

To seek authority to procure an a Construction and Housing Framework (YORbuild3)

Date: 23rd June 2021

Report of: Procurement Category Manager

Report to: Director of City Development

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- The procurement of a replacement construction and housing framework for YORbuild2 which operates in the Yorkshire and Humber region for public sector organisations.
- The proposal for Leeds City Council's Procurement and Commercial Services team to continue to manage the West Yorkshire region of the framework which generates income for the council.
- This framework supports the Best Council Plan by ensuring quality and accessible homes, improving housing stock which leads to an overall improvement to housing in the area around Leeds. This framework will support inclusive growth by providing regeneration to housing areas.

Recommendations

- a) Approve the procurement of a replacement framework for the current YORBuild2 construction and housing framework with call offs from 5 different lots of up to £10mn for construction works and up to 25 housing units. The framework will be 4 years in duration with up to 24 months of extensions available. The estimated annual expenditure is £45mn for the minor and £100mn for the medium framework lots.
- b) To note that the proposed YORBuild3 framework will bring in an income to the council of approximately £80,000 p.a. Procurement and Commercial Services (PACS) will manage the West Yorkshire region of the framework.
- c) To also note the resources needed to carry out the procurement and manage the framework going forward.

Why is the proposal being put forward?

1. Leeds City Council is one of four local authorities in Yorkshire and Humber region who operate the current YORbuild framework. It is due to expire on 9th February 2022 and there is no further scope to extend the contract.
2. This report outlines proposals and a programme to procure frameworks to replace YORbuild2, as follows, to complement the new YORbuild Major works framework set up last year for works over £10m:
 - new YORbuild3 medium frameworks with 2 lots – (1) works valued over £4m up to £10m and (2) new housing over 25 units (without cap on number or value)
 - new YORbuild3 minor frameworks with 3 lots – (1) works up to £1m, (2) works over £1m up to £4m and (3) new housing up to 25 units
3. The framework will be 4 years in duration with up to 24 months of extensions available.
4. Leeds City Council PACS will continue to manage the West Yorkshire region of the framework which brings in an income of approximately £80,000 p.a.

What impact will this proposal have?

Wards Affected: None

Have ward members been consulted? Yes No

5. YORbuild2 is part of the YORhub suite of framework agreements which also includes YORcivil and YORconsult.
6. YORbuild2 helps local authorities, other public bodies and third sector organisations procure construction projects efficiently and collaboratively. It's available to organisations across the Yorkshire & Humber region and the Sheffield Local Education Partnership area for projects of any value and in Lincolnshire for projects over £4m only, with procurement following a fully compliant process via the Find a Tender service. For projects over £4m it is also available to educational establishments in northeast England and areas of Nottinghamshire, Derbyshire. The proposed YORbuild3 will continue to operate in this way.
7. YORbuild2 has been used for circa 500 projects with a value of over £1.25bn since it commenced in February 2016 and YORbuild3 will continue to build on this success.
8. The Council's Contract Procedure Rules state that the YORhub suite of framework agreements should be used whenever a procurement contains, or is likely to contain, a construction, civil engineering or professional services component. The council wish to remain heavily involved in the procurement and management of YORbuild3 to ensure that framework agreement meets the requirements of users and has already embarked on a consultation exercise with its users.
9. The proposed tender route is to use the open procedure, a single stage process, as the number of firms applying is expected to be manageable since the framework agreement is to be split into minor, medium and major. In addition the open procedure should be quicker, given the tight time constraint of meeting the February 2022 deadline.
10. The new framework agreement will support four call off methods. Users can use single stage price only, single stage price/quality, two stage price/quality and direct selection on a rotational basis.

11. The framework will also facilitate the use of the social value to reflect the approach taken by different public sector organisations. This comprises of employment and skills, YOR4Good fund, the SCEP (Supply Chain Engagement Programme) and Waste and Carbon Reduction (sustainability) which aligns with the Value Toolkit. The use of the Social Value Portal (SVP) is permissible within the framework.

What consultation and engagement has taken place?

12. Consultation has already taken place with the framework agreement users across the region which has resulted in a number of proposed changes including the use of the NEC4 as the preferred contract (but retaining other options such as JCT) and appointing 12 organisations to each lot to overcome the issue of not having sufficient tender lists.

13. Consultation has also taken place with the relevant Executive Member, Director and Senior Officers in City Development. Procurement and Commercial Services (PACS) and housing colleagues have also been consulted with at relevant points during the process.

What are the resource implications?

14. PACS will be involved in the preparation of the tender documentation and the evaluation of the bids received. This is important since once the framework is implemented PACS will be managing the West Yorkshire region of the framework as they currently do for YORbuild2.

What are the legal implications?

15. This report is a Key Decision and is subject to call in as the maximum combined cost of the services detailed within this decision is greater than £500k. A notice was published on the List of Forthcoming Key Decisions on 14th May 2021. Other than confidential Appendix 1, there are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

16. The new framework agreement will aim to comply with all Government Construction Strategy requirements relating to effective framework agreements. In addition it will be aligned with the Construction Playbook and Social Value Toolkit.

17. As the total contract value over the potential 6 years of the contract will exceed the current procurement threshold, there is a requirement to advertise this opportunity in Find a Tender and run an open procurement exercise. Therefore competition will be sought through a formal tendering process.

18. Future decisions relating to the appointment of contractors to the YORbuild 3 framework agreement will be treated as a consequence of this key decision and will therefore be a significant operational decision at most which will not be subject to call in. However, a decision to place a call-off under the framework agreement will not be treated as consequential upon the decision to enter into the framework agreement. A Delegated Decision based on the value (estimated if necessary) and impact of the procurement will be taken for each call-off (or linked bundle of call-offs).

What are the key risks and how are they being managed?

19. If approval is not given to proceed then there will be no framework in place which means that the council will not be able to comply with their Contract Procedure Rules (CPRs). Although there are other frameworks approved for use, they are managed externally to the council and typically the framework fees are higher. In addition to this YORbuild is a source of income to the council.

20. Notable risks of proceeding are:

- There is risk that the new framework will not be in place for use when YORbuild2 expires on 9th Feb 2022, given the time required to procure YORbuild3.
- The use of Contractors by a call off from the current YORbuild2 framework can only be done if it is possible to award that call off before 9th February 22 (i.e. the end date of YORbuild2).
- Therefore considering the two points above there is a risk, if as an example a typical call off procedure will take 4 months from inception to contract award, then we will be unable to use YORbuild2 for new procurement activity after October 2021 and will have to wait in addition for YORbuild3 to be in place on top of that period of time. To mitigate this risk the option of an extension to the current YORbuild2 framework is being looked at.
- The ability to attract enough contractors to tender for the opportunity to be on the new framework who also meet the due diligence requirements. The framework landscape is currently changing with many unknowns including covid-19, more competition from new private and public frameworks. This risk will continue to be monitored and reported back to the YORhub board as required.
- The potential risk of a contractor challenge and worst case scenario, court costs. To mitigate this risk the board will maintain robust procurement compliance checks. Should a potential challenge be received from a contractor additional checks will be carried out before a response is issued which would normally be during the standstill period prior to award. Therefore there would be the opportunity to revise the intention to award decision if needed.
- The risk of contractors dropping out shortly after contract award which happened in some instances with YORbuild2 meaning that the optimum number of contractors in each lot was not achieved. The number of contractors to a Lot has always been based on a number of conflicting factors including being high enough to maintain competition, but low enough to keep contractors interested/ competitive tension. YORbuild3 will include a review on increasing the number of contractors appointed to each lot. The YORhub Management System processes/ data information will be improved to allow fee invoicing as early as possible.

Does this proposal support the council's 3 Key Pillars?

Inclusive Growth

Health and Wellbeing

Climate Emergency

21. The new framework agreement will continue to work with organisations who can support the council's 3 Key Pillars. An example is how contracts awarded from this framework will support health and wellbeing through ensuring quality and accessible homes, support inclusive growth by improving the housing stock.
22. The framework agreement will support Employment and Skills on all projects and it is mandatory for contractors to agree and carry out the employment and skills submission, creating employment growth and opportunity for training and development.
23. The framework agreement will continue to have a Supply Chain Engagement Programme focussed on utilising, promote and develop SME's and local suppliers, as well as creating opportunities for the local supply chain.

Options, timescales and measuring success

a) What other options were considered?

24. The YORhub suite of frameworks have been successful to date and there is the appetite in the region to continue with them, so any other options about not continuing with a successor to YORbuild2 were soon discounted. There are other frameworks available for public sector organisations such as Efficiency North, Fusion21, SCAPE, Northern Housing Consortium and Procurement for Housing which are always available for use. These are still options if an expression of interest from a YORbuild framework does not generate enough interest and/or does not cater for a more specialist requirement.

b) How will success be measured?

25. 83% of projects are rated green in the most recent RAG (Red-Amber-Green) Report Assessment from May 2021.

26. The new framework agreement proposes to simplify the performance management approach and reduce the list from 5 to 2 items, retaining post completion Key Performance Indicator's and quarterly Red-Amber-Green scores which ties in with the Construction Playbook. The previous approach was resource intensive and difficult to manage. To compensate for the loss of some measures (and to make them more responsive) options are being increased for temporarily suspending firms from the framework to compensate for the loss of some formal performance measures and make them more responsive.

c) What is the timetable for implementation?

27. The current Yorbuild2 contract expires on 9th February 2022 and this replacement framework agreement needs to be implemented prior to this date to enable continuity of service. Therefore all contracts utilising the framework agreement need to be awarded prior to the expiry date of the framework.

28. The proposed timetable for procurement is as follows:

Task	Date – Medium	Date - Minor
Tender Out	July 2021	August 2021
Tender Return	September 2021	October 2021
Tender Evaluation & Governance approval	October 2021 – January 2022	November 2021 – January 2022
Contract Award	January 2022	January 2022
Contract Start	February 2022	February 2022

Appendices

29. Equality, Diversity, Cohesion and Integration Screening (EDCI)

30. Data Protection Impact Assessment (DPIA)