

# BIRMINGHAM CITY COUNCIL

## PUBLIC REPORT

Report to:

CABINET

*Exempt  
information  
paragraph  
number – if  
private report:*

Report of:

Director of Commissioning & Procurement

Date of Decision:

18<sup>th</sup> September 2018

SUBJECT:

**PROCUREMENT STRATEGY FOR MAJOR  
CONSTRUCTION PROJECTS AND MAJOR  
PROGRAMMES OF WORK CONSTRUCTION  
FRAMEWORK**

Key Decision: Yes

Relevant Forward Plan Ref: 005292/2018

If not in the Forward Plan:  
(please "X" box)

Chief Executive approved ☐

O&S Chair approved ☐

Relevant Cabinet Member(s) or  
Relevant Executive Member

Cllr Brett O'Reilly – Finance & Resources

Relevant O&S Chair:

Cllr Albert Bore, Resources

Wards affected:

All

### 1. Purpose of report:

- 1.1 This report provides details of the strategy to establish a new construction Framework to replace the Lot 7 of the Constructing West Midlands (CWM) Framework for Capital Projects Framework, Major Construction Projects and Major Programmes of Work.

### 2.

That Cabinet:-

- 2.1 Approves the contents of this report and the commencement of the tendering activity to identify suitable construction companies to be placed on a new Construction Framework in accordance with the procurement strategy set out in Appendix 1.
- 2.2 Delegates authority to Director of Commissioning & Procurement in conjunction with the Corporate Director of Finance & Governance (or their delegate) and the City Solicitor (or their delegate) to approve the successful tenderers onto the new Framework Agreement following conclusion of the tender process and execute the necessary contractual documentation to effect this outcome.

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### **3. Consultation**

#### **3.1 Internal**

Officers from the Education Infrastructure team, Birmingham Property Services, Economy, Finance and Legal Services have been consulted on the contents of this report and the proposed procurement strategy.

The leader of the Council along with the Property and Assets Board were also consulted on this strategy.

#### **3.2 External**

External customers using the existing CWM Lot 7 framework and multiple construction companies have been consulted as part of the market consultation exercise and stakeholder engagement stage of this project.

Officers from Acivico Ltd were consulted on the proposed procurement strategy.

### **4. Compliance Issues:**

#### **4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?**

The Council approved and adopted the Council Plan 2018-2020, which identifies strategic outcomes for change in Birmingham (Children, Housing, Jobs and Skills and Health). This decision supports the priorities as follows:

- *We want Birmingham to be a great live in.* - This decision directly affects investment in and maintenance of the Council's property portfolio and other future major developments within the city.
- *Birmingham is an aspirational city to grow up in:* This decision will support the development and enhancement of educational establishments and schools helping to provide additional school placements for the children of Birmingham.

##### **4.1.1 Birmingham Business Charter for Social Responsibility (BBC4SR)**

Compliance with the BBC4SR will be a mandatory requirement for tenderers appointed to the Framework and will also form part of the conditions of those contracts called off it. Tenderers will submit an action plan with their tender submissions that will be evaluated in accordance with the criteria set out in Appendix 1. The action plan of the successful tenderers will be implemented and monitored during the period of the agreement.

## 4.2 Financial Implications

Birmingham City Council's spend over the last 3 years through the CWM Framework/Lot 7 has averaged £40m p.a. with a total spend under this framework including external users being circa £100m.p.a. The cost of works to the Council delivered under the proposed framework will be met from directorates' and schools' capital budgets.

The balance of £60m is derived from other local authorities and public sector bodies across the West Midlands whose annual spend averages by in excess of £60m under Lot 7. Active users of the framework in recent years include universities, other local authorities, schools and academies:

These projected spend figures are based on historical throughput and are dependent on a number of factors, including Capital Resource Allocations from the Government in relation to schools and continued downward pressure on revenue budgets and shifting capital spend priorities. Therefore, actual or out turn baseline spend will vary from that forecast as previously experienced. It should also be noted that this will reflect the reductions made to the Council's property portfolio over recent years as a result of building closure and disposal.

External clients that utilise the current CWM Framework are currently charged a one off Corporate Membership Fee per Lot of £2,000. In addition to the Corporate Membership Fee, a project fee is levied on each project comprising of a fixed fee of £2,000 plus an extra-over variable fee of 0.15% up to a maximum of £20,000 per project. 50% of this fee is charged at call off stage and 50% is charged at works order. This generates around £300k of income per annum for the Council.

The replacement framework will include a similar access fee for external clients that utilise the framework. The principles and percentages of this fee will be determined as part of the tender development stage and will be in line with comparable frameworks in the market.

## 4.3 Legal Implications

The works and services to be carried out under this proposed framework will be on Council owned buildings and other capital assets in the Council's area under various statutes to enable services and functions of the Council to be carried out. Subsequent reports seeking approval to specific projects called-off under the framework will list the relevant legal powers in relation to that particular project / building.

Under S111 of the Local Government Act 1972 the Council has a powers to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

Regulation 33 of the Public Contracts Regulations 2015 permit the Council to set up framework agreements and make them available to other identified contracting authorities.

#### 4.4 Public Sector Equality Duty

An initial Equalities Assessment has been completed in July to decide whether the commissioning and planned procurement of an organisation for the provision of the services currently provided under the CWM Lot 7 framework has any relevance to the equality duty contained in Section 149 of the Equality Act 2010. The initial screening identified that there was no requirement to assess it further at this stage.

The requirements of Standing Order No. 9 in respect of the Council's Equal Opportunities Policy and the Equality Act 2010 will be incorporated into the terms of the framework contracts that are awarded.

#### **5. Relevant background/chronology of key events:**

- 5.1 On 25<sup>th</sup> July 2011 Cabinet approved the appointment of contractors to the framework contracts or Lots, referred to as the Constructing West Midlands (CWM). These Framework contracts commenced on 1st October 2011, as 4-year contracts with 2 options to extend exercisable by the Council for up to 2 years in both cases. The current CWM Framework Agreement includes several Lots, these are Legionella inspection and servicing (Lots 1 & 2 – North and South), planned and mechanical and electrical maintenance (Lots 3&4 – North and South), the Acivico reactive building repairs and maintenance contracts (which superseded Lots 5 & 6) and major construction projects and programmes of work (Lot 7 city wide).
- 5.2 Whilst this is a Council Framework, Acivico Ltd has monitored the performance of all the framework contractors since 1 April 2012 and continue to do so.
- 5.3 The award of the first 2 year extension from 1<sup>st</sup> October 2015 – 30<sup>th</sup> September 2017 was approved by Cabinet on 16<sup>th</sup> February 2015. The recommendation to extend these frameworks to 30<sup>th</sup> September 2019 was approved by Cabinet on 20<sup>th</sup> September 2016.
- 5.4 On 25<sup>th</sup> July 2017 Cabinet gave approval to undertake a procurement exercise for the procurement of a third party organisation to provide Design, Construction and Facilities Management ('DCFM') services currently provided by Birmingham City Council's (the Council) Wholly-Owned Company ('WOC'); Acivico Limited ('Acivico') through its subsidiary Acivico DCFM Limited pursuant to contracts dated 28<sup>th</sup> September 2012 and 9<sup>th</sup> April 2015 respectively. The scope of this tender includes Lots 1-4 of the CWM framework set out above and the Acivico reactive building repairs and maintenance contracts (which superseded CWM Lots 5 & 6).
- 5.5 As part of this process discussion with the Leader of the Council and the Cabinet Member for Finance and Resources along with stakeholders from Education, Birmingham Property Services, Economy was undertaken, furthermore in light of the recent high profile insolvency of Carillion plc it was collectively agreed that the replacement for CWM Lot 7 major construction projects and programmes of work should be tendered independently of the other lots in the current framework.
- 5.6 Lot 7 delivers a variety of projects and programmes ranging from medium and large scale refurbishments of Council buildings to new build schools and major redevelopment programmes.

- 5.7 A Project Team, consisting of representatives from the stakeholder groups above was established in April 2018 which determined that the project will be delivered in 4 key stages;

Stage 1 – To be concluded by 31 August 2018

- Gain an understanding of the current CWM Lot 7 contractual arrangements, structure and performance
- Market sounding document and stakeholder and market engagement plan
- Options appraisal and Procurement Strategy development
- Stakeholder and Cabinet Approval of the Procurement Strategy

Stage 2 – To be concluded by 31 October 2018

- Ongoing stakeholder engagement & communications
- Launch Tender process and issue OJEU notice
- Completion of Supplier Qualification Stage (development of all supporting SQ documentation)

Stage 3 – To be concluded by 30 April 2019

- Completion of ITT stage (development of all supporting ITT and contract documentation, lead and facilitate tender evaluations, supplier clarifications, site visits and presentations)
- Production and approval of contract award report

Stage 4 – To be concluded by 31 July 2019

- Development, finalisation and execution of all necessary contracts
- Commence contract mobilisation for commencement on or prior to 30<sup>th</sup> September 2019

**6. Evaluation of alternative option(s):**

6.1 Whilst there are several pre-existing national frameworks for major construction projects and programmes, accessing one of these was rejected by Officers from the Council for the following reasons;

- The Council would be required to pay an access fee similar to or in excess of that which the Council charges external users of the CWM Lot 7 framework.
- The majority of these frameworks only include the large construction industry companies which potentially creates a risk to project delivery if one or more of these organisation became insolvent.
- Lack of flexibility in the call off process.
- These frameworks do not maximise opportunities for construction companies local to Birmingham or SME's to the same extent as a Council led framework can, nor would the Council be able to apply its Social Value policy or BBC4SR..

7. Reasons for Decision(s):

7.1 To enable the tendering, award and mobilisation of a replacement for Lot 7 Capital Projects Framework, Major Construction Projects and Major Programmes of Work of the CWM construction framework by 30<sup>th</sup> September 2019.

**Signatures**

**Date**

Councillor Brett O'Reilly  
Cabinet Member for Finance &  
Resources

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Nigel Kletz  
Director of Commissioning &  
Procurement

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**List of Background Documents used to compile this Report:**

**List of Appendices accompanying this Report (if any):**

1. Procurement Strategy

**Report Version 1**

**Dated 18<sup>th</sup> July 2018**

## **Appendix 1 – Procurement Strategy**

### **Considerations \ Key themes identified from stakeholder and market engagement activity.**

A number of issues were highlighted during the engagement stage that will have been taken into consideration for the imminent procurement to be considered a success. These are as follows;

#### **Current Lot Structure and Competition**

The current framework is just one lot which allows access to four contractors. Throughout the course of the current framework there have been periods and projects where not all four of the contractors have consistently responded to bids, this has been attributed by the contractors for the following reasons:

- Project values below £4million.
- Resource capacity diminished due to large volumes of projects being tendered at once.
- Level of input and risk to tender response.

Throughout the engagement it became apparent there were preferences to work types and values held by each contractor which did not fully encompass the full framework requirement to service all types of construction works from £500k upwards. This in turn provided a clear understanding that there is a need to ensure competition and appetite remains throughout all values and work types. This is further confirmed by the market feedback which identifies the average ideal minimum threshold for large organisations to undertake works in excess of £5m. During consultation it was suggested that it would be beneficial for the current lower threshold of £500k to be reduced to £250k and that there is no requirement for an upper value limit. Increasing the number of lots with appropriate value banding will help to maintain competition and contractor interest.

#### **Delivering Value for Money and Capturing Innovation**

The engagement also highlighted a number of issues around cost control and ensuring or demonstrating value for money. This has been identified as a key issue for the Council with comments noted around not feeling valued as a client, lack of transparency, concerns over on-costs being layered on top of on-costs and evidence of costs increasing just before award or at the end of projects. Linked to this there have also been costly time delays. A lot of these may be commercial issues that may be levelled at any construction project, whether procured via a framework or not, but to the extent that it is possible the new framework will look to address these issues as much possible. It is felt that having a Lot or Lots aimed to engage SMEs will help generate better value for money and support the local supply chain. The new framework will be designed to engender collaborative working and the procurement will give credit to those organisations that are supportive of this approach. It will look at the best use of tools including cost benchmarking, open book pricing, early supply chain involvement and key performance indicators to drive value, increase transparency and capture innovation.

#### **Sustainability and Social Value**

Retendering this framework presents a significant opportunity to deliver social value and the principles of the Birmingham Business Charter for Social Responsibility at both a framework and individual project level. How this can be achieved has been considered at each stage of the market sounding and development of the procurement strategy and will continue to be considered throughout development of the procurement documentation and the tender process itself.

The construction industry is fully familiar with the application of social value and there is a breadth of opportunities and areas that can be incorporated. Some representative examples of

where social value opportunities exist are set out below against each of the Business Charter principles.

Principle	Opportunity
Local Employment	Incorporation of apprenticeship schemes; mechanisms to attract SME's to the framework;
Buy Local	Use of local building suppliers, setting a percentage target to maximise the use of local suppliers and contractors;
Partners in Communities	Setting target number of community projects for contractors, seeking a commitment to an annual value of investment on local charities and education in schools projects;
Good Employer	Payment of the Birmingham Living Wage, Investors in People and ISO environmental accreditation targets;
Green and Sustainable	Green vehicle fleets, use of sustainable materials, designs that environmental benefits, % targets for use of recycled materials on projects;
Ethical Procurement	Prompt payment of their supply chain partners, commitments to environmentally friendly sourcing.

Such is the importance of the Business Charter it has been agreed that this will constitute a minimum 15% weighting in the award criteria for the tender assessment.

### **Contract Management and Governance**

The framework will include general KPI's as well as specific measures for particular projects, major projects and specialist works. These KPI's to be linked to a robust performance management mechanism and performance penalties.

The contract will also set out the contract management and cost transparency \ open book accounting requirements from both a Council and Contractor perspective so that expectations are made clear to all bidders at the outset of the process.

Additionally, the current framework manager post is funded by the current panel of four contractors so this arrangement will be coming to an end. Consideration is being given as to whether a similar arrangement is included in the new framework or an alternative approach is undertaken such as payment of the this role via the access fees collected. It should be noted that from a the funding of this role should not adversely impact the Council's budget.

### **Framework Access Fee**

The Framework generates a revenue stream for the Council and this needs to continue within the replacement Framework. The current fee/rebate arrangements needs to be reviewed in light of the anticipated workload of the new framework, potential changes to framework management resources/cost, and benchmarked against alternative frameworks that are available in the same geographical area to ensure that the new Framework is on market and an attractive option for new and existing framework users.

### **Overview of Procurement Strategy**

The stakeholder engagement, market sounding and the above considerations have been used to shape the procurement strategy which is summarised below.

The high level findings are that;

- The framework will be awarded in three lots with defined "core" value bands



- the wider lot values should overlap
- a mechanism needs to put in place for the tender to protect SME participation and prevent the larger companies securing places on all lots
- All types of works can be undertaken in each lot
- All market sector/building types can be undertaken in each lot
- Use of a dynamic Purchasing system (DPS) and Trades Lots have been discounted based on market responses.

Key Elements of the Framework & approach	Summary of Strategy
Branding	<p>The Framework will have a new brand and logo.</p> <p>In order to present and deliver a professional feel to the framework, logo's, branding and strapline design will be undertaken.</p>
Duration	<p>The term of a framework agreement cannot exceed 4 years (PCR Regulation 33 (3)) so it is advised that this should be the overall duration.</p>
Terms and Conditions	<p>The existing CWM Lot 7 currently permits the use of the full suite of both NEC and JCT contracts to be used as call off contracts for the works.</p> <p>The recommendation is that this should continue as due to the wide group of stakeholders and potential users of the new framework contracting flexibility will be key element to its success.</p>
Pricing	<p>Given the diversity of the potential clients and project types that will utilise the framework then using a detailed pricing model for price evaluation will not be appropriate. Therefore, the priced element of the tender needs to consider the elements that are directly within the control of the contractor.</p> <p>This will be:</p> <ul style="list-style-type: none"> <li>• Management preliminaries rates</li> <li>• Resource levels and commitment during a typical project</li> <li>• Overhead</li> <li>• Profit</li> </ul>
Rebates	<p>The framework will incorporate an access fee for other contracting authorities and public sector bodies that wish to utilise the framework. This rate will be set during the development of the tender documentation based on a benchmarking of other frameworks available within the market to set the rate a level that makes it attractive to external customers.</p>
Lot Strategy	<p>The solution will provide for one framework divided into the following lots;</p> <ul style="list-style-type: none"> <li>• Low Value Band – for contract values from £250k - to £1m</li> </ul>

	<ul style="list-style-type: none"> <li>• Medium Value Band – for contract values from £1m to £5m</li> <li>• High Value Band – for contract values above £5m</li> </ul> <p>Each Lot will allow for flexibility to operate within a % value overlap between each Lot to allow for maximum flexibility.</p> <p>The framework will cover the same geographical area as the previous CWM Lot 7 i.e. the wider West Midlands area and all market sectors will be capable of being delivered in each lot. All types of works will also be undertaken in each lot except for the low value band not requiring asbestos removal as this was indicated as a limiting factor for many of the SME's surveyed and the Council can use Birmingham City Laboratories for these works.</p>
Approach to Call Off	<p>Flexibility is the key to allow for the diverse requirements of the client, project type and requirement to provide a transparent and value for money scheme.</p> <p>Clients will be given flexibility to consider either a competitive two stage or single stage procurement process through a mini comp or direct award following negotiation with a particular contractor.</p> <p>Social Value will also be a key consideration within the call off process.</p>
Number of contractors	<p>The final position of number of awards per Lot will be fully defined in the tender documentation however it is recommended that each Lot has a minimum of 4 contractors.</p>
Route to market	<p>The Framework will be tendered using the Restricted Route (2 stage tendering).</p>
Approach to contractor selection (stage 1)	<p>The initial deselection process will be carried out using the Council's Selection Questionnaire, based on Crown Commercial Service's Standard (as provided in Procurement Policy Note 09/09/2016)</p> <p>The Selection Questionnaire developed for this procurement will include questions relating to the potential supplier's technical and professional ability and previous experience of working in framework or collaborative environments. These bespoke questions will be relevant and proportionate to the contract using the Council's procurement templates and documentation.</p>
Approach to contractor selection & evaluation (Stage 2)	<p>Quality will carry the heavier weighting at 60% with 25% Price</p> <p>Price has a comparatively low 25% weighting in the evaluation reflecting the fact that this is a framework</p>

	<p>procurement and the broad spectrum of projects it will be used to deliver. As discussed above the pricing approach will test contractors' overhead and profit levels and some prelims and therefore 25% is felt sufficient to be able to do this. Additionally, it is recognised that the call-off of projects under the framework represents a further opportunity to price projects in much more detail and therefore will carry a heavier weighting in the award of projects at that stage.</p> <p>Meeting the principles of the Birmingham Business Charter for Social Responsibility will be 15% of the award criteria to establish the framework and in line with the above, can be adjusted at call-off subject to the minimum 10% Council policy requirement for Social Value.</p> <p>The detailed criteria, weightings, questions and bid deliverables will be developed during the next phase along with development of the procurement documentation.</p> <p>Evaluation quality criteria may include but not be limited to;</p> <ul style="list-style-type: none"> <li>• Framework Management</li> <li>• Resources/Managing technical competence</li> <li>• Procurement and supply chain</li> <li>• Management of [cost/risk/design]</li> <li>• Social and economic value/meeting the principles of the Birmingham Business Charter for Social Responsibility</li> <li>• Project/Construction management</li> <li>• Performance management</li> <li>• Added value</li> <li>• Collaboration</li> <li>• Project handover/Testing &amp; Commissioning/Soft Landings</li> <li>• Whole life and ops costs</li> <li>• BIM</li> <li>• H&amp;S (if necessary to cover again)</li> </ul>
Evaluation Panel	<p>The project team has identified that obtaining stakeholder involvement in the evaluation process represents a great opportunity to secure buy in and therefore increase the likelihood that they will use the replacement Framework to deliver their forward pipelines of works. The following are considered to have the highest stake and will be invited to be involved in the evaluation panel;</p> <ul style="list-style-type: none"> <li>○ Education Sector Delegate</li> <li>○ External Customer Delegate</li> <li>○ Property &amp; Assets Board Delegate</li> </ul>

	<ul style="list-style-type: none"> <li>○ Previous framework CWM Framework Manager</li> <li>○ CPS Delegate</li> <li>○ Gleeds Commercial Management to provide the commercial assessment</li> <li>○ BPS delegate</li> <li>○ Acivico Delegate</li> </ul>
Contractor Performance Management	<p>The framework will include general KPI's as well as specific measures for particular projects, major projects and specialist works. These KPI's to be linked to a robust performance management mechanism and performance penalties.</p> <p>The contract will also set out the contract management and cost transparency \ open book accounting requirements from both a Council and Contractor perspective so that expectations are made clear to all bidders at the outset of the process.</p>

### **Procurement Timetable**

A detailed programme has been developed for the re-procurement of the Framework that aligns to the strategic approach described in this document. The key milestones taken from are provided in the table below. It should be noted that although the programme is being managed and the dates are achievable they are still only intended to be indicative and could be subject to change as we continue through the process.

Activity	Date
Draft procurement documentation	9 <sup>th</sup> July – 12 <sup>th</sup> Sept 2018
Cabinet approval of the Procurement Strategy	5 <sup>th</sup> Sept 2018
Publish Contract Notice & Tender	21 <sup>st</sup> Sept 2018
Launch Event	26 <sup>th</sup> Sept 2018
Selection Questionnaire (SQ) return date	19 <sup>th</sup> Oct 2018
SQ evaluation, shortlisting and reporting complete	8 <sup>th</sup> November 2018
Issue Invitations to Tender (ITT)	16 <sup>th</sup> November 2018
ITT return date	11 <sup>th</sup> Jan 2019
ITT evaluation, shortlisting and report drafted	5 <sup>th</sup> March 2019
Contract award report approved	30 <sup>th</sup> April 2019
Issue award and regret letters	1 <sup>st</sup> May 2019

Alcatel period ends	11 <sup>th</sup> May 2019
Contract engrossment and framework mobilisation	13 <sup>th</sup> May 2019 onwards