

HOLIDAY INN, TALBOT GATEWAY, BLACKPOOL

PHASED CONTRACT STRATEGY DUE TO COVID-19

APRIL 2020

BACKGROUND

As the Council's development partner, Muse Developments have procured a preferred main contractor to deliver the construction of the new Holiday Inn hotel at Talbot Gateway via an OJEU process. This process has been ongoing since June 2019.

The tender documents have been drafted such that there will be a single contract, to include the demolition of the existing Wilkinson's hardware store and the multi-storey car park over within the same contract as the construction of the hotel. Included within the tender is a requirement for the contractor to deliver part of the Wilkinson's plot to a third-party contractor (Sisk) to allow them to complete the construction on the tram track extension from the promenade to a location with the old Wilkinson's plot.

A single contract, with a single contractor means that any risks with the performance of the demolition and remediation elements of the works lie with the main contractor and allows him to manage these tasks appropriately. An alternative strategy, whereby the demolition and remediation works would be let under a separate contract and a cleared site handed over to a second hotel contractor, was considered and rejected, for that reason.

During the final negotiations with the preferred contractor, the Covid-19 virus situation has arisen.

CONTRACTOR'S POSITION

The preferred contractor, Robertson Construction Group Limited, have taken a very cautious position regarding the impact of the Covid-19 situation with respect to their ability to maintain progress on sites in a safe and appropriate manner. When the "lock-down" situation with respect to closing sites, social distancing in the workplace, working practices etc. was first identified & discussed within the construction industry, Robertsons considered that the contractual position under the Muse Form of Building Agreement (their own form of Contract) meant that they would be taking all of the risk of delays caused by the virus, but without any avenue to pursue a cost adjustment or an extension of time.

Consequently, they proposed the following solution:

1. Complete the contractual negotiations now, then "park" the contract documents and the start on site for an agreed period (circa six months minimum) so that the situation with Covid-19 might be clearer.
2. In the meantime, and prior entering into the contract, negotiate any adjustment in price that may be necessary due to the delayed commencement.

For several reasons, this was an unattractive proposition to both the Council and Muse.

1. The delayed start would mean that the Wilkinson's would remain standing for a considerable period, with the Council being required to maintain security, insurances and the like
2. The delay would also mean that the extension of the tram track works could not take place, adding uncertainty and costs to that contract as well as this one.
3. The possibility that a price could not be agreed with Robertsons to get to starting on site

MUSE / COUNCIL POSITION

Given the above, Muse and the Council considered the position carefully.

Muse's Building Agreement would allow a contractor an extension of time, without costs, in the event of Force Majeure, or for "the exercise after the date of this Agreement of any statutory power which restricts the availability or use of labour or prevents or delays the Contractor obtaining goods, materials, fuel or energy". It could be argued that Covid-19 is Force Majeure and that the government restrictions imposed restrict the availability of both labour and materials.

The problem lies in the fact that these events have already taken place before the Building Agreement would have been entered into and the contractor should therefore have taken them into consideration prior to going to

contract. Given the uncertainty surrounding the lock-down, returning to work and time scales etc, this is not something that could easily be done.

Muse's position, and the one that Robertsons have now agreed with, is to "split" the contract works into two Sections. The first section covers the following:

- Asbestos surveys throughout the former Wilkinson's store and MSCP over
- Asbestos removal as a result of the survey work
- The phased demolition of the former Wilkinson's store and MSCP over, including grubbing up of ground floor slab and obstructions below
- De-watering the site as required
- The construction of a new electricity substation to replace the existing substation within Wilkinson's
- Removal /treatment of contaminants below ground level
- Retaining walls necessary to support the surrounding footpaths
- Drainage and ductways associated with the "tram works" area including the attenuation tank
- Preparation of tram zone to the required specification
- HV and LV cable diversions
- BT / Virgin diversions
- Necessary architect and engineers' fees to maintain progress of all of the Works, including Section 2
- Associated Preliminaries

Section 2 will comprise:

- The remainder of the works.

The contract would be for the whole of the works, for the agreed contact sum.

Section 1 will be undertaken as soon as the contract is signed and Robertsons can take possession of the site. This is expected to be in June 2020.

The programme for this Section is 24 weeks and runs to the end of November 2020.

The costs for the two Sections are determined now, but due to the uncertainty, further work over the summer will be required and the Muse team will work with Robertsons, on a fully open book basis, to evidence if there may be increases in time or cost as a result of the Covid-19 situation and to ensure that these are taken into account for Section 2. This may mean increasing the programme for that Section, with resultant Preliminaries costs.

At an agreed date, before the end of Section 1 and once the cost/time implications of Covid-19 have become clear, Muse would have the absolute choice whether to continue onto Section 2 with Robertsons or conclude the contract there and re-tender. Therefore, should the consequences be none, or minimal, the instruction would be given to continue with the Section 2 as if nothing had happened.

Alternatively, should Robertsons not be able to agree a price that was considered to be competitive in the market place, Muse would have the option to conclude the contract at the end of Section 1 and re-tender the Section 2 works.

SUMMARY

There are three possible options to make progress with this project.

1. Delay the start by 6 months - this will cause delays and additional costs to both Tramway Extension works and this project
2. Re-Tender - which would also cause significantly more delays and costs to both the Tramway & Hotel schemes
3. Split the contract into two halves, progress with the demolition and delivery of the tram zone and firm up on the second Section at the same time - this will cause a two month delay to the programmes for both schemes but the effect on the cost of the Hotel project will be minimal compared to the two options above and could be nil. There is a small risk with this option that if, due to unpredictable consequences of the Covid-19 situation, terms to progress to the second section cannot be agreed then the hotel & underpass works would have to be retendered.

It is recommended that the third option is adopted.

While this is not an ideal position, the uncertainty surrounding Covid-19 is making many contractors nervous. While some contractors have taken a different position, Robertsons would not enter into a contract at this time, with this uncertainty unresolved and a way through it planned.

By adopting the approach outlined in option 3 above, we have the opportunity to demolish Wilkinson's, deliver the tram zone to the tram contractor and use the time wisely to negotiate with Robertsons to establish an equitable position for any delay or cost that may be involved in dealing with new working methods "post Covid-19".