

### Tender Submissions, costs and risks

#### Submission for funding and approvals

1. Submission for Full Approval (applied for after receiving tenders and before letting a contract) has been an ongoing process with the Department for Transport (DfT) to ensure that appropriate measures and detail of work is covered. While the two councils (LBC & CBC) have a legal agreement in place to provide equal partner status the powers to construct the scheme (via the Transport and Works Act 'TWA') are with LBC and consequently the submission to, and award of DfT funding will be with LBC.
2. The funding application is based on the Major Scheme Business Case (MSBC) and is being made to the DfT with approvals sought from LBC and CBC members to accept the DfT funding (assuming it is approved) offer and award the contract. This needs to be accomplished with a level of urgency to ensure we award early in the new year so the contractor can maximise works during the first summer season and we maximise spend in the 2009/10 period so avoiding any potential regional funding shortfall in future years.
3. The funding submission is based on tender prices of the preferred contractor to construct the Busway together with costs for:
  - (a) On-street bus stop improvement works (to be undertaken by the local authorities highway consultancy (Amey for CBC)
  - (b) Land and compensation (including Part 1 claims)
  - (c) site supervision and design check
  - (d) surveyor and legal fees

#### Type of Contract and funding implications

4. The type of contract being used is the NEC3 Engineering and Construction Contract Option C: Target Contract with Activity Schedule. This is for a design and build contract based on an outline design provided by the Councils. It works on a type of pain / gain costing scenario as follows:
5. The contractors have submitted a priced schedule of works including a priced risk schedule which forms a Target Cost (TC).
6. Costs, including savings / overspend on the TC are shared according to the table below. This incentivises the contractor to control costs and limits the Councils' risks..

- | 7. <b>Share Range</b>        | <b>Contractor's Share Percentage</b> |
|------------------------------|--------------------------------------|
| less than 80% of TC          | 100%                                 |
| from 80 to 90% of TC         | 90%                                  |
| from 90 to 95% of TC         | 75%                                  |
| <i>from 95 to 105% of TC</i> | <i>50%</i>                           |
| from 105 to 110% of TC       | 75%                                  |
| from 110 to 120% of TC       | 90%                                  |
| greater than 120% of TC      | 100%                                 |
8. The detailed design will progress following contract award with discussions between the contractor, Councils and other stake holders to develop the design and programme within the general bounds of the contractors submission. Once the design is agreed (based on the tender submission and information initially provided) a design freeze will result and any further employer changes / requests are likely to result in claims called compensation events.
9. **Contract supervision:** A site supervision team (including consultants 'Atkins') will monitor the contract and report to the Project Board at regular progress meeting. The Project Board comprises of the Corporate Director (Environment and Regeneration) and the Head of Corporate Finance of Luton and the Director of Sustainable Communities and the Director of Corporate Resources of Central Bedfordshire.

## **Tenders**

10. A select list of bidders was established following a pre-qualification submission exercise. Tender documents were despatched to three contractors on 21 May 2009.
11. On 12 June 2009 a letter was received from one stating that they would not be submitting a tender for the project. The following reasons were given:
1. The high level of risk transferred to the contractor under the terms of the contract.
  2. Affordability of the project.
  3. The high cost of tendering, particularly given the extent of design to be carried out and level of investigation required to quantify and mitigate the potential risk.
12. Talks with procurement officers at both councils concluded that providing the tendering process remained confidential it should continue.
13. Meetings were held during the tendering process with tenderers to clarify issues and respond to questions raised.
14. Tenders from the remaining contractors were returned on 23 September, in accordance with the instructions these were received in two sections, a 'quality bid' and 'financial and programme' section.

## Analysis

15. Two teams were formed with staff from both authorities (LBC & CBC) to assess the sections aided by consultants Atkins who will be assisting in running the contract.
16. The tender documents provided a standard set of questions (and related scores) for the contractors to answer with the final scores based on a 70/30 split with 70% quality 30% price. Contractors were notified of these proportions in advance.
17. Each member of the quality team assessed the documents to form an initial view / list of questions on the contractor's response to each question. Team meetings followed to agree a common set of clarification / questions for the contractors. The following weeks were spent clarifying the contractors bid documents and responses to questions to arrive at a view for the scores.
18. This process was replicated by the financial and programme assessment team.
19. A joint meeting of the two teams was convened to discuss overarching issues that impacted across the two scoring systems to seek further clarification from the contractors.
20. Following communications with the contractors and finalising of each team's scores a Preferred Bidder was proposed to the Project Board who at their meeting of 11 November 2009 agreed to forward that recommendation to Executive.

## Summary of Costs

21. **Maximum funding allowance:** Department for Transport (DfT) Conditional Approval was for a maximum funding contribution of £78.39m (but see 22. below) which equates to 93% of the estimated total scheme cost of £84.39m with a £6m shortfall.
22. **New Funding system:** Further discussions with the DfT over funding have resulted in the scheme moving to the new funding system. This provides a number of advantages to the authorities including:
  - (a) An increase in the level of preliminary design costs that the authorities are allowed to claim back. Previously this was capped at £850k, the new system allows 50% of all eligible preliminary costs since 'Programme Entry' stage. This amounts to 50% of £3.99m, an improvement of £1.145m as the £850k has already been claimed and re-invested in the scheme.
  - (b) Capital scheme costs are now calculated in a different way resulting in an increase in the maximum award from £78.39m to £79.54m.

- (c) The local contribution is now fixed at 10% of the 'Quantified Cost Estimate' (QCE). This is the scheme cost plus preliminary design costs ie £84.39m + £3.99m = £88.38m, where £88.38 is the approved sum from Conditional Approval stage as no new cost has been advised following the move to the new funding system. This can now be offset by the unclaimed preliminary design costs (50% of £3.99m) which reduces local contribution from £8.838m to £6.843m.
- (d) The new funding system addresses overspend with a 'Risk Layer' being added to the QCE. This risk layer is calculated using the optimism bias percentage (a factor indicating cost certainty) set at Conditional Approval stage with 50% of this being applied to the QCE to give the risk layer value. DfT will then commit to funding 50% of the risk layer, but this must be match funded by the promoting authority. On currently approved figures, this would give a risk layer value of £4.86m, of which DfT would contribute £2.43m with the remaining £2.43m to be sourced locally.

Paragraphs 23 -26 contain exempt information and has been extracted into a separate exempt Appendix

- 27. **Mitigation measures:** These have been put in place should the scheme overspend and includes a range of measures. As previously stated the type of contract is based on a pain / gain system encouraging the contractor to come in under price and so share the profits with the employer. The impact of a higher tender price being with the DfT rather than local Councils.
- 28. The awarded contract price is referred to as the target cost (TC). Should the scheme costs over-run then providing there has been no change to the TC then the Councils will be liable to share the cost over-run with the contractor in the proportions set out in (7) above.
- 29. This means for example that if there was a construction cost overrun of [say] 25% then the Contractor would be responsible for 81% of this with Councils left to fund the remaining 19% from other local sources. In the worst case of there being no other likely third party contributor then the Councils would share this cost 50:50 between themselves. Provided that this was within the risk layer then this would trigger the DfT match funding the local contribution further reducing each Council's liability. Going back to the example of 25% overrun therefore would leave Central Bedfordshire liable for about 9.5% of a 25% overrun if outside of the risk layer or 4.7% if within the risk layer.
- 30. An allocation has been made in the Councils 5 year capital programme for an overspend of £2m in both 2012/13 and 2013/14 providing a total of £4m. This together with the LBC/CBC cost sharing would account for an £8m allowance with a further £2m allowance from the DfT totalling £10m. This would allow for a substantial cost increase in the TC. This can be reviewed as the project progresses

31. By way of illustration only, the effect that a 25% cost overrun would have on a construction contract of £50m, would be to increase costs to £62.5m.

The first 5% of the overrun would be shared 50:50 with the Contractor:

The next 5% of the overrun would be shared 75% with the Contractor and 25% with the Councils

The next 10% of the overrun would be shared 90% with the contractor and 10% with the Councils

Anything above 20% would be solely at the Contractor's expense

Under the hypothetical scenario, the Councils' joint liability would be capped at £2.375M. As this is within the DfT's risk layer, identified earlier as £4.86M, half of our liability would be met by DfT, leaving £1.188M to be shared between the two Councils (£593.75K each), from a cost overrun of £12.5M

32. The other measures in place include an opportunity to cut back on the real time information systems and the local bus stop improvement measures. These, however will impact on the 'quality feel' of the system.

33. **Revenue costs:** The bus operator will meet all bus operational costs associated with the scheme (including adapting and supplying vehicles). There will be on going maintenance costs to the Councils for the infrastructure, the real time information system and day to day issues such as litter picking and vandalism. Work for this is ongoing and will be developed with the contractor. The business case identified a nominal cost in the region of £350k with recent estimates increasing after the first few years to between £300-600k (for both authorities) depending on level and scope of service required. These values will be refined with the selected contractor as part of the main design. The scheme would also see the authority responsible for additional bridges including the old railway bridge over the M1 that will be refurbished as part of the contract.

No annual operating cost subsidy from either Council is forecast.

34. **Revenue Support:** No allowances have been made for any additional provision of revenue support for services using the busway, nor for any additional costs arising from the national concessionary fares regime. These would be matters to be considered by the relevant local authorities in their normal annual budgeting process.

## Value Engineering

35. Talks with the preferred bidder will take place up to the submission for Full Approval to develop the design, reduce costs and risks to reach a Target Cost.

## **Contract Commitments**

36. DfT funding is awarded through a “Section 31 Grant”. This places various conditions on the authority including making it liable to use and maintain that asset for at least 10 years.

## **Maintenance of the Busway**

37. The contractor will initially be responsible for maintenance of the site (excluding routine maintenance such as litter picking).
38. The Councils liabilities will start from a relatively low cost base increasing as they take on full responsibility for the Busway. This will not include any Bus operational issues such as adapting or running buses, dealing with bus breakdowns but will include incidences such as removal of inappropriate vehicles, policing (private road, Police not liable) and routine maintenance.