

MEETING:	AUDIT AND CORPORATE GOVERNANCE COMMITTEE
DATE:	29 JANUARY 2010
TITLE OF REPORT:	TENDERING OF THE CONTRACT TO BUILD THE NEW HEREFORD LIVESTOCK MARKET
DIRECTOR OF RESOURCES	DAVID POWELL

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To inform the Audit and Governance committee of the process used during the procurement of the contract to construct the New Livestock Market.

Key Decision

This is not a Key Decision.

Recommendation(s)

THAT:

- (a) **The committee comments on the report**

Key Points Summary

- The Livestock Market procurement process was primarily driven by the requirement to keep the site build within the quoted cost.
- There was also a secondary requirement to keep the time to procure as short as possible.
- The most timely and cost effective route to procure a contractor to develop the scheme was to make use of an existing local government framework agreement.
- At the time of the procurement process the SCAPE framework was identified as being the only local government framework that could support the potential value of the works.

Further information on the subject of this report is available from
David Powell, Director of Resources (01432) 383519

Alternative Options

- 1 Alternative options were considered and are detailed in Appendix 1.

Reasons for Recommendations

- 2 This report has been drawn up in response to a requirement from the Audit and Corporate Governance Committee that: "a report is submitted to the next meeting detailing the tendering for the cattle market contract"

Introduction and Background

- 3 A new livestock market enables the existing livestock market to move from its current dilapidated seven acre city centre site in Hereford. A new livestock market will provide the county's farming industry with a modern, well-designed facility which will support the rural economy. A consequence of this will be to release prime development land for the city's new retail and leisure quarter. A project board and team are currently directing the project.
- 4 The justification, legal position and site option appraisal for the relocation of the livestock market was reported to Cabinet on the 21st December 2006 when Cabinet agreed the site and, in principal, the relocation of the Livestock Market
- 5 A further report was submitted to Cabinet on 24th January 2008 and it was resolved that agreement be given to complete the purchase of the preferred site. It was also agreed that amendments to the restrictive covenants on the site should be taken forward and that further work be undertaken on funding and procurement of the livestock market and seeking planning permission for its construction.
- 6 A further report was submitted to Cabinet on 1st October 2009 and it was resolved that the allocation of funding for the construction of a new livestock market and associated transportation improvements be approved and that delegated authority to the Director of Regeneration to proceed with the procurement and appointment of a contractor to develop the new livestock market be approved.

Key Considerations

- 7 The most timely and cost effective route to procure a contractor to develop the scheme is to make use of an existing local government framework agreement. The SCAPE framework agreement has been used to scope the costs of construction. An outline of the SCAPE framework is given in Appendix 1. The main benefit of this scheme is the guarantee of a capped construction cost. Preliminary negotiations with SCAPE, in conjunction with the Livestock Market Auctioneers have produced a saving in the order of £1,000,000 over the original design. Flexibilities within the framework have meant that we are examining further possible savings. Wilmott Dixon Construction Ltd are the current preferred contractor that will deliver the scheme within the framework.

Community Impact

- 8 The proposals to build a new Livestock Market are consistent with the Community Strategy and its commitment to support economic development and enterprise in the county by investing in key infrastructure to support the local economy. The market has been developed in consultation with HMA and the National Farmers Union who are the key users of the development. There has been significant community consultation over a number of years with regard to the selection of the site and the proposals to relocate the market. The provision of a

new livestock market will ensure ongoing continuity of local supply in the local food chain.

- 9 Wilmott Dixon Construction Ltd have indicated that they have an approved list of Herefordshire based contractors who have been appointed based on a number of criteria including health and safety, quality, management and financial stability. Should Wilmott Dixon Construction Ltd be confirmed as the contractor they have indicated they will ensure that local companies are given the opportunity to tender for a range of work which could include but not limited to Concrete Production, Steelwork and Block/Brickwork. Wilmott Dixon have also indicated that both in terms of their direct needs and sub-contractor requirements they would be looking to recruit local labour where possible.

Financial Implications

- 10 The cost of developing the site (building and infrastructure) and hence the total value of the contract is currently estimated at £7.1million.
- 11 As part of the original Cabinet decision and as a condition of the application it has been agreed that a number of traffic improvements and transport schemes on the surrounding road network be added to the work required to develop the site. These are likely to cost in the order of £530,000. The final figure will be confirmed subject to a separate tender process.
- 12 A total of £7.7m has been identified for allocation to the project from capital receipts reserves. It may be possible to drive further savings from the capital costs through value engineering with the contractor, however if this is not possible it may be necessary to make a further bid to the capital programme particularly for the required transport improvements
- 13 Work will continue with the contractor throughout the term of the contract to drive down costs further. The appointment of independent assessors to confirm value for money is also being explored.

Legal Implications

- 14 The legal position in respect of the council's responsibility to provide a new Livestock Market is set out in the Cabinet report of 21st December 2006. This includes the provisions of the historic charters, case law and the Hereford Markets Act 2003. The council also has legal obligations in respect of its lease arrangements with the Hereford Market Auctioneers.
- 15 The procurement process for the construction contract was carried out by the Council's strategic procurement officer with the full support of the Council's legal services. Due process was followed and Council's standing orders with regards to procurement were adhered to. A Contract Approval Request dated 18th September 2008 is included in Appendix 2.

Risk Management

- 16 The primary risk associated with the placing of any large contract is that of cost overrun. The use of the SCAPE framework agreement will mitigate the risk of cost overruns as will the introduction of some budget for contingency as per industry standards.

Appendices

- 18 Appendix 1 – The New Livestock Market Procurement Process
Appendix 2 – Contract Approval Request

Background Papers

19 Cabinet Report - 1st October 2009, Item 1 on the agenda

The New Livestock Market Procurement Process

The Livestock Market procurement process was driven by the requirement to keep the site build within the quoted cost. There was also a secondary requirement to keep the time to procure as short as possible.

The initial decision was with regard to whether a “design and build” or straightforward “build” contract should be used.

The appraisal of this was carried out by the council’s strategic procurement manager in December 2007. (Results below)

PROCUREMENT ROUTE OPTIONS

DESIGN AND BUILD

An arrangement where one contracting organisation takes sole responsibility, normally on a lump sum fixed price basis, for the bespoke design and construction of a client’s project.

ADVANTAGES:	<ul style="list-style-type: none">❑ Complete service from a single source – one point of responsibility.❑ Easier to integrate the design and construction components resulting in better time and cost performance.❑ Fewer defects due to closer working relationship.❑ Strict adherence to agreed programmes and budgets.❑ Less administrative work for the client (post contract award).❑ Full understanding of design and client requirements.
POINTS TO WATCH:	<ul style="list-style-type: none">❑ Changes to requirements can be very expensive and destroy price certainty.❑ Output specification must be very clear to prevent a reduction in the finished quality of the facility.
RISK:	<ul style="list-style-type: none">❑ Risk of design not working is passed to the supplier.
COST MANAGEMENT:	<ul style="list-style-type: none">❑ Cost certainty with fixed lump sum payment.❑ R.I.C.S. research states 20% cost reduction achievable throughout project.
TIMESCALE CONSIDERATIONS:	<ul style="list-style-type: none">❑ Lost time from re-starting procurement process (PQQ stage and OJEU notice issue = 37 days).❑ End to end procurement time period will be 5 calendar months est.

BUILD ONLY

ADVANTAGES:	<ul style="list-style-type: none"> ❑ Easier to assess and evaluate the tender responses as all based on the same design
POINTS TO WATCH:	<ul style="list-style-type: none"> ❑ Lack of understanding of the design process. ❑ Poor planning of design (budget and time). ❑ Conflict of perception of design between contractors and designers. ❑ Uncertainty over cost and build time.
RISK:	<ul style="list-style-type: none"> ❑ Risk of design not working remains with the Council.
COST MANAGEMENT:	<ul style="list-style-type: none"> ❑ Uncertainty over final build cost. ❑ Cost may be driven down but possibly reducing the quality of the facility. ❑ May not be able to reduce costs without significantly changing the design plans.
TIMESCALE CONSIDERATIONS:	<ul style="list-style-type: none"> ❑ PQQs ready to evaluate then further 3.5 calendar months to contract award.

With the approval of the Council's Property Services department the decision was taken to go down the "Design and build" route in January 2008.

At this time the PB looked at using a framework contract as a means of ensuring a rapid "design and build" contractor engagement with a capped cost.

Comparitive Key Issues/Advantages –

Pre-Existing Framework Versus Traditional New Tender Process :

Existing Framework	New Process
<p>Much quicker to establish, simply sign up to use the Framework agreement. Deadlines re vacating the old site make this a vital Issue. Also note it saves Officers a significant amount of time.</p>	<p>Will take three months or more longer to award a Contract from 'scratch' (including the option to set up a new, specific, Framework Agreement).</p> <p>Complex tenders can take many months to conclude.</p>
<p>Opportunity (as in this case) to select a Framework and Supplier set up by Local Authorities and with experience of working with LA's.</p>	<p>In a new Tender Process it would not be allowed to exclude bidders that do not have Public sector experience which adds risk in the suitability of suppliers coming forward .</p>
<p>Opportunity (as in this case) to select ; a). open book arrangement, and</p>	<p>Both would have to be negotiated/offered by winning bidder and therefore not guaranteed.</p>

<p>Opportunity (as in this case) to select ;</p> <p>a). open book arrangement, and b). a capped cost,</p> <p>thus increasing budgetary control and the ability to achieve best value.</p>	<p>Both would have to be negotiated/offered by winning bidder and therefore not guaranteed.</p>
<p>Early engagement is possible with the Supplier (as soon as signing up to use the Framework), Thus enabling advice to be sought on ;</p> <p>a) The Programme; b) Costings; c) Specific project details,</p> <p>immediately.</p>	<p>Cannot start on this until after Contract award which would be several months later (see above).</p>
<p>Selecting a suitable Framework offers the chance to include work on Flood Alleviation and seek cost efficiencies on both projects.</p>	<p>Setting up a new Contract that allows this opportunity would take longer (as above), and is not a guaranteed outcome. May require each Project to be separate processes and Contracts.</p> <p>The key benefit of a clean start is, it offers the chance to set up a highly-tailored solution, but takes longer, is not guaranteed re timescales, and quality of outcome, and is only an advantage if a suitable Framework is not already available.</p>

After concluding that a framework contract would be best suited to the needs of the project the SCAPE framework was proposed by the council's property services department as a suitable partner.

The council's strategic procurement and legal departments examined the SCAPE agreement and process. The following assessment was made:

Scape Construction Framework Agreement

What is it?

Scape is a Local Authority controlled company offering a framework agreement for design, build, consultancy for bespoke projects as well as "system build" technology.

The framework supplier is Wilmott Dixon, who have local sites at Birmingham, Bristol and Cardiff.

Flexibilities within the framework

- Ability to conduct pre-build dialogue and use Wilmott Dixon in a consultative capacity to discuss aspects of the project.
- Customer nominated design team or contractor nominated design team.

Legal and procurement considerations

- The framework has been through an “OJEU” tender satisfying requirements of EU Procurement Directives.
- Accessible by any UK public sector organisation.
- Open book costing ensuring VfM can be demonstrated.
- All sub-contract work subject to competitive tendering allowing local suppliers to bid for aspects of the project.

Principle features of the framework

- Cost control and ordering procedures.
- Engaging the client in the process.
- Simple process to follow.
- Risk management.
- Open book and transparent.
- Performance monitoring procedures.

Target costs

- Savings up to 100% of target cost – shared 50:50.
- 100-105% target cost – client pays.
- Over 105% target cost – contractor pays.

Key benefits of framework

- Reduced procurement timescales.
- A framework developed by Local Authorities understanding the needs of Local Authority projects.
- Cost certainty and cost management.
- Value for money
 - Use of open book accounting providing thorough audit trail
 - Works packages subject to competitive tendering
- Buildings which fit the client’s needs.
- Pre-build discussions allowed.
- Commitment to sustainable development.

In an update to Community Services Scrutiny committee on 18/04/08 Members were advised that work had started with the SCAPE framework organisation on driving down the cost of constructing the new livestock market.

Informal meetings between officers and lead councillors took place in order to guide officers in taking preliminary steps. It was agreed that the framework contract initial stage be commenced with SCAPE for Willmot Dixon to provide an estimate of the works and other pre-construction services. A contract for these initial stage services was entered into on 4th November 2008.

The result of this initial stage is a capped quote for £7.1m.

APPENDIX 2 – CONTRACT APPROVAL REQUEST

NEW LIVESTOCK MARKET

Contract Approval Request

FROM : **GEOFF HUGHES**, Director of Regeneration – H11

TO : **ALAN McLAUGHLIN**, Assistant Chief Executive – Legal and Democratic Services – H11

DATE : 18th September 2008

Purpose

Following consultation with Officers and necessary Cabinet Approval and in accordance with section 7 of Appendix 5 of the Council's standing orders, this memo authorises the Assistant Chief Executive – Legal and Democratic to formally execute an access agreement with the SCAPE framework organisation and place a Project Order authorising the initial costing and feasibility activity for the new Livestock Market.

Background Information

The council followed guidance from its Head of Property Services and Strategic Procurement Manager and identified the SCAPE local government framework as being able to offer the range of construction services required for the Livestock Market Project.

The terms of the framework agreement also guarantee a capped cost for any project orders placed within it.

To date, preliminary negotiations with the SCAPE framework organisation have been overseen by the Council's Legal and Strategic Procurement services and have been carried out in accordance with Council's contract procedure rules extant at the time.

Authorisation

I would be obliged if the Assistant Chief Executive – Legal and Democratic could arrange for the signature of the attached framework access agreement and initial stage Project Order with the SCAPE framework organization (in duplicate).

GEOFF HUGHES

Director of Regeneration