

Report of the YORbuild West Area Framework Manager

Report to Director of City Development

Date: 16/05/2019

Subject: Extension of the Regional Construction Framework – YORbuild 2 (West Area)

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

- The YORbuild 2 Contractors Framework Agreement commenced in February 2016 for an initial duration of four years and included an option to extend the agreement by a further two years. Approval is now sought to grant this two year extension to maximise the benefits available from the framework.

Recommendations

Director of City Development is recommended to:

- Approve the extension of the YORbuild2 West Area Contractors Framework Agreement by two years to expire on the 4th February 2022 by extending the contracts awarded to the contractors listed at Appendix A of the Extension report.

1 Purpose of this report

- 1.1 The purpose of this report is to make the Director of City Development aware of the experience and benefits of the regional construction framework, YORbuild 2, and subsequently to give approval to extend the agreement by a further two years

2 Background information

- 2.1 The YORbuild2 West Area Contractors Framework Agreement commenced in February 2016 and is currently a delivery vehicle for Council construction work

relating to housing, schools and the civic estate. It is part of the YORhub regional collaboration and to date the value of construction works commissioned and planned through this framework for the Council is £117m. The overall value of construction works for all authorities including the Council commissioned and planned through YORbuild2 to date is £997m.

- 2.2 The framework is currently managed in four sub regional wedges by officers from Scarborough District Council (North), East Riding of Yorkshire Council (East), Rotherham Borough Council (South) and Leeds City Council (West). The funding to support these resources is generated from fees charged to users of the framework which are calculated relative to the estimated cost of construction.
- 2.3 Each region was procured individually by the partnering local authority to ensure that the diverse requirements across the region can be met by competent and performing Small and Medium Enterprises (SMEs) in addition to larger regional and national contractors. It is available to all public sector and third sector organisations in the region and some neighbouring authorities.
- 2.4 The framework is capable of delivering refurbishment and new build projects of any value either as one off projects or for a period of time, and has available five separate methods of selecting contractors from it utilising price and/or quality over one or two stages, and operates on the National Audit Office and Office of Government Commerce endorsed NEC3 suite of contracts.
- 2.5 This combines contract conditions with project management methodology to produce a contract which promotes collaboration between client and contractor and proactive methodology for dealing with change during the contract, thereby facilitating greater time and cost certainty.
- 2.6 Director of City Development should note that Yorbuild 2 is one of a suite of frameworks currently supported and delivered through 'YORhub', which coordinates and steers the frameworks. The frameworks represented by YORhub are YORbuild 2, (for new build and refurbishment), YORcivils (for highways and civil engineering projects), YORconsult (construction and engineering related consultancy). The council currently has representation for YORhub as a Board Member and in providing the role of Chair of Operations Programme Manager (West Area). Leeds City Council also provides a framework manager for YORbuild 2 (West Area) and management of the regional Supply Chain Management Programme (SCEP).
- 2.7 The YORbuild2 framework was set up in accordance with the Public Contracts Regulations 2006 (as the current regulations at that time). These regulations restrict frameworks to a four year duration unless there are exceptional circumstances. When the YORbuild2 framework was established, it was considered that exceptional circumstances did exist and this was highlighted in the OJEU notice.

3 Main issues

- 3.1 The cost of establishing regional frameworks can be significant. To renew the YORbuild2 frameworks is estimated to cost in the order of £250,000 and would tie

up procurement staff for a duration of 12 months. This would be at a time when the new YORcivil and YORbuild Major Contractors Frameworks are to be procured.

- 3.2 Performance of firms appointed to the framework agreement is very good as evidenced by key performance indicators collected to date.
- 3.3 More firms were appointed to the framework than were required to cater for firms becoming bankrupt or failing for other reasons. There has only been a reduction of three firms to date, two due to bankruptcy and one voluntary withdrawal. The number of firms currently on the framework is sufficient to provide competition and deliver the anticipated workload over the extension period.
- 3.4 If the YORbuild2 framework is not extended then a procurement exercise will have to commence in the next few months. This ties up the resources of many SME construction firms in at a time when many of them are struggling to provide prices for tendering exercises across the industry. The cost to a contractor of pre-qualifying and tendering for a framework is estimated to range from £10,000 - £40,000, based upon figures provided by YORbuild contractors as part of a previous market sounding exercise. Extending the framework would defer this expenditure and effort.
- 3.5 The YORhub Board approved the proposal to extend all four YORbuild2 frameworks in December 2018.

4 Corporate Considerations, Consultation and Engagement.

- 4.1 Consultation with main directorate users have the following feedback-
- Category Manager Construction and Housing has stated that it is essential to extend the YORbuild2.
 - Housing Growth Projects Team have stated that the Housing growth team would like to see YORbuild2 extended to help deliver their very challenging housing growth build programme.

5 Equality and Diversity / Cohesion and Integration Equality.

- 5.1 Diversity, Cohesion and integration screening carried out from the original decision reveals there are no direct Equality, Diversity, Cohesion and Integration issues relative to the decision to use YORbuild.

6 Council policies and City Priorities

- 6.1 With consistent throughput through the framework, opportunities for development of the local supply chain intensify through the activities of the Supply Chain Engagement Programme

- 6.2 To further SME engagement, the framework operates a Supply Chain Engagement programme now managed by Leeds City Council, providing details of tender opportunities with framework contractors and hosting 'Meet the Buyer' events for members. The programme currently has almost 500 regional SME members. As a result, the framework has been recognised by Leeds City Region Leaders Board as supporting local businesses, and as such they resolved in 2011 that it should be used wherever possible.
- 6.3 The framework offers the ability for users to require contractors to deliver employment and skills outputs from their projects, this has resulted in significant benefits to the region.

7 Resources and value for money

- 7.1 The cost of establishing regional frameworks can be significant. Based on the cost to create the original framework, renewal of the YORbuild framework is estimated to cost in the order of £250,000 and would tie up procurement staff for a duration of 9-12 months.
- 7.2 If the YORbuild framework is not extended then a procurement exercise to replace may have to commence. The cost to a contractor of pre-qualifying and tendering for a framework is estimated to range from £20,000 - £40,000, based upon figures provided by YORbuild contractors as part of the sounding exercise referred to above. Extending the framework would defer this expenditure and effort.
- 7.3 Both the YORhub board and YORbuild Framework Management Team favour a two year extension to all four regional YORbuild frameworks, and the other three framework authorities have formally taken the decision to extend.
- 7.4 It should be noted that use of the framework by individual Directorates will depend on the nature of the procurement and suitability of the framework. Other options can also be considered and used, provided that where YORbuild is not the proposed route to procurement the alternative is approved internally.
- 7.5 YORbuild2 offers a quick and flexible route to procuring construction contracts for the Council and the rest of the region.

8 Legal Implications, Access to Information and Call In.

- 8.1 A decision to extend the framework would be a Key decision due to the estimated total value of the framework and is therefore available for call – in.
- 8.2 This report does not contain any confidential information.
- 8.3 Legal advice confirms that in principle a two year extension can be agreed. Regulation 19(10) of The Public Contract Regulations 2006 (as amended) restricts the duration of a framework to 4 years except in exceptional circumstances. This therefore permits frameworks to remain in place for more than 4 years. Indeed Government Guidance on Framework Agreements states that longer durations can be justified in order to ensure effective competition if four years would not be sufficient to provide a return on investment. Precedents in

the form of extensions granted to YORbuild, YORcivil and YORconsult have also been established.

8.4 A further consideration over whether to extend the framework or not relates to the risk of challenge from an aggrieved organisation. It is difficult to see how a firm could challenge the decision to extend as provision for this was included within the original OJEU advert. Any aggrieved organisation had an opportunity to challenge the award decision during the standstill period before the framework was awarded. No formal challenges were lodged. We are not aware of any grounds that would enable an organisation to mount a challenge if an extension was awarded.

8.5 The YORbuild2 framework was set up in accordance with the Public Contracts Regulations 2006 (as the current regulations at that time). These regulations restrict frameworks to a four year duration unless there are exceptional circumstances. When the YORbuild2 framework was established, it was considered that exceptional circumstances did exist and the following wording was included within an advertisement for the framework placed in the Official Journal of the European Union, known as an OJEU notice:

“The framework has an option to extend for a further period of 2 years to allow the appointed contractors adequate time to recoup their significant initial investment in establishing processes and procedures that will deliver the improvements that the clients are seeking through this framework. These include Economic Regeneration, Carbon and Waste Reduction, Training and Employment initiatives, training of their staff to new ways of working, BIM and New Models of Construction Procurement. In addition there will be significant investment required from clients in undertaking the selection and evaluation process, and in particular the training of their staff and consultants to new ways of working. The partnering and collaborative working objectives that will form part of this framework may only be capable of being realised over longer periods of time than 4 years, not least because a number of Local Authorities may only start using this framework when their existing arrangements expire.”

9 Risk Management

9.1 The performance levels of the contractors currently on the framework is sufficient to recommend their continuation on the framework. Project and contract management processes are clearly defined in the NEC form of contract under which they operate to enable users to manage risk for individual projects.

9.2 Failure to extend the YORbuild 2 framework reduces contracting options for the delivery of works for the Council and the rest of the region.

10 Conclusions

10.1 The use and management of the YORbuild framework presents an opportunity for Leeds to benefit from:

- Savings in time and cost on its construction projects
- Managed and structured development of local supply chains locally and in the region

- Creation of training and job opportunities on all projects irrespective of size

10.2 Evidence in operation of the framework so far is that all of those benefits are being achieved, and with further throughput can be intensified for the benefit of Leeds City Council.

11 Recommendations

11.1 Director of City Development is recommended to:

- Approve the extension of the YORbuild2 West Area Contractors Framework Agreement by two years to expire on 4th February 2022 by extending the contracts awarded to the contractors listed at Appendix A of the Extension report.

12 Background documents¹

12.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.