

## Executive Summary

### Introduction

The objective of this report is to summarise Baker Ruff Hannon's Recommendations in respect of the procurement strategy for Winchester City Council on the Witherbed Lane development.

This report looks at:

- Procurement Routes
- Contract Forms

This is a fairly simple scheme, comprising of 4 residential units. Whilst they are designed and required to be Passivhaus, this does not, of itself, add any real complications to the structure or services installation of the properties. In our view, if anything, they can be simpler than traditional wet heating system houses.

There is no real need for complicated detail design for the contractor to follow, as most experienced contractors in the residential sector, know how to build houses. We will need to draft the requirements carefully to be fully clear on the Passivhaus elements of the scheme and the requirements for heating using air source heat pumps and the mechanical ventilation and heat recovery system (MVHR).

Provided, through the pre-qualification / procurement process, we can select a contractor with the right Passivhaus experience, we recommend that a Design and Build approach is taken.

This provides risk transfer to the contractor and allows them to select materials that are available at the time, as long as they meet the specification and could result in a more cost effective design solution. Whilst there is often debate about single or two stage design and build, for a scheme of this nature we would recommend single stage, with quality being a significant factor in the selection process.

We recommend the use of a JCT form of contract due to the familiarity and lack of ambiguity assisting with the timely agreement of contract terms with the chosen contractor. The particular form of contract required to tie in with the procurement approach recommended above would be the JCT 2016 Design and Build Form of Contract. As part of the tender return we will ask for a detailed contract sum analysis with approx quants provided to allow us to check that everything has been included and that the tenders are comparable.

### Procurement route options

#### Traditional Procurement

Traditional procurement involves a full design prepared by the Client's team and tendered in competition to contractors.

The Client retains responsibility for the design of the project and retains a design team to check that the construction of the scheme is in accordance with the drawings and specifications, and that the materials and workmanship are of the required standard. Elements of design responsibility can be transferred to the contractor using design portion supplements or performance specified works.

With this route there is very limited contractor input into the buildability of the design and the cost of the project is a factor of the design team's solution.

The approach is very common and well understood in the industry.

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## Design and Build

The Client's team develop the design to an agreed RIBA stage and produce a set of Employer's Requirements setting out what the Employer would like to achieve from the works and the levels of specification expected.

The contractor then produces a set of proposals in response to the requirements and engages a design team to develop the design fully ready for construction on site. This could be the Clients' team that are novated or the contractor's own team. This is not a decision that needs to be made yet.

The responsibility for design and a great deal of risk are therefore transferred to the contractor. The other big advantage is that the design does not need to be completed prior to tender action and, since the contractor is preparing the final construction details, a start on site can be made more quickly than using a traditional approach.

The latter stages of design can run concurrently with the early phases of construction. However, it is usual to allow a longer tender period so that the contractor can evolve the design and prepare a price from the information provided.

Since, generally, the design is not completed by the Client's team, the final specifications, materials selections and detailing are the contractor's responsibility and can be perceived to be of a lesser quality than would be expected from a solution where the Client retains responsibility for the design team. However, the design can benefit from the contractor's input as it is in their interests to optimise the solution for site work and buildability. Finding a contractor with the level of expertise and availability to undertake the works under Design and Build in the region may prove difficult and to employ a contractor from a location distance from Micheldever may well incur further costs. The contractor is responsible for the detailed design of the scheme and cost certainty can be provided at tender stage.

Issues can arise if the contractor changes the design to improve margins that negatively impacts on quality and this may be a factor on this project.

The design team can either be the contractor's own team or the Client team novated to the contractor. This approach is again very common and well understood in the industry.

## Contract Forms options

There are a number of standard forms of contract available to WCC to appoint the contractor: -

- JCT Standard forms – suitable for traditional or design and build approaches.
- NEC Standard forms – Suitable for traditional or design and build approaches plus others

These are the two most commonly used. Baker Ruff Hannon would recommend the use of JCT. The JCT Forms have been in existence for many decades and until recent years were the only real option for building projects in the public and private sector. They have been cited as adversarial and the amount of case law around them is used to support this. However, their sheer age and longevity is in itself grounds for lots of the case law. They are generally understood by all in the industry and are relatively straightforward to administer and manage.

The contracts have evolved over the years to respond to weaknesses in their drafting and to reflect changes in statute and legislation pertaining to construction and the built environment. The forms can be used for all sizes and types of projects and bespoke forms are available to support the traditional and design and build approaches covered earlier.

Traditional contracts can be set up using with / without quantities or with approximate quantities. The design and build form is a bespoke version clearly setting out the obligations of the parties in the contract.

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The type of construction and the type of contractor employed, drives the use of the JCT type contract, as many contractors and clients are comfortable with these contracts. The NEC forms are very heavy on administration and require a good level of understanding regarding how they operate and sufficient resources from the Client and contractor to be a success. The very nature of the NEC places more risk on the Client due to the administrative burden and the extensive list of events that can give rise to an extension of time and additional payment.