

Subject:	Collaborative Partnering – Procurement of New Construction Strategic Partnership		
Date of Meeting:	13 October 2016		
Report of:	Executive Director for Environment, Economy & Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT:

- 1.1 On 21st March 2013, Policy & Resources Committee gave approval to procure a four year construction strategic partnership, (known as Sustainable Futures Partnership) to provide a cost effective method of designing and procuring capital construction projects within the Council and which was managed and overseen by Property & Design.
- 1.2 The current partnership is due to expire on 3rd January 2018 however the OJEU procurement process takes around 8 months to complete and so in order to maintain continuity for new and existing clients, it is desirable to have a 5 to 6 month overlap before the current partnership ends, hence it would need to be in place from July 2017 at the latest.
- 1.3 This report is to request that the Policy, Resources & Growth Committee approve the procurement of a new construction strategic partnership which would commence in July 2017, for an initial contract term of five years with an option to extend for a further two years. This partnership would be available for use not only by Client Departments within the Council but also by other external public or private organisations and would continue to be managed by Property & Design.

2. RECOMMENDATIONS:

That the Policy, Resources & Growth Committee:

- 2.1 Approves the procurement of a framework agreement for a new Construction Strategic Partnership comprising four 'lots' including; 1) a Constructor; 2) consultant Quantity Surveyor; 3) consultant Structural Engineer; and 4) consultant Health & Safety Advisor for a term of 5 years with the option to extend for a further 2 years subject to satisfactory performance.

- 2.2 Grants delegated authority to the Executive Director Economy, Environment and Culture following consultation with the Executive Director Finance & Resources -
- (i) to carry out the procurement of the framework agreement referred to in 2.1 above including the award and letting of the framework agreement;
 - (ii) to enter into any subsequent call-off contracts to the framework agreement referred to in 2.1 above should he/she consider it appropriate at the relevant time; and
 - (iii) to approve the extension to the framework agreement , if required, dependent on satisfactory performance.

3. CONTEXT/ BACKGROUND INFORMATION

3.1 Brighton & Hove Councils' Partnering Record

- 3.1.1 Since the publication of the national report *Rethinking Construction* in 1998, partnering has become an established and recognized form of collaborative procurement, which has been adopted by both the public and private sector. The benefits of partnering have now been proven and the objectives of the *Rethinking Construction* Report have been realised with more projects delivered on time and on budget, reduced financial risk to clients, and improved client satisfaction with completed buildings working within a non-adversarial relationship.
- 3.1.2 The Council has been procuring construction projects using the partnering route since the year 2000, when a pilot partnership was used to deliver three school projects. This partnership achieved '*demonstration status*' as an example of good practice and innovation under the Constructing Excellence Initiative. As a result of the success of the pilot, in 2003, a second, five year partnership (with two year extension) known as *The Goldstone Partnership*, was procured which ended in 2008 followed by a third partnership procured in 2013 called *Constructive Solutions*. The Constructive Solutions Partnership delivered 33 projects totalling £58 million. The current, four year, *Sustainable Futures Partnership*, commenced on 1st January 2014.
- 3.1.3 The Partnerships have all used the well-established national *PPC2000* contract. Professional fees for consultants and the value of overheads and profit for the constructor and subcontractors are competitively tendered as part of the OJEU process and are fixed for the duration of the Framework Agreement. Partnerships undertaken using *PPC2000* benefit from the early input of the constructor at the design stage which reduces risk and improves buildability. *PPC2000* recognises this and the constructor is paid a small pre-construction fee which is competitively tendered as part of the OJEU process and is fixed for the duration of the Framework Agreement.
- 3.1.4 It is important that the partnership is not perceived as a 'cosy relationship' and the success of individual projects is a requirement for other projects to be undertaken. This is measured by key performance indicators, which are reviewed by the Core Group, which meets monthly, to ensure that the performance of all

team members is maintained. The Core Group has the authority to change a sub contract partner where they feel the performance is affecting the whole team and is attended by senior representatives of the main partners and client representatives.

- 3.1.5 This proposed procurement was presented to and approved by the Procurement Advisory Board (PAB) on 23rd May 2016.

3.2 Achievements of the current Partnership

- 3.2.1 During the three year period from 1st January 2014, when the current partnership commenced, to the date of this report, a total of £58 million of new build and refurbishment projects have been completed or are in design / on site. Projects have included school expansions (such as at Saltdean and St Andrews schools), civic office refurbishments (such as at Hove Town Hall) and new build Council Housing under the New Homes for Neighbourhoods programme (such as at Robert Lodge and Findon Road).

3.3 Benefits of Partnering

- 3.3.1 A key benefit of partnering is the speed at which construction projects are able to start on site. The majority of the Council's capital schemes would require a full OJEU procurement process, which can take up to 8 months. As the partnership has already been set up through the OJEU procurement process, clients can have immediate access to the full design team and the constructor even at feasibility stage. Furthermore, because the constructor is already appointed, it is possible to undertake early 'pre-possession;' works such as drainage diversions, demolitions and site clearance and to be able to reduce lead in times on high value sub contract items such as steel frames and piling.
- 3.3.2 In the current *Sustainable Futures* Partnership, the Constructor was required to employ a high percentage of local labour and sub-contractors through the Councils Local Labour Scheme. The creation of apprentices and trainees was also much easier as there was continuity of employment over the various projects which often leads to permanent employment after the apprenticeship ends. On the recent refurbishment of Hove Town Hall for example, 43% of labour was from a BN postcode and currently on the new housing development at Findon Road site, this figure is 56%.
- 3.3.3 A further benefit of partnering is that disputes or claims are reduced to an absolute minimum partly due to the PPC2000 contract and also to the governance of the Core Group, which oversees the running of the partnership and the ability to call upon the independent external Partnering Advisor. In the sixteen years the Council has been using partnerships, the external advisor has only been consulted twice.

3.4 Value for Money in Partnering

- 3.4.1 In traditional construction procurement the tender price and the final account can vary widely because in many cases, contractors often submit artificially low tenders and then try to recoup costs through contractual claims when on site. In partnering, one of the Key Performance Indicators is that final account should be

on or under the Agreed Maximum Price (AMP) and that a lower contingency figure of 2.5% is used for new build projects rather than the industry norm of 5%. The AMP is agreed prior to the commencement of site works

- 3.4.2 Partnering relies on a totally transparent, open book approach in both the pricing of the projects and the value of fees and overhead and profit figures, for both the Constructor and all the sub contract partners. Every project is subject to a series of mini tenders which make up the overall AMP and these are thoroughly interrogated by the Cost consultant and form part of the Best Value Review document.
- 3.4.3 Overall, taking into account final account versus tender figures, it is estimated partnering produces savings of between 2% and 5% on traditional contracts prices, notwithstanding the savings on time.
- 3.4.4 Partnering has proven to be a more efficient method of procuring projects resulting further in both cashable and non-cashable savings. An example of this is that construction time is generally less, resulting in more economic preliminaries costs, because the contractor is involved with the design team right from the start of the project.
- 3.4.5 The partnership has to prove that it meets Best Value criteria, and so the external cost consultant produces a Best Value report, which benchmarks costs and rates against independent national BCIS (Building Cost Indices) criteria and also against previous projects within the partnerships.

3.5 Feedback and Learning Points from the Current Partnership

- 3.5.1 Feedback sessions have also been undertaken with both internal and external stakeholders and some of the key comments and observations were as follows:
 - The partnership is not as economic on projects valued at £250,000 or under.
 - Managing risks outside the partnerships control is the biggest risk to project delivery e.g. Poor performance of utility companies or unforeseen problems under the ground
 - More clarity required on expected timescales from clients to improve surety of delivery
 - Clients need to be more open to suggested changes from the design team which could save money.
 - An apprentice commitment is required across the partnership ie not just the constructor
 - As a direct consequence of the current partnership, a homeowner pack was developed for new tenants in completed projects
 - The current partnership is too short (4 years) and there should be the ability to extend the partnership subject to performance criteria being met. Most schemes need a minimum of 12 months from inception, feasibility, through to obtaining planning permission, detailed design and pricing, with larger projects taking 18 months on site which means that the contract re-procurement is required just as the partnership is starting to successfully deliver projects.

3.6 Potential Clients and Projects

- 3.6.1 It is not possible to quantify exactly the volume and nature of work the new partnership will undertake over the five year period, however it is anticipated that the external client base is likely to expand during its lifetime. Discussions have already taken place with East Sussex and Surrey County Councils (Orbis Partnership), Adur and Worthing and West Sussex Councils as well as the Clinical Commissioning Group (CCG). The Council will invite and enable all these parties to access the new Construction Strategic Partnership.
- 3.6.2 The Strategic Partnership is a delivery mechanism for capital projects and programmes both within the Council and potentially for external organisations. External organisations who wish to access the new Partnership cannot 'cherry pick' and would be obliged to use the entire partnership, design team including using Property & Design as Lead Architects.
- 3.6.3 It is estimated that the value of work which could potentially be undertaken by the new partnership over the seven year period might be somewhere in the region of £100 - £150 million. In addition these works would attract professional fees in the order of 8-11%. It should be noted that although the Council is required to set an overall value for the works that could potentially be undertaken by the Partnership, there is no commitment for the Council to undertake works to this value and each project will be subject to the usual approval process by each client department or client organisation.

3.7 Timescales

If the recommendation to undertake an OJEU procurement process for a new Construction Strategic Partnership is approved an indicative timescale is indicated below:

Activity	Date
Issue OJEU Notice & Pre Qualification Questionnaire (PQQ)	Jan 2017
PQQ Return	Feb 2017
PQQ Evaluation	Mar 2017
Issue Invitation to Tender (ITT)	Mar 2017
ITT Return	Apr 2017
ITT Evaluation	May 2017
Issue Award Letters	June 2017
Alcatel - Standstill Period	June 2017
Contract Start Date	3 rd July 2017

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Consideration of alternative procurement options for the Construction Strategic Partnership was presented to the Procurement Advisory Board (PAB) on 23rd May 2016 in a procurement options paper. This options paper appraised options for the procurement of both discrete projects that could be progressed by client departments in the Council through the Construction Strategic Partnership and methods of procurement for the re-procurement of a new Construction Strategic Partnership.

- 4.2 The options considered for discrete projects were either a traditional competitive tendering exercise or a mini competition off an existing framework. The options paper concluded that both of these options would not enable the Council to benefit from the advantages of working in partnership as identified within this report, would greatly increase the resource both internally and externally to implement these contracts and would increase the complexity of contract management for the Council both with regards to contract terms and relationships.
- 4.3 The options considered for re-procuring the Construction Strategic Partnership were either a mini-competition off an existing framework or a competitive tender exercise. No suitable framework to conduct such a call off could be identified and the options paper concluded that to re-procure the Construction Strategic Partnership the Council would need to conduct a competitive tender exercise.
- 4.4 It should be noted that Clients will continue to have a choice of procurement routes which are considered appropriate to their relevant projects.

5. COMMUNITY ENGAGEMENT AND CONSULTATION

- 5.1 All projects undertaken within the new partnership would be subject to consultation. The extent and nature of the consultation would be dependent upon the type and nature of scheme proposed.

6 CONCLUSION

- 6.1 The Strategic Partnership is now a well-established and recognised delivery vehicle and has a proven track record of efficiently designing and procuring capital projects which meet the needs of clients, whilst achieving best value and reducing both financial and project risks. It is therefore recommended that a new Partnership should be procured to replace the current Partnership when it comes to an end in January 2018

7 FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

The contract will be effective from July 2017 for a five year period with the option to extend for a further two years. It is estimated that the Construction Strategic Partnership will deliver between £100m to £150m of work over the seven (5 +2) year period. In addition these works would attract professional fees in the order of 8% to 11% for the contracted works. It is estimated that partnering produces savings of between 2% and 5% on traditional contracts prices as well as reducing the procurement process timetable. The partnership will be designed to ensure that it provides best value and this will be addressed as each individual projects are advanced. Any capital project associated with the Construction Strategic Partnership will be subject to separate approval at Policy, Resources and Growth before being incorporated into the Council's Capital Investment

Programme and there will be stringent viability testing to ensure best value is delivered. The partnership would be available for use not only by Client Departments within the Council but also by other external organisations which may enable further income for the Council.

Finance Officer Consulted: Rob Allen Date: 30 August 2016

7.2 Legal Implications:

7.2.1 The council has a duty to secure 'economy, efficiency and effectiveness' in all its activities. Supply of this service in a matter that attracts the most economically advantageous bid supports this principle and is in line with the EU procurement rules.

7.2.3 The Policy, Resources & Growth Committee is the appropriate decision-making body in respect of the recommendations at paragraph 2 above, given that the value of the contract which is the subject of the proposed tendering exercise is likely to have corporate financial implications.

7.2.4 Further, the council's Contract Standing Orders require that authority to enter into a contract valued at £500,000 or more be obtained from the relevant committee, which in this instance is the Policy, Resources & Growth Committee due to the value involved.

7.2.5 The length of the proposed framework is 5 years plus an option to extend for a further 2 years. It is understood that this is necessary to enable projects to be enabled within a reasonable time period without the need to re-procure the framework, as the average project duration is 29 months in total. Framework agreements can be let for a term greater than 4 years under exceptional circumstances and it is considered that there is reasonable justification for a longer framework.

7.2.6 The value of the proposed framework means that the UK Public Contracts Regulations will apply in full to the procurement of the Framework Agreement. The tender will need to be advertised in OJEU. The tender will be scored on the criteria of quality and price as part of the evaluation process. The division into Lots should enable SMEs to participate in the procurement process.

7.2.7 There will be a need to ensure that there are adequate continuity and handover arrangements in place for the end of the current Partnership in case there are changes to the contractors following the tendering process.

Lawyer Consulted: Jo Wyllly Date: 26 August 2016

7.3 **Equalities Implications**

7.3.1 All projects will be designed to comply with the requirements of the Equalities Act 2010 and the latest Part M section of the Building Regulations 2010 (as amended). Equality Impact Assessments will be undertaken on projects where appropriate

7.4 Sustainability Implications

- 7.4.1 The successful constructor will be required to meet key performance indicators on reductions in Site Waste, monitored by Site Waste Management Plans. Projects undertaken within the new partnership will be required to meet or exceed current Building Regulations and where appropriate (dependent upon the size and nature of the project) subject to a BREEAM assessment.

7.5 Any Other Significant Implications

7.5.1 Crime & Disorder Implications:

Individual projects will be assessed to reduce vandalism and crime. Where planning consent is required, the views of the Crime Prevention Officer will also be sought.

7.5.2 Risk and Opportunity Management Implications:

Individual projects will have risk registers and dependent upon the size and length of the building contracts, CDM Regulations will also apply. The procurement of the new partnership includes a Health & Safety Advisor.

7.5.3 Public Health Implications:

Public Health & wellbeing issues would be addressed on an individual project by project basis within the partnership.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents

None

