

## **CABINET**

**28 SEPTEMBER 2010**

### **GATEWAY 1 OPTIONS APPRIASAL: MEDWAY COUNCIL CONSULTANCY SERVICES FRAMEWORK FOR MUNICIPAL, HIGHWAY AND CIVIL ENGINEERING DESIGN**

Portfolio Holder: Councillor Phil Filmer, Front Line Services

Report from: Robin Cooper, Director of Regeneration, Community and Culture

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#### **Summary**

This report seeks permission to commence the procurement of a Consultancy Services Framework that will encompass services in relation to the design of any relevant Municipal, Highways and Civil Engineering projects. The successful consultants will be used to support internal resources on an ad hoc basis. Services from this Framework will be used at the discretion of the Head of Capital Projects, Road Safety and Networks when additional expertise or capacity is required.

## **1. Budget and Policy Framework**

### **1.1 Service Background Information**

- 1.1.1 This Consultancy Services Framework will be used for the design of any relevant Municipal, Highways and Civil Engineering projects. This will include any essential preparatory works, surveys, site investigations and modelling as well as the preparation of feasibility studies, business cases, planning applications and public consultations. The provision of technical advice on any engineering function may also be included. Services will sometimes be used in conjunction with clients internal to Medway Council, specifically, but not limited to, the Integrated Transport Team.
- 1.1.2 Funds for this contract will be primarily connected to Medway Council's third Local Transport Plan (LTP3), covering the period 2011-2026. This will be divided into sub-plans, the first of which covers the period 2011-2014. LTP3 seeks to address wider social, economic and environmental challenges for the area, based on an analysis from public consultation and work undertaken with other authorities through the North Kent Multi Area Agreement.
- 1.1.3 Although it is not yet known what annual LTP funding will be allocated for the period of this contract (2011 to 2015) it is expected that the 2011/12 figure will be, as an absolute maximum the same as 2010/11, if not significantly less. For this reason projected figures have been

based on the average annual percentage of relevant expenditure through both Mott McDonald and Mouchel against the annual LTP block allocation for the period 2005 through to 2010.

- 1.1.4 It may be possible that relatively small amounts of funding may be attracted for projects under section 106 agreements and Member's Priorities. Although these figures cannot be forecast, it is felt that the method of financial projection used in this report yields a total contract value in excess of actual expected value, and that this "buffer" will cover eventualities such as non-LTP funded projects and inflation.
- 1.1.5 It should be noted that the Framework would not commit the Council to any specific expenditure in relation to contracts to be awarded under that framework.

## **1.2 Council's Strategic Priorities And Core Values**

- 1.2.1 The provisional LTP3 is designed to support and refine national transport goals to incorporate sub-regional and local objectives. In short, LTP3, and therefore this procurement, is inextricably and strongly linked to many objectives from The Council Plan and it's Core Values and Strategic Priorities:

### **Core Values**

- Putting our customers at the centre of everything we do.
- Giving value for money.

### **Strategic Priorities**

- A clean and green environment.
- Safer communities.
- Children and young people having the best start in life.
- Older and vulnerable people maintaining their independence.
- People travelling easily and safely in Medway.
- Everyone benefiting from the area's regeneration.

### **Strategic Council Obligations**

The procurement of this requirement directly links into Strategic Council Obligations. The Local Transport Plan process is a statutory function and applies to all local transport authorities in England outside London under the Transport Act 2000, as amended by the Local Transport Act 2008.

### **Medway Council Plan**

This procurement requirement links into the Medway Council Plan.

This procurement is strongly linked to the various transport elements of the current 2010-2013 Council Plan, many of which are outlined in 1.2 of this report.

The Council's goals of promoting Medway as an historic tourist attraction, and as being a safe and attractive place to live are only achievable with a robust and efficient transport infrastructure. LTP3 is, therefore, essential in supporting the areas regeneration of as part of the government's Thames Gateway development plans.

### **Local Area Agreement (LAA)**

LTP3 draws its objectives from many national and local sources, including the LAA. This procurement will help fulfil schemes that will contribute to several of the priorities outlined in the current LAA, due to expire 31 March 2010.

## 2. Background

### 2.1 Project Details

2.1.1 This procurement is a services procurement requirement.

2.1.2 This report seeks permission to commence the re-tendering of a current procurement contract as a multi supplier framework, with proposed contract duration of 4 years. The contract is proposed to commence on 1 April 2011 and conclude on 31 March 2015.

The total value of this procurement contract re-tender is projected at £600,000 over the proposed 4-year period.

2.1.3 This procurement requirement is a standalone project with no linkage to any other procurement projects or procurement programmes.

It may be used in conjunction with, though is not reliant upon the Medway Council Highways and Engineering Works Framework, which was passed by Procurement Board at Gateway 1 on 9 June 2010. This framework will allow the call off of small to medium sized Highways and Engineering works of a value up to £500,000.

This procurement is required to fulfil Medway's statutory obligations, and will primarily deliver and support LTP schemes. The Local Transport Plan process is a statutory function and applies to all local transport authorities in England outside London under the Transport Act 2000, as amended by the Local Transport Act 2008.

### 2.2 Business Case

#### 2.2.1 Procurement Project Outputs / Outcomes

As part of the successful delivery of this procurement requirement, the following key procurement project outputs/outcomes will be monitored as part of the procurement project delivery process.

	<b>Outputs / outcomes</b>	<b>How will success be measured?</b>	<b>Who will measure success of outputs/ outcomes?</b>	<b>When will success be measured?</b>
1	A robust and legally compliant contract.	Through stringent and well developed contract management as well as robust procurement, and legal procedures	The contract management, Strategic Procurement and Legal teams.	During the preparation of, and throughout the duration of the contract
2	Capacity when required	A new system of real time resource reporting and feedback is currently under development. Quarterly reports will continue to be reviewed by the Strategic Transport Group	The Head of Capital Projects, Road Safety and Networks in conjunction with the Principal Engineer and Senior Project Planner	This system of feedback will be continual and ongoing.
3	Quality of service	Through robust and well-developed systems of	The Head of Capital Projects, Road Safety	Contract management will be

		procurement and contract management in conjunction with tailored and vetted contractual clauses and documentation.	and Networks in conjunction with the Principal Engineer and Strategic Procurement.	continual and ongoing.
4	Responsiveness of service	Through robust and well-developed systems of procurement and contract management in conjunction with tailored and vetted contractual clauses and documentation.	The Head of Capital Projects, Road Safety and Networks in conjunction with the Principal Engineer.	Contract management will be continual and ongoing.
5	Relevant expertise	Through robust and well-developed systems of procurement and contract management in conjunction with tailored and vetted contractual clauses and documentation	The Head of Capital Projects, Road Safety and Networks in conjunction with the Principal Engineer	Contract management will be continual and ongoing.

### 2.2.2 Procurement Project Management

This procurement project will be resourced through the following project resources and skills.

Ian Wilson. Head of Capital Projects, Road Safety and Networks  
David Highley. Senior Project Planner  
Capital Projects Technical Support Group

### 2.2.3 Post Procurement Contract Management

The contract management of this procurement project post award will be resourced through the following contract management strategy.

Ongoing contract management provided by  
Ian Wilson. Head of Capital Projects, Road Safety and Networks  
Andy Wilde. Principal Engineer.  
Capital Projects Technical Support Group

### 2.2.4 Other Issues

There are no other issues that could potentially impact both the procurement process and overall strategic aims as identified within Section 1 Budgetary and Policy Framework.

### 2.2.5 TUPE Issues

Further to guidance from Legal Services and Strategic Procurement, it has been identified that TUPE will not apply to this procurement process. This is because the current contract holder, Mott McDonald, does not use sufficient permanent resource dedicated to Medway Council work to justify the redeployment of staff to another contractor. Sub-contractors from a variety of locations and specialisms performed a substantial proportion of the work for the existing consultants. Each was only used for the duration of a specific project. This has been confirmed following conversations between The Head of Capital Projects, Road Safety and Networks and Steve Coker of Mott McDonald.

Similarly, Mouchel's work for the Integrated Transport team has been of insufficient quantity to justify the movement of any of its staff.

### **3. Options**

In arriving at the preferred option as identified within Section 4.1, the following options have been considered with their respective advantages and disadvantages.

#### **3.1 OPTION 1 - Do nothing**

The option of doing nothing has been considered and below are the advantages and disadvantages of this option:

Advantages.

There are no advantages to the "do nothing" option. Permanent recruitment of the internal staff needed to replace this external service would be impractical (see 3.2)

Disadvantages.

The current Consultancy has proven an invaluable resource in fulfilling the many goals resulting from the various plans and studies related to LTP2. This procurement will provide the support, expertise and capacity that it would be impractical to provide on a permanent, internal basis.

The disadvantage of not providing this framework is that transport related Council Plan priorities and commitments would not be fulfilled. The "do nothing" option would cause a failure to deliver the LTP capital programme and considerable failure of service.

#### **3.2 OPTION 2 - In-house service provision**

The option of providing this requirement through in-house service provision has been considered and below are the advantages and disadvantages of this option:

Advantages.

It could be argued that in-house provision may provide enhanced communication, though no problems have yet to be encountered in this regard when using the current external resource.

Disadvantages.

It has proven impractical to engage sufficient permanent staff required to cover this service. Medway Council could not effectively provide such specialists with sufficient workload to justify the disproportionate cost of their employment, space and equipment.

Although the organisation could directly contract any specialists required for the duration of a given project, this would represent exposure to various risks. The current contractor bears the total responsibility for engaging any contractors needed for projects under their jurisdiction, removing any financial and qualitative risks that would otherwise rest with Medway Council

#### **3.3 OPTION 3 - Using another local authority to deliver procurement requirements**

The options of using another local authority to deliver procurement requirements have been considered and below are the advantages and disadvantages of this option.

It has not been possible to find another local authority that has the internal facility to provide this service. KCC are the nearest authority that requires a similar range of functions. They have engaged an external consultant and are, therefore, internally deskilled. Services are

delivered under a fundamentally different system of procurement and management that would not sufficiently compliment the systems and requirements of Medway Council, and therefore not cover the full range of services sought.

#### Advantages

The use of facilities provided under another local authorities contract could provide economies of scale as well as providing a efficient and cost effective procurement route.

#### Disadvantages

None

### 3.4 OPTION 4 - Procurement via an EU compliant framework.

No EU compliant frameworks have been identified from which Medway Council's procurement requirements can be satisfied. Although Frameworks do exist that provide relevant consultancies, such contractors are of a size and nature that could not provide competitive rates for comparatively low value projects.

These contractors tend to sub contract services of the value expected through this framework and would therefore charge a premium for doing so.

#### Advantages

An EU compliant framework would offer a quick and efficient procurement route.

#### Disadvantages

None

### 3.5 OPTION 5 - Formal tender process in line with EU Procurement Regulations and Medway Council's Contract Rules.

The various options of formally tendering this procurement requirement in line with EU Procurement Regulations and Medway Council's Contract Rules have been considered, and below are the options and their inherent advantages and disadvantages:

#### 3.5.1 (A) Term Contract (which may be for more than 4 years) with a single contractor that allows call off when required. This is the option under which the current contract was procured.

##### Advantages

- This Consultancy has so far provided the flexibility of staffing, expertise and quality required to efficiently deliver services.
- Responsiveness. Call off will be immediate
- Efficiency. A longer contract than that allowed for a framework will negate the need to re-tender for the length of the contract and represent efficiencies regarding officer time

##### Disadvantages

- Inflexibility of specification. Such a contract would tend to be inflexible in dealing with any requirements not anticipated when the contract was originally drafted, and may not suit the agenda for meeting member priorities in a flexible and rapid manner. It would require a Specification that clearly made provision for all contingencies that would need to be catered for throughout the contract term.

- Inflexibility of service. We would be tied to use the winning contractor for that service for the period of the contract.
- Unlikely to provide VFM in the long term given that it is likely that the service requirements are likely to change throughout the period of the contract. Schemes involving services outside of those for which provision is made in the Term Contract will need to be separately procured.

### 3.5.2 (B) A single contractor Framework lasting for the maximum allowable term of 4 years.

#### Advantages

- The VFM advantages of centralised procurement without the commonly associated level of bureaucracy, together with competitive prices over the relatively short term (four years) duration of the Framework.
- A single full tendering exercise over the life of the framework.
- A reduction in administrative effort and cost for the Authority.
- Responsiveness. All T&Cs and protocols clearly laid out in the Framework so that no further tendering is required. The Authority's requirements for the supply of services will be clearly set out in the Framework. Call offs will therefore be immediate.
- Flexibility. Call offs can be used as and when required. Further, the Authority is not tied to the single contractor on the framework. The Authority retains the right not to use the Framework at all and go back to the market.
- A mutually beneficial longer term working relationship can be established with the contractor on the Framework.

#### Disadvantages

- Due to the requirement when setting up the Framework, to specify upfront and in relative detail the nature of the services required, there may be occasions where, because of the complexities of a particular project, the contractor on the Framework will not be able to deliver the overall quality of service required for that project.
- Where the Framework is completed on the basis of, inter alia, schedules of rates for the required services, these rates will generally be fixed and applicable for the duration of the Framework. It is considered to be unlikely that there will be changes in the market place that will result in significant decreases in these levels of rates making them no longer providing VFM. In the unlikely event of this occurring, the Authority has the option to abandon the Framework and go back to the market place.
- There will be a requirement to specify upfront and in detail, the kinds of services the Authority requires over the life of the proposed Framework.
- It is relatively unresponsive to change – there may be new suppliers and/or new solutions within the market that were not included when the Framework agreement was initially set up.

### 3.5.3 (C) A Multi-Supplier Framework with a Prime Contractor lasting for the maximum allowable term of 4 years. This is the preferred route of provision.

- The prime contractor will be appointed on the basis of the outcome of the MEAT evaluation. Other contractors on the Framework will then be listed in order of preference on the same MEAT basis.
- The prime contractor will be used unless they are unable to accept work on the basis of capacity, or that we are unhappy with their performance against

our expectations as qualified in all documentation. E.g. Work completed late on 3 occasions in the preceding year.

#### Advantages

- The VFM advantages of centralised procurement without the commonly associated level of bureaucracy, together with competitive prices over the relatively short term (four years) duration of the Framework.
- A single full tendering exercise over the life of the Framework.
- A reduction in administrative effort and cost for the Authority.
- Flexibility. This Framework will only be used when deemed appropriate, and when budgetary provision allows.
- It is considered to be unlikely that there will be changes in the market place that will result in significant decreases in the levels of rates making them no longer providing VFM. In the unlikely event of this occurring, the Authority has the option to abandon the Framework and go back to the market place.
- VFM will be demonstrated throughout the term of the Framework by one of two reporting methods.
  1. By requiring contractors awarded work under the Framework to report Annually, Quarterly or per job on Market Comparison, or
  2. By soft market testing specimen services every pre defined period and comparing these results with the prices under the Framework.
- It is not a condition of the Framework that Medway Council use it at all. In the unlikely event that either of the above methods demonstrates that the use of the Framework no longer offers VFM, the Authority has the option to abandon the Framework and go back to the market place.
- Responsiveness. Call off will normally be immediate. A prime contractor will be chosen and, providing they are able to accept the call-off and to provide the services in accordance with the performance standards/quality, will be given the majority of the work. Call offs from this prime contractor will use the scheduled rates set at Tender acceptance. If the Prime contractor is unable to accept the call-off or fails to provide the services in accordance with the performance standards/quality required, then call-offs will be offered to the provider ranked second and so on in relation to the original MEAT evaluation. The Prime contractor will be aware of the above criteria at all stages and this is likely to encourage him to retain his competitive advantage

#### Disadvantages

- Where there is limited work, contractors other than the prime contractor will get little opportunity for call-offs, and this potentially increases the risk of their resources being fully committed elsewhere on occasions when their services are required by the Authority.
- They are relatively unresponsive to change – there may be new suppliers and/or new solutions within the market that were not included when the framework agreement was initially set up.

### 3.5.4 (D) A Multi-Supplier Framework lasting for the maximum allowable term of 4 years

#### Advantages

- Flexibility. Where the terms laid down in the framework agreement are not precise enough for the particular call-off, a mini competition should be held with all those suppliers within the framework capable of meeting the particular need. This does not



mean that basic terms can be renegotiated, or that the specification used in setting up the framework can be substantively changed. It is more a matter of supplementing or refining the basic terms to reflect particular circumstances in a way foreshadowed in the framework. The Authority should award the call-off to the supplier which has submitted the most economically advantageous tender on the basis of the award criteria set out in the framework itself focusing on the particular requirement.

#### Disadvantages

- The mini-competition must include all providers who have been admitted to the framework agreement who are capable of performing the particular call-off contract,
- Responsiveness. This option is slower than that presented in 3.5.3 above. As response times are a primary driver in the design of road safety schemes, the delay caused by mandatory mini competition could cause unnecessary delay.
- It is relatively unresponsive to change – there may be new suppliers and/or new solutions within the market that were not included when the framework agreement was initially set up.

### 3.6 Uplift Options

Five uplift options have been identified that can be used in conjunction with the above contract options

#### a) 0% uplift. (Option A)

##### Advantages

- Budgetary certainty for the contract term

##### Disadvantages

- This could attract artificially high tenders as contractors would mitigate the risk of increasing costs over time with inflated initial rates. Artificially high prices may not provide VFM

#### b) Predefined percentage uplift (Option B)

##### Advantages

- Likely to yield better initial prices than that of option A, and will also give budgetary certainty over the term of the contract.

##### Disadvantages

- This may attract higher priced tenders as contractors may mitigate the risk of increasing costs (over that of the prescribed uplift) over time with rates reflecting their anticipated increases over the four-year term of the Framework. The tendered prices may not provide VFM.

#### c) Uplift based on the market place. (Option C)

The Council allows the contractors to predefine their uplift percentage as part of their tenders and choose the most attractive overall rates in combination with them.

#### Advantages

- This is likely to attract competitive initial prices
- Likely to yield better initial prices than that of option A and/or B, and will also give budgetary certainty over the term of the contract.

#### Disadvantages

- We are reliant on contractors to define the uplift and will have to accept what they dictate subject to the overall evaluation outcome of MEAT

#### d) Index/Inflation linked uplift (Option D)

##### Advantages

- Is likely to yield better initial prices than that of Options A and/or B and/or C

##### Disadvantages

- Will only ensure limited budgetary certainty, as there will be continuing uncertainty as to exactly what the percentage increase of the uplift will be in each year of the four year term of the Framework.

#### e) Every contractor tenders on basis of 2 options.

1. 0% uplift.
2. An uplift that each consultant defines

The Prime contractor will be selected as the contractor who submits the lowest total submission over the contract term, regardless of uplift type. Other contractors are ranked in order of the whole life cost from the lot from which the Prime was selected.

##### Advantages.

- Certainty that value for money can be demonstrated

##### Disadvantages

- Unlikely to have a significant effect on total costs over the life of the contract

### 3.7 OPTION 6 - Internal Medway Council Collaboration between departments

The option of procuring requirements through internal collaboration between Medway Council departments in order to exploit economies of scale and synergies has been considered and below are the advantages and disadvantages of this option:

##### Advantages.

This service will be open to use by any relevant internal department through the Capital Projects Team, yielding economies of scale and efficiencies related to the use of officer time and duplication of effort. Historic examples include Integrated Transport, Car Parks, Greenspaces, Leisure, Medway Renaissance, World Heritage, Community Services and Economic Development.

##### Disadvantages.

None

### 3.8 OPTION 7 - External public sector collaboration (e.g. other Councils, Fire Service, PCT, Police)

The option of procuring requirements through external collaboration between Medway Council and other external public sector organisations in order to exploit economies of scale and synergies has been considered but no such opportunities exist.

Any such contract through the nearest local authority with the same range of requirements as Medway council has been investigated. The only possibility has been ruled out on the grounds that concerns have been voiced about the reliability, capacity and responsiveness of that contractor, and that the method of provision of this service will be changed in the near future.

### 3.9 OPTION 8 - Private sector collaboration e.g. Private Public Partnering/Private Finance Initiatives

The option of procuring requirements through private sector collaboration between Medway Council and other external private sector organisations has been considered but no such opportunities exist.

The sporadic nature of the use of this framework's service would not represent a guaranteed return for any private investor. For this reason such partnerships would not be attractive or practical.

### 3.10 Other alternative options

No alternative options for procuring requirements have been identified.

## 4. Advice and analysis

### 4.1 Preferred option

Further to the options identified within Section 3, the following preferred option is outlined below with associated justification.

This report recommends OPTION 5 (D), the procurement of 4-year multi-supplier Consultancy Framework with a prime contractor and between 3 and 6 supporting contractors . This contract will be let on the basis of an uplift defined by the market as detailed in 3.6.e

The use of such a framework is seen as preferable to any other options including that of internal provision.

The report provides evidence that the preferred method of procurement,

- Will secure the efficient and effective provision of the required services.
- Will provide a Framework that will carry an assured level of quality and sustained value for money.
- Will safeguard against financial, legal, reputational and political risk in a way that cannot be bettered by any other route, and
- Is the best option available to the Council.

#### 4.1.1 Race Relations Act (Amendment) 2000

This procurement is not a policy or service change and therefore not subject to a Diversity Impact Assessment (DIA).

As this procurement is designed to support the LTP, it is inextricably linked to those objectives inherent within it that actively seek to promote equality relating to the access and efficiency of Medway's road transport infrastructure.

#### 4.1.2 Corporate Sustainability Plan.

This procurement, and its resultant Framework will support projects designed to increase the efficiency of the existing road network and encourage modal shift toward public transport, walking and cycling.

## 5. Risk Management

### 5.1 Risk Categorisation.

The following risk categories have been identified as having a linkage to this procurement project:

- Procurement process
- Equalities
- Contractual delivery
- Sustainability / Environmental
- Service delivery
- Legal
- Reputation / political
- Financial
- Health & Safety
- Other.

	Risk Categories	Outline Description	Risk Likelihood	Risk Impact	Plans To Mitigate Risk
			A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	I=Catastrophic II=Critical III=Marginal IV=Negligible Impact	
a	Procurement process	The current primary resource for the management of this process is the Senior Project Planner. A lack of local permanent resource and high workload represent a risk to the smooth running of this procurement.	D	III	<b>The number of appointments is likely to be small and can be managed within the current team structure. If a large number of projects were required to be resourced within a short period of time, additional recourses would be funded from the relevant projects</b>
b	Equalities	As representatives of Medway Council the awarded contractors would have to adhere to the rigid rules and expectations of Equality and Diversity that the authority and law dictates.	F	III	Procurement and legal processes will be robustly auditable, and ensure that all tenderers subscribe to relevant policies and insurances.  All procurement, contracting and contract management procedures will be stringently conducted within all relevant rules and legislation and vetted by relevant internal expert teams. These include the Strategic Procurement, and Legal teams, and the appropriate managerial and political bodies that form part of the procurement process.  Any risk borne by Medway Council is therefore reliant on the advice and expertise offered by such bodies, and robust adherence to procedure.
c	Contractual Delivery	As this consultancy framework offers no guarantee of work, and Medway will be able to market test against, and use other consultants, the risk associated with Contractual Delivery is seen to be very low.	D	III	The framework will allow Medway Council to use and market test other consultants when appropriate. Although it is hoped that this will not be necessary it will ensure that the awarded Consultants will be aware of their competition and deliver accordingly. This will be clearly outlined in the Terms and Conditions of contract and all tender documents, and be vetted by the Strategic Procurement and Legal teams
d	Sustainability/Environmental	As representatives of Medway Council the awarded contractors would have to adhere to the rigid Sustainability and Environmental rules and expectations that both the authority and national legislation dictate.  It would be expected that the appointed Consultants would assist and advise Medway Council in its efforts to achieve its goals in this regard, and therefore detract from any such risk rather than add to it.	F	III	Procurement and legal processes will be robustly auditable, and ensure that all tenderers subscribe to relevant policies and insurances.  All procurement, contracting and contract management procedures will be stringently conducted within all relevant rules and legislation and vetted by relevant internal expert teams. These include the Strategic Procurement, and Legal teams, and the appropriate managerial and political bodies that form part of the procurement process.  Any risk borne by Medway Council is therefore reliant on the advice and expertise offered by such bodies, and robust adherence to procedure.

e	Service Delivery	This Consultancy framework is being procured for the purpose of supporting projects when required. The consultants contracted from the framework will bear much of the risk associated with Service Delivery in such cases. This method of working is therefore gauged as a minimal risk.	E	III	Requirements will be robustly communicated to all relevant Consultants
f	Legal	This procurement is conducted within all pertinent rules and legislation and will be reviewed by all relevant legal bodies. It will fully comply with all EU legislation and the recent Remedies Directive.	B	II	Rigidly auditable processes will ensure that any legal risk is minimised. Dispute resolution clauses will be included in the contract. All documentation and processes will be closely scrutinised and vetted by the Strategic Procurement and Legal teams. Any risk borne by Medway Council is therefore reliant on the advice and expertise offered by the Strategic Procurement and Legal teams, and robust adherence to procedure.
g	Reputational/Political	As this framework will only be used for projects that have been approved by relevant political and managerial bodies, and well-developed internal systems, this risk is seen to be low.  Any inadequate provision of guidance and support from the Capital Projects team and it's various clients could have reputational and political connotations.	E	II	Procurement and legal processes will be transparent and auditable, and ensure that all tenderers subscribe to relevant policies and insurances.  All procurement, contracting and contract management procedures will be stringently conducted within all relevant rules and legislation and vetted by relevant internal expert teams. These include the Strategic Procurement, and Legal teams, and the appropriate managerial and political bodies that form part of the procurement process.  Any risk borne by Medway Council is therefore reliant on the advice and expertise offered by such bodies, and a robust adherence to procedure.
h	Financial	This Framework is being procured for the purpose of supporting projects when required, and when budgetary provision allows.	E	IV	It is a primary objective of the contract that flexibility of resource, and hence value for money is increased and financial risk mitigated. This procurement and its subsequent projects will be subject to the advice and scrutiny of the departmental accountant and finance department.  Risks associated with financial security of the chosen contractors will be mitigated with use of the ongoing financial check carried out by the Strategic Procurement team.
i	Health and Safety	As representatives of Medway Council the awarded contractor would have to adhere to the rules and relating to Health and Safety that legislation, regulations, guidance and best practice dictate.	E	IV	The procurement and legal processes will be transparent and auditable, and ensure that all tenderers subscribe to relevant policies and insurances.  All procurement, contracting and contract management procedures will be stringently conducted within all relevant rules and legislation and vetted by relevant internal expert teams. These include the Strategic Procurement, and Legal teams, and the appropriate managerial and political bodies that form part of the procurement process.  Any risk borne by Medway Council is therefore reliant on the advice and expertise offered by such bodies, and robust adherence to procedure. Independent Safety Audits will continue to be conducted on each design before works commence on site.

## **6. Consultation**

### **6.1 Internal (Medway) Stakeholder Consultation**

- 6.1.1 In order to direct the specification the following internal stakeholder consultation is required before the commencement of the procurement project.

The Head of Capital Projects, Road Safety and Networks will compose the specification in conjunction with the Principal Engineer and the Head of Integrated Transport.

The Strategic Procurement Manager and Legal Team will both be consulted to ensure the compliance of this procurement.

- 6.1.2 In order to aid the evaluation process the following internal stakeholder consultation is required before the commencement of the procurement project.

The Head of Capital Projects, Road Safety and Networks will compose all evaluation criteria in conjunction with the Principal Engineer and the Head of Integrated Transport.

The Strategic Procurement Manager and Legal Team will both be consulted to ensure the compliance of this procurement.

- 6.1.3 In order to aid the contract management process no internal stakeholder consultation is required post procurement/tender award.

The Head of Capital Projects, Road Safety and Networks will manage this contract with the support of the Capital Projects Technical Support Group. No other internal management will be required.

### **6.2 External Stakeholder Consultation**

- 6.2.1 No external stakeholder consultation is required before the commencement of the procurement project to direct the preparation/content of the specification

- 6.2.2 No external stakeholder consultation is required during this procurement process to aid the evaluation process.

- 6.2.3 No external stakeholder consultation is required post procurement/tender award to aid the contract management process.

## **7. Comments of the Portfolio Holder for Front Line Services**

- 7.1 This framework will add to the suite of options available to the Council for the procurement of design and consultancy support services, ensuring that the most appropriate and cost-effective solution can be used according to the scope and timing of the relevant project.

## **8. Procurement Board**

- 8.1 The Procurement Board considered this report on 8 September 2010 and approved and recommended its review at Cabinet for formal consideration and approval.

## **9. Financial, procurement and legal implications**

### **9.1 Financial Implications**

- 9.1.1 The nature of the work is the design of municipal, highways and civil engineering projects. These will mainly be externally funded, primarily through the LTP. However, the Council cannot be certain of the level of funding available over the course of the contract. The form of agreement will clearly reflect that the Council does not bind itself to provide any minimum level of works, and will reserve the right to seek other contracts if it considers that this is the best way of achieving its objectives. The assessment of the likely cost over the course of the contract is set out in the Appendix. This is based on the past outturns being projected against the best information available now and concludes that, over the course of the contract the upper limit of the total value of work would be approximately £14m, of which the design elements using this framework would be 3.6%, or approximately £600,000 over the total 4 year duration of the contract.
- 9.1.2 Although it is not yet known what annual LTP funding will be allocated for the period of this contract (2011 to 2015) it is expected that the 2011/12 figure will be no greater than that for 2010/11 and there is every possibility that it could be significantly less. For this reason projected figures have been based on the average annual percentage of relevant expenditure for both Mott McDonald and Mouchel against the annual LTP block allocation for the period 2005 through to 2010. These projections are contained within the table in 3.1 of the Exempt Appendix.

### **9.2 Procurement Implications**

- 9.2.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 Preferred Option and the recommendation below, has the following procurement implications, which Cabinet must consider.
- 9.2.2 Strategic Procurement supports the recommendation contained within this report for the creation of a services framework. The Procurement of 4-year multi-supplier Consultancy Framework with a prime contractor and between 3 and 6 supporting contractors will provide the Council with an acceptable balance between VFM and flexibility to react to changing financial and service objectives. The proposed multi-supplier methodology will ensure that a Prime Contractor provides a quality service at an economical set of rates, which can be competitively benchmarked against throughout the contract term.
- 9.2.3 In addition, this proposed methodology neither commits the Council to the framework nor to the Prime Contractor nor provides an opportunity to use other suppliers on the framework in the event that the Prime Contractor does not have capacity or is not performing in accordance to the specification and contract terms and conditions. The proposed methodology should ensure that the Council achieves best value and is in a position to procure requirements quickly, efficiently and within full compliance of Medway's internal procurement rules as well as EU Procurement Regulations. In addition, the ability for other internal departments to use this framework should ensure greater internal collaboration and through the new contract, supplier rationalisation and demand aggregation may result in potential future savings against historic expenditure. In line with the EU Procurement Regulations, frameworks cannot be for a period longer than 4 years and therefore the proposed methodology is fully compliant. Strategic Procurement will provide quality assurance throughout the process including a review of procurement documentation at gateway 2. The client department is advised that the creation of such a contract does not negate responsibility of subjecting future major consultancy projects to Medway Council's gateway procurement processes.



### 9.3 Legal Implications

- 9.3.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 Preferred Option and the recommendation below, has the following legal implications which Procurement Board/Cabinet must consider.
- 9.3.2 The services provided under the framework will be Part A services for the purposes of the Public Contracts Regulations 2006 (as amended) and the estimated value of the contract is well in excess of the threshold for public services contracts. This procurement will be subject to the new rules implemented by virtue of the Remedies Directive. Care will need to be taken to ensure that the procurement is fully compliant with the relevant rules and regulations and that contracts let under the framework are let in accordance with the framework's protocols. This is to ensure that the Council is not exposed to risks of challenge from contractors unhappy with the Council's contract award decision in creating the framework and/or its later decisions to award call-off contracts under the framework

## 10. Recommendation

- 10.1 The Cabinet is requested to approve option 5D (the procurement of 4-year multi-supplier Consultancy Framework with a prime contractor and between 3 and 6 supporting contractors) for a new Consultancy Services Framework for Municipal, Highways and Civil Engineering Design, as set out in paragraph 4.1 of the report.

## 11. Suggested reasons for decision(s)

### 11.1 The proposed Framework:

- Will strongly support corporate, local, national and international objectives
- Will represent best value and mitigates financial risk.
- Will represent an efficient and responsive method of procurement and contracting.
- Will be procured robustly and compliantly to mitigate the risk of future challenge
- Negates the risks associated with providing this service internally.

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## Background papers

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

Description of document	Location	Date
The Stern Review-2006- Climate Change Study	<a href="http://hm-treasury.gov.uk/stern_review_report.htm">http://hm-treasury.gov.uk/stern_review_report.htm</a>	April 10
The Eddington Transport Study Summary Report-2006	<a href="http://www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy/">http://www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy/</a>	April 10
Delivering a Sustainable Transport System- Main Report 2008	<a href="http://www.dft.gov.uk/about/strategy/transportstrategy/dasts/dastsreport.pdf">http://www.dft.gov.uk/about/strategy/transportstrategy/dasts/dastsreport.pdf</a>	April 10
Roads-Delivering Choice and Reliability- 2008	<a href="http://www.dft.gov.uk/pgr/roads/introtoroads/roadcongestion/roadscommandpaper1.pdf">http://www.dft.gov.uk/pgr/roads/introtoroads/roadcongestion/roadscommandpaper1.pdf</a>	April 10
North Kent Transport Strategy-November 2009	Mark Johnson. Ext. 1505	April 10
Medway Sustainable Community Strategy- 2010-2026	<a href="http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=4419">http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=4419</a>	April 10
LTP3 Executive Summary	Mark Johnson. Ext. 1505	April 10
LTP3-2011-2026	Mark Johnson. Ext. 1505	April 10
The Council Plan	<a href="http://www.medway.gov.uk/council_plan_2010-13_v10.pdf">http://www.medway.gov.uk/council_plan_2010-13_v10.pdf</a>	April 10
Capital Projects, Road Safety and Networks Service Plan 2010-2011	Ian Wilson. Ext 1543	April 10
North Kent Multi Area Agreement (NK MAA)	<a href="http://www.tgkp.org/content/MAA%20web.pdf">http://www.tgkp.org/content/MAA%20web.pdf</a>	April 10
Medway Local Area Agreement (LAA) 2008-12	<a href="http://www.medway.gov.uk/laa2_refresh_2008-2012.pdf">http://www.medway.gov.uk/laa2_refresh_2008-2012.pdf</a>	May 10
Medway CAA (Organisation Summary report and Area Summary report)	<a href="http://www.medway.gov.uk/index/council/policy/caa.htm">http://www.medway.gov.uk/index/council/policy/caa.htm</a>	May 10
Medway LDF Documents	<a href="http://www.medway.gov.uk/index/environment/developmentplan/ldf.htm">http://www.medway.gov.uk/index/environment/developmentplan/ldf.htm</a>	April 10
Capital Projects-National Indicators from the Council Plan	Anna-Marie Lawrence	April 10
Medway Risk Management Strategy	<a href="http://connections.medway.gov.uk/index/managers_toolkit/33607.htm">http://connections.medway.gov.uk/index/managers_toolkit/33607.htm</a>	May 10
Medway Corporate Sustainability Strategy and Action Plan January 2007	Senior Research and Review Officer	May 2010