

CABINET

30 SEPTEMBER 2014

GATEWAY 1 PROCUREMENT COMMENCEMENT: MINOR WORKS/LOW VALUE CONSTRUCTION FRAMEWORK AND CONSTRUCTION PROFESSIONAL SERVICES CONSULTANCY FRAMEWORK

Portfolio Holder: Councillor Jarrett, Finance and Deputy Leader

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SUMMARY

This report seeks permission to commence the procurement of a Minor Works / Low Value Construction Framework and a Construction & Engineering Consultancy Framework. This will cover projects up to the value of £1 million. Project works values will be met within the framework value bands set at the Framework tender stage. This Gateway 1 report has been approved for submission to Cabinet after review and discussion at virtual Corporate Management Team and the Procurement Board.

The Procurement Board has recommended that this project be approved as a Category High risk procurement.

The aim of the framework is to support the local economy through the use of local SME's where they meet the required standards. The Property and Capital Projects service sensitivities are to ensure speedy service selection. Once the framework is in place then call off from the framework will be in line with the procedures as set out in the framework.

1. Budget and Policy Framework

- 1.1 This procurement is within the Council's budget and policy framework.
- 1.2 The frameworks will be financed through the various project budgets as allocated to Property and Capital Projects (P&CP). The current need is being

met via an ad hoc approach and a new system has been requested by the P&CP service and agreed as best practice for delivery and service costs between P&CP and Category Management; the implementation of the frameworks will work towards giving greater transparency of projects, more responsive services to meet needs, ensuring Key Performance Indicators are used to ensure quality via direct allocation and/or mini competitions. Once in place P&CP shall select from the frameworks in accordance with framework call off procedures and inform Category Management of services being delivered by the suppliers to assist with their monitoring of KPI's for the services. As there is no commitment to use frameworks, the Council will estimate the amount of business to be delivered through the framework via the OJEU notice.

2. Background

- 2.1 PC&P and Category Management having investigated local and national framework alternatives, have agreed that a local framework best suits Medway Council's priorities.
- 2.2 P&CP identified through a recent alternative service model provision exercise that Medway Council are currently spending in excess of £10m per annum of low value construction projects and a further £2m per annum on project support. These needs are currently met by running repetitive tenders which are time consuming to the Council. By implementing a framework for both areas Medway Council will free up their resources and P&CP's involvement including the assistance of Category Management in these tenders and reduce the burden of running tenders and repetitive gateway reports on each occasion and in turn provide cost savings and quality improvements. There is currently no consistency with spend and these frameworks will ensure that the best price is used across the board for the entirety of the framework agreement.
- 2.3 The disciplines covered by these frameworks are in frequent demand and by putting in place a framework Medway Council will be able to better monitor spend and receive better supplier performance due to the supplier relationships being built in the correct manner.
- 2.4 The lots which are to make up the Low Value Construction Framework, including proposed number of suppliers, will be sub divided into sub lots, value bands and categories as necessary, with each of these having no more than 10 suppliers per sub category area. These may include multiple entries across the sub category areas.

2.5 The proposed lots for both the Minor Works and Consultancy will be divided into Phase 1 and Phase 2:

Phase 1

Lots:	Number of Suppliers:
General Building Works	No more than 10 per value band, works category and/or sub lot.
Roofing	No more than 10 per value band, works category and/or sub lot.
Windows/Glazing	No more than 10 per value band, works category and/or sub lot.
Doors	No more than 10 per value band, works category and/or sub lot.
Asbestos Assessment & Removal	No more than 10 per value band, works category and/or sub lot.
Mechanical Engineering Works	No more than 10 per value band, works category and/or sub lot.
Electrical Engineering Works	No more than 10 per value band, works category and/or sub lot.
Painting and Decorating	No more than 10 per value band, works category and/or sub lot.
Fencing	No more than 10 per value band, works category and/or sub lot.
Demolition	No more than 10 per value band, works category and/or sub lot.
Emergency Call Outs	No more than 10 per value band, works category and/or sub lot.

Phase 2

Heritage Specialist Works	No more than 10 per value band, works category and/or sub lot.
Steelwork	No more than 10 per value band, works category and/or sub lot.
Pool Maintenance	No more than 10 per value band, works category and/or sub lot.
Play Area Equipment and Services	No more than 10 per value band, works category and/or sub lot.
Modular Building Types	No more than 10 per value band, works category and/or sub lot.
Lifts and Lift Maintenance	No more than 10 per value band, works category and/or sub lot.
Plant Hire Companies	No more than 10 per value band, works category and/or sub lot.
Legionella	No more than 10 per value band, works category and/or sub lot.
Security Systems	No more than 10 per value band, works category and/or sub lot.

2.6 The lots which are to make up the Construction Professional Services Consultancy Framework are:

Lots:	Number of Suppliers:
Project and programme management	No more than 10 per value band, works category and/or sub lot.
Regeneration/Landscaping/Artisan	No more than 10 per value band, works category and/or sub lot.
Architectural Design	No more than 10 per value band, works category and/or sub lot.
Sustainability & Environment	No more than 10 per value band, works category and/or sub lot.
Valuation and Market Analysis	No more than 10 per value band, works category and/or sub lot.
Mechanical/Electrical/Building Services	No more than 10 per value band, works category and/or sub lot.
Quantity Surveying	No more than 10 per value band, works category and/or sub lot.
Building Surveying	No more than 10 per value band, works category and/or sub lot.
Fire Risk Assessments	No more than 10 per value band, works category and/or sub lot.
Multi discipline Services	No more than 10 per value band, works category and/or sub lot.

2.7 Funding/Engagement From External Sources

2.7.1 There is no funding required by external sources.

2.8 Parent Company Guarantee/Performance Bond Required

2.8.1 A Parent Company Guarantee will be requested as necessary on a project by project basis.

3. PROCUREMENT DEPENDENCIES & OBLIGATIONS

3.1 Project Dependency

3.1.1 The low value construction framework will be formed of multiple disciplines and will therefore be dependent on upcoming requirements.

3.1.2 The consultancy framework is dependent on upcoming projects where internal resources cannot meet the needs of projects and will therefore be variable.

3.1.3 Other service areas within Medway Council will need to consult with P&CP on its use as P&CP, with the assistance of Category Management, will act as the Gatekeeper to ensure the framework is used correctly. P&CP will need to agree to the use of the framework by external interested parties. This may necessitate the use of a Memorandum of Understanding or an Access Agreement. Whilst the frameworks will have the ability to cover most future requirements that arise within Medway Council, where the framework cannot deliver the requirements,

alternative solutions will be reviewed and the Gateway report as appropriate will be written before action is taken.

3.2 Statutory/Legal Obligations

3.2.1 The following statutory/legal obligations apply to the implementation of these frameworks:

- EU Procurement Directives (OJEU notice)
- Public Contracts Regulations 2006 (as amended)
- The Framework will enable Medway to meet obligations of transparency, equal treatment and non-discrimination
- Thresholds for goods/services/ works must be complied with.

4. BUSINESS CASE

4.1 Procurement Project Outputs / Outcomes

As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
1. Controlled pipeline spend analyses	By measuring current spend against those of future years	P&CP with the assistance of Category Management & Finance through pipeline trend consultations	Annually
2. Better quality of service	Implementing KPIs to ensure quality service is delivered.	P&CP with the assistance of Category Management & Finance through pipeline trend consultations	On-going, project by project. P&CP to collect KPI Data with the assistance of Category Management
3. Quicker appointment of contractors	Comparing current tendering times against those when the framework is in use	P&CP measuring the effectiveness of the framework operated with the assistance of Category Management	Ongoing
4. Greater Control and visibility of Spend	Category Management will be able to pinpoint all spend through low value construction projects and consultancy	P&CP managing the Budgets with the collaboration of the Client services	Annually
5. Larger & more diverse range of suppliers – Appointment based on merit rather than preference	By inviting SMEs to a supplier event to gauge interest. Post tender, by analysing the contractors who were successful through the tendering procedure	P&CP measuring the effectiveness of the framework operated with the assistance of Category Management	Post Tender P&CP to run KPIs, review success and submit papers to procurement board annually with CM

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
6. Greater ability to plan annual programmes	By Category Management working with service areas earlier to appoint contractors with a greater lead in time	P&CP, with the assistance of Category Management and the Service departments.	Annually through framework usage meetings
7. Less tendering requirements to be undertaken by Category Management with the ability to focus more on proactive procurement	Success will be measured by the time Category Management will be able to allocate to other procurements	PC&P with the assistance of Category Management	When the framework is used Category Management will be able to indicate the time they would have been spent on that programme but instead can be used on other requirements.
8. More standardised specifications for more compliant tender returns	This will be measured through the tendering process to become part of the framework and also as part of the mini competition to reduce any potential ambiguity in the current process	PC&P will be producing the specifications	Will be measured Quarterly via supplier and framework member feedback

4.2 Procurement Management

- 4.2.1 This title “Procurement Management” relates to the framework procurement, where Category Management and P&CP will ensure OJEU compliance for the creation and operation of the frameworks.
- 4.2.2 P&CP will produce specifications and technical questions for the PQQ and/or ITT elements which will allow appropriately qualified and experienced suppliers to become framework members via the OJEU process.

4.3 Post Procurement Management

- 4.3.1 Day to day contracts will be managed by the P&CP project managers, P&CP will undertake framework monitoring management to ensure KPIs are delivered and services will advise whether the framework is performing.
- 4.3.2 Contract award and contract management is to be by P&CP with the assistance of Category Management as required.
- 4.3.3 Category Management and P&CP will contract manage the overarching Framework Agreement via quarterly meetings with P&CP. Any issues which may necessitate suspension or termination of a framework member from the framework will be escalated to Category Management for a coordinated approach to resolution.

5. MARKET CONDITIONS & PROCUREMENT APPROACH

5.1 Market Conditions

- 5.1.1 The construction and consultancy markets are vibrant and therefore adopting an OJEU open market tender approach, Medway envisage a sufficiently large quantity of responses across all lots. P&CP will provide the questions and rate the scoring criteria with the assistance of category management to arrive at a suitable number of successful tenders for each lot/sub lot.

5.2 Options

5.2.1 Do nothing

The option of doing nothing will leave the Council in the current state of play with requirements being tendered on an individual basis. The following pros and cons are applicable to this option:

Pros	Cons
No time required to set up	Leaves the Council tendering projects on an as and when basis (time consuming)
	There are no standard prices so they can fluctuate vastly
	Doesn't work towards creating efficiency savings through better use of officer time
	Leaves the Council open to a greater risk of challenge through disaggregation.
	Retains the current strain of meeting needs within stipulated deadlines

5.2.2 Use Existing Frameworks

Frameworks set up by other contracting Authorities can enable a local authority to use these rather than set up its own arrangements.

Pros	Cons
Saves the time of putting a Medway Framework in place	There are no frameworks known to the Category Management team which include all disciplines required
Potentially readily available with bespoke and easy to use documentation	May lead to local SMEs being excluded from Medway projects
	Will not be bespoke to Medway and could be cumbersome to use
	Suppliers on the framework may not be able to meet Medway's requirements
	Potential hidden costs within the framework which Medway would have to pay for through usage

5.2.3 Implement Medway Frameworks

Frameworks are an EU compliant way of delivering the requirements of the authority. The pros and cons of implementing Medway frameworks are as follows:

Pros	Cons
Gives Medway SMEs the opportunity to be included on the frameworks	Resource heavy to implement and get working as intended
Minimises the risk of challenge the Council is exposed to	May return incompatible contractors onto the frameworks
Enables greater Authority – Contractor relationships	Can be costly if not utilised or adopted properly
Provides granularity on costs and competitive sustainability over the 4 year period	
Speeds up the tendering process once in place	
Council would retain control and ensure they are run correctly and at the most competitive cost	
Potentially provides cost savings through standard pricing models	

5.2.4 Norse

Pass the work over to the Council joint venture Medway Norse

Pros	Cons
Council benefits from Norse efficiencies	Norse may not have the capacity to deliver all disciplines and requirements. Norse tend to undertake maintenance and repairs rather than works eg repair a roof rather than replace it.
Saves the time of putting a Medway Framework in place	Not clear how to demonstrate best value for money.
No tender process required	Norse is one supplier whereas the Framework is looking to establish a range of suppliers to deliver the requirements.
	Norse will be responsible for the EU tender of these services that they can't deliver in house as they will be spending public money and therefore the EU Procurement Directives will be applicable

5.3 Procurement Process Proposed

5.3.1 Proposed process: Implement Medway Frameworks

5.3.2 It is proposed that for both framework opportunities Medway adopts an OJEU Restricted procedure. This falls in line with requirements where the total cost is higher than the OJEU threshold, it will also ensure that the greatest possible segment of the market is engaged to create optimal competitive conditions and in turn provide Medway with the best tender returns.

5.3.3 A supplier engagement event is proposed to allow consultation with the industry experts to ensure that more suppliers understand the opportunity, how to participate and their responsibilities to enable them to be successful at the tender stage. This will be achieved by consultation with P&CP Project Leads and Project Managers to utilise lessons learned including Construction line that will use their knowledge and contacts to ensure that supplier are aware and prepared for the opportunity.

5.3.4 As part of the Council's drive to reduce administrative burden on suppliers, we will use PAS91 which is an industry standard PQQ, as part of the tender process and we will also allow the 'passporting' of bidders where they have been pre-accredited by a third party operating a PAS91 or similar standard approved by Medway council, for example Constructionline.

5.4 Evaluation Criteria

5.4.1 The Framework will be set up 70% quality 30% price in order to ensure that the Council will be working with good quality contractors when the Framework goes live.

5.4.2 The proposal for mini competitions that may be required on a day to day basis by P&CP is to employ the matrix below so the bespoke nature of the individual projects can be taken into consideration. This is proposed to ensure that the quality received is high and the costs are also competitive for the 4 year contract duration whilst accommodating for the different disciplines contained within the Minor Works Framework.

Quality Price Matrix for Mini Competitions

PURCHASE TYPE	QUALITY/PRICE RATIO (Q/P)
Innovative	80/20 to 55/45
Complex	70/30 to 50/50
Straightforward	40/60 to 25/75
Routine	30/70 to 20/80

The above will be assigned to the lots prior to going out to tender to avoid confusion post award of the Framework

6. RISK MANAGEMENT

6.1 Risk Categorisation

1. Risk Category: Resources	Likelihood: Significant	Impact: Marginal
Outline Description: Not enough internal resources available to evaluate returns to enable the framework to be awarded		
Plans to Mitigate: Thoroughly plan and potentially increase the length of the evaluation period to combat the potential resource restraint with a possibility to use additional resources via housing, education and regeneration.		
2. Risk Category: Procurement Process	Likelihood: Low	Impact: Critical
Outline Description: Some lots do not receive enough interest to make them viable to award		
Plans to Mitigate: Category Management are holding a supplier event 9 September which will raise interest and understanding and help contractors to submit a compliant bid to increase the pool of possible contractors.		
3. Risk Category: Procurement	Likelihood: Low	Impact: Critical
Outline Description: Legal Challenge by unsuccessful bidders		
Plans to Mitigate: By following the EU principles of non-discrimination, transparency and equal treatment we will reduce the ability for a vexatious legal challenge		
4. Risk Category: Financial	Likelihood: Low	Impact: Critical
Outline Description: Value for money not being achieved following award of lots		
Plans to Mitigate: Plan pricing strategy for each lot to ensure appropriate approach is taken; this may include a schedule of rates/ day rates, overheads and profit.		

7. CONSULTATION

7.1 Internal (Medway) Stakeholder Consultation

- 7.1.1 In order to set up the framework, Category Management and P&CP will be consulting with the various service departments such as Housing, education and regeneration who will be using the contractors on the final framework.
- 7.1.2 In order to ensure that the Framework gets buy in from internal customers, it is essential that we consult and agree specifications to enable the rolling out of the use of this Framework when live and help P&CP expand its portfolio of work.

7.2 External Stakeholder Consultation

- 7.2.1 In order to set up the framework Category Management and PC&P will be in consultation with various external public bodies/stakeholders. The intention will be to allow other public body's access to these frameworks.

8. SERVICE IMPLICATIONS

8.1 Financial Implications

- 8.1.1 The requirement and its associated delivery (as per the recommendations at Section 12, will be funded from various project budgets on a project by project basis
- 8.1.2 Further detail is contained within Section 1.1 Finance Analysis of the Exempt Appendix that accompanies this report.
- 8.1.3 Category Management have undertaken spend analysis tasks to capture annual spend for all lots within both proposed frameworks for the purpose of the OJEU notice. Combining these sums with all potential stakeholders, the OJEU notice will outline a range of spend across the 4 year period. There are no further financial risks as there is no commitment to use a framework and each project will have its own budget.

8.2 Legal Implications

- 8.2.1 Framework arrangements are expressly permitted under the Public Contracts Regulations 2006. They provide the Council with a facility for procurement without creating an obligation either to purchase exclusively from a single supplier or to purchase a minimum quantity of services. The advantages of framework arrangements are that they permit the Council to undertake a single procurement exercise for the supply of a service or group of services and make a saving in the time, cost and resources that would be spent by the parties to the arrangement if multiple discrete competitive tendering exercises were conducted.
- 8.2.2 Regulation 19 of the Public Contracts Regulations requires a framework arrangement to be procured in compliance with one of the permitted competitive procedures - Open procedure, Restricted procedure, Negotiated procedure or Competitive Dialogue - but in practice only the Open procedure

or the Restricted Procedure tend to be used. The obligation to follow the competitive procedures set out in the Regulations extends only to the award of the framework agreement and does not apply to the award of a specific contract (regulation 19(2)(a)). Specific contracts can be awarded in accordance with the provisions of Regulation 19 and with the framework agreement; consequently, there is no requirement to advertise each specific contract in the Official Journal of the European Union (OJEU). A contract notice for the framework agreement itself will need to be advertised in the OJEU using the appropriate form

8.2.3 The proposed procurement process complies with the requirements of the Regulations and thus of the EU public procurement regime.

8.2.4 The proposed procedure gives a high degree of confidence that that the Council's primary objectives for procurement are met, as required by Rule 1.2.1 of the Council's Contract Procedure Rules ("the CPRs").

8.3 TUPE Implications

8.3.1 TUPE will not be applicable to these frameworks.

8.4 Procurement Implications

8.4.1 The implementation of these frameworks will better protect the council from accusations of disaggregation and enable the Council to ensure that there is transparency in the contract awarded going forward. As well as the protection these frameworks will afford the Council, there will also be operational benefits in terms of quicker responses to requirements. This will free up officers' time to focus on the value added elements of these services.

8.5 ICT Implications

8.5.1 There are no ICT implications.

9. OTHER CONSIDERATIONS

9.1 Diversity & Equality

9.1.1 Through the tendering of a framework Medway will be engaging with new suppliers for a greater range of diversity but also treating all parties equitably throughout the entirety of the process.

9.2 Social, Economic & Environmental Considerations

9.2.1 In accordance with the Social Value Act P&CP and Category Management wish to provide opportunities for Local SMEs/ local employment as part of this procurement and also secure further apprenticeships. Due to the current logistics of the Minor Works there is a further drive to reduce the Carbon Footprint on Medway projects which this framework can help towards.

9.3 Drive towards SME's

9.3.1 In anticipation of the recent changes to the European Procurement Directives which are to be transcribed into UK Law in the form of the Public Contract Regulations, this Framework has been divided into Lots to provide opportunities to SMEs who may otherwise not be able to participate in this framework.

10. OTHER INFORMATION

10.1 Other Information

10.1.1 A Gateway 3 report will be produced at the Framework award stage. Once the Frameworks are live, it is proposed that Gateway 1 & 3 papers are not reported for each project. The frameworks will be monitored by the presentation of an annual summary report to Procurement Board. These will contain a running total of projects to date and also the running total of spend and KPI performance.

10.1.2 Standard and approved Contracts will be selected and utilised by P&CP as the delivery team from, wherever possible, recognised standard suites of Contracts produced by professional bodies such as JCT/NEC suites and using standard amendments agreed between PC&P, Client Service Contract Professionals, with prior ratification by Medway Legal Teams. Any special amendments to be agreed with Medway Legal Services.

11. PROCUREMENT BOARD

11.1 The Procurement Board considered this report on 13 August 2014 and supported the recommendation set out below.

12. Recommendation

12.1 Cabinet is recommended to approve the following:

1. Permission to proceed with the procurement of:
 - a) Low value construction/minor works framework
 - b) Construction professional services consultancy framework
2. Gateway 1 and 3 reports to be replaced with annual summary reports to Procurement Board detailing the number of projects, total value of spend and the framework KPI monitoring.

13. SUGGESTED REASONS FOR DECISION

13.1 The recommendations will reduce the reactive procurements undertaken at present whilst providing efficiencies to the Council and ensure quality improvements over the course of the 4 year framework. Negating Gateway 1 & 3 papers will also speed up the procurement process enabling officers to dedicate time to more projects thereby increasing efficiency and productivity. The production of an annual summary of contracts via the framework will

enable members to monitor contract performance and have an overview of productivity.

Lead Officer Contact

Name Title
Department Directorate
Extension Email

Background Papers

The following documents have been relied upon in the preparation of this report:

Description of Document	Location	Date
NA – None Used		