,693
Blaenau Gwent Council	£ 6,500,000
Ceredigion Council	£ 3,807,495
Neath College	£ 3,265,019
Total	£ 498,867,902

Issues

Governance

9. The SEWSCAP2 Collaborative Framework has a steering board made up of representatives from the 10 core local authorities. The board has been in operation for many years providing leadership for the operation of the framework and is now managed by Cardiff's Commissioning and Procurement team as part of the framework transfer in April 2017. The board ensures both participating authorities and contractors work within the principles of the framework:
 - Work together and with the potential clients and their advisors in good faith and in a spirit of mutual trust and co-operation.
 - Act in a co-operative and collaborative manner so as to achieve and advance the relevant construction project and provision
 - Share information honestly and openly: and
 - Highlight any difficulties at the earliest possible opportunity
10. These principles promote good working practices with all stakeholders across the regions to support the delivery of value for money, improve sustainability and to deliver benefit through active community benefits. The purpose of the Board is to:
 - Provide strategic direction and support to the Framework Management team
 - Ensure that the SEWSCAP framework is an effective vehicle to deliver construction projects that provide value for money to the participating authorities and wider public body users

Funding

11. The SEWSCAP2 framework operates through a Levy recovery model, where each call-off project generates a Levy as a percentage of its value. The levy, once collected by the hosting authority is paid back to the membership after costs. The net effect should be cost neutral for Cardiff Council acting as contracting authority, whilst providing the relevant resources to administer develop and promote the use of the framework going forward.
12. The SEWSCAP framework Levy recovery process works in the following way;
 - The result of all call-off contracts and direct awards are notified to the Framework team by the Framework users
 - The contractor is invoiced the levy cost (see table below) upon contract award who then pays the authority within 30 days based on the call off contract value
 - The above process and levy percentages set out below form part of the Framework agreement for the current SEWSCAP2 framework

and will not materially change as agreed with the SEWSCAP Board which should allow the framework to remain competitive over the next 4 years.

- Table 1: Framework Levy SEWSCAP2 by lot:

Lot Description	Levy Percentage
LOT 1: £1.5M - £5M Mid Wales	0.50%
LOT 2: £1.5M - £3M	0.50%
LOT 3: £3M - £5M	0.375%
LOT 4: £5M - £10M	0.250%
LOT 5: £10M - £25M	0.175%
LOT 6: £25M - £100M	0.125%

13. The current framework (2015-2018) has generated total income:-

Project/Spend per year based on date awarded			
Year	Projects	Tender	Fee
2015/16	6	£ 72,293,657	£ 156,066
2016/17	22	£ 264,820,086	£ 503,567
2017/18	15	£ 161,754,159	£ 224,441
2018/19	0	£ -	£ -
Total	43	£ 498,867,902	£ 884,074

Community Benefits

14. To date the SEWSCAP2 framework which has its own CITB Contractor funded skills academy has attained an overall framework achievement of 96% against the KPI's targeting the following areas:-

NSAfC Update: Year 3 Results

KPI	No. Planned	No. Achieved	%
1. Work Experience Placements (In Education)	132	135	102%
2. Work Experience Placements (Not in Education)	53	45	85%
3a. Jobs Created (Apprentices)	60	83	138%
3b. New Entrants	51	100	196%
3c. Graduates	14	11	79%
4. CCIAG Events	56	77	138%
5a. Waged Training Weeks (Apprentices)	1624	2791	172%
5b. Waged Training Weeks (Existing Workforce)	480	576	120%

NSAfC Update: Year 3 Results

KPI	No. Planned	No. Achieved	%
6a. Qualifications (Main Contractor)	35	46	131%
6b. Qualifications (Sub Contractor)	31	69	223%
6c. Short Course (Main Contractor)	39	148	379%
6d. Short Course (Sub Contractor)	28	92	329%
7. Training Plans	46	37	80%
8. Case Studies Approved	42	45	107%

15. As part of the Capital Ambition, and the Council's new Socially Responsible Procurement Policy, SEWSCAP3 will seek to incorporate a number of the deliverables that look to go beyond the current positive recruitment and training targets that seek to address the skills shortage in Construction but will also look to focus contractor activity across the following priority areas:-

- **Local Training and Employment:** Create employment and training opportunities for local people in order to reduce unemployment and raise the skills level of the local workforce, especially in target groups such as long term unemployed
- **Think Cardiff City Region First:** Take account of the social and economic impacts of buying locally when commissioning and contracting, and expect suppliers and contractors to do the same
- **Partners in Communities:** Play an active role in the local community and community support organisations, especially in those areas and communities with the greatest need
- **Green and Sustainable:** Protect the environment, minimise waste, reduce energy consumption and use other resources efficiently.
- **Ethical Employment:** Employ the highest ethical standards in operations and within the supply chain.
- **Promoting Wellbeing of Young People and Vulnerable Adults** Safeguard and promote the welfare of children, young people and vulnerable adults together with the support of the entire community including local businesses

16. Additionally the Cardiff Capital City Region Deal will through its Joint Working Agreement represent a fundamental shift in the way in which local government in the city region collaborates in future across areas of economic development, skills and training, regeneration, strategic planning, housing and transport. The availability of a collaborative construction framework for use by public bodies across the Cardiff City

Region boundary provides a compliant procurement route for future City Region funded construction infrastructure projects.

17. Early contractor involvement (ECI) will be promoted through the new framework. This often results in a more complete approach to design, with the experience of both the designer and the contractor taken into account early in the design process. In addition the approach tends to result in lower project costs and safer working practices on larger full design schemes.
18. Prior to instigating the Call off Process, the framework user will organise workshops to provide a forum where early contractor involvement (ECI) can be introduced to the design process without unfair bias being given to one or more Framework Suppliers.
19. As part of preparation for re-procurement, a lessons learnt exercise has been conducted with recommendations from contactors and local authority users in order to make improvements to the new framework across the following areas:-
 - i. Reflect local authority boundaries in line with the Cardiff City Region
 - ii. Provision of lower value lots to provide greater scope for renovation works
 - iii. Renovation lots starting at £250,000 will provide greater SME access
 - iv. Prime Contractors may appear across numerous lots reducing potential for competition and so consideration to be given to restricting the number of lots contractors can be appointed against in order to promote SMEs for lower value lots
 - v. Introduce relevant community benefits targets that seek to develop beyond targeted recruitment and training and promote use of social enterprises and locally sourced materials across geographic boundaries within supply chains
 - vi. Introduce specialist lots to cover modern methods of construction including off-site manufacture and promotion of sustainable classroom design
 - vii. Currently the recommended Cost / Quality evaluation weighting is 50/50 when appointing contractors from the framework at further mini competition. At this stage there is a need to enable further focus on quality leading to a suggestion of 70/30 in order to promote sustainability via whole life costing, use of UK produced steel in line with WG PAN (Procurement Advice Notice) and enhanced community benefits
 - viii. Improve standardisation and call-off documents and procedures including use of templates
 - ix. Set a sustainable minimum cap on overheads and profit which will develop greater levels of trust and partnership working, removing the need for contractors to negotiate margins causing delays pre-construction.

20. Consequently the member authorities have proposed that the following high level outcomes need to be delivered as part of the re-procurement of SEWSCAP3 :

- Compliance with EU Procurement and Wales Procurement Policy Statement
- Aggregation of demand across framework users to improve value for money for users
- Delivery of sustainable benefits for now and future generations
- Securing an ongoing relationship with suitably competent contractors in the market. Providing benefits of being a preferred client, with rationalisation of process and design, reductions on set up costs and continuous improvement opportunities.
- Providing an ongoing relationship and contractual basis to help facilitate the establishment of long-term framework and performance improvement for school renovations and new builds and wider public building construction.
- Provide opportunities for early contractor involvement and provide better intelligence on client forward pipelines in order to provide the contracting market with the ability to invest within their organisations for the benefit of the client groups.
- Develop robust community benefits delivery, including targeted recruitment and training and supply chain initiatives leading to further enhanced delivery of this Council's new Socially Responsible Procurement Policy
- Improved performance management
- Opportunities for shared learning for clients and contractors

21. The proposed lotting structure will consist of the following geographic lots split by forecast value while the SEWSCAP key users forum has specified a minimum of five contractors be appointed per lot. It is intended that the evaluation weighting based on the positive experience and performance of the current framework will remain at 60% Cost and 40% quality at framework award.

PROPOSED STRUCTURE OF FRAMEWORK	
Lot 1	£250k - £1.5m – Mid Wales (Powys)
Lot 2	£250k - £1.5m – Torfaen; Blaenau Gwent; Monmouthshire
Lot 3	£250k - £1.5m – RCT; Merthyr; Caerphilly
Lot 4	£250k - £1.5m – Bridgend; VoG; Newport
Lot 5	£1.5m - £5m – Mid Wales (Powys)
Lot 6	£1.5m - £3m - All
Lot 7	£3m - £5m - All
Lot 8	£5m - £10m - All
Lot 9	£10m - £25m - All
Lot 10	£25m - £100m - All
Lot 11 – Off-site Con	£250k - £100m - All

22. Whilst matters are subject to consideration, and subject also to legal requirements, it is intended that the call off procedure will require all clients to run further mini competitions for lots valued in excess of £1.5

million, within a flexible price / quality ratio as listed in the table below. With respect to the new lower value lots for renovations and in order to accelerate the award process, a direct award provision will also be made available to clients who decide a single contractor can meet their requirements based against pricing submitted at framework award.

FURTHER COMPETITION EVALUATION CRITERIA
• 100% Price
• 90% Price and 10% Quality/Technical
• 80% Price and 20% Quality/Technical
• 70% Price and 30% Quality/Technical
• 60% Price and 40% Quality/Technical
• 50% Price and 50% Quality/Technical
• 40% Price and 60% Quality/Technical
• 30% Price and 70% Quality/Technical
• 20% Price and 80% Quality/Technical

23. A flexible approach for contracting bodies will continue through the use and promotion of either NEC (New Engineering Construction Contract) or JCT (Joint Contracts, Tribunal) forms of contract. This approach will provide users with the ability to use a menu of contracting forms to enable them to construct fit for purpose commercial arrangements that suit the nature of the contract e.g. risk allocation and options chosen. Greater clarity and simplicity is achieved from clear roles and responsibilities together with definitions for compensation events. Greater stimulus for good project management is promoted with contracting parties due to the use of standardised documents with obligations clearly understood by the contracting market.
24. In order to ensure the contractors being selected for works are performing to the contracting Authority's required standards, a performance-monitoring procedure is being established. This process is designed to ensure that the quality and performance of each framework contractor is recorded and reported at the end of each project, allowing all users to access and share the information. This will ensure that lessons learnt are shared and the quality of work is always improved. This will also include recording information captured at mini competition stage to ensure any additional cost savings are realised and reported.
25. A full review of the current framework KPIs is under consideration by the SEWSCAP stakeholder board and particular attention is currently focused on contractor obligations to participate once on the framework (failure to bid in mini - competitions) and the potential for suspension if necessary. Additionally, continued use of reserve contractors is being considered to promote competition, with the potential implementation of performance deductions with an escalations process based against severity of non-performance and frequency. Legal advice will be sought on these points before determining the final position

26. In order to drive customer satisfaction and promote the SEWSCAP frameworks usage it is planned to introduce a post project review where users are asked to try to compare the initial project objectives against the final project achievements and the Contractors' contribution in achieving this. The following factors will be recorded:
- Time
 - Budget (Claims / Added value)
 - Quality
 - Client satisfaction
27. The following indicative tender timeline is proposed in order to achieve the commencement of the new framework from 1st April 2019.

Activity	Deadline
Issue PQQ	W/C Monday 25 th June 2018
Return PQQ	W/C Monday 6 th August 2018
Evaluation Period	W/C Monday 6 th August 2018 to W/C Monday 10 th September 2018
Issue ITT	W/C Monday 10 th September 2018
Return ITT	W/C Monday 22 nd October 2018
Evaluation Period	W/C Monday 22 nd October 2018 to W/C Monday 26 th November 2018
Intent to Award	W/C Monday 26 th November 2018
Standstill	W/C Monday 26 th November 2018 to W/C Wednesday 5 th December 2018
Award	W/C Wednesday 5 th December 2018
Implementation	W/C Wednesday 5 th December 2018 to Wednesday 1 st May 2019

Reason for Recommendations

To re-procure the South East Wales, Schools and Public Buildings (SEWSCAP3) Collaborative Construction Framework with effect from April 2019.

Financial Implications

28. The proposed model for hosting the SEWSCAP frameworks is self-financing by recovering the costs incurred for supporting this framework

by charging a levy to users of the framework. Paragraph 13 highlights the income earned over the last few financial years. Any income in excess of the amount required to fund the hosting of the framework is returned to the partner authorities.

29. The financial risk in respect of hosting the framework is that the partner councils may reduce or stop their use of the framework and so the levy income will not be generated. This would result in a deficit that the Council would be required to fund. Some uncertainty remains around the scale of the forthcoming Welsh Government 21st Century Schools Plan B programme and in particular the extent to which it will be funded from the Mutual Investment Model (MIM) which will not use the SEWSCAP3 framework. Mitigations to offset this risk include :-
- The use of the SEWSCAP framework also includes Further and Higher Education organisations whose Property investment programmes are not impacted by Schools Plan B programme.
 - Added Value services are being considered which will generate additional fee income.
 - New Lots have been introduced for lower value work in the £0.25million - £1.5million range which are less likely to be influenced by the Plan B programme.
 - The SEWSCAP3 framework will offer a compliant route to market prior to the finalisation of the MIM framework. .
 - Cardiff Council is also the host of the South East Wales Highways Framework with the joint hosting of the two framework allowing some costs to be shared and economies of scale to be achieved.

Legal Implications

30. The recommendations to procure framework arrangements for civil construction works, which frameworks can be relied upon by other public bodies, can be achieved within legal constraints. The main legal constraint being that the award of framework agreements by a contracting authority (which in this case would be the Council) is regulated by the Public Contracts Regulations 2015 (SI 2015/102) (PCR 2015). Accordingly, in letting the frameworks the requirements of the PCR 2015 must be complied with.
31. A framework agreement is a general phrase used for agreements with a provider or providers that set out terms and conditions under which agreements for specific purchases (known as call-off contracts) can be made throughout the term of the Agreement. It is important that the Framework Agreement is drafted such that the framework agreement will not itself commit the Council (or those other public bodies who may rely on the framework agreements) to purchase any works or services. In this case it is proposed that the frameworks agreements will be multi-provider frameworks. Accordingly, the Framework agreement must set out how providers may be selected and specific call-off contracts placed; direct award; mini-competition; or a combination of both. Detailed legal advice will be required on these proposals.

32. The Council as a contracting authority may set up framework agreements on behalf of other contracting authorities provided that the call for competition clearly identifies the other public bodies (contracting authorities) that can use the framework. It is proposed that the Council will conclude a User Agreement, with those contracting authorities that wish to place reliance on the framework arrangements. This is necessary to ensure, amongst other matters, that contracting authorities using the framework agreements will be responsible for awarding call-off agreements in a way which complies with the terms of the framework agreement and will be responsible for all costs associated with such call-offs.
33. The body of the report sets out that the framework operates on a levy recovery model and this provision will need to be captured in the Framework Agreement and User Agreement. As the levy generated will depend upon the number and value of the call-off contracts placed there is a risk that the Council will not recover all its costs in setting up and operating the framework arrangements. The body of the report sets out why the Service Area has confidence that sufficient levy will be generated to cover all such costs.
34. It should be considered if there are any employment law (in particular TUPE) issues that may arise, as it is understood the proposed frameworks will replace existing framework arrangements.
35. The report refers to the continuation of a Board comprising core member authorities who use the existing framework arrangements. It is understood that the Board acts as a forum and has no formal decision making powers. The operation of the Board will, however, serve to create an expectation that the views of the members will be taken into account.
36. The report refers to use of standard form contracts (JCT and NEC Suites.) Consideration will be required as to the additional bespoke clauses required to reflect particular requirements.
37. Legal advice will be required on the procurement process, including drafting of the procurement documentation and agreements referred to.

HR Implications

38. Based on the information within the report there are no HR implications.

RECOMMENDATIONS

Cabinet is recommended to:

1. Agree to the commencement of the re-procurement of the South East Wales Schools and Public Buildings Collaborative Construction Framework (as detailed in this report) and

2. Delegate authority to the Corporate Director Resources, in consultation with the Cabinet Member for Finance, Performance and Modernisation, to carry out all aspects of the procurement, (including setting the evaluation methodology, and award of successful contractors to the framework) and thereafter to host and deal with the operation of the framework arrangements, including any ancillary matters relating thereto.

SENIOR RESPONSIBLE OFFICER	CHRISTINE SALTER CORPORATE DIRECTOR RESOURCES
	7 June 2018