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PROCUREMENT OVERVIEW

Consultants

Substantial construction project will typically involve an architect, a structural/civil engineer, a mechanical and electrical engineer and a quantity surveyor. Larger projects may also include planning consultants, infrastructure engineers, fire safety consultants, landscape designers, acoustic consultants and interior designers.

Specifications

There are various sources of standard building specifications including the approved documents under the Building Regulations and the British Standards and European Design Codes. One of the most comprehensive and widely used sources is the National Building Specification produced by RIBA Enterprises Limited. The most authoritative source of design codes and manuals for building services are those published by the Chartered Institute of Building Services Engineers.

Tendering Processes

Contract prices for proposed works may be obtained by competitive tender or negotiation. It is usually the quantity surveyor who makes the necessary arrangements to analyse and report to the developer on tenders. The documents issued to tenderers usually consist of architectural and structural drawings, specifications and bills of quantities or other pricing schedules.

The Construction Industry Board has published a series of guidance booklets for employers on the management of development projects. These include a code of practice for the selection of main contractors, for the selection of sub-contractors and guides for the selection and briefing of the employer's team of consultants. The main principles underlying the codes are that the selection of contractors should be fair and transparent. For larger projects a pre-qualification procedure is recommended, following which no more than or four contractors should be invited to tender.

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Open tendering was formerly the predominant procurement method. It is effectively, an indiscriminate request for tenders. The process has declined in use because it was perceived as ineffective and places an unnecessary burden of time, effort and expense on the industry.

In single stage selective tendering, a limited number of contractors are preselected and invited to tender. This method involves the contractor at an early stage in assisting with the design issues.

A further refinement is two stage selection tendering. Selection of a contractor takes place in the first stage based on minimum information on layout and design. The information need only be sufficient to provide a basis for competitive tender. In the second stage, the employer's consultants collaborate with the selected contractor in the design and development of the project. The contractor is not responsible for design. This is more appropriate to more complicated projects.

The Quantity Surveyor quantifies every aspect of the work. Structural and services engineers provide the design advice which is co-ordinated by the architect.The Architect cover design and build, contributes cost planning, control procurement planning and contractors selection of expertise.

The Quantity Surveyor controls the financial aspects of the project. The contractor is selected on the basis of his estimate and the contractor carries the risk that the estimate may be wrong. Quantity surveyor plays in an important role in costing, procurement and contractor selection. His expertise in preparing the bill of specification from the design drawings focuses on financial aspects of the projects.

Design and Build

"Design and build" refers to methods of procurement where a contractor has a significant involvement in the design. This varies from situations where the contractor takes over the employer's architect and other consultants while some design aspects are

outstanding, to situations where employer approaches a contractor with a set of requirements only. In this latter instance, the contractor will undertake most, if not all, design work. A design and build contract will sometimes have a guaranteed maximum price. Standard form of design and build contracts are governed by means of a contract sum analysis. This is different to a bill of quantity and its form is not prescribed.

The advantage of design build contract is that the contractor is in principle responsible for both design and construction. The employer may employ an architect or designer to work up some initial proposals. These would form the basis of the employer's requirements and the contractor could subsequently take over the employers architects. Alternatively the client may approach a design and build contractor who employs in-house consultants.

A significant feature of design and build arrangements is lack of an independent certification role. There is no architect or contract administrator to settle differences between the parties. There is no independent quantity surveyor responsible for preparing the basis upon which the contract is tendered. The classic role of quantity surveyor as such does not arise although a quantity surveyor may be employed. The employer may in fact employ its own architects, quantity surveyors and engineers but their functions will not be the same as in traditional “general” contracting.

The extent of the contractor's role may be different from its responsibilities. An employer may undertake a significant amount of the design process in much the normal way. However, instead of preparing a detailed bill of quantity and putting to tender, it may use the substantially completed design as a set of employer's requirements. It may then require the successful design and build contractor to employ the design team. This is done so on the basis of the transfer of design obligations to the contractor so as to give contractual responsibility to the contractor for both design and construction

The JCT design build contract (CD98) is intended for use in design and build procurement.

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Management Contracting

Under “Management Contacting” the client engages the managing contractor in order to manage and procure the entire process. The managing contracting is a method which effectively consists of 100% sub-contracting. Every item of building work is sub-contracted to work contractors. The management contractor is equivalent to other consultants such as the Architect, Quantity Surveyor, Structural or Services Engineer.

The design is carried out by an independent architect and other members of the design team. The project will typically be large and complex. The architect and design team will be independent of the contractor.

The parties will use MC98 which is the standard management contract. Unlike the JCT2005 and other similar forms, MC98 is not a lump sum contract. The amount paid to the management contractor is the prime costs of all the sums due under the sub-contracts plus the management contractor's fees. The cost will be certified by the contract administrator (usually the architect).

Construction Management

Construction management involves the construction manger in the role of a consultant. Unlike with management contracting the principal work contractors are not sub-contractors of the construction manager.

The employer contracts directly with the trade contractors who are doing the work and the construction manager as co-ordinator has no responsibility for their performance. The trade contracts are each entered directly by the employer. Any employer has a direct contact with each of the consultants.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.