



Regeneration of Stanhope Estate

INVITATION TO TENDER FOR LEGAL ADVISORY SERVICES

ASHFORD BOROUGH COUNCIL
UK –Ashford:Legal Consultancy Services

**Request for Legal Advisory services in Relation to the Stanhope PFI Housing
Revenue Account (HRA) social housing project**

1. Introduction

- 1.1. Ashford Borough Council is seeking to appoint Legal Advisers to support the development and procurement of a Public Private Partnership (PPP) for its Stanhope housing estate.
- 1.2. The Council has issued an OJEC Notice for the Project, and the closing date for expressions on interest from prospective private sector consortia is the 30th September 2002. It is expected that the pre-qualification questionnaires will be issued by 28th October 2002.
- 1.3. The Office of the Deputy Prime Minister has approved the scheme for procurement through the Private Finance Initiative and has agreed on the amount of “PFI Credit Support” that will be made available. The project has also received endorsement from the inter-departmental Project Review Group in June 2002.
- 1.4. The Council also intends to enter/ has entered a Development Partnership Agreement (DPA) with Partnerships UK plc (PUK), under which PUK and the Council will co-sponsor the project. This will include *inter alia* the appointment and management of the external advisory team.
- 1.5. This Invitation to Tender contains:
 - A. Background to the Project
 - B. Scope of Commission
 - C. Description of Work Phases Zero to Five
 - D. Terms of Appointment
 - E. Evaluation of Proposals
 - F. Submission of Tenders
- 1.6. The information contained in this ITT is provided to firms in their capacity as bidder for the appointment. Bidders must consult both Ashford Borough Council and PUK before disclosing any of the contents of this Invitation to persons outside their firm.
- 1.7. The final date for return of tenders in response to this Invitation is 30th September at 12pm.
- 1.8. A Bidders conference in relation to the tender for advisers will be held on the 20th and 23rd September at 1.30pm. The deadline for RSVPs to attend is 18th September at 1pm. See Section G.

A. BACKGROUND

1. Overview of Project

The Council is keen to bring about the physical regeneration of the Stanhope housing estate in order to create and maintain a sustainable community. The estate is a 1960's Wimpey No-Fine, Radburn layout; London County Council designed development to the south of the town.

The Council intends to enter into a partnership agreement with a private sector partner under the Government's Private Finance Initiative (PFI). The PFI contract will be implemented within the Housing Revenue Account. The scope of the PFI services will cover the initial refurbishment/remodelling of the housing units within the Stanhope estate and their ongoing maintenance to a stated performance specification. All the units in the PFI scheme will be initially within the ownership of the Council, and it is expected that the successful service contractor will be able to provide housing management services for all the housing units within the scheme.

There may also be considerable scope for redevelopment of brown field sites made available through the remodelling of the estate. The Council intends to explore options for a mix of additional non-HRA social housing and private properties on such.

B. SCOPE OF COMMISSION

2. Scope of Commission

- 2.1. The Council intends to procure the contract under the Private Finance Initiative (PFI). Its objective is to secure a long-term service delivery partnership for the regeneration of the Stanhope housing estate (“the Project”), which represents value for money to the Council and is affordable.
- 2.2. It is anticipated that the external Advisers for the procurement phase will fall within the categories of “technical”, “legal” and “financial”. The appointed Advisers will be expected to work as a team and to contribute in close liaison with each other, Partnerships UK and with the Council’s project team although they will be appointed separately. The Advisers will advise and assist in the management of the project through the procurement phase.
- 2.3. The Advisers’ remits will be to assist the Council in preparing contract and tender documentation for the project, negotiation support in the pre-qualification and tendering phase and to provide advice and assistance leading to contract award and financial close. In undertaking this work, the Council expects the Advisers to utilise appropriately qualified and experienced staff and to undertake all tasks using due professional skill, care and diligence.
- 2.4. This appointment will be that of Legal Adviser to Ashford Borough Council to undertake such duties as contained within this Brief, during the period prior to any award of a contract for the Project.
- 2.5. An indicative timetable for the project is shown below:

Indicative Timetable	
<i>Project Milestone</i>	<i>Expected Date</i>
OJEC Notice	August 2002
Return of PQQ	December 2002
Announcement of Shortlist	February 2003
Issue Invitation To Negotiate	March 2003
Select Preferred Bidder	September 2003
Contract Award & Financial Close	March 2002
Service Available	May 2004

- 2.6. Notwithstanding any other provisions of the terms of appointment, the length of the appointment will be dependent on the actual programme of events leading up to a potential execution of a DBFO Agreement and on the private sector partner's actual programme for the design and construction of the Works.
- 2.7. The Legal Adviser will require, in addition to their own area of expertise, a broad understanding of financial and technical aspects of the following issues so as to interface effectively with the financial and technical advisers:
- Requirements of Social Housing legislation and the regulations surrounding the Housing Revenue Account;
 - Preparation of public sector comparators for a DBFO Project;
 - Operation approval, and audit of both technical and financial quality management systems of the project company and its sub-contractors;
 - Preparation of Tender documents for a DBFO Project as part of a multi-disciplinary team incorporating the Employer organisation, Technical Consultant, Legal Consultant and Financial Consultant;
 - Construction contract management;
 - Certification of payments to the project company;
 - Quality and financial monitoring during Project preparation, bidder short-listing, preparation of Tender documents, evaluation of tenders and, design, construction, and operation and maintenance of the Project by the Company;
 - Liaison with public, statutory and private authorities, and other third parties within all stages of the Project preparation, preparation of Tender documents, and design construction, and operation and maintenance of the Project by the Company, both in respect of the New Works and the Operation and Maintenance Works for the Project (O & M Works);
 - Contractual awareness within both a New Works and O & M Works environment;
 - Assessment of extensions of time and evaluation of DBFO Agreement Variations and claims;
 - Understanding of planning procedures;
 - Understanding of Health and Safety and CDM Regulations.

3. General Requirements

- 3.1. The Services will be delivered by the Legal Advisor in Work Phases Zero to Five as set out below.
- 3.2. The scope of each Work Phase shall include but not be limited to the following:
- 3.3. Administration, management and supervision of all aspects of this appointment;
- 3.4. Provision of legal and procedural advice and assistance when requested or required and, in particular, without prejudice to the generality, on the laws, procedures and practices relating to:
- a) Banking

- b) Commercial contracts
- c) Competition
- d) Construction (including the CDM regulations and other health and safety legislation)
- e) Conveyancing
- f) Education
- g) Employment
- h) Environment
- i) European Community
- j) Intellectual property
- k) Leasing
- l) Planning
- m) PFI and PPP
- n) Procurements
- o) Propriety
- p) Public sector
- q) Risk assessment
- r) Roads and transport
- s) Taxation

Such advice and assistance will include drafting or review of any necessary documents, reports or correspondence.

- 3.5. Preparation and development, in conjunction with the Financial and Technical Advisers, of all the necessary tender documentation as required by the Project and the Council;
- 3.6. Attendance at progress meetings with Midlothian Council as required;
- 3.7. Preparation and circulation of minutes of all meetings attended by the Legal Adviser in relation to the Project, where the Council or Partnerships UK are unable to attend, if required by the Council;
- 3.8. Integration, consultation and liaison with the Council, PUK and the other consultants forming part of the project team for the Project, including technical and financial consultants. The Legal Adviser will take instructions from the Project Manager, who will be responsible for collating and feeding through comments and requirements of the Council, PUK and the Council's other advisers to the Legal Adviser. The Legal Adviser must ensure that all such comments are incorporated in the correct form into any documentation reviewed or prepared by the Legal Adviser and issued to prospective bidders, preferred bidder(s) and/or the project company.

- 3.9. Provision by the Legal Adviser of all such described and other necessary draft and final documentation, including reports, studies, and minutes of meetings to the Council, its Project Team and third parties as necessary for the successful progression of the Project. The Legal Adviser will be responsible for the provision of all necessary copies of all documentation prepared by it, including modifications to previously submitted documentation, as are required by the Council to progress the Project to completion;
- 3.10. All work necessary to produce the information or documentation, necessary in the opinion of the Council, for tenderers involved in the DBFO competition for the Project, which will allow the Council and the DBFO competition tenderers to undertake a successful tender;
- 3.11. Carrying out any other work scope to the extent that it is set out in this Invitation to Tender or can reasonably be implied by the other provisions of this Invitation or the DBFO Agreement and is necessary in the opinion of the Council for the progress and successful completion of the Project.

C. WORK PHASES

4. Work Phase Zero – Mobilisation and Project Review

Phase Zero would commence immediately after the appointment of the Legal Adviser. The Adviser would be expected to undertake, in conjunction with the Financial and Technical Advisers, a thorough and methodical review of the current project documentation including the Outline Business Case for the project, with the Legal Adviser focusing on the following:

- Options Appraisal;
- Outline output specification;
- Proposed Risk Allocation;
- Draft heads of terms for the DBFO contract;
- A strategic assessment of project status from a legal perspective, identifying the key risks to the procurement and the critical deliverables in the project timetable, along with an action plan to address these issues.

This should result in an Inception Report/Position Statement signed off by the Financial, Legal and Technical Advisers, which identifies the key strategic issues in the procurement timetable, and discusses how adequately they have been dealt with in the current documentation. The Inception Report should recommend an Action Plan to address any perceived shortcomings in the existing documentation.

Ref.	Work Phase	Advisor Tasks	Outputs Expected
5.1	Project Review	As above	<ul style="list-style-type: none">• Integration of Legal Advisor into Project Team• Inception Report

5. Work Phase One – PQQ and Procurement Plan

Work Phase One would commence in parallel with Phase Zero. The OJEC notice for the project has already been issued and a draft Pre-Qualification Questionnaire has been prepared by the Council. Accordingly, the key focus of this phase will be on:

- Reviewing the PQQ and assisting the Council in its completion and issue;
 - Developing a transparent and objective Evaluation Criteria for the evaluation of PQQ responses in conjunction with Technical and Financial Advisers;
 - Assisting in the evaluation of PQQ responses;
 - Maintaining and managing a clear audit trail;
- and:
- Developing the overall procurement strategy and project management arrangements for the rest of the procurement, including work on the first draft of the Output Specification, the Payment Mechanism, the draft Project Agreement and the Invitation to Negotiate (Legal Bid) sections.

This phase is particularly important given that PFI in social housing is relatively new, and the Council is developing a Pathfinder scheme. In addition, this project is not purely accommodation-focused; there is a strong regeneration element. Of

particular importance in this regard to the Council are the options for structuring the project to achieve:

- Renewal of the properties;
- Environmental improvements;
- Encouraging innovative remodelling of the estate;
- Redevelopment of land made surplus through re-modelling.
- Encouraging mixed tenancy (i.e. social with private housing).

In responding to this tender, **we would like bidders to set out their approach to developing a procurement strategy and project management arrangements**, including issues they think will be most critical to address from a legal perspective in ensuring that the Council is able to achieve its regeneration aspirations for the Stanhope estate.

Ref.	Work Phase	Advisor Tasks	Outputs Expected
5.2	PQQ Preparation and Procurement Plan	As above	<ul style="list-style-type: none">• Shortlist of suitable bidders for ITN• Project Management plan• Procurement strategy document to address regeneration objectives• Draft Output Specification• Draft Payment Mechanism• Draft ITN (Legal Bid) and Instructions to Bidders

6. Work Phase Two: PQQ Shortlist to ITN

In Work Phase Two, the Council will need the Adviser to work closely with the Project Team and the Financial and Technical advisers to the Project, in preparing the scheme for the ITN process. The most critical areas in this phase are likely to be:

- Finalising the detailed Output Specification (in conjunction with the Technical Adviser);
- Commissioning a detailed Stock Condition Survey (in conjunction with the Technical Adviser);
- Finalising the Payment Mechanism (in conjunction with the Financial and Technical Advisers);
- Preparing the draft Project Agreement and associated Schedules;
- Planning for and maintaining the Data Room documentation (in conjunction with the Technical Adviser);
- Finalising the Instructions to Bidders (with the Legal Adviser leading on the Legal Bid sections);
- Developing and finalising the Evaluation Framework in conjunction with the Financial and Technical Advisers to assess ITN submissions.
- Assisting the Council (in conjunction with financial and technical advisers) in preparing a Revised Business Case based on the above for submission to the Project Review Group before the issue of the ITN¹.

¹ A pre-ITN review by the PRG was one of the conditions on which the project was endorsed in June 2002.

Ref.	Work Phase	Advisor Tasks	Outputs Expected
5.3	PQQ Shortlist to ITN	As above	<ul style="list-style-type: none"> • ITN Document complete for issue • Stock Condition Survey completed • Draft Evaluation Framework • Revised Business Case with supporting schedules

Bidders should be aware that keeping in mind the timetable target of issuing the ITN by March 2003, Work Phases Zero, One and Two will need to proceed very much in parallel (rather than in sequence), with intensive involvement of the advisers in the first three months following appointment. Bidders should keep the resource implications of this in mind in organising their bid.

7. Work Phase Three: Release of ITN to Selection of Preferred Bidder

The Council anticipates that this phase will be relatively straightforward if the ITN is robustly prepared and the evaluation criteria have been clearly formulated in advance. However, support from the Advisers is likely to be required in the following areas:

- In order to give bidders sufficient confidence to bid for the project, there will be a need to maintain contact with short-listed bidders through bidder clarification meetings. The Council anticipates the Legal Adviser will attend all bidder clarification meetings and address the queries relating to legal aspects of the ITN.
- The Legal Adviser will be expected to finalise the Evaluation Criteria (along with the Financial and Technical advisers) well in advance of the receipt of bids.
- The Legal Adviser will assist the Council in evaluating the ITN submissions to identify a Preferred Bidder and Reserve Bidder. If necessary, the Legal Adviser will also provide support on preparing a BAFO shortlist, and managing the process of inviting and evaluating BAFO bids to identify the Preferred Bidder. This may also involve the evaluation of variant bids as required.
- For the avoidance of doubt, this phase will include negotiating with the lenders to the preferred and the reserve preferred bidders during their process of due diligence.

Ref.	Work Phase	Advisor Tasks	Outputs Expected
5.4	ITN to Preferred Bidder	As above	<ul style="list-style-type: none"> • ITN/BAFO Evaluation Framework • Selection of Preferred Bidder

8. Work Phase Four: Preferred Bidder Appointment to Financial Close

The legal adviser will be required to support the Project Team in final negotiations following the selection of the preferred bidder. This phase will include:

- Final negotiations of the Project Agreement, Direct Agreement (if any) and all other project documentation, and ensuring that all such documentation complies with current government Guidance in respect of PFI contracts;
- Advising the Council of all liabilities accepted by it through the Project Agreement;
- Assisting in the completion of the Final Business Case for the project and resolving any issues that may arise from the formal review of the final business case and the project documentation by regulatory bodies;

Bidders should not that the list of tasks is not exclusive and the legal adviser will be expected throughout the procurement to assist in all areas of the procurement where its expertise is relevant.

Ref.	Work Phase	Advisor Tasks	Outputs Expected
5.5	Preferred Bidder to Financial Close	As above	Final Project Agreement (and associated documentation and schedules) Final Business Case

9. Work Phase Five: Post-Contract Award

Once the contract has been awarded, the Council will require to put in place a contract management system. The Legal Adviser, in liaison with the Council and its financial and technical advisers, should provide guidance on the setting up of such a system. Amongst other issues arising, the Legal Adviser should comment on:

- The form of the team required to manage the contract
- The contract change procedure
- Performance monitoring arrangements and associated information requirements
- Mechanisms for problem solving and dispute resolution
- Contingency arrangements in the event of supplier default or serious failure
- Preservation of the Council's ability to re-tender on termination of the original contract
- Asset handover criteria at contract termination
- Arrangements for monitoring and managing proposals for refinancing the project
- Any other pertinent issues

Ref.	Work Phase	Advisor Tasks	Outputs Expected
5.6	Post-Contract Award	As above	Contract Management System in association with financial and technical advisers.

D. REQUEST FOR PROPOSALS

10. Submission from potential financial advisers

10.1. Any bid submitted in response to this Invitation to Tender must contain the information requested below.

11. Resources

- i. Bidders for this tender should complete, for each Work Phase, the details set out in the Appendix [1]. Bidders should set out in detail in terms of days the contribution you would expect to make during each Phase;

Notes:

- A. In particular please include any areas of advice that are not specifically set out in the appendix or this tender and any assumptions that you are making in respect of input from the Council, PUK and other advisers.
- B. Please include any comments if necessary about what exactly you will contribute within each task.
- C. We are keen to ensure that tasks and responsibilities are well defined, are not duplicated and that the legal adviser's input is focused on those areas in which it is best placed to add value.
- D. The Council will normally expect to see a maximum of two representatives from the Legal Advisers at every meeting. Prior consent of the Council should be taken if more than this number are required to be present.

12. Experience

Bidders should provide:

- ii. Evidence of capability and recent relevant experience in relation to each of the principal activities in each Work Phase, including the capacity in which you acted;
- iii. Details of experience generally in working on PFI and/or social housing projects, including experience with other HRA Pathfinder schemes;
- iv. Details of experience of dealing with local authorities, bidders, bidders' funders, ODPM, HM Treasury, and local planning authorities;

13. Approach

- v. In light of the information set out in this Invitation, all proposals should contain a description of how the prospective Legal Adviser would approach this remit, and how they would best interface with the Financial and Technical advisers on the project. In particular, bidders should set out their approach to tackling the regeneration issues described in Work Phase One.
- vi. All proposals should also contain a section setting out what the bidder sees as the key legal or commercial issues that have slowed down progress in delivering PFI in social housing projects, and how they would work to ensure that these issues do not hamper this procurement.

14. Team

Bidders should provide:

- vii. Details about the individuals who will form your Team for this project, and the approach by which their input will be marshalled and managed;
- viii. For each of the principal activities which individuals above will be undertaking, evidence of capability and recent relevant experience;
- ix. Clear statement on where, within your firm, project leadership for this project will lie.

15. Fees

Bidders should provide:

- x. Hourly rates for the provision of the services exclusive of VAT. Hourly rates should be broken down to cover the rate(s) at which each team member is to be charged out, with the post-qualification experience in number of years of each member indicated clearly;
- xi. For any elements of your bid that are not fixed or capped (see further below), you are required to bid a schedule of regressive hourly rates, exclusive of VAT. This means that bidders must propose rates which (for any uncapped or unfixed element) decrease as the overall fees earned on the appointment increases. Bidders should indicate the points at which total fees earned trigger a decrease in daily rates, and the corresponding extent of reduction;

The Council seeks to agree the Adviser's contracts on the basis of fixed fees and/or caps tied to defined deliverables as far as possible. Equally, the Council is keen to align the Advisers' incentives with the success of the project, and so would like to receive fee proposals that incorporate a success-based element.

However, keeping in mind the pathfinder status of the project and the lack of signed precedents, the Council recognises that a fixed fee for the entire procurement may not necessarily offer best value for money. Accordingly, bidders should provide their (mandatory) fee proposals as Bid A and Bid B on the following basis:

xii. Fee Proposals

Work Phase	Bid A	Bid B
Zero	Capped	Fixed
One	Capped	Fixed
Two	Capped	Fixed
Three	Capped	Fixed
Four	Monthly Cap	Fixed
Five	Capped	Fixed

Any exclusions from the caps must be clearly stated, and all uncapped or unfixed elements of the bid must be priced using a regressive fee structure;

- xiii. The Council would view favourably proposals that tie an element of fee to the success of the procurement. For example, bidders may wish to consider structuring their proposals so that any time costing incurred in excess of the monthly cap would be recovered at financial close as a success-based incentive;
- xiv. The discounts (if any) to your usual fee arrangements that you have applied due to the involvement of Partnerships UK in the project;

Expenses and Overheads

- xv. Bidders are expected to subsume their administration overheads within their hourly fees. This includes black and white photocopying. Further, the Council will not pay for travel and subsistence within the London area (within the M25). However, bidders may indicate in their proposals those items they expect to charge for separately and specify rates at which these items will be charged. These costs and rates must be reasonable, and may include items such as colour printing and the production of high quality documentation for external circulation. Bidders should also specify in their bids a schedule of reasonable costs and rates for providing meeting rooms and refreshments in the event they are required to host meetings in the course of the procurement.

If an expense item is not itemised in the bid, it will not generally be paid unless it is wholly exceptional or unforeseen. In such cases, expenditure must be authorised with the Council in advance of any expense being incurred.

16. Conflicts of Interest

- xvi. In the light of the information contained in this ITT, firms should confirm that they have no actual or potential conflict of interest in respect of the services to be provided if they are offered this appointment. In particular, bidders must confirm that they are entirely independent of any firm tendering for the Project, and will remain so in the course of procurement unless previously agreed with the Council.

17. Terms of Appointment

- xvii. All proposals should confirm acceptance of the terms set out at Section D, and set out any additional terms which advisers would require if appointed.

18. Miscellaneous

Bidders should provide:

- xviii. Confirmation that you will, subject to the consent of the Council, co-operate in the sharing of project documentation, including Project Agreements, that is not commercially sensitive as required within the public sector in the interests of disseminating best practice, and no confidentiality constraints will be imposed on the Council in this regard;
- xix. Confirmation of your commitment to follow revised OGC General Guidance on Standardisation of PFI Contracts (in conjunction with the Guidance on

Local Authority PFI Contracts and other Guidance on Social Housing PFI projects) in order to deliver a speedy procurement.

E. TERMS OF APPOINTMENT

19. Contract

19.1. The appointment will last until the project has reached financial close, and post-contract award contract management arrangements have been put in place. The appointment is expected to last at least 18 months. Ashford Borough Council shall have the right to terminate the appointment upon 1 month's notice.

19.2. It will be a term of the appointment that the adviser team remains substantially unchanged throughout the period of the appointment. Any proposed replacement to a lead director or partner of the firm and their senior assignment manager/s will require prior approval from Ashford Borough Council and PUK (subject of course to their remaining employed within the firm).

19.3. It will be a term of the appointment that the successful firm notifies the Council if it becomes aware of any potential conflict of interest during the course of the appointment.

F. EVALUATION OF PROPOSALS

20. Evaluation of Proposals

20.1. The contract, if awarded, will be given to the applicant whose bid is considered to be most economically advantageous, having regard to the price and quality of the proposals. The Council reserves the right not to accept any proposal received or to award any contract pursuant to this Invitation.

20.2. The Evaluation Team for the appointment will consist of:

Project Manager-ABC

Project Executive-PUK

Head of Corporate and Community Projects –ABC

Head of Housing Services -ABC

20.3. Proposals will be evaluated against the following criteria:

20.3.1. Track record in PFI and PPPs generally;

20.3.2. Knowledge of the social housing sector, and social housing PFI in particular;

20.3.3. Demonstration of an understanding of the Council's requirements;

20.3.4. Demonstration of an understanding of the key commercial and legal issues that will need to be addressed to run an efficient and effective procurement for this project;

20.3.5. Ability to provide comprehensive advice in relation to legal, regulatory and procedural issues;

20.3.6. Price, taking account of resources to be made available and overall fee structure.

20.4. Following the closing date for receipt of bids, the evaluation is expected to take three weeks, during which time the Council will shortlist up to 5 advisers to invite to interview. Interviews are expected to be held in the week commencing 30th September 2002. A decision on the final appointment is expected to be made by 11th October 2002.

G. SUBMISSION OF PROPOSALS

21. Tender Procedure

21.1. The information contained in this Invitation is limited, and it is acknowledged that, only once appointed, will a firm be in a position to understand fully all the requirements. Any contact or correspondence with regard to this Invitation to Tender should be addressed to:

Paul McKenner

Ashford Borough Council,
Civic Centre
Ashford
Kent
TN23 IPL

Bidder Conference

21.2. In advance of submitting proposals, the Council will hold a bidders' conference on both the 20th and 23rd September 2002. These will give bidders an opportunity to receive a presentation on the project, understand the Council's objectives better and clarify information about the advisory role. The conference will be held at Gerlach House, Beecholme Drive Kennington, Ashford.

21.3. If you wish to attend the bidders' conference, please RSVP by e-mail to Paul. Mckenner@Ashford.gov.uk by 18th September 2002, giving the names of those attending. No more than two delegates may attend from each bidder.

Submission of Bids

21.4. Bids must be submitted by hard copy, please supply seven paper copies of your written proposal. All bids should be received by 12pm on Monday 30th September 2002 at the following address:

**Administrative Services Manger
Directorate of Central Services
Ashford Borough Council
Civic Centre
Ashford
TN23 IPL**

Submissions **MUST** be Marked '**TENDER DOCUMENT- LEGAL**'

21.5. Interviews of suitable tendering firms will be arranged following receipt of tenders. Bidders should hold themselves available for interviews in London or Ashford during the week of 30TH September 2002.

21.6. Appendices:

- Resource Table for Bid A and Bid B

DATE FOR RETURN OF TENDERS: 12PM 30TH September 2002