

RE-PROCUREMENT OF FORMER NATIONAL PROCUREMENT SERVICE (NPS) COLLABORATIVE CONSTRUCTION AND CIVILS CONSULTANCY FRAMEWORKS

FINANCE, MODERNISATION AND PERFORMANCE: CHRIS WEAVER

AGENDA ITEM: 5

Reason for this Report

1. Cardiff Council has been using three existing construction and civils consultancy frameworks let by Welsh Government's National Procurement Service (NPS) as the go-to procurement route for a large proportion of its third party construction consultancy (built environment and Highways) spend (£2.2m) on an annual basis.
2. Two of these arrangements are shortly due to expire and due to Welsh Government's re-organisation of the National Procurement Service (NPS) to a smaller internal contracting body, these arrangements were not going to be renewed.
3. In order to support the Cardiff Council's own requirements and provide the council with a compliant procurement route for construction and civils consultancy commissions, Cabinet is requested to approve the Council's Commissioning and Procurement (C&P) team to re-procure these arrangements on a collaborative basis.
4. As per the existing National Procurement Service (NPS) arrangements, a levy fee (0.45%) will be payable on all spend going through the arrangements in order to fund a post within the Council's Commissioning and Procurement (C&P) team to support the ongoing administration. A key driver of the WLGA Heads of Procurement network is the promotion and retention of Local Government Procurement expertise; as such, the arrangements will be open for use by the public sector on an all Wales basis.

Background

5. In September 2018, the First Minister published a written statement informing Local Government that the National Procurement Service (NPS) would cease to operate in its current form.

6. In response to the change in policy direction, the Welsh Local Government association (WLGA) set up a Heads of Procurement (HoP) network, consisting of a nominated lead officer from each organisation. The HoP network supports collaborative procurement and the promotion of good practise in procurement. Cardiff Council's Head of Procurement chairs this group.
7. The HoP network has established three regional delivery groups consisting of North Wales, South West and Mid Wales and South East Wales. A key principle being the creation of regional category centres of excellence with the flexibility to provide all-Wales procurement arrangements where required. The HoP network felt the South East Wales delivery group has the relevant expertise based on Cardiff's Commissioning and Procurement (C&P) team's success with the re-procurement of both construction (www.sewscap.co.uk) and Civils (www.sewh.co.uk) frameworks in 2018/9 .
8. The existing Construction Consultancy framework's offers a swift route to market that are 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 frameworks have been used by Local Authorities and Welsh Government and associated bodies since their inception in 2015/6.
9. Key to the success of the framework is the option for a flexible approach for clients, encouraging early consultant involvement, focusing on developing client/contractor relationships that improve value for money through reduced time to market, duplication of processes, development of common standards and sharing of best practise that seeks to drive innovation.

NPS Construction Consultancy Spend	Value
Welsh Government	£18,632,467
Natural Resources Wales	£ 9,777,046
Monmouthshire County Council	£ 2,258,231
Cardiff Council	£ 2,200,924
WGSB's (Other)	£ 973,135
Neath Port Talbot County Borough Council	£ 520,830
Newport City Council	£ 337,432
Natural Resources Wales	£ 246,266
Caerphilly County Borough Council	£ 237,517
Conwy County Borough Council	£ 129,656
Gwynedd Council	£ 126,412
Coleg y Cymoedd	£ 118,520
TOTAL	£41,260,395

10. Cardiff Council is the fourth largest user by spend in terms of value on the current Construction consultancy Framework. However the Council's spend on Construction consultancy is much larger (£8mpa,) currently spread across a number of consultancy frameworks let by buying groups and purchasing organisations not based in Wales. The opportunity to let a collaborative agreement that consolidates this spend via one procurement route should

drive economies of scale and improved cost efficiency for Council directorates.

Issues

Governance

11. It is intended to create a client user forum to engage with users of the framework in order to drive continuous improvement. The forum will ensure both participating authorities and consultants work within the principles of the framework:
 - a. Work together and with the potential clients and their prime contractors in good faith and in a spirit of mutual trust and co-operation.
 - b. Act in a co-operative and collaborative manner so as to achieve and advance the relevant construction project and provision
 - c. Share information honestly and openly: and Highlight and difficulties at the earliest possible opportunity
12. The current NPS Construction consultancy framework operates through a Levy recovery model, where each call-off project generates a Levy as a percentage of its value. The current (0.45%) levy will be carried forward with the re-procurement having been agreed by the WLGA Heads of Procurement network. The net effect should be cost neutral to Cardiff Council acting as contracting authority, whilst providing the relevant resources to administer develop and promote the use of the framework going forward.
13. The proposed 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 Authority invoices the consultant quarterly for the calculated levy based on the contract value awarded during the preceding 3 months.
 - Based on a comparison with Crown Commercial Services, ESPO, YPO, and Bloom Procurement Services levy rates in the market vary from 0.5-5%. Based on this comparison, a levy of 0.45% provides a competitive rate for Welsh based public sector clients to utilise this arrangement.

Community Benefits

14. To date the current NPS let Construction Consultancy framework has not focused on community benefits or social value delivery which will be a key focus for the re-procurement exercise.
15. As part of the Council's Capital Ambition, and Socially Responsible Procurement Policy, the new Construction Consultancy framework will seek to incorporate a number of the deliverables that seek to support the skills shortage across Construction but will look to focus consultant activity across the following priority areas:-

- **Local Training and Employment:** We want to create employment and training opportunities for local people in order to reduce unemployment and raise the skills level of our local workforce, especially in target groups such as long term unemployed
 - **Think Cardiff City Region First:** We want to take account of the social and economic impacts of buying locally when commissioning and contracting, and want our suppliers and contractors to do the same
 - **Partners in Communities:** We want to 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:** We want to protect the environment, minimise waste, reduce energy consumption and use other resources efficiently.
 - **Ethical Employment:** We want to employ the highest ethical standards in our own operations and those within our supply chain.
 - **Promoting Wellbeing of Young People and Vulnerable Adults** We want to safeguard and promote the welfare of children, young people and vulnerable adults businesses together with the support of entire community including local businesses
16. Additionally 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 construction consultancy 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. Delivery of this re-procurement will support the WLGA Heads of Procurement (HoP) network key principles that include :-
- a. New arrangements must support an investment in Local Government Procurement to deliver for Future Generations
 - b. Local Government collaborative procurement activity across Wales should be coordinated through the WLGA Heads of Procurement Network
 - c. The Network to develop and 'own' an All-Wales Local Government Sourcing Plan and Contract Forward Plan
 - d. Local Government to deliver collaborative contracts through three Regional Delivery Groups to include South West and Mid Wales, North Wales and South East Wales
 - e. Where appropriate contract delivery would be allocated and delivered through Regional Category Focused Centres of Expertise with flexibility to provide All-Wales contracts where appropriate
 - f. Contracts would continue to apply a levy, which would be used to fund the retention and growth of procurement capacity and expertise across the Welsh Public Sector.
 - g. Levy would be managed on an Open Book basis and excess used to fund category development

Lessons Learnt

18. A lessons learnt exercise has been conducted with recommendations from consultants 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 and existing Construction frameworks i.e. South East Wales, South West Wales and North Wales.
 - ii. Standardisation of specialist lots currently split across two frameworks; intend to procure one new framework with a reduced number of specialisms (still covering the core LA requirements.)
 - iii. Large Consultancy firms appear across numerous lots reducing potential for competition, consideration of restricting number of lots consultants can be appointed against in order to promote SMEs for lower value lots
 - iv. Introduce relevant community benefits targets that seek to develop beyond targeted recruitment and training and promote use of supported social enterprises and locally sourced materials across geographic boundaries within their supply chains
 - v. Current Direct Award Provision (£25k) seen by clients as too low for the number of urgent commissions, based on a published day rate card at framework award this level is proposed to be increased to £150k. Client bodies will need to use their discretion when using the Direct Award route and work within their own procurement standing rules.
 - vi. Currently the recommended Cost / Quality evaluation weighting is 50/50 when appointing contractors from the framework at further mini competition. Need to further enable focus on quality to suggested 70/30 in order to promote sustainability over framework lifecycle and remove “race to the bottom” price focus.
 - vii. Need to improve standardisation and call-off documents and procedures including use of templates

Evaluation Structure

19. It is intended that the proposed lotting structure taking on board the lessons learnt will consist of a single specialism per lot, a review has been undertaken simplifying the structure (from 96 lots across the two existing frameworks to 21 lots on the new framework.) Feedback from key users has specified a minimum of 7-10 consultants be appointed per lot. It is intended that the evaluation weighting may remain at 50% Cost and 50% quality at framework award, pending final customer / market review.
20. One of the reasons there was such a high number of lots was the fact lots were geographically split and priced accordingly, it is therefore proposed each specialist lot will have a simple rate card incorporating three prices based on geography i.e. South East Wales, West Wales and North Wales.
21. 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.

22. A full review of the current framework KPI's 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.
23. In order to drive customer satisfaction and promote 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 consultants' contribution in achieving this. The following factors will be recorded:
 - Time
 - Cost (Budget versus Outturn, Claims / Added value)
 - Quality
 - Client satisfaction

Reason for Recommendations

24. Cardiff Council spends in excess of £2.2m per annum on Construction related consultancy and requires an efficient value adding procurement vehicle. With the ability of the Council's own Commissioning and Procurement team to let and manage a collaborative future framework, council directorates will be able to utilise the future go-to framework for Construction consultancy driving efficiencies whilst contributing the wider collaborative public sector agenda.

Financial Implications

25. A levy at the rate of 0.45% would be payable on expenditure incurred through the arrangements. This would generate an income stream for the Council, to support associated workload requirements. The income stream has the potential to vary. Whilst this could represent a degree of risk to the Council, based on current levels of framework spend, it is not considered significant. Any risk is further mitigated by the intention to cover workload through existing posts in the first instance, before reviewing the potential creation of additional posts in line with ongoing framework spend.

Legal Implications

26. 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. It is understood that the value of such framework is over the EU procurement threshold and accordingly, the full ambit of the Public Contract Regulations apply and to that end it is noted that the Directorate intends for follow a full blown

competitive tender exercise. Ongoing legal advice should be sought in relation to the procurement.

Equality Duty

27. The Council has to satisfy its public sector duties under the Equalities 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. Legal Services are instructed that an Equalities Impact Assessment will be attached to the delegated report under recommendation 2 of the report.

Well Being of Future Generations (Wales) Act 2015

28. 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.
29. 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 2019-22. 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.
30. 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

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

31. 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.
32. The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

HR Implications

33. There are no HR implications for this report.

Property Implications

34. There are no Property implications for this report.

RECOMMENDATIONS

Cabinet is recommend to:-

1. Agree in principle to the commencement of the re-procurement of the current National Procurement Service (NPS) Construction and Civils Consultancy Framework and take on the hosting arrangements for the subsequent arrangement (as detailed in this report) and
2. Delegate authority to the Corporate Director Resources, in consultation with the Cabinet Member for Finance, Modernisation & Performance, to carry out all aspects of the procurement, (including setting the evaluation methodology, commencing procurement and award of successful consultants to the framework) and thereafter to host and deal with the operation of the framework arrangements, including any ancillary matters relating thereto.

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	Date submitted to Cabinet office