2 - Procurement

1 EXECUTIVE SUMMARY

1.1 The report has been prepared with input from GVA, DAC Beachcroft, Aecom and project, procurement and legal officers from the Council. There have been a number of detailed discussions held to discuss the options, emerging strategy and to help shape the preferred approach to the next stages of procurement to enable the construction of the proposed development including the procurement of the surveying, planning consultancy, project management, contract administration / employer’s agent and quantity surveying roles required to deliver a development of the scale of the Civic Development.

1.2 The Council has set out a number of key aspects it is seeking to meet through the procurement of contractors and professional expertise to deliver the Civic Development:

- Cost – the Project is procured within the approved budget;
- Quality – the completed Project meets the high standards required for a development of its status and highly sensitive location;
- Risk – as far as possible the risk of delivering the Project is allocated to a single contractor that is experienced, competent and resourced to manage the risks and deliver the project successfully;
- Disruption – the disruption to the locality and the Town due to construction operations is minimised in time, temporary loss of amenities, traffic and pedestrian movements, noise and dust etc;
- Timescales – the project is delivered in the shortest overall time, whilst achieving the above cost, quality and risk objectives.
- A fair and transparent procurement process is put into place.

1.3 The Two-Stage Design & Build approach has been selected as meeting the Council’s objectives and market requirements. A suitable construction framework will be utilised.
Alongside the procurement of a contractor the Council will utilise a suitable framework/s (Homes and Communities Agency and Crown Commercial Services RM 3816 and RM 3741 frameworks) to appoint the design and project management teams and to appoint the specialist site assembly and Compulsory Purchase advisors with the relevant experience and expertise to meet our criteria.

2 INTRODUCTION AND BACKGROUND

2.1 This report covers the procurement aspects of the Civic Development project related to the following elements:

- A new 1,200 seat theatre;
- A new shared-use building including accommodation for civic functions and offices for the council and third party organisations;
- An underground car park, partly under the office building and extending under part of Calverley Grounds;
- Local remodelling of the public realm associated with the above buildings and car park.

2.2 In the Civic Complex - Assembly Hall Theatre Mandate Next Steps report to Full Council on 9 December 2015 it was considered that a development agreement should be structured combining delivery of the Civic Complex site redevelopment with one or potentially both public buildings. However, during the course of the development of the design work through the RIBA stages we have undertaken a number of Soft Market Testing approaches to the existing Civic Complex. These engagements with the market have highlighted the need to separate the delivery of the Civic Development from the disposal for development of the Civic Complex. This report does not cover the strategy and work carried out on the future of the current Civic Complex, this is contained in Report 3: Civic Complex.

2.3 The Procurement report has been prepared with input from GVA, DAC Beachcroft, Aecom and project, procurement and legal officers from the Council. There have been a number of detailed discussions held to discuss the options for procuring each of the services required, the emerging strategy and to help shape the preferred approach to the next stages of procurement to enable the construction of the proposed development including the procurement of the surveying, planning consultancy, project management, contract administration / employer’s agent and quantity surveying roles required to deliver a development of the scale of the Civic Development.

2.4 The discussions have included:

- Initial workshop set out the options and the mechanics, advantages and disadvantages of each option;
- Meetings held with DAC Beachcroft, Mid Kent Legal Services;
- Meetings with GVA, AECOM and Council Procurement;
- Meeting held with PAGABO regarding their public sector construction framework;
Meeting held with Southern Construction regarding their public sector construction framework;
Discussions held with the Homes and Communities Agency regarding their public sector framework;
Discussions held with the Crown Commercial Services (CCS) regarding their public sector frameworks relevant to the opportunity.

3 PROCUREMENT OBJECTIVES

3.1 The Council has set out a number of key aspects it is seeking to meet through the procurement of contractors and professional expertise to deliver the construction of the Civic Development:

- Cost – the Project is procured within the approved Budget;
- Quality – the completed Project meets the high standards required for a development of its status and highly sensitive location;
- Risk – as far as possible the risk of delivering the Project is allocated to a single contractor that is experienced, competent and resourced to manage the risks and deliver the project successfully;
- Disruption – the disruption to the locality and the Town due to construction operations is minimised in time, temporary loss of amenities, traffic and pedestrian movements, noise and dust etc;
- Timescales – the project is delivered in the shortest overall time, whilst achieving the above cost, quality and risk objectives;
- A fair and transparent procurement process is put into place.

4 CONSTRUCTION PROCUREMENT

4.1 There are a number of approaches to the construction of a major development these range from Traditional to Design and Build. A brief outline of the options is set out here. More detail on the options and the advantages and disadvantages of each are set out in Report 2 Procurement Appendix 1 attached to this report.

Traditional - Lump Sum

4.2 The Traditional Lump Sum procurement route is historically the most widely used, and hence familiar, method of appointing a contractor, who takes responsibility for delivering the project to an agreed price and programme. It is the system by which the majority of construction contracts are let in the UK. There are various different forms of contract available for use with this procurement route, dependent upon the value of the project and the nature of the works and there are a number of variations to the basic model, which have been developed over the years. The traditional option leaves the design team under the control of the Client for the duration of the project. This is set out in more detail in Report 2 Procurement Appendix 1 attached to this report.

Traditional – Two-Stage Tender

4.3 The traditional route can be accelerated by overlapping the design and construction and adopting a ‘two-stage’ approach. This typically involves the selection of a main contractor through preliminary proposals (pricing of their own costs for managing and running the site plus their mark-up on sub-contractors’ prices), and subsequent tendering of sub-contract packages on an
Design and Build

4.4 Under the Design & Build approach the design team are employed by the Client during the early stages, but are then employed by the Contractor, once they are appointed, to complete the design. Sometimes the clients design team are novated to the Contractor and on other occasions they employ their own team (with the Client often retaining the original team as design ‘policeman’, making sure that the contractor’s design is of an acceptable quality and meets their requirements). The Contractor gives a lump sum price and a commitment to complete the design and construction by an agreed date based on a set of ‘Employer’s Requirements’, which set out the basic design and specification criteria for the project.

4.5 The approach is, therefore, quite similar to the traditional route, except that the design is not developed to the same level of detail prior to tendering the project and the Contractor’s tender will include due allowance for this future design development. After their appointment, the Main Contractor will complete the design, either using the Client’s Design Team or their own team. On projects of this nature, it is normal for the Client’s Design Team to be novated to the Main Contractor to allow continuity in the design process and to provide the Client with the confidence that the Design Team have the experience and expertise to complete the design to the required standard.

4.6 The Client will then appoint an ‘Employer’s Agent’ to administer the contract, which will obviously not be the Architect if they are novated to the Contractor. In the event of the Client’s Design Team being novated, then the Client will generally appoint a ‘Monitoring’ Team to check that the design being submitted by the Contractor is fully in accordance with the Employer’s Requirements. More recently rather than appointing separate design organisations, clients have been appointing a different individual from within each of the novated Design Team organisations, to act in an independent capacity as the design ‘policeman’. Under this arrangement, there would be ‘Chinese walls’ between the independent ‘policeman’ and the other members of his organisation working on the project. This is set out in more detail in Report 2 Procurement Appendix 1 attached to this report.

Two-Stage Design and Build

4.7 The Design and Build route can be accelerated by increasing the amount of overlap between design and construction and adopting a ‘two-stage’ approach. This typically involves the selection of a main contractor through preliminary proposals (pricing of their own costs for managing and running the site plus their mark-up on sub-contractors’ prices), and subsequent tendering of sub-contract packages on an open-book basis. The Contractor then commits to a lump sum price, and to a completion date, once main sub-contracts are tendered, or at least the majority of sub-contracts are tendered.

4.8 The Contractor therefore acts during the first stage like a Construction Manager, providing construction advice, management skills and assisting in the
procurement of the early trade packages. Once approximately 70-80 per cent of the value of the project has been procured then the contractor commits to a lump sum price (calculated on the basis of their original tender, applied to the sub-contract values obtaining during the first stage) and to a programme. Thereafter, the contractor bears the risk on costs and programme, save for specified events, notably client change, discovery of the unknown in the existing building, planning or other statutory changes. This is set out in more detail in Report 2 Procurement Appendix 1 attached to this report.

4.9 During the process some consideration has been given to whether the contracts would be for the whole construction scheme or split between contractors with one package being the car park and office with the second contract for the Theatre due to the specialist requirements of the building. A multiple construction contractor approach has been dismissed due to the added risk of having two separate contractors on site and works and liabilities falling between the different contracts. In addition, two separate contractors would result in separate compounds for each development which would require a greater impact on the area of Calverley Grounds required to enable the developments to take place and the management of the access aspects would also have added disruption, it is key that the disruption is minimised as far as possible. The preferred approach is for a single contractor is to be appointed to deliver the entire scheme concurrently.

5 PREFERRED APPROACH TO CONSTRUCTION

5.1 Having considered the various construction approaches it has been decided that a two-stage design and build contract is the most suitable way forward. This is proposed as the Contract Sum needs to be agreed with a single contracting entity prior to the Council agreeing to proceed to construction and entering into the contract. The Management forms of procurement (Construction Management and Management Contracting) do not allow for this and have therefore been discarded from further consideration.

5.2 As the Council wishes to pass the design as well as construction risk as far as possible to the Contractor the traditional form of procurement has also been excluded from further consideration.

5.3 A major concern in utilising a Design and Build route is the potential for the contractor to prioritise commercial imperatives over the quality of design detailing and choice of materials so that the buildings and landscape ultimately fail to live up to their intended quality and status. The procurement process chosen needs to ensure that the design team taking the project forward will have the skills and expertise to further develop the proposals in keeping with the historic and sensitive nature of the proposed sites and general confidence that has been built up with stakeholders through the implementation stages (RIBA Stages 4 to 7).

5.4 Under current market conditions that are expected to prevail through the procurement period for this project in 2018, contractors are unlikely to bid for a project of this scale and complexity on a single stage Design & Build basis. The bidding costs will simply be too high and the perceived risks too great when set
against the chances of winning and if successful, then making a profit. There are many other more commercially attractive opportunities available to contractors. As a result, the single stage Design and Build is not considered a suitable solution.

5.5 As a result the Two-Stage Design & Build is therefore considered to meet the Council’s objectives and market constraints. The implementation of this procurement route for this project is set out in Report 2 Procurement Appendix 1 attached to this report.

6 DESIGN TEAM AND PROJECT MANAGEMENT

6.1 As highlighted in section 3 above it is normal for the Client’s Design Team to be novated to the Main Contractor to allow continuity in the design process and to provide the Client with the confidence that the Design Team have the experience and expertise to complete the design to the required standard.

6.2 The Client will then appoint an ‘Employer’s Agent’ to administer the contract, which will not be the Architect if they are novated to the Contractor. In the event of the Client’s Design Team being novated, then the Client will generally appoint a ‘Monitoring’ Team to check that the design being submitted by the Contractor is fully in accordance with the Employer’s Requirements. More recently rather than appointing separate design organisations, clients have been appointing a different individual from within each of the novated Design Team organisations, to act in an independent capacity as the design ‘policeman’. Under this arrangement, there would be ‘Chinese walls’ between the independent ‘policeman’ and the other members of his organisation working on the project.

7 SITE ASSEMBLY AND CPO

7.1 In addition to the procurement of a contractor, the design team and project management, the Council will procure the specialist professional and legal services to complete the site assembly through private treaty or using Compulsory Purchase powers.

8 PUBLIC SECTOR FRAMEWORK AGREEMENTS

8.1 Procurement must be carried out in accordance with the Council’s obligations under the EU Directive 2014/24/EU on public procurement. The Public Contracts Regulations 2015 (PCR 15) implement this Directive in England and Wales). This obligation can be discharged either by using the Official Journal of the European Union (OJEU) to advertise the procurement opportunities, or by using and complying with a suitable and established public-sector framework agreement under Regulation 33 of the PCR 15.

8.2 Public Sector Framework Agreements are established for use by local authorities and other public sector bodies as a means of “fast-tracking” procurement based on the commercial and contractual arrangements already in place under framework agreements, where suppliers are already appointed under the framework. The logic is that the suppliers on these frameworks (panel
suppliers) have been procured by the relevant authority in full compliance with PCR15 and provided that the rules of the framework are adhered to, local authorities can appoint the framework panel suppliers either through a mini-competition or direct negotiation. Different public sector frameworks have different rules and charging structures and the bodies that run them seek varying levels of involvement in the project, but the basic logic applies. Thus the ability to utilise a framework and go to a mini-competition will save time and costs otherwise spent running a pre-qualification process.

8.3 An important benefit in using a public sector framework is that it will enable delivery of a two stage design and build process to be addressed within the OJEU process.

8.4 The Council has utilised frameworks for delivery of the RIBA Stages within the Civic Development and in other development programme projects. As a result, we have examined a number of the frameworks available assess whether they will meet the requirements of the project going forward. This has included a range of construction and professional services frameworks including the Crown Commercial Services, SCAPE, YPO, HCA, KCC, PAGABO and Southern Construction frameworks.

8.5 The detailed discussions which have explored the options, came to the conclusion that for construction, a design and build route under a public sector framework was likely to best fit the Council’s requirements. On the basis of a trawl of existing public sector frameworks and consideration of their criteria, it was agreed to explore two specific public sector frameworks, PAGABO and Southern Construction Framework in greater detail.

8.6 Meetings were arranged with the two public-sector framework providers, PAGABO and Southern Construction Framework (SCF). Both have a panel of suitable contractors and provide suitable processes. Of the two frameworks, the Southern Construction Framework is the more established and from the investigations can support the process mapped out, in the attached Report 2 Procurement Appendix 1, to procure a Design and Build Contractor for this project.

8.7 Alongside the procurement of a contractor the Council will utilise a suitable framework/s to appoint its design and project management teams and its site assembly and CPO specialist advisor going forward. From the review of public sector frameworks available it is anticipated that the Homes and Communities Agency and Crown Commercial Services RM3816 and RM3741 Frameworks provide the best route to securing the relevant experience and expertise to meet our criteria with sufficient flexibility, framework support, compliant processes and sufficient track record.

9 Timetable

9.1 On the basis that Full Council decides on 6 December to proceed with the Civic Development, the preferred approach is a Two Stage Design Route utilising the appropriate Frameworks. Our intention would be to further explore the Southern Construction Framework alongside the HCA and Crown Commercial Services
RM frameworks to establish the design and project management and specialist site assembly and CPO advice, and to procure using the most appropriate framework for each service.

9.2 The key dates for the procurement of the D&B Contractor are anticipated as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec 2017</td>
<td>Pre-qualification of shortlist</td>
</tr>
<tr>
<td>Jan 2018 – Mar 2018</td>
<td>Tendering contractors tender for the project.</td>
</tr>
<tr>
<td>Apr 2018</td>
<td>Select Contractor and subject to obtaining planning consents, appoint contractor for the pre-construction period (after standstill period as appropriate)</td>
</tr>
<tr>
<td>May 2018 – Apr 2019</td>
<td>Pre-Construction Period</td>
</tr>
<tr>
<td>May 2019</td>
<td>Appoint D&amp;B Contractor for the Construction phase (subject to the date of obtaining vacant possession of the necessary sites).</td>
</tr>
</tbody>
</table>

9.3 The key dates for the procurement of the project management and design team and the site assembly and CPO advisor are anticipated as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec 2017</td>
<td>Sifting Brief and Shortlisting of tenderers</td>
</tr>
<tr>
<td></td>
<td>Commence Mini Competition</td>
</tr>
<tr>
<td>Jan 2018</td>
<td>Receive submissions</td>
</tr>
<tr>
<td></td>
<td>Review submissions and make Award</td>
</tr>
<tr>
<td>Feb 2018</td>
<td>Contract commencement after standstill</td>
</tr>
</tbody>
</table>

9.4 Adopting the above programmes will enable the Council to keep the project on track to meet the programme set out in the redacted Stage 3 documents.

10 FEES AND COSTS

10.1 Fees and costs will be incurred in completing the procurement process to progress the project as proposed in this report. These will include professional and legal advice in undertaking and completing the procurement processes.

11 REPORT APPENDICES

The following documents are to be published with, and form part of, the report:

- Report 2 Procurement Appendix 1: GVA - Construction Procurement Strategy Options & Recommendation