

Special Cabinet

Background papers

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**27-37 HIGH STREET,
SWANLEY**

Procurement Report

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1.0 Executive Summary

This report has been prepared for Sevenoaks District Council (SDC) with the intention of providing a recommendation for an appropriate procurement route including commentary on tender processes and contract selection.

This is a supplementary report as further to Procurement Report dated March 2020 the Central Government have made additional funds available to local authorities to accelerate the delivery of “shovel ready projects”. The possible availability of this funding and associated drawdown criteria requires an alteration to the previously preferred procurement route.

Whilst the SDC drivers for this project remain as follows.

- aspirations for a unique building that portrays a high-quality town visitor image,
- ability to showcase their intention to uplift the High Street
- a start on site as soon as possible
- cost / programme certainty from the outset due to set budget constraints

The requirement to complete the project by March 2022 has become paramount.

Given our understanding of the new SDC key drivers of the project our recommendation would be a single stage competitively tendered Design & Build procurement route.

Refer to the 3 possible procurement route programmes in Appendix A

Option 1 – Single stage

Option 2 – Two stage with BQ

Option 3 – Two stage (traditional)

The tender price will be sourced through a single stage process using RIBA Stage 4 design information, the unpriced quantified cost plan as the tender cost document. The proposed contract would be the JCT Design & Build 2016 form, bolstered with the clients' contract amendments.

By basing the contract price on the RIBA stage 4 design it will allow SDC to retain more control over the specification of the project.

The above is not without risk the project budget has always been under pressure and this has been confirmed by soft market testing and issuing a single stage D&B tender will only exacerbate this however (addressing the new funding criteria) it should offer the best balance between cost certainty, programme certainty and quality.

There will probably be a period post tender return when a Value Engineering/cost saving exercise will need to be undertaken.

Our recommendation remains that the following Designers are novated to the Main Contractor at the start of the construction phase.

- The architect
- The structural Engineer
- The fire consultant

SDC should consider the use of an external fire safety clerk of works (should they not have this resource in-house)

2.0 Project Description

The site currently comprises of terraced two storey buildings with an extensive single storey rear extension. The scope of works for the project is as follows: -

- Demolish the existing buildings and level the site
- Construct a new mixed-use building comprising of business hub on the ground floor (High St elevation) and 17nr residential units to the ground, first and second floors.
- Associated external works and parking area

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3.0 Procurement Options

3.1 Refer to Procurement Report dated March 2020

Further to our Report the recommendation was to use a Design & Build form of contract.

3.2 Procurement Route Recommendation

By designing and specifying the works to a RIBA Stage 4 level of design before entering into Design & Build contract and then novating the key members of the design team, the client will have more control of the quality and specification of the product. Cost and programme certainty can be achieved by the Main Contractor submitting a firm cost for the works based on a detailed and co-ordinated Stage 4 design pack.

4.0 Tender

4.1 Options Available for Consideration

From discussions with SDC we have considered two different tendering strategies;

- (A) Single Stage
- (B) Two Stage

4.2. Two Stage Design & Build Tendering

This route can be sub-divided into

- i) traditional
 - ii) with BQ
- i) The first stage tender is sent to several contractors and they are asked to provide a fixed price for preliminaries and overheads & profit and to provide a target cost plan and programme. The tender pack includes the RIBA Stage 3+ information and the cost plan. For the second stage a single contractor is selected and appointed under a pre-construction services agreement (PCSA) they work with the design team through RIBA Stage 4 and tender the individual sub-contract packages before providing a final contract sum. These s/c's are monitored against the cost plan

Refer to Appendix A - This route achieves the March 2021 start on site date however it holds the most cost risk.

- ii) The first stage tender is sent to several contractors and they are asked to provide a fixed price for entire project and programme. The tender pack includes the RIBA Stage 3+ information and the BQ. For the second stage a single contractor is selected and appointed under a pre-construction services agreement (PCSA) they work with the design team through RIBA Stage 4 but the 1st stage tender sum is not expected to change unless the Employer changes the design information.

Refer to Appendix A - This route does not achieve the March 2021 start on site date.

In both cases it is normal that a fee will be paid to the contractor for undertaking these services during second stage.

Two stage tendering is generally used on;

- large scale projects with high levels of complexity which requires specialist contractor input from an early stage.
- Where the site is particularly tight or the construction unusual and an early involvement of a contractor will give buildability expertise
- Where single stage is not attractive to contractors for keen bidding.

The disadvantages of two stage tendering are that the overall process takes longer to arrive at a final fixed price than it would do with a single stage tender. Also, the contract price can often increase between receiving the target cost plan at stage 1 and agreeing the final price at stage 2. This is down to having only one main contractor on board during the second stage, resulting in a lack of competitive tension.

4.3. **Single Stage Design & Build Tendering**

A set of Employers Requirements is issued to a number of contractors (say 3 or 4) for them to price it competitively in a fixed tender period. The contractors provide a fixed price and programme for the works.

The advantage to single stage tendering is that it is competitive.

The disadvantage is that SDC would need to wait until the very end of the tendering process to find out how much the tenderers sought to construct the project. This could result in a lengthy value engineering/cost saving exercise.

To mitigate single stage D&B tendering risk pricing we would recommend the use of a BQ as part of the tender documents. This would assure parity of tendering and the cost framework to address VE, valuations and variations going forward. However, the pre-construction period does not allow the time for a BQ to be produced and as such the tender cost document would need to be the blank quantified cost plan.

Refer to Appendix A – This route achieves the March 2021 start on site date.

4.4. **Recommended Tender Strategy**

To address the new criteria for the “Shovel ready funds” we would suggest that a single stage tender process is used. The project needs to be completed by March 2022 and as such the pre-construction period is too short for a Two-stage approach.

The single stage approach is far from risk free.

Potential risks include;

- 1) Contractor disinterest
- 2) Tender risk cover pricing
- 3) Tender return/evaluation around the Christmas period.
- 4) Covid-19 costs

To mitigate some of this risk we would recommend that the works are tendered on the RIBA stage 4 set of information. This will give tenderers confidence that the design has been thought through and co-ordinated.

5.0 Contract

Based on the recommendation of a Single Stage Design and Build procurement route, we would suggest the Employer uses the latest JCT Design & Build 2016 contract, with contract amendments, plus a suite of further protection measures such as performance bonds, parent company guarantees, warranties and novation agreements prepared by the SDC Lawyers.

As part of the JCT D&B contract, the Client should also consider set Liquidated Damages (LD's) to cover known and anticipated costs associated with any programme delays and to incentivise the Main Contractor to deliver the works on programme.

We would recommend that named sub-contractors / suppliers are not specified within the contract. Naming suppliers and subcontractors can lead to issues of responsibility when the named supplier / contractor is delayed and can also reduce pricing competitiveness.

Under the Design & Build procurement route, the specification can allow the contractor to suggest alternative suppliers which then can be varied on an "equal or approved" basis. As part of the tender process the contractor will need to clarify any changes of specification or supplier.

These clarifications can then be reviewed and accepted or rejected by the design team. Further to this any post contract change put forward by the contractor would need to first be approved by the client team through the change control procedure set out in the contract documents. The result of the above is that the specification for the specialist items cannot be changed without approval from SDC.

6.0 Official Journey of The European Union (OJEU)

This is a publicly funded project and as such we need to ascertain whether or not it will fall within the requirements of OJEU tendering procedures. The project value is below the OJEU Threshold detailed below but it may be sufficiently close to require OJEU tendering.

Public Contracts (Scotland) Regulations 2015

| | Supplies and Service Contracts | Works Contracts | Social and other specific services |
|---|--------------------------------|-----------------|------------------------------------|
| Central Government* | £122,976 | £4,733,252 | £663,540 |
| Other public sector contracting authorities | £189,330 | £4,733,252 | £663,540 |
| Small Lots | £70,778 | £884,720 | N/A |

Source: <https://www.ojeu.eu/Thresholds.aspx>

If SDC are the Employer under the contract, it would be important to understand if they still need to comply with OJEU.

We would advise SDC to seek specialist advice from their solicitors regarding whether this project needs to be tendered through the OJEU process.

If an OJEU procedure is required, this would have a significant impact on tender procedure and duration.

7.0 Contractors

We would be approaching local Kent and east London based medium size contractors with residential and timber frame experience.

8.0 Covid-19

The construction market is currently experiencing the impact of the Covid-19 pandemic.

This has impacted on;

- a) tender pricing
- b) risk pricing
- c) programme fixing
- d) contractual amendments
- e) availability of labour
- f) availability of materials
- g) onerous s/c conditions

This is being addressed by tenderers differently.

Some are buying work to fill their order books for next year whilst some are covering as much risk as they can perceive with tender cost allowances.

This is skewing the market and as such the range of tender returns is likely to be wide.

We intend to approach medium-sized, local Kent and East London based contractors for this project and their comfort with single stage tendering and Covid-19 may result in tendered cost allowances that are not currently included within the project budget.

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