

Report to CABINET

Construction and Highways Works & Services (CHWS) Framework Agreement - Existing Framework

Portfolio Holder:

Cllr Arooj Shah,
Leader and Cabinet Member for Reform & Regeneration

Officer Contact: Emma Barton, Deputy Chief Executive, Place

Report Author(s):

John Winterbottom – Property Services, Divisional Manager
Nigel Molden – Team Leader Place and Economic Growth and Irfan
Oomer – Senior Category Manager Commercial Procurement Unit

13th November 2023

Reason for Decision

This report requests approval to:

- (a) modify existing CHWS Framework Agreements, which expired on 2nd October 2023, by extending the term of the agreements by 1 year (to expire on 2nd October 2024) to facilitate the design and completion of a fit for purpose procurement process for the establishment of new multi lot CHWS Framework Agreements and by uplifting Charges payable to appointed suppliers.

Executive Summary

Current Framework Agreements for CHWS expired on 2nd October 2023 and there is insufficient time to develop and complete a tender process for a replacement framework arrangement that meets service delivery requirements and wider corporate objectives (e.g. social value) prior to the expiry of the agreements. There is also insufficient time to conduct the extensive market engagement required to ensure an appropriate procurement model is deployed to attract the most economically advantageous suppliers.

If the current CHWS Framework Agreements were to expire without new arrangements being in place, this would leave officers without access to procurement compliant framework arrangements which facilitate the efficient weekly procurement of statutory compliance works and services, maintenance and minor works without the need to commission on a case by case basis in accordance with Contract Procedure Rules. It is, therefore, proposed that current Framework Agreements are modified to extend their expiry date to 2nd October 2024, but also to apply an inflationary increase to the Charges payable to suppliers.

~~Appendix A to this report details the current suppliers appointed to the CHWS Framework Agreements.~~

Recommendations

That Cabinet approval is given to –

- approve a modification to extend those current CHWS Framework Agreements detailed in Appendix A for a term of 12-months to allow sufficient time to robustly procure and mobilise a new CHWS framework arrangements from 3rd October 2024 and to apply an inflationary uplift to the charges payable under the Framework Agreements, as detailed in this report.
- delegate approval to the Deputy Chief Executive (Place), Director of Environment and the Director of Economy, as relevant, to award call-off contracts under the Framework Agreement entered into under the CHWS framework arrangements, subject to compliance with the prescribed call-off procedures and the formalisation of call-offs using the prescribed forms of contract.

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- Delegate authority to the Director of Legal Services or nominee to carry out all legal formalities.

Cabinet

13 November 2023

Construction and Highways Works & Services Framework Agreement (CHWSFA) - Existing Framework

1 Background

- 1.1 The current Construction and Highways Works & Services Frameworks were procured during 2019 and became contractually effective from 3rd October 2019. The contract term for each of the 23 lots was 2 years with the option to extend by an additional two years in one-year increments (2+1+1). The frameworks are now in the final year and will end on 2nd October 2023. The Council did not extend the term for Lot 8 Legionella Risk Assessments & Remediation for the period 3rd October 2022 to 2nd October 2023.
- 1.2 On 3 January 2023 approval was granted to apply an inflationary increase to the charges payable by the Council under the following Lots –

Lot 1 - Roofing Works – Flat / Pitched - Responsive & Minor Repairs

Lot 3 - Building Repairs/Maintenance

Lot 4 - Mechanical Works

Lot 5 - Electrical Works

Lot 6 - Asbestos Remediation Works

Lot 7 - Lift Servicing

Lot 9 - Fire Alarms Servicing

Lot 10 - Security & CCTV

Lot 15 - Roller Shutter and Automatic Doors

Lot 16 - Lightning Protection

Lot 17 - Roofing Works – Flat / Pitched

Lot 23 - Fire extinguishers/Fire Signage

Lot 24 - Sprinklers

The increase was effective from 1 February 2023 and was applied because of the significant changes to the strength of the economy and because contractors indicated that they could not continue to honour their Schedules of Rates formed in 2019.

- 1.3 The existing Construction and Highways Works & Services Framework Agreements are coming to their expiry date, which is 2nd October 2023. The Council requires the continued delivery of the works and services currently commissioned under the Framework Agreements; however, the Council needs to ensure all procurement activity is fully compliant with Oldham Council Contract Procedure Rules (CPRs) and UK Procurement Regulations.
- 1.4 Due to the amount of work involved in the re-tendering of multi lot framework arrangements and the resource requirements from various departments such as Place & Economic Growth, the Commercial Procurement Unit, Finance and Legal Services it is deemed that additional time is needed to deliver the overall project robustly including market engagement, a fit for purpose procurement exercise, tender evaluation, contract development and execution and mobilisation. Consequently, it is considered necessary to extend the existing Framework Agreements (as identified in Appendix B) for a period of 12 months (3rd October 2023 to 2nd October 2024), with the new CHWS Framework Agreements commencing from 3rd October 2024. In addition to this, due to the value of the existing CHWS framework arrangements, circa £13m per annum, it is necessary to extend the existing CHWS Framework Agreements in line with the Council's Contract Procedure Rules incorporating the Public Contract Regulations 2015. The following Lots will be extended under the Framework Agreement –

Lot 1 - Roofing Works – Flat / Pitched - Responsive & Minor Repairs
Lot 3 - Building Repairs/Maintenance
Lot 4 - Mechanical Works
Lot 5 - Electrical Works
Lot 6 - Asbestos Remediation Works
Lot 7 - Lift Servicing
Lot 9 - Fire Alarms Servicing
Lot 10 - Security & CCTV
Lot 12 - Minor Works – Highways / Structures / Drainage
Lot 13 - Highways Lining / Road Marking
Lot 14 - Building Repairs / Maintenance / New Build / Extensions / Refurbishment
Lot 15 - Roller Shutter and Automatic Doors
Lot 16 - Lightning Protection
Lot 17 - Roofing Works – Flat / Pitched
Lot 19 - Highways Surface Dressing
Lot 20 - Major Works - Bridges & Structures
Lot 21 - Major Works – Drainage
Lot 22 - Groundworks & Landscaping
Lot 23 - Fire extinguishers/Fire Signage

The following Lots will not be extended under the Framework Agreement –

Lot 8 - Legionella Risk Assessments & Remediation
Lot 11 - Highways Minor Works
Lot 18 - Highways Carriageway Surfacing
Lot 24 - Sprinklers

Please note, Works and/or Services under the Lots that are not going to be extended, will be procured outside of the CHWS Framework Agreements in line with CPRs and PCR 2015 (for example, other local authority framework agreements and other procurement processes such as open tender, request for quotations).

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- 1.5 Further, in light of the increasing cost of supplies and staffing, it is considered appropriate to apply an inflationary increase to the Charges payable to suppliers under the Framework Agreements in order to make the offer of a one year extension to the term both attractive to suppliers but also deliverable. The proposed mechanism has been calculated in accordance with the BCIS (Building Cost Information Service) index and is intended to address concerns raised in respect of the present and future inflationary environment. Previously, the Charges were subject to a 10.47% uplift which was in effect from 1 February 2023; The basis on which Specifications / Pricing Schedules is to be revised with effect from 3 October 2023 is the percentage change of the Building Maintenance Institution Local Authority Maintenance Cost Indices published by the Royal Institution of Chartered Surveyors 'General Maintenance' between the period 1 February 2023 to 1 February 2024 (see Appendix C – BCIS Indices Results). As a result, the Charges will be subject to a further 6.1% uplift with effect from 3 October 2023 which will apply to all of the Lots being extended under the Framework Agreement.

2 Current Position

- 2.1 As stated above, the current Construction and Highways Works & Services Frameworks were procured during 2019 and became contractually effective from 3rd October 2019. The contract term for each of the 23 lots was 2 years with the option to extend by an additional two years in one-year increments (2+1+1). The frameworks are now in the final year and will end on 2nd October 2023. The Council requires the continued delivery of the works and services currently commissioned under the Framework Agreements and it is therefore considered necessary to extend the existing Framework Agreements for a period of 12 months (3 October 2023 to 2 October 2024).

3 Options/Alternatives

- 3.1 There are two options available:
- 3.2 Option 1 – To modify and extend current CHWS Framework Agreements for a period 3rd October 2023 to 2nd October 2024 to facilitate the development and implementation of new arrangements. Also, to modify current CHWS Framework Agreements to apply an inflationary increase to charges payable to suppliers.
- 3.3 Option 2 – Not to approve the further 12-month extension of the existing CHWS Framework Agreements until 2nd October 2024 and not to apply an inflationary increase to charges. This option is not considered viable as the consequence of this will leave the Council without access to framework suppliers and each scheme or works package would need to be individually quoted or tendered for in accordance with Contract Procedure Rules, which is considered an inefficient procurement method and would not provide best value.

4 Preferred Option

- 4.1 Option 1 – To modify and extend current CHWS Framework Agreements for a period 3rd October 2023 to 2nd October 2024 to facilitate the development and implementation of new arrangements. Also, to modify current CHWS Framework Agreements to apply an inflationary increase to charges payable to suppliers.

5 Consultation

- 5.1 The procurement process will be progressed in consultation with the Corporate Procurement teams, Legal teams along with Property and Highways representatives.

6 Financial Implications

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- 6.1 Oldham Council has a Repairs & Maintenance (R20100) and Maintenance Contracts (R210106) revenue budget of £2,019,900 for 2023/24.
- 6.2 As at Month 6 financial monitoring, the forecast expenditure for Repairs & Maintenance and Maintenance Contracts in 2023/24 is £2,779,200, a current forecast pressure of £759,390.
- 6.3 Actual expenditure for Repairs and Maintenance and Maintenance contracts for the period April 2023 to September 2023 is £1,589,650. The remaining forecast expenditure for the period October 2023 to March 2024 is therefore £1,189,550.
- 6.4 The assumption is that it is this forecast expenditure of £1,189,550 that will be subject to the new inflated contracts of 6.1%. This will result in an additional cost of £72,563. This will increase the forecast pressure against Repairs and Maintenance and Maintenance Contracts to £831,953.
- 6.5 Whilst the above pressure is the current best forecast, proactive work continues to help reduce this expenditure for the remainder of the financial year. A working group has been set up to limit the financial pressure on repairs and maintenance works with a real focus on those works that impact health and safety, are required for compliance or those that have operational implications.

John Hoskins (Finance Manager)

7 Legal Services Comments

- 7.1 The proposed contract modification has been approved by the Commercial Procurement Unit on the basis of assessment against Regulation 72 of the Public Contract Regulations 2015 as per below.

Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part:

72. (1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—

(b)for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—

(i)cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or

(ii)would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract;

- 7.2 The application of paragraph (b) has been assessed in conjunction with the report author and this decision has been deemed compliant by the Commercial Procurement Unit.
- 7.3 A Modification of a Contract which is subject to the Procurement Regulations, shall be governed by the relevant legislation and the procedure in Paragraph 17.5 of the Contract Procedure Rules including in particular the following requirements:-

The Head of the Commercial Procurement Unit is responsible for ensuring that a complete record of all Modifications is kept and a record of the decision approving a Modification and the reasons for it must be stored electronically in Modern.gov and on The Chest.

A notice of the Modification of a Contract under Rules 17.1 (b) and (c) with a value over the relevant procurement threshold shall, where required, be published in the Find a Tender in accordance with the Procurement Regulations.

7.4 The report author has considered Paragraph 17 of the CPRs alongside Regulation 72 of the Public Contract Regulations in conjunction with the Procurement Team and confirmed that paragraph 17.1 (b) of the Contract Procedure Rules applies to justify and authorise the Modification referred to above and that the Council's Contract Procedure and Financial Procedure Rules have been and will continue to be complied with.

7.5 There are risks involved in making modifications to contracts which can be mitigated by careful consideration of the circumstances, appropriate due diligence and advice in applying the rules and diligent record keeping to evidence the route to and justification for making the decision.

(Rebecca Boyle – Corporate Group Solicitor).

8. **Co-operative Implications**

8.1 The proposal to extend current CHWS Framework Agreements are in line with the Council's Co-operative agenda as an up to date CHWS Framework Agreement will enable staff to carry out major and minor construction and highway works in the borough which will improve and enhance existing infrastructure or establish new ones for residents. Maintaining the borough's infrastructure for resident satisfaction is a key corporate priority.

(Mahmuda Khanom, Policy Support Officer)

9 **Human Resources Comments**

9.1 No HR implications.

(Catherine Reed, Strategic HR Lead)

10 **Risk Assessments**

10.1 The procurement risks have been considered in the legal services comments. The balance is of risks of extending an existing framework and adding in the inflationary costs which are included as part of the contract and balancing the opportunity that this framework agreement has in providing known cost measures for dealing with outstanding backlog maintenance issues and liabilities arising from the property estate. The extension of the framework agreement which reduces the financial risks of further works if remedial work is not carried out in a timely manner or the risk of further liabilities. All contractors insurance requirements should be rechecked as part of the extension.

Vicki Gallacher (Head of Insurance and Information Governance)

11 **IT Implications**

11.1 There are no IT implications from the framework agreements. IT services can be requested for project work using the Council IT Request for Service (RFS) process as and when required, where IT is charged at Finance agreed daily charge rates.

Lindsey Al-Basri (IT Head of Projects)

12 **Property Implications**

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- 12.1 The Council understands that if buildings are not maintained, they will cease to fulfil their intended functions. Continuing and implementing the existing CHWS Framework Agreements is recognised as a cost-effective measure of dealing with outstanding backlog maintenance issues, which if deferred or left will ultimately result in future increased costs, possible consequential damage and liabilities to the property estate. Continuing with the existing CHWS Framework Agreements will create an efficient model for dealing with building and highway maintenance issues, it also reduces the Council's risks in terms of loss of service and business continuity.

Katy Webster (Assistant Director – Property & Projects)

13 Procurement Implications

- 13.1 The present framework agreement requires modifying and approval to extend for a further 12-month period until October 2024 which will be compliant in line with Regulation 72 (1)(b) of PCR 2015, which states -

“Contracts and framework agreements may be modified without a new procurement procedure, for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor, would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.”

The modification is to also address the present and future inflationary reality. By providing approval for these modifications to the existing CHWS Framework Agreements will continue the flexibility and choice in selecting the most appropriate procurement procedures for individual service requirements.

- 13.2 Failure to approve the proposed modifications would result in the stakeholder department using alternative accessible market frameworks with potential increased cost implications, as Oldham Council has not created or negotiated the agreement rates, terms, and contractor selection for these alternative options which may not offer the specialist services required. If having to rely on national frameworks there is the real possibility local SME'S would not be included which is contrary to Oldham Council's own Contract Procedural Rules and the recommendations of the Public Contracts Regulations 2015.
- 13.3 Approval of the inflationary increase and the option to extend affords the stakeholder departments the continued ability to deliver and strive for best possible value in the present challenging inflationary circumstances moving forward into the new year. The use of other alternative procurement procedures would cause delays as other traditional procedures have longer procurement periods having additional resource costs.

Irfan Oomer (Senior Category Manager)

14 Environmental and Health & Safety Implications

- 14.1 Environmental - If the current framework agreements are to be extended the contract management arrangements around environmental performance which have been applied to date will continue to be in force for the period of the extension.

Andrew Hunt (Green Energy & Sustainability Manager)

- 14.2 Health & Safety – As an employer/duty holder, Oldham Council has a statutory duty to ensure so far as is reasonably practicable, the health, safety and welfare at work of all it's employees, and that persons not in his employment who may be affected by their work, are

not exposed to risks to their health or safety. Oldham Council's Health and Safety Team have no objections to the extension as we have been assured that all contractors will have signed up to construction line. Specific risk assessments and other safety documentation will still need to be checked for individual jobs/projects during the planning/construction phases of any works.

(Neil Crabtree, Head of Public Protection)

15 Community cohesion disorder implications in accordance with Section 17 of the Crime and Disorder Act 1998

15.1 There are no community cohesion implications arising from the proposals within the report.
Natalie Downs (Stronger Communities Manager)

15.2 Failure to adequately maintain Council Assets particularly CCTV and Security, could lead to the properties becoming vulnerable to Crime and promote an increase in Anti-Social Behaviour. The proposals outlined in the report will not contribute towards Crime and Disorder within the Borough and should reduce Crime and Disorder in respect of Local Authority assets.

Phil Bonworth (Community Safety Services)

15.3 There are no equality implications arising from the proposals within the report.

(Mahmuda Khanom, Policy Support Officer)

16 Oldham Impact Assessment Completed (Including impact on Children and Young People)

16.1 Oldham Impact Assessment completed (See Appendix D - Oldham Impact Assessment CHWS Framework Agreement). Please note, there are no equality implications arising from the proposals which will impact any of the equality groups.

17 Key Decision

17.1 Yes (see below)

18 Key Decision Reference

18.1 NEI-13-23

19 Background Papers

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

File Ref: CHWS Framework Agreement Approval Report August 2019

Name of File: Construction Highways Services Framework Procurement Approval Report - August 2019

Records held in Property Services Department, Henshaw House, Cheapside, Oldham. OL1 1NY

Officer Name: Peter Wood

Contact No: 0161 770 4028

File Ref: CHWS Framework Agreement Approval Official Recorded Minutes August 2019
Name of File: Construction Highways Services Framework Approval Official Recorded Minutes August 2019
Records held in Property Services Department, Henshaw House, Cheapside, Oldham. OL1 1NY
Officer Name: Peter Wood
Contact No: 0161 770 4028

20 **Appendices**

Appendix A – Current CHWS Framework Contractors

Appendix B – Lot Structure during Extension Year of Framework Agreement

Appendix C – BCIS Indices Results

Appendix D – Oldham Impact Assessment CHWS Framework Agreement