

**Report to: Cabinet, 11th June 2013**

**Report of: Cabinet Member for Safer and Stronger Communities**

---

**Subject: WORCESTER SWIMMING POOL CONTRACTOR PROCUREMENT – KEY DECISION**

**1. Decisions Required**

1.1 That Cabinet agree:

- i. the new swimming pool complex be procured as a 'Develop and Construct' Contract and that prior to seeking tenders from contractors the design is taken to RIBA Stage D and;
- ii. the Restricted OJEU Procurement route is utilised to procure the contractor.

1.2 That Cabinet note the Sansome Walk site will be marketed to coincide with the tendering of the new swimming pool to ensure a more precise value of the capital receipt is known at the time of the contract evaluation.

**2. Background**

2.1 The Council at its meeting on the 26 March 2013 agreed

- i. the site at Perdiswell for the new swimming pool complex.
- ii. Option 1 as its preferred option with Option 2 being the minimum specification for the new swimming pool complex.
- iii. the indicative Business Plan and the significant assumptions contained within it particularly that the model excludes in-house operations.
- iv. that the operation of the new facility will be via an external operator based on a non-business lease with a peppercorn rent which includes the option to tax.
- v. the capital allocation for construction and fees of £10.5 million
- vi. to progress to tender and evaluation stage for the construction and allocate a budget of £300,000 for the tender process.

2.2 The Cabinet at its meeting on 12 March 2013 agreed that officers investigate and secure further value for the project through sponsorship, partnership, grants and other potential site uses.

2.3 Chapter 11 of the Worcester Swimming Pool Feasibility Study report states that the choice of an appropriate procurement route is crucial to the success of any project and that the new swimming pool has some unique requirements such that a range of viable procurement options need to be appraised.

2.4 The report states that each of the commonly adopted procurement routes have differing characteristics in respect of:

- Client control of design;
- Cost certainty;
- Risk;
- Ability to accommodate change;
- Time;
- Quality control.

2.5 The report further states:

- i. The design needs to be of a suitable quality, finished with good quality materials that are robust in nature and well-constructed.
- ii. The centre consists of swimming pool areas that are notoriously complicated to build and as such recommend that the risks inherent in constructing the pools, along with other risks, are transferred away from the Council.

2.6 Deloitte Real Estate (DRE) recommends that the proposed / selected procurement route should provide the Council with:

- robust and functional design solutions, proven to be durable;
- a transfer of project and more specifically design risks to the contractor;
- minimal risk of project / programme over run;
- minimal risk of project / programme overspend;
- a tender price early on in the project to inform decisions on affordability;
- minimal snagging that ensures the facilities can be used from day one after handover; and
- reduced lifecycle costs.

2.7 There are effectively two choices, available to the Council related to how it procures the construction contract, Design and Build or Develop and Construct, both of which will be carried out utilising a National EU approved framework or via the appropriate EU procurement route.

2.8 In accordance with the recommendations of this report a procurement exercise has been undertaken in relation to the appointment of the Lead Consultant and Design Team which is presented later on the agenda for Cabinet's approval.

2.9 The indicative business plan approved by Council in March assumed that the capital receipt from the sale of Sansome Walk will be allocated to the project and was built into the financial modelling and projections. In this regard it would be prudent to conduct a marketing exercise for the disposal of the Sansome Walk site to coincide with the contractor tendering to ensure a more precise value of the capital receipt is known at the time of the evaluation and award of contract. This information will inform Cabinet / Council at the time of contract award.

2.10 The South Worcestershire Development Plan has allocated the site at Sansome Walk, once the swimming pool is replaced, for housing with an indicative number of 40 dwellings referred to in the plan.

2.11 The estimated Agent's fee for the disposal of the site is likely to be between 1% and 1¼% of the realised sale price. Other costs including survey fees are estimated at £20,000.

### **3. Procurement Options**

3.1 After careful consideration and debate your officers concur with the views of DRE that the Council should utilise the Develop and Construct route for the procurement of the swimming pool and develop the design to RIBA Stage D, see **Appendix 1**, because this is considered to be in the best overall interest of the Council. The Develop and Construct and the Design and Build options are described in more detail below.

#### **Develop and Construct**

3.2 If the client wants to be closely involved in the development of the concept design it is advisable to adopt a "client led design" approach, which is a procurement route that is often referred to as Develop and Construct, whereby the contractor is only required to carry out limited elements of the detailed design.

3.3 The Employer's Design Team works up the design in some detail, typically to RIBA Stage D/E, to ensure that the brief can be met and that a unique design is achieved. The Design Team may subsequently be appointed by or novated to the successful Design and Build contractor. In relation to the swimming pool project DRE has recommended that the design is taken to RIBA Stage D.

3.4 Taking the project to RIBA Stage D over and above RIBA Stage C would:

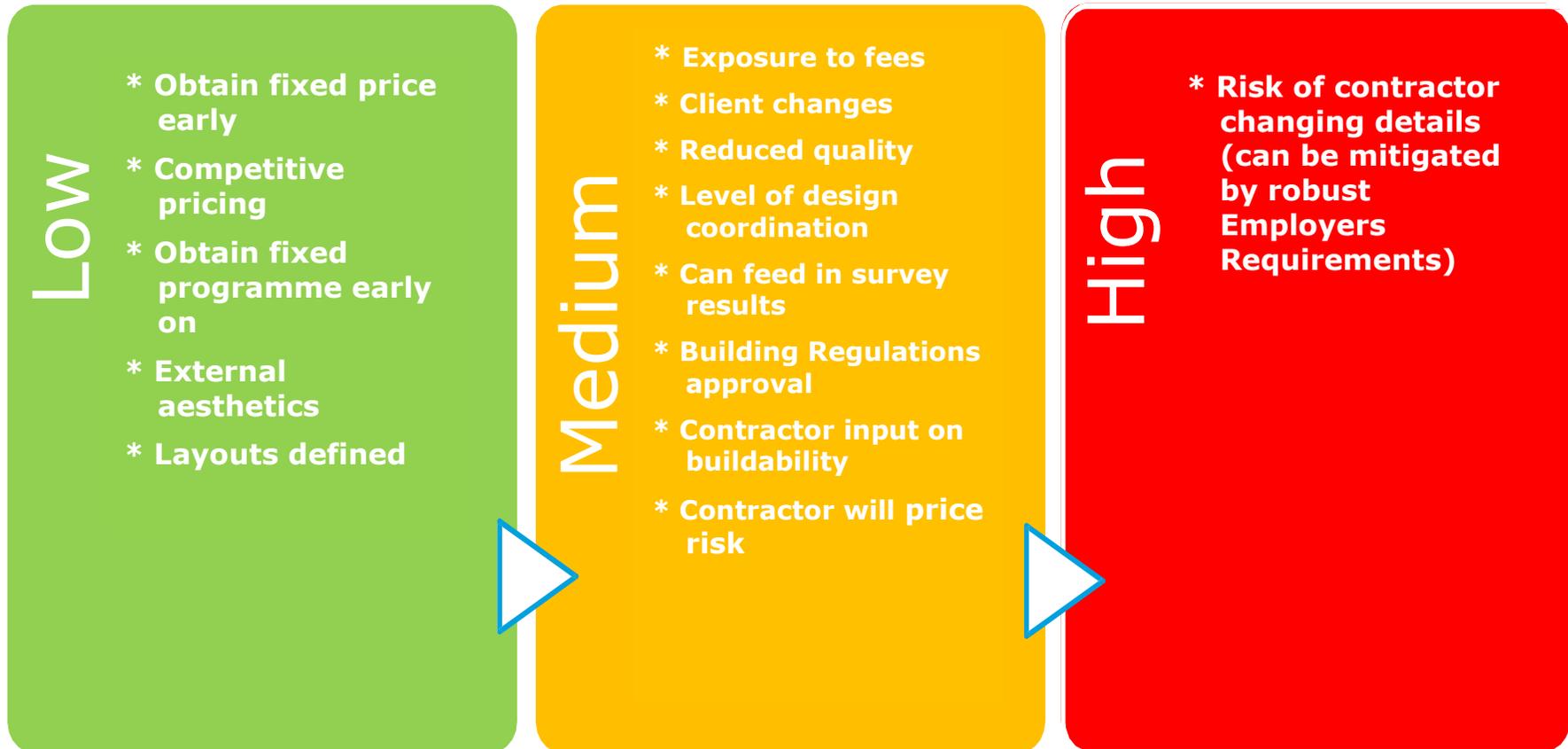
- i. Ensure that the design is developed to be fully coordinated with the structure, services and civils.
- ii. Detail the external envelope which removes the risk that an allowance for setting out assumed at Stage C might have been incorrect. Coordination is progressed to also ensure ceiling heights and allowances for plant space are correct. Initial mood boards for internal finishes are produced and reviewed with the client and the internal layouts should be finalised including for all structural and M&E zones.
- iii. Enable a price for the works to be obtained fairly quickly, (normally about ten weeks after you would obtain a price if tendering on Stage C information). However, when compared with Stage C, progressing the design to Stage D allows the client to prescribe the external aesthetic to a much greater extent, which maintains quality.
- iv. Lose some of the flexibility, so tender prices may not be as competitive as a less defined tender, but a good level of competition should still be maintained. For a complicated building such as a swimming pool or leisure centre, this is the minimum level of design detail DRE recommend a project of this nature is progressed to, prior to tender.

3.5 Whilst the Develop and Construct procurement route ensures that the client can maintain the integrity of the design, some of the advantages of Design and Build are sacrificed as the contractor is not able to contribute to the buildability of the project at an early stage. However, this absence of contractor input to buildability can be mitigated by consulting main sub-contractors on the more complex aspects of the design, such as steelwork, and by appointing an experienced Design Team.

- 3.6 The Develop and Construct route allows for changes in the brief to be integrated into the design for an extended period prior to tendering, which would be important where there are several key stakeholders and funders. Furthermore, whilst any post tender changes should ideally still be avoided, any essential changes may be accommodated without penalty if a disciplined change order procedure is adopted.
- 3.7 Therefore, the Develop and Construct route has many of the advantages of Design and Build in relation to the speed of design development, with the residual risks associated with shortcomings in the design and temporary works being transferred to the contractor. However, the design and quality of workmanship can be more closely prescribed in order to achieve a fixed price tender from the successful contractor for a defined product.
- 3.8 DRE consider that a Develop and Construct procurement route is appropriate for this project and recommend the design is progressed to Stage D to ensure that the Council can retain more control over quality, but will still benefit from not restricting the tenderers, thus encouraging input on the design and materials proposed, whilst still obtaining a tender price earlier in the project.
- 3.9 The chart below identifies the risks associated with going out to tender at RIBA Stage D.

# Procurement Risk

## Stage D Design - Risk Assessment



## **Design and Build**

- 3.10 For Design and Build procurement, the client provides the contractor with a defined set of performance requirements against which the contractor responds with a proposal, including prices for construction and design works. The client and contractor negotiate to ensure that the contractor's proposals accurately reflect the Employer's requirements and agree a mutually acceptable specification.
- 3.11 Under this form of contract, the contractor is solely responsible for design, fabrication and co-ordination of the works as described in the contractor's proposals, including the appointment of specialist consultants and sub-contractors. The client will usually utilise a consultant to prepare the Employer's Requirements and to monitor the progress and quality of the works.
- 3.12 Under the Design and Build form of procurement, the contractor is responsible for all aspects of the work. This "single point" responsibility can be highly attractive and advantageous to Employers. The Design and Build form of procurement also presents a time advantage, as design work does not have to be completed before the commencement of construction. The development is therefore complete much sooner than under more traditional forms of contract.
- 3.13 Design and Build normally involves the design being progressed to RIBA Stage C – Outline Design, see **Appendix 1**. This would normally involve the production of floor plans, a site plan, basic elevations and room data sheets. This level of design provides a good overview of the scheme without going into too much detail. The design team make assessments on how much space they expect they will need for service zones and structure and use these assumptions to generate design areas and an overall footprint and volume for the building.
- 3.14 Because the design is still relatively flexible at this stage tenders for basic buildings are often sent out with only this level of detail. For example warehousing, retail sheds, etc. This is because contractors have a good knowledge of how to construct simple buildings like this and they can therefore input advice on constructability at this stage.
- 3.15 The disadvantage of going out to tender at this stage is that: with only a basic level of design to hold a contractor to once in contract, the client has little control over the end quality of the building. Specifications for internal finishes and detailing of design can often be poor.
- 3.16 Design and Build contracts offer high cost certainty as the contractor is obliged to do whatever is necessary to comply with the contractual requirements. However, tendered costs may be slightly higher than with other procurement routes in order to cover the contractor's liability or risk. Cost certainty is attained at an early stage in the design and abortive costs are therefore less should the contractor tenders be more than the cost estimate prepared by the cost consultant and a redesign required.
- 3.17 Quality control problems are often given as a reason for not selecting Design and Build. However, provided that the Employer's Requirements document is sufficiently detailed and quality is closely monitored on site, it is possible to achieve a good quality building.

- 3.18 With Design and Build contracts, it is difficult to vary the works once the contract has been entered into. Variations can be awkward to deal with so that it becomes even more important to ensure that an accurate and comprehensive Employer's Requirements document is prepared and agreed with all parties before the contract is let.
- 3.19 The chart below identifies the risks associated with going out to tender at RIBA Stage C.

# Procurement Risk

## RIBA Stage C Design - Risk Assessment



#### **4. Design Team**

- 4.1 In terms of the professional advice the Council will require to progress the scheme DRE recommend that a consultant team, (including Project Management, Architect, Structural and Civil Engineer, Mechanical and Services Engineer, Pool Filtration Engineer (often combined with M&E), Cost Consultancy and a CDM Coordinator), is appointed through a Lead Consultant using the Government Procurement Service (GPS) Framework. Members should however, be aware that the GPS Framework is due for renewal with the existing Framework ending on the 15<sup>th</sup> June 2013. Information posted on the GPS website indicate it is unlikely that a new Framework will be in place until early 2014.
- 4.2 In the light of this your officers have commenced the procurement of the Lead Consultant and Design team using the existing GPS Framework, which contains twelve contractors with the capability of providing 'Project Management and Full Design Team Services', to submit tenders via a 'Mini Competition' in accordance with the Framework's procedures.
- 4.3 Prospective tenderers have been requested to provide prices for the work required at each RIBA stage so that a Project Management and Full Design Team can be appointed for the whole project including L1 Administration of the building contract following Practical Completion and making final inspections. Prospective tenderers have been made aware that the first phase will be to carry out the works required up to and including RIBA Stage H Tender Evaluation. Progress beyond this point being dependant on the Council agreeing to the scheme(s) submitted and deciding to proceed with the project.
- 4.4 The alternative to utilising the GPS Framework was to utilise an OJEU Procurement Route which would add a minimum of 3 months to the project timetable.
- 4.5 The results of the tendering exercise will be presented for Cabinet's approval later on this agenda.

#### **5. OJEU Procurement**

- 5.1 There are four routes in OJEU, Restricted, Open, Competitive Dialogue and Negotiated. The most common route is Restricted, because it attracts the most credible and experienced tenderers due to its efficiency. In a restricted tender potential contractors are asked to pre-qualify for the tender process by completing a Pre-Qualification Questionnaire. They are then shortlisted normally to a minimum of five and they are invited to tender.
- 5.2 An alternative to OJEU is to utilise a National OJEU compliant framework to procure both the consultant team and contractor more efficiently. The advantages of using a National OJEU framework are that the resource required to procure a contractor is substantially less than if you use an OJEU route. There is also less risk of an appeal, because the framework was established in accordance with OJEU procedure. A bespoke OJEU process on the other hand could always be called into question.
- 5.3 After careful consideration of the options and recognising that the Council would want the opportunity to review a number of potential design solutions it is considered that the OJEU Restricted route is the most appropriate procurement process for the Council to use in relation to the appointment of a contractor.

5.4 Based on the current programme it is anticipated that the OJEU Notice will be issued in January 2014 with contractor bids being received and evaluated in June 2014.

## **6. Policy, Legal, Financial, Equalities, HR and Risk Management Implications**

### **Policy**

6.1 Within the Council's Corporate Plan which sets out the Council's vision to make Worcester a 'First Rank Cathedral and University City' there is a commitment to consider options for a swimming pool replacement and to develop plans for long term provision of all leisure centre and swimming pool facilities.

### **Legal**

6.2 With a project of this complexity, there are a number of potential legal risks that could arise relating to procurement, planning and property. On-going legal support and advice will be required to mitigate any risks that might arise throughout the duration of this project, including the use of specialist external advisers where appropriate.

### **Financial**

6.3 The budget allocated at £300k and was agreed by Council on the 26 March 2013. The funding sources for this cost are £154k from New Homes Bonus in 2013/14, and £150k from the Butts Depot capital receipt (£1.15m in total). It should be noted that if, following the procurement exercise, the swimming pool project does not proceed, then these costs are aborted, and the capital receipts funding would not be available for utilisation and an alternative revenue funding source would be required.

6.4 In accordance with Cabinets request that officers investigate and secure further value for the project through sponsorship, partnership, grants and other potential site uses work has commenced and a number of discussions have or are taking place. The outcome of these discussions will be reported back to Cabinet in due course.

### **Risk management**

6.5 The Council's corporate risk register identifies a number of risks associated with the project and the actions required to mitigate them. The major risk at this stage is that if the Council decides not to proceed with the project the costs incurred up to and including that point will have been aborted and will have to be funded from revenue budgets.

6.5.1 The operational risk register associated with this project is contained in Appendix H of DRE's report. In addition to these risks the Council has the risk of not providing a municipal swimming offer to residents, if the existing pool plant or building infrastructure breaks down before a viable alternative plan has been shaped, resourced and implemented.

### **Organisational Resources**

6.5.2 It is important in projects as complex as the construction of a new swimming pool, that the Council reduces its risks as early in the process as possible by passing them to a third party or contractor. The alternative is that managers and staff are diverted away from their key functions leading to a reduction in the quality of services elsewhere within the organisation.

## **7. Comments of the Managing Director**

- 7.1 The proposed approach to the procurement of a contractor for the new swimming pool is supported because it will provide the flexibility to enable the Council to provide the best overall solution for the residents of Worcester.
- 7.2 The marketing of the Sansome Walk site to coincide with the contractor procurement is also supported because it will enable the Council to have certainty regarding its value when deciding if and on what basis to proceed with a new swimming pool.

## **8. THE CABINET MEMBER FOR SAFER AND STRONGER COMMUNITIES, COUNCILLOR ROGER BERRY, RECOMMENDS:**

- 1. Cabinet agree the new swimming pool complex be procured as a 'Develop and Construct' Contract and that prior to seeking tenders the design is taken to RIBA Stage D.**
- 2. Cabinet agree the Restricted OJEU Procurement route is utilised to procure the contractor.**
- 3. Cabinet note the Sansome Walk site will be marketed to coincide with the tendering of the new swimming pool to ensure a more precise value of the capital receipt is known at the time of the contract evaluation.**

**Ward(s): All**

**Contact Officer: Ruth Mullen, Corporate Director, Service Delivery 01905 722010**

### **Background Papers:**

Worcester Swimming Pool Feasibility Study - Deloitte Real Estate February 2013

Worcester City Council Corporate Risk Register

## Appendix 1

### RIBA Design Stages

1.1 Throughout the Cabinet and DRE report the level of design development is referred to using the definitions provided by the Royal Institute of British Architects, the "RIBA", and for ease of reference the main design stages are noted below in Table A:

RIBA Stage	Status	Summary (based on information to be provided by the architect)
<b>A</b>	Appraisal	Review feasibility and alternative design solutions
<b>B</b>	Strategic Brief	Preparation and development of the Client Brief
<b>C</b>	Outline Proposals	Site master plan, floor plans, elevations, typical sections, indicative material schedule
<b>D</b>	Detailed Proposals	Development of floor plans, elevations, sections, room data sheets, building materials. Fully coordinated with other consultants.
<b>E</b>	Final Proposals	Detailed design and specification.
<b>F</b>	Production Information	Construction details
<b>G and H</b>	Tender	Preparation of tender documents and tender period.
<b>I</b>	No such stage under RIBA schedule	N/A
<b>J to L</b>	Construction period	Tasks to be performed under the construction contract.

**Table A: RIBA Design Development Stages**