



**CUSHMAN &
WAKEFIELD**

Delivery & Procurement Strategy for SG1 Stevenage

Prepared for

Stevenage Borough Council

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Table of Contents

| | | |
|----|--|----|
| 1. | Introduction..... | 2 |
| 2. | Scope of Opportunity / Context | 3 |
| 3. | Delivery Objectives..... | 4 |
| 4. | Delivery Mechanisms | 5 |
| 5. | Procurement / Marketing Options..... | 8 |
| 6. | Procurement Options Analysis | 12 |
| 7. | Recommendation | 14 |
| | Appendix A – Conducting an Efficient & Effective Competitive Dialogue Procedure..... | 15 |
| | Appendix B - Project Objectives | 18 |
| | Appendix C – Further Procurement Considerations..... | 20 |

1. Introduction

- 1.1. Stevenage Borough Council (SBC) are considering the process for the appointment of a development partner for the development opportunity area in Stevenage town centre referred to as SG1, with the potential for additional sites in the town centre to be included at a later date.
- 1.2. Cushman & Wakefield (C&W) have been commissioned by SBC to consider the most appropriate delivery and procurement strategy for this development opportunity. This paper sets out the key considerations for the determination of the most appropriate delivery mechanism and procurement route and demonstrates the due process undertaken to support the recommendation.
- 1.3. The advice provided in this paper is C&W's interpretation of procurement regulations as property procurement advisers as opposed to legal advisers. SBC should seek legal advice where they rely on legal matters, such as interpretation of regulations and in particular where they believe that there is a risk of legal challenge.

2. Scope of Opportunity / Context

The Opportunity

- 2.1. SBC have identified the regeneration of Stevenage Town Centre as their number one priority. This ambition is supported by public sector partners including the Hertfordshire Local Enterprise Partnership (LEP), Hertfordshire County Council (HCC) and the Homes and Communities Agency (HCA) through Stevenage First. In order to advance this ambition, a Framework Plan for the future of the Town Centre has been developed and was launched in Autumn 2015.
- 2.2. The Stevenage Central Framework is the overarching regeneration strategy for the development of the centre of Stevenage including the establishment of investment priorities, partnership working and physical interventions over the next twenty five years. The aim of the Framework is to ensure that Stevenage Central once more plays as full a role as possible in the lives of Stevenage residents, ensuring that it becomes the place that provides real and tangible benefits for the wider population of the district and the wider region. The emerging Local Plan is setting an ambitious growth agenda for the whole Borough.
- 2.3. Whilst a few sites within the town centre have and are coming forward for development by the private sector, SG1 is the first development opportunity within the Stevenage Central Framework to be brought to the market by the public sector. SG1 comprises an overall area of c. 14.2acres (5.75ha), to the West, South and South East of Town Square, with the following development potential:

| | |
|----------------------|--|
| Residential | Circa 850 Units |
| Retail | 6,000 – 7,000 sqm |
| Leisure | 3,000+ sqm |
| Stevenage Hub | Circa 9,000 sqm (Re-provision of Public Sector services) |
| Education | Possible inclusion of a primary school |

3. Delivery Objectives

- 3.1. SBC's delivery objectives should be the key consideration for the identification of the most appropriate procurement route. These delivery objectives should capture what SBC wants to achieve from the procurement process along with the working arrangements in the procurement and delivery phases. As such, they are distinct from the broader project objectives which deal with the outputs and outcomes of the project.
- 3.2. The proposed delivery objectives for SG1 are that the delivery mechanism and procurement process should:
 1. Allow for engagement and negotiation with the market for the formulation of acceptable proposals;
 2. Allow the ensuing contract to include positive obligations for the development partner and provide for a level of control over the development, in addition to the Council's planning controls;
 3. Allow for the procurement of a development partner based on the requirements of SG1, but with the potential for other development opportunities within the town centre to be brought forward by the delivery mechanism;
 4. Secure private sector expertise and resources to deliver the proposed development;
 5. Provide for the ability to use the Council's CPO powers if required to achieve vacant possession;
 6. Provide for an efficient, effective procurement programme to select a high quality private sector partner(s);
 7. Maximise competition from appropriate private sector partners (attracting and maintaining bidders);
 8. Be proportionate to the development opportunity from a resourcing and timetable perspective;
 9. Adhere to relevant procurement regulations, such as the Public Contracts Regulations 2015 (as amended) (the Regulations) and minimise the risk of procurement or any other challenges.

4. Delivery Mechanisms

- 4.1. Set out below, at a high level, are a number of potential delivery mechanisms and their strengths and weaknesses when related to the context of the SG1 scheme and SBC's delivery objectives. The commentary has been informed by C&W experience on similar projects and broader knowledge of the market, together with feedback from the Soft Market Testing exercise on SG1 undertaken in 2015 and 2016.

| Delivery route | Description | Pros | Cons |
|-----------------------------|--|--|---|
| Disposal following planning | Public sector parties dispose of their land following securing appropriate planning permission(s), therefore leaving delivery to subsequent purchasers to bring forward proposals within the framework set by the planning consent. | <ul style="list-style-type: none"> • Relatively cheap implementation costs • Sale & capital receipt could be achieved quickly | <ul style="list-style-type: none"> • Disposal at present may not maximise value (e.g. title not clean) • Landowners would need to bear cost of planning • Risk that landowners may not achieve planning consent that maximises market appeal • Risk of non-delivery and lack of control over performance and quality – in the absence of a procurement process, it will be challenging to include enforceable obligations, whilst the public sector facilities will need to be procured separately. |
| Development manager | SBC/public sector partners fund the development which is delivered on their behalf by a development manager and contractor. SBC could retain freehold of the land and take ownership of completed properties which could then be leased. | <ul style="list-style-type: none"> • High level of control for SBC • Development profit (but also risk) would sit with SBC • Assets could be retained by SBC (potential benefit from revenue streams and capital growth) • SBC has access to cheap borrowing through PWLB (or potential other sources such as LEP funding) | <ul style="list-style-type: none"> • Requirement to forward-fund scheme • SBC exposed to commercial risk rather than passing on to a developer • Risk that development manager does not maximise value/regeneration benefits • Requirement to run procurement process for DM & subsequently for different streams of works & services (contractor, design team, etc) |

| Delivery route | Description | Pros | Cons |
|---------------------------|---|---|---|
| Contractual partnership | <p>SBC procures a development partner with delivery arrangements governed by a development agreement (DA) between the parties. This contractual mechanism would be the method by which the project objectives are pursued, with no separate entity being created. The legal agreement would set out the project objectives and set out the roles, rights and obligations of the parties including responsibilities for carrying out development, land transfer, achieving appropriate planning consents, funding, financial arrangements, delivery programme and so on.</p> <p>DAs can either be structured as a set of formal obligations; or on a partnering basis whereby decisions are taken through a project board comprised of both parties.</p> | <ul style="list-style-type: none"> • Development management fee rather than developer profit • Tried and tested approach, well understood by the market • Contractual structure is familiar to local authorities • No separate entity created • Straightforward approach where the structure of the delivery arrangement is set by the terms in the contract negotiated by the parties • Clear delineation of objectives, roles, risks and responsibilities. • Development risk primarily with the developer | <ul style="list-style-type: none"> • Potential lack of flexibility and ability to manage change requiring careful drafting to ensure durability through changing market conditions. • Lack of a distinct/separate identity, which can dilute focus should appropriate governance and resourcing structures not be designed. • Typically, contractual arrangements do not naturally promote commonality of interests and parties rely more on the contract to govern joint working, potentially leading to disputes which will require resolution mechanisms to be included. • A contractual partnership such as this does not itself create an entity that can hold assets/enter into contracts - one of the parties must do this |
| Joint venture partnership | <p>SBC & a private sector partner establish a common enterprise (JVCo) in which they participate together and share the same approach & aims. JVs therefore embed partnership working and genuine risk sharing. There are many structures that can be adopted for joint ventures each with distinct advantages and</p> | <ul style="list-style-type: none"> • Establishment of distinct entity encourages focus on shared business plan and objectives • Easier branding and marketing • JV Co can enter into contracts in own right if required | <ul style="list-style-type: none"> • Relatively complex and costly to establish for relatively smaller schemes such as SG1 • Potentially exposes SBC to different types and levels of (commercial) risk • Complexity of aligning shared objectives and agreeing respective risks and returns |

| Delivery route | Description | Pros | Cons |
|----------------|--|---|--|
| | <p>disadvantages which require careful consideration (covering issues such as tax considerations and any need to limit liability, for example).</p> <p>Operation of the JVCo would be governed by a Memorandum and Articles of Association which would be written to allow all activity required to achieve the project objectives</p> | <ul style="list-style-type: none"> • Flexibility and durability to address changing market circumstances • Could cover investor partner as well as developer partner scenario | <ul style="list-style-type: none"> • Potential concern of insufficient accountability to parent organisations • Potential to impact market appetite, particularly where the local authority cannot demonstrate successful track record of participating in JVCo structures. A requirement for this type of structure could also limit market competition as there are relatively fewer operators with genuine experience of such vehicles. |

- 4.2. On the basis of the above, it is considered that SBC’s delivery objectives are likely to be more achievable through the contractual partnership route relative to the other routes. A number of organisations made it clear during the soft market testing exercise that they wanted SBC to be clear with regard to the preferred delivery mechanism and not leave this aspect open during the procurement. In addition, as heads of terms are required at the outset of the process, it is more challenging / complex for the choice of delivery route to be left open, rather, it will be much more straightforward for heads of terms to be produced for a single preferred delivery model. Therefore, it is recommended that the Council progress the procurement of SG1 through a contractual partnership route and that heads of terms are provided at the outset on this basis.
- 4.3. The remainder of this paper focuses on the procurement strategy for the contractual partnership approach.

5. Procurement / Marketing Options

- 5.1. Assuming that SBC progresses the opportunity under a contractual partnership route, this section assess the potential procurement procedures.

Application of Procurement Regulations

- 5.2. The provisions of the Regulations will apply to this contract if certain criteria are satisfied as listed below:
- On the basis that the proposed contract has the characteristics of a “works” contract, the anticipated value of the works being above the value threshold of £4,104,394;
 - The contracting authorities in question are not excluded from the Regulations (which they are not); and
 - The works and/or services in question are not excluded from the Regulations (i.e. the unencumbered disposal of land by a contracting authority is excluded).
- 5.3. In addition to the above relatively objective criteria within the Regulations, there is relevant case law and guidance, such as *Auroux and others v. Commune de Roanne (2007)* and the former OGC’s Procurement Policy Note – *Public Procurement Rules, Development Agreements and s106 “Planning Agreements”*; *Updated and Additional Guidance, Information Note 12/10 30 June 2010*. These consider issues such as whether a land transaction is a straight disposal or whether it comprises the contracting authority procuring the carrying out of works.
- 5.4. Having considered the above in relation to this particular contract and the procurement objectives in the previous section, C&W are of the opinion that the Regulations will apply to this proposed contract and that it will need to be procured thorough an OJEU compliant process.
- 5.5. From our understanding of the opportunity we are of the opinion that it will be defined as a ‘public works contract’ (rather than a service or supplies contract), which means a public contract which have as their object any of the following:
- a) the execution, or both the design and execution, of works related to one of the activities listed in Schedule 2 of the Regulations;
 - b) the execution, or both the design and execution, of a work;
 - c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

Lots

- 5.6. The Regulations require a contracting authority to consider awarding a contract in separate lots. In the event that it is determined that a contract will not be awarded in lots, the contracting authority must provide an indication of the main reasons for their decision and include this within the Project Report (See Paragraph 6.1 – Project Report).
- 5.7. Having considered the potential to sub-divide the opportunity into Lots, SBC have determined that the contract will not be sub-divided into lots for the following reasons:
- Comprehensive Development – SBC are looking for the comprehensive masterplanning and development of the site, rather than fragmented or even competing development. A single ‘development’ would also more efficiently deliver the key linkages required;
 - Scale – If the opportunity is divided into lots, this would diminish the overall scale of the project which would make it less attractive to the market.

Procurement Processes

- 5.8. The Regulations provide a number of procurement procedures as listed below, that can in theory be utilised for a public works contract of this nature¹:
- Open Procedure
 - Restricted Procedure
 - Competitive Procedure with Negotiation; and
 - Competitive Dialogue
- 5.9. A brief description and summary of the characteristics of the options listed above are detailed below, including where the use of these processes needs to be justified. (Where such justification is required to use the recommended approach, this will be set out in the latter part of this report and referenced in the Project Report – see Paragraph 7.1):

OPEN

- 5.10. The Open procedure is one of the default OJEU procedures that may be used by a contracting authority without any specific justification. It is a single stage procurement procedure and as such does not include an initial Pre-qualification (PQQ) stage. The opportunity is open to any organisation who may submit a tender within prescribed timescales. Tender documents will need to set out the exact requirements of SBC, including the legal form of contract and pricing structure. The procedure does not allow for negotiations with any of the bidders.
- 5.11. This procedure is appropriate for contracts where it is determined that a separate PQQ (selection) stage is not required; where the requirements are understood and known; and elements, such as the contract, will not require negotiation, such as: facility management service contracts, simpler construction projects, etc.

RESTRICTED

- 5.12. The Restricted procedure is the other default OJEU procedure that may be used by a contracting authority without any specific justification. This is a two stage procurement procedure comprising a PQQ (selection) stage followed by a tender stage. At the tender stage, bidders will be issued with tender documents that set out the exact requirements of the Landowners, including the legal form of contract and pricing structure. As with the Open procedure, the Restricted procedure does not allow for negotiation with bidders.
- 5.13. This procedure is appropriate for contracts where it is determined that a separate PQQ (selection) stage is required, so as to be able to limit the number of tenderers, and the requirements are understood and known and elements, such as the contract, will not require negotiation, such as: facility management service contracts, construction projects, etc.

COMPETITIVE PROCEDURE WITH NEGOTIATION

- 5.14. This is a new procedure introduced on 26 February 2015 within the Regulations. It allows for an initial PQQ (selection) stage at which the number of bidders to be invited to participate can be limited. This is then followed by one or more successive stages to develop proposals and reduce the number of tenders by applying the award criteria. Towards the end of the process, the

¹ Other OJEU procedures such as 'Innovation Partnership' and 'Negotiated Procedure without Prior Publication' have not been considered as, in the opinion of C&W, we do not believe that they are either appropriate for this opportunity or capable of being justified.

remaining bidders must submit final tenders for evaluation and award of contract. Whilst this process allows for market engagement and negotiation following the PQQ stage to refine proposals, it does not allow for any negotiation in relation to the final tender. Use of this procedure requires justification by the contracting authority, such justification may include: where the *“contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them”*.

COMPETITIVE DIALOGUE

- 5.15. This procedure was introduced in 2006. It was the de-facto default procurement procedure for complex procurements under the previously applicable Public Contracts Regulations 2006 (as amended) for contracts of this nature, when the Open and Restricted Procedures were not appropriate. Since that time it has been used for numerous development agreement procurements. The procedure has been amended under the new Regulations. Two key amendments being:
- For tenders to be “optimised” following the final tender stage which appears to provide for a greater level of adjustments to the final tenders than the previously used term of “fine-tuned”; and
 - Negotiations are now permitted with the preferred bidder to *“confirm financial commitments or other terms contained in the tender by finalising the terms of the contract”*. This is subject to the proviso that such negotiation does not materially modify the essential aspects of the tender or the procurement and does not risk distorting competition or cause discrimination.
- 5.16. Use of this procedure also requires the same level of justification by the contracting authority as for the Competitive Procedure with Negotiation, i.e. such justification may include: where the *“contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them”*.
- 5.17. This is a three stage procedure comprising a PQQ (selection) stage followed by a dialogue stage and finally a tender stage. Following the PQQ stage, short-listed bidders will participate in the dialogue stage where they work with the contracting authority to develop their solutions. The dialogue stage may be undertaken in a single or multiple phases, depending on a number of factors. The dialogue stage may also be used to reduce the number of solutions / bidders by applying the award criteria. Dialogue will continue until a solution or solutions capable of meeting the contracting authority’s needs is identified. In the context of a development, the solution will typically include agreement on the technical, financial and contractual position. Following close of dialogue, bidders are invited to submit final tenders on the basis of the solution or solutions presented and specified in the dialogue and which must contain all of the elements required and necessary for the performance of the contract. Following submission of final tenders, the contracting authority may request tenders to be clarified, specified or optimised in accordance with rules set out in the Regulations. Once a preferred bidder is identified, the contracting authority may undertake negotiations with that preferred bidder to confirm financial commitments or other terms contained in the contract with such negotiations undertaken in accordance with the rules set out in the Regulations.
- 5.18. The approach to undertaking competitive dialogue under the previous regulations has historically been quite varied, and in quite a few cases, very resource intensive to the extent that the experience of developers from having undertaken competitive dialogue has created reservations about committing to one of these procedures. Of particular concern to developers has been the funding of legal costs for the drafting of the detailed contract documentation whilst still in a competitive position (at the dialogue stage). In relation to this particular issue, we are aware of a large number of developer procurement procedures where the contracting authority has taken a more principled based approach to the production of the legal documents – in effect developing

draft heads of terms through to detailed heads of terms in dialogue with each bidder and then converting the detailed heads of terms to a development agreement with the preferred bidder, whilst maintaining the integrity of the principles that were tendered.

- 5.19. It should also be noted that in C&W's experience it is possible to undertake competitive dialogue relatively efficiently, with good preparation and a clear strategy to efficiently execute the process.

6. Procurement Options Analysis

- 6.1. This section provides an analysis of the available procurement options against the delivery objectives.

OPEN

- 6.2. The Open procedure does not allow for an initial evaluation and potential short-listing of bidders, as part of a PQQ stage. Given the size and complexity of the project and that SBC will require the eventual development partner to have appropriate experience and financial strength, it is considered that a PQQ stage is required to ensure that short-listed bidders, who will potentially be required to undertake an extensive amount of work, will have demonstrated that they are appropriate from the outset. Accordingly, we have not considered the Open procedure any further.

RESTRICTED

- 6.3. This, in theory, is one of the simplest and less resource intensive OJEU procurement procedures and consequently should also be attractive to the market. However, this procedure is not designed for complex projects that require negotiation and meaningful engagement during the procurement process. Given the attributes of a typical developer procurement process for a complex process such as this, whereby developer engagement during the process is essential along with negotiation of issues such as the form of contract, it would be hard to envisage how this process could be used without creating a significant procurement challenge risk.
- 6.4. C&W are aware of examples where this process has been used for developments, but these have typically been for significantly less complex projects and it is the opinion of C&W that some of these projects may have included for a level of negotiation contrary to the procurement rules.

COMPETITIVE PROCEDURE WITH NEGOTIATION

- 6.5. Whilst this procedure allows for a negotiation stage, the inability to negotiate after final tenders are submitted is likely to make this procedure unworkable for the procurement of this opportunity. As previously mentioned, the required legal documents for the envisaged contract will be extensive and bespoke. From C&W's experience, developers will be very reluctant to commit to a procurement process, with a risk / reward profile similar to this project, where they will be required to prepare all of the contract documents whilst still in a competitive position. Consequently, if this processes were to be used, C&W would be very concerned that it could fail due to lack of participation by the market.

COMPETITIVE DIALOGUE

- 6.6. Competitive dialogue provides the flexibility to structure the procurement process around the needs of complex procurement projects and in particular engagement with bidders to structure acceptable solutions around the requirements of the contracting authorities.
- 6.7. Use of this procedure does require justification. One of these justifications is where:
"The contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them"
- 6.8. Specifically, in relation to this project, SBC are not in a position to award the contract without prior negotiation due to the nature of the project – i.e. the regeneration solution; legal and financial makeup will all require substantial negotiation to reach agreeable positions which will be specific to each bidder. As such, C&W are of the opinion that there is valid justification to use this procedure for the proposed public works contract.

- 6.9. Of particular consideration is the ability for the tenders to be clarified, specified or optimised and subsequently for negotiations to be undertaken with the preferred bidder to confirm financial commitments or other terms contained in the contract, all in accordance with the rules set out in the Regulations.
- 6.10. SBC would need to be mindful that this process has the potential to deter the market, along with being resource intensive for all parties and should consider how it can be structured and presented to the market to minimise these risks.

Conclusion

- 6.11. Following the above considerations, C&W are of the view that a competitive dialogue procedure is more likely to provide an optimal and acceptable solution for this opportunity. Of particular significance is the inability to meaningfully negotiate under the open and restricted procedures and the inability to negotiate following final tenders under the Competitive Procedure with Negotiation procedure, considerations which C&W believe will be key requisites for a successful outcome.
- 6.12. There are a number of risks inherent in the use of the competitive dialogue procedure, a key one being lack of engagement by the market. Therefore, a key risk mitigation will be to structure the procedure to attract and maintain competition and to deliver an efficient and effective process. Appendix A to this document includes a number of considerations for the conduct of an efficient and effective competitive dialogue procurement process.
- 6.13. A critical part of the procurement will be the project objectives. These have already been considered by the project team and for ease of reference have been included at Appendix B to this document.
- 6.14. Finally, Appendix C includes a number of further procurement considerations not otherwise covered in this document.

7. Recommendation

- 7.1. This report initially considered the most appropriate delivery mechanism against the delivery objectives for the SG1 development opportunity. Based on the analysis undertaken, it concluded that SBC's delivery objectives are more likely to be achievable through the contractual partnership approach relative to the other approaches. Whilst it could be possible to leave the final choice of delivery mechanism open for resolution during the procurement process, a number of organisations made it clear during the soft market testing exercise that they wanted SBC to be clear with regard to the preferred delivery mechanism and not leave this aspect open during the procurement. In addition, as heads of terms are required at the outset of the process, it is more challenging / complex for the choice of delivery mechanism to be left open, rather, it will be much more straightforward for heads of terms to be produced for a single preferred delivery mechanism. Therefore, it is recommended that the Council progress the procurement of SG1 as a contractual partnership and that heads of terms are provided at the outset on this basis.
- 7.2. Based on the above recommendation for the delivery mechanism, potential procurement procedures were also considered. Based on the considerations, C&W are of the view that a competitive dialogue procedure is more likely to provide an optimal and acceptable solution for this opportunity in comparison against the other available procedures. Of particular significance is the inability to meaningfully negotiate under the open and restricted procedures and the inability to negotiate following final tenders under the Competitive Procedure with Negotiation procedure, considerations which C&W believe will be key requisites for a successful outcome.

Appendix A – Conducting an Efficient & Effective Competitive Dialogue Procedure

Based on C&W's experience and lessons learnt from structuring and managing numerous Competitive Dialogue (CD) procedures for complex regeneration projects similar to SG1, and the feedback received from developers during the soft market testing, set out below are a number of considerations for the structure and management of an efficient and effective CD procedure:

- **Project Objectives** – SBC to clearly set out their project objectives, structured and weighted in a manner that can be used to inform and manage the procurement process. Appendix [] contains the project objectives that have been collectively developed by the project team, along with weightings to signify relative importance. The project objectives will form the basis of the questions / requests for information and also the evaluation criteria. It is therefore essential that these have been well thought through as they form the 'backbone' of the procurement process.
- **Structure** – Overall process to be mindful of the significant resources required by developers to participate within an OJEU developer procurement exercise and ensure that it is structured in a manner that attracts and retains bidders. For example, C&W propose that the procurement process is structured as a single dialogue stage process, which will save c. 2 months of procurement time against a two stage procedure as well as saving resources for both the bidders and the Council. This was particularly welcomed by the majority of organisations during the soft market testing. Note, however, that we will still typically allow for recourse to a two-staged dialogue (i.e. outline solution stage followed by a detailed solution stage), should the number of bidders shortlisted following the PQQ process exceed c. four and need to be managed down during the process.
- **Legal Documentation** - C&W are of the opinion that in order to attract and maintain competition throughout the process, SBC should not seek to agree full and final contract documents during the dialogue stage but rather seek to agree detailed heads of terms, which for certain documents might be in the form of the draft contract, by the end of the dialogue stage of the process and then use SBC's ability to optimise positions post tender and subsequently to negotiate with the preferred bidder to finalise the suite of contract documents. This process should include agreement on all commercial and contractual elements to ensure that the relative positions of the parties are clearly articulated. This reflects the requirements of the Regulations that final tenders should be called for only once a solution capable of meeting the contracting authority's needs has been identified and that the final tender must contain all the elements required and necessary for the performance of the project

The above to be conducted on the basis that this:

- does not have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, and
- does not risk distorting competition or causing discrimination.

The above process could be effectively monitored by SBC's procurement and/or legal teams and C&W during the preferred bidder stage to ensure that these provisions are adhered to.

- **Minimum Project Requirements** - A contracting authority can specify minimum / maximum positions within a procurement process, outside of which a tender would be deemed to be non-compliant. However, we would urge caution in stipulating absolute requirements as it might be that there are other 'trade-offs' or provisions that would make an otherwise unacceptable provision, acceptable. Ultimately, the process can be structured to take more of a rounded approach with clear indication of positions to allow the market to optimise acceptable solutions.

- **Procurement Portals** - C&W have been advised that the process will be undertaken via SBC's on-line procurement portal. It should be acknowledged that the developer market is typically unaccustomed with the workings of these portals and we have seen examples in the past where challenges have arisen that have best been resolved through direct communication and a more flexible / considerate approach to the use of the portal. C&W therefore recommend that alongside the on-line system, the project team is able to maintain a more personnel human interface, whilst also complying with the requirements of the Regulations.
- **Procurement Documentation** - C&W have developed 'market friendly' documents which we have adapted for this procurement to incorporate both the requirements of SG1 and SBC procurement. C&W's overall approach to the marketing and procurement documentation is to make it market specific and proportionate to the procurement in question and mindful that it has dual functions – i.e. controlling the conduct of the procurement procedure, but also promoting and marketing the opportunity.
- **Detail** – One of the key procurement principles is that any procurement should be 'proportionate'. This extends to the level of detail requested of bidders during the procurement which in itself will have an impact on attracting and maintaining bidders. SBC will need to strike an appropriate balance between requesting sufficient information to appropriately understand and evaluate bidders' solutions, but not too much information / detail that would be excessively costly for the bidders to produce. Any information requested should also be mindful of subsequent post procurement steps such as the planning process. Using design as an example, the Council should seek to request sufficient information such that they can understand the principals of the bidder's concept, whilst leaving the detail to evolve post contract award when it can progress under an agreed approval structure and be mindful of consultation and the planning process.
- **Dialogue Meeting Structure** – Dialogue meetings can add real value to the conduct and outcome of the procurement process, but they can also be relatively resource 'hungry' for all parties. We would therefore recommend that they are carefully structured from the outset to follow a logical progression of the bidders' solution. We would typically recommend that the initial dialogue meetings focus on the concept and design aspects; then progress to the financials and then finally the contract. The proposed meetings and main agenda topics will be set out in the invitation to dialogue document at the outset of the process, both to structure the timeframe of the dialogue stage of the process, and also to allow the bidders to effectively manage their resources.
- **Preparation** – Thorough preparation at the outset is crucial to a well-run and credible procurement. Bidders will soon recognise if preparation has been lacking and this will have the potential to reduce their appetite to bid. Good preparation encompasses not only physical data, such as title reports and site surveys but also decisions by the Council in relation to key aspects such as around the public sector hub and financial return. The more that is locked down at the outset the better, whilst recognising that some aspects of a development opportunity should allow for developer contribution.
- **Project Sponsorship and political support** – Bidders will like to see that the project has support both at a senior/executive level within the Council as well as political buy in, particularly cross party where the Council's has significant representation from more than one political party.
- **Dialogue & Negotiation** – The dialogue stage of the process is where any negotiation on the solution will take place. Whilst competition is maintained, SBC will be in a relatively strong negotiating position, hence the emphasis above on attracting and maintaining competition throughout the process. In a competitive bidding environment, SBC will also have insight into all of the bidders' evolving solutions – this knowledge will be invaluable in challenging positions taken by certain bidders.

At the outset of the procurement, the Council should be clear to the bidders, which elements are fixed. They should also be clear with respect to which elements are more flexible, even if this is just within the project team and not necessarily explicit to the bidders. For example, certain aspects such as levels of affordable housing may require an initial 'position' from SBC (as contracting authority) for the purpose of tendering in order to treat all bids equally and in recognition that the exact level of affordable housing and/or off-site contribution can only be determined at a later date.

The project team will not have a negotiation strategy set out at the outset of the dialogue process per se, as the overall challenges and issues will not be apparent at that time. Rather, the project team will need to act within the structure of the dialogue process and negotiate on matters at the appropriate time in the process. For example, C&W are proposing that the dialogue stage of the process is structured to address the following topics, in sequential order, and in effect any required negotiation will following.

- i. concept and design aspects;
- ii. financials and deliverability;
- iii. contractual.

Appendix B - Project Objectives

The following project objectives and weightings have been determined by the project team. They have been structured under three main topic headings:

- Scheme Design
- Deliverability
- Commerciality

Scheme Design (55%)

Masterplan (15%)

To create a masterplan that supports the Council's vision for the town centre and the principles of the Stevenage Central Framework through comprehensive redevelopment of the site.

A positive, flexible approach to access and car parking reflecting the town centre location and opportunities for sustainable transport and modal shift.

To enhance linkages, pedestrian flows and access within the site and to the rest of Stevenage Town Centre through provision of a high quality network of active streets and spaces. To specifically include contributing to an East – West pedestrian link between Town Square and the proposed new train station; pedestrian links southwards towards North Hertfordshire College; northwards to Town Square via Queensgate; and East - West adjacent to Six Hills Way.

Residential (9%)

Provision of a substantial number of high quality residential units that will grow the population within SG1. To provide a balanced range of unit sizes and tenures to contribute to the regeneration, vibrancy and activity in the town centre.

Commercial Uses (7.5%)

To provide commercial uses (A1, A2, A3 and A4 restaurants, bars, cafes and offices) that will contribute towards the local economy, revitalisation and the life and vibrancy of this part of the Town Centre. Activation of frontages to the main Town Square and along key linkages.

Design (8%)

To provide an overall high quality of design which reflects the significance of the location, contributes to the character of the town, sets a new standard and is integrated into its physical environment whilst respecting the principles set out in the Stevenage Central Framework. Design will need to respect and enhance the established Town Square Conservation Area particularly where new buildings adjoin the Square, including the setting of the listed structures.

To respond positively to the important south facing aspect of the site onto the Stevenage Town centre ring road with an outward facing design.

Creation of a 'greener', safe environment in all public areas to enhance the experience for all town centre users.

Stevenage Hub (7.5%)

The provision of a new facility that provides accommodation for front facing public services, including health, library and the Council's customer services along with the Council's back office and democratic space as provided for in the [Employer's Requirement?] document whilst also contributing to the revitalisation of the Town Centre through its location and design

Community & Economy (4%)

To create and enable sustainable and genuine local employment and training opportunities through the development & construction process and beyond through the lifetime of the development. This should include providing opportunities to local businesses and supply chains

Management & Maintenance (4%)

Establishment of a long term management and maintenance structure at minimum cost and risk to the public sector

Deliverability (15%)

Delivery and Timing (10%)

To provide a timely, co-ordinated, efficient and feasible development programme and phasing plan that minimises impact on the function of the Town Centre during the development stage with a target development commencement date of [_____].

Site Delivery / Assembly (5%)

To efficiently assemble the land necessary for the timely execution of the development comprising the land within the red-line boundary along with any other land that enables or facilitates the comprehensive development of the overall site.

Commerciality (30%)

Financial Return and Viability (30%)

The provision of a solution that is commercially viable, fundable, sustainable and satisfies the Council' duty to obtain the best value / best consideration reasonably obtainable for the disposal of an interest in land and providing an appropriate level of return. The provision of the Stevenage Hub in a manner that provides value for money across the lifecycle of the facility.

Appendix C – Further Procurement Considerations

Project Report

CORE PROJECT REPORT REQUIREMENTS

The Regulations require contracting authorities to draw up a written report for the procurement process, which shall contain, as a minimum:

- a) the name and address of the contracting authority, the subject-matter and value of the contract;
- b) the circumstances as laid down in the Regulations which justify the use of competitive dialogue;
- c) where applicable, the results of the qualitative selection and reduction of numbers at the PQQ stage, including:
 - (i) the names of the selected applicants and the reasons for their selection;
 - (ii) the names of the rejected applicants and the reasons for their rejection;
- d) the name of the successful tenderer and the reasons why its tender was selected and, where known—
 - (i) the share (if any) of the contract which the successful tenderer intends to subcontract to third parties, and
 - (ii) the names of the main contractor's subcontractors (if any);
- e) where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders;
- f) the reasons for the rejection of tenders found to be abnormally low;
- g) where applicable, conflicts of interests detected and subsequent measures taken;
- h) where applicable, the reasons why the contracting authority has decided not to award a contract.

We recommend that the above are specifically captured with a 'Project Report' document that will be drawn up during the process either by C&W or SBC procurement, in conjunction with the core project team. This document will then be reviewed and signed off by SBC at the conclusion of the procurement process.

ADDITIONAL DOCUMENTATION REQUIREMENTS

In addition to the above, the Regulations also require contracting authorities to document the progress of all procurement procedures, whether or not they are conducted by electronic means. This should include sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on:

- a) communications with all applicants and bidders and internal deliberations,
- b) preparation of the procurement documents,
- c) dialogue and negotiations, and
- d) selection and award of the contract.

The above documentation must be kept for a period of at least 3 years from the date of award of the contract.

C&W recommend that this additional documentation is also captured within or appended to the Project Report:

Compliance with the Regulations

It should be noted that whilst the Regulations are not prescriptive on certain aspects of how the procurement will be conducted, such as how the dialogue stage of the procedure is conducted, they are prescriptive on a number of specific elements such as minimum time limits for receipt of requests to participate.

The project team will need to ensure that it complies with these requirements in the conduct of the process.

Initial Procurement Documentation

The new Regulations include an apparent need to provide an additional number of procurement documents concurrent with the issue of the contract notice, than was the case under the previous regulations. Some of these documents will by necessity be in draft form, such as the draft heads of terms and the Invitation to Participate in Dialogue, whereby until the number of selected bidders is known, we will not know how the dialogue stages will be structured – i.e. if four or less bidders are shortlisted, then it is anticipated that a single dialogue stage will be used, whereas if c. five or more bidders were shortlisted, then it is anticipated that we would conduct a two stage dialogue process. Clearly, key points within any of the documentation provided at the outset of the process should not be materially deviated away from as this would have the potential to create a risk of procurement challenge.



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