

Cabinet

3 December 2020



Procurement of a Construction Contractor Framework Agreement

Purpose of the report	To make a decision	
Report Author	Nicholas Cummings	
Cabinet Member	Councillor Jim McIlroy	Confidential No
Corporate Priority	Financial Sustainability	
Recommendations	Cabinet is asked to: Approve the Construction Contractors Framework Agreement Approve the named providers in each lot for the Construction Contractors Framework Agreement as set out in Confidential Appendix C	
Reason for Recommendation	Cabinet approval is required for all procurements subject to the Public Contracts Regulations 2015 unless the matter has been delegated to portfolio holder(s) and designated post holders by Cabinet. The establishment of the Construction Contractors Framework Agreement will provide a faster and more compliant route to market, and deliver additional benefits, e.g. such as improved social value. The fees proposed by the Construction Contractors are the basis for a negotiation to obtain the lowest possible project fees which demonstrate value for money.	

Appendices (Confidential)

Appendix A – Contractors' Prelims, Profits and Overheads

Appendix B – Procurement Tender Report.

(The report contains full details of the Procurement exercise undertaken to establish the Framework Agreement)

Appendix C – Construction Contractors Framework Agreement – Contractors by Lot

Appendix D – Performance Monitoring Report Format

1. Key issues

- 1.1 The Council's property and development programme requires construction contractors with demonstrable ability (experience, financial standing, etc.) to carry out the required construction works.
- 1.2 As a public sector organisation, SBC must comply with procurement regulations (the Public Contracts Regulations 2015), with its own Contract Standing Orders and with the requirement to competitively tender our requirements in an open market. We must be able to demonstrate value for money in all such procurement activity.
- 1.3 Procuring works contractors on a project by project basis, whilst providing a compliant route to market which may demonstrate value for money, is proving to be time-consuming. Not can this approach guarantee to secure the best possible outcomes in terms of project construction cost. Further, this approach does not enable the development of a longer-term relationship with contractors who understand our requirements and our corporate priorities.
- 1.4 The Assets team has hitherto either undertaken individual tender exercises to select a construction contractor or has used various third party framework agreements (such as the Newlon Housing and the Prefect Circle Frameworks) to appoint construction contractors. This has generally delivered a compliant route to market.
- 1.5 However, the continued reliance on these other external frameworks presents a number of disadvantages to using a third party's framework agreement:
 - (a) These frameworks are more general and not tailored to our specific portfolio of work. Our bespoke framework has focused on delivering our values and specific project requirements;
 - (b) They do not use our specific contract terms and are outside of our direct control in other respects;
 - (c) They are utilised by many other organisations. As such we are competing with other users of the framework for availability and value for money;
 - (d) In some cases, the Council has had to pay a fee to access the providers on these frameworks.
- 1.7 In order to ensure that the Council always fully meets the requirement to maximise value for money, delivers compliant appointments of service providers, and achieves a consistently high quality delivery of project professional services, the options below were considered.

2. Options considered

- 2.7 **Procure works contractors on a project by project basis:** This is in part what is done now, but adds time (up to 6 months in some cases) and cost to project delivery.
- 2.8 **Continue the use of other external frameworks:** External frameworks are currently used; in some cases the Council is charged for access to providers. Others' frameworks do not reflect our specific requirements.
- 2.9 **Develop a bespoke Council Framework Agreement:** the development of a bespoke Council framework agreement, with contractors who specifically

meet our requirements, provides a long term, compliant solution, and the ability to demonstrate value for money.

2.10 The development of SBC's own framework agreement was considered to be the preferred option, with the framework comprising of 5 Lots to cover the range of project types and values:

- Lot 1 - Contractors with capacity for projects valued between £0-1m
- Lot 2 - Contractors with capacity for projects valued between £1-5m
- Lot 3 - Contractors with capacity for projects valued between £5-20m
- Lot 4 - Contractors with capacity for projects valued between >£20m
- Lot 5 - Fitout contractors.

2.11 In establishing this framework agreement, it is important to note that the Council is not committed in any way to award any volume or value of contract work to any of the framework providers. This provides reassurance to the Council in the event that there are any changes to the property and development programme of work. More detail on the operation of the framework is set out at section 7.

3. Contractors Prelims, Profits and Overheads

3.1 Contractors were required to submit their indicative Prelims, Profits and Overheads percentages for project case studies for each Lot; these are shown at Confidential Appendix A.

3.2 There is a wide variation in the percentage fees for Prelims, Profits and Overheads. This can, in part, be explained by contractors' different project approaches and different corporate arrangements.

3.3 Under the terms of the framework agreement, contractors may be directly awarded a contract without further competition, or by a mini-competition conducted with all capable contractors on the relevant Lot.

3.4 The mini-competition is the opportunity for all contractors on the bespoke framework agreement to submit their most competitive overall fees. Where there is a requirement to directly award a contractor, then this must be with a contractor who has demonstrated the most competitive fees in their original fee submission.

4. Other considerations

4.1 When expressing an interest in bidding for the framework agreement, contractors were asked to demonstrate the social value benefits that they have delivered on previous construction projects. The examples provided by the majority of the contractors gives confidence that they will be able to deliver social value benefits to the community as an added value to the delivery of the contract. Other frameworks have not necessarily allowed us to focus on delivering these community benefits.

4.2 The added value benefits will be monitored and recorded

- 4.3 Many of the contractors identified sourcing from local suppliers, employing residents from within the Borough, and work experience and training as opportunities they would offer as additional contract benefits should they be awarded project contracts, and this will be a requirement when undertaking the mini-competition.

5. Sustainability

- 5.1 Contactors also demonstrated, in their expressions of interest, the requirement to limit the environmental impact of their organisation in the execution of SBC's contracts.

6. Timetable for implementation

- 6.1 Assuming Cabinet approve the recommendation to conclude the framework agreement, as described, a 10-day statutory standstill period will apply. Once this has concluded, the providers on all of the framework lots will be advised and the framework agreement will be concluded. Providers will then be required to sign the framework agreement contracts. The framework agreement commencement date is anticipated to be 11 January 2021.

7. Operation of the Framework Agreement

- 7.1 In accordance with the contract terms issued to bidders, the framework agreement may be used as follows:
- (a) By undertaking a direct award of a provider via a call off, taking into account availability of the contractor to undertake the works, their price and the proposed quality;
 - (b) By undertaking a mini-competition with all capable contractors within the Lot.

Please note that the Prelims, Overheads and Profits submitted by the contractors in their proposals are a starting position from which the Assets team will undertake further negotiations to obtain optimal project pricing.

Appointments of all contractors will be undertaken in accordance with Contract Standing Orders.

- 7.2 The Corporate Procurement Manager and Property and Development Manager will regularly monitor and review the performance of the Framework Agreement, and present a quarterly report to the Development & Investment Group (DIG).
- 7.3 Call offs from the framework agreement will be subject to the JCT contract terms issued to bidders during the procurement process, and these terms, and any project-specific requirements, will form the basis of the contractor performance monitoring.
- 7.3 All call-offs from the framework agreement will be recorded on the Monitoring Report, a suggested example of which can be found at Appendix D. This information will be incorporated into a 6-monthly report for Cabinet with input on the content and format from the Portfolio Holder.

7.4 In addition, there will be a six-monthly report to Cabinet advising on the performance of the Framework Agreement, highlighting any issues and setting out how these will be mitigated and/or rectified. The Portfolio Holder will be kept fully informed of any emerging issues in the intervening period as required.

8. Recommendation

8.1 Cabinet is asked to:

Approve the Construction Contractors Framework Agreement.

Approve the named providers in each lot for the Construction Contractors Framework Agreement as set out in Confidential Appendix C.