

Poynton Relief Road

Procurement Workshop Summary

Final

(Annex A – Cheshire East Cabinet February 2017)

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1 Introduction

1.1 Date and Location

A Procurement Workshop for both Poynton Relief Road and Congleton Link Road was held on 18th May 2015 at the Cheshire East Council Offices in Sandbach, Cheshire.

1.2 Attendees

The workshop was attended by the following individuals:

- David Skeet (Cheshire East – Poynton Relief Road Project Sponsor)
- Paul Griffiths (Cheshire East - Congleton Link Road Project Sponsor)
- Steve Mellor (Cheshire East - Procurement)
- Jane McLaughlin (Cheshire East - Legal)
- Helen Ashley (Cheshire East – Programme Manager)
- Matthew Clark (Jacobs – Procurement)
- Peter Kirk (Jacobs – Project Director)
- Adam Godbold (Jacobs – Poynton Relief Road Project Manager)
- Martin Davis (Jacobs – Congleton Link Road Project Manager)

1.3 Aims and Objectives

The aims and objectives of the workshop were as follows:

- Assess the pros and cons, opportunities and risks associated with each of the potential procurement options for Poynton Relief Road (£20m works).
- Analyse the programmes associated with each of the procurement options and whether they can be achieved given the milestone dates on each of the projects.
- Assess the ways in which the services of a contractor could be secured – i.e. via a framework or the open market.

Although the workshop held on 18th May 2015 considered Poynton Relief Road and Congleton Link Road, this report only considers procurement options and routes in relation to Poynton Relief Road.

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2 Procurement Options

2.1 Overview

Discussion in the workshop focussed on the following three procurement options for Poynton Relief Road:

- Early Contractor Involvement (ECI)
- Design and Build (D&B)
- Construction contract only – i.e. NEC3 ECC Option A

An assessment of each option is provided below.

2.2 Early Contractor Involvement

Early Contractor Involvement (ECI), in the case of Poynton Relief Road, would involve the procurement of an ECI contractor during the statutory process, but before or just after any potential Public Inquiry.

This would be at a later stage than an ECI contractor is usually procured. ECI is of greater benefit when the contractor is procured during the preliminary design phase and has the ability to affect key design decisions which would in turn affect the planning application.

The contract would be an NEC3 ECC Option C, and a target cost for the works would be agreed following the Secretary of State (SoS) decision on the public inquiry.

Positives

- ECI is a useful option if there are complex elements on a project that would benefit from early contractor input.
- The contractor can be called upon to support during a Public Inquiry.
- ECI gives cost certainty as the 'target cost' is based on a well-developed design and understanding of the project.
- The ECI contractor is usually procured on the basis of quality plus Phase 1 fee; hence there is a degree of reassurance for the client.

Negatives

- ECI, more often than not, results in a higher construction cost estimate as there is limited commercial tension in the tender process and once a contractor is procured there is limited incentive to reduce costs.
- The contractor would be required to develop his design sufficiently to determine a 'target cost' for the scheme prior to DfT funding release and Notice to Proceed. If there is an unfavourable Secretary of State (SoS)

decision this could result in further design work, or worse, a lot of abortive work if the scheme is cancelled.

- On a relatively straight forward scheme such as Poynton Relief Road it was felt that the presence of the contractor at a public inquiry is beneficial but not essential.
- The administration of an NEC3 Option C contract is more costly and time consuming than an NEC3 Option A.

2.3 Design and Build

A Design and Build contract, based on an NEC3 ECC Option A – Priced Contract with Activity schedule would require the involvement of a contractor and his designer to develop and construct the conceptual design. .

During the workshop two procurement strategies were discussed:

- 1 Procurement of a D&B contractor during the statutory process, with award subject to, and following SoS decision and full approval.
- 2 Procurement of a D&B contractor after the SoS decision.

2.3.1 Option 1 – Procurement during Statutory Process

Positives

- It was felt that if the D&B contractor was procured during the statutory process then tendered total of the prices could be submitted to the Department for Transport (DfT) for the release of funding (subject to a favourable SoS decision), as soon as the SoS decision was known.
- This procurement strategy would ensure that the target dates for the start of construction associated with both projects were not delayed.
- Achieve a competitive tendered price for the project.
- The administration of an NEC3 Option A contract is less costly and time consuming than an NEC3 Option C contract.

Negatives

- Going out to the market place for tenders before the outcome of a public inquiry could potentially prejudice the outcome of the inquiry (i.e. legal challenge on the basis that going out to tender influenced the SoS decision)

2.3.2 Option 2 – Procurement after SoS Decision

Positives

- Procurement after the SoS decision would remove the possibility of legal challenge associated with the strategy set out in Option 1.
- Achieve a competitive tendered price for the project.

Negatives

- Procurement after the secretary of SoS decision would potentially add a further year to the targeted start on site date.
- In the event of the aforementioned project delays additional inflationary construction costs may be incurred.

2.4 Construction Contract – NEC3 ECC Option A

The third option considered in the workshop was for the design of the scheme to be fully developed during the statutory process, with a NEC3 ECC Option A (or similar) contract let upon a favourable SoS decision, and on a design prepared by Jacobs as the Cheshire East design agent.

Positives

- Contractors would be pricing a fully developed design, so tendered prices should be very competitive and give early certainty of price.

Negatives

- Under this option, the design of the scheme would have to be fully developed during the statutory process (before the SoS decision). The design work could be abortive if the decision is not favourable or if significant changes are required.
- This option would result in a delay to the project construction start date as the tender process could not begin until after the SoS decision and DfT funding release.

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3 Securing the Service of a Contractor

3.1 Overview

Discussion in the workshop also focussed on how a contractor would be procured. The following three options were identified:

- OJEU Notice - Restricted Procedure
- OJEU Notice – Open Procedure
- Framework

3.2 OJEU Notice

This approach involves raising a notice for the construction marketplace to consider. Two procedures for raising the notice were deliberated; Restricted and Open.

3.2.1 Restricted

The Restricted Procedure is a two-stage process which would allow Cheshire East to draw up a short-list of interested parties by undertaking a pre-qualification stage assessment of their pre-qualification submissions, prior to the issue of invitation to tender documents.

Positives

- The OJEU notice approach (in general) ensures that only contractors who want to win the work express their interest.
- The restricted OJEU notice approach ensures that Cheshire East is able to ensure only appropriate suppliers are invited to tender.
- The restricted OJEU notice approach saves time in the assessment of tenders by limiting the number of tenders received.

Negatives

- A pre-qualification (PQQ) stage is required which lasts approximately one month after the notice is raised. This does not involve the assessment of the PQQ's which could be significant timeframe depending on the number of interested parties.
- Under the restrictive procedure, the tender documents need to be submitted at the same time as the notice.

3.2.2 Open

In an Open Procedure the Invitation to Tender is issued to all suppliers who respond to the OJEU notice.

Positives

- The OJEU notice approach (in general) ensures that only contractor who want to win the work express their interest.
- The open procedure eliminates the need to undertake the pre-qualification stage associated with the restricted procedure.

Negatives

- The open procedure may result in a large number of tenders received, all of which need to be evaluated. This would take longer than the restricted process.

3.3 Framework - CDF

It was agreed that a potential framework which could be used was Highways England's Collaborative Design Framework (CDF). Two separate pools of contractors would be considered:

Poynton Relief Road, with a construction estimate of £20m would fall into the CDF Lot 2 medium value construction work category ("schemes up to £25m, may be extended to £50m")

Contractors:

- EM Highway Services Limited
- Geoffrey Osborne Limited
- Interserve Construction Ltd
- John Graham Construction Ltd
- Volker Fitzpatrick Ltd

Positives

- The CDF framework approach could potentially reduce the tender programmes on the project.
- The CDF framework can be used with minimal Highways England input (other than adherence with and reporting on Key Performance Indicators (KPI's)).

Negatives

- Progressing down the framework route, results in the client being restricted to the contractors who are on the framework.
- The Contractors on framework have had no previous working relationship with Cheshire East Council and were not regionally recognisable.

3.4 Framework – Midlands Alliance

This framework is run by Leicestershire CC. The key features of the framework are as follows:

- There are charges associated with joining the alliance and using the framework
- The framework only applies to schemes up to a construction value of £25m
- Balfour Beatty, Lafarge/Tarmac, Galliford Try are on the framework

Positives

- No prequalification process is required; hence programme associated with the tender process could be reduced.

Negatives

- The Contractors on framework have had no previous working relationship with Cheshire East Council and were not regionally recognisable.

3.5 Other Considerations

It should be noted that the OJEU route could potentially attract Morgan Sindall who are constructing the A6MARR scheme into which Poynton Relief Road would connect. Poynton Relief Road is anticipated to commence immediately after A6MARR and efficiencies and savings could be realised if they were procured.

3.6 Conclusion

It was concluded that the most appropriate process for Poynton Relief Road would be to obtain a tender list from a restricted OJEU procedure. This would enable an appropriate tender list to be drawn up, of tenderers interested in the work, and who Cheshire East were likely to want to appoint.

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Follow-Up Meeting (29th June 2015)

4.1 Overview

The June 2015 Procurement Planning Meeting was called in response to an action raised at the Poynton Relief Road and Congleton Link Road Procurement Workshop held on 18th May 2015.

The May 2015 workshop concluded 'Design and Build' would be the preferred route for the tender process. However, concern was expressed that undertaking this before the Secretary of State (SoS) Decision could be seen as prejudging the outcome of the Public Inquiry.

The action tasked Peter Kirk and Matthew Clark to discuss this conclusion within Jacobs and report back to CEC.

Feedback from experience within Jacobs identified the following risks

- The statutory process delays or significantly amends the scheme thus requiring negotiation and/or significant change to the contract.
- Potential lack of interest/reasonable price.
- Provides any objectors with ammunition to claim that the outcome of the statutory process was being prejudged, and increases the risk of procedural challenge/judicial review.

The inviting of Tenders before the SoS decision was not unprecedented, but it was recommended that Cheshire East obtain Committee approval to the proposal prior to inviting tenders and take legal advice on the third bullet point above.

Although keen to avoid, any changes resulting from the Public Inquiry would be the subject of a change Order to the contract.

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Key Dates

5.1 Overview

This section provides the key milestone dates for the Poynton Relief Road programme assuming the OJEU Notice 'Design and Build' procurement route (prior to SoS decision) is followed.

5.2 Poynton Relief Road

- Submit Planning Application – 1st September 2016
- Planning Approval – Jan/Feb 2017
- PIN Notice – Feb 2017 (After CEC Cabinet approval of procurement route)
- Publish Orders – Mar/Apr 2017
- OJEU Contract Notice and PQQ – Jun/July 2017
- Public Inquiry – Oct/Nov 2017
- SoS Decision – Jan 2018
- Procurement Complete – Mar 2018
- Submit Full Business Case – Mar 2018
- DfT Funding Release – May 2018
- Contract Award – May 2018
- Advanced Site Works – Sept 2018

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6 Conclusions and Recommendations

6.1 Overview

This report has reviewed the options for procuring a contractor on the Poynton Relief Road scheme, which is being promoted by Cheshire East Council.

The first workshop, held on 18th May 2015, considered that a 'Restricted OJEU Notice' approach would provide the best way to achieve an appropriate tender list, and recommended that more work was required to assess the different forms of procurement.

A meeting, held on 29th June 2015, was held in response to a concern that undertaking the tender process before the Secretary of State (SoS) Decision could be seen as prejudging the outcome of the Public Inquiry.

This Option (OJEU prior to Public Inquiry, and invitation to tender shortly after PI) would allow a competitive tender price to be included in the funding application submitted to the DfT, and enable the start of the construction phase at the earliest opportunity. A 'Design and Build' Lump sum tender would also provide some cost certainty.

6.2 Conclusion

The two workshops concluded that OJEU prior to Public Inquiry, and invitation to tender shortly after PI would allow a competitive tender price to be included in the funding application submitted to the DfT, and enable the start of the construction phase at the earliest opportunity.

A 'Design and Build' Lump sum tender would also provide some cost certainty. However, it is recommended that Cheshire East Council obtain Committee and Legal approval to the proposal, ensuring that the Council is content that an invitation to Tender during the Statutory Process is not seen as prejudging the Secretary of States' decision on the scheme following the Public Inquiry.

6.3 Recommendations

Design and Build (Lump Sum – i.e. NEC Option A) is the preferred route for the tender process.

A restricted OJEU notice approach provided the best way to achieve an appropriate tender list. A PIN Notice could also be raised prior to going out to tender, thereby alerting the industry to the project.

The final decision for the procurement strategy sits with the Cheshire East Council, and whether Cheshire East Council consider that going out to the market to procure a Design and Build Contractor prior to a Secretary of States' decision on the project is seen as prejudging the outcome of the Public Inquiry.

It is recommended that the Tender invitation documents clearly state that the award of a contract will be subject to a successful Secretary of State Decision, and approval of funding.

Although keen to avoid, any changes resulting from the Public Inquiry would be the subject of a change Order to the contract.