

PROPERTY DEVELOPMENT SERIES 7 CONSTRUCTION TENDERING AND CONTRACTOR SELECTION

A PERSPECTIVE

CONTRACT



STM Developments

Property Development Series 7

Construction Tendering and Contractor Selection

You have now completed detailed design, value engineered the design, almost achieved your pre-sales threshold to commence construction and your documentation is well co-ordinated and almost complete. Your building permit may also have been issued. Now comes an important stage of the development process – the tendering of the main construction works and selection of a suitable builder or contractor to undertake the construction works.

Whether your project is a small domestic multi-unit development or a multi-million dollar major complex project, it is important to keep in mind the following matters when undertaking tendering of construction works. This assumes that the builder will be selected based on a competitive pricing scenario.

1. Have all your design documents, reports and any relevant correspondence, letters and drawings collated in a compact and easy-to-deliver format. A master index and schedule of all documents will assist. The importance of having complete and clear documentation will make the tenderer's job a lot easier and also acts as a checklist for you when collating these documents

2. If you are also preparing a pre-tender estimate, the QS will be able to conduct a good third party independent check of the completeness and accuracy of documentation and issue any tender queries to the consultant team to clarify any missing details. Hence a pre-tender estimate serves 2 purposes – a cost estimate and also a third party check on the quality and completeness of tender documentation. It acts as a “trial” tender issue.

3. Make sure it is clear what returnable deliverables are required by each tenderer. Design a form of tender and schedule so each party provides the same information. Such information may include price breakdown, programme, key personnel, insurance certificates, past project references and contact details and any tender qualifications

4. In the tender preamble, or in your communication with tenderers, clearly define a timetable of events and activities for the tender process and stick to them. These milestones will include tender issue

date, tender return date, assessment period, interviews and meeting dates, and target tender award date. For larger corporates, there may also be multiple levels of management signoffs or board approval timeframes to consider.

5. It may also be appropriate to conduct a tenderer pre-qualification process (especially for larger projects), where your bank or construction financier will also have the opportunity to review each tenderer and carry out credit and financial checks. It will also allow you to make sure each tenderer will have the capacity and resources to undertake construction works and possess the necessary skills and expertise to complete the work successfully. This will ensure there are no surprises when making the final selection. Competent small to medium scale builders are almost always capacity constrained as they do not have the scale to undertake so many projects at one time. You must get a commitment from them during pre-qualification that they will have the minimum necessary resources and a suitable level of management staff to carry out this project successfully.

In a previous paper, we briefly discussed the pros and cons of a fully documented lump sum approach versus a design and construct approach to procuring building works. You may have noticed that we have a clear preference for full documentation, or very close to that end of the spectrum, due to the increased level of control over the whole design and negotiation process, certainty in outcome and a greater level of competition amongst tenderers. We will not go further into the technicalities of the spectrum of procurement methods as we are aware there are already numerous analyses and writings on this topic, and we will not attempt to bore you with re-iteration of published literature.

Instead, we would like to provide some of our insight and strategies when dealing with lump sum contracts, which will hopefully alleviate some of the concerns voiced by the Australian construction industry, but are fully embraced by the Asian industry. By lump sum

contracts, we are referring to the fact that the contractor is only responsible for constructing the works strictly according to the provided contract documentation and the client is responsible for any design errors and co-ordination issues. Nevertheless, recognise that there will still be some element of D&C remaining in the project, eg. specialist plant and equipment or structures.

1. Invest in technology and human resources to tackle detailed design co-ordination and reduce the likelihood of future variations arising from co-ordination issues

2. Bring in a construction advisor during design to advise on buildability issues – making sure that architectural details are buildable, the structure is standardised and optimised as far as practicable to enable repetition, lead times on key services plant and equipment are understood and incorporated

3. For larger projects, appoint a full time on site client representative to oversee and monitor progress, quality of works and manage and build working relationships with the team on the ground. In Asia, this is the role of the Resident Architect, or Resident Engineer – the person who resides on site. Very often, the client will rely on the consultant team or the client's project manager to visit the site once or twice a week and undertake spot checks of the quality. In our view, this is not adequate. Too many things happen in one week to warrant any form of part time or casual monitoring and control. Also having a full time representative on site who reports to you will keep the contractor on alert at all times, and also provides you with an independent and honest opinion on project progress against programme and pursues any necessary make-up acceleration measures in a timely manner. This person will also issue timely instructions and notices in accordance with the Contract which safeguards the client's contractual time position, should any future issues arise. How many times have we heard from the contractor that the project is on track or ahead of programme at every site meeting, only to find out 2 months before completion that the project is to be delayed by another 2 months? By that time, what can you do? Gear up for a costly and lengthy contractual battle, pay for acceleration costs, or just live with it.

Whilst most contracts allow for liquidated damages, delay costs and potentially consequential loss, our experience shows that these costs are seldom truly enforceable in the end especially when pursued through a court of law, and mainly acts as a deterrent – a “teethless tiger” in Asian slang. Personally, I prefer the reverse. Bonuses for early completion are sometimes more effective and easier to enforce than penalties – at least you have the control and upper hand.

For smaller projects, engage a part time person to maintain a clo-

se eye on the project, the quality of works, and also manage the handover and settlement process.

4. Allow an appropriate amount of contingency in the budget to cater for any unexpected design and co-ordination errors. Typically, this may be 5-10% of contract value, depending on project complexity and extent of D&C. Keep this contingency amount to yourself, and do not let the team feel that there is additional money to be spent. This is the client's contingency, and the best projects are normally completed without spending a cent of this contingency. This contingency can be used at your discretion in the form of early completion bonuses or consultant team rewards.

5. Normal contractual provisions always allow for timeframes and procedures for bringing design issues and co-ordination matters to the attention of the client and circumstances under which claims are valid and whether they are also entitled to an extension of time. Spend time with your construction lawyer to review and define these variation, delay cost and EOT contract clauses so there is little ambiguity. Define which variations are defined as design development and which are scope changes, and what the contractor is entitled to for each case. Define time bars for submission of any claims.

However, do bear in mind that when dealing with construction lawyers and legal provisions, it is very easy to be over cautious and over contractual. Lawyers can and will propose as many special conditions as necessary to safeguard your rights and position. This will send a wrong message to the tenderer reading the contract. You as the developer will need to balance legal risk against commercial reality and ensure the contract both protect yourself and also allow some leg room for the contractor. Give clear and firm direction to your lawyer, but never vice versa. Take advice from the lawyer, but set the final ground rules yourself. How do you want to play the game? Offensive, defensive or some form of hybrid. The best contracts in the world are those which are signed, then stored away forever at the bottom of the drawer until the end of the project. Once you starting looking at contract terms, you will know a problem has arisen. Contracts only come to surface when there is a problem. Your aim is to resolve these problems before resorting to any form of legal input.

6. The soft side of managing a contract is also important and sometimes de-prioritised. Whilst there are more formal methodologies to build the relationship such as partnering workshops, and charters and alliancing arrangements, we believe

ve it ultimately comes down to informal and unwritten relationships between the contractor and the client. Maintain regular top level informal engagements and encounters to foster communication at the highest level. This may take the form of a monthly catch up over coffee or dinner. This form of encounter often provides a forum for escalation of critical major issues in an informal setting, and enables the project to move forward. Many major issues are typically resolved through these encounters via commercial deals and arrangements and are negotiated away from the strict contract. After all, if both parties are making money in the end, what is the point of arguing over small contract terms?

Different companies adopt different methods of assessing the suitability of contractors for their work. Broadly, they can be categorised into 2 aspects – price and non-price. Price is not merely a matter of going with the lowest price tenderer. Price must be reviewed in light of any qualifications or exclusions and inclusions each tenderer may assume. Thus to achieve value for money, one must undertake an apple-to-apple comparison of all tender prices and make adjustments as necessary. Normally, the QS will be in a position to professionally carry out these adjustments and comparison. Non-price criteria typically include proposed team capability, past similar project experience and references, financial capacity, programme and any special

contractual and technical qualifications.

Government bodies may sometimes adopt a two-envelope tender approach to ensure the technical assessment is carried out in isolation from the commercial offer – the price. However, in most private sector organisations, the assessment is performed in parallel and will nevertheless be influenced greatly by price. To allow an element of comparability and structure, weightings may also be defined to enable a more scientific approach (price may be 65%, non-price 35% - how the 35% is divided can be further stated).

Following initial assessment of the tenders by the team, interviews can be scheduled with each tenderer to discuss issues and resolve any queries. This is normally followed up by written confirmation which will form part of the contract. Any price adjustments or new qualifications will be documented and included in the contract documents. Any design changes will also be documented by the respective design consultant and included.

For us, construction tendering and contractor selection is the most exciting part of the development process, as you are entering the real business straight of the process and making the largest financial commitment of the project. Managed and executed well, it will make your life during construction a lot smoother.



STM Developments

YOUR TRUSTED AUSTRALIAN DEVELOPMENT PARTNER

OUR CAPABILITIES



SITE ACQUISITION

Solid pre-acquisition due diligence and sourcing of the best on and off market development sites is the first step to a successful project.



PROJECT FEASIBILITY

Thorough market research, detailed risk assessment and a robust project feasibility analysis will provide comfort for a successful acquisition.



DEVELOPMENT MANAGEMENT

Leading and managing all project consultants and stakeholders and securing the best planning approval is a crucial first step in the development process.



PROJECT MANAGEMENT & FINANCING

Disciplined project management, design and documentation management and cost control within feasibility limits will ensure projects are completed on time and to budget.



INVESTOR REPRESENTATION

On larger scale joint ventures or projects, negotiating development agreements, undertake commercial and technical due diligence and representing investors throughout the project will ensure their interest and risks are managed.

ABOUT US

STM Developments is a property development & advisory business based in Melbourne, Australia.

We work alongside developers and investors, providing site acquisition, feasibility analysis and project management services for residential and commercial projects. We initiate and participate in property development joint ventures as project proponent. We also act as investors' independent representatives as their point of contact for their co-investment projects and joint ventures.

Founder and Managing Director Simon Lee has more than 17 years of professional experience in all major facets of the development industry in Australia. He has successfully designed, led and managed major commercial, retail, mixed use and residential projects in Hong Kong and Australia ranging in value from \$4 million to \$20 billion. Simon is also an occasional guest lecturer and tutor at the Faculty of Architecture University of Melbourne.

CONTACT

Simon's Wechat



PHONE: +613 9824 1887

ADDRESS: 306/521 Toorak Road, Toorak VIC 3142 Australia
www.stmdevelopments.com.au

Company Wechat Account



CHINA ADDRESS: Jinan Gaoxin Wanda Plaza J2 Tower, Room 2411/2412

57 Gongye S Road, Lixia Qu, Jinan Shi, Shandong Province, China, 250000

www.stmdevelopments.com.au



STM Developments

STM Developments Pty Ltd

Property Development

Development Management

Investor Representation and Strategic Consultation

Contact

Phone: +613 9824 1887

Address: 306/512 Toorak Road, Toorak VIC 3142 Australia

www.stmdevelopments.com.au

Copyright and Legal Disclaimer

This material and all of its content, including but not limited to all text, graphics, charts, audio, logos, images, data compilations, icons, code and software ("Content"), are the property of STM Developments and are protected by Australian and international copyright laws, with all rights reserved unless otherwise noted. All trademarks service marks, trade names and other product and service names and logos displayed on the Site are proprietary to STM including all registered and unregistered trademarks and service marks of STM. If this presentation includes any trademarks, service marks, trade names or logos of any third parties, such items are the proprietary marks and names of their respective owners and are protected by applicable trademark and intellectual property laws. Your use or publication of any content, whether owned by STM Developments or any third party, without the express written permission of STM Developments, is strictly prohibited except as otherwise expressly permitted in these Terms of Use. Without limiting the foregoing, you are prohibited from using any STM's copyrighted material or trademarks for any purpose, including, but not limited to, use as metatags, links or otherwise on any website or social media platform such as WeChat, without the prior written permission of STM.

© 2018 STM Developments Pty Ltd. All right reserved.