

Report for: Cabinet - 12 March 2019

Title: London Construction Programme (LCP) Pan – London Collaborative Procurement Initiatives

Report authorised by: Director, Environment and Neighbourhoods

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Ward(s) affected: All

**Report for Key/
Non Key Decision:** Non Key Decision

1 Describe the issue under consideration

1.1 The purpose of this report is to seek Cabinet approval for the Council to lead on the development and implementation of the procurement strategy to create the following bespoke commercial arrangements to support Haringey and other London Construction Programme (LCP) members to deliver their Estates Strategy. This includes:

- Replacement of the existing LCP Major Works Framework Agreement with a new improved second generation 5-year Framework that adopts modern best practice construction procurement, including comprehensive social value requirements, together with relevant KPI's;
- New Dynamic Purchasing System (DPS) for Minor Works projects primarily valued up to £1m: and
- New Dynamic Purchasing System (DPS) for Construction, Estates and Property Consultancy Services to replace the time expired Consultancy Services Framework Agreement.
- Both DPS's have been specifically designed to support the local SME agenda within London and address capacity issues in the current available frameworks.

- 1.2 The Councils' Contract Standing Order 7.04 (a) requires Cabinet approval where the Council is intending to lead on any joint procurement activity that is likely to involve a key decision.
- 1.3 The establishment of the above framework and DPS does not commit the Council to entering into a contract. Any call off from the DPS or framework will still be subject to the Councils' procurement, award and governance processes.
- 1.4 This report includes a recommendation, that given the non – financially binding nature of the proposed commercial arrangements, delegated authority be given to the Head of Procurement to establish the Dynamic Purchasing Systems and the replacement Major Works Framework, including the award to the successful suppliers following the completion of the procurement exercise in accordance with the Public Contracts Regulations 2015 (as amended). (Note; this does not include the award of any financially binding contracts, just supplier admission to the DPS and framework).

2 Cabinet Member Introduction

- 2.1 The LCP is an excellent example of collaborative working across the public sector in London. Since it was established in 2012, LCP membership has expanded (currently 43 members) with the potential to grow further. The level of expenditure through the Construction and Professional Services frameworks put in place by LCP is in excess of £1 billion since inception and has resulted in tangible savings.
- 2.2 The LCP spent a significant amount of time during 2017/18 engaging both LCP members and the supply chain in developing both the DPS and the framework. This was to ensure it met the needs of the LCP members but could also be delivered by the supply chain. This has resulted in what is being described as a 'next generation' of construction contract vehicles that provide flexibility and support public sector bodies in delivering of their priorities.
- 2.3 The establishment of the Major Works Framework and the Dynamic Purchasing Systems for minor works and professional services, is a key enabler to assist the Council and LCP members in delivering their housing and capital programme over the coming years. The framework and DPS's will each be multi-billion-pound contractual arrangements to support the demands of LCP members over the coming years.
- 2.4 The establishment of the framework and DPS's provide not only some much-needed capacity within the construction sector to meet the demands of LCP members across London, they facilitate the next generation of social, economic

and environmental values integrated into the contractual terms. These contractual terms actively promote the following key requirements:

- Use of local SME's
- Use of local supply chain
- Requirements for use of local labour, apprentices (including hard to employ groups)
- Payment of London Living Wage
- Enhanced modern slavery checks
- Use of sustainable materials
- Increased air quality requirements (including dust control measures)
- Increased noise pollution measures
- Carbon and emission reductions

2.5 The establishment of the framework and the DPS's places Haringey at the forefront of promoting these key values that align not only with the Borough Plan but the wider aspirations of authorities throughout the London region.

3 Recommendations

3.1 It is recommended that Cabinet:

- i. approves the replacement of the existing LCP pan - London Major Works Framework;
- ii. approves the establishment of two LCP pan - London Dynamic Purchasing Systems for the provision of construction, estates and property related professional services and minor works;
- iii. delegates authority to the Head of Procurement to admit suppliers to the Dynamic Purchasing Systems and award successful Suppliers onto the replacement Major Works Framework following, the completion of the procurement exercises conducted in accordance with the Public Contracts Regulations 2015 (as amended).

4 Reasons for decision

4.1 The establishment of the proposed major works framework and DPS's does not place any contractual obligation on the Council or other LCP members to

award any call off contracts against the Dynamic Purchasing Systems or the Major Works Framework.

- 4.2 Where it is intended by the Council to commission works or services, these would be undertaken in accordance with the Council's Contract Standing Orders (CSO). Where this involves a key decision, Cabinet approval will be sought in accordance with CSO paragraph 9.07.01. (d).
- 4.3 The LCP was established in 2012 and currently has a total membership of 43 London Authorities. The LCP is a virtual organisation hosted and led by Haringey's Strategic Procurement Team, managed by the Head of Procurement in Haringey Council.
- 4.4 The primary purpose of the LCP is to design, create and maintain a number of pan-London construction and works related contract vehicles (including frameworks and dynamic purchasing systems where appropriate) that can be accessed by public sector organisations across the London region and reduce the administrative burden of each organisation establishing their own contracts.
- 4.5 The current LCP Major Works Framework expires in May 2019, the proposed second-generation major works framework is intended to supersede the current framework as it expires, retaining continuity for LCP members calling off such works.
- 4.6 The intention is to commence the procurement process for the framework and DPS under the Public Contract Regulations 2015 ahead of Brexit. This will avoid any disruption to the process, as the Government has already confirmed procurements commenced prior to Brexit will continue under the current Regulations.
- 4.7 Extensive LCP member and market engagement has been undertaken to ensure the structure of the contractual arrangements meet the requirements of the LCP members and is sustainable within the sector.
- 4.8 There have been significant capacity issues within the current portfolio of frameworks that public sector has been able to access. This is primarily due to the limited number of contract vehicles and the same suppliers appearing across these frameworks. To provide an example of the issue, Haringey recently approached a leading framework with 30 providers registered in the category and only received one response due to capacity issues in the market. The DPS will allow LCP members to access to a wider supply chain than those

restricted by frameworks and provide additional multi-billion-pound capacity in each sector.

4.9 There are several benefits being derived from the establishment of the Framework and the DPS's; these include:

- Flexibility in use of all common forms of contracts associated with construction works and services;
- Specific provisions to support the use of local and regional SME's (LCP members can invite local or regional suppliers to bid for contracts);
- Provisions to support social value initiatives such as apprenticeships, hard to employ groups, modern slavery, payment of London Living Wage (LLW), use of local supply chains and business etc.
- Sustainable procurement and environmental considerations that include provisions for sustainable building materials, increased air quality, carbon reduction, noise pollution etc.
- Active monitoring and enforcement of the Key Performance Indicators (KPI's). The KPI's are essentially aligned to performance, social, economic, and environmental values. Failure to comply could result in suppliers being suspended from the framework and DPS.
- The contract vehicles will generate revenue that will contribute to cost recovery of establishing these vehicles and generate a surplus to contribute to the ongoing operations of Strategic Procurement.
- Comprehensive management information will be available through the DPS; this will include market intelligence relating to number of responses to requirements, average price paid, capacity within the market, spend with local SME's etc.
- Avoidance of significant procurement associated costs for LCP members individually putting in place their own contractual arrangements for these services.

5 Alternative options considered

5.1 Do Nothing - This option would expose the Council to significant criticism from LCP members for not meeting the obligations of the LCP to create a suite of contracts and frameworks in this sector. All LCP members (including Haringey)

would have to seek alternate procurement arrangements incurring significant additional costs and resource effort.

- 5.2 Establish a framework for professional services and minor works – this option was discounted in preference to the use of a DPS for these works and services. This is primarily due to the restrictions applied to the duration of a framework and the limitation of suppliers only being able to be admitted at the point of establishment of the framework. In comparison to a framework, a DPS enables an unlimited number of suppliers to join at any time; provided they meet the accreditation and enrolment criteria. The duration of the DPS can be much longer than a traditional framework period (4 years) (the LCP will be 7 years with a further option to extend another 7 years).

6 Background

LCP

- 6.1 The LCP was established in 2012 with the primary purpose of establishing contracting vehicles within the construction sector for public sector organisations within the London region.
- 6.2 The LCP is currently made up of 43 members, mostly consisting of contracting authorities in the London region, blue light organisations, houses of parliament, housing associations etc. Additional public sector bodies can join at any time through completing an access agreement for the required framework or DPS.
- 6.3 The LCP previously operated a professional services framework until 2016 and a major works framework that expires in May 2019. Around £1bn of services and projects have been commissioned via the LCP frameworks to date.
- 6.4 The LCP is a member the National Association of Construction Frameworks (NACF). The NACF is made up of regional construction related framework providers across the country. This enables the LCP to influence key considerations in construction frameworks across the country and adopt these into our contractual arrangements. This will include initiatives relating to health and safety, social, economic and environmental values, national key performance indicators etc.
- 6.5 In December 2017 and May 2018, the Capital Board approved a business case for the establishment of the DPS's and the Major Works Framework.
- 6.6 During 2017 and 2018, the LCP undertook several LCP member events to identify the key attributes members wanted to see within the next generation of these contract vehicles. A number of supplier engagement events were held to

establish if the supply chain could accommodate these requirements. This generation of contract vehicles reflects the outcome of that engagement.

- 6.7 Specialist experienced advisors have been engaged to assist construct the procurement and contractual documents to reflect the requirements of the LCP.
- 6.8 There is limited capacity in current frameworks to meet the demands of public sector across London, especially in relation to construction related professional services. LCP members are eager for the LCP to establish the DPS's and the new major works framework to address the current capacity issues.

Dynamic Purchasing System (DPS)

- 6.9 One of the frameworks previously operated by the LCP was the Construction Related Consultancy Services (CRCS 2012). This framework expired in February 2016. A decision was taken not to re-procure the CRCS framework at that time pending a thorough review of the options available for delivering the service.
- 6.10 On completion of the review, it was decided not to replace the CRCS framework but instead to create a dedicated DPS for the provision of professional services to support the delivery of major /minor works projects and to incorporate a wide and varied range of estates and property advisory services.
- 6.11 Haringey operates the largest portfolio of DPS within local government and has a dedicated DPS team that is well placed to support the LCP and its members in maximising the potential of a DPS.
- 6.12 The DPS has been designed to be "SME friendly" and promote local community wealth building. Suppliers can join the DPS at any time during its initial 7-year term, provided they meet the accreditation and enrolment criteria. The DPS supply chain can be divided into five regional areas (north, east, south, west and central). LCP members have the flexibility under the DPS to invite one or more regional suppliers to tender for the works or services.
- 6.13 Each supplier must maintain their accreditation status throughout the duration of the DPS. This is monitored by the DPS team, where a supplier fails to maintain the accreditation (i.e. insurances, health and safety certificates etc.) they are suspended until such time they have rectified the failures.
- 6.14 The DPS for minor works will generally apply to minor building works projects valued up to £1m although some projects may exceed this value.

Framework Agreement for Major Works

- 6.15 The existing LCP major works framework was launched in May 2015 and expires in May 2019. There is no scope under the Public Contracts Regulations (as amended) to extend the existing framework beyond the initial 4-year term.
- 6.16 The existing framework has significantly influenced the way major projects are procured in London, reducing the cost and time of the procurement exercise and providing a more collaborative way of working with the private sector. The framework's biggest impact is on the delivery of Housing and Education projects, which accounts for 83% of the current framework usage. LCP members are keen for a successive major works framework to be in place at expiry of the existing framework.
- 6.17 The new framework will provide significant flexibility in allowing any industry standard form of contract to be used, provision for direct awards up to £2.5m, prevent suppliers applying for lots below £5m if applying for lots valued above £5m, thus promoting SME's opportunities in lower value.
- 6.18 The framework has been designed to ensure we collate and monitor 12 primary KPI's that align to performance, social, economic and environmental values and national KPIS's. Where a supplier fails to provide this information or does not meet the requirements (i.e. pay London living wage), a 'ratchet system' is in place that could lead to suspension for repeat failure. This would in effect mean the supplier would not be able to bid for any work until the KPI has been brought in line with the requirements of the framework.

7 Contribution to strategic outcomes

- 7.1 The introduction of the DPS and Major Works Framework will support a number of Corporate Priorities:
- Creating a suite of procurement tools to support development, growth and regeneration in the borough and across London;
 - Promotion of Social Value Act through the suite of contracts contained within the procurements;
 - Promotion of environmental values including air quality, sustainable materials, carbon reduction etc.;
 - Promotion of SME engagement across London;

- Promoting localism and community wealth building across the borough and London;
- Payment of London Living Wage, use of local labour and promotion of apprenticeships;
- Efficiency gains through the use of collaborative procurement with other local authorities and public sector organisations.

8 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

- 8.1 This report advises Cabinet of the intention for the Council to lead on the development and implementation of the procurement strategy to create a bespoke commercial arrangement to support Haringey and other London Construction Programme (LCP) members to deliver their Estates Strategy.
- 8.2 It is noted in the supporting outline business cases, that the introduction of the new commercial arrangements will result in additional revenue.
- 8.3 It is anticipated that the additional income generated from LCP members will be in the region of £440k in year 1 rising to £800k p.a. thereafter. However, it should be noted, the revenue will be used to offset set up costs and ongoing costs of maintaining the framework and DPS's. These are estimated figures based on anticipated usage of the new arrangements by existing and potential new LCP members.
- 8.4 Any variances resulting from this proposal will be managed as part of the monthly budget monitoring process and contained within existing resources.

Procurement

- 8.5 The new commercial arrangements fully align with the Council's Procurement Policy, which is to maximise the use of Framework Agreements and Dynamic Purchasing Systems and to promote collaborative procurement with other public sector organisations in London to achieve efficiencies.
- 8.6 Whilst establishing these DPS's and the Major Works Framework does not in itself place any obligation on the Council to enter into any contracts, it is extremely likely due to the nature of the works and services, a number of contracts procured from the DPS and framework are likely to involve a key decision. For this reason, we need to comply with CSO 7.04 (a).

- 8.7 For the reasons stated in this report, Strategic Procurement fully supports the creation of the new commercial arrangements that are required to deliver operational critical activities. Capacity in alternate public sector frameworks is very limited, these new contracting vehicles will provide welcomed additional capacity and resilience within the marketplace.
- 8.8 The terms and conditions relating to the DPS and major works framework align with Strategic Procurements Strategy in promoting social, economic and environmental values, promoting the use of local SME's and local supply chains.
- 8.9 The new arrangements will be put in place by procurement, legal and technical specialists, managed by Strategic Procurement in full compliance with Public Contracts Regulations 2015.

Legal

- 8.10 The Assistant Director of Corporate Governance notes the contents of the report and sees no legal reasons preventing the Cabinet from approving the recommendations in the report.

Equality

- 8.11 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 - Advance equality of opportunity between people who share those protected characteristics and people who do not;
 - Foster good relations between people who share those characteristics and people who do not.
- 8.12 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 8.13 The DPS and Major Works Framework does not represent a significant change to the existing framework, and there are no known equality issues with the proposal, therefore an EQIA is not required. Each scheme commissioned

through the DPS or Framework will be subject to its own EQIA where applicable.

9 Use of Appendices

Not Applicable