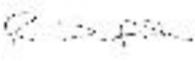


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|--|---|--------------|--------------|
| <b>Report to:</b>                      | Audit & Governance Committee  | <b>Date:</b> | 18 June 2020 |
| <b>Report title:</b>                   | Review of the procurement of main contractors for major construction projects   |              |              |
| <b>Report from:</b>                    | Richard Simpson, Strategic Director - Resources   |              |              |
| <b>Ward/Areas affected:</b>            | Borough Wide  |              |              |
| <b>Chair of Committee/Lead Member:</b> | Councillor Sam Weatherlake  |              |              |
| <b>Author(s)/Contact Number(s):</b>    | Paul Algeo, Head of Programme & Project Management, 020 8770 6377<br>Adam Whiteley, Senior Project Manager, 020 8770 6308 |              |              |
| <b>Corporate Plan Priorities:</b>      | <ul style="list-style-type: none"> <li>• Smarter Ways of Working</li> </ul>   |              |              |
| <b>Open/Exempt:</b>                    | Open  |              |              |
| <b>Signed:</b>                         |   | <b>Date:</b> | 2 June 2020  |

## 1. Summary

- 1.1 A review of how the council currently procures major construction projects and whether there are other effective options that should also be considered.

## 2. Recommendations

- 2.1 To note that following this review the council will continue the current 'best fit' approach, of choosing the optimum procurement route to suit each particular project.
- 2.2 To note that the council will consider an additional option of setting up a regional contractors framework again in 12 to 18 months, when the legislative and business context has stabilised post-Brexit. This report will be referred to the Strategy and Resources Committee for consideration.

## 3. Background

- 3.1 Following discussion at the Audit and Governance Committee in October 2019 covering an audit report relating to Hackbridge Primary School construction works, the Committee asked for a paper to be brought back on the use of Construction / Contractor Frameworks and available options going forward.
- 3.2 Sutton set up a contractor framework based on use of the PPC2000 partnering contract (2009 - 2015), in conjunction with L B Merton. The call-off method was to select the most suitable

contractor from the 'panel', applying their pre-tendered preliminaries, profit and overheads rates in an open-book partnering procurement process. This framework offered good value for money and fast contractor engagement to meet client timetables, and produced some notable projects for Sutton - eg Westcroft Leisure Centre; Middleton Circle Library, Whitehall Museum, in addition to many school expansions.

- 3.3 In 2014, the council decided to participate in setting up the London Construction Programme Major Works framework, to influence its design to suit Sutton (however in the event the scale and universality of Haringey's ambition resulted in an unwieldy system). Sutton used the LCP MW2014 framework for major projects (£9M and £38M; single-stage and two-stage respectively) and smaller projects (under £1M). Sutton have continued to use the replacement LCP framework - MW2019, which is only applicable to projects over £1M.
- 3.4 Programme & Project Management (P&PM) experienced a long period from around 2008 during which the majority of projects were school expansions, plus other new-build and major refurbishment projects. The school expansion programme came to an end in 2019, and the current range of projects is more diverse, including new-build social housing, landscaping, infrastructure and urban/commercial regeneration.

#### **4. Issues**

- 4.1 P&PM have experienced some problems with framework contractor procurement using LCP MW2014.
- One problem was that procedures obliged us to appoint the most competitively priced contractor in the appropriate Lot, despite having direct poor experience of this contractor. In the event this contractor failed and the contract had to be terminated, requiring significant additional funding to complete the project. While the council criticised LCP for not maintaining regular financial checks on the framework contractor it is not clear that later financial checks would have given us grounds for refusing to appoint them, as they continued to post good results.
  - Another problem was a very poor level of interest from framework contractors to a recent tender enquiry for a £10M multi-site housing project.
- 4.2 Our response to problems encountered using LCP MW2014 and to the limitations of the framework has been to review a range of alternative frameworks and other procurement options, with the aim of achieving a close 'match' between the priorities of each project and the chosen procurement method.

#### **5. Options Considered**

##### Current procurement options used by P&PM

- 5.1 Since 2016/17 P&PM have monitored available frameworks and other procurement routes, to assist us in matching procurement routes to projects.

- 5.2 Council Standing Orders currently state a preference for procurement to utilise suitable frameworks. For larger projects (over £4.65M) using a framework also satisfies EU equivalent procurement legislation and cuts out the first stage of an open procurement process, which otherwise requires a longer timetable.
- 5.3 Commentary from LBS Procurement team: Frameworks are a valuable procurement option. They can speed up the procurement process and reduce the resources required to arrive at the contract award stage. For example, if we run a procurement using either the Restricted or Open process, there are set timeframes in which the procurement has to remain open to allow bidders to respond. These range from 30 days for the Open process and 55 days when using the two stage Restricted process.

We sometimes include a further competition when using a framework, but there is no statutory minimum timeframe in which the competition has to remain open to bidders. In addition the time taken to evaluate a further competition is likely to be shorter than in the case of either a Restricted or Open process. Finally there is no requirement to observe a ten day standstill period prior to awarding a contract via a framework.

The Borough have recently used frameworks to award the contract for the Hosting and Website Platform for Sutton and Kingston and are currently running a further-competition for the School Catering contract.

- 5.4 Open tendering, eg Option B below, requires the council to assess contractors' acceptability in terms of financial strength, relevant insurances and Health & Safety competence. These matters are covered already when a framework is set up.

For medium and large projects

**Option A: Choose suitable framework, and hold a mini-competition**

- Advantages - OJEU equivalent competition legislation satisfied; contractors have met typical public-sector compliance and are deemed acceptable.
- Disadvantages - Resource-hungry process; structured marking system allows no basis for non-acceptance of any tender other than for gross non-compliance or under-pricing.

**Option B: Open-tender procedure using Pro-contract portal** - for medium size projects under EU equivalent value threshold (£4.65M).

- Advantages - wider (uncontrolled) market access; potential lower price
- Disadvantages - resource-hungry, normally 2-stage process; the quality questions at tender are critical to filtering submissions; have to consider all submissions however many; winning tenderer is likely to be higher risk to council than a contractor from a framework.

For smaller projects

**Option C: LCP Dynamic Purchasing System (DPS) Minor Works** - under £1M

- Advantages - contractors have passed compliance criteria; wider range of contractors than on standard frameworks.
- Disadvantages - medium resource needed to run tender and marking, and number of bidders is not restricted

**Option D: Pro-contract Quick Quote** - under £100k; 3 contractors invited to tender on price only.

- Advantages - reduced procurement time; chosen shortlist of contractors
- Disadvantages - Only suitable for simple works as 'quality' cannot be considered in tenders; resource and risk in shortlisting suitable contractors.

**Option E: FM management contractor (Mitie)** - under £110k

- Advantages - reduced procurement time; and low resource required; suitable for general works; competitive pricing by subcontractors.
- Disadvantages - only subcontractors on Mitie's supply chain can be used (not many specialist contractors); may not deliver the lowest price.

Additional option for consideration

5.5 **Option F: Create a new regional framework** (similar to Sutton and Merton Framework 2009/15) - a competitively procured 'panel' of contractors from which the council could call-off or hold mini-competitions (depending on the project constraints and preferred form of contract).

- Advantages - contractor can be matched to project; fast lead-in when using partnering contract; partnering approach less adversarial; contractor input at design stage; continuity of work improves contractors' commitment to council; SME's supported.
- Disadvantages - considerable resource and time to set up a new framework; difficulty of defining typical 'model project(s)' needed to tender Preliminaries, Profit & Overheads due to current project diversity; similar advantages and disadvantages to external framework if 'mini-competition' is chosen rather than 'call-off'.

5.6 Uncertainty in the construction industry and over the future UK legislative context due to Brexit negotiations through 2020 suggest this year would not be a good time to run a new framework procurement process - our work could prove abortive due to evolving legislation, and potential contractors may be most concerned with short term business until the political and legislative situation becomes more certain.

5.7 It would be desirable to have one or two partner councils to share the costs of setting up a new regional framework, which would be of the order of £150,000 (based on previous framework set-up cost). Approaches would have to be made to other authorities in south and south-west London to establish whether there would be any interest in partnering with Sutton. A multi-council framework would also improve interest from contractors due to better continuity and volume of contracts.

## 6. Commentary on the risk of contractors failing

- 6.1 The contracting industry is volatile - companies respond to market conditions and businesses do fail. For example, on Hackbridge Primary Expansion, Lakehouse had satisfactory financial checks both when they were accepted onto the MW2014 framework and when we checked again in the middle of the contract (when we were advised the contractor was going to be bought out). However they then went into administration within 6 months of that last check. While it is now recommended that the council should carry out due diligence on a contractor before entering into contract, a process which is now in place, we do not believe this can prevent the occasional rapid failure of a contractor while working for the council. In addition, this risk is not reduced by any of the alternative procurement options discussed in this report.

## 7. Impacts and Implications

### Financial

- 7.1 None in respect of this report.

### Legal

- 7.2 The Council is bound to procure lawfully and is required under section 135 of the Local Government Act 1972 at section 135 to maintain standing orders with regard to the processes by which it enters into contracts.
- 7.3 The report cites uncertainty connected with the market in relation to the withdrawal from the European Union and legislative arrangements. Procurement of construction agreements, whether a framework or specific contract must be made in accordance with the prevailing procurement regime which at present is the Public Contracts 2015.

**8. Appendices and Background Documents**

| Appendix letter | Title |
|-----------------|-------|
| N/A             | N/A   |

| Background documents |
|----------------------|
| None                 |

| Audit Trail                          |       |                   |
|--------------------------------------|-------|-------------------|
| Version                              | Final | Date: 2 June 2020 |
| Consultation with other officers     |       |                   |
| Finance                              | Yes   | Lyndsey Gamble    |
| Legal                                | Yes   | Fabiola Hickson   |
| Equality Impact Assessment required? | No    | N/A               |