

Proposed Uplift in Framework Value for Re:fit 3

To: Environment & Green Investment Committee

Meeting Date: 11 July 2024

From: Executive Director of Place and Sustainability

Electoral division(s): All

Key decision: Yes

Forward Plan ref: 2024/076

Executive Summary: This paper provides an update on the procurement arrangements for the delivery of the Council's energy projects. The County Council conducted a mini-competition under the Re:fit 3 Framework in 2017 for the delivery of these projects. The target value included in the competition was £50m. Due to a range of unforeseen issues such as Covid and the Ukraine War the target value needs to be extended. This report sets out the case to increase the target value from £50m to £75m.

Recommendation: The Committee is recommended to:

- a) Approve an extension to the target value for the contract awarded under the Re:fit 3 Framework in November 2017 from £50million to £75million for energy performance contracting as detailed in paragraphs 3.5 and 3.6 of this report.
- b) Delegate authority to the Executive Director of Place and Sustainability in consultation with the Chair and Vice Chair of this Committee to authorise the extension of this contract

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1. Creating a greener, fairer and more caring Cambridgeshire

- 1.1 This report relates to Ambition 1: Net zero carbon emissions for Cambridgeshire by 2045, and our communities and natural environment are supported to adapt and thrive as the climate changes.
- 1.2 Achieving the Council's Ambition of Net Zero by 2045 requires a transition to a clean and efficient energy system including low carbon electricity generation and low carbon heating. The Council has developed and is delivering a portfolio of renewable energy, heat network and smart grid projects to reduce the Council's carbon footprint; delivery reductions for the net zero target for Cambridgeshire and support and to build resilience in local energy supplies.

2. Background

- 2.1 Re:fit 3 is a procurement framework for energy performance contracting. It was released in March 2016 by the Greater London Authority (GLA) and Local Partnerships, in collaboration with Crown Commercial Services.
- 2.2 The Re:fit 3 framework is a four-year framework, which is now expired for new projects but still operational for those projects commissioned during its active phase. The total value of the framework is £1.5billion.
- 2.3 On 14 July 2016, the Council's Economy and Environment Committee approved the running of a procurement exercise for an Energy Service Provider under the Re:fit 3 framework using a mini-competition. The Council awarded the procurement to Equans (formerly Bouygues Energies and Services Ltd) in November 2017 with a target value of £50million based on anticipated project pipeline. A 'target value' is an estimate of the value of projects that could be put through under the mini-competition.
- 2.4 This report is seeking an extension to the target value of the mini-competition under the Re:fit 3 Framework.

3. Main Issues

3.1 The Council approved the following projects under the Re:fit 3 Framework, some of which are still in delivery.

Projects	Committee decision date	Original value of approved projects (all project costs not just REFIT 3)	Current expenditure under REFIT 3 (as of 30 th May 2024)	Forecast total expenditure under REFIT 3
North Angle Solar Farm (including Private Wire)	18/12/2020	£24,443,287	£23,804,608	£28,671,514
Swaffham Prior Community Heat Network	14/01/2021	£11,900,000	£12,118,630	£15,105,999
Alconbury solar carports	11/03/2021	£611,311	£689,073	£689,073
Schools (including Comberton)	11/03/2021	£6,170,000	£6,170,000	£6,170,000
Babraham Rd P&R	11/03/2021	£5,795,386	£5,351,323	£8,680,633
Total		£48,919,984	£48,133,634	£59,317,219

3.2 All of these projects have been impacted to varying extents by increasing costs relating to materials and labour in the construction industry in the U.K. since the COVID-19 pandemic, Eu Exit, the Ukraine war and other global events. The general impact on construction output prices is outlined in figure one below.

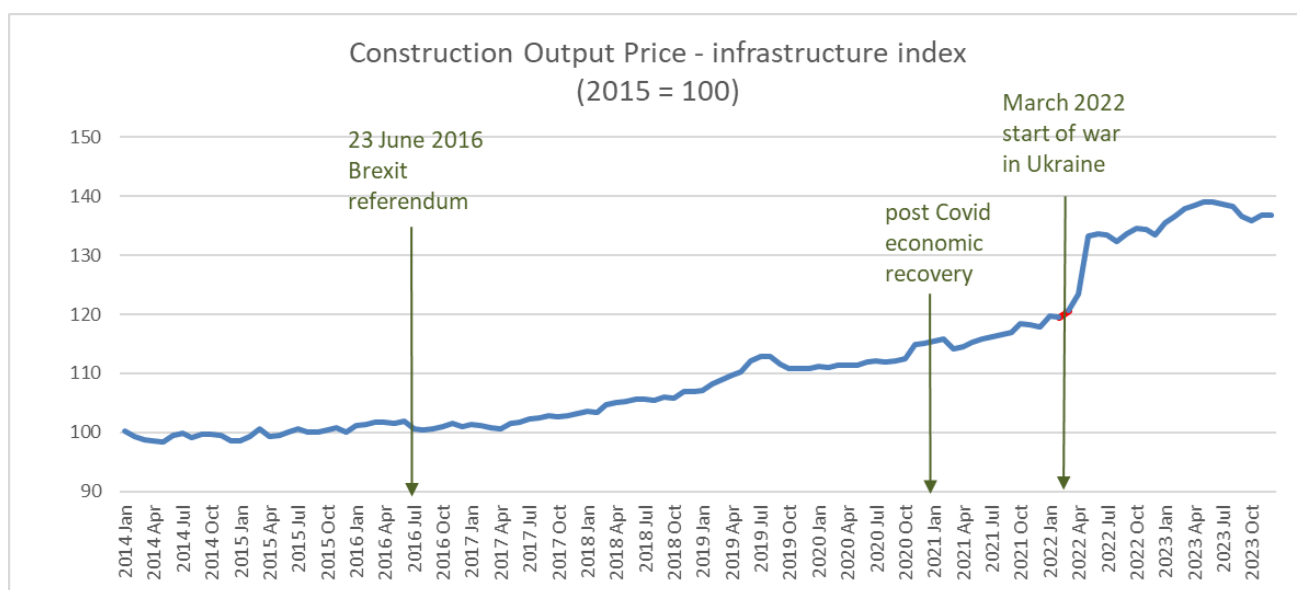


Figure One: Construction Output Price index 2014-2023, Office for National Statistics

- 3.3 Contracting during the period 2020-2022 was particularly challenging due to the range of global impacts being experienced consecutively - some of this legacy is still being experienced today. Fixed price contracting was temporarily replaced with a 'cost plus' model where all those elements that could be tied down were fixed but areas where prices changed too swiftly at that time, for example, costs for steel, solar panels, electronics, control systems and logistics were not fixed and managed separately.
- 3.4 As a result, projects experienced cost increases. All the increased costs and budgets have been approved through committee decisions. However, it is now timely to regularise this position with the Re:fit 3 framework mini competition target value of £50m to extend this to reflect these increases.
- 3.5 Local Partnerships, co-owners of the Refit 3 Framework, have confirmed that the overall value of the framework is £1.5bn and there is significant headroom availability on this framework for the Council to extend the target value of its mini-competition.
- 3.6 The mechanism under which this can be achieved is through the Public Contract Regulations (2015) Regulation 72(1)(b) and (c)(iii). This allows an increase in price which does not exceed 50% of the value of the original contract or framework agreement, subject to meeting the associated provisions. In this case, the procurement of the mini-competition was undertaken prior to Covid and the Ukraine war and 18 months after EU Exit, before the effects were fully clear and therefore the price impacts could not have been reasonably foreseen.
- 3.7 The current expenditure under the mini-competition is £48.7m (as of 30th May 2024) out of the £50m target. It is proposed to increase the target value by £25m, from £50m to £75m to reflect the project increases resulting from the issues highlighted in paragraphs 3.2 and 3.3 above.

4. Alternative Options Considered

- 4.1 The main alternatives considered were the level of increase up to the maximum of 50%. As the Regulation 72 is a process you only tend to undertake once, it was felt extending to the maximum level would ensure there is sufficient provision within this contract for remaining portfolio of projects to be delivered.

5. Conclusion and reasons for recommendations

- 5.1 To accommodate the additional costs on energy project, the recommendation is to extend the target value of contract through the Re:fit 3 Framework using Procurement Regulation 72.

6. Significant Implications

6.1 Finance Implications

There are no finance implications as this is a procurement target and does not relate to budgets for any individual projects. Only were there to be a legal challenge, as detailed below in 6.2 would there be cost implications for the Council.

6.2 Legal Implications

The legal implications of this are two-fold:

- 1) The Council is contractually obliged to pay Equans under the various signed project contracts. Therefore, the do-nothing option with the framework limit is not a viable option.
- 2) The Public Contract Regulations (2015) must be adhered to or there will be a risk of legal challenge in relation to the procurement of the provider under this framework. The Head of Procurement has been consulted in the development of the recommended approach and Pathfinder Legal Services Ltd advised on the mechanism.

The Council shall adhere to the Public Contract Regulations 2015, notably, Regulation 72(1)(c) (iii) and Regulation 72(8).

6.3 Risk Implications

There is very low risk of a potential legal challenge relating to the extension value of the mini-competition under the Refit 3 framework provider for the following reasons:

- The extension comfortably fits with the Refit3 Framework overall target value.
- There were 16 providers on the Framework given the opportunity to tender for the mini-competition. Of this, only one provider bid for the works. To assess the bid, procurement regulations were followed, a waiver approved to assess the bid on the basis this passed the quality thresholds.

6.4 Equality and Diversity Implications

There are no equality or diversity implications.

6.5 Climate Change and Environment Implications

The climate change and environment implications of this are that raising this limit will permit a number of projects aimed at delivering significant carbon savings to be delivered.

7. Source Documents

[Procurement for an Energy Service Provider under the REFIT 3 Framework - Economy and Environment Committee - 14th July 2016](#)

[North Angle Solar Farm Investment Decision - Commercial and Investment Committee - 18th December 2020](#)

[Swaffham Prior Community Heat Project – Investment Case - Environment and Sustainability Committee - 14th January 2021](#)

[Civic Hub Solar Carports Investment Decision - Environment and Sustainability Committee - 11th March 2021](#)

[Schools Low Carbon Heating Investments - Environment and Sustainability Committee - 11th March 2021](#)

[Babraham Road Park and Ride Smart Energy Grid Investment Decision - Environment and Sustainability Committee - 11th March 2021](#)

[Development and construction of the Private Wire connecting North Angle - Environment and Green Investment Committee - 3rd March 2022](#)

[United Kingdom-London: Energy and related services \(crowncommercial.gov.uk\) - 2015/S 214-391299 - Contract Notice](#)

RE:FIT3 – Mini-Competition Reference - DN265022. Document can be requested via email.

[Construction project delays soar by over 100% in wake of COVID-19 - plantandcivilengineer.com](#)

[COVID-19 Implications on UK Construction - first-law.com](#)

[Challenges of advancing COVID-19 supply chain delay and disruption claims under contractual force majeure provisions – Clifford Chance](#)