PROCUREMENT OPTIONS GUIDE

The Valley

for

WINCHESTER CITY COUNCIL

at

THE VALLEY, STANMORE
WINCHESTER

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THE VALLEY
PROCUREMENT OPTIONS GUIDE

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1.0 INTRODUCTION

As the appointed Employers Agent and Quantity Surveyor for the client Winchester City Council, this document has been prepared to outline the procurement options available for the construction of a multiple unit affordable housing development, 'The Valley, Stanmore, Winchester.'

The purpose of this document is intended to provide a briefing on the procurement options and give an overview of associated benefits and shortcomings of the procurement routes to enable the development to proceed. It is assumed that the JCT suite of contracts will be used.

The deliberation of the procurement route takes into account the constraints and objectives of the project; these elements are not limited to the construction but also include the engagement of the design team.

Generally:

The design and construction of any building project is subject to a series of risks and uncertainties for the parties involved. A formal Contract between the Client and the contractor sets out the rights and obligations of the parties to the Contract, allocating the risk between the Contract parties.

Furthermore, the form of contract also determines the way in which everyone involved in the development process works together as a team. The Contract arrangement should therefore be consistent with the primary project objectives and should enable the risks to be properly allocated to achieve a successful outcome.

The choice of procurement is therefore one of the most important decisions on the scheme, and influences not only the allocation of risk but also the timescale and final cost of the project, and will go a long way to ensuring its successful outcome.

It is essential to identify the project objectives and match the procurement strategy to that which best suits. Paramount to selecting the most successful path is the relative importance of the three main criteria; time, cost and quality; all of which are directly interrelated.

Due to the assessment of risks, the nature of the project and necessity for the control of cost and time, we have dismissed Management Contracting and Construction Management as viable forms of procurement. Further information upon this deliberation and these forms can be provided if required.

1.1 CURRENT PROJECT STATUS IN BRIEF

Design Status:	Planning Stage Only.
Planning:	Approved on the 27th July 2017
Appointments:	Employers Agent and Quantity Surveyors appointed only
Form of Contract:	TBC
Tender Date:	TBC
Start Date:	Target 31st March 2018
Duration:	TBC
Completion:	TBC

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2.0 PROJECT OBJECTIVES

Time:

A project goal has been set to commence by the 31st of March 2018, thus this commencement is the first element of consideration in regard to time. In order to commence works, a design team needs to be procured though a competitive bid process, design undertaken and a contractor to undertake the works must be engaged. What is more, prior to the commencement of construction, due consideration of health and safety for construction and use of the building must be given prior to the finalisation of detailed design and construction planning.

Cost:

Cost certainty of the project and the long-term cost of future ongoing maintenance are paramount to the success of the project. Given public funding sources are limited and strict protocol of funding procedures, accuracy and risk mitigation in regard to the fiscal aspect of the project is of principle concern. Therefore, full design and procurement is required to achieve cost certainty which takes time and is conflict with the time objective.

Quality:

The quality of the building and end product needs to reflect the long-term housing demand which stands the test of time with minimal ongoing cost and maintenance. The retained ownership by Winchester City Council results in the demand for a clear level of control over the specifics of the units for affordable or shared ownership. Public open space continued use and the engagement of the neighbouring residents for the greater benefit of the community can only be achieved if the quality of the development is high and preserved at a high level.

Further Factors

In addition to the three key criteria identified above, other factors are also relevant, namely:

- Engagement with Contractors to receive competitive tender bids.
- Compliance with the Official Journal of the European Union (OJEU) procurement procedures.
- Compliance with Winchester City Council procurement procedures.
- Complexity of the construction.
- Flexibility of policy & procedure.
- Competition with other demands for funding.
- Risk avoidance.
- Previous experience.
- Timing and duration of approval procedures & date of committee meetings.
- Internal & external restrictions of budget timing.

3.0 PROCUREMENT ROUTES

3.1 TRADITIONAL SINGLE STAGE TENDER

Method

A design team is engaged by the client to undertake a full co-ordinated design. Competitive tenders are obtained on the basis of the specification and drawings once all elements of the design are complete.

The successful contractor would be appointed on a traditional basis using a JCT Standard Form of Contract with perhaps minor elements of contractor design portions for specialist elements. However, this form of contract puts a greater onus of responsibility for the design on the Client and the design team.

Advantages

a) Tenders are obtained in competition on fully detailed information.

b) Contractor's programme is prepared based upon detailed knowledge of the project.

c) Tenders are submitted on an identical basis.

d) The Client through their team has total control over design and quality of workmanship.

e) There is no early commitment to a single Contractor at an early stage.

Disadvantages

a) Lengthy pre-contract period to accommodate completion of design and tender.

b) The Client is exposed to additional costs and claims if the design is insufficient in any way at tender stage.

c) If the Contractor is disrupted in any way by the Client or their professional team this gives rise to additional costs.

d) Contractor's construction experience and expertise is not utilised during the development of the design.

e) Design problems encountered during construction will cost money.

f) There can be a tendency to rush the full design process to achieve the tender.

g) Cost of design is lost if project is not viable

Summary

A traditional procurement approach has benefits in cost and quality but at the expense of time. There is a significant cost risk if insufficient design information is available at tender stage.

Due to the OJEU procurement regulations, the Homes and Communities Agency's recently launched Delivery Partner Panel (DPP3) procurement framework was considered as a procurement mechanism. This is explored later in further detail within section 4.1.

3.2 DESIGN AND BUILD

Method

Competitive tenders are obtained on the basis of a detailed statement of Employer's Requirements. The Employer's Requirements can be based upon as little information as a performance specification and sketch scheme drawings or on as much as full working drawings with a requirement that the Contractor employs the Clients own design team for the construction phase. The tenders obtained are fixed lump sums which will only vary if there is a change in the Employer's Requirements.

A Building Contract let on a design and build basis offers a single line of responsibility for the design, construction and cost of the building.

Advantages

a) Tenders are obtained in competition.

b) Cost and programme certainty provided there are no changes in the Employer's Requirements.

c) Full use of Contractors resources and expertise in buildability and planning with regard to the design and achievement of shortest construction period.

d) Relatively fast method of procurement which depends largely on the detail contained in the Employer's Requirements. Overall time is reduced as design and construction can proceed in parallel.

e) Co-ordination of design and construction within one organisation saves time and promotes efficiency.

f) Lines of communication are simple. Responsibility is clearly defined and lies wholly with the Contractor.

g) Minimises disputes and claims as professional team is employed direct by the Contractor.

h) The Employer's Agent only has to deal with one organisation.

i) Novation of Employer's professional team ensures continuity of design and specification principles.

j) Can be developed into a two stage design and build procurement route.

k) Engages the contractor to aid the detailed and considered budget as design progresses when combined as a two stage tender.

Disadvantages

a) Difficulties in comparing tender submissions where Employer's Requirements are left open under a single stage tender process.

b) Specification may suffer as Contractors endeavour to submit the most competitive price. Full development of the scheme prior to tender reduces this risk.

c) Employer's Requirements should be clearly defined as post contract variations will carry cost penalties. There is little basis for accurate independent evaluation of variations.

d) The Client has no direct control over the Contractor's performance therefore quality may suffer if the correct monitoring procedure is not adopted.

e) The Client may pay a premium for "transferring the risk" to the Contractor especially when the design information for tender is limited.

f) Design costs are expended at risk

Summary

A single stage design and build approach can offer distinct benefits in terms of cost, time and responsibility although unless stringent controls are introduced this may be at the expense of quality. A two stage design and build process can limit risk in controlling the quality of the design and ensuring a further significant commercial advantage of open book tendering as the design proceeds. An early commencement can also be secured but the full costs are not established until the completion of stage two.

3.3 TWO STAGE TENDER

Method

A two stage approach may be adopted for both traditional and design & build procurement routes. This means that the tender process is brought forward and Contractors are requested to price, in competition, certain elements of the contract works at an advanced stage. Typically, this involves the pricing of "Preliminaries" or site establishment and running costs, along with tendering the mark ups to cover their overheads and profit.

Varied amounts of documentation can be offered to Contractors to establish Stage 1 tenders and a wide range of information can be requested in return and this is all very much dependant upon the specific requirements of the Client and the design team.

The second stage of the tender process involves open book tendering and negotiation of the remaining elements of the scheme to establish a Contract Sum.

If a two stage approach is applied to Design and Build then it is not necessary to novate the Clients designers to the Contractor until such time as the design has been fully developed although this to the detriment of time and there is then little programme advantage although this can be at the point in time when the building contract is being entered into. Once the designers are novated to the Contractor for the construction phase of the development it is possible for the Client to retain a link either by:

a) Requesting that the Contractor produces monthly reports from consultants confirming compliance of the completed works on site with the Employer's Requirements/Contractors Proposals.

b) A nominated individual from each consultant is employed direct as an independent auditor of the completed works.

Advantages

a) Positive engagement from Contractors at stage one tender as the cost and risk to contractors is minimal.

b) Tenders are obtained in competition.

c) Early buildability and planning input from Contractor ensuring shortest construction period.

d) Early start on site achievable.

e) Allows the design to develop under the Client control, variations and changes can be negotiated economically.

f) Savings incentives can be introduced.

g) Flexibility which has benefits if the programme needs to be accelerated.

h) The contractor is engaged in the development of the budget and costs

Disadvantages

a) Whilst full competition exists for Stage I, price negotiation in Stage II creates some risk as the Contractor may have started on site prior to final agreement of a Contract Sum.

b) Cost of design is lost if project is not viable.

Summary

A two stage approach offers flexibility, an early start on site, up front buildabilty advice and has cost, time and quality benefits. Cost certainly is achieved at the completion of stage two which takes time.

Due to OJEU procurement policy, the Southern Construction Framework was considered as a compliant framework which is also recognised as a Government Construction Strategy procurement routes. Further consideration is provided later under section 4.2.

4.0 PROCUREMENT FRAMEWORKS

4.1 Procurement Delivery Partner Panel 3 (DPP3)

DPP3 framework works upon a single stage tender process following an expression of interest request and if interest is high a sifting process is undertaken to limit the tender numbers to between three and five Contractors. The form of contract can be a JCT Standard form of contract or a Design & Build form of contract. Thus we will consider the merits of both forms of contract using DDP3 later.

As a cause for concern, DPP3 officially became live on the 31st July 2017 and communication was extremely poor taking six weeks to respond and another week to obtain meaningful information. Furthermore, due to staff shortages, the schemes electronic process has in fact not been live until the 14th August and even then, no tenders can be sent as there are no user agreements issued out to those organisations wishing to tender their projects.

Standard Building Contract:

For a full tender bid to be received providing full cost certainty, clarity of delivery dates and a robust specification for quality, a full detailed design is required. It is likely that this co-ordinated design process could take in excess of six months following a competitive consultant fee bid process.

Thereafter, once a fully co-ordinated design and specification is produced the tender process can commence which realistically, given the size of the scheme and without considering the WCC approval process would take in the region of three months. A detailed programme illustrating these timescales against key milestones is provided under Appendix 1. This clearly shows that the key commencement date objective cannot be achieved. However, one key objective, cost certainty at commencement can be attained albeit, due to the volume of work and cost for a contractor to bid, it is likely that contractors will be dissuaded from the process. We are not aware of how many contractors are part of the framework or who these contractors are.

Design & Build:

Given that the framework only supports a single stage tender process we must consider that the design needs to be at a fairly advanced stage for the contractors to consider their risk in providing a fully fixed price upon limited information. The current design has been taken to planning stage only and therefore many assumptions will be made in the computation of cost which is increased risk to the contractor – this is therefore likely to be priced by the contractors with a premium for taking on that risk. Moreover, the current design state and Employer's Requirements are such that a contractor could alter their detailed design accordingly to their financial benefit such that the quality of the build may be compromised.

4.2 Southern Construction Framework (SCF)

The Southern Construction Framework is a two stage tender framework process and is made of eight contractors and is a fully EU procurement qualifying process primarily Design and Build focussed form of contract. All eight of the framework's contractors have been approached to test the market for interest, two contractors confirmed very positive interest and one other has also subsequently confirmed that they may be able to tender depending timing. A programme based upon the use of the SCF is provided under appendix 2

The process is broken into two stages:
Stage I "Mini Competition:"
a. A formal expression of interest is sent requesting confirmation of; availability, capability, capacity and comment upon the contractors added value services. These returns are in fact more like a pre-qualification questionnaire and scored by Winchester City Council, SelwayJoyce & SCF themselves based upon pre-established criteria.
b. The contractors if deemed sufficiently capable, undertake technical and cost submissions Generally, the cost submissions comprise of OH&P, design fees, design management and pre-construction fees. Furthermore, the tender sum for full or part preliminary & management costs can also be included.

The technical submission element are responses to on average five questions which must be entirely specific to the project. The questions are client selected and the weighting of these questions in the deliberation of the tender return is established in advance. Again, these are scored as the expression of interest is.
A contractor is then selected to undertake the design and progress to stage II.

Alternatively – the process can stop and there is no cost incurred to the WCC at all.

Stage II:
Having entered into a pre-construction services agreement, the development of the Employer's Requirements in the design process is undertaken and the design responsibility is with the contractor.
An open book exercise is undertaken to procure subcontractors and work packages as either a dynamic process or as one event.
This then moves forward into actual construction when appropriate and sanctioned. This could therefore mean that construction could commence simultaneously with elements of design but this does come at some risk in that the full and total cost is not fully ascertained.

At the end of stage II if costs are not desirable further design evolution can occur with value engineering or the information and design can be used for a separate single stage tender process without any further costs incurred other than those set out for stage 1.

5.0 CONCLUSION

DPP3 is a somewhat, rigid process and under the design and build route removes Client interaction and control at a very early stage, therefore giving less surety of the final product and outcome whilst likely being economically inefficient. Moreover, under a Standard form of contract it is most likely that due to the cost, time, effort and risk to contractors to undertake a single stage process many construction firms will be unwilling to respond.

It is our recommendation that SCF is the better suited and most likely vehicle to achieving contractor engagement, design progression as well as construction commencement at the earliest opportunity. Furthermore, it is also the most likely to achieve the lowest capital cost although full cost certainty cannot be achieved until completion of stage 2. There are also advantages in that the process can be halted at the stage 1 or at the end of stage 2 and if required or preferred the design undertaken with the successful contractor can then be used to undertake an entirely separate single stage tender prices.

The commitment to a contractor for design at the end of stage I, is essentially no different to undertaking the detailed design directly with consultants in terms of risk whilst possibly being minimally greater a financial commitment at worst. In fact, it could be considered that the risk is less due to the input that the contractor can provide. Alternatively, the stage 1 appointment does not have to take place having undertaken the tender process and there is no cost incurred until a contractor is appointed

If all construction costs must be absolute prior to construction commencement, the process of the stage II must be completed however, this does not dissolve the benefit in using the two stage SCF procurement route: The key advantage of the two stage process is that the initial risk and costs to both the client and the contractor is reduced, thus making the likelihood of engagement at tender more likely. What is more, value engineering during the design process can be undertaken with real market input and the budget more accurately controlled & forecast. Input upon efficiency & construction methodology can be given by the contractor as design proceeds and before costs are fully committed. Expertise upon construction can not only reduce the total capital expenditure but input upon maintenance may also mitigate ongoing future costs. Again, in the case of the stage one appointment, there is no binding mechanism that forces construction to be commissioned after undertaking the full design and stage two tender process. If costs do not fit expectation WCC have incurred fees for the design only – the same position as if the single stage process was followed.

Under the SCF, the commitment to the total cost can be made generally at any time and the start on site date is entirely flexible to suit the needs of Winchester City Council and when all costs are fully tendered.