

# Cabinet

14 July 2022

## Construction Framework Contract 2023-2027

### Recommendations

That Cabinet:

1. Approves the Strategic Director for Communities proceeding with a Public Contract Regulation 2015 compliant procurement process, in consultation with the Portfolio Holder for Transport and Planning, for the provision of a Framework Agreement with multiple Lots for highways and structural works of varying price ranges.
2. Approves and authorises the Strategic Director for Communities to enter into all relevant contracts for the provision of Framework Contracts for the Provision of Engineering and Construction Works on terms and conditions acceptable to the Strategic Director for Resources.

### 1. Executive Summary

- 1.1 With effect from 1<sup>st</sup> January 2019, Warwickshire County Council entered into the current Framework Agreements for the provision of Engineering and Construction Works following a competitive tendering process referred to as the Framework Contract for the Provision of Engineering and Construction Works 2019 (the “**2019 Framework**”).
- 1.2 The 2019 Framework includes 13 Suppliers over 4 Lots. Since its inception, Engineering Design Services (“**EDS**”) has used it to award 45 separate contracts with an estimated total value of work in the region of £80m. Each contract is awarded following a mini-competition process between the members of the 2019 Framework. Since 2021 approximately £26m of construction work has been procured and over the remainder of 2022 further works of c.£35m are estimated to be procured. This rate of procurement is expected to continue, with c.£35m estimated to be procured in 2023 and c.£130m expected over the next four years based on approved and funded projects in the Capital Programme.
- 1.3 The 2019 Framework is due to expire on 31st December 2022. Cabinet approval is required to (i) start a new procurement exercise and to (ii) enter into Agreements in due course to engage with successful contractors to deliver the expected Capital Programme.

- 1.4 It is recommended that the Council develops new Framework Contract Agreements for the Provision of Engineering and Construction Works.
- 1.5 The procurement strategy will evaluate and review the existing approach and produce appropriate procurement and contract documentation. This process will be overseen by a project board. Decision making at this board will be supported by consultation with senior officers and specialist officers within the Council and from external providers as required. Any opportunities for improvement will be considered in the development of the proposed Framework Contract Agreements.
- 1.6 The process of procuring new Agreements is expected to take twelve months. To maintain delivery of the Capital Programme an Exemption has been approved to extend the 2019 Framework to accommodate this procurement process. This extension will be used to assess which of the new NEC4 industry standard terms and conditions should be included within our construction contracts which are currently based on NEC3. Now that NEC4 is being adopted across the UK, there is more experience and training within the industry of the effects of its application and therefore WCC can better assess which additional terms and conditions should be adopted. This assessment needs to be done around the time that we are going out to tender for the works, to ensure that the contract being let for the next 4 years will be robust.
- 1.7 Furthermore, due to the four-year time period of the 2023 replacement contract, it has recently been chosen to be part of the pilot for including Social Value measures within its procurement. The extension will enable EDS to liaise with the Procurement team to ensure that appropriate TOMS (Themes, Outcomes and Measures) are identified and applied to the Framework and call off contracts. The TOMS need to provide Social Value to the authority without adversely affecting the construction works nor significantly adversely affecting the monetary costs of the works. Time is required to assess the measures and their impacts on other EDS procedures, for example the Quality Management System and other processes. When the subsequent contract is tendered in 2027, the Social Value procurement regulations will be fully implemented. Therefore, if the 2023 framework contract is not within the pilot scheme it might prove difficult to robustly meet all Social Value requirements in an efficient way in the 2027 contract.
- 1.8 While the retendering exercise is underway it is intended that the Council will continue to draw upon the 2019 Framework.

## **2. Financial Implications**

- 2.1 The 2019 Framework over 3 years had a value of approximately £80m. It is expected that over the rest of 2022 (for the remainder of the 2019 Framework) works worth approximately £35m will be procured, taking the total amount procured through the 2019 Framework to c. £115m.

- 2.2 A 6-month extension to the 2019 Framework has been approved. It is expected that an additional c.£29.5m of work will be procured based on approved and funded projects within the Capital Programme.
- 2.3 The development and procurement of the new Agreements will be funded through the EDS revenue budget. The cost in the short term constitutes a saving against the cost that individual procurements would have incurred.
- 2.4 Whilst this report concerns the appointment of several Suppliers, there is no direct financial risk to the Council as there is no commitment to capital spend as a result of establishing the bespoke tendering contract. The Contractors for individual capital projects are selected via mini competition from the approved Suppliers for the given Lot(s). The decision to add any such projects to the Capital Programme will be taken via the appropriate procurement and approval methods including through elected member decision making as required.
- 2.5 Although there are no cost savings to be had as part of The Framework, what the Framework will provide is the best value for money as it encourages competition between the Contractors. This is explained further in 4.4.2.2 and 4.4.2.3.

### **3. Environmental Implications**

- 3.1 There are not expected to be any significant environmental impacts of procuring the new Agreements. The assessments will be received and processed electronically which will save paper and the assessment can take place remotely.
- 3.2 For the construction works procured through the contract, the Suppliers will have to demonstrate how their works will contribute to the Council's carbon reduction and Social Value targets as part of the tender process. The new frameworks will include and develop the environmental requirements of the 2019 Framework, for example quality assessments based on Suppliers' waste management plans.

### **4. Supporting Information**

- 4.1 The Council has a range of procurement options currently available for the delivery of the Capital Programme:
- Option 1: Direct award for each scheme through the Find a Tender Service
  - Option 2: Use external framework agreements
  - Option 3: Bespoke tendering
- 4.2 Option 1: Direct award of each contract through the Find a Tender Service

- 4.2.1 Due to the value of the construction schemes, every scheme will need to be procured separately through a quotations process through the Find a Tender Service and the tender returns would need to be assessed by a minimum of two qualified people, preferably more.

This procurement process would be the most expensive as more work is required to write the tender documents, do the tender, assess each contractor and award the scheme. This is an appropriate form of tender for a one-off unusual procurement but would be very time consuming for each procurement.

#### 4.3 Option 2: External framework agreements

- 4.3.1 Although national frameworks (such as Scape and others), offer an effective and efficient option for large one-off projects as they have already been tendered, they are potentially less flexible in that there would be no scope under this option to select specific Suppliers according to the Council's individual requirements for each project.

#### 4.4 Option 3: Bespoke Tendering

##### 4.4.1 The Highways Maintenance Contract (HMC)

- 4.4.1.1 This contract provides lower value standard works and is already used for these. It is not suitable for the more complex works delivered by the 2019 Framework.

##### 4.4.2 Framework Agreements:

- 4.4.2.1 The 2019 Framework sets out the Council's general terms on which individual construction schemes are procured. Contractors evaluated as being suitable have been appointed to a particular Lot, with a limited number of contractors appointed to each Lot. Being appointed to the framework agreement is not a guarantee of work, as a contractor is chosen from the relevant Lot through a mini-competition process when each scheme is required.

- 4.4.2.2 The use of a mini-competition process allows the Council to choose the most economically advantageous tender at the time of call off. It allows Suppliers to target current prices in their supply chains which makes their quotations more competitive and realistic. This in turn reduces the risk that the Council will be paying more than current market values for its capital projects and means that the impact of inflation is accounted for up to the point of contract award. Contractors are not required to fix prices at the start of the Framework period, which is expected to be four years. Without the mini-competition process, Suppliers would inflate their prices to accommodate expected price increases over the four-year framework period which would not provide value for money to the Council.

4.4.2.3 The number and value of forthcoming schemes makes it cost efficient for the Council to apply its own terms and conditions through a Framework contract, and to draft these to suit the Council's ways of working. Tailored terms and conditions enable the Council to reduce the amount of time and resources required for procurement processes on each scheme.

4.4.3 Dynamic Purchasing Systems (DPS)

4.4.3.1 The Council would publish its minimum requirements for Suppliers to qualify to be appointed to a Lot. As with a Framework, the Lots can be based on the value and type of work and contractors would be awarded through a mini-competition process. Unlike a Framework there is no limit to the number of Suppliers, they can apply to join the DPS at any time and they do not need to be appointed when the DPS commences.

4.4.3.2 A DPS would not have an expiry date and can be terminated at any point in time, however its performance should be reviewed after four years

4.4.3.3 Having no limit to the number of Suppliers will increase competition. However, this can also discourage construction companies from bidding for work due to the amount of time lost in the tender process and can increase the time required for assessing tenders.

4.4.3.4 Other legal agreements that interact with the DPS would have to be reviewed, tested and reissued. As these new agreements have not been tested, it is not proposed to use a DPS.

4.5 The arrangement of a further bespoke construction framework in combination with the national frameworks and HMC facilitates choice and resilience and supports a positive approach to social value through using a range of small and medium entities and national suppliers. It allows the Council to choose the criteria on which it assesses contractors, to set the terms of appointment and to segment the Lots in the way which most sensibly suits Warwickshire's needs.

4.6 It is considered that the initial time and cost implications of setting up a new Framework will pay dividends over the life of that Framework as the Council can minimise later procurement demands as each project commences and maximise relationships with Suppliers to deliver time savings.

4.7 The 2019 Framework uses the following Lots:

Lot 1	Ordinary highway and	£0 – £1.5m
-------	----------------------	------------

	associated works	
Lot 2	Ordinary structural, bridge maintenance and other civil engineering works	£0 - £1.5m
Lot 3	Major highway, structural and other engineering works	£1.0m - £5.0m
Lot 4	Major highway, structural and other engineering works	£4.0m upwards

The existing Lots will form the basis of the new Framework. Allocating work based on value and type of work has allowed Suppliers to apply for Lots based on their competencies. It is recommended to continue using Lots based on scheme value and type of work, but the specific categories and ranges may vary based on feedback from consultation with users of the 2019 Framework.

- 4.8 Suppliers will be required to tender for inclusion on each Lot of the Framework and will be able to bid for one or two Lots. It is expected that each Lot will aim for between a minimum of 5 and a maximum of 10 Framework Suppliers.

## 5. Timescales associated with the decision and next steps

- 5.1 The next steps will be to draft the terms of contract and undertake the procurement process by advertising for expressions of interest and, in due course, evaluating Supplier submissions. The value of the works to be procured using these Agreements, at approximately £30m spend per annum, will be above the Public Contract Regulation 2015 threshold, so the Find a Tender service and associated public procurement regulations will apply.

- 5.2 The provisional timetable for establishing the various Framework Agreements is set out below:

Advertise for expressions of interest	March 2023
Tender period closes	May 2023
Tender assessment period ends	July 2023
Mandatory standstill period	August 2023
Framework Agreement finalised	September 2023
Framework Agreement begins	October 2023

- 5.3 The Framework Agreements will be in place for a maximum of 4 years and would need to be re-procured in 2027.

## Appendices

None

## Background Papers

None

	<b>Name</b>	<b>Contact Information</b>
Report Author	Sarah Dealtry, Claire John	sarahdealtry@warwickshire.gov.uk, clairejohn@warwickshire.gov.uk
Assistant Director	Scott Tompkins	scotttompkins@warwickshire.gov.uk
Strategic Director	Strategic Director for Communities	markryder@warwickshire.gov.uk
Portfolio Holder	Portfolio Holder for Transport and Planning	wallaceredford@warwickshire.gov.uk

The report was circulated to the following members prior to publication:

Local Member(s): n/a

Other members: The Chair and Party Spokes of the Communities Overview and Scrutiny Committee