

BEST VALUE AND CONSTRUCTION PROCUREMENT

Report of the Director Corporate Services

SUMMARY OF REPORT

- 1.1 The report seeks approval to a new procurement process for appointing contractors to carry out the bulk of the Council's and Derby Homes' construction programme over the next 3-5 years. **[Paragraphs 4.5 - 4.6]**
- 1.2 The report explains how the process will use the Best Value approach to construction procurement, expounded in the Government commissioned "Rethinking Construction Charter" and what the advantages of such an approach are. **[Paragraphs 4.1 - 4.3]**
- 1.3 It also explains how, after a competitive tendering exercise, a number of contractors will be chosen as "Strategic Partners" who will enter into a Framework Agreement with the Council and how individual contracts will then be let, under the umbrella of this Framework Agreement, to one of these Strategic Partners without the need for a further tendering process. **[Paragraphs 4.14 - 4.23]**

RECOMMENDATION

- 2.1 To approve the procurement process set out in the report.
- 2.2 To authorise the Director of Corporate Services to enter into a Framework Agreement with selected Strategic Partners.
- 2.3 To authorise the Director of Corporate Services to enter into individual contracts under the Framework Agreement.
- 2.4 To waive Contract Procedure Rule C15 (Requirement to Obtain Tenders) for the purposes of paragraph 2.3.
- 2.5 To recommend to Council that Contract Procedure Rules are amended to exempt individual contracts awarded under any Framework Agreement from the need to go through a competitive tendering process.

REASON FOR RECOMMENDATIONS

- 3.1 The Government sees "Rethinking Construction" as a Best Value approach to construction procurement. The extent to which these principles are adopted is a performance measure that will be taken into account when assessing the Council's Capital Strategy, Schools Asset Management Plan, Housing Investment Plan and Local Transport Plan.

- 3.2 To respond quickly to fluctuating programmes, including the delivery of Derby Homes' exceptionally large-scale programme over a relatively short period by reducing the need to tender individual contracts.
- 3.3 To bring about the improvements in construction procurement that should result in reductions in costs, time, accidents and defects and increases in the predictability of cost and time, productivity and profitability.
- 3.4 To develop regeneration initiatives linked to investment and to promote the local economy and training opportunities for local people.

MATTER FOR CONSIDERATION

"Rethinking Construction"

- 4.1 In 1998 a taskforce led by Sir John Egan and commissioned by the Government produced a report on the efficiency of the UK construction industry. "Rethinking Construction" reflects the recommendations in that report which identified the need to radically change the way that construction industry operates.
- 4.2 In particular the report stressed the need to:
 - address the needs and expectations of the end user more closely
 - move away from the traditional ways of doing business, which are restrictive and confrontational
 - aim to achieve targets for:
 - reductions in costs, time, accidents and defects
 - increases in predictability of cost and time, productivity and profitability
 - build long-term design and project management relationships with contractors.
- 4.3 The adoption of these principles is becoming increasingly important in Government funding schemes and is part of the criteria under which the Council's performance is measured for the Single Capital Pot, assessment of Local Transport Plans, Schools' Asset Management Plans and Housing Investment Plans. The criteria for corporate assessment of capital schemes in the Council's Capital Strategy include the use of these principles.
- 4.4 The "Rethinking Construction" partnership approach is currently being used on a scheme to improve Unity houses at Mackworth. A project approved by Policy Committee on 15 April 2000.

Council and Derby Homes' Construction Programme

- 4.5 This report seeks approval for the adoption of the "Rethinking Construction" principles to the procurement and delivery of the Council's and Derby Homes' construction programmes.

- 4.6 The intention is to appoint up to 4 contractors as strategic partners in each of the five categories of work under 3-5 year Framework Agreements. Individual contracts on a series of construction projects would then be awarded to the strategic partners under the umbrella of the Framework Agreements, thus removing the need to go out to tender on each and every project.
- 4.7 Additional advantages of this approach are that as these strategic partnership arrangements would involve the same teams working together on a series of projects, it should help build a relationship between the Council and contractor and promote an integrated approach and continuous improvement.

Framework Agreement

- 4.8 Framework Agreements are contractual arrangements that provide a flexible and efficient vehicle for procuring projects with contractors who have been selected by a competitive process where both quality and price are factors.
- 4.9 The key features of Framework Agreements using the "Rethinking Constructions" principles are:
- "Open Book" arrangements
 - a competitively tendered percentage for profit and overheads
 - commonly understood and agreed joint objectives
 - mechanisms for risk allocation
 - adoption of a non-adversarial approach
 - key Performance Indicators and continuous improvement.
- 4.10 It is intended that the Framework Agreements will provide a broad indication as to the likely volume and type of work. The actual volumes of work flowing to each partner will be dependent upon the Council's programme, the partner's level of available resources and their satisfactory performance. There will be no guarantee of the volume, or any, work.
- 4.11 Partnering will not be appropriate for all types and values of projects. For example, small one-off projects may be better tendered individually. In addition, there will be a need to test the market periodically to check that the process is achieving value for money. For these reasons a proportion of projects will continue to be procured through competitive tendering.

Main Areas of Work to be Awarded

- 4.12 The main areas of work it is intended to procure using the Framework Agreement approach are:
- Housing Work (Client: Derby Homes)
Refurbishment of Wimpey No-Fines Dwellings
Refurbishment of Pre and Post War Traditional Dwellings.
 - Non-Housing Work (Client: Derby City Council – Various Departments)
The construction of new or refurbishment of schools, classrooms, Social Services buildings, arts, leisure or sports facilities.

4.13 The Procurement Profile at Appendix A provides details of the:

- nature and extent of the intended works
- timescales
- anticipated level of funding
- indicative number of partners sought.

4.14 The housing budget is conditional on Derby Homes having their provisional “3 star” rating confirmed by the Housing Best Value Inspectorate. The non-housing budget is far less predictable being susceptible to increases/reductions as a result of bid competition/reviews in public spending/ Government Policy generally.

Appointment of Partners – Pre Tender

4.15 In compliance with the European Procurement Directives a notice has been placed in the Official Journal of the European Community (OJEC) seeking expressions of interest from contractors interested in entering into a Strategic Partnering Framework Agreement with the Council.

4.16 In order to draw up a tender list, interested contractors are required to complete a Pre-Tender questionnaire. The answers given will form part of a quality evaluation assessment. Contractors will need to demonstrate a proven track record and have experience or a good understanding of partnership arrangements as partners will need to have the capacity and skills to deliver with confidence large-scale programmes of work, to consistent standards through close co-operation with client departments, consultants and end users.

4.17 Based on the responses to the Pre-Tender questionnaire, a shortlist will be selected for the various categories of work, each shortlist comprising between 4-8 potential partners.

Appointment of Partners – Tender Stage

4.18 All contractors shortlisted will be issued with a tender document, which will include the following:

- details of proposed work packages on offer including approximate timescales and values
- details of the contractual arrangements
- quality Questionnaire - category of work specific
- details / Specification of a notional scheme for tenderers to price items of work. In addition main office / site overheads and profit are to be priced.

4.19 Tenders will be assessed by a selection panel consisting of officers of the Corporate Services Department and the relevant client departments. In addition, the opinions of end users will be taken into consideration. Internal Audit and Legal Services will monitor the appointment process.

Timetable

4.20 The proposed timetable is as follows:

1.	Return Date for expressions of Interest	Mid June 2002
2.	Selection of Shortlists	By early July 2002
3.	Issue of Invitations to Tender	By end July 2002
4.	Return of Tenders	By end August 2002
5.	Selection of Preferred Partners	By mid September 2002
6.	Signing of Strategic Partnering / Framework Agreement	By mid October 2002
7.	Pre – Project Planning / Signing of Initial Project Partnering Agreement	October – December 2002
8.	Start on Site (Depending on Type of Work)	January – March 2003

Award of Individual Contracts

4.21 Once strategic partners have been selected, there will be a need to select contractors for individual schemes. There are a number of issues to be considered in this respect:

- there needs to be sufficient work for each partner contractor to sustain the investment of resources needed in the partnering process
- use of more than one partner in a particular field can act as a barometer for price and quality
- the volume of work may be such that it is sensible to share it amongst a number of contractors, for example Derby Homes programme.

4.22 During the first year, contractors within each category will be awarded work of approximately equal value subject to their resources. Their performance will be reviewed annually and subsequent allocations of work being based on results. Decisions on future allocations of work will be taken by the Director of Corporate Services in conjunction with the client department or the Director of Derby Homes, as appropriate.

4.23 The Procurement Strategy will be as detailed in Appendix B. A retrospective report will submitted quarterly to the Director of Finance detailing by which means contracts have been procured, the contractor selected and the reasons why.

FINANCIAL IMPLICATIONS

5. The approximate values of work involved are set out in Appendix A and are extracted from part of the overall capital budgets.

LEGAL IMPLICATIONS

- 6.1 The procurement of the Framework Agreement is subject to EU Works Procurement Directive.
- 6.2 In order to comply with the EU Directive the Framework Agreement must contain the fundamental terms and conditions on which the subsequent individual contracts will be awarded. These cannot be re-negotiated when letting the individual contracts.

PERSONNEL IMPLICATIONS

- 7.1 Adopting the strategic partnering approach will in the initial stages require greater staff input than traditional methods for contract procurement, but can be carried out with existing staff resources. However, the arrangements will, overall, result in more effective use of existing staff resources.
- 7.2 Consultation needs to be carried out with the Trade Unions representing staff of Commercial Services. The process provides the Department with opportunities to secure a guaranteed level of work over the medium term and reinforce good relationships with existing clients and end users. However, the process also poses the threat of losing some work to its private sector competitors.

ENVIRONMENTAL IMPLICATIONS

8. Long-term relationships with contractors, employing best practice, will result in the following:
 - use of environmentally friendly materials and working practices
 - safer construction sites
 - reductions in time spent on site and waste
 - less dust and noise on site
 - fewer periods of disruption.

EQUALITIES IMPLICATIONS

9. As part of the evaluation process, tenderers will be asked to provide their equal opportunities policies and asked the six approved questions relating to equal opportunities, and their policies relating to local employment, sub contractors and suppliers and training. The appointed contractors will be required to provide monthly monitoring reports.