

Birmingham City Council

Report to Cabinet

Date 15th October 2019



Subject: **PROCUREMENT STRATEGY FOR A HIGHWAYS AND INFRASTRUCTURE WORKS FRAMEWORK AGREEMENT**

Report of: **Director, Inclusive Growth**

Relevant Cabinet Member: **Councillor Tristan Chatfield, Finance and Resources**

Relevant O &S Chair(s): **Councillor Sir Albert Bore, Resources**

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1. Executive Summary

- 1.1. To provide details of the category strategy and the procurement process for the provision of a highways and infrastructure works framework agreement (HIWFA) for a four year period to commence on 1st April 2020, to replace the existing highways and infrastructure works framework agreement that expires on 31st March 2020.
- 1.2. It is proposed to undertake the procurement following the Open procedure.

2. Recommendations

- 2.1. Approves the strategy and the commencement of tendering activity for a highways and infrastructure works framework agreement in accordance with the requirements and approach outlined in Section 3 of this report.
- 2.2. Delegates authority to the Director, Inclusive Growth, in conjunction with the Assistant Director, Development and Commercial Finance (or their delegate), the Chief Finance Officer (or their delegate), and the City Solicitor (or their delegate) to award the Highways and Infrastructure Works Framework Agreement (HIWFA) following the completion of the tendering process.

3. Background

3.1. Background and Service Requirements

- 3.1.1. The existing highways and infrastructure works framework agreement to undertake new highways and infrastructure works expires on the 31st March 2020. This framework agreement is for new infrastructure works on the highway up to the value of £10million that do not form part of the Constructing West Midlands framework agreement managed by Acivico Limited or the Highways Maintenance and Management PFI contract. Projects with a works value of over £10million will be procured via an appropriate route to be considered on a project by project basis.
- 3.1.2. In view of the expiry of the highways and infrastructure works framework, a replacement is required for the provision of works to support highways and infrastructure projects across the Council.
- 3.1.3. The HIWFA will mainly be accessed by Transport and Connectivity and Highways within the Inclusive Growth Directorate, however access is not restricted and is available to all parts of the Council.
- 3.1.4. The framework will also be open for other public sector bodies (as defined in the OJEU notice) should they wish to use it. The overall management and responsibility for the contract will remain with the Council.

3.2. Outcomes Sought

The procurement process for the proposed HIWFA is expected to deliver the following outcomes:

- Efficiencies realised by reducing the number of full tendering exercises to be carried out;
- Greater value for money opportunities through updated pricing and contractual arrangements;
- Full visibility of spend against this service and an integrated contract management activity to realise value through efficiencies and improvements;
- Consolidated management information to support directorate resource planning;
- Reduced risk in the engagement of contractors;
- Consistency in the implementation and delivery of works;
- Manage the supply chain and contract packaging so that it supports local contractors and suppliers;
- Continue with the existing work already carried out by contractors to support local people in obtaining employment and apprenticeship opportunities through targeted Social Value action plans.

3.3. Market Analysis

- 3.3.1. Highways and infrastructure works is a mature market with contractors ranging from local Micro, Small and Medium Enterprises, up to large multi-national organisations. Soft market testing has shown that the type of schemes to be delivered as part of the Council's Capital Programme for highway and infrastructure works will appeal to the full range of contractors.
- 3.3.2. In order to compliment the soft market testing undertaken, a pre-tender market consultation exercise was undertaken with potential tenderers. This advised potential tenderers of the opportunity and the proposed procurement strategy with feedback given by potential tenderers used to finalise the strategy. The potential tenderers provided feedback and insight on: threshold levels for direct award/further competition, potential number of lots, internal management of the framework, and pros and cons of the existing framework. This feedback has been used to develop the strategy for this new proposed framework.
- 3.3.3. The market in the Birmingham and wider West Midlands area is suffering market saturation due to high supply and demand. Due consideration has been given to this and is reflected in the strategy report.

3.4. Procurement Approach

3.4.1. Duration and Advertising Route

The proposed framework will be for a period of four years which is the maximum permissible under EU procurement law where there are no circumstances which justify a different period. The duration maximises the value of the tendering process as it takes into account the costs associated with undertaking a tendering exercise e.g. officer time. There is no level of business guaranteed under a framework agreement. The tender will be

advertised via www.finditinbirmingham.com, Contracts Finder and the European Journal (OJEU).

3.4.2. Procurement Route

The requirement will be tendered using the open procedure on the basis that:

- the service can be clearly defined;
- tenderers' prices will be based on model schemes that reflect typical requirements for each lot;

3.4.3. Scope and Specification

3.4.3.1. The scope and specification is designed to ensure that highways and transportation works can be delivered in the most efficient and effective way. These works can range from minor highway improvements, for example new white lining through various pedestrian and cycling improvements, to large scale road junction projects and will involve the full range of highway and civil engineering works.

3.4.3.2. The options that will be covered are:

- Buildability advice – provision of construction advice during the development of the project for a supplier to act as a critical friend to the Council to challenge the feasibility and practicality of the proposals. The objective is to improve the quality of the tender specifications that are issued. To ensure there is no conflict of interest, the buildability advisor will not have expressed an interest in the construction of the project.
- Construct only – delivery of works which have been designed by others.
- Design and Construct – the contractor has responsibility for the design of some or all of a project as well as delivery of the works
- Early Contractor Involvement – jointly designing and planning infrastructure projects in a cost effective and less adversarial structure.

3.4.3.3. There will be 4 Lots for individual work packages to be issued under, as follows:

Lot 1 – works up to £200,000

Lot 2 – specialist works up to £250,000

Lot 2a – Footway Crossings

Lot 2b – Drainage

Lot 3 – works between £200,001 and £1,000,000

Lot 4 – works between £1,000,001 and £10,000,000

3.4.4. Tender Structure (Framework Agreements)

3.4.4.1. Evaluation and Selection Criteria – Selection Questionnaire (SQ) Stage

The evaluation of the SQ stage will be based on the following criteria:

Assessment A (Pass/Fail)

- Section A – Information about the Applicants (Pass/Fail)
- Section B – Grounds for Mandatory Exclusion (Pass/Fail)
- Section C – Grounds for Discretionary Exclusion Part 1 and Part 2 (Pass/Fail)
- Section D – Economic and Financial Standing (Pass/Fail)
- Section E – Technical and Professional Ability (Pass/Fail)
- Section F – Environmental Management (Pass/Fail)
- Section G – Insurance (Pass/Fail)
- Section H – Compliance with Equalities Duty (Pass/Fail)
- Section I – Compliance with Health & Safety (Pass/Fail)
- Section K – Declaration (Pass/Fail)

Those organisations that pass the SQ criteria will be passed to the evaluation team for further consideration.

3.4.4.2. Evaluation and Selection Criteria – Invitation to Tender (ITT) Stage

The ITT will be evaluated using the quality/social value/price weightings below that were established having due regard to the corporate document 'Advice and Guidance on Evaluating Tenders on Quality and Price' which considers the complexity of the services to be provided.

Tenders will be evaluated against the specification in accordance with a pre-determined evaluation model.

Assessment A – Social Value – Pass/Fail

Tenderers will be required to provide policies and procedures, evaluation of the good employer and ethical procurement criteria only, along with confirmation of paying the Real Living Wage.

Assessment B – Quality (Written Proposals) (60%)

Criteria	Overall Weighting	Sub-Weighting
Project Management	60%	20%
Risk Management and Allocation		20%
Design and Value Engineering		20%
Management of Utilities		20%
Organisation and Resources		10%
Communications		10%

Tenderers who score less than the quality threshold of 60% i.e. a score of 300 out of a maximum quality score of 500 may not take any further part in the process.

Assessment C – Pricing (40%)

Price will account for 40%. The tenderer with the lowest acceptable price is awarded the maximum possible weighted price score. All other tenderers' weighted price scores are then calculated pro rata.

Tenderers will be expected to state their rates against a schedule of works for each value threshold. The completed tender prices will then be assessed using model schemes, containing an accurate representation of the work items and quantities that are likely to be found on typical highway and infrastructure improvement schemes for each value threshold. This enables each tender to be assessed in a way which reflects the actual work to be carried out under a contract.

Prices will be fixed for a period of 12 months from the date of award but will be subject to an annual price review thereafter using an agreed price fluctuation formula. A cap will be applied to the maximum increase available with reference to market conditions to manage and limit any increases.

Interview

Interviews may be required to be undertaken to clarify any questions or concerns arising from the written evaluation stage.

Overall Evaluation

The evaluation process will result in comparative quality and price scores for each tenderer. The overall weighted quality and price scores for each tender will be added together to produce an overall combined total score. The scores for each tender will be compared and ranked. The recommendations for award will be based on the aggregate weighted scores. The maximum number of providers per lot will be:

Lot	Maximum no. of Providers
1	6
2a	3
2b	3
3	6
4	6

3.4.5. Evaluation Team

The evaluation of the tenders will be undertaken by officers from the Major Transport Projects, Transport Projects, and Highways teams within the Inclusive Growth Directorate, supported by Corporate Procurement Services.

3.4.6. Indicative Implementation Plan

The indicative implementation plan is as follows:

Cabinet Approval (Strategy)	15 th October 2019
OJEU Notice Issued	22 nd October 2019
Issue Invitation to Tender	28 th October 2019
ITT Deadline Submission	13th December 2019
Evaluation Period	December 2019 / January 2020
Tenderer Interviews	January 2020
Contract Award	January - February 2020
Mobilisation Period	February – March 2020
Contract Start	April 2020

3.4.7. Service Delivery Management

3.4.7.1. Contract Management

The framework agreement will be managed by the Transport Delivery Specialist – Contracts, Major Transport Projects, Transport and Connectivity

3.4.7.2. Performance Management

Performance management measures for each individual work package will be included in the framework.

3.4.7.3. Calling Off Against the Framework Agreement

The process to call-off from the framework agreement by the Council is described in Appendix 1.

4. Options Considered and Recommended Proposal

- 4.1. Tender each works contract on an individual basis – There are benefits as prices will reflect current market conditions and the latest corporate requirements can be included for each tender exercise. This is not an option due to the cost of procurement (both time and resources required) the risk of increased prices as market conditions change and potential inconsistency in delivery.
- 4.2. Tender for a framework agreement for the Council only – This is not an option as it considered more appropriate to open the framework up to other public sector bodies to use.
- 4.3. Tender for a framework agreement led by the Council available for use by other public sector bodies – the benefits include purchasing power, better collaboration and shared knowledge between authorities and reducing tendering time and resources for both authorities and suppliers. This is the recommended option.
- 4.4. Opt into a collaborative framework agreement: There are framework agreements in place for highways works led by others, e.g. Midlands

Highway Alliance that have been considered and deemed not suitable for the diverse needs of the Council for these works.

5. Consultation

- 5.1. The Cabinet Member for Transport and Environment has been consulted and supports this report proceeding to an executive decision.
- 5.2. Other West Midlands authorities are aware of this proposed procurement exercise and may require access to the framework agreement during the contract period.

6. Risk Management

- 6.1. The Corporate Procurement Services (CPS) approach is to follow the Council Risk Management Methodology and the Procurement and Contract Management Teams are responsible for local risk management. CPS maintains a risk management register and documentation relevant to each contract. The risk register for this framework agreement has been jointly produced and owned by CPS and Major Transport Projects and is included in Appendix 2. Arrangements are in place to ensure operational risks for the framework agreement are mitigated. Risk management for the individual commissions undertaken by Inclusive Growth or other directorates will form part of the Risk Register for the specific project.

7. Compliance Issues:

7.1. How are the recommended decisions consistent with the Council's priorities, plans and strategies?

- 7.1.1. Projects undertaken using the new framework agreement will contribute to achieving the priorities and targets set out in the Council Plan and Budget 2019 to 2023, West Midlands Strategic Transport Plan, Birmingham Development Plan, Birmingham Connected transport strategy, Clean Air, and Commonwealth Games agendas, particularly to underpin private sector led growth and economic regeneration, and to improve the health, personal security, and safety of people travelling in the West Midlands metropolitan area.

- 7.1.2. Birmingham Business Charter for Social Responsibility (BBC4SR)

Compliance with the BBC4SR will be a mandatory requirement for tenderers and forms part of the conditions of this framework agreement. The Council will identify the social value outputs required and these will be built into the specifications and mini competitions for the works packages. Prior to individual contract award, an action plan will be agreed with the proposed service providers on how the charter principles will be implemented and

monitored during the contract period. Contract spend will be monitored and the action plan adapted to reflect the value of business achieved throughout the contract period.

Inherent to the tender strategy, the value breakdown of the work packages, as detailed in 3.4.3.3 above, has been set to provide opportunities and to encourage Micro Businesses and Small and Medium Enterprises to compete for Council business.

7.2. Legal Implications

7.2.1. The Council, in carrying out transportation, highway and infrastructure related work, will do so under the relevant primary legislation comprising the Highways Act 1980; Road Traffic Act 1974; Road Traffic Regulation Act 1984; Local Government Act 1972; Traffic Management Act 2004; and Transport Act 2000 and other related regulations, instructions, directives and general guidance.

7.2.2. Pre-Procurement Duty under the Public Services (Social Value) Act 2012

Consideration of how the HIWFA might improve the economic, social and environmental well-being of the City and whether to undertake any consultation was discussed at the planning stage. It was agreed not to conduct further consultation on the basis that external consultation will be undertaken for each scheme and that application of the BBC4SR would satisfy the Council's obligation under this Act, with relevant proposals from tenderers to secure such improvement being evaluated during the process.

7.3. Financial Implications

7.3.1. The HIWFA will be used to provide works for the Transport and Connectivity, and Highways groups within the Inclusive Growth Directorate approved capital programmes and other revenue budgets.

7.3.2. The actual work to be delivered through the framework will be determined by each year's approved budget (both capital and revenue). Although no guarantee of work will be given to service providers it is estimated that the Council's works requirements will vary between £20-50m per annum. Historical spend in 2018/19 was £36m. An increase in expenditure is anticipated with the increased volumes of work as a consequence of future projects.

7.3.3. There are no specific revenue implications arising from the procurement of the HIWFA. The revenue implications in relation to individual projects or programmes will be identified in future governance reports.

7.3.4. A fee of 0.5% of the works value will be levied by the Council on external organisations who access the HIWFA. This fee will be value-based and payable, retrospectively, on a periodic basis by the authorities using the HIWFA. This revenue fee income will be used to develop future frameworks within the Inclusive Growth Directorate and CPS.

7.3.5. The tender process will be resourced by CPS and the Council's Evaluation Team who will contribute to the development of the relevant documentation and evaluation processes. The costs will be contained within approved budgets.

7.4. Procurement Implications

7.4.1. This report concerns the procurement strategy for the highways and infrastructure works framework agreement and any implications are detailed throughout the report.

7.5. Human Resources Implications

7.5.1. The procurement activity and the subsequent contract management will be undertaken by Council staff.

7.6. Public Sector Equality Duty

7.6.1. A relevance test to decide whether the planned procurement for the HTWFA has any relevance to the equality duty contained in Section 149 of the Equality Act 2010 of eliminating unfair/unlawful discrimination and to promoting equality and human rights was conducted on 23rd July 2019. The screening identified there was no requirement to assess it further and completion of an Equality Assessment form was not required.

8. Appendices

8.1. List of Appendices accompanying this report:

1. Call off Strategy
2. Risk Assessment

Call Off Strategy

Suppliers will be required to develop and agree a social value action plan to state how they propose to deliver social value, as a result of their being awarded work called off through the framework agreement, in line with Birmingham Business Charter for Social Responsibility (BBC4SR). The proposed social value will be proportionate to the value of contracts awarded. Each time suppliers reach a threshold spend of £1,000,000 the action plan must be implemented. Individual work packages over £1,000,000 will include social value as part of the assessment.

Buildability Advice

All tenderers will be asked to tender for the provision of buildability advice as detailed in paragraph 3.4.3.2 where they have not expressed an interest in tendering for the construction of the project.

A further competition exercise will be carried out using criteria from the table below.

Criteria	Weighting
Quality	70%
Price	30%

Lot 1

The call off procedure for Lot 1 will be as follows:

Projects with a value of less than £50,000

Direct Award - the work will be offered to the first ranked company in terms of quality and price. If this company does not have capacity or declines the opportunity, the work will be passed to the second highest ranked company and so forth.

Projects with a value of £50,000 - £200,000

Projects with more than 60% of standard items against works value

Direct Award - the work will be offered to the first ranked company in terms of price. If this company does not have capacity or declines the opportunity, the work will be passed to the second highest ranked company and so forth.

Projects with less than 60% of standard items against works value

A further competition exercise will be carried out using criteria from the table below.

Criteria	Weighting
Quality	10% – 50%
Price	50% – 90%

Lot 2

Specialisms:

- a) Footway Crossings (up to £250,000)
- b) Drainage (up to £250,000)

The call off procedure for Lot 2 will be as follows:

Projects with a value of less than £50,000

Direct Award - the work will be offered to the first ranked company in terms of quality and price. If this company does not have capacity or declines the opportunity, the work will be passed to the second highest ranked company and so forth.

Projects with a value of £50,000 - £250,000

Projects with more than 60% of standard items against works value

Direct Award - the work will be offered to the first ranked company in terms of price. If this company does not have capacity or declines the opportunity, the work will be passed to the second highest ranked company and so forth.

Projects with less than 60% of standard items against works value

A further competition exercise will be carried out using criteria from the table below.

Criteria	Weighting
Quality	10% – 50%
Price	50% – 90%

Lot 3

The call off procedure for Lot 3 will be a further competition exercise using the criteria from the table below.

Criteria	Weighting
Quality	10% - 50%
Price	50 – 90%

Lot 4

For each project, expressions of interest will be undertaken and sent to all the framework providers on Lot 4. Those interested in the opportunity will be sent further competition documentation with the evaluation criteria as per the table below:

Criteria	Weighting
Quality	10% - 80%
Social Value	10% - 20%
Price	10% - 80%

Where works are of a higher value and are less complex in nature or require minimal design, for example lines and signs, the Council at its discretion may use the lower value lots. This type of work is more suitable for the lower value lots and the suppliers assigned to the lower value lots, are more likely to express an interest in these types of works.

Appendix 2 – Risk Assessment

Risk No	Risk description	Risk mitigation	Residual / current risk			Additional steps to be taken
			Likelihood	Impact	Prioritisation	
1.	Insufficient tender responses to ensure competition.	Requirement advertised in OJEU, Contracts Finder and on www.finditinbirmingham.com and contact potential bidders to advise of opportunity	Low	Low	Material	None
2.	Uneconomical bids received.	Ensure accurate specification is drawn up.	Low	Low	Material	None
3.	Tender results challenged.	Issue report on procurement procedures followed to show due diligence.	Low	Low	Material	None
4.	Contractor(s) ceases trading during the contract period.	Check financial statements for solvency as a tender qualification and an on-going basis as part of the Supplier Performance Review.	Low	Low	Severe	Situation kept under review by Contract manager and reported as part of Supplier Performance Review process. Date: On-going
5.	Contractor merges (or bought) by competitor.	Check financial statements of parent company. Consult with Legal Services and novate contract if applicable.	Low	Low	Material	Situation kept under review by Contract manager and reported as part of Supplier Performance Review process. Date: On-going
6.	Poor performance by Contractor during framework period	Framework management in place to identify any potential issues early and seek to resolve with the Contractor	Low	Low	Material	Situation kept under review by Contract manager and reported as part of Supplier Performance Review process.

						Date: On-going
7.	Change in market conditions during framework period	Check industry position regularly and hold ongoing discussions with the Contractors to ensure they remain interested in delivering through the framework	Mid	Mid	Material	<p>Situation kept under review by Contract manager and reported as part of Supplier Performance Review process.</p> <p>Date: On-going</p>

Measures of likelihood/ Impact:

Description	Likelihood Description	Impact Description
High	Almost certain, is expected to occur in most circumstances. Greater than 80% chance.	Critical impact on the achievement of objectives and overall performance. Critical opportunity to innovate/improve performance missed/wasted. Huge impact on costs and/or reputation. Very difficult to recover from and possibly requiring a long term recovery period.
Significant	Likely, will probably occur in most circumstances. 50% - 80% chance.	Major impact on costs and objectives. Substantial opportunity to innovate/improve performance missed/wasted. Serious impact on output and/or quality and reputation. Medium to long term effect and expensive to recover from.
Medium	Possible, might occur at some time. 20% - 50% chance.	Waste of time and resources. Good opportunity to innovate/improve performance missed/wasted. Moderate impact on operational efficiency, output and quality. Medium term effect which may be expensive to recover from.
Low	Unlikely, but could occur at some time. Less than 20% chance.	Minor loss, delay, inconvenience or interruption. Opportunity to innovate/make minor improvements to performance missed/wasted. Short to medium term effect.

Key:

Severe	Immediate control improvement to be made to enable business goals to be met and service delivery maintained/improved
Material	Close monitoring to be carried out and cost effective control improvements sought to ensure service delivery is maintained
Tolerable	Regular review, low cost control improvements sought if possible