

PROPOSED CONTRACT FOR DESIGN AND BUILD SERVICES

To: **Cabinet**

Date: **12th June 2012**

From: **Corporate Director: Customer Service and Transformation**

Electoral division(s): **All**

Forward Plan ref: **2012/029** **Key Decision: Yes**

Purpose:

- To advise on the current contracting arrangements for the design and construction of capital building projects;
- To advise on the status of projects within the capital programme, the general level of performance, the developing trends and the measures being taken to secure improvements and reduce supplier costs;
- To advise on the contract management arrangements in place to monitor these contracts;
- To advise on the main benefits and disadvantages of framework contracts in relation to this proposed contract, noting that these may vary in other supplier market circumstances.; and
- To seek Cabinet's view on the proposed use of a framework contract as the strategy for the re-tender of design and build services.

Recommendations: **Cabinet is asked to**

- a) **Note the current contracting arrangements and the measures that have been taken to manage performance and deliver efficiencies both in respect of cost and project control**
- b) **Note the steps that are being taken to address the few negative aspects of framework contracts, whilst recognising the wider benefits of their use in specific contracting situations**
- c) **Agree to the proposed re-procurement for Design and Build services should be through the establishment of a framework agreement and that at least 15% of the capital programme should be allocated outside of the framework.**

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1.0 BACKGROUND TO HISTORICAL POSITION

- 1.1 In response to the new communities growth agenda and the need to build capacity, the County Council introduced framework partnership arrangements with project management, design and constructors. These current contracting arrangements which are due to come to an end are described below. The report goes on to describe how these contracts have performed and the measures taken to improve performance and maintain a competitive market within the framework contract. The final section of the report then explores an approach to a reprocurement that is predicated on the implementation of new frameworks with a carve out for open tendering and sets out the advantages and disadvantages.
- 1.2 Design Strategic Partners – In January 2007, the in house design staff were TUPE transferred across into two external multi-disciplinary design practices. The two Strategic Design Partners appointed were Capita Architecture and Mouchel.
- 1.3 Project Management – To strengthen project management and separate it from the design function, this role was excluded from the Design Partnerships. A practice with a demonstrable track record of successful construction procurement and project management were appointed in March 2007. The appointed Project Managers were Bovis Lend Lease Consulting.
- 1.4 Constructors – New long-term partnership contracts with constructors were established. This has enabled long-term relationships to be developed with far fewer construction companies. The contractor partnerships were awarded and implemented in January 2008
- 1.5 Partners from the professional service providers and constructors form project teams tasked with delivering specific schemes. The aim of this approach was to secure the benefits of a more integrated supply chain and improved build-ability through early constructor involvement as well as increased certainty of cost and programme.
- 1.6 These long-term framework contract arrangements were concluded following an extensive EU procurement process. This approach, therefore, was intended to allow the Council to make significant cost and time savings on projects through securing the benefits of economies of scale and continuous improvement, and by avoiding the need to undertake these tendering processes on every major capital project. These contracts are for 7 Years with an option to extend for a further 3 Years.

2.0 PERFORMANCE ISSUES

- 2.1 The expected improvements in project control, i.e. time, cost and quality through the strengthening in project management and the appointment of high calibre design consultants, fell during 2009 and hence were not achieving the improvement targets set out in the contract. The core factors behind this fall were:
 - Staff changes within the project management service
 - Loss of focus in ensuring robust quality assurance in “design services”
 - Ambiguity in the Contract terms and conditions relating to the operation of the target cost model

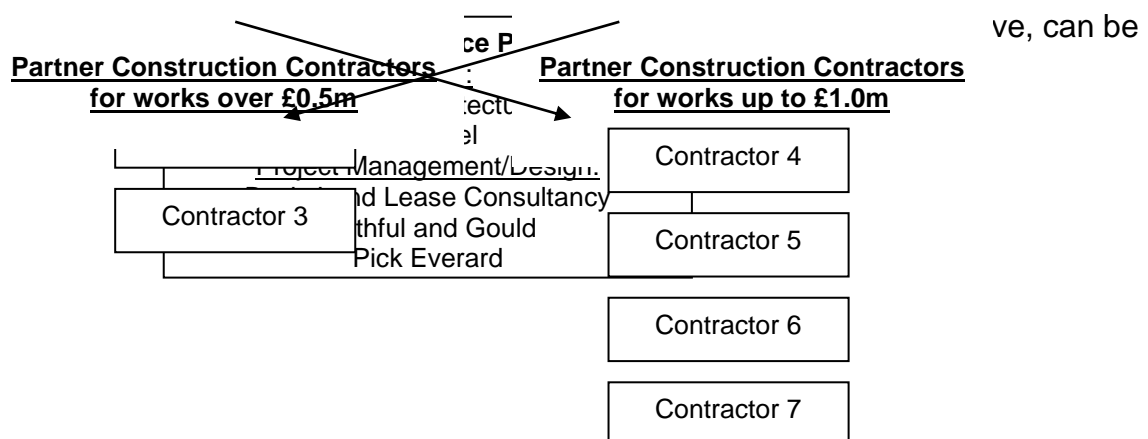
2.2 The performance of the constructors was regarded as excellent and a prime factor for End User satisfaction scores being high. Projects were also being delivered ahead of programme due to the performance of contractors and were achieving zero or minimal defects.

2.3 Due to the fall in performance scores it was evident that there was a need to review work load allocation, reduce the level of new commissions to existing suppliers and introduce further competition. At the same time it was apparent that the market was contracting and becoming more competitive. This offered an opportunity to renegotiate fee rates, overheads and profit.

3.0 MEASURES AND EFFICIENCIES

3.1 In response to these issues it was essential that effective measures needed to be implemented to bring about service improvements. These measures are outlined below.

3.2 **Increased competition/supplier base** - In January 2010 the professional service providers base was expanded by running a further mini competition (using the Office of Government Commerce's framework contract). This resulted in the addition of two further multi-disciplinary design and project management practices coming on board through the appointment of Faithful and Gould and Pick Everard. The OGC Framework term is 4 Years - from 2009 to 2013 and the CCC Framework term would end in 2014 if run for the full term.



3.3 **Increased range of procurement models** - In order to address a number of the ambiguities in the contract Framework terms and conditions and some of the short-comings in the NEC Engineering Construction Contract Option C Target cost

a broader suite of contracting models was introduced. All new constructor providers under the new procurement arrangement operate using the NEC Engineering and Construction Contracts (NECECC) suite of contracts including the Short Form, Option A Lump Sum Contracts and Option C Target Cost contracts. Professional Service Providers operate on a fixed fee basis except for early feasibility work which is time based. Their appointment uses the NEC Professional Services Contract. The step change however came when we introduced two stage design and build. We are now using this arrangement to procure projects on the basis of 100% contractor design and therefore increasing competition even further on professional services costs as contractors can bring in their own design teams.

- 3.4 **Restructured project management services and renegotiated design fee rates** - Once we had increased our supplier base and reviewed the models of contracting we were able to restructure the project management role to the role of Employers Agent/project management in order to operate in a design and build environment. The addition of a further supplier also helped address the staff churn that had impacted onto a few projects. The further benefit of introducing additional suppliers provided an important market test and benchmarking of where the market was heading in terms of project management and design fee rates. As a consequence lower rates were negotiated.
- 3.5 **Renegotiated major contractors overheads and profit** - With the industry coming under pressure to return to tender award based on lowest price tender it was evident that although our contracting arrangements were based on open book and therefore securing the benefits of open subcontract competition, there was further scope to renegotiate the 2008 tendered overheads and profit with our major contractor. During July and September 2010 on-going negotiations culminated in reductions on some rates. The average net saving across the forward capital building programme is 2% - which equates to £1 million saved on an annual capital spend of £50 million. We are also now running mini-competitions and this has seen rates fall further.
- 3.6 **Designing in more off site prefabricated solutions** - The approach towards modern methods of construction - leading to more off site prefabrication with the benefits of greater quality control, speed of on site construction, reduced site waste and lower embedded carbon is being embraced. Evidence is demonstrating we can achieve reduced contract periods on site and thus increased saving in contract preliminaries. In some instances this can be off-set with the marginally higher capital cost of the components but expectation is to achieve net savings in capital costs of 5 to 10%.

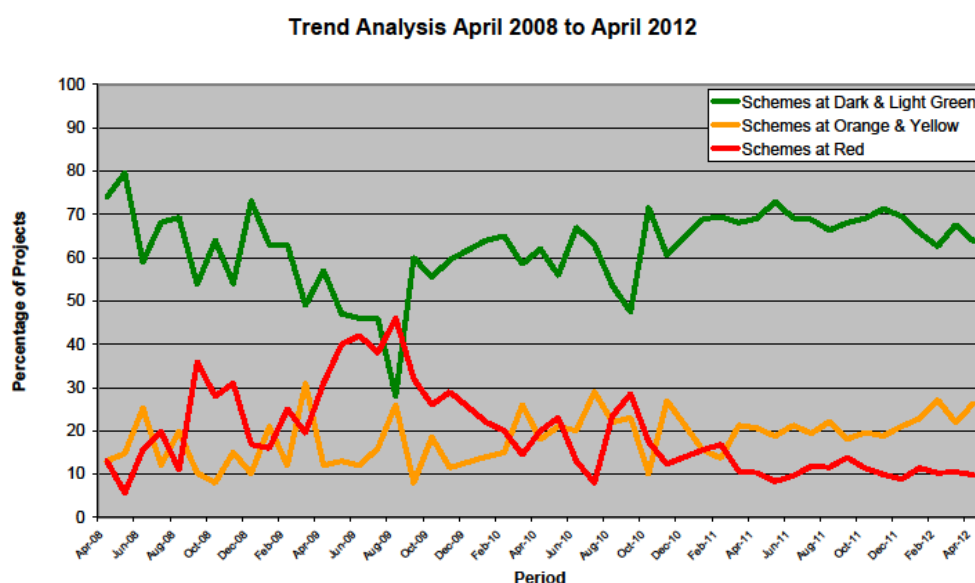
4.0 TRENDS

- 4.1 Each month a Capital Programme monitoring report is produced. This report tracks in excess of 100 projects. These projects are either in design, or on site in construction or at defects stage.
- 4.2 The effect of the measures taken above has produced improved performance, savings in costs and has demonstrated that projects are now under greater control. The outcome from the analysis shown at 4.4 below leads to the conclusion that performance improvements can be achieved under long term framework arrangements if the contracting model is flexible and mechanisms for

renegotiation exist. Table 4.4 shows the status of projects in respect of time and budget as a snap shot in time. At a given point around 10% of projects will need attention.

- 4.3 At present the contracting industry is performing better under a design and build model. This can either be achieved through the appointment of a design team that then are novated to the constructor at planning approval stage or through procurement of an integrated supplier vehicle that offers design and build services. Either model can operate but in order to reduce our contracting interfaces and reduce our contracting risk the integrated supplier vehicle that offers a complete design and build service is considered preferable.

4.4



Performance table is based on budget and time targets

- 4.5 All of our major contractor partners have confirmed that in excess of 65% of their subcontract supply chain is local. This percentage would be higher if all products specified in a construction project were all manufactured in Cambridgeshire.

5.0 CONTRACT MANAGEMENT ARRANGEMENTS

- 5.1 Property Commissioning undertake the contract management of the Framework contracts. The central aims of the contract management role are to ensure that:
- The Council's agreed contractual position is protected.
 - The service provider's performance is monitored against the contract specification to ensure services are delivered in accordance with the contract.
 - The financial implications of success or failure to perform are taken into consideration and appropriate action taken (e.g. pain/gain incentivisation and work allocation).
 - Services are commissioned and paid for.
 - Best Value is achieved.

- 5.2 The contract management team are a small group of 4 Management band staff with 1 Admin officer and support from the Head of Service. This team is not resourced to micro-manage the consultants or the individual projects. The team is also not resourced to procure a capital building programme on the basis of tendering individual projects in open market tendering conditions. The team is structured to operate under Framework contracting arrangements.

6.0 FORWARD PROCUREMENT STRATEGY FOR DESIGN AND BUILD SERVICES

- 6.1 The CCC Frameworks for Design, Project Management and Construction have 2 Years to run however the work volume advertised under the OJEU Notice will soon be reached and therefore we need to look to put in place new contracting arrangements.

- 6.2 There are a number of factors that are being considered in developing our proposed approach. These are:

- The pro's and con's of tendering for a new framework contract
- Risk allocation
- Economies of scale
- Simplification of competition procedures and processes
- Reduced contracting interfaces
- A model which can be evidenced as performing well
- Contract management resources
- Support for the SME market
- Support of local economic development and employment through direct and sub contract opportunities
- Investment in apprenticeships
- 2011 CIPFA published report on re-evaluating competition and contracting

- 6.3 Framework agreements are agreements in which parties provisionally agree terms, without immediately accepting any commitment and may subsequently make firm contracts on these terms. In the case of a multi-contractor framework agreement a number of contractors are 'admitted'. On a project by project basis thereafter mini-competitions (sometimes called further competitions) are then held between them to decide which should receive any given order.

- 6.4 Framework contracts are used widely in the public sector over a wide range of services and their continued use on this basis is being questioned due to their impact on closing out opportunities to suppliers. The wide range of services frameworks are used for makes it difficult to judge the merits or otherwise on a blanket basis with the recommended approach being a judgement on a case by case basis.

- 6.5 In relation to this contract the major advantages of the use of a framework contract include:

- Ease of use and reduced bid costs for bidders and the Council. Once the initial procurement is complete the mini competitions are simple to run and a lower cost than a full competitive process for both bidders and the Council.

- Competition – Multi supplier frameworks retain competition.
- Resource implications – The use of frameworks allows the operation of a small management team to oversee the capital building programme
- Different frameworks aimed at specific supplier markets – The lot strategy is aimed at optimising the opportunity for SMEs to successfully compete whilst recognising that on contracts over £10m are not always going to be suitable for all SMEs.
- The use of frameworks significantly reduces the lead time in appointing contractors as a separate full procurement is not required.

The use of a framework for this contract does however have some disadvantages and these where possible have been addressed in the proposed approach:

- Once a framework contract has been awarded it cannot be opened up for new entrants to join under EU Procurement rules that could be deemed to close off opportunities for the life of the framework contract. To address this it is proposed to undertake up to 15% of selected projects under £10m via an open tender process outside of the framework contract.
- Some framework contracts either only have one provider or allocate work on a rotation basis with no competition that can result in suppliers becoming complacent and not competitive. Our intended approach includes a minimum of four providers per lot with a mini competition always been undertaken.

6.6 A proposal to procure a Design and Build Services framework agreement for a period of 4 Years was tabled to an officer group to offer challenge and advice. . The main points from this process were:

- Cabinet approval to the procurement was needed
- In order to support the SME market the tender should be in three Lots
- The successful framework suppliers should support and invest in apprenticeships
- If we are to open the framework for access from partner organisations we should consider a charging mechanism/fee tariff arrangement in order to offset our costs.
- The award criteria must be consistent at tender award stage and at mini-competition and should be based on a 50:50 quality v price assessment
- The award criteria to take account of maintaining/creating local employment and other local economic benefits
- Legal must advise on whether TUPE applies
- The contract must have a suite of key performance indicators and must have a robust set of contract terms to manage poor performance
- Consideration been given to the proposed framework covering no more than 85% of projects with a value of up to £10m to some projects still to be advertised outside the framework.

6.7 A Procurement Category Manager is working with the Property Commissioning team to ensure these points are addressed in the procurement work stream.

- 6.8 Based on the assessment of the forward capital building programme and an assumption on possible external partner organisations spend through the framework the Lots have been determined as follows:
- LOT 1 - £250,000 to £2,999,999
 - LOT 2 - £3 million to £9,999,999
 - LOT 3 - £10 million and above
- 6.9 LOT 1 commences at £250,000 since Facilities Management established a Framework Agreement for minor maintenance capital projects and for schools to use when undertaking capital maintenance and minor improvement projects using their devolved formula capital. This framework has another 2 Years to run but as it operates as a call off framework this can be subject to the at least 15% allocation outside the framework.
- 6.10 The proposed number of admitted contractors per Lot is four and each admitted contractor will have to declare four design consultants that will be form part of their integrated design and build offer.
- 6.11 The tender will be undertaken in compliance with EU procurement rules and the proposed timetable is as follows:

Task	Date
Issue of OJEU Notice	w/c 11.6.12
PQQ Period	w/c 11.6.12 – w/e 27.7.12
PQQ Returns	w/c 23.7.12
PQQ Evaluation	w/c 30.7.12 – w/e 10.8.12
Sign-off of shortlisted companies	w/c 13.8.12 – w/e 31.8.12
Tender issue (shortlisted companies)	w/c 3.9.12
Tender Period	w/c 3.9.12 – w/e 12.10.12
Tender Return	w/c 8.10.12
Tender Interviews/Office/Site Visits	w/c 15.10.12
Tender Evaluation	w/c 22.10.12 – w/e 2.11.12
LGSS Approval Period	w/c 5.11.12 – w/e 30.11.12
Intention to Award/Reject	w/c 3.12.12
Alcatel Period	w/c 3.12.12 – w/e 21.12.12
Framework Award	w/c 17.12.12
Framework Commencement	1.1.13

- 6.12 The provision of at least 15% carve out to allow projects to be tendered outside the proposed new frameworks will provide real time benchmarking on performance and price. As the framework is a call off with no work guarantee the amount of work to be tendered outside the framework will be increased if tendering outside delivers better outcomes, taking into account the extra resources this process requires.
- 6.13 In order to ensure the 15% has maximum impact and benefit for SMEs there will be no application of this deduction to Lot 3 unless there is reasonable evidence to show that best value would be secured through a one off EU procurement exercise.

- 6.14 The estimated volume of contracting opportunities for Lots 1 and Lots 2 will be reduced to reflect the fact that 15% of the capital building programme spend per annum i.e. some £7.5million of business will be procured through open competition operating outside of this Framework. The precise mix will be dependent on the projects that make up the programme but will be focused on getting a broad spread of low, medium and higher value projects that are best geared towards the SME market.

7.0 ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING

7.1 Supporting and protecting vulnerable people when they need it most

- 7.1.1 There are no significant implications for this priority.

7.2 Helping people live healthy and independent lives in their communities

- 7.2.1 The contracting arrangement agreed would have no direct impact on this priority. However, since the capital programme delivers infrastructure such as new schools in the new growth areas if pupils have access to local schools in new housing developments, they are more likely to cycle or walk to school rather than using Local Authority-provided transport or parental cars. They will also be able to access out-of-school activities such as sport and homework clubs more readily. This will contribute to the development of both healthier and more independent lifestyles.

7.3 Developing the local economy for the benefit of all

- 7.3.1 Employment is provided by the capital investment and building of a new or the refurbishment or remodelling of public infrastructure.

7.4 Ways of Working

- 7.4.1 Framework contracting arrangement will offer opportunities at a local level and will prove an efficient model for delivering investment in growth.

8.0 SIGNIFICANT IMPLICATIONS

8.1 Resources and Performance

- 8.1.1 These issues have been addressed in the measures and efficiencies section.

8.2 Statutory, Risk and Legal Implications

- 8.2.1 This area of work is subject to a large number of statutory requirements, relating to planning, building regulations and procurement regulations. As any further guidance emerges from central government, it will be incorporated into the relevant processes.

8.3 Equality and Diversity Implications

- 8.3.1 There are no significant implications for any of the prompt questions within this category.

8.4 Engagement and Consultation

- 8.4.1 Any issues requiring consultation as a result of Cabinet's decision will follow the appropriate processes.

Source Documents	Location
<i>CIPFA Re-evaluating competition and contracting.</i>	RES 1301, Shire Hall Cambridge