



# Pedestrian Heart Tendering

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# 1. OVERVIEW



# OVERVIEW

- European Rules
- Contract Procedure Rules
- Tender Documentation
- Evaluation Criteria
- Tender Panel
- Contract Award
- Preparation of Contract Documentation based on tender documentation



## 2. GILLESPIES – S&E



# OJEU ADVERT – MAY 2003

- **Contract for creating ‘The Pedestrian Heart’**
- ‘Appointment of an Urban Designer to provide a complete urban design service and act as lead designer who would be responsible for the execution and co-ordination of all design issues, project management and supervision of works on site.’
- Restricted Procedure
- Award Criteria ‘most economically advantageous’



# SHORTLISTING

- Expressions of Interest Received
- 21 July 2003 Tender Panel selected five consultants to be invited to submit competitive bids



# INVITATION TO TENDER

Letter sent out 23<sup>rd</sup> July 2003 – Enclosing

- Summary of Fee Tender
- The Briefing Document
- Development Strategy for Darlington
- Town Centre Access Studies
- Highway Layout drawing
- H&S Questionnaire
- Details of Processing/timescale





# CONTRACT AWARD

- Opening of Tenders 2<sup>nd</sup> September
- Tender Panel 16<sup>th</sup> September 2003
- Awarded the contract to Gillespies with an initial fee bid of £324,126.92 for all consultation and design works up to and including contract preparation for the site works and a total fee bid of £413,982.92 subject to funding approval for capital works.



# GILLESPIES

- The bid from Gillespies indicated that they were the lead consultants in the bid, incorporating their partners Faber Maunsell (Engineers) Kinsler (QS) and Equation (Lighting Consultants)



# ISSUES - GILLESPIES



# SPLIT TENDER

- Gillespies tender for the contract administration/site supervision section of the tender was received after tender opening by Members.



# LOW BID

- Tender Panel report did not itemise separately tenders for the contract administration/site supervision element of bids.
- Gillespies bid of £89,856 was £60k below the next lowest bidder for this element.



# EVALUATION

- Evaluation scoring matrix lacked depth



# VARIATION TO TENDER

- Gillespies original tender of £413,982.92 varied by Cabinet in January 2005 to £523,982.92 to reflect work not identified or identified to a lesser amount in the original tender and to cover increased fees in proportion to the increase in scheme construction costs.



# ENGAGEMENT OF SUB-CONSULTANTS

- Gillespies as part of their brief engaged sub-consultations where necessary.
- Not clear what procurement procedures Gillespies were expected to follow





# CONSULTANCY OPTIONS

- Were better options available to deliver the consultancy elements of the scheme?
  - Appointment of considered ‘best of breed’ ie project manager, designer, engineers etc
  - Appointment of ‘best’ project manager and ‘best’ consultancy partnership headed by a lead consultant.



# LETTER OF APPOINTMENT

- Letter dated 29th September 2003
- Terms on which the offer is made are not set out in the letter.



# CONTRACTING

- Instructions to Legal Services to draft contract
- Letter from Gillespies 1<sup>st</sup> Oct 2003 enclosing Standard Terms
- Draft Contract prepared
- Further instructions
- No further correspondence
- Payments made under letter of 1<sup>st</sup> October 2003



# PROPOSED CONTRACT

- Landscape Contract
- Specified in Tender Documentation
- Contractor Contract had specific Project Management role
- Not envisaged prior to September 2003



# PM ROLE IN TARGET COST CONTRACT

Significant role within the NEC/ECC contract, eg compensation events

Contract with Gillespies should tie them into performing the role as set out in the Option D contract.



# 3. BIRSE - S&E



# OJEU- JUNE 2004

- **Darlington Town Centre – The PH**
- Appointment of a Contractor to undertake the transformation of the Town Centre through major reconfiguration of the circulation system by using high quality paving materials and incorporating additional features
- Restricted Procedure
- Award Criteria – ‘most economically advantageous’



# SHORTLISTING

- Expressions of Interest Received
- 26th August 2004 Tendering Panel approved a select list of five contractors to enter into Early Contractor Involvement and thereafter be invited to formally tender.
- ECI Workshops took place in January 2005





# INVITATION TO TENDER

Letter dated 16th May 2005

- Contract Conditions (including form of contract) Specification, Bills of Quantities and Quality Submission requirements.
- Drawings
- Form of Tender and Contract data parts 1 and 2
- Notes for Tendering Contractors



# CONTRACT AWARD

- Tender Opened 20 June 2005
- Tendering Panel 12 July 2005 awarded contract to Birse Civils with a target cost of £5,369,532.00.



# LETTER OF APPOINTMENT

19th July 2005

'I confirm that DBC accept your tender dated 16 June on the terms and conditions incorporated within the tender documentation in the sum of ..'

Details that award is based on:

- ITT and various correspondence
- Acknowledged by Birse 28th July 2005



# ISSUES - BIRSE



# CONTRACT

- There is no signed and sealed contract



# 4. FORM OF CONTRACT

Engineering and Construction  
Contract Option D  
(part of NEC suite of contracts)



# FORM OF CONTRACT

- As early as September 2003 a partnering contract was suggested by Gillespies and supported by ONE
- In January 2004 ONE wrote supporting the NEC Target Cost form



# FORM OF CONTRACT (CONTD)

In January 2005 following ECI workshops Gillespies proposed a way ahead including:

- Tender will be based on a target BQ which would be more flexible than traditional Bill, but would give a fair comparison of rates and prices
- Use NEC D (Target cost with a BQ possibly with GMP)
- ECI process would take place over 12 weeks. At the end of that period, target cost and GMP would be fixed.





# FORM OF CONTRACT (CONTD)

- Tendering Panel Report 12<sup>th</sup> July 2005:  
  
‘The scheme is being administered under the NEC Option D. This option obtains a target cost using a bill of quantities.’



# ISSUES – FORM OF CONTRACT



# PAIN/GAIN SHARE

- 90/10 pain/gain share
- Little incentive for contractor to remain within target cost



# FAMILIARITY WITH FORM OF CONTRACT

- DBC unfamiliar with this type of contract



# ARBITRATION

- Any dispute which isn't resolved under the terms or through conciliation is submitted to and settled by the Adjudicator
- If the matter is not resolved by the Adjudicator it can go to arbitration
- Legal proceedings would be a last resort.



# RECOMMENDED IMPROVEMENTS

- Evaluation models
- Tendering Panel Reports
- Tender documentation
- Engagement of sub-consultants
- Verifying tender opening figures
- Agreements to be signed!

