

AVTM Full Approval Cabinet Report 7th October 2014

CONFIDENTIAL APPENDIX A

Exempt information as defined in paragraph '3' of Part I of Schedule 12A of the Local Government Act as amended by the Local Government (Access to Information) (Variation) Order 2006.

1. Approved Budget

The overall approved budget for the AVTM is £51,148,205

2. Tender Prices Received

For all three contracts we have received prices above the available budget. For the Engineering Works, the preferred tender prices (through competitive tender processes) are as follows:

- Contract 1 (the Busway excluding Ashton Avenue Bridge) - £29,370,373
- Contract 2 (Ashton Avenue Bridge) - £4,420,826
- Bathurst Basin Bridges - £1,732,494
- The remaining works are being undertaken through the existing highways framework.

With these tenders we have a residual budget pressure of £9.12m above the approved budget (following ongoing updating of inflation, risk and preparatory costs).

To bring the project back into budget there are a number of changes proposed. The changes can be summarised as follows.

Table 2 – Breakdown of Innovation Savings / Additional Funding

Description	Saving
Omit new street lighting along Route (except at Bus Stops)	£671k
Transfer landscape maintenance contract to BCC after defects period of 2 years	£9k
Reduce work to Cumberland Road (remove VRS wall and carriageway rebuild)	£2.4m
Reduce Avon Crescent Shared Space Proposals	£270k
Skewed Bridge - Omit 100m of Bus Guideway on south ramp and reduce number of piers / spans	£118k
Remove need for Wessex Water diversion near Silbury Road	£168k
Remove South Bristol Link Flood Compensation Works (now being undertaken as part of the South Bristol Link MetroBus scheme)	£391k
Amend construction depths for maintenance track	£90k
Remove Engineer's Representative's Requirements	£124k
Reduce Silbury Road Footbridge Construction	£92k

Description	Saving
Undertake ecology works as part of Preparatory Costs	£37k
Use Tyre Bales for Embankment construction where possible instead of imported fill	£44k
Reduce amount of acoustic fence required	£16k
Reduce City Centre Works	£1.1m
Transfer City Centre Works to other schemes	£1.5m
Reduce Preparatory Costs for FY14/15	£382k
Contribution from Cycling Ambition Fund for Bathurst Basin Bridge Works	£400k
Additional Cost Reduction on Contract 1	£208k
Additional Funding from Others and reduced land costs	£1.1m
TOTAL	£9.12m

3. Changes to Contract 1, 2, 3 and Remaining Works

Contract 1 - the Busway

The proposed form of Contract is NEC3 Engineering and Construction Contract Option C, as amended to suit the requirements of Bristol City Council and the risk profile of the AVTM MetroBus Programme. Under this form of Contract, the Contractor is paid his allowable costs. The total of the allowable costs is compared to an initially-agreed Target Cost and the Contractor and Bristol City Council share the difference, with the Contractor bearing by far the majority of excess costs and the City Council receiving a slender majority of the benefits of cost savings. It must be noted however during implementation of the Works variations may be necessary. The Contractor would be entitled to compensation for any additional or modified works and the effect would be an increase in the Target Cost.

The "headline" tender sum as submitted by Balfour Beatty is: £29,370,973. This is the sum offered for implementing the Works in accordance with the tender documents issued. Under the proposed form of Contract this sum would become the Target Cost.

The tendered price exceeds the level at which Bristol City Council could enter contract. It was therefore necessary to agree innovation savings with Balfour Beatty which could be applied to the Target Cost at the time of sealing the Contract.

Balfour Beatty and the project team - Bristol City Council and its advisers - took part in a joint innovation exercise to make changes to the proposed Works. Balfour Beatty are preparing final quotations for the innovation savings, as if the Contract were already in place but in advance of sealing. These savings are described in section 2.

It must be understood that the Contract to be entered into will still be for a tendered value of £29,370,973. However, the pre-agreed quotations – to be referred to as negative compensation events – will be implemented by both parties at the same time as the Contract is sealed.

Contract 2 – Ashton Avenue Swing Bridge

The proposed form of Contract is NEC3 Engineering and Construction Contract Option A, as amended to suit the requirements of Bristol City Council and the risk profile of this Programme. Under this form of Contract, the Contractor's tendered prices are a lump sum, which may be adjusted during implementation of the Works if variations are necessary.

The "headline" tender sum as submitted is £4,420,826

A similar cost reduction process was undertaken and the scope for reduction was considered to be negligible as the scope for reduction is considerably less than on the Busway owing to the constraints of the bridge structure itself. Any pre-agreed quotations would be implemented by both parties at the same time as the Contract is sealed.

Contract 3 – Bathurst Basin Bridge

The proposed form of Contract is Engineering and Construction Contract Option A, as amended to suit the requirements of Bristol City Council and the risk profile of this Programme. Under this form, the Contractor's tendered prices are fixed, subject to events on site.

The "headline" tender sums as submitted by Alun Griffiths is £1,732,494.

No amendments are proposed to this contract.

Remaining Works

The remaining works, essentially being the 'City Centre' works are being undertaken through the Highways Framework which is already in place.

Risks of These Changes

The AVTM MetroBus Scheme and the wider MetroBus Programme has been undertaking regular Quantitative Risk Assessments (QRA) since inception. The following risks relate to the procurement exercise being undertaken.

- 1. The Risk of Cost Reduction Measures not being acceptable to the Planning Authorities.** The cost reduction proposals for Contracts 1 and 2 require acceptance by Bristol City Council as the Planning Authority. A minority of proposed changes to Contract 1 also require acceptance by North Somerset Council as Planning Authority. Planning Authority acceptance depends upon approval of the proposals by Bristol City Council's highways asset management officers and others, including English Heritage in respect of Ashton Avenue Swing Bridge. The project team is currently working to ensure that all these proposals can be accepted by the Planning Authorities.
- 2. The Risk of Tenderer Withdrawal due to Tender Expiration.** Tenders were returned on the following dates: Contract 1 on 1st April; Contract 2 on 14th March and Bathurst Basin Bridges on 22nd April 2014. The tender documents required tenderers to hold their prices until 15th September, 28th August and 11th October respectively. For example, Balfour Beatty will be formally approached to extend the period for acceptance of their tenders in order for this Cabinet to approve them.
- 3. The Risk to the Works Programme due to Delay.** The tenderers submitted programmes based on starting their work in (respectively) July and September. There is a risk that some items may be disrupted, delayed or made more difficult owing to starting in October (mainly

those affected by tides and the weather, or the requirements of Network Rail) and this could increase costs to the project during 2015.

4. The Risks of Cost Increases during the life of the Works. The project team has employed risk assessment principles to fix the balance of risk between the Contractor and Bristol City Council in each Contract. There remain risks which, if they occurred, would increase costs or delay the work, thereby increasing other costs or making it harder to justify the programme to the Department for Transport. Particular risks include the following:

- The discovery of additional or different defects in the existing structure of Ashton Avenue Swing bridge. It may be noted that all defects on the bridge would exist whether or not this programme proceeds and would eventually have to be corrected by Bristol City Council as structure owner;
- Protests by opponents of the scheme
- Discovery of unforeseen ground conditions, contamination etc considerably different from that known at the time of tender.

5. Risk that a third party could bring Judicial Review proceedings alleging that Bristol City Council's decision to enter into a Contract for a sum that significantly exceeds the professionally prepared budget estimate is irrational. Under the European Public Procurement rules material variations to the contract terms, and post tender negotiations or dialogue on fundamental aspects of the contract are prohibited. During the tender period material variations to the contract terms of Contract 1 (Busway) were made. The joint cost reductions exercise carried out for Contracts 1 and 2 could amount to post tender negotiations and dialogue. There is a significant risk that the material amendments to the contract terms, which were made either during the tender period, or during the post tender negotiations, or after the Contract are entered into, could amount to the award of a new contract. Under the European Public Procurement rules a new tender process for the new contract should have been, but was not commenced. Therefore there is a risk that a third party could bring a procurement challenge alleging the European Public Procurement rules have been breached.

4. Updated Budget Position

As a result of the changes in section 2 the overall budget situation is summarised in Table 3.

Table 3 – Updated AVTM Budget

Cost Description	Currently Estimated Cost
Engineering Works	£34,258,739
Land Costs	£2,095,409
Site Supervision Costs	£505,000
Preliminaries	Included in engineering works costs
Environment	Included in preparatory / engineering works costs
Preparatory Costs	£11,891,422
Project Management	£300,000
Outturn Risk Budget (P80)	£1,421,026

Cost Description	Currently Estimated Cost
Inflation	£410,105
Part 1 Claims	£140,000
Scheme Evaluation	£124,000
Total	£51,145,701

5. Signing of Contracts 1 and 2

To comply with the tender process Bristol City Council will be required to enter into the Contract for the sums given in the tender returns.

The cost reduction exercise that has been undertaken will allow Bristol City Council to implement contract variations at the time of sealing the Contract. By implementing the contract variations the projects can proceed within the budgets as set out in Section 3.

If the Contractor is not willing to implement the contract variations at the time of sealing the Contracts, the sealing will not take place and the Contracts will not be entered into.

It should be noted that the total cost in Table 3 includes a £1.42m risk budget which could be called upon if needed.

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