

**RE-PROCUREMENT OF THE COLLABORATIVE SOUTH EAST
WALES COLLABORATIVE CONSTRUCTION FRAMEWORK
(SEWSCAP4)**

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

AGENDA ITEM: 2

Reason for this Report

1. The third iteration of the Cardiff Council hosted South-East Wales Capital (SEWSCAP) collaborative construction framework ends in June 2024. To maintain a compliant procurement route for building construction projects including schools for Local Authorities within South East Wales, there is a need to run a restricted tender process to appoint suitably qualified contractors onto the fourth iteration of SEWSCAP.

Background

2. Cardiff Council's Commissioning and Procurement team took over the hosting of SEWSCAP2 from Rhondda Cynon Taf County Borough Council (RCT) in 2016/17. The first framework iterations were procured in 2013, being initially set up to provide participating South-East Wales Authorities with a swift selection and procurement process for construction works.
3. The framework has been supported by Welsh Government's Value Wales and Constructing Excellence in Wales (CEW). Collaborative frameworks benefit user organisations through the development of longer-term client/contractor relationships that improve value for money through lessons learnt, removing duplication of processes, development of common standards, and sharing of best practice with reduced time taken to get to market.
4. The SEWSCAP framework has been used by the 10 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.
5. The SEWSCAP framework supports collaboration through a joint approach to best practice for construction and refurbishment projects with clients, stakeholders, contractors and across local authority

boundaries. The framework incorporates Fair Payment Practices for subcontractors and suppliers as well as options for utilising 'Project Bank Accounts', whereby subcontractors and suppliers can obtain swifter payment as soon as clients approve payments to main contractors.

6. Cardiff Council is the largest user by spend in terms of value and number of projects, as it meets the ongoing requirements of its construction projects largely from within the Education Directorate. The total spend to date on the framework as at April 2023 is in excess of £482 million (with current 2023/24 pipeline £500 million), with Cardiff Council equating to 29.86% of spend value and 50% of projects.

Authority Spend	Spend	Projects	% based on spend
Cardiff Council	£ 144,121,851.97	56	29.86%
RCT Council	£ 62,299,683.38	9	12.91%
Newport Council	£ 50,002,730.81	3	10.36%
Monmouthshire Council	£ 45,308,258.64	2	9.39%
Vale of Glamorgan Council	£ 41,010,399.91	4	8.50%
Powys	£ 28,398,108.61	3	5.88%
Swansea University	£ 25,917,908.33	1	5.37%
Torfaen CBC	£ 24,121,419.00	6	5.00%
Blaenau Gwent CBC	£ 13,052,468.11	1	2.70%
Caerphilly CBC	£ 12,735,289.88	3	2.64%
Cardiff University	£ 7,251,979.89	8	1.50%
Coleg y Cymoedd	£ 7,198,029.68	3	1.49%
St David's Catholic Sixth Form College	£ 5,509,503.13	1	1.14%
Cardiff Metropolitan University	£ 4,112,943.44	2	0.85%
Network Rail	£ 3,575,654.73	2	0.74%
Bridgend Council	£ 2,259,965.60	2	0.47%
Merthyr Tydfil CBC	£ 2,008,212.26	2	0.42%
University of South Wales	£ 957,170.00	1	0.20%
Welsh Government Health and Social Services Department	£ 844,324.80	1	0.17%
Swansea Bay University Health Board	£ 740,825.25	1	0.15%
NHS - Powys Teaching Health Board	£ 695,728.03	2	0.14%
National Museum Wales	£ 598,730.69	1	0.12%
Total	£ 482,721,186.14	114	100.00%

Issues

Governance

7. A core group of 10 member authorities make up the SEWSCAP Governance board, which is chaired by a member authority. They meet quarterly covering framework pipeline, performance, social value delivery and task and finish subjects such as retentions, use of PBAs, SUDs, and NEC4 / JCT contract management. The board members work under agreed Terms of Reference that ensure governance and provide leadership for the operation of the framework agreement. The board

ensures that participating authorities and contractors work within the principles of the framework, which are:

- 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 construction projects;
- to share information honestly and openly; and
- to highlight any difficulties at the earliest possible opportunity.

Funding

8. The SEWSCAP framework operates through a levy recovery model, where each call-off project generates a levy as a percentage of its value. The levy, collected by the hosting authority (i.e. Cardiff Council), is used fund Cardiff Council and external legal resources to administer, develop and promote the use of the framework. Any additional levy is used to fund initiatives and training to improve practice across the Local Authorities and to develop and support social value and carbon reduction initiatives nominated by the governance board.
9. 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 Cardiff Council framework team by the framework users;
 - within twenty (20) Working Days after the date of the invoice issued by the Authority, the contractor must pay the appropriate levy (in each case stated as a percentage of the Call-Off Contract Value).
 - The levy is calculated from the awarded Contract Value sum, and ranges from 0.6% for lower value contracts to 0.125% for higher value contracts. excluding value engineering, provisional sums and variations. This levy is regularly benchmarked against other similar frameworks across the UK and is competitive. The levy has not been uplifted over the framework iterations and remains competitive against other construction frameworks.
10. The current SEWSCAP3 framework (2019/20 - to date) has from 114 projects with a combined tender value of £482,721,186 generated a levy income of £1,133,925.

Social Value

11. During the re-tender of the third iteration of the framework, the Commissioning and Procurement team introduced the Council's Socially Responsible Procurement Policy as the lens through which contractors would deliver social value on a South-East Wales regional basis. The policy aims to ensure that, from a framework perspective, clients maximise the social, economic, environmental and cultural wellbeing benefits are being delivered to the respective communities in which these

schemes are delivered and links back to WG legislation including the Wellbeing of Future Generations Act, Wales Procurement Policy Statement and Code of Practice: Ethical employment in Supply Chains.

12. The expectation is for clients to incorporate social value requirements at mini competition stage in-line with the framework social value policy guidance. Bidders will also submit a response to a social value question that they must deliver over the life of the framework.
13. Throughout the term of SEWSCAP4 in addition to social value there will be an increased focus on reduction the carbon emissions from the projects being delivered through the framework.
14. An example of how SEWSCAP3 has helped to support the social value agenda is its role in supporting the establishment of the Onsite Construction Academy South-East Wales.
15. The construction industry is currently experiencing a skills shortage nationally, with the annual recruitment rate in Wales sitting at approximately 1310 individuals a year. The Construction Industry Training Board (CITB) invited bids for projects to create flexible onsite learning hubs which will increase the talent pool for job-ready construction workers in South-East, South-West and North Wales. A collaborative grant application was submitted by the Council's Commissioning and Procurement team, Into Works employer liaison service and Cardiff Living team which was successful.
16. The Onsite Construction Academy South-East Wales has seen a mobile onsite training hub set up on the former Eastern High site in Llanrumney to run from March 2021 to March 2024, serving the South-East Wales region. The scheme aims to provide 750 unemployed individuals with training to become site ready and to provide 750 students with site experience, ultimately culminating in creating 225 site ready individuals with sustainable employment or apprenticeships with 65 of these jobs to be from underrepresented groups. The construction sector and project pipeline will be signposted towards the hub as a resource to support contractors in delivering against tendered recruitment and training social value contractual commitments.

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:-
 - Current lotting structure to remain with the current regional splits, with the removal of the Powys specific lots 1 and 5.
 - Restriction of lots – Allow bidders to apply for as many as they wish but they need to provide a preference, and only award each successful bidder a maximum of 3 lots, to allow more SME access.

- Current scope remaining, with updating of information where required, including the risk profile of the current Forms of Contract.
- Framework scheme cap to remain at £100m.
- Introduction of specialist lots for System Build (Modern Methods of Construction), Heritage and split of the previous lot 11 to purchase and hire.
- Further embed standardisation and call-off documents and procedures including use of existing templates.
- Full review of the existing approach to ensure it meets the current needs of the client base.
- Review the applicability of including use of the Social Value TOMs (Targets, Outcomes, and Measures) in respect of providing clients with a standardised, repeatable way of measuring social value delivery.
- Enhanced consideration of carbon reduction.

Evaluation Structure

18. Following on from the lessons learnt exercise undertaken with the SEWSCAP Governance and key stakeholder users, it is recommended that we continue with the existing regional split of the lotting structure (can be viewed at [Contractors \(sewscap.co.uk\)](http://Contractors.sewscap.co.uk)). The lotting structure is being finalised but the current lotting structure is as follows:
 - Lot 1-4 Regional Split, £250k - £1.5m
 - Lot 5 Regional Split, £1.5m-£3m
 - Lot 6 All Regions, £1.5m - £3m
 - Lot 7 All Regions, £3m - £5m
 - Lot 8 All Regions, £5m - £10m
 - Lot 9 All Regions, £10m – £25m
 - Lot 10 All Regions, £25m - £100m
 - Lot 11 All Regions, demountables hire and purchase £0 - £100m
19. It is anticipated that specialist lots for Modern Methods of Construction and Heritage will form part of the new lotting structure.
20. The call off procedure will largely remain the same as the current framework with two options -
 - a. direct award, whereby the client establishes objective and transparent Direct Award Criteria which shall be designed to assess which framework contractor in the relevant lot will provide the best price/quality/social value ratio (i.e. best value for money) in relation to the proposed Works up the value of the Public Contract Regulations Works Threshold; and
 - b. running a mini competition to which all contractors in the appropriate lot(s) will be invited.
21. After reviewing the current framework prices received from mini-competitions, consideration has been given to how social value can be included as a separate part of evaluation in line with WPPN 01/20. Clients will have the ability to flex weightings up to 80% quality / 20% Price and include a separate 10% weighting for social value, in order to

drive innovation, quality and social value rather than lowest price and resultant race to the bottom – a common criticism with framework arrangements.

22. At framework award, bidders will be evaluated against overheads and profit and typical schemes achieving a combined commercial score in order to achieve their ranking against those lots. Due to the variety of works procured through the framework, it is difficult to put in place a schedule of rates that will be suitable for all projects, though it is being reviewed how we can manage pricing elements.
23. A flexible approach for contracting bodies will continue through the use and promotion of either NEC4 (New Engineering Construction Contract) Professional Service Contract (PSC) and 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. A full review of the current framework KPIs are under consideration. Particular attention is currently focused on contractor obligations to participate once on the framework (failure to bid in mini - competitions) and potential for suspension. In order to drive customer satisfaction and promote usage, it is planned to introduce a post project review where users are asked to compare the initial project objectives against the final project achievements and the consultants' contribution in achieving this. The following factors through both framework KPIs and post project reviews will be recorded:
 - Time Predictability
 - Cost Predictability
 - Client Satisfaction
 - Contractor Satisfaction
 - Targeted Recruitment and Training
 - Environmental.
25. The following tender timeline is proposed in order to achieve the commencement of the new framework from 3rd June 2024.

Activity	Target Date
Find a Tender Service notice published with Pre-Qualification Questionnaire (PQQ) made available to Potential Providers.	May 2023
PQQ Return Date	Mid-July 2023

Evaluation of PQQs completed	September 2023
Invitation to tender issued to qualified Potential Providers	September 2023
Tender Return Date	November 2023
Evaluation of tenders completed.	January 2024
Standstill period	January 2024
Contract Award	January 2024
Implementation / Mobilisation	5 months
Framework Start Date	3 rd June 2024

Local Member consultation

26. Full member consultation will be undertaken as part of the re-procurement timeline through engagement with the 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

27. Cardiff Council currently makes up nearly 30% of the spend going through the existing SEWSCAP3 collaborative construction framework. To date this framework has provided a compliant efficient procurement vehicle and therefore its re-procurement is critical for continuity based against existing capacity constraints and the value for money efficiency its continued use and promotion provides.

Financial Implications

28. The levy as described in Paragraph 10 is used to cover the administration arrangements undertaken by Cardiff Council with any surplus income left over being reinvested into the regional framework.

Legal Implications

29. As set out in the report, the recommendation is to commence a procurement to set up a framework on behalf of Cardiff and other bodies.
30. The proposed procurement is within the Council's powers under its general power of competence as set out in s.24 of the Local Government and Elections (Wales) Act 2021, as well as specific powers relating to the provision of education and other sector-specific powers.

31. It is understood that the value of the framework is over the UK public procurement threshold and accordingly, the Public Contracts Regulations 2015 (dependent on timing -see below) will apply in full. To that end it is noted that the Directorate intends to follow a fully compliant competitive tender exercise. Ongoing legal advice should be sought in relation to the procurement. The Council has engaged Blake Morgan LLP to advise on procurement matters as well as updating and re-drafting the framework agreement and construction contracts.
32. The new Procurement Bill currently being progressed by UK Government has nearly completed its Parliamentary stages and Royal Assent is expected some time in late Spring 2023. However, it will not come fully into force until secondary legislation has been made setting out the required matters of detail. This is expected to take a further 6 months. Where a procurement has commenced under the current regime (Public Contracts Regulations 2015), it will continue to be subject to that regime. Given the timings set out above, it is therefore likely that the procurement will be subject to the 2015 Regulations even if the new Procurement Act comes into force while the procurement is ongoing.
33. In preliminary discussions between the Council procurement team and Blake Morgan, Blake Morgan have confirmed that there is nothing that would present an unusual level of risk for the Council in the context of a procurement of this size and nature, and that there is nothing that is otherwise novel, contentious or unduly onerous based on the current known facts. The SEWSCAP framework has been procured on three occasions previously by RCT and Cardiff without legal challenge, and Blake Morgan do not believe that any of the changes / improvements to the framework stated above would increase the risk above that which is normally present in any procurement exercise of this value and nature.

Equality Duty.

34. The Council has to satisfy its public sector duties under the Equality Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of ‘protected characteristics’. The ‘Protected characteristics’ are: • Age • Gender reassignment • Sex • Race – including ethnic or national origin, colour or nationality • Disability • Pregnancy and maternity • Marriage and civil partnership • Sexual orientation • Religion or belief – including lack of belief.

Well Being of Future Generations (Wales) Act 2015

35. The Well-Being of Future Generations (Wales) Act 2015 (‘the Act’) places a ‘well-being duty’ on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

36. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2021-24. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
37. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them.
38. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

General

39. The decision maker should be satisfied that the procurement is in accordance within the financial and budgetary policy and represents value for money for the Council.
40. The decision maker should also have regard, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

HR Implications

41. There are no HR implications for this report

Property Implications

42. There are no Property implications for this report

RECOMMENDATIONS

Cabinet is recommended to:-

1. agree in principle to the commencement of the re-procurement of the current South East Wales Collaborative Construction Framework; 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 finalising the lotting structure, setting the evaluation methodology, commencing procurement 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	CHRIS LEE Corporate Director
	11 May 2023