

# THE GLASSWORKS Barnsley



**Procurement Strategy**

June 2017

**Queensberry**

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## **1. EXECUTIVE SUMMARY**

### **1.1 OBJECTIVE OF REPORT**

This Objective of this Report is to review the various procurement routes open to Barnsley Metropolitan Borough Council (BMBC) in procuring a contractor to complete phase 2 of The Glass Works project.

The report seeks to recommend a procurement route that aligns with BMBC's Procurement Objectives as understood by the Reports writers.

### **1.2 SUMMARY OF RECOMMENDATIONS**

#### **The Contract should be let as a Design and Build Contract**

This provides the most secure contract cost and programme prior to construction. It also transfers the most amount of risk to the Contractor and incentivises the contractor to ensure that the appropriate design is in place in time for the project to progress.

#### **The Glass Works Phase 2 should engage in a two stage tender process**

The first stage should go to market on the RIBA Stage 3 design information that is available now. The second stage should be open book negotiation to agree Works Packages based on RIBA 4 design information.

## 2 INTRODUCTION

The Glass Works project is a £120m regeneration project with in the heart of Barnsley Town Centre that covers 3.8 hectares. The project, as a whole, will create space for new shops, cafes and restaurants as well as high quality public realm. The project has already signed leases with key leisure anchor tenants, namely; Cineworld for a 13 screen cinema and Superbowl Barnsley which will provide Ten Pin Bowling, Laser Quest and Soft Play.

The Objective of The Glass Works project is to provide Barnsley with a renewed and vibrant town centre that is family friendly and safe. The project will create high quality open spaces encouraging people to shop, socialise and relax.

Phase 1 of The Glass Works project has already started and has a Contractor on site undertaking the Works.

Phase 1 comprises of; demolition of existing structures to create a development platform for Phase 2, the building of a state of the art Library, building temporary market halls and the refurbishment of the Metropolitan Centre to house the existing market traders in a new and updated centre in the heart of The Glass Works

Barnsley Metropolitan Borough Council (BMBC) are embarking on the procurement of a Contractor to complete Phase 2 of The Glass Works scheme.

Phase 2 will connect in to Phase 1 and comprises a majority of new build structures that will house Superbowl, Cineworld and provide the retail circuit and new multi-story car park. Please see Fig 1 below which shows the phasing plan for The Glass Works.



Fig 1: The Glass Works Phasing Plan

This paper seeks to review the procurement routes open to BMBC in order to procure a contractor for phase 2 and produces a recommendation for the procurement route to be followed for phase 2 of The Glass Works project.

### **3 PROCUREMENT OBJECTIVES**

The procurement of the works needs to support the objectives of the project so that the key members of the Contract are accountable and have a defined responsibility for their works and their Sub Consultants or Sub Contractors.

All procurement options have different amounts of risk transfer and the procurement route is often defined by the amount of risk that the client wishes to transfer or keep.

The key Procurement Objectives for Phase 2 of The Glass Works are noted as below:

- Complete the Procurement process within the unconditional long stop date for the Agreements for Leases signed to date, thereby confirming the cost and deliverability of the scheme to BMBC prior to entering unconditional AfLs.
- Have the maximum programme certainty possible to ensure that long stop completion dates in the Agreements for Lease are not missed.
- Provide a high level of Cost Certainty so that the agreed funding position is not compromised.
- Transfer risk and accountability to the contractor to ensure that the contractor is responsible and incentivised for completing on programme and budget.
- Produce a product that is designed and constructed to deliver longevity in terms of retail sector demand and institutional investment standards.

## 4 PROCUREMENT CRITERIA

In order to develop a procurement strategy for phase 2 of The Glass Works it is important to review the different Project Objectives and to understand the project set against a number of criteria as listed below:

1. **Project Characteristics (complexity):** The size, complexity and location of the Project should be considered; with particular attention given to the mix of new, refurbishment and conversion works. Phase 2 of The Glass Works is essentially a new build, low complexity building once the project has completed the groundworks phase. The complexity comes through the logistics of the project during the build and then the retail and leisure fit out phases.
2. **Contractual Relationships (Responsibility):** Fewer Contractual relationships should reduce any risks associated with any disputes that may arise. It is a Project Priority that there are No Disputes
3. **Ability to make change (Variations):** It is preferable to identify the final scope of the Project during the early design stages but this is not always possible. Changes in the scope of a Project very often result in an increased cost, especially if they arise during construction. Changes introduced after the design is well advanced or construction has commenced often have a disproportionate effect on the Project, in terms of cost, delay and disruption, compared with the change itself. However, it is recognised that some change may occur due to the complexity of ground works and interface with the existing structures that will be encountered. Detailed surveys and enabling works will seek to reduce these risks ahead of the contract award. Tenant variations will, almost certainly create a reason for change following a design freeze. Some Contract Strategies are better at handling Change late in the project than others without having to pay a large premium.
4. **Risk Management (Risk Avoidance):** Different Contract strategies allocate Risk in different ways
5. **Cost Certainty:** There are two issues
  - 5.1 **Price Certainty:** influences project timing and Contract strategy that should be used, generally design should be complete if price certainty is required prior to start on site
  - 5.2 **Cost of Change:** if cost certainty is to be maintained, Changes must be avoided. Changes that occur during the project generally have time and cost implications on the Project in excess of the change its self. It is therefore important to freeze the design prior to contract and manage the Retailer change as efficiently as possible.

The procurement criteria important to phase 2 of The Glass Works project are considered to be the below:

<b>No</b>	<b>Procurement Criteria</b>	<b>Requirement</b>
1	Time	Certainty of Dates of Completion for the various Retailer Access Dates
2	Price Certainty	Certainty of Price is needed prior to final funding to be signed off
3	Cost of changes	Cost of Change must be reasonable and must not exceed total budget
4	Performance (design and Quality)	The specification of the project will be high, but not prestigious.
5	Responsibility	Minimum contractual links preferred. Reduction in the opportunity for disputes by having single point of responsibility
6	Complexity	The building design will not be overly complex
7	Variations	The brief is to be well defined. With the exception of Tenant Changes. It is unlikely that there will be any major changes during construction
8	Risk Avoidance	Pass the maximum, but controllable, risk on to the Contractor

## **5 PROCUREMENT STRATEGY**

Different Procurement and therefore Contractual Strategies will provide different levels of Risk and responsibilities on to the different parties contributing to a project. The main procurement routes appropriate to a project of this size are listed below:

### **5.1 TRADITIONAL**

In this approach, the Client employs the Design Team directly and manages their performance in time and quality. The Design is largely completed prior to the Contractor is asked to price

Advantages to this approach are:

- Cost and Time Certainty prior to Construction
- Competitive Tendering Environment
- Close Design Control
- Change is Controlled through prescribed means with clear contractual steps.

Disadvantages to this approach are

- There can be no overlap in Design and Construction. The design must be largely complete first to allow a complete tender and stop large contract variations during the build process. This extends the project time line prior to the build process.
- Design Risk sits with the client. Importantly this means that Programme and Cost risk also sits with the client especially during the design stage.
- Inevitably there will be further design development required during the course of construction as queries arise during that process. This design development creates potential for further cost and programme entitlements for the contractor.
- Traditional Contracts do not bring in a Contractor early to use their specialist contractors to help make the design efficient. This can slow down the build process and has potential to bring in variations through the build once specialists are involved.

### **5.2 DESIGN AND BUILD**

A Design and Build Contracts are set up by Clients to wrap the detailed design with the Build Contract. In this Contract choice, the Client employs a consultant team to bring a project through a feasibility stage and then through a planning consent. The Contractor is then brought in to complete the detailed design and construct the project. The Contractor can use their own design team or the Client can stipulate that the Contractor uses the incumbent design team using a novation.

The Contractor still has to give a firm cost and programme at tender stage but may apply a "Design Development" cost to the tender to cover any mistakes or detailing problems in the design that the contractor has taken responsibility for. This is generally within the region of 2-5% dependent on the level of design already completed.

Advantages to this approach are:

- Cost and Time Certainty prior to Construction
- Competitive Tendering Environment
- Risk of Design delay or Design detailing complexity are held by the Contractor
- Design does not have to be as advanced as traditional procurement at contract stage as the Contractor is expected to use their own supply change to detail connections etc. this shortens the overall development programme.
- Cost risk has been “bought” at contract stage. It is only specifically instructed change that will be deemed a Variation
- There is one contractual link and one point of responsibility to complete the project on time. It is therefore incumbent on the contractor to manage the consultant team to achieve the programme requirements
- The Project Team takes advantage of the specialist contractors to do the detailed design and therefore efficiencies are brought in to the process and there is no design work completed that has to be redone

Disadvantages to this approach are

- As the Contractor takes responsibility of the design though the detailed design there can be a perception that the quality of the design could be diluted. This can be managed by including a strong set of Employers Requirements in to the Contract that control the areas that have specific value to the Client. This then leaves the noncritical areas of the project available for the Contractor to apply value engineering principles to.

### **5.3 CONSTRUCTION MANAGEMENT**

With this approach, the Client employs a fee earning Construction Manager and also employs all of the design team and all Works Contractors. Design and works on site can be overlapped as there is no overall contractual price for the project.

The Construction Manager defines and manages the works on site. All contracts for Work Packages are between the Client and The Works Package Contractors.

Advantages to this approach are:

- Design and Construction can be significantly overlapped and therefore overall programme time can be reduced.
- The Client is in full Control of Design and Works Contractor choice

Disadvantages to this approach are

- All Cost, Programme and Design risks are the Client's
- The final cost of the project can only be ascertained when the last Works Contract is let
- This procurement choice creates a large number of contracts and therefore Works Contractors are only responsible for each of their trades. This requires a large amount of resource from the client team to resolve any issues or gaps

## 5.4 MANAGEMENT CONTRACTING

This Procurement choice is very similar to Construction Management with the only change that the Works Contracts are let through the Contractor not through the Client.

The advantages are still the same, this is the fastest procurement type, however, the major disadvantages are also the same. There is no cost certainty until the last Works Package is let and also design and programme risk still stays with the Client.

## 5.5 SUMMARY REVIEW AGAINST PROCUREMENT CRITERIA

No.	Procurement Criteria	Traditional	Design and Build	Construction Management	Management Contracting
		Score out of 5			
1	Time Certainty	4	5	3	3
2	Price Certainty	4	4	2	2
3	Cost of changes	3	3	4	4
4	Performance (design and Quality)	5	4	5	5
5	Responsibility	4	5	2	3
6	Complexity	4	4	4	4
7	Variations	3	3	4	4
8	Risk Avoidance	4	5	2	3
	<b>Total (out of 35)</b>	<b>31</b>	<b>33</b>	<b>26</b>	<b>28</b>

From the above table, it can be seen that Design and Build is the favoured option for this project.

## 6 TENDER STRATEGIES

### 6.1 SINGLE STAGE

Single-stage tendering is the more traditional route, used when all the information necessary to calculate a complete price is available when tendering commences:

- An invitation to tender is issued to prospective suppliers (perhaps following completion of a pre-qualification questionnaire and / or a pre-tender interview). The invitation to tender will include information describing the goods or services required in sufficient detail to enable prospective suppliers to prepare an accurate tender.
- Tenders are prepared and returned by prospective suppliers (this may involve questions and answers and a mid-tender review meeting to clarify the Client's requirements).
- Submitted tenders are then assessed and compared (this may involve further interviews).
- The preferred tenderer is selected and negotiations opened.
- Subject to the outcome of those negotiations the preferred tenderer may then be appointed.

Following the last recession, many Contractors have been 'burnt' by badly tendered single stage contracts. For the Contractor, Single Stage Tenders sometimes do not allow a long enough time for the Contractor to fully understand the Contract and therefore can often make assumptions that end up being incorrect

In recent history, it has therefore been very difficult to convince a Contractor to engage in a single stage tender.

The market is softening to the single stage route, however, it is generally for low cost and low complexity projects.

### 6.2 TWO STAGE

Two-stage tendering is a procedure typically used to achieve an early appointment of a Contractor to a lump-sum Contract. For the first-stage, the objective is to competitively appoint, on the basis of limited information, a preferred Contractor for further negotiation.

The first-stage competition is typically based on deliverables including a construction programme and method statement, detailed preliminaries pricing, and overheads and profit. The first-stage may also include the competitive tendering of some Work Packages, together with lump sums for pre-construction services, design fees, risk margins for work that will not be tendered in the second-stage, and so on. The first-stage usually concludes with the appointment of a Preferred Contractor (or a

Preferred Bidder) on the basis of a Pre-Construction Services Agreement (PCSA) prior to the completion of a Contract at the end of stage-two.

The public procurement obligations are normally discharged upon completion of the first stage.

The second-stage, which is typically managed as a negotiation between the Employer and the preferred Contractor relies upon competition between second tier Contractors (sub-contractors) for Work Packages. The second-stage is concluded with the agreement of a lump-sum contract sum, typically based upon the competitive tender of between 70% and 80% of the value of Work Packages.

This process clearly relies upon an element of co-operative negotiation during the second-stage. The abuse of a negotiating position during the second-stage can have a damaging effect on the conduct of the entire Project and cannot be tolerated.

Two-stage tendering is adopted for a number of reasons, including:

- Achieving early appointment of the Main Contractor ahead of the completion of design, and potentially a quicker start on site.
- Securing the involvement of a Contractor for pre-contract services on a competitive basis, to obtain input on buildability, sequencing and sub-contractor selection.
- Retaining greater Client involvement in the pre-selection and appointment of sub-contractors.
- Motivating the design and construction team to drive out cost and to drive in value.
- Transferring a greater degree of design and other construction risk to the Contractor.

### **6.3 OTHERS**

There are other strategies such as negotiated or selective tendering that this paper will not review as they are not expected to be able to be used for Public Procurement.

### **6.4 RECOMMENDED STRATEGY**

Considering the information available and the programme position of the design team with RIBA 4 not being complete until November, the recommendation of this paper is to run a two stage strategy with the first stage sent out on the RIBA Stage 3 Design information as it is now and then the second stage informed with RIBA 4 Design information. This has the advantage of being able to complete Value engineering, if needed, with the selected Contractor and their supply chain.

## 7.0 CONCLUSION

BMBC are looking for a procurement strategy that:

- Completes the Procurement process in time to allow BMBC to be in a position to understand the cost and programme metrics of the project within the unconditional long stop date for the leases signed to date.
- Has the maximum programme certainty possible to ensure that long stop completion dates in the agreed leases are not exceeded.
- Provides a high degree of Cost Certainty so that the agreed funding position is not compromised.
- Transfers risk and accountability to the contractor to ensure that the contractor is responsible for completing on programme and budget.
- Produces a product that is designed and constructed to deliver longevity in terms of retail sector demand and institutional investment standards.

All Procurement Strategies explored in this report have advantages and disadvantages.

Design and Build is strong in meeting the requirements of time and cost certainties with the most risk transfer to the Contractor. However, it is weaker in keeping a direct link between the Client and the design team. The timing of the novation of the design team is key to mitigating this disadvantage. Ensuring that the design is sufficiently progressed to be able to maintain the areas that the Client has specific value attributed to is important to keeping control of those areas of the design.

Traditional Contracts allow for cost certainty at the start of the build but there can be little overlap of construction and design. The client also maintains the design risk and therefore programme risk for the professional team. The Contractor has no incentive to ensure the design is in place in time.

Construction Management and Managing Contracting are quicker to starting on site but provide no cost certainty prior to contracts are signed. Both of these also have very little risk transfer to the contractor and require large resource from the client team.

With regard to tender strategy, the size of this project is likely to mean that there will be no interest from the market to engage in a single stage procurement strategy.

## 8.0 RECOMMENDATION

**The Glass Works Phase 2 should engage in a two-stage tender process**, the first phase should go to market on the RIBA Stage 3 information that is already complete. Contractors should be requested to produce a firm programme, method statement, priced preliminaries and fixed overhead and profit percentage. A preferred bidder will then be chosen from this information to carry on to the second stage.

The second stage will be open book tendering for Works Packages based on RIBA 4 design information. The aim of this will be to achieve a position in the new year where there is a fixed cost and programme agreed with the chosen contractor of at least 80% of the Contract Sum prior to confirming the construction phase funding for Phase 2 with BMBC Cabinet at the end of February 2018.

**The Contract should be let as a Design and Build Contract**, this provides the most secure contract cost and programme at contract signing. It also transfers the most amount of risk to the contractor.

Design and Build is a very popular type of contract (using the JCT 2016 suite of contract, amended). Most contractors are set up to work on a Design and Build Contract basis and are experienced and comfortable with design delivery responsibility during construction. The vast majority of building contracts for this type and size of scheme are placed as Design and Build contracts.

With the second stage of the contract based on RIBA 4 design information there will be very little room for the Contractor to degrade the design in the areas that are important to BMBC. The Contractor will still be able to make efficiencies in other areas that will be beneficial to the project in programme and cost savings to the contractor.

This also allows for contractor input in to the design process (buildability) so that there is no abortive design work through the detail design process.