

REPORT TO STRATEGIC SCRUTINY COMMITTEE

Date of Meeting: 16 March 2023

Report of: Director of Culture, Leisure and Tourism

Title: **St. Sidwell's Point Project Contractual Arrangements**

Is this a Key Decision?

No

Is this an Executive or Council Function?

Executive

1. What is the report about?

- 1.1 This report follows a request to the Scrutiny Programme Board by Councillors M Mitchell, D Moore, J Moore and Sparling seeking a report on the contractual and oversight arrangements regarding the St Sidwell Point project. The report outlines the management arrangements in place for the St. Sidwell's Point project with specific regard to contractual arrangements, re budgeting, contractual changes and varying timescales.
- 1.2 It is the intention that any matters highlighted by this specific project are duly considered when management and contractual arrangements are entered into in future capital-intensive projects.

2. Recommendation:

- 2.1. That the report be noted.

3. Reasons for the recommendation:

- 3.1. The report is a response to a request for information on the contractual arrangements.

4. What are the resource implications including non-financial resources?

- 4.1 None

5. What are the legal aspects?

- 5.1 This report sets out in some detail the current position concerning St Sidwell's Point. The report does not raise any issues as this is an informative report.

6. Report details:

- 6.1 The St. Sidwell's Point project commenced construction works on site 17th January 2019, with a Contract Date for Completion identified as 8th March 2021. Practical Completion was achieved on 22nd April 2022.
- 6.2 The budget for the 'Exeter Bus Station and St. Sidwell's Programme' was agreed as follows:

- Approval of the Bus Station and SSP programme = £51.8m at Council on 18th December 2018
- Approval to spend Local Enterprise Partnership 'Getting Building Fund' grant on the Bus Station = £800k at Council on 20th July 2021
- Approval of the operator fit out budget = £1.5m at Council on 21st July 2020

The above approvals result in a total budget of £54.1m.

6.3 In December 2022 further funds of £1,164,049 (for Contractual entitlement) and £1,750,000 (for Covid Settlement) were approved by Council to conclude the final accounts & costs on the programme.

6.4 **Current position (Review of Arrangements)**

To help outline the arrangements, the key aspects are set out below in a series of sections:

6.5 **Procurement & Contract**

The *procurement* route followed was a two stage design & build route, whereby a builder was procured to work with the client to develop the delivery plan, programme and cost of the project. This enabled the builder team to work collaboratively with the client team to identify, understand, allocate and quantify project risks. A detailed understanding of the project gained in the two stage process allowed the builder to propose a contract value and programme. This process also enabled the client to allocate budget Contingency sums for risk, provisional sums and changes.

The *Contract* was drafted with advice from construction contract law specialists and ECC's own legal team, utilising an industry recognised standard form of Building Contract (a JCT contract) with project specific amendments (to reflect ECC requirements and the risk allocations agreed with the Builder). This approach helped ensure the basis of the Contract used at SSP was tried, tested and understood by professionals in the construction industry.

6.6 **Professional Team**

To manage the client side Contract administration / duties and financial aspect of the contract, a professional Construction Consultancy Practice was employed. The Practice provided Employers Agent / Contract Administration services, in addition to Quantity Surveying cost management. The practitioners used in both the Employers Agent and Quantity Surveyor roles were Members of the Royal Institution of Chartered Surveyors.

The Employers Agent managed the contractual obligations, duties and responsibilities of the Employer (ECC) – acting under Law of Agency.

A series of weekly (initially) and then fortnightly meetings were held between the Employers Agent and the ECC Senior Responsible Officer throughout the full construction works programme period. This ensured that any necessary decisions and approvals were provided in an ongoing and timely manner.

6.7 **Contract : Change Control**

The JCT Standard Form of Building Contract contains clauses in relation to changes / variations to the Contract. In addition to this, the Employers Agent implemented a Change Control system comprising ERIA's (Employers Request for Impact Advice) and CRCs (Contractors Request for Change). These allowed – where possible – for the impacts of changes to be identified and confirmed before the changes are instructed (such impacts being on quality, capital cost, operational cost, etc). This system of impact advice added aspects of the New Engineering Contract (NEC) change control process to the provisions contained within the JCT Contract.

All potential instructions were discussed between the Employers Agent and ECC Senior Responsible Officer to understand the implications and decide if the change would be instructed.

6.8 **Contract: Cost Management**

The Quantity Surveyor managed the financial aspects of the Contract, including monthly site valuations, the valuation of provisional sums, the financial impact of changes, and the agreement of the value in the Final Account. A schedule of provisional sum adjustments and Contract Instructions was maintained by the Quantity Surveyor. This schedule included adjustments to the forecast total Contract cost for provisional sums and changes.

The costs increased above the approved budget due to four main items:

- 1) Section 278 highways works for Devon County Council costing significantly more than originally envisaged, with the scope of works increased considerably above the original intention.
- 2) Change of building cladding material to alleviate building insurance concerns.
- 3) Operator fit-out works instructed to be delivered by the building contractor costing in excess of the allocated budget for such.
- 4) Covid19

Further information on these items is included in the attached Report to Executive & Council (& particularly in the attachments to that Report).

6.9 **Contract: Time / Programme**

The JCT Standard Form of Building Contract used at SSP provides for a fixed programme duration. Delivery to the programme duration is the responsibility of the Builder. However, there are instances where the programme duration is changed – these are termed ‘Relevant Events’. A Relevant Event could include Variations, delays in receiving permissions from the Employer, the supply of goods & materials from the client, national strikes, delay on the part of a nominated supplier, exceptionally adverse weather, civil commotion or terrorism, statutory undertakers work, changes in statutory requirements, Force Majeure (events that are beyond the reasonable control of a party).

In the SSP contract, the delays to completion were assessed as:

- 1) Exceptionally inclement weather
- 2) Contractor performance
- 3) Client instructions (M&E changes to accommodate final operating requirements)
- 4) Force Majeure : Covid

The largest influence on the extended delivery programme was the outbreak of Covid. The delay caused by Covid was not only experienced during the periods of national lockdown and significantly reduced working capacity on-site, but also in the period after the lockdowns through to project completion as the industry supply chain was disrupted by the pandemic (adversely affecting the availability of materials, availability of labour & specialist trades, etc).

Future position (Lessons Learned for future projects)

- 6.10 For a large, complex capital build project it is important to engage and employ the right level of professional support – from specialist contract law legal advice, to professional Employers Agents and Quantity Surveyors. The skills and experience of these professionals in the construction industry help and support the BAU teams in ECC tasked with delivering the new project.

- 6.11 The use of standard, industry recognised documentation (such as the JCT Standard Form of Building Contract) helps with familiarisation of responsibilities and obligations across the team – whilst also helping to avoid any misunderstanding of duties which might be caused by bespoke drafted documentation.
- 6.12 Frequent (weekly / fortnightly) meetings between the Employers Agent and the ECC Senior Responsible Officer help to ensure there are no delays in ECC approvals or decisions on the project.
- 6.13 Although Contingency Sums were included in the Budget of £54.1m, these allowances were calculated based on the knowledge of risk and works at that time - and were in keeping with industry norms & expectations.
- 6.14 Given the full extent of works which were required to repair / fix substandard existing roads in the Section 278 works, the contingency allowance for cost overruns on the Highways Authority related work could in future be higher than allowed at SSP – ie greater allowance should be included for unknowns and unforeseen highways costs.
- 6.15 The budget approved for the operator fit-out items was not sufficient at the time of purchasing the required items – linked to supply chain issues following Covid, the use of the main builder to install many items (to provide a pre-opening programme advantage), etc. In future projects, a more detailed schedule of operator fit-out items, with quotes from suppliers, would provide a more robust budget figure for approval.
- 6.16 Additionally, a specific Contingency Sum could be included for Force Majeure and/or pandemics. The amount to include for this would be subjective and could – in the normal course of matters – materially affect the viability of the scheme. The decision to include a project specific risk pot for global pandemics, or hold an ECC wide corporate pot, or none at all, is a decision for Council in future.

Conclusion

- 6.17 The cost of SSP was impacted by Covid, two large variations (both external factors), and the decision to carry out increased operator fit-out to improve the programme for opening the centre.

The delivery programme was significantly and materially delayed by Covid.

Future projects would benefit from many of the SSP contract management matters outlined in the sections above, whilst also areas for improvement could include:

1. Allowances in Contingencies (financial & programme) for pandemic outbreaks.
2. Greater contingency allowances for Highways works.
3. Greater understanding and clarity on the operator fit-out costs and requirements.
4. ECC internal programme allowance for contract delays (such as exceptionally inclement weather, pandemic, etc.)

7. . How does the decision contribute to the Council’s Corporate Plan?

- 7.1 There are no decisions being made. Previous decisions made around SSP have had their alignment with the corporate plan included

What risks are there and how can they be reduced?

- 8.1. There are no decisions being made.

9.. Equality Act 2010 (The Act)

9.1 No potential impact has been identified on people with protected characteristics as determined by the Act because the report is for noting only.

10 Carbon Footprint (Environmental) Implications:

10.1. There are no direct carbon/environmental impacts arising from the recommendation to note.

11. Are there any other options?

11.1. There are different forms of Contract, with differing allocation of risk in relation to increases in prices of materials, goods & services, risk of programme, risk of design detailing, etc – all of these would need to be considered at the outset of the next capital project to ensure the most suitable Contract type is chosen for that specific project.

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Contact for enquires:

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