

JOINT PROFESSIONAL SERVICES FRAMEWORK

To: Highways and Transport Committee

Meeting Date: 19 January 2021

From: Steve Cox, Executive Director, Place & Economy

Electoral division(s): All

Forward Plan ref: 2021/008

Key decision: Yes

Outcome: To update the committee of developments relating to procurement of the Joint Professional Services Framework since the report of the 10 November 2020. And to seek the committee's approval to rescind the previous Decision, retain the submission of tenders on Quality and the completed Quality evaluation and scoring part of the tender process, rewind part of the procurement process relating to Price only, review and reissue to tenderers one to six some of the procurement documents relating to Price , re-run the Price part of the tender process and Award the Contracts to the two highest scoring tenderers by combining the existing Quality scoring with the outcome of the rewound Price scoring.

Recommendation: The Highways and Transport Committee is asked to:

a) rescind the Decision of the committee dated 10 November 2020 which was:

b) Approve the award of the framework contracts as set out in the confidential Appendix A (The Committee is asked to provide Approval to Award to the two top scoring bidders one and two, and enter into a contract with each company at the end of the standstill period)

b) retain the completed Quality evaluation and scoring of tenderers one to six

c) review and reissue to tenderers one to six some of the procurement documents relating to Price in order to produce greater clarity and transparency in order to ensure that all tenderers interpret the Staff Categories Guidance and Requirements and all other reissued Guidance and Requirements as to Price in a uniform way when formulating their new Price tender submissions

d) rewind the tender process for Price only so that tenderers one to six will be given the opportunity to re-submit their tenders of Price only

- e) following evaluation of the resubmitted tenders on Price only delegate authority to the Executive Director of Place and Economy to Award Contracts to the two highest scoring tenderers identified after combining the existing scores on Quality with the new scores received on Price

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1. Background

- 1.1 On 10 January 2019, the Economy and Environment (E&E) Committee approved the establishment of new professional services contract arrangements to support the development of the infrastructure in the Cambridgeshire and Peterborough area and help ensure its continued economic success.
- 1.2 A Project Team to manage the development and procurement of the new arrangements was established in March 2019. The Project Team is now led by the Interim Group Manager of Major Infrastructure and Delivery and comprises of procurement experts, external NEC contract expert and LGSS legal representatives plus a representative of the Greater Cambridge Partnership.
- 1.3 The Project Team oversaw the development of an options appraisal and a market engagement exercise during the Spring and Summer of 2019. The team identified a 5-year duration framework with two multi-disciplinary suppliers as the option that best met the needs of the Contracting Authorities. This option balances the need for ongoing competition and service resilience with the opportunity to develop collaborative relationships and knowledge retention with a smaller number of suppliers.
- 1.4 The framework will be hosted by Cambridgeshire County Council (the County) and will be accessible by the County Council, the Greater Cambridge Partnership, the Cambridgeshire and Peterborough Combined Authority, Peterborough City Council and other public sector organisations in the area, together, the Contracting Authorities.
- 1.5 When a Contracting Authority requires work that is within the scope of the framework, it may select one of the two suppliers using either a direct appointment route or by using a secondary competition route. The Contracting Authority then enters into a contract (a Task Order) for the required work with the selected supplier.
- 1.6 Although there is a no guaranteed level of spend via the framework, it is anticipated that professional services of up to approximately £13M per annum may be procured in order to support the planned programmes of investment in the region's infrastructure.
- 1.7 The framework scope is the provision of professional services across the full project lifecycle for transportation and other infrastructure projects in the Cambridgeshire and Peterborough area.
- 1.8 The project types include but are not limited to highways; walking, cycling and other non-motorised modes; public transport including rail, bus, guided transport and metro systems; intelligent transport and future mobility solutions. Projects may include multiple modes.
- 1.9 The scope of services for delivery under the framework include but are not limited to the type of service outlined below.
 - Transport Solutions
 - Project Delivery Studies
 - Consultation and Stakeholders
 - Planning and Statutory Services
 - Design services (feasibility, preliminary and detailed)

- Commercial services
- Surveys and investigations
- Environmental Services
- Future Mobility Services
- Construction Phase services

- 1.10 A restricted two-stage procurement process commenced on 4th December 2019 by issuing a Contract Notice in the Official Journal of the European Union (OJEU). The first stage of the process was a submission of a contract notice in the Official Journal of the European Union (OJEU) on 4th December 2019 and published on the 9th of December 2019 and the issue of Selection Questionnaires (SQ). The SQ invited interested providers to make a submission which was evaluated for financial and safety suitability, along with capacity and relevant experience, particularly with respect to some of the likely risks involved in delivering the services.
- 1.11 Eight organisations expressed an interest in the framework contract. The organisations included both single suppliers and consortia / subcontract arrangements that had come together in order to provide the wide-range of services required.
- 1.12 All eight SQ submissions were evaluated. One of the submissions did not meet the required thresholds of the SQ and was therefore not invited to submit a tender. The Invitation to Tender (ITT) was issued on 25th February 2020 to the remaining seven organisations.
- 1.13 During the tender period, one of the seven organisations withdrew as it transpired that it was not able to put in place the levels of professional indemnity insurance required by the contract.
- 1.14 The tender period had been planned to close on 30th March 2020 but this period was extended until 20th May 2020 to enable all organisations additional time to prepare their tenders as a result of the onset of the Covid-19 pandemic.
- 1.15 All six of the remaining organisations submitted a Final Tender by 20th May 2020 via the LGSS e-tendering system.
- 1.16 The tenders comprised two structurally separate parts: a Quality Submission and a Price Submission.
- 1.17 The Quality submission required written responses to eight questions to demonstrate the method as to how the supplier would provide a high-quality service and work collaboratively with the Contracting Authorities and with the other supplier on the framework. It also included how the supplier would support local suppliers and Small and Medium sized Enterprises (SMEs) and provide the Contracting Authorities with access to specialist services as and when required.
- 1.18 The Price submission required submission of costs for a wide range of professional staff skills and grades that are likely to be required during the term of the framework.
- 1.19 The Quality and Price submissions were evaluated.

- 1.20 During the evaluation of the Price submissions, tender clarification questions were issued to all six suppliers in order to seek confirmation of the accuracy and compliance of the submitted cost data.
- 1.21 The evaluators sought explanations as to prices submitted by one tenderer, as their tender had the appearance of being abnormally low. That tender submission was subject to further detailed analysis, and a meeting subsequently took place with the tenderer on 5 October 2020, where the tenderer provided further information to the evaluators. Subsequently all six bids were accepted.
- 1.22 Following this the scores of tenderers one to six for the Quality and the Price parts of their submissions were combined to give an overall score. The overall score was calculated on a ratio 30% Price to 70% Quality as provided in confidential Appendix A.
- 1.23 A Recommendation from the Project Team was brought to this committee dated 10 November 2020 which stated:

The Committee is asked to provide Approval to Award to the two top scoring bidders one and two, and enter into a contract with each company at the end of the standstill period.

The scoring for tenders one to six and tenderers who were ranked one and two were set out in confidential Appendix as part of that committee.

- 1.24 The committee approved this recommendation which became the Decision. This Decision was notified to tenderers one to six on the same day as the committee, and the standstill period was determined at midnight on the 20 November 2020.

2. Main Issues

- 2.1 During the standard 10 day standstill period, also known as Alcatel, enquiries were received and issues raised by tenderers scoring three and four directed to the validity of the Award Decision concerning the tenderer who was ranked number two. These enquiries and issues related primarily to whether the Project Team's failure to reject tenderer two's tender for being abnormally low was sound and could be challenged. Due to the content and complexity of what was being requested by tenderer three and four and the legal company acting on behalf of tenderer three, the Project Team decided to extend the stand-still period to the 4 December 2020 to allow further time to investigate and consider the issues raised.
- 2.2 During this extended standstill period while the enquiries were being investigated and the issues raised considered, the Project Team recognised the possibility that the procurement documents as to Price may not be sufficiently clear, precise and unequivocal so as to ensure that all tenderers were afforded an equal opportunity to formulate their tenders on Price on a uniform basis. A potential consequence of the possibility of such a flaw was whether any Abnormally Low Tender assessment of any information provided during the seeking of any Abnormally Low Tender explanations was an effective assessment when that assessment included comparing the Prices of the tenders received. The presence of such flaws may also have meant that the two Most Economically Advantageous Tenders were not identified.

- 2.3 The Project Team extended the standstill period to the 29 January 2021, to consider that possibility further, and instruct external legal procurement lawyers to undertake a review working closely with the Project Team.
- 2.4 The external legal review appears in confidential Appendix B.
- 2.5 In the light of the developments outlined above the recommendations are as set out above which involves the County exercising its discretion to rescind its previous Award Decisions and rewind the procurement on Price only so that the Quality evaluation and scoring of the tender process is retained, and some of the procurement documents relating to Price are revised and reissued with an invitation to tenderers one to six to resubmit their tenders on Price only. Since the tenders on Quality and Price were structurally separate (see paragraphs 1.16 to 1.18 of this report), it is possible to retain the Quality evaluation and scoring, re-run the Price part of the tender as the re-run Price tender does not affect the content of the tenders on Quality or their evaluation or vice versa.
- 2.6 Following the rewind of the Price tender process, scheduled during late January and February 2021, the Project Team will evaluate the Price tenders received and rescore the revised Price (30%) tenders received from tenderers one to six and combine these to the retained Quality tenders (70%) scores and re-rank tenderers one to six from the resulting total combined scores.
- 2.7 Due to delays in the process thus far, and risks of running into the purdah period leading up to May 2021 County Council elections, it is proposed to delegate authority to Award the Contracts to the Executive Director of Place and Economy to award to the two highest scoring tenderers identified after combining the existing scores on Quality with the scores received on Price as per paragraph 2.6. New award decisions notices will then be issued to all participating tenderers.
- 2.8 Entering into the Contracts with the two winning tenderers will once again be subject to a 10 day stand still period, after which details of the Contract Award Decisions can be made publicly available. This information will be included within the Contract Award Notice in the OJEU and the Council will actively communicate this information.
- 2.9 Further to Contract Award as proposed in this report and expiry of the standstill period, there will be a period to finalise and sign the contract documentation, mobilise resources and it is therefore programmed that the contracts will go live on the 1 June 2021 for delivery of the services.

3. Alignment with corporate priorities

3.1 A good quality of life for everyone

The framework will help develop and deliver the infrastructure required to support the continued health and success of our area.

3.2 Thriving places for people to live

The framework will help develop and deliver the infrastructure required to support the continued economic success of the Region.

3.3 The best start for Cambridgeshire's children

There are no significant implications for this priority.

3.4 Net zero carbon emissions for Cambridgeshire by 2050

The framework will enable the development and implementation of a wide range of transport and other infrastructure (including sustainable transport solutions) that will help reduce congestion and sources of emissions from transport.

4. Significant Implications

4.1 Resource Implications

A Framework Manager will be recruited and appointed to oversee the operation of the framework. The role will involve collation of forward work programmes, liaison with the Contracting Authorities and the two suppliers, seeking quotations and awarding Works Orders under the framework and managing the performance management framework.

4.2 Procurement/Contractual/Council Contract Procedure Rules Implications

A restricted OJEU process has been completed in accordance with contract procedure rules.

4.3 Statutory, Legal and Risk Implications

Until the standstill period expires and the time for issuing court proceedings expires there is always a theoretical opportunity for any losing tenderer to commence a court claim. However, in every case there have to be recognised and valid grounds to bring a claim. In this case it is not considered that there are such grounds.

4.4 Equality and Diversity Implications

There are no significant implications within this category. An Equalities Impact Assessment screening has been undertaken for the project previously.

4.5 Engagement and Communications Implications

There are no significant implications within this category.

4.6 Localism and Local Member Involvement

There are no significant implications within this category.

4.7 Public Health Implications

There are no significant implications within this category.

Have the resource implications been cleared by Finance? Yes

Name of Financial Officer: Sarah Heywood

Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement? Yes

Name of Officer: Gus de Silva

Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or LGSS Law? Yes

Name of Legal Officer: Fiona McMillan

Have the equality and diversity implications been cleared by your Service Contact?

Yes

Name of Officer: Elsa Evans

Have any engagement and communication implications been cleared by Communications? Yes

Name of Officer: Sarah Silk

Have any localism and Local Member involvement issues been cleared by your Service Contact? Yes

Name of Officer: Andrew Preston

Have any Public Health implications been cleared by Public Health Yes

Name of Officer: Iain Green

5. Source documents

None