

**SOCIAL SERVICES, HOUSING AND COMMUNITY SAFETY
CABINET BOARD**

JUNE 2022

**URGENCY ACTION - REPORT OF THE HEAD OF:
ADULT SERVICES – A. THOMAS**

SECTION A – FOR DECISION

Matter for Decision

WARD(S) AFFECTED: All

**HOUSING RENEWAL & ADAPTATION SERVICE - EXTENSION
OF FRAMEWORK FOR HOUSING RENEWAL WORKS**

PURPOSE OF REPORT

- 1 To seek authority to extend the current framework for Housing Renewal Works (the 'Framework') and the framework agreements with each contractor appointed thereunder (the 'Framework Agreements') to ensure continuity of Renewal works and to allow for the procurement and implementation of a new framework.

EXECUTIVE SUMMARY

- 2 The report seeks authorisation to extend the term of the Framework Agreements in accordance with regulation 72 of the Public Contract Regulations 2015 and the Council's Contract Procedure Rules.

BACKGROUND

- 3 The Framework and the six Framework Agreements commenced on the 1st July 2018 for a period of three years with an option to extend for 1 year which has been done.
- 4 The expiry date of the Framework is 30th June 2022.
- 5 The six Framework contractors appointed under the Framework are:

- CJ Construction (Wales) Ltd
 - R. T. (Contractors) Ltd
 - SAM Drylining Ltd
 - SERS Energy Solutions Ltd
 - T.A.D Builders Ltd
 - Thomas CMS Holdings Ltd
- 6 It was anticipated that the Council would have undertaken a competitive tender exercise with an award date of 1st July 2022.
- 7 However, it is decided to delay this exercise for a number of reasons; due to the current market conditions and the limited capacity of contractors due to the amount of work currently available there is a potential lack of interest in applying for the framework.
- The Welsh Government are currently out to consultation to how ECO4 (Energy Company Obligation) funding will be distributed and to what type of works will be required, until this is decided the scope of the framework cannot be specified as this is the funding source that funds the work of this framework.
- 8 The service prepared a regeneration scheme prior to the pandemic which is now proposed to commence on site mid June 2022,
- 9 Continuation of the framework is essential to ensure full completion of this contract.
- 10 In order to ensure continuity of the Housing Renewal Works, it is necessary to extend the Framework and each of the six Framework Agreements for a period of 1 year from the Framework's expiry date.

FINANCIAL IMPACT

- 11 Subject to service requirements, the potential value for an extended period of the Framework and of the six Framework Agreements of 1 year is expected to be in the sum of £500k.
- 12 Subject to the requirement to allocate schemes to the framework contractors, the Council will make payment to the

framework contractors in line with the agreed framework rates, thereby providing a greater certainty of price.

- 13 By not extending the framework no contracts for Housing Renewal Works would be able to be awarded for this financial year.
- 14 Funding that may be awarded this financial year would be lost.

EQUALITY IMPACT ASSESSMENT

- 15 There is no equality impacts associated with this report

WORKFORCE IMPACTS

- 16 There are no workforce impacts associated with this report

LEGAL IMPACTS

- 17 The estimated value of the framework was specified as £4,400,000.00 in the original contract notice and it was above threshold value for the purpose of the Public Contract Regulations 2015 (PCR). The intention is to vary the existing Framework Agreements to extend their term by an additional year. The anticipated value of the one year extension is £500,000. There is a risk that such a variation could be considered to constitute an illegal direct award under regulation 72(9) of the PCR. In addition, regulation 33(3) of the PCR states that the term of a framework agreement shall not exceed 4 years, save in exceptional cases duly justified, in particular by the subject-matter of the framework agreement. Therefore, the Council could potentially be exposed to challenge from aggrieved providers who have not had an opportunity to bid for the extended period. They may wish to challenge this by Judicial Review of the Council's decision.
- 18 Under regulation 72(1)(e), a modification to an existing contract irrespective of its value, requires a new procurement competition only if it is "substantial". Regulation 72(8) sets out various types of modification which are deemed substantial. Together regulations 72(1)(e) and 72(8)(d) permit modifications without the need for a new procurement where the modification does not extend the scope of the framework agreement considerably.

19. It is contended that in the circumstances extending the term of the framework beyond 4 years is justified due to present situation in the market and the future intentions of Welsh Government. It is also considered that the extension of the framework term by a year is not a substantial modification within the meaning of regulation 72(8) and that therefore 72(1)(e) provides the ground for the variation without the need to re-procure and thus the extension does not constitute an illegal direct award.

- 20 The requirements in relation to contract variations under the Contract Procedure Rules state as follows: 23.4 Variations to Contracts will be permitted without a new Tender process only in specified circumstances and only following consultation with the Head of Legal Services. The relevant specified circumstances here are under rule 23.4.3 which states where the variations are brought about by unforeseen circumstances which do not affect the overall nature of the original Contract and do not exceed 50% of the value of the original Contract. Further rule 23.6 states that where the terms of the Contract do not expressly provide for extension then such Contract may only be extended in exceptional circumstances, where legislation permits and Value for Money issues have been addressed. Such decision shall be made by the Authorised Officer in consultation with the Head of Legal Services. As stated above regulation 72 can be relied upon for the framework extension. In addition the framework pricing will continue to apply and will offer value for money for the Council and also legal advice has been provided for the purpose of this report.

- 21 The risk of challenge set out above is acknowledged, however, it would be contended that the Council must ensure that suitable contractual arrangements continue to be in place for the Housing Renewal Works in a safe manner with approved contractors, must ensure the provision of Housing Renewal Works for the Council's service users and must ensure best value to the Council, which it is considered the proposed arrangements would satisfy. In addition the maximum estimated value of the framework will not be exceeded by the extension. Further, the risk of challenge is mitigated by the intention of the Council to go out to the market and procure a new framework in 12 months' time.

RISK MANAGEMENT

- 22 This report seeks to minimise the risk to the council by ensuring continuity of Housing Renewal Works pending the council undertaking a new procurement exercise to secure a new framework for the service.

CONSULTATION

- 23 There is no requirement under the Constitution for external consultation on this item.

RECOMMENDATION

- 24 It is recommended:

- 24.1 That the framework is extended in accordance with regulation 72 PCR and the CPRs on the basis that the extension of one year does not amount to a substantial variation to the framework.
- 24.2 That the framework and the six framework agreements are extended for a period of 1 year from 1st July 2022 to allow the Council to determine the exact scope of the framework following the Welsh government consultation and to run its own competitive tender exercise which will be undertaken at the same time as the extension is to be put in place and to maintain continuity during this financial years awarded contracts.

REASONS FOR PROPOSED DECISION

- 25 To ensure continuity of Housing Renewal Works pending the Council's intended competitive procurement exercise and the implementation of a new framework and new framework agreements resulting therefrom.

IMPLEMENTATION OF DECISION

- 26 The decision is for immediate implementation (Urgency Action).

APPENDICES

- 27 None

LIST OF BACKGROUND PAPERS

28 None

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