

Meeting:	Cabinet
Date:	17 December 2009
Subject:	Harrow Corporate Major Works Contract
Key Decision:	Yes
Responsible Officer:	Brendon Hills, Corporate Director Community and Environment
Portfolio Holder:	Councillor Tony Ferrari, Portfolio Holder for Major Contracts and Property
Exempt:	No, except for appendix A which is exempt by virtue of paragraph 3, Part 1 of Schedule 12A of the Local Government Act 1972 (as amended) on the grounds that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).
Enclosures:	Appendix A –Tender Evaluation Data (Part II)

SECTION 1 – SUMMARY AND RECOMMENDATIONS

SUMMARY:

This report sets out the project management and evaluation processes undertaken to tender, design and construction major works for Harrow's Corporate properties, in line with current procurement legislation.

RECOMMENDATIONS:

Cabinet is recommended to:

Approve entering into a partnering framework contract with the Apollo Group, with a commencement date of 1/4/10, for the provision of major works, design and related services, within the Council's property asset portfolio.

REASON:

A major works partnering framework is currently in place between Harrow and Kier and was endorsed by Cabinet 19/4/07. This framework, which is separate to Kier's continuing repairs and maintenance contract due to end in 2012, has proved to be a successful delivery vehicle for major construction projects.

However, taking into account works already undertaken by Kier and those due to be completed, such as Whitmore High School and a number of Housing projects, it has been necessary to re-tender the framework for Corporate buildings in line with European procurement directives and the Public Contract Regulations 2006.

Cabinet has previously agreed to the principle of combining major construction works within a single contractor framework at its meetings 6/4/06 and 19/4/07. The tender process undertaken during 2009, resulting in the recommendation to appoint the Apollo Group, has followed the same project management methodology and made use of the same project partnering contract arrangements, in order to minimise the process, reduce procurement costs and maximise consistency, building on the Councils growing expertise in the management and development of partnerships.

SECTION 2 – REPORT

Harrow's vision of becoming one of the best London Councils by 2012 is supported by its continued use of best practise procurement principles and partnership working. This approach has the significant benefit of improved risk management associated with the Council's design and construction costs, related to its capital programme and resultant building life cycle financial commitments. This is achieved through the long-term one partner delivery model, allowing early engagement of designers, constructors and clients all focussed on the delivery of overall value for money. Major partnerships in this area have and will continue to allow property based flagship actions to be delivered efficiently and effectively.

2.1.1 Options Consideration

The options considered prior to the commencement of the previous framework with Kier included analysis of the benefits of a single source supplier and reductions in Harrow's major works management costs. This rationale and potential to reduce the time resource and interface costs, associated with multi contractor appointments, has not changed. The partnership with Kier in this area has been successful, with numerous high quality buildings completed and handed back to the Council over the last few years.

There is no way of accurately predicting the level of work likely to be placed in the new framework with the Apollo Group, in view of the current economic climate. However, the benefits of re-tendering in a significantly changed market were considered to be attractive, in order to continue and improve on both the internal and external cost savings to the capital programme, generated through well developed partnerships with high market interest.

There is no work throughput guarantee to the Apollo Group within the contract and it is considered likely at present, that projects placed with our new partner, especially in the early years, will be significantly less than those placed through the previous framework.

2.1.2 Background

Prior to the current framework contractual arrangements in place, it was accepted practice within Harrow to tender each individual major construction project. The cost to develop, procure and manage design and works programmes, represented a significant charge to capital budgets. There were regularly over 100 major construction projects tendered within an average annual period and numerous design consultants engaged at any one time. Contract disputes were common and resource intensive.

The repetitive multi contractor/consultant approach to major construction works was significantly ineffective and represented poor value for money.

The framework partnership arrangement rationalised this approach, dramatically reducing the level and number of staff interfaces/overlaps with contractors, together with the risks associated with the constant introduction of new companies.

2.1.3 Brief History

CSB received a report 25/2/09, detailing a recommendation to undertake the major works tendering exercise, which included, in line with best practice, a project initiation document detailing the proposed project scope and procurement options. It was agreed at the meeting to commence the OJEU procurement process and for a project board and team, to be set up.

It was noted that the key benefits of framework partnership include :-

- The development and retention of skilled and experienced multi-disciplinary teams.
- An opportunity to increase the focus on sustainability and whole life costing.
- Early engagement between constructor and designer, reducing project variations.
- No costly and resource intensive adversarial contracts.
- Improved financial predictability and cost/risk management of capital projects.
- Reductions in contractor contract claims process management.
- A reduction of duplication and professional overlay between organisations.
- Clearer management and influence of the construction supply chain.

2.1.4 Project Management

The approach to project management was developed in line with the Office of Government Commerce recommended “Gateway” system of project delivery. A project board was set up to provide overall project direction, together with final accountability for the implementation of the project. The Board was led by the Head of Property and Infrastructure, and included the Portfolio Holder for Property and Major Projects, together with representatives from Legal, Finance, Property, Procurement, Children’s Services, and Internal Audit. Specialist support was provided as required from Trowers and Hamlins solicitors and PWC when necessary.

A project team was developed from board nominations and was responsible for managing the project on a day-to-day basis. This involved the creation of specialist sub groups covering risk, document drafting and tender evaluation etc.

All project board and team members were required to sign confidentiality agreements designed to ensure separation from current contracts and legal services undertook staff training sessions on EU procurement procedures. The team maintained a comprehensive and up to date risk register throughout the project, which was fully considered and evaluated during the procurement and award stage.

2.1.5 Customer and Stakeholder Involvement

The involvement and consultation with internal and external customers and stakeholders in the evaluation process, was essential to ensure the chosen contractor demonstrated a clear understanding of the need to improve the customer experience from property related work. The need to deliver a modern, effective and cost efficient service, in line with customer’s expectations was clearly defined.

The evaluation procedures were therefore structured to enhance the involvement and relationship between the Council and its customer base. Representatives of school governors and head teachers, together with client budget holders for all areas were included in the process.

Advanced briefings were provided by the corporate procurement representative, to ensure meaningful involvement was undertaken within an accountable framework, evenly applied to all bids under consideration. The objective was to allow future service clients and customers to influence the result, gaining their confidence that a service provided by a selected bidder would have been professionally assessed and capable of delivering a quality service.

2.1.6 Procurement Methodology

A contract of this size and duration must comply with EU procurement directives and in line with the project plan, an advertisement was placed in the Official Journal of the European Union. This attracted 79 expressions of interest resulting in 25 completed pre-qualification questionnaires.

Financial reviews were undertaken on companies prior to confirming them on a shortlist and references sought. Short-listing criteria cited in the “Pre Qualification Questionnaire” was used by the evaluation team to deliver a final short list of 5 bidders. At a bidder’s briefing held 29/7/09, where prospective bidders were requested to confirm their interest, tender documents were issued to them with a return date of 11/9/09.

All 5 short-listed contractor tenders were returned and found to be fully compliant and capable of being formally evaluated.

2.1.7 Project Team Evaluation

Tenderers were advised in the contract documentation of the evaluation process. The matrix used by the evaluation team and agreed by the project board, was decided on the basis of:-

- 60% Cost evaluation.
- 15% Quality.
- 15% Customer and client confidence through site reference visits to other client Authorities.
- 5% Customer and client confidence through contractor presentations.
- 5% Educational added value, including provision of apprenticeships etc.

The contractor presentations were arranged in the form of a “bidder’s challenge session”, held 15/10/09 and were an opportunity for a wide-ranging staff and member involvement in the evaluation process.

More detailed information relating to the evaluation process, is shown in appendix A (Pt 2) and the overall evaluation Matrix is shown below. It can be seen that although the scores for the highest four companies are close, reflecting the quality of the submissions and additionally, a recognition that the construction market is now used to and skilled at responding to partnering contracts.

It also demonstrates the market's keenness to secure a single party agreement and this point was endorsed by all bidders in the tender process. The result is that the Council's single point and fully open book approach, has secured a vigorous and competitive market response.

Following a thorough tender evaluation, the view of the project team was that the Apollo Group be awarded the contract and this was further endorsed by the project board.

<u>Contractor Organisation</u>	<u>Score</u>	<u>Ranking</u>
Apollo Group	85.6	1
Morgan Ashurst	83.4	2=
Neilcott	83.4	2=
Wates	83.3	4
Kier	72.7	5

2.1.8 Tender Validation

In addition to the formal tender evaluation process undertaken by the project team and agreed by the project board, including the portfolio holder, Harrow's Internal Audit service were engaged throughout the process and have made the following statement:-

Internal Audit has undertaken a review of the contract evaluation process as part of the HCMWP project. The review ran concurrent with the evaluation process to enable proactive input from the Auditor and covered the evaluation of cost, assessment of the quality section including the impact on the Education agenda, review of the PWC report and findings, customer/client confidence, and site references. The process was assessed for consistency, transparency, accuracy, and sound methods of recording evaluations and decisions. As a result, in the opinion of Internal Audit, the overall process was well managed, transparent and robust.

In addition, validation was undertaken on the tender submissions by all of the short-listed companies, during site reference visits to public sector clients at Milton Keynes Council, Reading Borough Council together with the London Boroughs of Bexley, Hounslow and Ealing. The information obtained from senior client staff concerning their contractual experiences with the tenderers supported the overall process.

A further validation check was carried out by Price Waterhouse Cooper on the cost evaluation undertaken by the project team to ensure accuracy and transparency. The conclusion by PWC was that tender submissions were of an acceptable standard and the process was sound, reflecting the evaluation criteria detailed within the Invitation to Tender.

2.1.9 Contractual Arrangements

The Framework agreement will cover all major works to Corporate Council buildings, including schools. These works will be called off on a project-by-project basis from the Framework agreement and will have separate contracts for each project or batch of projects governed by a standard form of Project Partnering Contract (PPC), issued

by the Association of Consulting Architects. The duration of the agreement, in line with EU directives and the Public Contract Regulations, is 4 years, although in practice works placed in year 4 can be delivered in a subsequent year.

The Council will also commission the Apollo Group to carry out design and other property professional tasks including engineering and quantity surveying services, on a pre-tendered basis. It is expected that this service will be used widely, but there will be some schemes where more specialist design expertise is desirable and therefore commissioned separately.

2.1.10 Future Contract Management

Project delivery will be developed closely with the contractor's professional staff and it is likely that the Apollo Group will be asked to undertake significant design and related services as well as construction delivery. The company's profit and overhead costs will already be known via the competitive tendering process and built into prices. The Council will then be provided with a full project cost build-up, having jointly agreed the budget and required work scope. The "Agreed Maximum Price" for the project (a defined PPC 2005 contract term), will be jointly compiled with all labour, material and sub-contractor prices declared. These will be based on the cost models contained in the tender documents, ensuring a competitive basis for pricing.

The Council will undertake independent benchmarking and cost appraisals, in order to ensure ongoing value for money and a parallel EU procurement process is currently in place to appoint specialist independent cost consultants. This approach will enable the Council to retain separation between project cost proposals put forward by the contractor and acceptance of their appropriateness. Ultimately, the Council will still have the option for individual project procurement, outside the partnership, should that be considered necessary.

The principle of an agreed maximum price derived from joint value engineering, is considered a far more accurate assessment of final cost than an often unrealistic and speculative tender. It should be noted that a final project cost and the traditionally tendered sum are rarely the same, with adversarial contracts often encouraging low tenders that disguise the potential level of extra charges.

2.1.11 Equalities Issues

This is an area that partnership contracts can deliver value added benefits. The award of a significant workload over a sustained period of time, will enable a higher level of commitment to be developed with the Apollo group.

The company has undertaken to provide local apprenticeships targeting "hard-to-reach" groups and young people who have not been successful in gaining employment. Apollo have stated that they will work with local schools, and the skills centre in order to offer shadowing opportunities in the construction field. In addition they will work with the Brent and Harrow Business service to offer workplaces.

A positive impact is therefore expected in training, widening the scope of construction related employment, as well as adopting innovative design and better delivery techniques to enhance the quality of life of all Harrow people.

2.2 Financial Implications

The re-tendering of this major works contract within a construction industry market affected by the current economic downturn, will accrue financial benefits in reduced costs to the Council's capital programme and either be shown through the ability to reduce expenditure, or increase the level of work undertaken for the same cost.

Within the procurement process and in line with Corporate Finance regulations, appropriate financial checks were undertaken on the turnover of the applicants, in order to confirm the financial viability and capacity of the organisation, to deal with the anticipated through put. These included turnover for the last three years, liquidity ratio and a credit score check.

There is no identified necessity for virement of budgets, nor adverse implications to the Councils Medium Term Budget Strategy as a consequence of this report. Procurement of the contract has been funded from pre approved 2009 / 2010 Capital Budgets.

2.3 Performance Issues

Measurement of the contractor's performance will be a significant part of the contract management governance structure, with a specific performance framework agreed during the mobilisation process. The Project Partnering forms of Agreement used for major works projects, make full provision for performance measurement. The data obtained through this arrangement will provide a transparent methodology of tracking performance and the suite of Key Performance Indicators, published as construction best practice measurement, by the Centre for Construction Innovation, will be introduced to form a challenging performance regime. Benchmarking of results against similar organisations and, where relevant, the private sector, will be undertaken through comparison with the CCI benchmarking data base and used to support decisions on the level of work throughput.

Examples for individual projects will include :-

- Design time
- Construction milestones
- Construction cost
- Level of customer and user satisfaction
- Defects at project handover
- Health and safety reportable incidents

The data will be integrated within appropriate Harrow management reports and strategic plans to ensure synergy exists between Corporate priorities and improvement planning of services.

Where appropriate, the partner will contribute towards the following areas of Council performance information submissions, for onward presentation to bodies such as the Audit Commission.

- Use of Resources – Asset Management.

- Use of Resources – Sustainability.
- Use of Resources – Partnership Working.
- National Indicators - NI185,186

2.4 Environmental Issues

In line with the Council's strategy to reduce Carbon emissions, procurement of the new Framework has ensured that a robust interface exists between design, construction and the policy itself. As part of the procurement process, all contractors' tender submissions contained areas of environmental assessment, validated within the procurement process. It is expected that the Apollo Group will put in place a dedicated In-House Environmental Advisor, with a specific manager responsible for the collection and evaluation of energy and waste data.

Major works projects let under this framework agreement will give consideration to the following environmental areas:-

Biodiversity, flora and fauna

- Pre construction site assessments will be undertaken to ensure appropriate consideration is given to all site environmental factors.

Noise and vibration impact

- Construction programme to reflect hours of working and include resident consultation where out of hours working is essential.
- Consider type of foundation – piling or traditional strip foundations.

Water & soil

- Attenuation – rainwater interceptors to reduce risk of flooding / overloading surface water drainage systems.
- Contaminated soil – geographical studies undertaken in advance of construction.
- Grey water harvesting (rainwater collection) for use in flushing toilets and urinals to reduce water consumption from potable / non-potable water services.

Air quality and pollution.

- Low carbon emission plant – condensing boilers
- Use of natural ventilation system in the building design
- Intelligent building management control systems
- Reduce air conditioning installations by other comfort cooling systems or building design.

Traffic and transport.

- Integration of the Green Travel Plan within Planning considerations

- Planning considerations in relation to car parking spaces – promote use of public transportation
- Provision of cycle storage / hygiene facilities to promote people cycling to their place of work / education.
- Recording distances travelled in the supply chain seeking to minimise pollution and carbon emissions by stimulating use of local suppliers and storage

Waste.

- Waste management plans in place prior to construction – reduction of waste materials to Landfill sites.
- Selection of materials that in the future can be recycled.
- Management of disposal of hazardous waste (Asbestos) to Landfill following building refurbishment or demolition.
- Longevity of materials to avoid premature failure / replacement. Design considerations and promoting a Life Cycle Costing approach.

Energy.

- Thermal efficiency – working towards BREEAM excellent rated buildings.
- Renewable energy – Ground Heat Recovery, Combined Heat and Power, Photovoltaic.
- Building management controls, zoning of heating systems to avoid heating unoccupied areas of the building, controls to operate artificial lighting installations.

Procurement.

- Sustainability, use of timber from sustainable sources.
- Optimum use of the partnering contractors Supply Chain to promote positive affect upon the local economy and the environment.

2.5 Risk Management Implications

An EU compliant procurement process enables the Council to enter into the Framework agreement and Legal Services have approved the forms of contract to be used, confirming that these give adequate legal protection, setting out the Council's and the Contractor's rights and obligations and providing a clear allocation of risk.

During the course of the procurement process, a full risk register was agreed by the project team and overseen by the project board. An additional partnership specific risk register, will now be developed during the contract mobilisation phase, in order to proactively manage risks in accordance with Harrow's Risk and Audit guidelines. This document will feed into the contract governance process at a strategic level and support the ongoing delivery of the contract. It is proposed that the partnership risk register input on an exception basis to the Directorate Risk Register and form inputs into the Corporate Improvement plan as required.

During the course of the procurement process, the Office of Fair Trading (OFT) confirmed the issue of fines against 103 companies involved in anti-competitive tender bids between 2000 and 2006. These included three of the five short-listed companies and the Apollo Group, along with Morgan Ashurst and Kier received fines. The Council was aware of the investigation and the OFT and the Office of Government Commerce (OGC) issued further guidance when announcing the fines, cautioning procurers against excluding the infringing firms from future tenders.

Following consideration, it was concluded that the council should act in accordance with the OFT and OGC advice (and legal advice, including advice from Trowers and Hamlins) not to automatically exclude fined companies from tendering, as those companies were unlikely to have been the only parties involved in the anti-competitive processes, with evidence uncovered on over 1000 companies. Also significant legal risks were identified in excluding tenderers from further participation in the procurement process on the basis of the fines. As detailed in section 2.1.10, the Council will ensure cost transparency and value on Harrow contracts, through the formal use of separately procured, independent cost consultants.

In addition however and in line with accepted best practice, the contract documents included the requirement for companies to certify that they had not taken part in any collusive activities during the preparation and submission of their tenders and the Council has reserved the right in the contract documents to terminate the contract should such activities be discovered. This fully accords with legal advice received from Legal Services and Trowers and Hamlins.

Apollo have advised that they intend to contest both the allegation and the fine and have presented a full statement to the Council regarding internal tendering governance which is considered robust.

Section 3 - Statutory Officer Clearance

Name: Narinderpal Heer	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 18/11/09		
Name: Stephen Dorrian	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 18/11/09		

Section 4 – Performance Officer Clearance

Name: Liz Defries	<input checked="" type="checkbox"/>	on behalf of the Divisional Director Partnership, Development and Performance
Date: 18/11/09		

Section 5 – Environmental Impact Officer Clearance

Name: Andrew Baker



on behalf of the
Divisional Director
(Environmental Services)

Date: 17/11/09

Section 6 - Contact Details and Background Papers

Contact: Eddie Collier, Head of Property and Infrastructure, 0208 416 8675

Background Papers:

- Cabinet Report 6/4/06 : Harrow's Integrated Property Services Partnership
- Cabinet Report 19/4/07 : Harrow's Integrated Property Services Partnership