

Report of: Asset Management
Report to: Director of City Development
Date: 15 October 2015
Subject: Proposed Procurement of the Design Team, West Yorkshire Playhouse Project

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): City and Hunslet		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report advises the Director of City Development of the options available for the procurement of a multi-disciplinary design team including theatre consultant, to develop the scheme proposals for the proposed refurbishment of the West Yorkshire Playhouse building (the building).
2. The proposed appointment of the multi-disciplinary design team (the design team) will be on the basis that the City Council and the Playhouse are successful in the Stage 1 application to Arts Council England (ACE) for grant support towards the proposed refurbishment works. The design team's appointment would initially be to RIBA Stage 3 (Developed Design), sufficient for the submission of a Stage 2 application to ACE and, subject to grant support being confirmed by ACE to completion of the project.
3. In accordance with the Council's Contract Procedure Rules 3.1.8 and 3.1.10, the report requests the Director of City Development to approve that the procurement of the design team incorporating a theatre consultant should be by a Restricted OJEU procurement process and, that the evaluation criteria to be used to assess the suitability of the design team to undertake the commission be based on a combination of quality and price, with the evaluation being split 60% quality and 40% price and, to note that the quality evaluation criteria would have a minimum threshold which if the bidder scored below would eliminate them from the procurement process.

Recommendation

4. The Director of City Development is requested to approve the procurement of a multi-disciplinary design team including theatre consultant to develop the scheme proposals for the proposed refurbishment of the West Yorkshire Playhouse building by a Restricted OJEU procurement process and, that the evaluation criteria to be used to assess the suitability of bidder's to undertake the commission is split 60% quality and 40% price..
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1 Purpose of this report

- 1.1 The purpose of the report is to seek the Director of City Development's approval to the procurement of a multi-disciplinary design team including theatre consultant to develop the scheme proposals for the proposed refurbishment of the West Yorkshire Playhouse building by a Restricted OJEU procurement process and, that the evaluation criteria to be used to assess the suitability of bidder's to undertake the commission is split 60% quality and 40% price.

2 Background information

- 2.1 The City Council in partnership with the West Yorkshire Playhouse has submitted a Stage 1 application to ACE for grant funding towards the cost of refurbishing the Playhouse building. The application seeks £6.633m grant support from ACE (including a development grant of £300,000) towards the total estimated project cost of £12.7m (rounded).
- 2.2 The proposed refurbishment works to the Playhouse building include;
 - the re-orientation of the theatre towards the city centre by creating a new glass extension and high impact entrance at street level on St. Peter's Street opposite the proposed new car park serving the Victoria Gate development which is scheduled to open in autumn 2016
 - the refurbishment of the front of house areas to create a more welcoming ambience and better opportunities for income generation
 - the creation of a new performance/rehearsal space in the 'Rock Void' underneath the foyer area
 - reconfigured offices to enhance working practices
 - the replacement of plant at the end of its intended life and improvements in energy efficiency
 - an overhaul of the technical installations in both the Quarry and Courtyard theatres, replacing inadequate systems and providing increased flexibility of the space available.
 - access improvements, focussing on improvements to lifts to make them more usable by people with disabilities and step free public access to more areas of

the building, including the mid-level of the Quarry Theatre and the Barber Studio. Step free access is also proposed to the new Rock Void space.

- 2.3 In order to support the Stage 1 application to ACE, the West Yorkshire Playhouse following a competitive tender process appointed a number of consultants to prepare a feasibility study for the proposed works. The Director of City Development should note that the consultants were only appointed up to the preparation of a feasibility study to support the submission of the Stage 1 application to ACE, with no commitment to their ongoing appointment thereafter and, that all intellectual property rights with respect to the feasibility study generated by the consultants rests with the West Yorkshire Playhouse.
- 2.4 In anticipation that the Stage 1 application to ACE is successful, the City Council and the West Yorkshire Playhouse advised ACE that as there is little financial cost in doing so, that it would be the intention to progress the procurement of the design team during the latter part of 2015/early 2016, so that the design team would be in place ready to commence work in early 2016, if the application to ACE is successful.
- 2.5 The Director of City Development should note that whilst interested bidders will be requested to provide a tender submission from RIBA Stage 2 (Concept Design) to RIBA Stage 7 (In Use) based on both a traditional and Design and Build/Construct approach, the design team's initial appointment will only be to the completion of RIBA Stage 3 (Developed Design), sufficient to support the submission of a Stage 2 application to ACE and then, thereafter, their ongoing appointment and the form of such appointment will be subject to the application to ACE being successful, their performance to the completion of RIBA Stage 3 and, the approach to the appointment of the contractor being agreed. The design team's appointment will be with the City Council.

3 Main issues

- 3.1 The City Council and West Yorkshire Playhouse acknowledge that all consultant appointments need to comply with all applicable current UK public regulation procurement laws when purchasing any goods or services to be used directly or indirectly in relation to the proposed capital project to refurbish the Playhouse building. In particular, ACE advise that in relation to the procurement of services, that the applicant must demonstrate that procedures to recruit the design team are fair and open and keep to the relevant legislation and, that the project partners will need to follow the EU Public Procurement Regulations if the value of the required service is above the defined threshold (£172,000).
- 3.2 Having regard to the procurement parameters detailed in paragraph 3.1 above, the following options have been considered for the appointment of the required design team;
- (i) **NPS (Leeds);** In accordance with the City Council's Service Agreement with NPS (Leeds), the City Council requested the company to submit a proposal to provide a multi-disciplinary design team inclusive of the theatre consultant to progress the scheme design proposals. NPS was asked to provide details of their team and relevant comparable experience, details of their proposed organisational and management structure, details of any sub-consultants and, their methodology for undertaking the commission. NPS submitted a

resourced proposal, but in the intervening period, discussions with ACE confirmed that the use of NPS would not comply with their (ACE's) procurement requirements, in that the process leading to NPS' appointment had not been open and competitively procured i.e. tested against the market.

- (ii) **Procurement via the YORconsult Framework;** The City Council would consider the YORconsult Framework (which was procured using the OJEU Open Procedure) along with other available and applicable frameworks for the procurement of the multi-disciplinary design team. The use of the YORconsult Framework would achieve the appointment of the required consultants sufficient that they could commence the commission to coincide with ACE's decision on the Stage 1 application.
 - (iii) **Procurement via the Scape Framework;** The Scape Framework, procured in compliance with the Public Contract Regulations 2006 (as amended) via a two stage selection process offers (amongst other services) the provision of architecture, structural, mechanical and electrical engineering services and principal designer services for use by local authorities. Faithful and Gould (F&G) who have an office in Leeds, was appointed as the single supplier under the framework. Under the terms of the framework the company can customise the formation of a design team to meet the client's specific requirements and, can if requested by the client run mini competitions for specialist disciplines to ensure that the most experienced practices are offered the opportunity to tender for the commission, the only proviso being the such companies have to be prepared to sign up to F&G's commercial terms. The client can be as active or otherwise in the selection of any specialist sub consultants.
- 3.3 The Director of City Development should note that use of either the YORconsult or Scape Framework detailed at paragraphs 3.2 (ii) and (iii) above would secure the appointment of the required design team sufficient that they could commence the commission in February 2016 to coincide with ACE's decision on the Stage 1 application. However, ACE has provided informal feedback that is not positive with regard to using either the YORconsult or the Scape Framework, advising that it is likely their assessors would not recommend either Framework as an appropriate procurement route, feeling that the use of a Framework is too limiting and, that it might be an obstacle to getting the right design team for the proposed scheme. It is clear that ACE need to be confident that there is a real, open and competitive process and they are not convinced that either of the Frameworks noted above would offer that.
- (iv) **Full Restricted OJEU Procurement Process;** The Director of City Development should note that whilst the Restricted OJEU process would fully meet ACE's requirements, it would be unlikely that a design team would be appointed in a timescale such that the commission could commence to coincide with the decision on the Stage 1 application. The City Council's Programme, Projects and Procurement Unit advise that with the introduction on the new EU procurement procedures, that a period of between 6 to 8 months should be allowed to undertake an OJEU procurement process. This would mean at best, that a design team may only be in place to commence work on the project by mid-April 2016 and, at worst by mid June 2016, some 2 – 4 months after the date envisaged in the Stage 1 submission to ACE.

- 3.3 Having regard to ACE's comments regarding the potential use of NPS Leeds and, the use of existing Frameworks for the appointment of a design team to develop the scheme proposals for the project, then the procurement of a multi-disciplinary design team through a Restricted OJEU procurement process is the only way forward that would be acceptable to ACE.
- 3.4 The Director of City Development in determining the procurement approach for the design team is also requested to approve the proposed evaluation criteria for the appointment of the consultants to undertake the commission which will be based on a quality/price combination, with the evaluation being split 60% quality and 40% price. In authorising such a quality/price split, the Director of City Development should note this it is proposed that the quality evaluation criteria would have a minimum quality threshold which if a bidder did not exceed would eliminate them from the procurement process.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Executive Member for Economy and Culture has been consulted and is supportive of the recommendation contained in the report.
- 4.1.2 The West Yorkshire Playhouse Project Board has been consulted on the proposed procurement approach and evaluation criteria to be pursued for the appointment of a multi-disciplinary design team and is supportive of the recommendation contained in the report.
- 4.1.3 The Council's Procurement Unit has been consulted and advised that under Contract Procedure Rules 3.1.8 and 3.1.10 the delegated decision to undertake a procurement approach will be taken at the point that the procurement route is chosen and, subject to any project specific issues, this will normally be the main decision that all subsequent decisions flow from and, the evaluation criteria must be formally approved by the relevant Chief officer respectively.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There is no expected impact on the protected equality characteristics and, therefore, it is not applicable for an EIA or screening form to be completed at this time.

4.3 Council Policies and City Priorities

- 4.3.1 Investment in the Playhouse will aid the Council's bid to become European Capital of Culture 2023. It would contribute to both a strong economy and to a compassionate city by both making Leeds a more attractive place to invest but also a better place to live. The Playhouse contributes strongly to Child Friendly Leeds, most notably through its Youth Theatre and First Floor provision. It contributes to Leeds' ambition to be best city by 2030.

4.4 Resources and Value for Money

- 4.4.1 Except for officer time, it is not envisaged that there will be any costs associated with the procurement of the design team to develop the scheme proposals for the proposed refurbishment of the Playhouse building.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The delegated decision to determine the procurement approach for the consultancy services detailed in the report should be taken in compliance with Contract Procedure Rules 3.1.8 and 3.1.10 respectively.
- 4.5.2 The proposal forming the subject of this report constitutes a key decision and is subject to Call In.

4.6 Risk Management

- 4.6.1 There is a risk that the fee proposal arising from the competitive Restricted OJEU procurement process may exceed the allowance for such fees contained within the project cost plan and, that this will only become apparent once the preferred bidder has been identified. If such a position were to arise, it may be necessary to review the scope of service required of the design team in order to ensure compliance with the existing budget provision.

5 Recommendation

- 5.1 The Director of City Development is requested to approve the procurement of a multi-disciplinary design team including theatre consultant to develop the scheme proposals for the proposed refurbishment of the West Yorkshire Playhouse building by a Restricted OJEU procurement process and, that the evaluation criteria to be used to assess the suitability of bidder's to undertake the commission is split 60% quality and 40% price.

6 Background documents¹

- 6.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.