



**REVIEW OF CONTRACT PROCUREMENT
FOR
HEALTH PROFESSIONS COUNCIL**

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HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

Contents

- 1.0 Executive Summary
- 2.0 Objectives
- 3.0 Procurement Options Under Consideration
- 4.0 Form of Contract
- 5.0 Procurement Programme
- 6.0 Summary and Recommendation



**REVIEW OF CONTRACT PROCUREMENT
HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

1.0 Executive Summary

- Davis Langdon have held preliminary discussions to understand the key client drivers and refine the list of options to be considered.
- Delivering the project within the defined budget is key for HPC therefore cost certainty at the earliest possible time takes priority over the timing of the project delivery. Retaining control over the desired quality is also key but secondary to cost in terms of importance.
- On this basis, we consider the most appropriate procurement route would be a traditional, single stage, lump sum form fully designed by the consultant team and competitively tendered to the market.
- This will give the following benefits:
 - It is the most widely used and understood procurement method in the UK. There are, therefore, a greater number of main contractors who are able to offer this arrangement.
 - HPC retains control of design development and therefore the quality of the design and specification.
 - The contractor receives a good level of information prior to his appointment enables him to properly price and programme the project and assess the risks associated with it.
 - The contractor commits to a firm price and programme based on the information provided to him and there is, therefore, a significant transfer of the construction risk from the client to the contractor.
 - The main contractor takes total responsibility for the performance of the sub-contractors and for any financial failure of a sub-contractor.
 - The main contractor provides a single point of responsibility for dealing with future defects in materials and workmanship.



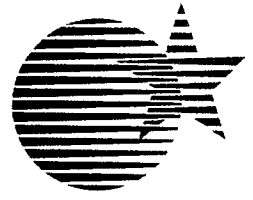
**REVIEW OF CONTRACT PROCUREMENT
HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

2.0 Objectives

Following initial discussions with HPC and Studio Callaghan, Davis Langdon have been asked to recommend the procurement route for 22-26 Stannary Street.

It is understood that the chosen procurement strategy should ensure delivery of the following:

- an end product that most effectively meets the Client's brief in terms of the appropriate quality of materials, workmanship and detailing
- the most economic price
- certainty of price as early as possible
- certainty of the occupation date
- an ability to accommodate change during the construction period (both client led change and change driven by hidden risks associated with the refurbishment of an existing building)
- minimise cost and design risk exposure to HPC



REVIEW OF CONTRACT PROCUREMENT HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET

3.0 Procurement Options Available

Construction contracts can be procured in many ways. The principle types of contract strategy used in the market today are as follows:

- (i) **construction management:** design by the client's consultants generally overlaps with the construction. A fee earning construction manager defines and manages the procurement and construction of the work packages. All contracts are between the client and the trade contractors. The construction managers liability is one of 'reasonable skill and care', rather than him bearing the full financial (and programme) risks of the project.
- (ii) **management contract:** design by the client's consultants generally overlaps with the construction. A management contractor is appointed early to let elements of work progressively by trade or package contracts. The contracts are between the management contractor and the trade contractors, rather than being between the client and sub-contractors (as under the construction management arrangement). The management contractor in theory assumes responsibility and financial (and programme) risks, but in reality this is diluted by the terms of the standard form of contract, so his liability is similar to that of a construction manager.
- (iii) **design, manage and construct:** similar to the management contract, with the contractor also being responsible either for the production of the detailed design or for managing the detailed design process.
- (iv) **traditional lump sum:** design by the client's consultants is completed before contractors tender for, then carry out, construction. The contractor assumes responsibility and financial (and programme) risks for the carrying out of the building works whilst the client takes the responsibility and risk for the quality of the design and the design team performance.
- (v) **design and build:** detailed design and construction are both undertaken by a single contractor in return for a lump sum price. Where a concept design is prepared before the contractor is appointed, the strategy is called **develop and construct**.

These strategies can be further modified to adopt either single stage or two stage tendering i.e. the contractor/manager can be appointed based on a full set of tender documentation (single stage) or an initial appointment can be made on limited documentation, where the main principles of price and programme are agreed at the outset and the final terms are then negotiated as the design is progressed and the works tendered (two stage).

Risk

These contract strategies differ from each other in relation to:

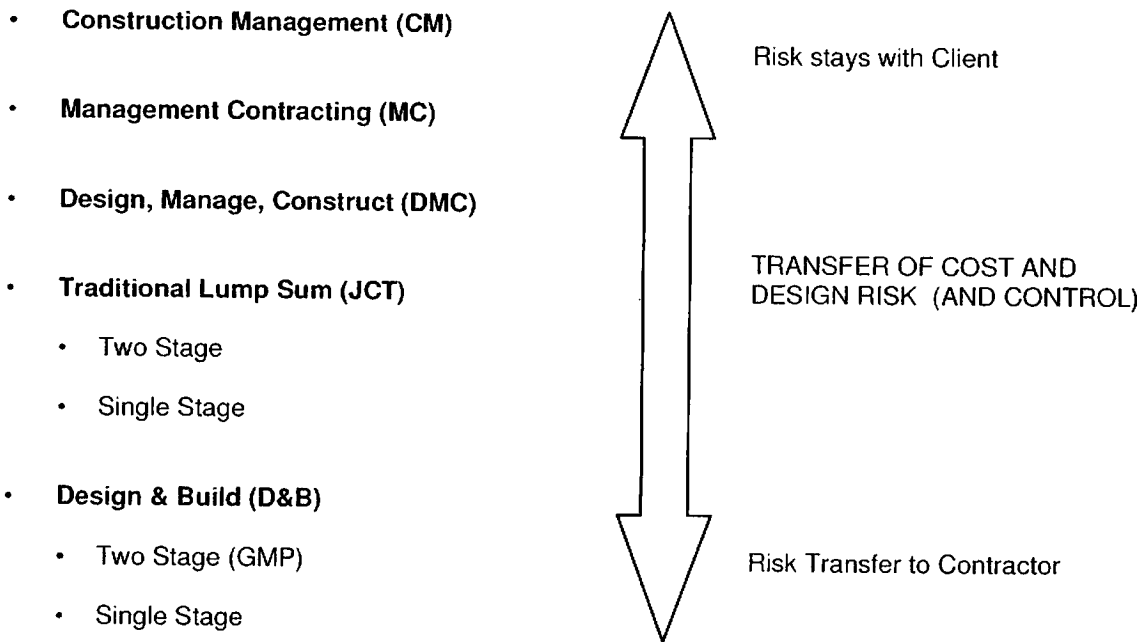
- the degree of control that the client has over the design and construction processes;
- the information required at the time construction contracts are let;
- organisational arrangements and
- the financial and programme risk that the client is exposed to.



**REVIEW OF CONTRACT PROCUREMENT
HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

Construction Management offers the greatest degree of control of the design and construction process for the Client, but also the greatest level of financial and programme risk, whereas the single stage design and build offers (potentially) the greatest opportunity to transfer this risk to the contractor, but with a corresponding loss of control.

Diagrammatically the extent of risk transfer for the various routes can be expressed as follows:



Refining the Options

During discussions with HPC and Studio Callaghan, it has been generally agreed that a single stage traditional lump sum procurement route will best satisfy the client requirements.

This approach can be summarised as follows:

- (i) The brief is agreed between the client and the architect.
- (ii) The design team produce a full set of design information, with all aspects of the project drawn and specified to a significant level of detail.
- (iii) Bills of quantities or pricing schedules are produced by the Quantity Surveyor, based on this detailed design information.
- (iv) Typically between 4 and 6 main contractors are invited to tender, normally on the basis of a pre-qualification enquiry document and pre-tender interviews. The purpose of this process is to establish which contractors have the appropriate experience and expertise, the right team available, the right systems in place to manage the project, etc.
- (v) The tender documents are sent out to these selected contractors who submit a lump sum price and programme for acceptance.
- (vi) These tenders are evaluated by the quantity surveyor, the design team and the client, in order to establish the best value offer.



**REVIEW OF CONTRACT PROCUREMENT
HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

- (vii) A contract is placed with the preferred tenderer and, after an appropriate lead in period, work commences on site.
- (viii) Generally speaking, the main contractor will sub-let most, if not all, of the work to sub-contractors, but he takes full responsibility for the performance, and the work, of those sub-contractors.
- (ix) The client retains responsibility for the design team and any further design development by that team after the appointment of the main contractor is deemed to be a variation under the contract, potentially entitling the contractor to additional payment, and if appropriate, additional time.
- (x) Typically the client also bears the responsibility for other risks such as unforeseen ground conditions, failure on the part of utilities and statutory authorities, exceptionally inclement weather, etc.

Benefits

The benefits of this approach are:

- (i) It is the most widely used and understood procurement method in the UK. There are, therefore, a greater number of main contractors who are able to offer this arrangement.
- (ii) It leaves the client in total control of design development and therefore enables the client to determine the quality of design and specification.
- (iii) It provides a good level of information to the contractor prior to his appointment and starting work on site and thus enables him to properly price and programme the project and assess the risks associated with it.
- (iv) The main contractor commits to a firm price and programme based on the information provided to him and there is, therefore, a significant transfer of the construction risk from the client to the contractor. Whilst the client retains some element of risk, the primary risk of constructing the scheme to the required quality, in the time available and to the agreed price, rests with the main contractor.
- (v) The main contractor takes total responsibility for the performance of the sub-contractors and for any financial failure of a sub-contractor.
- (vi) The main contractor provides a single point of responsibility for dealing with future defects in materials and workmanship.
- (vii) Because there will be bills of quantities or detailed pricing schedules, it is generally easy to value any post contract changes.

Disadvantages

The disadvantages of this approach are:

- (i) The main disadvantage is that, because there is no overlap in the design and construction process, the time elapsed before a start on site can be made is significantly longer. Given that cost certainty is a greater priority than the time of the commencement of the project, this is considered acceptable.



**REVIEW OF CONTRACT PROCUREMENT
HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

- (ii) The main contractor is not involved in the design development process and, because there is no early involvement, there is no input into site logistics, buildability, value engineering, etc.
- (iii) The robustness of the contractor's offer, in terms of price and programme, is entirely dependent upon the quality of the design information which is provided to him for tender. If there is significant design development or change in the design after the appointment of the main contractor then this will significantly weaken his commitment to price and programme. This risk can be reduced by close monitoring and control of the design process by Davis Langdon.
- (iv) Because there is a significant transfer of construction risk from the client to the main contractor, this type of contractual arrangement can be adversarial. Contractors will often tender at very competitive prices if they believe that they can subsequently improve their profit margins by pursuing claims for additional payment in respect of client changes, design development, provision of late information from the design team, etc.
- (v) The client takes responsibility for the performance of the design team – if the design information is incorrect, uncoordinated or issued late then the contractor potentially has a claim for additional payment and an extension to his contract period.
- (vi) It is difficult to remove the contractor in the event of his non-performance. Unlike Construction Management, all of the sub-contracts are held by the main contractor and he is given complete control of the site. It is, therefore, more difficult to remove him, whilst maintaining the sub-contract in place, in the event of his non-performance.
- (vii) In the event of claims for delay/disruption to design and/or construction, nobody in the client team is in a good position to defend against them, unless there is a full-time client representative who is close to the design/construction programme management.



**REVIEW OF CONTRACT PROCUREMENT
HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

4.0 Form of Contract

Following the selection of the appropriate procurement route, the final decision is for the particular contract to be used.

Due to the nature of construction work and the high possibility of dispute, construction contracts are long and complex documents. Developing a bespoke contract is a time-consuming and costly process and it would be highly impractical to attempt to develop a bespoke contract for this project.

Various standard forms of contract have been developed specifically for use in construction projects and these can be adapted using industry standard amendments to suit a variety of situations. These standard forms have become widely used throughout the industry and one of the major benefits of using them is the familiarity of the parties as to their rights, duties and obligations under them. This reduces the occurrences of disputes but, if disputes do occur, the course of action operated under the contract speeds up resolution of the dispute and minimises the cost of litigation.

There are various forms of contract available for use with the single stage traditional lump sum procurement route, dependant 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.

Under a lump sum contract, the contractor agrees to undertake a defined amount of work for an agreed sum. These contracts can be either 'with quantities', where the price is based on drawings and a firm bill of quantities, or 'without quantities', where the price is based on drawings and either a specification or schedule of works.

The most widely used suite of contracts is the Joint Contracts Tribunal (JCT) standard forms of contract. Following the guidance set out by the JCT in selecting the most appropriate form of contract we have identified that the Standard Building Contract Without Quantities is the most suitable for this project.

This form of contract is appropriate for works of this nature, where the degree of complexity is not such as to require bills of quantities, and where a Contract Administrator and Quantity Surveyor are to administer the conditions.

The benefit of using the 'without quantities' form is that the risk on the quantities is transferred to the contractor upon agreement of the contract sum.

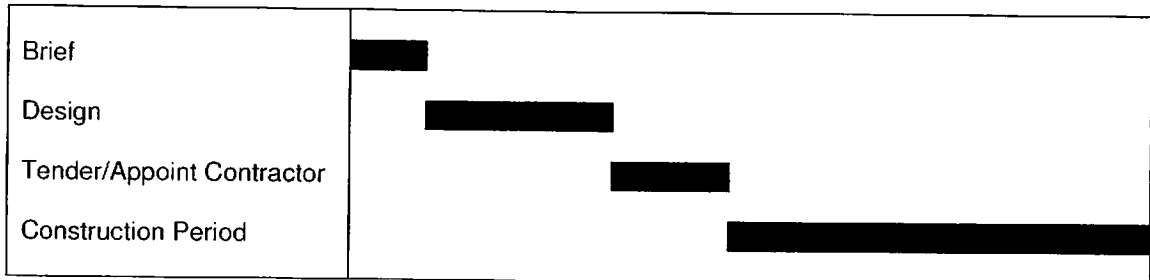
We have discounted using the JCT Intermediate Building Contract as, although the works are of a small scale, they are sufficiently complex and the programme of a sufficient duration to warrant the use of the Standard Building Contract.



**REVIEW OF CONTRACT PROCUREMENT
HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

5.0 Procurement Programme

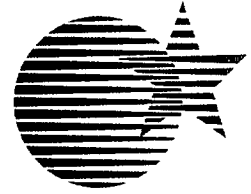
The sequence of a project procured under the stage traditional lump sum is characterised as being "end to end", that is one process must end before the next in the sequence may begin. As a result the overall delivery period for a project is maximised. The sequence of activities undertaken with the traditional procurement strategy is shown below:



Having determined the single stage traditional lump sum procurement route as the most appropriate for this project, the following programme of events will be triggered relating to design and tendering of the contract.

- (i) **design for tender purposes:** the design team will usually require a minimum of six weeks to produce the design information to the required level of detail to enable the contractors to submit a lump sum tender.
- (ii) **prequalification:** whatever the method of contractor selection is adopted, it is important that a robust prequalification exercise is undertaken to ensure that appropriate companies are put on the tender list. A short prequalification questionnaire is sent to potential contractors to obtain information such as company structure, financial standing, health and safety policy, relevant experience, their proposed approach to the project and any other general information. From receipt of this information, the contractors will be invited to attend a pre-tender interview to ensure they are fully competent, have the necessary resources and experiences and are keen to carry out the works. Two weeks should be allowed for the prequalification process.
- (iii) **tender preparation:** the lump sum will be based upon the detailed design information and a priced schedule of works. One week will be required to prepare the tender documents for the project from receipt of the design information from the consultants.
- (iv) **tender period:** the tender documents are sent to the contractors short listed following the prequalification interviews. A period of four weeks should be allowed for the contractors to return their tender submissions.
- (v) **tender interview:** following on from the receipt, examination and validation of tenders documents it may be appropriate to hold a meeting with the lowest one or two valid tender to resolve any remaining issues or questions concerning their tender. If the tender contains errors, the meeting may provide a suitable opportunity for providing details of these to the tenderer, and give him opportunity to confirm, withdraw or amend his tender.
- (vi) **appointment:** finally, and following the issue of the tender report by Davis Langdon for approval by HPC, the preferred contractor is appointed and the contract documents assembled and issued prior to commencement.

We would welcome the opportunity to discuss the procurement programme with HPC to establish a realistic timescale for this process and confirm the anticipated date for appointment of a main contractor.



**REVIEW OF CONTRACT PROCUREMENT
HEALTH PROFESSIONS COUNCIL, 22-26 STANNARY STREET**

6.0 Summary and Recommendation

There is no perfect solution to the choice of procurement route and contract form, there is rather, a commercial judgement based upon the mode of operation and perceived priorities of the Client. A balance between all of the objectives listed under Section 2.0 must be made.

This balance will vary from client to client and from building to building, according to the relative importance of cost, time and quality and the attitude taken to the acceptance or avoidance of risk.

There are certain basic principles:

- (i) The greater the amount of design completed prior to commencement of work on site, the lower the risk to the client, but the longer the period from inception to completion.
- (ii) Any reduction in the main contractor's liability for time and cost inevitably results in a corresponding increase in the client's risk.
- (iii) Having obtained a commitment from a contractor to price and programme any subsequent change to the project will reduce the strength of this commitment.
- (iv) Transferring risk to a contractor inevitably comes at a price and transferring an un-quantifiable risk, or one that is difficult to manage, is likely to carry a far greater price, particularly in a busy tendering market (as at present).
- (v) If a contractor's early input into the planning and design process is considered beneficial/essential, then the ability to obtain a commitment to time and price is inevitably reduced, but the ability to plan and design in the most efficient way should be increased.

Recommendation

Based on our initial discussions with HPC and Studio Callaghan, it is our view that the most appropriate procurement method for this project is a single stage traditional lump sum approach utilising the JCT 2005 Standard Building Contract Without Quantities.