

Committee:	Date:
Procurement Sub Committee – For Decision	24 March 2020
Projects Sub Committee – For Information	22 April 2020
Community and Children Services Committee – For Decision	24 April 2020
Subject:	Public
Strategy to enhance engagement with suppliers in the Housing category to yield more bidder responses.	
Report of:	For Information
Joint report of the Chamberlain and City Surveyor	
Report author:	
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Summary

Members of the DCCS Committee raised concerns in October 2018 around perceived failures in the procurement exercises undertaken for some projects where poor or no responses were received. In one instance, this resulted in the Contract being 'Set Aside' due to the winning supplier refusing to accept the terms of the contract. This led to delays to the Housing Programme. This issue illustrates general concerns around responses from the Housing Construction Marketplace to Corporation projects.

In response to a resolution from DCCS Committee on this matter, the Procurement Sub Committee approved a recommendation that a bespoke Housing Working Group be set up to review the Housing Projects, document lessons learned and make recommendations on how to improve on the quality and number of Tender returns received for future housing projects.

The aim of advertising tenders is to ensure we receive sufficient interest from potential suppliers, whilst working proactively with Departments to encourage higher quality and competitive returns from the market. Due to the pressures to maintain our housing stock, the Housing Delivery Programme was set up to manage and deliver housing projects.

For the past year, the Housing Working Group met Bi-Monthly to identify the problems and create an Action Log to improve engagement with the market and identify specific challenges whilst developing objectives to deliver the Housing Programme ensuring contracts are awarded within the terms of the Procurement Code.

Recommendation

Members of the Committee are asked to:

1. Approve the recommended strategy proposed by the Working Group on behalf of the Procurement Sub-Committee.
2. Note the disbandment of the Housing Working Group.

Main Report

1. The Housing Working Group consisting of officers across Housing, City Surveyors and City Procurement undertook a review of the procurement challenges within the City and created an Action Plan which identified the key issues, potential improvements and lessons learnt from previous tenders. Two projects were earmarked for a deep dive. The Cullum Welsh Balustrades project and the Isleden House Infill Project.
2. As part of the Deep Dive, a questionnaire was sent to the Housing Working Group covering all aspects of the exercise such as tender programme, tender sum, clarity of documentation (*A full list of areas covered can be found in Appendix 2*), this enabled the Group to review the projects under the following headings. All responses to the questionnaires were reviewed in detail at the Housing Working Group and a summary of the Group's findings as follows:

Cullum Welsh

3. Cullum Welsh was a balustrade replacement project. Following the Tender exercise, the appointment of the contractor was set aside due to queries from the winning bid which exposed some inconsistencies. This led to a subsequent tender which was successful and therefore was awarded. Both tenders were an Open Below OJEU Tender using the Design and Build form of Procurement. The section below summarises the key learnings from both tender exercises.

First Tender Exercise (Set Aside)

4. Only two tender responses were received. The tender was awarded to the bidder with the lowest price, £465,582.55. The highest bid was £640,450.00. This tender was set-aside as the Contractor submitted a variation to the tender sum based on the 'opening up' investigations. The Variation request was for £67,000 which would have brought the total figure to £532,582.55 plus any additional variations scheduled. Ideally the contractor's initial bid should have priced using scaffold. Once the tender was awarded, they subsequently refused to sign the contract and were asking for more money before they even really got started.
5. At the time of tender publication, it was believed a comprehensive specification had been supplied by Architect, Engineer and Corrosion Specialist. However, the construction method of how the Balustrades had been attached to the main structure was not included in the specification, which made it difficult for the contractor to price this element of the works.
6. The tender return period was only 30-days. This should have been longer due to the intricate nature of the project. The contractors were aware of this and therefore requested two extensions to the tender period, however these requests were not accepted by the project team.
7. Under a design and build contract, it is expected that the contractor takes full responsibility for the design. This is a risk most contractors will only accept if they have full details of the project and have undertaken detailed surveys. The Winning Bidder refused to accept these conditions. Making a fixed price bid for

the contract as a Design and Build suggests that they were willing to accept these conditions to win the tender.

Second Tender Exercise - Successful

8. The second tender exercise was run for 44-days, over the Christmas period. As a result, a request for an extension to 77 days was made and accepted by the project team. This second exercise received six tender returns. The winning bid was for the sum of £619,911.36, the highest being £1,442,874.05, and the average £946,786.49.
9. The Specification was similar to the first tender exercise, but now included more detailed information, such as the opening up images. This helped the contractor's price more accurately, as it showed the full extent of works. Additional detailed information was also included in the subsequent successful tender.

Lessons Learned

10. Risk - Where the City transfers risk to the bidder. The City needs to request bidders' assumptions to be explicit. In the Set Aside tender the Risk was pushed to the bidders. without consideration of the quantum of the risk.
11. Variation - The variation specified by the Set Aside Tenderers bid was £532,582.55 plus any additional variations scheduled, this added to their submitted price was. If the change control had been accepted the unsuccessful tendered price, would have been comparable.
12. Procurement Process - There is a danger that officers use the Procurement Process as a 'method to recover time on a project rather than utilising the procurement tools to achieve the best outcome. This can be counterproductive. Note the unsuccessful original tender has a much tighter turnabout with no extensions accepted, in comparison to the successful tender. Officers need to work more effectively to utilise the experience of the procurement team and be realistic about the tender timeframes.
13. Documentation - The Report on the condition of the Reinforced Concrete Structures included in the tender was from 2014, this should have been updated before going out to tender. The 'opening up' images and other relevant information helped mitigate the most contentious risk.

Isleden House Infill project

14. The project involves the construction of an infill development at Isleden House providing social housing units. In March 2017, a multi-disciplinary design team was appointed to progress design proposals up to detailed design RIBA Stage 4 only. The commission included an architect, principal designer, structural engineer, mechanical and electrical engineer. Unfortunately, the project has suffered delays from the start. The appointed architect recommended that amendments be made to the original planning application to rationalise the design, reduce costs and enable the building process to be less complicated.

The variation to the planning application took some time to resolve and, the London Borough of Islington (LBI) would not consider the planning amendments until the variation had been completed. This took the London Borough of Islington almost one year to approve the planning amendments and enable the design team progress to RIBA Stage 3.

15. The Housing Working Group undertook a workshop to review the procurement issues of this project. Summary from the workshop is as follows;
16. Procurement - The procurement exercise was undertaken during August/September 2019 for the main contract works using the new City Housing Lot 1 framework. Unfortunately, only one tender was received from a potential framework of six contractors. This was possibly attributed to unfortunate timing of the tender exercise which took place over the summer months. The construction industry slows down during August and although there is a return to capacity in September, the ability to coordinate subcontractors and the supply stream to provide accurate pricing can be challenging.
17. Design team - The Design team had only been appointed to deliver design services up to RIBA Stage 4. In early 2019 a new tender exercise was undertaken to appoint a design team to deliver the project through to completion. This change in design team at a critical stage could lead to gaps in the project information as the level of engagement and responsibility may have diminished.
18. The project is yet to commence on site, and a Gateway 5 Report is being prepared for committee consideration in April. A value engineering (VE) exercise is being undertaken with the contractor to reduce the tender costs from £1.5m to £1.4m. It is possible that if cost reductions are not achieved, the project may be retendered, but this could put in jeopardy the GLA grant secured for this project of £180,000.

Overall Findings

19. On completion of the review of both projects, the Working Group embarked on identifying common procurement issues. A full breakdown can be found in Appendix 1, but the main elements are highlighted below:
 - a) Route to market – The selected route to market may limit the level of interest from suppliers, for example, on one of the Housing projects, the Architect for a Windows replacement project, was selected from an existing framework. The City selected the Homes and Communities Agency (HCA) framework to procure the Architect. The HCA framework is set up specifically to support delivery of the design intensive projects. Later feedback from the suppliers on this Framework would confirm that the niche requirements of the window replacement project, made the project unattractive to Architects on that framework. The City should be mindful of selecting appropriate frameworks depending on the type of project.
 - b) Approach to Market – Programme - Cullum House Balustrade Project was advertised over the Christmas period, a time in which the Construction

industry shuts down. A tender advertised during this period and given additional time to cover the shutdown will allow suppliers a better opportunity to plan their resources. During the Second tender exercise the project team worked hard to communicate with the market and engage with potential suppliers, this input provided by the Project Team we had a valuable impact on receiving 6 compliant returns instead of 2.

- c) Quality of Tender Documentation – Our Tender documentation instructs the tenderers on process, clarifications methods, and response procedures. Some of this detail can sometimes be overlooked by Suppliers. In addition, some of this tender pack may not include the clarity they require. If the documents do not have the level of clarity the contractors require, they may not be able to properly price the tender and in some instances decline or simply price in risk.
- d) Procurement Timelines - This report notes the constrained time allowed for the procurement process by respective projects. In the case of Cullum Welsh Balustrade project, 3 separate requests for an extension of time were submitted. Realistic Procurement timelines should be agreed before going out to tender. The markets capacity and willingness to respond will be subject to other demands and opportunities that the supplier may be bidding for, and therefore a short timeframe may discourage them for submitting a tender. A common approach to meeting programme is to squeeze tender timeframes but this does not always ensure positive outcomes.
- e) Procurement method/Contract strategy – In respect of the consultant appointments for the Architect to deliver the Windows programme it appears that the contract strategy to combine packages was not effective in generating interest through the selected external framework. The feedback received referred to the multitude of materials, general differences and listed type of building to not submit a tender. On reflection a better approach would be to combine similar packages and tender on that basis.
- f) Form of contract – Construction market consultation carried out by the City in 2017 and 2018 suggested that were happy with our contractual approach. For the smaller projects, the bespoke City contract terms, with ease of execution and drafting approach suited SME's. However, it is noted that making local amendments to industry standard forms of contract may affect a contractor's willingness to tender for a project. It is also noted that the City's schedule of amendments is not onerous and larger suppliers are willing to accept in most circumstances.

Recommendations

- 20. Procurement Methodology – This should be heavily influenced by the type of project and should be approved by the Construction Category Board.
- 21. Approach to Market – The timing of the tender should be reviewed. Usually the summer and Christmas break should be avoided, likewise when major sports activities are on, for example the World Cup.
- 22. Quality of Tender Documentation – Tender packs must include as much information as possible, where the information does not exist, surveys must be undertaken. In addition, coordination exercises should be undertaken to ensure all drawings and specifications are detailed. If necessary, a peer

review could be undertaken. This will enable the contractor to provide a robust price.

23. Supplier engagement - Where possible contractors should be given an opportunity to seek clarification on the tender pack before submission, this could be by way of a Mid Bid Site Visit or an open session with the design team to table a clarifications document.
24. Procurement Timelines – Tender timeframes should be realistic as squeezing the tender timeframes can result in poor quality submissions in which tender responses can lack important details.
25. Procurement method/Contract strategy and Form of contract – The form of contract and procurement method proposed should be appropriate for the project and determined by the project team. However, this decision needs to be in line with the City's policies.
26. Project Team Consistency- The project team should be maintained for the duration of the project where at all possible. Changing the project team mid-way through will alter the quality of service and increase the programme loss of knowledge.

Conclusion

27. The Major Works and Intermediate works frameworks are now available and include provision for housing related project in the value range £250k to £15m and should help resolve some of these issues. These frameworks give the City the ability to continue to have dialogue with a select group of suppliers, who can advise on industry best practice. This will be achieved with regular supplier forums to improve communication and quality of documentation.
28. The Working Group has considered the projects in question, the lessons learned and reasons for the challenges. The proposals put forward should deliver better outcomes for our projects. The Housing Working Group, Action log and this report provides a clear way forward and therefore it is proposed that the Housing Working Group be closed, and the Actions monitored regularly at the Construction Category Board.

Related Papers: Community and Children's Services Committee, 8 February 2019, approval to proceed with the establishment of the Housing Working Group.

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Appendix 1: Action Log from the Working Group

Appendix 2: Questionnaire used to analyse the Callum Welsh Project and typical response

Appendix 1 – Action Plan identifying items covered by the Housing Working Group

No	ITEM	DETAIL	ACTION PLAN
1	Tender Submission	Create less arduous requirements for contractors to submit a tender for example awareness that some information need not be repeated, as it had been submitted prior	Provide/create guidance notes to aid SME when tendering for work and account for additional information.
2	Terms and Conditions	Elements within Terms and Conditions, may not be suitable for some suppliers	Request Legal review the terms and identify the possibilities of making the terms clearer to SME's
3	Insurances	How can we better identify insurance levels on a project by project basis?	Draft initial proposal for discussion and agreement with CoL Insurance team
4	Terms and Conditions	Suppliers reviewing T&C's before submitting tenders.	Draft communications with supplier's mid tender to request any amendments to the T&Cs and provide any help/support they require.
5	Tender pricing calculations	To clarify what options are available for calculating the tender price and what steps do we take to review on a project by project basis.	Review the price/quality matrix to ensure the scoring is based on the average cost and not the lowest cost
6	Template form for example projects	To create a template to distribute, that answers the questions that we want to know from the supplier. Also, to include relevant accreditations.	Draft Template and Issue to the working group for review
7	Tailor Scoring - Reviewing Scoring descriptions	Review current scoring methodology and redraft to represent housing projects, to give the evaluators clearer guidance.	Issue draft proposal for the revised scoring matrix to the working group
8	Soft Market Testing	Look at feedback on tender exercises and how we are perceived in the market.	Issue draft questionnaire for the soft market testing to the Working Group for approval
9	Sharing Pipelines	To redact and distribute current housing works programme with suppliers.	Issue version to Working Group before publishing final list at the supplier's day
10	Supplier Engagement	To arrange open days for each tender.	Ongoing

11	Deep Dive into a Housing Project	To distribute the Cullum Welsh concrete tender to the team. Arrange a lesson learnt to compare the differences between the Set Aside tender and the successful tender, to help mitigate possible risk and delays to projects.	distribute the Cullum Welsh concrete tender to the team
12	Deep Dive into a Housing Project	To distribute the Cullum Welsh concrete tender to the team. Arrange a lessons learnt to compare the differences between the Set Aside tender and the successful tender, to help mitigate possible risk and delays to projects.	Arrange the lessons learnt workshop
13	Deep Dive into a Housing Project	To distribute the Cullum Welsh concrete tender to the team. Arrange a lesson learnt to compare the differences between the Set Aside tender and the successful tender, to help mitigate possible risk and delays to projects.	Issue project synopsis report from the lessons learnt session
14	Communication Strategy	To better engage with specialist contractors, Tenders should be advertised in the trade press with directions to the portal Once confirmed, look at producing a strategy in doing so.	To confirm if we can advertise in trade press/Journals & Magazine
15	Improving our Approach	Produce a Committee report on results, this will identify how we tendered for work previously compared to now.	Collate results from the action log for the committee report - submission
16	Price vs Quality	Be clear in our message that the City is not price only and more quality driven,	promote during the supplier engagement open days.

Appendix 2 - Questionnaire used to analyse the Callum Welsh Project

Cullum Welsh Concrete Tender Questions

Technical CPG Team

1. Tender Sum

Successful:

Potential issues when requesting single price of repair type on priced schedule. E.g. that the Contractor will price most likely repair types the highest and larger, less likely repairs the lowest. This will help them win the tender but also to charge a higher rate for repairs on site.

Failed:

2. Clarity of Specification

Successful:

Failed:

3. Clarity of Employers Requirements

Successful:

Few areas of doubled up information e.g. the prelims as V3 in the prelims section but as V2 in the appendices.

Failed:

4. Supporting Documents

Successful:

High resolution survey photos very helpful to enable Contractor idea of the full extent of works required without needing specialist access.
Noted that Martech report was dated 2014.

Failed:

5. Programme

Successful:

Page 4 of Broomfields specification outlines detailed programming requirements of the contractor. P1,4,3 of the Watermans spec also calls for specific approvals process that would need to be programmed too.
Unlikely that all contractors will have picked up on this potentially onerous requirement

Failed:

6. Insurance Levels

Successful:

Failed:

7. Form of Contract

Successful:

Looks to have been successful though it is noted that most of the design (barring the balustrades) had been mostly completed by others pre-tender. Suggested that perhaps a JCT IC with Contractors design could have been used.

Failed:

Noted that failed tender didn't have quality question that specifically referred to the D&B contract

8. Site Inspections / Visit / Survey

Successful:

List of drawings/documents was helpful when reviewing.

Failed:

9. Procurement Route

Successful:

Failed:

10. Tender Process – Time frame

Successful:

Noted that this was extended over the Christmas shutdown to enable contractors more time to seek sub-contractors quotes etc

Failed:

Tender issued at the end of the summer – often a busy time for contractors etc. Also not extended.

11. Allocation of Risk between parties

Successful:

Failed:

12. Contract Partnering

Successful:

Noted that employer's agent was referenced but not used.

Failed:

Cullum Welsh Concrete Tender Questions

Legal Team

1. Tender Sum

Successful:

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Failed:

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2. Clarity of Specification

Successful:

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Failed:

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3. Clarity of Employers Requirements

Successful:

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Failed:

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4. Supporting Documents

Successful:

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Failed:

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5. Programme

Successful:

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Failed:

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6. Insurance Levels

Successful:

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Failed:

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7. Form of Contract

Successful:

The Form of Contract (modified JCT DB 2016) was the same for both tenders, which might lead to the conclusion that the Conditions of Contract had no bearing on the outcome. However, it is worth noting that the City's modifications to the JCT terms are onerous from the Contractor's perspective in that the Contractor bears the risk of:

- the entire design, including any errors and deficiencies in the designs provided by the Employer (clauses 2.14 & 2.17); and
- physical conditions (clause 2.1.7)

It may be difficult for a tenderer to price these risks within the time scale allowed within a single stage tender. In my opinion, this form of contract is more suitable for use with a two-stage tender process – allowing for pre-construction site investigations and design development by the Contractor before it is committed to offer a final price.

Failed:

See above

8. Site Inspections / Visit / Survey

Successful:

Failed:

Refer to comments section 7 above regarding single stage tender

9. Procurement Route

Successful:

Failed:

Refer to comments section 7 above regarding single stage tender

10. Tender Process – Time frame

Successful:

Failed:

Refer to comments section 7 above regarding single stage tender

11. Allocation of Risk between parties

Successful:

Failed:

Refer to comments section 7 above regarding single stage tender

12. Contract Partnering

Successful:

Failed:

Cullum Welch Concrete Tender Questions

Technical Housing Team

1. Tender Sum

Successful:

Failed:

Contractor realised they had not allowed enough to cover the cost upon further investigation, but it should be noted that this was to recreate existing specification rather than review and change accordingly. Costs were lower but this could have been through alternative access. Contractor should have priced using scaffold (so to compare apples with apples) and then worked with Client to save costs, post contract award.

2. Clarity of Specification

Successful:

A higher level of detail was provided as a D&B contract to help contractors price more accurately. The same specification was provided for the second tender which has resulted in a successful appointment and six responses.

Failed:

3. Clarity of Employers Requirements

Successful:

Failed:

4. Supporting Documents

Successful:

Large quantity of supporting documents provided by architects (appointed directly by CoL) including existing and proposed elevations & sections, 3D visualisation of proposed replacement balustrade panels, existing balustrade panel plans and sections, engineers concrete specification and 40+ images detailing the opening up works completed to ascertain how the balustrades are attached to the building.

Failed:

We could have further stressed through supporting documents that we were not aware of how the balustrade were structurally installed, and the contractor was responsible for this.

5. Programme

Successful:

Failed:

6. Insurance Levels

Successful:

Failed:

7. Form of Contract

Successful:

It was made clear that this project was a design and build and the responsibility for removing and installing the new balustrades was entirely down to the contractor.

Failed:

With hindsight we could have stressed with more emphasis that the contractor was responsible for the design of the balustrades in their entirety.

8. Site Inspections / Visit / Survey

Successful:

Failed:

Mandatory site visits and inspections could have been stipulated.

9. Procurement Route

Successful:

Failed:

10. Tender Process – Time frame

Successful:

Failed:

11. Allocation of Risk between parties

Successful:

It was stipulated in the contract documents that the design (and therefore design risk) was the contractor's responsibility. They refused to accept this and hence the tender failed.

Failed:

12. Contract Partnering

Successful:

Failed:

Cullum Welsh Concrete Tender Questions

Procurement Team

1. Tender Sum

Successful:

6 Responses received
Winning Bidder (Also Lowest) = £619,911.36
Highest Cost = £1,442,874.05
Average = £946,786.49

Failed:

2 Responses.
Winning bidder (Also lowest) = £465,582.55
Highest Bidder = £640,450.00
Average = £553,016.28

2. Clarity of Specification

Successful:

10 Clarifications received.
Specification similar to before but included opening up images from the failed tender.

Failed:

14 Clarifications received.
Comprehensive specification supplied by Architect, Engineer and Corrosion Specialist.

3. Clarity of Employers Requirements

Successful:

ER's similar to before but included a detailed overview of the Appendices to the ER's.

Failed:

Detailed ER's provided, unable to locate the Appendices located in the Failed tender.

4. Supporting Documents

Successful:

Included Opening Up images and Appendices to ER's compared to the failed tender

Failed:

Mainly contained in the ER's.

5. Programme

Successful:

Programme is dependent on the tender returns.

Failed:

Programme is dependent on the tender returns.

6. Insurance Levels

Successful:

Standard Insurance Levels - No issues

Failed:

Standard Insurance Levels – No Issues

7. Form of Contract

Successful:

JCT D&B provided no issues raised by the tenderers.

Failed:

JCT D&B provided no issues raised by the tenderers.

8. Site Inspections / Visit / Survey

Successful:

Site Visits – Not offered or requested via the portal.

Failed:

Site Visits – Not offered or requested via the portal.

9. Procurement Route

Successful:

Open below OJEU tender exercise, opened up to Capital eSourcing

Failed:

Open below OJEU tender exercise, opened up to Capital eSourcing

10. Tender Process – Time frame

Successful:

44-day tender over the Christmas period. A request for extension was accepted due to Sub-Contractor costing delays. To 77 days.

Failed:

30-day tender process 2 extension requests received.

11. Allocation of Risk between parties

Successful:

Unknown

Failed:

Unknown

12. Contract Partnering

Successful:

Unknown

Failed:

Unknown
