

## **APPENDIX 3 - Dynamic Purchasing System (DPS) V Frameworks**

### **For Highways & Construction Projects**

#### **1.0 Introduction**

- 1.1 The Public Contracts Regulations 2015 (34) amended the rules surrounding DPS making this procurement method easier to use with less risk of a challenge. The rules for frameworks have not changed.
- 1.2 DPS is a procedure available for contracts for works, services and goods, 'commonly available on the market', largely off the shelf that can be closely specified in advance.
- 1.3 1.2 BCC has identified the use of DPS contracts as a key means of streamlining how goods/services are purchased as well as reducing costs. Benchmarking against existing DPS contracts across local authorities indicates the savings are usually in the range of 4% to 8%. Although such savings would need to off-set against any general price rise in the external market. BCC has engaged employed Ernst & Young (EY) to (in partnership with Corporate Procurement) assess areas of spend across the council to determine where DPS contracts would add value and where savings can be achieved with no loss of services through the use of DPS.
- 1.4 This report considers the possible practical application of introducing a new DPS compared to setting up a new framework.

#### **2.0 DPS**

- 2.1 The Public Contracts Regulations 2015 (34) governs how a DPS is to be established and function through its lifetime.
- 2.2 In a more volatile economy some supplier stop trading and new companies are being launched at record-breaking levels. This can be a problem with existing frameworks. A DPS, in principle, can reduce this risk by allowing new suppliers to join during its lifetime.
- 2.2 The basic concept of a DPS is:-
  - BCC can set any period for a DPS. This can be more than four years.
  - New suppliers can apply to join a DPS at any time during its lifetime.
  - Easier access for SME's for public contracts and encourages new suppliers to enter the market.
  - Allows the market to provide competitive prices for each call-off contract.
  - BCC is unable to restrict the number of suppliers to each category within a DPS, subject to the supplier passing technical, financial, quality, suitability assessment stage.
  - All call for competition has to finalise their evaluation within 10 working days after the tender closing date. This process may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.
  - BCC has to allow the market to adjust their prices for each competition.

- Block contracts guarantee a certain volume of business with a provider, over a set period of time to an agreed written specification, at a fixed price. These can be set up through a DPS reducing the burden of developing detailed quality, financial etc. standards for each block contract.

### **3.0 Framework**

3.1 The Public Contracts Regulations 2015 (33) governs how a framework is to be set up and how it should work through its lifetime.

3.2 The basic concept of a Framework is:-

- BCC can set any period up to a maximum of four years unless there is justification for a longer period which would not apply to either highway or construction projects.
- Once the suppliers have been placed onto a framework no new suppliers can be added during the lifetime of the framework.
- Mini competition allows suppliers to provide competitive prices for each call-off project.
- BCC can set the suppliers rates / prices for any length of time as stated within the framework agreement.
- BCC can limit the number of suppliers on any 'Lot' except 2 suppliers without justification.
- No time limit to evaluate mini-competition except whatever the framework conditions state.

### **4.0 Practical Application**

#### **4.1 Existing Framework**

Before BCC project team consider setting up any new frameworks or DPS's, the project team should consider using existing internal or external frameworks as this reduce the risk of a procurement challenge and the project team's procurement costs.

#### **4.2 Computer Systems Compatibility**

When deciding whether to set up a framework or a DPS the project team needs to consider how any call-off contract or call for competition will be managed through Pro-Contract and any links to other computer systems which will be used to order such contracts.

Although Housing Delivery will use Pro-Contract to run a call for competition within future DPS projects the actual contract order, on completion of the call for competition, will be issued through Civica computer system. Therefore, any decision whether to set up a framework or a DPS needs to consider the officers time required in duplicating the Pro-Contract successful tenderers details onto Civica to allow for a contract order to be raised. Unless 'Block Contracts' are used Housing Delivery would need to set up a new contract on Civica for every call for competition project.

Highways currently use a set of priced rates from their standalone computer system to raise individual planned maintenance contracts. If Highways was to continue with this

working practice it would mean that every time there was a call for competition, through a DPS, Highways would have to amend these priced rates on their standalone electronic system for any existing DPS tenderer that altered their prices or add any new tenderer prices before Highways could raise a new individual contract.

#### 4.3 Site Access

Although you can limit the number of successful tenderers onto a 'Lot' within a framework this is not an option for categories within a DPS. In practice this could mean there are between 4 to 10 tenderers on each category but this number could increase during the lifetime of the DPS project. Therefore, the project team needs to consider how many tenderers will need access to a site to allow them to prepare their tender bid. This is especially a concern when tenderers have to gain access to council tenant's home or a restricted site. Block contracts, awarded off the DPS, may be a suitable solution in certain areas.

#### 4.4 Social Value Benefits

BCC has obtained substantial benefits from a recent framework regarding employment and training opportunities. However, it is unlikely tenderers on a DPS project would make a reasonable offer due to the transactional way a DPS works. Therefore, there is potential risk that some of the additional social benefits that may be achieved through the council's new Social Value policy could be at risk where DPS are used to procure future projects, as competitors in the market may have less incentive to deliver additional employment and training opportunities due to the lack of guaranteed work (unless the BCC use the 'Block Contract DPS method').

However, other social value can be generated by DPS through encouraging development of new market entrants, ability for local business and SMEs to win more council work thereby creating employment opportunities. Also as DPS has to be fully electronic there is less paper associated with the process having a positive impact on the environment.

#### 4.5 Market Engagement

DPS are able to stimulate the market and encourage providers to deliver new services. However, the highway and construction industry are fully developed competitive, buoyant markets. Currently both markets lack skilled workforce and competition in the region is high, which has resulted in contractors being able to 'pick and choose' the projects they wish to tender for. Current market research and analysis trends indicate contractors have adopted a strategy of targeting their resources in tendering for opportunities in which they have a genuine prospect of being awarded a contract i.e. 4 to 5 other tenderers expressing an interest. Therefore, project team needs to consider whether a DPS with potentially a large number of tenderers on each category will actually result in BCC receiving any bids. A framework can limit the number of successful tenderers on each 'Lot' which can mitigate the external market concerns.

#### 4.6 Contract Management

When a project team decide whether to set up a new framework or a DPS consideration needs to be given as to how any new contractual obligations, performance and supplier

relationships is to be managed. Although a tender bid is likely to offer improvements in service and reduce costs through either a framework or DPS the project team will need to carefully manage the overarching framework or DPS together with individual contracts to ensure the commitments within the tenderer's bid are delivered and remain compliant.

Limited number of contractors on a framework may be easier for the project team manage the overarching framework compared to an unknown and changing number of suppliers on a DPS project leading to better and long term supplier relationships resulting in improved performance, innovation, service improvements and reduced costs or additional value.

#### 4.7 Block Contracting

Block contracts, under a DPS project, guarantee a certain volume of business with a provider, over a set period of time to an agreed written specification, at a fixed price. This arrangement, in principle, could resolve some of the disadvantages of a DPS compared to a framework as mentioned in 4.2, 4.3, 4.4 and 4.6 above but would require highways to deliver their planned maintenance using different working methods. This method of using a DPS would also require BCC to make a payment for the guaranteed contracted volume irrespective of how much of the service is actually called off.

Advantages:

- Supports development of long term relationships.
- Secures capacity in the market at known rates - increased confidence in ability to deliver sustainable savings or additional value.
- Gives certainty for providers and sustained income.
- Should achieve economies of scale and reduce transaction costs.
- Secures capacity in the market where demand exceeds supply and other organisations are competing for capacity.

Disadvantages:

- BCC would need to identify the type and number of individual contracts for the period covered by the 'Block Contracting', 6 to 12 month period.
- BCC may end up paying the contractor 'extra money' if block contracts are underutilised.

#### 4.8 Overall Savings

The project team needs to carry out a cost benefit analysis, set the potential costs savings from a DPS project against the overarching costs of running a DPS project compared to a framework and a robust business case needs to be considered and signed off for both options before a final decision is made on which procurement procedure is used.

#### 4.9 Resources

If the project team decide to use a DPS, they need to ensure there are sufficient resources available to complete an evaluation within 30 days (DPS creation round) and 10 working days following a call for competition.

## **5.0 Conclusions**

- 5.1 Although both procurement methods will provide legally compliant projects, the project team needs to consider whether BCC should change their current working practices in order to achieve the estimated 4% to 8% savings that a DPS generally should deliver.
- 5.2 The project team needs to consider the overall costs of running a DPS compared to a framework.
- 5.3 The project team needs to consider how to minimise the impact to the service and the risk to the council's Social Value policy if a decision is reached to use a DPS.
- 5.4 DPS' are on the whole more flexible, user friendly and easier to call off despite some potential back office challenges that may require thinking.

## **6.0 Recommendations**

- 6.1 Each project for Highways and Construction should consider a DPS at the earliest stages of a project. If a DPS is not achievable for that project a record of the reasons for that decision is recorded and placed on Pro-Contract.