

08 October 2020 at 5.00 pm

This meeting will be held virtually via Zoom,
and livestreamed here:

https://www.youtube.com/channel/UCIT1f_F5OfvTzxjZk6Zqn6g

Despatched: 30.09.20



Improvement & Innovation Advisory Committee

Background papers

	Pages	Contact
7. 27 - 37 High Street, Swanley Redevelopment	(Pages 1 - 10)	Detlev Munster Tel: 01732227099

This page is intentionally left blank



**27-37 HIGH STREET,
SWANLEY**

Procurement Report

**Appleyard & Trew LLP
36 Long Acre
LONDON
WC2E 9SZ
t. 020 7379 6223
kevin@appleyardandtrew.co.uk**

March 2020

CONTENTS

1.0	Executive Summary	2
2.0	Project Description	3
3.0	Procurement Options	3
4.0	Tender	6
5.0	Contract	7
6.0	Official Journey of The European Union (OJEU)	7
7.0	Contractors	8
8.0	Consultant Value for Money	8

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.

We believe SDC key drivers for this project to be 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

There are also other key characteristics that are unique to this project that will drive the procurement route and contract choice, these are as follows;

- A complex build form (In-situ concrete podium with timber frame upper floors)
- Tight site on a busy main road

Given our understanding of the SDC key drivers and the value and complexity of the project our recommendation would be a two-stage negotiated Design & Build procurement route. Whilst having explored other routes outlined in the below report, namely construction management and traditional we believe these will pose too greater programme and cost risk to the client. Once the contract has been placed, the Design and Build route will allow for a greater level of cost and programme certainty for SDC.

We would liaise with a local Kent or East London based medium sized contractors.

The initial tender price will be based on a Bill of Quantities at the RIBA stage 3 set of information, this will allow SDC to have an early indication from the market of the total construction cost of the project. The final contract price will be based on a well-developed RIBA stage 4 design, with specialist design and supplier input. The proposed contract would be the JCT Design & Build 2016 form, bolstered with the clients' contract amendments.

We would recommend that named sub-contractors and suppliers for the specialist items are not written into the contract as this will limit competitiveness. Alternatively our suggestion is for the suppliers to be named in the specification on an equal or approved basis.

We believe the above will offer the best balance between cost certainty, programme certainty and quality. 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. For a more detailed breakdown of the pros and cons of each route please refer to the detailed

explanations contained in the body of the report.

We would also propose 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

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

The estimated construction period is 12 months and the current estimated construction cost is circa. £4m to £4.5m (including contingency but excluding fees).

3.0 Procurement Options

3.1 Options Available for Consideration

Based on the current scope of works and discussions with SDC we believe there are three main procurement options to consider; being (A) Design & Build; (B) Construction Management; (C) Traditional Procurement, (D) Negotiation.

3.2 Design & Build (D&B)

With a Design & Build approach, a Main Contractor is appointed directly by the Employer. They are required to assume responsibility for design work already undertaken by the design team in the pre-contract stage, together with on-going design development and co-ordination in the post- contract stage. The Contractor would provide a fixed price and programme to design and construct the project.

Comparing these works to similar projects, D&B is the most widely used procurement route across both the public and private sector.

One disadvantage of D&B is the perceived loss of control over quality of the works. In order for the Client to have proper control over the design and specifications, we would suggest the design team fully designs the building to a RIBA Stage 4 level prior to entering into Contract. This will help the Client keep control of the design intent and it should achieve the most competitive price and programme for the works, as the Main Contractor can fully assess the design and better calculate their D&B risk allowance for completing and constructing the design.

Design & Build will provide cost certainty provided that a detailed set of Employers Requirements is prepared. Under this procurement route, the contractor will then take on responsibility for the ER's (under an amended form of JCT contract), and should any design development be required this will be undertaken at the Contractor's cost.

In the construction phase, it is very common under D&B to novate the principal design consultants (e.g. architect, structural engineer and M&E engineer) to the Main Contractor. This helps to maintain clear design responsibility and warranties and also allows the designers to complete their initial design intent.

3.3 Construction Management (CM)

With a Construction Management (CM) approach, the physical works are constructed by a number of different Trade Contractors under the supervision of the Construction Manager.

Under CM, the Client places direct contracts with each of the Trade Contractors and utilises the expertise of the Construction Manager who acts as a consultant to co-ordinate the contracts. The Trade Contractors carry out the work and the Construction Manager supervises the construction process while also co-ordinating the design team. Under CM, the Construction Manager's role includes preparing the programme, determining requirements for site logistics, breaking the project down into the various work packages, obtaining and evaluating tenders and co-ordinating and supervising the design and the works.

A disadvantage of CM is that the Client may not have a fixed price or programme at the point of commencing works on site. As such, the client is largely responsible for the financial implications of any cost and programme overruns. In reality, the Client will not obtain cost and programme certainty until the last trade package has been placed. The client will also carry additional risks throughout the construction period (e.g. any cost and programme impact arising from insolvency of a Trade Contractor would normally rest with the client).

Construction Management is usually viewed in the UK as being most suited to very large and complex projects, where the Main Contractor is not able or willing to provide a fixed D&B lump sum price, or where construction programme or detailed control of site activities is a higher priority. This could be because either the design is not sufficiently advanced at the point where the client would normally need to sign a contract, or the commercial risk is too great for the Main Contractor to provide a commercially viable fixed D&B price.

3.4 Traditional Procurement With Contractor Design Portion (CDP)

With traditional procurement a fully detailed design is prepared by the design team which is then priced competitively by a number of contractors. The client retains the risk involved with the design throughout the project, and the contractor takes the risk on pricing the scope identified within the tender documents and also the construction programme.

Traditional procurement requires the design to be fully developed and detailed before the scheme is tendered. Under a traditional procurement route, the client retains responsibility for the design and should there be any inadequacies or design

development required whilst on-site this could lead to an increase in price and programme.

Traditional procurement with contractor design portion allows for certain work packages to be designed by the contractor. These are generally for more complex packages, such as the mechanical and electrical systems. As with a design and build contract the contractor will take on the responsibility and risk for the contractor's design elements.

3.5 Negotiation

With negotiated procurement you select a contractor (normally known to the Employer and design team) and they join the design team at RIBA Stage 3. This could be subsequent to a competitive 1st stage tender. The contractor will then be part of the Stage 4 process. How the contractor demonstrates his cost is to be agreed with the Employer however when the budget is tight the contractor is given a figure to cost within and the team then works together to achieve that figure as the contract sum.

This method of procurement is historically been viewed as one of the lesser competitive routes to agree a contract sum, however this can be managed and if the whole team is focussed on achieving the same financial end point this route has been successful.

3.6 Procurement Route Recommendation

Our understanding is that SDC requires cost and programme certainty but also want a good quality of build and control over the specification of the product. These requirements would point towards Design & Build being the most appropriate procurement route for the project.

It is our opinion that the project is not of sufficient size or complexity to justify using a Construction Management procurement route. In addition to this, we believe CM route would offer too high a level of risk for SDC surrounding price and programme in the construction period. Indeed, if the project is tendered to the open contractor market, we would expect to be able to attract several D&B tenders from suitably experienced and qualified Main Contractor's.

We believe that the traditional procurement route poses a bigger risk to SDC in relation to programme and cost certainty. SDC have a set budget that cannot be exceeded so will need a high level of cost certainty at the time of placing a contract.

Some of this risk associated with traditional procurement could be mitigated by using contractors design portion (CDP). However due to the fact that SDC would still hold responsibility for large elements of the design and the risk associated with inadequacies in this design, we believe it's not the optimum procurement route for this project. Further to this, any discrepancies between the clients' design and CDP portions could also lead to increases in price and programme.

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 is 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 Tendering

The first stage tender is sent to a number of contractors for them to firm price preliminaries and overheads & profit and to provide a target cost plan and programme. For the second stage a single contractor is selected and appointed under a pre-construction services agreement (PCSA) to tender the individual sub-contract packages before providing a final contract sum. 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 overall it can take 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 Tendering

A set of Employers Requirements (if D&B) or Bills of Quantities (if traditional) tender documents 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.

4.4. Recommended Tender Strategy

For this project we would recommend that a two-stage tender process is used. Due to this projects' relatively higher level of complexity and the budgetary constraint, we suggest that there is no advantage to undertake a single stage process.

An added benefit of the two-stage process is that the contractor will be selected based on a competitive process.

For this project we would recommend that the works are initially tendered on the RIBA stage 3 set of information allowing SDC to gain an early indication on price. The design will then be developed further to RIBA Stage 4 by the design team and this information can then be issued as the contract set. By developing the design to RIBA stage 4, it will allow SDC to maintain control over the end product.

5.0 Contract

Based on the recommendation of a Two 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.

	Supply, Services ¹ and Design Contracts	Works Contracts ²	Social and other specific services ³
Central Government ⁴	£118,133 €144,000	£4,551,413 €5,548,000	£615,278 €750,000
Other contracting authorities	£181,302 €221,000	£4,551,413 €5,548,000	£615,278 €750,000
Small Lots	£65,630 €80,000	£820,370 €1,000,000	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 Consultant Value for Money – the BPA team including sub-consultants

In terms of the architectural fee for work stage 4 we are aware of the need to demonstrate value for money. Bell Phillips Architects regularly tender for public sector projects, which are partially judged on fee level, many of which they win highlighting that their fees are well benchmarked to show best value. There may be other architectural firms who could price this work more cheaply, however our knowledge of the project and efficient working methods will ensure that their fees will be the minimum to provide a good service. They can also bring substantial value for money in relation to a number of important metrics, notably:

1. The Golden Thread; as defined by Dame Judith Hackitt in her review of fire safety following the Grenfell Tragedy. This continuity of knowledge, achieved by retaining the design team throughout a project was stated as being a key part of ensuring fire safety in the design of residential buildings
2. BPA have a strong understanding of Sevenoaks District Council's aims, objectives and brief for the project. This knowledge will ensure a smooth continuation of work, avoiding the significant effort involved in getting a new team up to speed.
3. Programme. BPA are aware of SDC's ambitions to move this project forward and they have the resources available to start work on the Stage 3+ package immediately, ensuring that the scheme can start on site as soon as practically possible.
4. BPA have developed a strong relationship with planning officers and other statutory consultees; it is likely that these relationships will prove very helpful in discharging planning conditions or negotiating any necessary changes during technical design and construction
5. Quality. Sevenoaks District Council have stated that they need the project to be well designed and worthy of the Council's aspiration to produce excellent new homes for their residents. In following through from outline design to technical design and construction, as original architects, BPA will be more passionate and motivated than another technical architect design team to achieve this aim. They have, over the years, been lucky to work with a number of local authorities on the design, delivery and construction of new homes as a part of their house building programmes. Many of these have been recognised with a number of industry awards which they are very proud of. They want to deliver the best homes not only for the future residents, but also for their clients. In delivering for their clients, they are aware of the need for

economy and buildability, and they will work hard to achieve these practical objectives at the same time.

6. BPA are well experienced in working with contractors during work stage 4 to 6 and know exactly what kind of technical detail and co-ordination is required for construction. BPA are always organised and professional in ensuring that packages are issued on time and fully complete, and that helps minimise any cost and programme risks which the contractor must avoid.