

CABINET MEETING: 27 JULY 2017

**RE-PROCUREMENT OF THE COLLABORATIVE SOUTH EAST
WALES HIGHWAYS AND CIVILS CONSTRUCTION
FRAMEWORK (SEWHIGHWAYS2)**

**REPORT OF CORPORATE DIRECTOR OF RESOURCES
AGENDA ITEM: 6**

**PORTFOLIO: FINANCE, MODERNISATION AND PERFORMANCE
(COUNCILLOR CHRISTOPHER WEAVER)**

Reason for this Report

1. To inform Cabinet of the change to the hosting arrangements for the collaborative South East Wales Highways and Civils Construction (SEWH) Framework contract arrangements and to seek approval for the re-procurement of these frameworks by April 2018.

Background

2. Rhondda Cynon Taf Borough Council (RCT) as hosting authority, procured the current South East Wales Highways and Civils Construction Collaborative Framework (SEWH) in April 2013. The framework was set up to provide participating South East Wales authorities with a swift selection and procurement process for Highways, Civil Engineering, Maintenance and Surfacing Works. The framework in collaboration with ten South East Wales authorities takes into consideration their needs and preferences for engagement of contractors for this work with the associated benefits coming from collaborative frameworks.
3. The framework is supported by Welsh Government's Value Wales and Construction Excellence in Wales (CEW) as well as the Civil Engineers Contractors Association (CECA). It is recognised that collaborative frameworks benefit user organisations through the development of longer-term client/contractor relationships that improve value for money remove duplication of processes, develop common standards, and share best practice. In addition there is a reduction in the time taken to get to market.
4. Due to a re-organisation of their procurement team RCT no longer wish to continue to host the SEWH framework. Following consultation between RCT, the National Procurement Service and other participating organisations there was unanimous support for a suitably resourced

Local Authority to deliver the SEWH framework re-tender and to manage the ongoing arrangements. Consequently it was proposed that Cardiff's Commissioning & Procurement team take on this role. This was agreed and will enable Cardiff to lead the re-procurement and manage the SEWHH frameworks, and also promote their future usage across the Welsh Public Sector. This is particularly important as Cardiff has generated almost 50% of the value and number of projects going through the framework and so the continuity of a compliant procurement route is a priority for the Council.

5. The SEWH framework has been used by the ten original member authorities since 2013. Its membership has since grown and is currently open for use by the Fire Service and Further Education Organisations with Welsh Government being a recent new user.
6. The framework supports collaboration through a joint approach to best practice for civils construction and highways projects with clients, stakeholders, contractors and across local authority boundaries. Additionally the framework incorporates Fair Payment Practices for subcontractors and suppliers as well as options for utilising 'Project Bank Accounts' whereby suppliers can obtain swifter payment as soon as clients approve payments to main contractors.
7. Cardiff Council is the largest user by spend in terms of value and number of projects as it meets the ongoing requirements of its civil construction and highway schemes. The total spend to date on the framework as at May 2017 is in excess of £87 million (with current 2017/18 pipeline of £91.1 million) with Cardiff Council generating 41% of spend value and 49% of projects.

Current Spend Data per Lot/No. of Projects

Lot	Number of Projects	Amount	%
1	3	£ 119,355.10	0.14%
2	1	£ 34,653.15	0.04%
3	60	£ 2,349,404.35	2.68%
4	3	£ 101,413.53	0.12%
5	7	£ 977,882.96	1.12%
6	56	£ 4,604,678.29	5.26%
7	62	£ 7,706,388.61	8.80%
8	7	£ 595,023.85	0.68%
9	70	£ 45,421,854.24	51.87%
10	1	£ 2,564,374.17	2.93%
11	31	£ 11,820,520.75	13.50%
12	29	£ 11,269,451.71	12.87%
Total	330	£ 87,565,000.71	100.00%

Issues

Governance

8. Key users from the core group of ten member authorities met on the 19th May to confirm the governance structure for the refreshed board, high level evaluation methodology taking into consideration the lessons learnt exercise previously conducted by RCT and then further developed by Cardiff's Commissioning & Procurement team.
9. A draft set of terms of reference was agreed that sought to ensure transparent governance and provide leadership for the operation of the framework agreement. The board will ensure participating organisations and contractors work within the principles of the framework :
 - To work together with framework stakeholders in good faith and in a spirit of mutual trust and co-operation.
 - To act in a co-operative and collaborative manner to achieve and advance the efficiency and effectiveness of civils / highways projects.
 - To share information honestly and openly; and
 - To highlight any difficulties at the earliest possible opportunity.
10. The board will be chaired by a constituent council with representation from the contractor market through the Civil Engineering Contractors Association (CECA.) The draft ToR are attached at Appendix A.

Funding

11. The SEWH 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 will be cost neutral for Cardiff Council acting as hosting authority, whilst providing the relevant resources to administer, develop and promote the use of the framework going forward.
12. The SEWH 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
 - Within 14 days of entering into each Contract awarded under this agreement, the Authority invoices the contractor the sum of 0.75 percent (across all lots) of the Anticipated Contract Value.
13. The current framework (2013-2017) has in total generated income since April 2013 of :-

SEWHighways		
Year	Tender Values	Levy income
2013/14	£ 16,412,640	£ 123,095
2014/15	£ 22,491,171	£ 168,684
2015/16	£ 9,329,823	£ 69,974
2016/17	£ 27,156,897	£ 203,677
TOTAL	£ 75,390,532	£ 565,429

Community Benefits

14. The Cardiff Capital City Region Deal will promote a joint working agreement that represents 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 civils framework for use by public bodies across the Cardiff City Region boundary provides a compliant procurement route for future City Region funded civils infrastructure projects.
15. The continuation, through the re-procurement of the SEWH framework, is key to encouraging framework contractors to deliver Community Benefits across the South Wales region. The new framework will have core key evaluation criteria that supports and develops the current delivery and implementation of community benefits initiatives such as use of Y Prentis shared apprenticeship schemes to develop targeted employment opportunities, graduate placements, provision of free materials and labour, sub-contractor development including early payments.
16. Early contractor involvement will be promoted through the new framework, which should result in a more complete approach to design, with the experience of both the designer and the civils contractor taken into account early in the design process. This should result in lower project costs and safer working practices on larger full design schemes. Prior to instigating the Call off Process, the participating organisation will organise workshops to provide a forum where early contractor involvement can be introduced to the design process without unfair bias being given to one or more Framework Suppliers.

Lessons Learnt

17. A lessons learnt exercise has been conducted with recommendations from contractors 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 a Maintenance only lot to continue to support users with no DLO provision

- iii. As Prime Contractors appear across numerous lots reducing potential for competition, consideration given to restricting number of lots contractors can be appointed against in order to promote SMEs for lower value lots
- iv. Increasing £5 million framework cap with lots of £5-£10 million and +£10 million
- v. Introduction of specialist lots for Street lighting, Specialist Surfacing, Deep Recycling etc.
- vi. Reduce number of lots with introduction of “Renewals” up to £100,000 and “Project improvement” up to £500,000 lots.
- vii. Need to improve standardisation and call-off documents and procedures including use of templates

Outcomes

18. The constituent authorities have agreed to the following high level outcomes from the re-procurement of the SEWH Framework
 - Advantage of compliance with EU Procurement and Wales Procurement Policy Statement
 - 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 highways and civils work.
 - Provide opportunities for early contractor involvement and provide intelligence on intended forward plan schemes
 - Develop robust community benefits delivery, included targeted recruitment and training and supply chain initiatives
 - Improved performance management
 - Opportunities for shared learning for clients and contractors

Evaluation Structure

19. The contractual arrangements for the framework will continue under National Engineering Construction conditions. The prices provided at tender stage will be subject to annual review in accordance with the specified indices to be detailed in the contract.
20. The proposed lotting structure, taking on board the lessons learned will consist of the following geographic lots split by work type. The SEWH key users have specified a minimum of six contractors be appointed per lot. The evaluation weighting based on the experience of the first framework is geared towards a higher price evaluation for lots with lower spend predominantly for maintenance type work with the project works having a higher quality focus.

Proposed Framework Structure

Lot Description	Scope	No of Contractors awarded to Framework	Quality (%)	Cost (%)
Lot 1 - Torfaen, Blaenau Gwent, Monmouthshire	Minor works (Renewals) up to £100k	6	10%	90%
Lot 2 - RCT, Merthyr, Caerphilly	Minor works (Renewals) up to £100k	6	10%	90%
Lot 3 - Bridgend, VoG, Cardiff, Newport	Minor works (Renewals) up to £100k	6	10%	90%
Lot 4 - Torfaen, Blaenau Gwent, Monmouthshire	Project's (Improvements) up to £500k	6	20%	80%
Lot 5 - RCT, Merthyr, Caerphilly	Project's (Improvements) up to £500k	6	20%	80%
Lot 6 - Bridgend, VoG, Cardiff, Newport	Project's (Improvements) up to £500k	6	20%	80%
Lot 7 - All	Project's (Improvements) £500k-£2m	6	20%	80%
Lot 8 - All	Project's (Improvements) £2m-£5m	6	20%	80%
Lot 9 - All	Project's (Improvements) £5m-£10m	6	30%	70%
Lot 10 - All	Project's (Improvements) +£10m	6	30%	70%
Specialists Lots covering Street Lighting, Specialist Surfacing, Deep Recycling		Up to 5 per lot	10%	90%

21. The call off procedure will largely remain the same as the current framework with two options, direct award to lowest contractor (based on their schedule of rates submitted at framework tender stage) and running a further mini competition to all contractors in the appropriate lot.
22. The continued use of the National Engineering and Construction forms of contract will facilitate flexibility for users 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 and 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.
23. In order to ensure the Contractors being selected for works are performing to 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 learned 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.
24. A full review of the current framework KPIs are under consideration by the SEWH stakeholder board, particular attention is currently focused on contractor obligations to participate once on the framework (failure to bid) and potential for suspension. Additionally 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.
25. In order to drive customer satisfaction and promote the frameworks usage it is planned to introduce a post project review where users are asked to try to compare the initial project objective against the final project achievements and the Contractors' contribution in achieving this. The following factors are recorded:
 - Time
 - Budget (Claims / Added value)
 - Quality
 - Client satisfaction
26. The following tender timeline is proposed in order to achieve the commencement of the new framework from 1st April 2018.

Tender Process & Timescales

Activity	End Date
Issue of PIN	May 2017
Contractor Day	July/August 2017
OJEU Contract Notice Publication (2 days)	October 2017
PQQ Stage - Issue to Return (33 days)	November 2017
PQQ Evaluation & Feedback (21 days)	November 2017
ITT Stage – Issue to Return (42 days)	January 2018
Tender Evaluation (35 days)	February 2018
Intent to Award – Standstill Period (10 days)	February 2018
Contract Award (1 days)	March 2018
Implementation Period	April 2018
Framework Commencement	April 2018

Local Member consultation (where appropriate)

27. Member consultation will be undertaken as part of the re-procurement timeline through engagement with scrutiny committee and market engagement via contractor days, meet the buyer events and current attendance at industry forums i.e. CEW Frameworks and Best Practice events.

Reason for Recommendations

28. Cardiff Council currently makes up nearly 50% of the spend going through the existing SEWH collaborative highways and civils framework. To date this framework has provided a compliant efficient procurement vehicle and therefore its re-procurement is critical for continuity and the value for money its continued use and promotion provides.

Financial Implications

29. The proposed model for hosting the frameworks is self-financing by recovering the costs incurred for support. The levy income is determined by the value of contracts put through each framework.

30. The levy income needed to be generated by the frameworks to cover the cost of administration is £117,000. There is a risk of this level of income not being achieved should constituent members stop using the frameworks and should this happen then the commitment would need to be funded by the Council within its existing resources. However paragraph 13 demonstrates that the average income generated from the previous iteration of the framework was in excess of £140,000.

Legal Implications

31. 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.
32. 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 to select the provider and place specific call-off contracts: direct award; mini-competition; or a combination of both.
33. 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.
34. 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.

35. 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.
36. 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.
37. The report refers to use of the NEC 3 conditions of contract. A new NEC4 suite of contracts is due to be launched at the end of June. That said it is still acceptable to use NEC 3 but consideration should be given to adding bespoke clauses ('Z clauses') to reflect particular requirements and any developments in legislation.
38. Legal advice will be required on the drafting of the procurement documentation and agreements referred to.

HR Implications

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

RECOMMENDATIONS

Cabinet is recommended to:

1. Approve the decision to commence the re-procurement of the South East Wales Collaborative Civils Construction Framework as set out in this report, delegating all ancillary matters to the Corporate Director Resources in consultation with the Cabinet Member for Finance, Performance and Modernisation, including setting the evaluation methodology and up to and award of successful contractors to the framework.
2. Note that Cardiff Council has agreed to host the collaborative framework for the period of March 2018 - March 2022 and that the responsibility for that and any ancillary matters involving the administration of the SEWH3 Collaborative Framework has been delegated to the Corporate Director Resources, delivered via the Commissioning and Procurement team.

CHRISTINE SALTER
Corporate Director
21 July 2017

The following appendix is attached:

Appendix A : Terms of Reference SEWH Board