

Summary Sheet

Title

YORbuild2 Framework - Extension

Assistant Director Approving Submission of the Report

Paul Woodcock – Strategic Director, Regeneration and Environment.

Report Author

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Ward(s) Affected

All.

Executive Summary

The YORbuild2 South Area Contractors Framework Agreement commenced in February 2016 for an initial duration of four years and included an option to extend the agreement by a further two years. Approval is now sought to grant this two year extension and to commence the re-procurement of the framework during the extension period.

Recommendations

- a) It is recommended that the YORbuild2 South Area Contractors Framework Agreement is extended by two years to secure construction capacity, deliver efficiencies in construction works and allow a longer period of time for initial investment by contractors appointed to YORbuild2, the Council and other public sector users of the framework to be recovered.
- b) That the process of re-procuring the YORbuild2 framework during the extension period is approved to ensure the Council continues to gain the benefits of the use of such agreements and regional collaboration.

List of Appendices Included

N/A

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

N/A

Council Approval Required

No

Exempt from the Press and Public
No

Title: YORbuild2 Framework - Extension

1. Recommendations

- 1.1 It is recommended that the YORbuild2 South Area Contractors Framework Agreement is extended by two years to secure construction capacity, deliver efficiencies in construction works and allow a longer period of time for initial investment by contractors appointed to YORbuild2, the Council and other public sector users of the framework to be recovered.
- 1.2 That the process of re-procuring the YORbuild2 framework during the extension period is approved to ensure the Council continues to gain the benefits of the use of such agreements and regional collaboration.

2. Background

- 2.1 The YORbuild2 South Area Contractors Framework Agreement commenced in February 2016 (Cabinet Report, 8 January 2016 refers). It is part of the YORhub regional collaboration and to date the value of construction works commissioned through this framework for the Council is £28m. The overall value of construction works for all authorities including the Council commissioned through YORbuild2 to date is £211m.
- 2.2 YORbuild2 was a collaborative project on behalf of the region with four lead local authorities, namely East Riding of Yorkshire Council (the host/ overall lead authority), Rotherham Metropolitan Borough Council, Scarborough Borough Council and Leeds City Council. Although marketed as a single entity "YORbuild2", the project consists of four sub-regional framework agreements, North, East, South and West. Each region was procured individually by the partnering local authority to ensure that the diverse requirements across the region can be met by competent and performing Small and Medium Enterprises (SMEs) in addition to larger regional and national contractors. It is available to all public sector and third sector organisations in the region and some neighbouring authorities.
- 2.3 The YORbuild2 framework was set up in accordance with the Public Contracts Regulations 2006 (as the current regulations at that time). These regulations restrict frameworks to a four year duration unless there are exceptional circumstances. When the YORbuild2 framework was established, it was considered that exceptional circumstances did exist and the following wording was included within an advertisement for the framework placed in the Official Journal of the European Union, known as an OJEU notice:

"The framework has an option to extend for a further period of 2 years to allow the appointed contractors adequate time to recoup their significant initial investment in establishing processes and procedures that will deliver the improvements that the clients are seeking through

this framework. These include Economic Regeneration, Carbon and Waste Reduction, Training and Employment initiatives, training of their staff to new ways of working, BIM and New Models of Construction Procurement. In addition there will be significant investment required from clients in undertaking the selection and evaluation process, and in particular the training of their staff and consultants to new ways of working. The partnering and collaborative working objectives that will form part of this framework may only be capable of being realised over longer periods of time than 4 years, not least because a number of Local Authorities may only start using this framework when their existing arrangements expire.”

- 2.4 A further consideration over whether to extend the framework or not relates to the risk of challenge from an aggrieved organisation. It is difficult to see how a firm could challenge the decision to extend as provision for this was included within the original OJEU advert. Any aggrieved organisation had an opportunity to challenge the award decision during the standstill period before the framework was awarded. No formal challenges were lodged. We are not aware of any grounds that would enable an organisation to mount a challenge if an extension was awarded.
- 2.5 If the YORbuild2 framework is not extended then a procurement exercise will have to commence in the next few months. This ties up the resources of many SME construction firms at a time when many of them are struggling to provide prices for tendering exercises across the industry. The cost to a contractor of pre-qualifying and tendering for a framework is estimated to range from £10,000 - £40,000, based upon figures provided by YORbuild contractors as part of a previous market sounding exercise. Extending the framework would defer this expenditure and effort.

3. Options considered and recommended proposal

- 3.1 An appraisal of the options available relating to the proposed two year extension, including relevant considerations, is given in the table below.

Option	Appraisal and Considerations	Overall View
1) Terminate the framework after 4 years	<ul style="list-style-type: none"> Appointed Contractors and users don't recoup their investments. The Council would need to start gearing up to replace the framework at a time when two new frameworks are planned due to unexpected high levels of demand for major projects. To renew the YORbuild2 framework is estimated to cost £250,000 and would tie up procurement staff for a duration of 12 months. Momentum would be lost in delivering initiatives such as Employment and Skills. 	Not acceptable for the reasons stated.
2) Extend the framework by a further 2	<ul style="list-style-type: none"> Provision was included within the OJEU advert to extend the framework by 2 years therefore there is 	Preferred solution

years	<p>a low risk of challenge.</p> <ul style="list-style-type: none"> • Benefits of long term relationships are extended. • Contractors are performing well and relationships are good. • Cost of renewing the framework for the Council and local firms is deferred. • Contractors have further opportunity to recoup their Investments. • Provides a longer period to establish re-procurement fund renewal by YORhub. • This is the preference of the YORhub Board representing all of the lead authorities. 	
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3.2 It is recommended that the YORbuild2 South Area Contractors Framework Agreement is extended by two years to secure construction capacity, deliver efficiencies in construction works and allow a longer period of time for initial investment by contractors appointed to YORbuild2, the Council and other public sector users of the framework to be recovered.

3.3 That the process of re-procuring the YORbuild2 framework during the extension period is approved to ensure the Council continues to gain the benefits of the use of such agreements and regional collaboration.

4. Consultation

4.1 The YORhub Board approved the proposal to extend all four YORbuild2 frameworks in December 2018.

5. Timetable and Accountability for Implementing this Decision

5.1 The existing YORbuild2 Framework will expire in February 2020 unless the approval to take up the two year extension is granted.

6. Finance and Procurement Implications

6.1 The YORbuild2 Framework will continue to be used to generate competitive tenders for construction works, providing best value to the Council.

7. Legal Implications

7.1 Legal advice confirms that in principle a two year extension can be agreed. Regulation 19(10) of The Public Contract Regulations 2006 (as amended) restricts the duration of a framework to 4 years except in exceptional circumstances. This therefore permits frameworks to remain in place for more than 4 years. Indeed Government Guidance on Framework Agreements states that longer durations can be justified in order to ensure effective competition if four years would not be sufficient to provide a return on investment. Precedents in the form of

extensions granted to YORbuild, YORcivil and YORconsult have also been established.

8. Human Resource Implications

8.1 There are no HR implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

9.1 Children and Young People and Vulnerable Adults implications will be assessed on each framework call-off as part of the tendering process.

10. Equalities and Human Rights Implications

10.1 Equalities and Human Rights Implications will be assessed on each framework call-off as part of the tendering process.

11. Implications for Partners and Other Directorates

11.1 The framework will continue to be available to all public sector and third sector organisations in the region and some neighbouring authorities.

12. Risks and Mitigation

12.1 The contractual arrangements for individual commissions will be between the relevant contractor and council / public body. There would be no contractual risk to Rotherham MBC other than for its own projects.

13. Accountable Officer(s)

13.1 Mike Mullins – Principal Quantity Surveyor / Framework Manager, Asset Management.

13.2 Paul Smith – Head of Asset Management.

Approvals obtained on behalf of:-

	Named Officer	Date
Strategic Director of Finance & Customer Services	Jon Baggaley (Finance Manager)	20 th March 2019
Assistant Director of Legal Services	Bal Nahal (Service Manager)	30 th April 2019
Head of Procurement (if appropriate)	Karen Middlebrook (Head of Procurement)	12 th April 2019
Head of Human Resources (if appropriate)	John Crutchley (HR Business Partner)	20 th March 2019

Signed: 

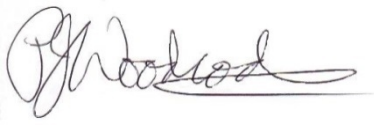
Paul Smith, Head of Asset Management

Date: 1st May 2019

Signed: 

Bronwen Knight, Acting Assistant Director, Planning, Regeneration and Transport

Date: 31st May 2019

Signed: 

Paul Woodcock, Strategic Director, Regeneration and Environment

Date: 17th June 2019