

Report for: Cabinet 07 November 2023

Title: London Construction Programme (LCP) Collaborative Procurement Initiatives

Report authorised by : Jon Warlow, Director of Finance

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Ward(s) affected: N/A

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

1. Describe the issue under consideration

- 1.1. The London Construction Programme (LCP) is a virtual organisation which is hosted by Haringey Council and managed by Strategic Procurement. The purpose of the LCP is to establish collaborative contract vehicles in the construction sector (e.g. frameworks, dynamic purchasing systems (DPS)) across London and the Home Counties.
- 1.2. The LCP currently operates a major works framework covering housing, education, major works, heritage and highways categories. This framework expires in June 2024. In addition to the major works framework the LCP operate and manage a construction related professional services and minor works DPS, which expire in 2026.
- 1.3. It is unlikely a replacement of all frameworks will be in place prior to June 2024; therefore, a short extension is required to the current LCP Major Works (MW2019) Framework to ensure clients can continue to access the framework and the LCP can continue to generate revenue. This is a time extension only with no implication on the overall value of the framework. Contracting authorities can continue to access the framework and can commission/award contracts during the extension.
- 1.4. The pending Procurement Act expected to come into force in 2024, will replace the current DPS legislative provisions with a new similar Dynamic Marketplace provision.
- 1.5. The Council along with 56 public sector bodies regularly utilise the above contracting vehicles. Revenue of circa £1m+ p.a. are generated through organisations utilising the LCP contract vehicles.
- 1.6. This report seeks approval to proceed in the LCP establishing a new suite of contract vehicles to replace the expiring ones above. 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.

1.7. The proposed new suite of frameworks will cover the following categories:

- 1.7.1. Housing
- 1.7.2. Education
- 1.7.3. Major works

Each of the frameworks will have multiple lots to accommodate specialist areas (i.e. repairs and maintenance, new build etc.) and support contracts valued at £5m and above.

- 1.8. The proposed suite of Dynamic Marketplaces will be established once the Procurement Act is enacted and will replicate the framework categories above to primarily focus on contracts valued below £5m. The current LCP DPS categories will also migrate across to a Dynamic Marketplace prior to their expiry.
- 1.9. The establishment of the above frameworks and Dynamic Marketplaces does not commit the Council to entering into a contract. Any call off from the Dynamic Marketplace or framework will still be subject to the Councils' procurement, award and governance processes.
- 1.10. 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 the replacement frameworks in accordance with the Public Contracts Regulations 2015 (as amended) and the establishment of Dynamic Marketplaces in accordance with the Procurement Act (when enacted), including the award to the successful suppliers following the completion of the procurement exercises. (Note; this does not include the award of any financially binding contracts, just supplier admission to the Dynamic Marketplaces and frameworks).

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 to beyond 55 public sector organisations who utilise the LCP, with the potential to grow further. The level of expenditure through the LCP is in excess of £2 billion since inception and has resulted in tangible savings for its members and an incremental revenue stream exceeding £1.2m p.a. for the Council.
- 2.2. In excess of 90% of contracts awarded through the current LCP Dynamic Purchasing System (DPS) go to small, medium sized enterprises, which is expected to continue with the new Dynamic Marketplaces. This has led to the

LCP winning several awards from the Federation of Small Businesses and finalists in several prestigious procurement awards since 2019.

- 2.3. The LCP spent a significant amount of time during 2022 engaging both LCP members, the supply chain and internal stakeholders in developing a next generation of frameworks and Dynamic Marketplaces. This was to ensure it not only met the needs of the LCP members and government 'gold standards' 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.
- 2.4. The establishment of these Frameworks and the Dynamic Marketplaces is a key enabler to assist the Council and LCP members in delivering their housing, educational and capital programmes 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.
- 2.5. The establishment of the Framework and Dynamic Marketplaces provide not only some much-needed capacity within the construction sector to meet the demands of LCP members across London, but they also facilitate the next generation of social, economic and environmental values integrated into the contractual terms. These contractual terms actively promote the following key requirements:
 - Capability to deliver environmentally friendly schemes
 - Responding to the climate emergency through promotion of environmental values including use of sustainable materials, carbon reduction, increased air quality, noise reduction etc.
 - Embedding social value into all contracts
 - Use of local small and medium sized enterprises
 - Requirements for use of local labour, apprentices (including hard to employ groups)
 - Payment of London Living Wage
 - Enhanced modern slavery checks
 - Mental health awareness and staff wellbeing policies
- 2.6. The establishment of the next generation of Framework and Dynamic Marketplaces ensures Haringey is at the forefront of promoting these key values that align not only with the Haringey Deal and Borough Plan but the wider aspirations of authorities throughout the London region.

3. Recommendations

It is recommended that Cabinet:

- 3.1. In accordance with Contract Standing Order 7.04 (a):
 - i. approves the replacement of the existing LCP pan - London Major Works Framework with frameworks in housing, education and major works categories;
 - ii. approves the establishment of Dynamic Marketplaces in housing, education, major works, minor works and professional services, following the enactment of the Procurement Act;
- 3.2. Delegates authority to the Head of Procurement to admit suppliers to the frameworks stated in 3.1 i. and the Dynamic Marketplaces stated in 3.1 ii. following the completion of the procurement exercises conducted in accordance with the Public Contracts Regulations 2015 (as amended) and the incoming Procurement Act.
- 3.3. In accordance with Contract Standing Order 10.2.1 b) (Cabinet approves extensions in excess of £500,000), Cabinet approves the extension of the LCP Major Works Framework (MW 2019) until 31 December 2023.
- 3.4. Approve the use of flexible capital receipts to fund the £275,000 cost of establishing the new LCP Frameworks and Dynamic Marketplaces in 2023/24.

4. Reasons for decision

- 4.1. The establishment of the proposed frameworks and Dynamic Marketplaces does not place any contractual obligation on the Council or other LCP members to award any call off contracts against the frameworks or Dynamic Marketplaces and is therefore not a Key Decision.
- 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/Member approval will be sought in accordance with relevant CSO provisions.
- 4.3. The LCP is utilised by 56 Public Sector organisations (LCP members) and is regular route to market for their construction related procurement activity. The LCP has the infrastructure and resources to continue providing quality services to its members and supply chain.

- 4.4. The LCP currently generates over £1m p.a. in revenue, which helps support the wider Strategic Procurement function within the Council. Without this income stream, Strategic Procurement would have a budget pressure of circa £600k p.a. Extending the portfolio of contract vehicles will increase the revenue generated through the LCP.
- 4.5. The current LCP Major Works Framework expires in June 2024 and current portfolio of DPS's expire in 2026. The proposed third generation of frameworks and new Dynamic Marketplaces is intended to supersede the current framework and DPS's as they expire, retaining continuity for LCP members calling off such works.
- 4.6. An extension of the existing framework is required to ensure we provide continuity for the LCP members being able to procure works and the LCP does not have a gap in revenue receipts. Currently fees for contracts let via the DPS are charged to LCP members as it is not permitted to charge the supply chain. Under the new Procurement Act fees can be charged to the supply chain. This will reduce the administration and some budgeting complications for LCP members.
- 4.7. The proposal to continue with the LCP and introduce the extended suite of contract vehicles referenced in this report, has been subject to a robust business case with sensitivity analysis, which clearly demonstrates the financial and operational benefits of adopting the recommendations in this report. The business case indicated generating surplus revenue between £1.4m and £4.1m depending on sensitivity projections.
- 4.8. Extensive consultation with internal stakeholders, LCP members and the supply chain has been undertaken to ensure the structure of the contractual arrangements meets the requirements of the LCP members and is sustainable within the sector.
- 4.9. There are several benefits being derived from the establishment of the frameworks and Dynamic Marketplaces (DMP); these include:
 - The structure will be aligned to the 'Construction Gold Standard Framework' guidance, to support the governments [Construction Playbook](#) guidance.
 - Flexibility in use of all common forms of contracts associated with construction works and services;
 - The collaborative purchasing power has led to reduced rates on the current framework. The current LCP DPS has on average achieved circa 9.7% lower costs compared to the budget or pre-tender estimates for its clients.
 - Specific provisions to support the use of local and regional SME's (90% of contracts let through the current DPS are to SME's);

- Flexible social value provisions to enable LCP members to prioritise their corporate objectives or to use the National Social Value TOMS.
- Suppliers will need to demonstrate carbon reduction and other environmental capabilities and credentials as part of the assessment criteria.
- 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 DMP.
- Comprehensive management information will be available; 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

Do Nothing

- 5.1. This essentially means the LCP would lapse and be disbanded. The loss of revenue would create a £600k p.a. budget pressure for Strategic Procurement.
- 5.2. The Council would either have to establish similar frameworks for itself only, incurring similar costs of establishment to that of the LCP, utilise other similar frameworks/DPS/DMPs, or undertake individual procurements as they arise from the business units. This would require additional procurement resources and is the least efficient option operationally and does not meet the corporate objectives of migrating to a more commercially focused organisation delivering value for money or generating income.
- 5.3. If utilising other frameworks the Council would be incurring fees that go to other framework operators. In addition, there is evidence where the services in the Council have opted to use alternatives routes to market instead of using the LCP, which has resulted in higher cost of works.
- 5.4. The Council may be subject to adverse criticism from LCP members and suppliers for not continuing with the LCP given the success to date.

Procure LBH only Frameworks/DMPs

- 5.5. Loss of revenue generated through the LCP would create a £600k p.a. budget pressure for Strategic Procurement.

- 5.6. The cost of establishing Haringey only frameworks and DMPs' will be similar to that of establishing for the LCP. Therefore incurring unrecoverable costs.
- 5.7. Increased cost of services – it is anticipated that if approaching the market as Haringey only, the response and quality of participating suppliers on the frameworks and DMPs' will be much lower than current supply chain levels. In addition, Haringey will lose the effect of the collaborative buying power of the LCP. It is anticipated tender prices/fees submitted will be at least 3% higher than a collaborative type of framework.
- 5.8. The Council may be subject to adverse criticism from LCP members and suppliers for not continuing with the LCP given the success to date.

Use Alternate Frameworks/DMPs

- 5.9. Loss of revenue generated through the LCP would create a £600k p.a. budget pressure for Strategic Procurement.
- 5.10. Operationally this would have minimal impact to Strategic Procurement, other than needing to identify alternate frameworks and DPSs to support the Councils capital programme.
- 5.11. Whilst there are alternate frameworks and DPSs' available, these maybe somewhat restricted, as many of these are not fully compliant, especially if considering direct awards. Most of the national frameworks contain the same larger contractors and do not support SMEs.
- 5.12. Capacity may be an issue in accessing other frameworks and DPSs, as the 56 LCP members will be trying to access the same contract vehicles. This runs the risk of the supply chain not being able to respond to an increased volume of tender returns or works and may also lead to increased prices due to increased demand.
- 5.13. It should also be noted that fees will still be payable for accessing these frameworks and DMPs; however, the revenue will go to third parties and not remain within Haringey.

6. Background information

- 6.1. The LCP was established in 2012 and currently has a total membership of 56 Public Sector organisations. The LCP is a virtual organisation hosted and led by Haringey's Strategic Procurement Team, managed by the Head of Procurement in Haringey Council.

- 6.2. 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.
- 6.3. In 2019 the business case was approved by the Capital Board, the Organisation Impact Operational Board and the Transformation Board to renew and enhance the previous Major Works Framework (2014) and implement the construction related DPS's. The business case was approved and projected generating revenue of circa £1m p.a. by the end of 2021/22.
- 6.4. Actual revenue generated was:
 - 2021/22 - £1.19m
 - 2022/23 - £1.35m
- 6.5. In 2019 the Revenue Team was established, amalgamating the LCP function and the corporate DPS function, to enable efficiencies across these functions, reduce resourcing requirements and avoid additional establishment costs in running two separate teams.
- 6.6. The LCP expanded its regional reach to include London and the Home Counties and has grown its membership from just over 20 members in 2019 to 56 members in 2023. The introduction of a brokerage function in 2021 has increased the use of the LCP and expanded the membership (especially across London), as members take advantage of the support provided in the procurement processes.
- 6.7. The LCP has become an established brand across London and has a very good reputation with its members. This has been re-enforced by being a finalist in several award ceremonies over the past couple of years, including the prestigious Procurement GO Awards.
- 6.8. In 2022 the LCP commenced consultation on establishing a suite of new frameworks to replace the current LCP Major Works Framework (MW 2019) and a new suite of DMP's when permitted to do so under the Procurement Act.
- 6.9. There is a clear appetite from LCP members for the LCP to continue with a suite of frameworks and DMPs'. The process of developing a business case commenced in 2022.
- 6.10. The approach adopted in developing this business case is as follows:

- Establishing with LCP members whether there is an ongoing demand for these types of services.
- Sought Counsels opinion in respect of ensuring the proposals put forward by the LCP remained lawful. Counsel confirmed the LCP was able to act commercially and generate a surplus in accordance with Local Authority Goods and Services Act 1970 and Section 1 of the Localism Act 2011.
- Member and supplier engagement sessions obtaining feedback on:
 - the current portfolio of frameworks and DPS (what worked well and where improvements could be made);
 - what portfolio of contract vehicles would be of most interest going forward;
 - what attributes and considerations the LCP need to consider going forward;
 - the commercial structure of the LCP contract vehicles.
- Opportunities with the introduction of the new Procurement Act.
- Internal stakeholder engagement across several Haringey departments.
- Consultation with the Head of Procurement in relation to the longer-term strategy for the LCP.
- Consultation with senior officers in the Council on the proposed future of the LCP.
- Understanding the market dynamics, competitors, future opportunities and funding within London.
- Financial modelling of the projected income and related expenditure, including sensitivity analysis and growth potential.
- Exit options for the LCP.

6.11. The outcome of the business case indicated the LCP would generate a surplus of £1.5m to £4m over the lifecycle of the frameworks (5 years). The range takes account of the sensitivity analysis which allows for a low, projected and high take up. However, it should be noted that the surplus generated by the LCP supports the wider Strategic Procurement Budget.

Key Risks

- 6.12. The main risk is that the Frameworks and DMP's are not utilised as projected and therefore the revenue is reduced. This is mitigated through:
- 6.12.1. The sensitivity analysis undertaken as part of the business case process.
 - 6.12.2. The is the ability to flex the resourcing of the LCP.
 - 6.12.3. The level of consultation undertaken with LCP members, internal and external stakeholders, has resulted in the design of the frameworks and DMP's to reflect their needs; therefore we anticipate LCP Members will continue to use the LCP going forward.

- 6.12.4. Strategic Procurement and Finance have developed a robust budget monitoring process that includes a comprehensive revenue projection tool, to ensure revenue can be projected as accurately as possible.
- 6.13. Exposure of litigation from procurement undertaken through the LCP. This is mitigated through:
- 6.13.1. Working closely with legal advisors on the establishment of the Frameworks and DMP's to ensure they are compliant with the Procurement Regulations.
- 6.13.2. Using specialist advisors to ensure the structure of the contract documents are lawful and consistent with industry standards.
- 6.13.3. The Access Agreements entered into between the LCP and the LCP Members, allowing the LCP Member to use the LCP contract vehicles, state very clearly that Haringey/LCP does not hold any liabilities in respect of procurements undertaken via the LCP. It is the responsibility of the LCP Member to ensure their procurement documents and the procurement process are compliant with relevant legislation.

Exiting the LCP

- 6.14. Should the Council decide not to continue operating the LCP there are several options that could be considered:
- i. **Transfer the LCP to another Contracting Authority** – This would involve identifying another Contracting Authority willing to host the LCP. Staff would transfer across under TUPE. This would require the Council to fund the budget shortfall in Strategic Procurement or create an alternate operating model within the budget envelope.
 - ii. **Close the LCP** – there would still be a need to retain some members of the team during a 'winding down' period, whilst outstanding procurements were completed, invoices raised, continued compliance checks on suppliers etc.
 - iii. **Sell the LCP** – This would involve selling the LCP as 'a going concern'. Staff would transfer under TUPE and access agreements would novate to the new owner.
 - iv. **Management Buy Out** – Staff maybe interested in a Management Buy Out; however this would be unlikely unless the Procurement Act changes the definition of a Contracting Authority, as the LCP would not be able to establish contract vehicle for public sector to access and therefore have significantly reduced revenues.

7. Contribution to the Corporate Delivery Plan 2022-2024 High level Strategic outcomes'?

7.1. The new suite of frameworks and DMPs 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;
- Responding to the climate emergency through 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. Carbon and Climate Change

8.1. Reducing carbon, using sustainable materials and processes is at the heart of the new frameworks. Companies will have to demonstrate they have the capability, experience and capacity to deliver environmentally friendly and sustainable solutions as part of the eligibility criteria. The LCP will be one of the first frameworks to have this baked into all of the categories as part of the assessment criteria and not as a separate framework that just looks at carbon reduction works.

8.2. The LCP will be setting standards that ensure all suppliers on the frameworks have this capability and therefore it is expected this will flow through into all contracts let through the frameworks.

9. Statutory Officers comments (Director of Finance (procurement), Head of Legal and Governance, Equalities)

Finance

- 9.1. This report advises Cabinet of the intention for the Council to lead on the development and implementation of the procurement strategy to establish a suite of Frameworks and Dynamic Marketplaces via the London Construction Programme (LCP) to support Haringey and LCP members to deliver their capital programmes.
- 9.2. An Outline Business Case (OBC) was presented to the Commercial Board by the Head of Procurement in July 2023. The OBC considered sensitivity analysis relating to the revenue profile being lower and higher than the baseline projections. In all projections the OBC indicated a surplus would be generated.
- 9.3. There is an initial investment of £585k (2023/24: £275k and 2024/25: £310k) required to implement the LCP recommended Frameworks and DMP's. The costs in this year can be met from 2023/24 flexible capital receipts within the agreed framework for their application. It is proposed that next year's cost be funded again from flexible capital receipts, with their application agreed as part of the Budget and Medium Term Financial Strategy 2023/28.
- 9.4. Assuming the revenue is generated in line with the OBC baseline projections, it is anticipated that the additional income generated from LCP members will be in the region of £100k in year 3 rising to £500k p.a. by year 5. This has been included as a saving in the MTFS 2024-2029 process. However, it should be noted these are estimated figures based on anticipated usage of the new arrangements by existing and potential new LCP members. This risk is identified in paragraph 6.12 above.
- 9.5. Any variances resulting from this proposal will be managed as part of the monthly budget monitoring process and contained within existing resources.

Procurement

- 9.6. The Head of Procurement has been fully consulted in relation to this report and supports the recommendations in paragraph 3 above.
- 9.7. The recommendations in this report fully align with the Council's Procurement Policy, which is to maximise the use of Framework Agreements and Dynamic Purchasing Systems (to be replaced by Dynamic Marketplaces) and to promote collaborative procurement with other public sector organisations in London to achieve efficiencies and value for money.
- 9.8. Whilst establishing the proposed frameworks and Dynamic Marketplaces (DMP) does not in itself place any obligation on the Council to enter into any contracts; however, it is extremely likely due to the nature of the works and

services, a number of contracts procured from the framework and DMPs are likely to involve a key decision. For this reason, we need to comply with CSO 7.04 (a).

- 9.9. For the reasons stated in this report, Strategic Procurement fully supports the creation of the new contract vehicles 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.
- 9.10. The terms and conditions relating to the proposed frameworks and DMPs will be aligned to the 'Construction Gold Standard Framework' guidance, to support the governments [Construction Playbook](#), and will align with Strategic Procurements Strategy in promoting social, economic and environmental values, promoting the use of local SME's and local supply chains.
- 9.11. The new frameworks will be put in place by procurement, legal and technical specialists, managed by Strategic Procurement in full compliance with Public Contracts Regulations 2015.
- 9.12. The Procurement Act is due to come into force in 2024. Once enacted the LCP will commence the process of establishing DMP's in accordance with the Procurement Act to mirror and compliment the suite of frameworks, primarily to manage contracts below £5m; however, there will be flexibility to go above £5m where required.
- 9.13. Strategic Procurement confirm the proposed extension of the existing LCP Major Works Framework is permitted under Regulation 72 (5) of the Public Contract Regulations 2015.

Head of Legal & Governance

- 9.14. The Head of Legal and Governance (Monitoring Officer) has been consulted in drafting this report.
- 9.15. Pursuant to Contract Standing Order 9.07.1(d) the Cabinet has authority to approve the recommendations in this report.
- 9.16. The extension referred to in the recommendations in this report is in accordance with Regulation 72(5) of the Public Contracts Regulations 2015.
- 9.17. The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in this report.

Equality

9.18. 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.

9.19. 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.

9.20. The proposed frameworks and DMPs does not represent a significant change to the existing framework and DPS's, and there are no known equality issues with the proposal, therefore an EQIA is not required. Each scheme commissioned through the frameworks and DMPs will be subject to its own EQIA where applicable.

10. Use of Appendices
N/A

11. Background papers
N/A