

**POLICY AND RESOURCES COMMITTEE****WEDNESDAY 15 JANUARY 2025**

<b>REPORT TITLE:</b>	<b>DELIVERY AND MANAGEMENT PARTNER (CONCESSION) &amp; CONSTRUCTION AND DEVELOPER FRAMEWORKS</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF FINANCE</b>

**REPORT SUMMARY**

This report sets out a proposal for a new procurement initiative which seeks to appoint a concessionaire under a concession contract. The appointed concessionaire will work with the Council as the contracting authority to design, market, and manage framework agreements for use by the Council and other contracting authorities. The framework agreements will cover:

1. Construction Works (with or without Lots), and
2. Developer Led Projects (with or without Lots)

The Council intends to appoint the concessionaire by the end of March 2025 and will commence immediately thereafter to design and set up both frameworks with anticipated award dates of Q2 2026.

The report supports the delivery of the Council Plan: Wirral Working Together 2023-27 specifically in terms of the Efficient, Effective and Accessible Council theme. The Capital Programme also contributes towards projects that support all five Council Plan delivery themes.

This matter is a key decision and affects all Wards within the Borough.

**RECOMMENDATIONS**

The Policy and Resources Committee is recommended to approve:

1. The commencement of a process to appoint a concessionaire who will work with the Council and specifically the Director of Finance reporting to the finance working group to design, market, and manage framework agreements as follows:
  - (a) Construction Works (with or without Lots), and
  - (b) Developer Led Projects (with or without Lots) as referred to in paragraph 1.1 of this report.

2. That the Director of Finance be requested to bring a further report to Members which sets out the results of evaluation of the bids for a concessionaire for the concession contract to deliver the frameworks referred to in recommendation 1
3. To note the further steps that will need to be undertaken post the decision to appoint the concessionaire which will include:
  - a. Commencement of the procurement processes to appoint contractor, developer and professional services suppliers to the frameworks, and
  - b. Evaluation submissions and make appointments further to the processes referred to at recommendation 2(b).
  - c. That the Director of Law and Corporate Services, in consultation with the Director of Finance, will need to be authorised to finalise and enter into the concession contract and the framework agreements for contractor, developer and professional services suppliers all of which will be reported to Members in due course for decision.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 A procurement exercise will allow the implementation of a new procurement initiative to appoint a concessionaire under the Concession Contracts Regulations 2016 (the “Concessionaire”) to work with the Council as the contracting authority to design, market and manage framework agreements for use by both the Council and other contracting authorities such as local authorities, police and fire authorities, universities, NHS Trusts etc.
- 1.2 The initiative is expected to be income generating based on a commercial model that will make the concession contract financially viable for both the concessionaire and the Council. The concessionaire will not receive any consideration or payment from the Council for any of the services to be delivered under the concession contract. The precise detail of the commercial arrangements will not be established until the concessionaire is appointed.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 Doing nothing would be an option. The Council’s capital programme and other contracting authorities would continue to utilise other 3<sup>rd</sup> party frameworks, and therefore the Council would not benefit from efficiency gains when awarding its own works projects, nor generate any monetary income to contribute towards its challenging savings targets.

### **3.0 BACKGROUND INFORMATION**

- 3.1 On 29<sup>th</sup> October 2024, the Council dispatched a Prior Information Notice to support its research and survey market interest in this procurement initiative – twelve (12) responses were received and with several organisations invited to discuss their response in more detail to help shape a delivery strategy for this project. The exercise concluded on 19<sup>th</sup> November 2024 and if the recommendations within this report are agreed, a concession notice will be dispatched to initiate a procurement process to appoint a concessionaire in full compliance with the Concession Contracts Regulations 2016.
- 3.2 Frameworks help public sector buyers to procure goods, services, and works from a list of pre-approved suppliers and can help save time and money by removing the need to run lengthy and expensive tender processes. A framework is an agreement between a contracting authority and a supplier and helps determine numerous conditions for contracts over a set period whilst streamlining the procurement process. This helps to ensure development projects are delivered on time and within budget whilst saving on resources. For a place on the framework agreement suppliers are evaluated on the basis of suitable qualification to provide the services under the framework agreement. The streamlined procurement process allows suppliers to focus on delivering quality bids whilst reducing significant bid costs and saving clients time and money that may be involved in repeating the pre-qualification process. As the construction industry is high risk, it is vital that suppliers hold the necessary accreditations, experience and compliance standards to work on public sector construction projects and by using a reliable framework, suppliers have been

vetted as part of the initial bidding process undertaken; and continuously throughout the framework term. Frameworks act as a vehicle for effective performance management with terms and conditions and key performance indicators agreed to protect clients and uphold high standards in project delivery.

- 3.3 This report proposes a construction works framework and whilst the design of such will be developed once the concessionaire is appointed, it will take the form of a multi lot regional structure with several value bands and will be designed to provide opportunities to Small and Medium Enterprises both locally and regionally.
- 3.4 This report proposes a developer led framework and whilst the design of such will be developed once the concessionaire is appointed, it will take the form of a multi lot national structure with several value bands split geographically across for example, property development via joint venture and development agreement and with development sectors such as residential; commercial buildings; transport infrastructure; education; healthcare; care homes and extra care buildings; and mixed-use schemes.
- 3.5 The framework agreements will provide significant value add through income-based activity and cost avoidance fees for the Council. A mechanism is to be agreed as a result of the concession tender process but envisaged to include a levy-based approach built into the framework agreements; levy becoming the main source of revenue for the appointed concessionaire with a percentage of that levy becoming the main source of income for the Council as a result of the agreed profit share agreement with the concessionaire.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 The initiative is expected to be income generating based on a commercial model that will make the concession contract financially viable for both the concessionaire and the Council. The concessionaire is to make all necessary commitments and investments; resources, financial or otherwise, to work in partnership with the Council to establish the frameworks. The concessionaire will not receive any consideration or payment from the Council for any of the services to be delivered under the concession contract. The precise detail of the commercial arrangements will not be established until the concessionaire is appointed.
- 4.2 The envisaged income estimates for the Council are set out in paragraph 4.4. They are based on example profit share percentages across a framework term of 4 years.
- 4.3 The Council will incur upfront costs for external legal support and any other expertise required to draft the specification, concession agreement, and the evaluation of bids.
- 4.4 Example income and cost avoidance projections have been included below and are based on current market operating models and information gathered during the pre-market engagement process.

## **Construction Works Framework**

Potential Throughput – £1.5 billion (4-years)

Potential Concession Revenue – £15 million (circa 1% of throughput)

Potential Council Income – £4.5 million (based on a profit share of 30%)

Potential Cost Avoidance – £2 million (assumed 1% framework levy on indicative £200m delivery programme). This is effectively the removal of framework fees as the Council will not be charged for using a framework they own.

The precise detail of the commercial arrangements including receipt of income via the profit share agreement will not be established until the concessionaire is appointed.

Example model:

Project A = £50M

Concession Revenue = 1% / £500K

Council Profit Share = 30% / £150K

Payment 1 to the Council = 15% / £75k – to be paid when project starts on site.

Payment 2 to the Council = 15% / £75K – to be paid on practical completion.

Start on site and practical completion dates are linked to each project delivery programme and therefore based on a 2-year programme, payment 2 will be received 2 years after payment 1.

## **Developer Framework**

Potential Throughput – £10 billion (4-years)

Potential Concession Revenue – £50 million (circa 0.50% of throughput)

Potential Council Income – £15 million (based on a profit share of 30%)

## **5.0 LEGAL IMPLICATIONS**

5.1 The concession agreement will be procured in a legally compliant manner in accordance with the Concession Contract Regulations 2016 and the Council's Contract Procedure Rules.

5.2 The framework agreements will be procured in a legally compliant manner in accordance with the Public Contract Regulations 2015 or Procurement Act 2023 and the Council's Contract Procedure Rules.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

6.1 The procurement and finance resource will be met from within existing departmental structures. There will be a requirement for legal advice to develop the procurement and contract documentation for both the concession and framework procurements, which will be sought externally due to the highly specialist nature.

## **7.0 RELEVANT RISKS**

- 7.1 The risk to the Council is that the proposed concession contract does not generate the income stream envisaged as the frameworks do not attract the external interest from other contracting authorities. There is the additional risk that the Council may suffer reputational damage if there are any elements to the framework agreements that are not lawful or there are legal challenges by suppliers. The Procurement Act 2023 differs from the Public Contracts Regulations 2015 and is untested. This will be managed by onboarding a delivery partner with relevant experience, resources, and capabilities to deliver the contract and will be managed through the procurement process. The Council will also be utilising an experienced team to deliver both the concession and framework procurements.
- 7.2 There is the risk that any costs to set up and deliver framework agreements are non-recoverable if they are not met by the income generated under the framework agreements. The concessionaire is to make all necessary commitments and investments; resources, financial or otherwise, to work in partnership with the Council to establish the frameworks. The concessionaire will not receive any consideration or payment from the Council for any of the services to be delivered under the concession contract.
- 7.2 There is potential risk to the Council if it requires intellectual property rights to the website and brand that the concessionaire establishes to manage and market the framework agreements for the Council and to continue letting the framework agreements after the concession agreement has ended if the appropriate contractual provisions for assignment are not dealt with in the concession agreement. The concession agreement will include provisions that deal with these issues.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 There is no direct external consultation required from this report.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 There are no direct equality implications from this report. Small and Medium Enterprises both locally and regionally will be engaged as part of preliminary market engagement prior to issue of the framework procurement documentation.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 The Council's social value policy will be a key feature in the procurement processes with key performance indicators built into both the concession contract and framework agreements.

## **11.0 COMMUNITY WEALTH IMPLICATIONS**

- 11.1 The Council's social value policy will be a key feature in the procurement processes with key performance indicators built into both the concession contract and framework agreements.

**REPORT AUTHOR:**

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**BACKGROUND PAPERS**

Councils Contract Procedure Rules.

**TERMS OF REFERENCE**

This report is being considered by the Policy & Resources Committee in accordance with Section (f) of its Terms of Reference, “responsibility for developing and monitoring the enabling corporate services”.

**SUBJECT HISTORY (last 3 years)**

Council Meeting	Date