

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Environment and Transport
Date:	29 October 2018
Title:	Infrastructure Delivery: Strategic Direction and Development of Generation 4 Construction Frameworks
Report From:	Director of Economy, Transport and Environment

Contact name: Keith Gale

Tel: 01962 847271

Email: keith.gale@hants.gov.uk

1. Recommendations

- 1.1. That approval be given to procure three framework arrangements to deliver the County Council's civil engineering, highways, transport and ancillary infrastructure projects for a period of up to four years duration commencing in April 2020.
- 1.2. That access be given to other appropriate public bodies in return for a contribution as reasonable toward running and set up costs, and that authority is given to enter into the necessary access arrangement agreements to facilitate this in consultation with the Head of Legal Services.
- 1.3. That selection of suppliers will be a combination of price and quality as set out in the tender evaluation section of the tender documents.
- 1.4. That performance management systems be included within the mini-competition selection process to ensure high standards of contract performance are encouraged and maintained.
- 1.5. That the Director of Economy, Transport and Environment be given delegated authority to agree minor variations to the items approved, in consultation with the Executive Member for Environment and Transport.

2 Executive Summary

- 2.1 The purpose of this paper is to register the County Council's resilience in relation to the failure of construction suppliers in delivery of its capital and revenue programmes, and to begin the process of procurement and engagement for the next generation of works frameworks into Generation 4 (Gen4).
- 2.2 This paper seeks to:
 - examine the recent construction supplier failures and record the steps taken by the County Council to complete projects effectively and efficiently;
 - discuss the current nature of the construction industry and ensure alignment is made for future engagement;

- record the lessons learnt which will be implemented within the next generation of contracts and frameworks;
- set out the proposed approach for the market testing and contractual arrangements with the next generation; and
- outline the agile nature of such arrangements.

3 Contextual information

- 3.1 The County Council has a very long history of procurement and engagement of construction services in delivery of its duties to maintain and improve transport infrastructure in a safe and efficient manner. In addition, the Council encourages economic growth to the region through infrastructure improvements in conjunction with other partners. Within the ETE Department, delivery of infrastructure, such as highways and transportation projects, has been undertaken through engagement of external contractors following a competitive tendering procurement exercise. Such exercises are conducted in accordance with prescriptive legislation contained in the Public Contracts Regulations 2015 and the Council's Standing Orders.
- 3.2 Current arrangements for the engagement of suppliers are through three frameworks (known as Gen 3-1, Gen 3-2 and Gen 3-3) which commenced in Spring 2016 and will expire in Spring 2020. Market engagement, production of tenders, tender assessment, award and mobilisation is anticipated to take around 18 months duration. The size and scope of the existing Gen3 frameworks are:

Framework	Scope	Suppliers
<i>Gen 3-1</i>	Minor highways improvement works up to an individual project value of £450,000	8 small and medium sized civil engineering contracting companies
<i>Gen 3-2, two lots by geographical area</i>	Major or complex civil engineering works between a value of £50,000 and £10M	10 medium sized civil engineering contracting companies
<i>Gen 3-3</i>	Major or complex civil engineering works between a value of £8M and £25M	3 large national/international engineering companies

Due to many public authorities increased capital programmes it is suggested following a market testing exercise that values for individual projects, particularly for Gen 3-3, are substantially increased to reflect current investment in infrastructure.

- 3.3 Although all frameworks incorporate similar conditions of contract and specifications, there are technical differences which reflect projects undertaken within each, and the way such projects are priced. The access arrangements for each framework are also slightly different. Gen 3-1 is designed for small projects within the geographical area of Hampshire and is therefore restricted to Council use and those of its District agents only. Gen 3-2 and Gen 3-3 are

both available for use by other participating public bodies in return for a moderate access fee.

- 3.4 The Gen 3 frameworks are estimated to deliver around 300 projects with an overall value of approximately £175million upon completion. The significant majority of these will be in accordance with key performance indicators of safety, quality, time and budget parameters.

4 Risks within the supply chain

- 4.1 Construction is one of the largest sectors of the UK economy. It contributes around £100 billion to the UK economy (or 9.0%) in value added and represents around 280,000 businesses covering some 2.93 million jobs, equivalent to about 10% of total UK employment. One particular feature of the construction industry is the myriad of small sized suppliers and the variation of skilled resources required to produce a single project or service operation. This is exemplified by the fact that in 2010 the average size for a construction company was 10.71 employees – emphasising the fragmented nature of the supply chain.
- 4.2 The volatility of construction and contracting is also evident with the number of insolvencies experienced by the industry. During 2016 around 2,500 construction companies filed for insolvency, making this sector the second highest in terms of company failure.
- 4.3 The County Council has not been immune to such failures. During the currency of the Gen3 frameworks, three framework companies went into administration or receivership, one of which was widely publicised within the national media. Apart from the significant consequences to those employed either directly or through the supply chain, the demise of a supplier reduces the Council's resources and creates delays and costs attributable due to returning back to 'normal service'.
- 4.4 Fortunately the contractual mechanisms and financial arrangements set within each of the frameworks allowed engagement of other resources without compromising safety and delivery of projects affected by the insolvent suppliers. In each case, officers engaged with Official Receivers to minimise impact and complete projects.
- 4.5 The Gen3 mechanisms operated as intended but there are proposals in this paper that seek to strengthen the supply chain further.

5 Benefits of framework engagement

- 5.1 The Council has operated a framework method of procurement for more than a decade with the Economy, Transport and Environment Department initiating civil engineering frameworks since 2008. The use of frameworks is now widespread with the Department adopting a multi-supplier version. This has produced tangible benefits to delivery of the Council's infrastructure projects in that:
 - Suppliers placed on a framework do not require further procedures for selection other than bidding for a project;

- Standard terms, conditions and specifications are incorporated into the framework which reduces the need for bespoke documentation;
- Following setting up a framework, individual work packages for projects can be tendered with reduced timescales;
- Additional requirements such as key performance indicators can be used to ensure performance is maintained throughout the framework duration;
- The current Gen3 framework includes forums which allow Client representatives and suppliers to discuss technical issues for future improvement; and
- There are no minimum financial commitments to suppliers for works to be ordered through the frameworks.

6 Dis-benefits of framework engagement

- 6.1 A public sector framework arrangement must comply with current regulations and this can restrict operational considerations. These are:
- New suppliers cannot be added to a framework once it has commenced, so suppliers that either fail or withdraw from a framework cannot be substituted with another;
 - Frameworks are generally restricted to four years duration (although individual projects awarded during this time can exceed this timescale); and
 - The scope and extent of a framework arrangement cannot be significantly changed following publication of a OJEU Contract Notice.

7 Overall balance of considerations

- 7.1 On balance, operation of a framework has provided the County Council with access to a range of suppliers which has delivered a substantial number of projects effectively and efficiently. Although resources are needed to compile, tender, assess and operate frameworks, once in place the individual works packages can be produced and tendered to shortened timescales enabling prompt commencement of works
- 7.2 The frameworks incorporate critical success factor performance indicators which ensure supplier performance is maintained throughout the framework. This has aided with consistent delivery of projects throughout the capital programme.
- 7.3 Allowing access to other public bodies has allowed costs of initiation, operation, and management of the frameworks to be shared, making the procurement choice cost effective. The interest and growth of infrastructure from public bodies has meant that constraints of Gen3 have limited inclusion of some projects.
- 7.4 Provided the scope is enlarged to contain most project variables, and the number of suppliers increased to account for predicted workload, then dis-benefits of using a framework can be reduced.

8 Market Engagement, and Contract Strategy

- 8.1 The Gen3 frameworks were widely publicised throughout the South East region and generally well received. Many of the local suppliers are aware that the frameworks will end in Spring 2020 and will be looking to the Council's announcement with its next procurement strategy. In addition, those authorities that have used the current frameworks will be examining their capital programmes for future engagement. It is therefore proposed that a market testing exercise is conducted to gauge reaction to the future framework proposals by contacting other public bodies and arranging a market testing invitation day for suppliers and users.
- 8.2 Following the market testing exercise, and estimation of future capital requirements conducted after discussions with other public bodies, the scope value and extent of each framework will be determined for OJEU publication through a series of Contract Notices.
- 8.3 It is proposed that contractual arrangements are updated to the latest industry standards (*New Engineering Contract Version 4*) but retain existing payment safeguards which have served the Authority well to date. One essential element of all of the contracts within the current frameworks are that works are paid **in arrears** – that is, after the works or services have been provided – and this will continue to apply.
- 8.4 A number of innovative contractual mechanisms will be introduced to strengthen the supply chain further and manage potential risks of supplier failure. These are:
- *Project Bank Accounts (PBA)*: for the largest value projects to ensure finances are contained within a project;
 - *Performance Bonds*: where appropriate to ensure performance with specific projects; and
 - *Collateral Warranties*: allowing 'step in' rights with key suppliers and subcontractors in case of main contractor failure with large value projects.

9 Finance

- 9.1 The costs of setting up frameworks and engagement of suppliers is similar to those required through normal operation of the Council's business with its desire for a capital programme. Costs of production of works packages and tendering for individual projects are included within the Project Appraisals for those particular projects.
- 9.2 Access to the frameworks by other public bodies is offered in return for a moderate fee. The intention, subject to volume, is that setting up and managing the Gen4 construction frameworks will be cost neutral.

10 Conclusions

- 10.1 The previous frameworks have served the Council well in terms of efficient delivery for projects. During the four year period of Gen3, the sector has experienced supplier failure and company changes. The proposals outlined in this report recommend strengthening elements of the frameworks model to provide resilient resources for the Council's future infrastructure capital and revenue requirements.

CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
<u>Title</u> Procurement Approval: generation 3 Civil Engineering and Infrastructure Works frameworks 2016-2020	<u>Date</u> 9 July 2015
Direct links to specific legislation or Government Directives	
<u>Title</u> HM Government Industrial Strategy: government and industry in partnership Construction 2025	<u>Date</u> July 2013

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

IMPACT ASSESSMENTS:

1. Equality Duty

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2 Equalities Impact Assessment:

It is considered that this decision will have a neutral impact on groups with protected characteristics because all contract documentation and contractual arrangements with suppliers will incorporate the Council's equalities policies, procedures and standards. It will be a requirement that suppliers comply with these at all times in the execution of their works and services.

Specific call offs leading to Project Appraisals will result in their own equalities impact assessments.

2 Impact on Crime and Disorder:

2.1 Projects will be constructed using the current guidelines and national standards for infrastructure development.

3 Climate Change:

(a) How does what is being proposed impact on our carbon footprint / energy consumption?

Engagement of local contractors and suppliers, where possible, will limit the amount of movement of materials and people. The contracts will encourage

sustainable sources of materials whilst workmanship standards will include longevity requirements.

- (b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Inclusion of resilient materials and current best practice construction methods will aid to ensure projects are more durable and longer lasting.