

Cabinet - 13 December 2017

Integrated Facilities Management: Procurement of works and services for 2018 - 2021

Portfolio: Councillor K Chambers – Portfolio Holder Personnel and Business Support / Agenda for Change

Service: Integrated Facilities Management - Change and Governance

Wards: All

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 This report seeks Cabinet endorsement in line with the Public Contract Regulations 2015 and Council's Contract Rules to appoint, via Official Journal of the European Union (OJEU) compliant frameworks, a range of organisations to deliver works and services associated with operational and non-operational Council premises.
- 1.2 The key decision is that, the expected council expenditure using the proposed tenders and subsequent contracts for works and services is 'significant' (i.e. above £250,000).

2. Recommendations

- 2.1 That Cabinet approves the award of contracts set out in **Annex A** via the stated Official Journal of the European Union (OJEU) compliant frameworks for works and services associated with operational and non-operational Council premises;
- 2.2 That Cabinet delegate authority to accept tenders, enter and to subsequently authorise the sealing of any deeds, contracts or other related documents for the contracts set out in **Annex A**, to the Executive Director Resources and Transformation, in consultation with the Portfolio holder for Personnel and Business Support / Agenda for Change.

3. Report Detail

The procurement Process

- 3.1 Following an options appraisal in 2014 the Council has been principally securing building repair and maintenance works and services via an agreement with Solihull Metropolitan Borough Council (the 'Solihull agreement'). The current arrangement involves Solihull Council providing a 'managed service', with Solihull appointing work to two key partner organisation providers. This agreement ends on 31 March 2018.
- 3.2 Following a review of other options and the cost of works received from the Solihull agreement, detailed work has been undertaken to prepare for procuring works and

services via OJEU compliant frameworks from alternative organisation(s). This will also seek to secure additional social value in line with the Council's stated objectives agreed by Cabinet in July 2016 and wherever practicable local supply.

- 3.3 An option considered but discounted was to use a single 'Total Integrated Facilities and Management (IFM)' framework with Eastern Shires Purchasing Organisation ('ESPO'). This is considered to have similar benefits but also similar limitations to the current Solihull agreement and it was concluded that such an option, whilst having some merits (such as reduced initial tendering work) does not have the benefit of 'spreading' the risks of potential underperformance across a range of organisations and work streams.
- 3.4 Efficiency East Midlands ('EEM') have a wide range of OJEU compliant frameworks that are available for the Council to access. EEM is a not-for-profit organisation and members receive a proportion of the EEM operating surplus based on their usage of the EEM frameworks. EEM require that the surplus is strictly used by Councils and other contracting bodies for supporting the communities they serve and not to reduce costs on existing budget lines. For example, the current rate is 1% of materials cost and is used by authorities to help provide works such as refurbishment of community common rooms, or a 'helping hand' grant scheme.
- 3.5 EEM frameworks allow for either direct award or for mini-competition. Whilst the process of mini-competition is longer than the direct award approach, it provides the potential for better value for money ('VFM') and increased level of social value received for the borough and is in line with procurement best practice.
- 3.6 To facilitate mini-competitions, EEM have undertaken (at no cost to the Council), pre-market engagement of the potential opportunities for works and services in Walsall. This has resulted in a high level of interest under each framework and is allowing for a shorter tender / mini-competition time period than would otherwise be the case.
- 3.7 The EEM frameworks being accessed are listed in **Table 1** below, together with the anticipated 3 yearly value of works to be placed through the tender.

Table 1

EEM Frameworks to be accessed	3 Yearly total Estimated Contract Value
EEM0007 Water Treatment and Air Conditioning	£525,000
EEM0009 Electrical Works including emergency lighting testing	£510,000
EEM0015 Portable Appliance Testing ('PAT')	£90,000
EE0024 Asbestos Surveys and removals	£450,000
EEM0026 General Mechanical and boiler repair / maintenance / servicing	£690,000
EE0034 Lift Servicing and Maintenance	£120,000
EE0037 Door Entry Systems	£180,000
EEM0056 Property Improvements	£900,000

3.8 To be appointed to an EEM framework all supplier organisations must satisfy a range of stringent qualifications/tests in line with the Public Contracts Regulations 2015 and are advertised via a range of tendering websites including Tenders Electronic Daily.

3.9 EEM's tenders are conducted via the open procedure (a process where all qualified organisations are able to apply and their submissions are assessed based on price and quality) and include:

- a mandatory requirements questionnaire;
- pricing submission and a method statement (written) submission.

Annex B has details about the process of assessment for organisations to be accepted onto their Frameworks.

3.10 The mini-competitions are being managed through the Council's e-procurement portal 'In-tend'. The current programme for mini-competitions is set out in **Table 2**, below:

Table 2

Action	Date
Issue of mini-competition documents via In-tend	During November / December 2017
Mini-competition return date	During December 2017 / early January 2018
Decision on award(s)	Early January 2018
Letter to successful contractor (after voluntary standstill period)	Early January 2018
Pre-contract meeting with potential contractor	January 2018
Mobilisation / pre planning period for new contractors	February 2018 and March 2018
Planned start date for new contract	April 2018

3.11 The submissions via the mini-competitions will be evaluated (using the process summarised in **Annex C**) by a range of senior Council officers, supported by colleagues from finance and procurement. The proposed officers include:

- Commissioning and Programme Manager IFM;
- Commercial Manager IFM;
- Accountancy Officer.

3.12 Following the mini-competition evaluation process, subject to Cabinet approval for delegated authority, a recommendation to award report will be produced for those works and services listed in **Annex A**. The recommendation to award report will be presented to the Executive Director Resources and Transformation for consideration and approval to award contracts to the successful bidders, in accordance with the Public Contract Regulations 2015 and the Council's Contract Rules and in consultation with the portfolio holder.

3.13 For the EEM frameworks where estimated costs of works are less £250,000 or services are less than the EU threshold (currently £164,176), for the 3-year period, approval to award contracts is possible under the Council's finance and contract rules

at Head of Service level. As a result, the Manager for Integrated Facilities Management and Housing Standards and Improvement will consider the relevant recommendation to award reports and will award contracts and advise the Portfolio Holder for Personnel and Business Support/Agenda for Change of the action taken.

4. Corporate Priorities

- 4.1 This proposal seeks to reduce costs associated with procuring and undertaking a range of building repair, maintenance and related services to corporate premises. This is fully in line with the Council's ongoing work to rebalance its budgets so that it can effectively deliver the Council's corporate priorities.

5. Risk management

- 5.1 The principal risk relates to the potential that the Council will not be able to secure suitable contractors to undertake the works and services. This risk has been mitigated by the fact that the Council proposes to award contracts to organisations following mini competition, who are already delivering these works and services under existing OJEU compliant frameworks and have already indicated via pre-market engagement to be interested in the scope of the Council's work.
- 5.2 Steps have been taken to minimise procurement-related risk including by use of OJEU compliant frameworks. However, there will always remain an inherent risk of legal challenge associated with any procurement undertaken by the Council.
- 5.3 The Council's Insurance & Loss Control Services have confirmed that the level of insurance required by EEM contractors is appropriate for work on Council premises.

6. Financial Implications

- 6.1 The proposal is to use available OJEU compliant frameworks to deliver works and services at a lower overall cost than the current Solihull arrangement.
- 6.2 All costs relating to these works will be funded either by:
- Existing Council-wide capital repair and maintenance budgets including specific capital scheme allocations; or
 - Existing revenue repair and maintenance budgets within IFM.

Any cost savings will therefore be available to be re-utilised across other essential works and services.

7. Legal implications

- 7.1 The works and services are to be sought in full compliance with the Public Contract Regulations 2015 and Council's Contract Rules. Integrated Facilities Management will seek advice and assistance from Legal Services, where required, about the suitability of all contracts terms and conditions for any chosen framework and how to ensure that any call off of services from those frameworks are achieved in a legally binding way.
- 7.2 The recommendations in this report are also based on compliance with the Council's Best Value duty.

8. Procurement reporting

- 8.1 The procurement processes will be conducted via the Councils' e-procurement portal, in accordance with the Public Contract Regulations 2015, the Council's Contract Rules and Social Value Policy.
- 8.2 Procurement Services have supported in detail the work related to this report including:
- Identifying relevant OJEU compliant framework(s);
 - Providing recommendation on which framework option(s) should be considered for selection and rationale for selecting; and
 - Technical support on mini-competitions and direct awards.
- 8.3 Advice will continue to be sought from Procurement and Legal Services, as required to ensure the conduct of compliant procurement process and the contract management of the subsequently appointed contractors.

9. Property implications

- 9.1 The works and services relate specifically to operational and non-operational Council premises and will ensure appropriate statutory compliance and essential maintenance and improvement of property assets.

10. Health and wellbeing implications

- 10.1 The proposal will enable the Council to meet its statutory health and safety duties in regard to its corporate premises as such help contribute to the Marmot objective of creating and developing healthy and sustainable places and communities. The services for example include legionella and asbestos testing and remediation.

11. Staffing implications

- 11.1 There are no Council staffing implications.
- 11.2 Solihull Metropolitan Borough Council have confirmed that they have no staff that are subject to the right of transfer under the Transfer of Undertakings (Protection of Employment) (TUPE).
- 11.3 Solihull Metropolitan Borough Council have indicated that their partnership contractors may consider that TUPE applies to their own employees. Legal Services have been consulted on this matter and consider that the proposed Operating Model (i.e. use of a range of Frameworks) is a substantial and material difference to the current arrangements with Solihull Metropolitan Borough (and their partners). The Council does not consider that TUPE will apply as a result. Solihull Metropolitan Borough have been advised of this and whilst the overall issue of TUPE may be an issue between the incoming contractor(s) and Solihull Metropolitan Borough's partners this Council's position on the matter is as set out above and has been communicated to them.

12. Equality Implications

12.1 The frameworks which the Council intends to use meet the requirements of the Equality Act 2010 and will include contract conditions which:

- Prohibit the contractor from unlawfully discriminating under the Equality Act 2010;
- Require them to take all reasonable steps to ensure that staff, suppliers and subcontractors meet their obligations under the Equality Act.

12.2 Based on an assessment of the proposal and the above provisions no Equality Impact Assessment is considered to be required for this proposal.

13. Consultation

13.1 The need for external consultation has been considered and the conclusion is that none is necessary given the nature of the proposal.

13.2 Key customer departments are aware that the Integrated Facilities Management Service have been seeking to secure alternative VFM organisations to undertake works to operational and non operational Council premises and are supportive of this work.

Background papers

None

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Signed



Paul Gordon
Head of Business Change
Change and Governance
5 December 2017

Signed



Councillor K Chambers
Portfolio Holder Personnel and Business Support /
Agenda for Change
5 December 2017

Annex A

List of works / services for which Cabinet Approval for delegated authority is sought.

Following the mini-competition evaluation process, subject to Cabinet approval for delegated authority, a recommendation to award report will be produced for those works and services listed below.

Table 1 EEM Frameworks to be accessed

Framework Title and contractors who have indicated they will bid as part of mini-competition	3 Yearly total Estimated Value
EEM0007 Water Treatment and Air Conditioning <ul style="list-style-type: none"> • H2o Nationwide • Hertel Solutions • MSM Environmental Services • Second Element 	£525,000
EEM0009 Electrical Works including emergency lighting testing <ul style="list-style-type: none"> • Dodds Group • Foster Property Maintenance • Complete Electrical 	£510,000
EE0024 Asbestos Surveys <ul style="list-style-type: none"> • Armstrong York • DMW Safety • Environtec 	£450,000
EE0024 Asbestos Removals <ul style="list-style-type: none"> • European Asbestos Services • Asbestech Ltd • Kaefer Ltd • Rhodar 	
EEM0026 General Mechanical and boiler repair / maintenance / servicing <ul style="list-style-type: none"> • Lakehouse • TSG • Dodds Group 	£690,000
EEM0056 Property Improvements <ul style="list-style-type: none"> • J Tomlinson • Fortem 	£900,000

The recommendation to award report will be presented to Executive Director Resources and Transformation for consideration and approval to award contracts to the successful bidders, in accordance with the Public Contract Regulations 2015 and the Council's Contract Rules

Annex B

Summary of Process for organisations to secure a place on an EEM Framework.

The mandatory requirements questionnaire is a pass/fail evaluation and consists of the following:

- Grounds for mandatory exclusion (corruption, fraud, terrorists, trafficking);
- Grounds for discretionary exclusion (environmental, social, professional misconduct, conflict of interest);
- Financial information. They recommend a minimum turnover of at least 2 times the average call off contract and also carry out an Experian credit check on all successful Contractors prior to notification of award. This section also includes for insurances;
- Health & Safety and Equality & Diversity;
- Modern Slavery Act 2015;
- Safeguarding Provisions –included where relevant;
- Relevant experience – this asks for up to 3 contracts relevant to the services being tendered that have been performed in the past 3 years. EEM reserve the right to contact the references provided in this section to confirm the accuracy of the information provided and provide an evaluation of their experience.

Once the above evaluation is complete and providing all Bidders have passed all sections EEM progress on to the pricing and written submissions assessment. Their pricing is normally based around a set of schedule of rates along with pricing scenarios taken from actual projects undertaken by their members.

EEM have price/quality split which can vary depending on the services being procured, however their standard split is 60% price and 40% quality.

The quality element is based on the written submission which includes for a set of method statements in the following areas:

- Evidence of experience – this includes experience, capacity, skills and qualifications of employees, accreditations and training;
- Working practices – this covers site supervision, quality, customer care, contract management and completion procedures;
- Case Study – EEM ask for evidence of the contractors experience by way of a completed project record which demonstrates that the working practices detailed are applicable to a live contract;
- Working with Consortia – EEM include this question to test the understanding of what it means to hold a place on a framework, work with EEM members and also manage and maintain pricing across the EEM membership.

Annex C

Summary of Process used by Council staff to evaluate Mini-Competition Returns

The following process is being used to evaluate the submissions to the mini-competitions for each Framework:

- A panel of evaluators (Council staff) will individually score the quality sections of the submissions.
- A Moderation meeting will be held at which the evaluation panel members review the quality questions along with the bidder responses and individual evaluator's scores. They discuss the findings and agreed a moderated final score for each of the quality questions.
- Moderated scores were/will be fed into the overall Value for Money assessment tool with the price submission from the contractors.
- Upon completion of the evaluation, subject to Cabinet approval for delegated authority, a recommendation to award report will be produced and presented to the Executive Director – Executive Director Resources and Transformation for consideration and approval to award contracts to the successful bidders, in accordance with the Public Contract Regulations 2015 and the Council's Contract Rules. The Portfolio Holder for Personnel and Business Support / Agenda for Change will be consulted prior to signing.

