

## **BRIEFING NOTE - POSITION AND OPTIONS FOR WAY FORWARD WITH PHASE 2 OF WTS FOLLOWING RL DAVIES & SONS LTD ENTERING ADMINISTRATION**

### **POSITION**

RL Davies & Sons Ltd (RLD) were appointed to deliver the Phase 2 Contract to complete construction of the new Waste Transfer Station (WTS) in June 2022. The Contract Sum was £6.231M. The form of contract used was the NEC4 Engineering and Construction Contract (ECC) Option A. Work commenced on site in August 2022. Up to end January 2023 the latest estimated Final Account for Phase 2 was £6.9M which included for a number of Compensation Events (CE's) approved since site start to capture scope changes from the Service which were approved by Board in September 2022 and other issues that have arisen on site. A number of further CE's were still to be priced by RLD and remained outstanding at time of administration but were estimated to take a revised Final Account Estimate to close to £7M. At present the approved overall budget for Phase 2 including Contingency is £7.022M. Spend to date following the final account on administration on the Phase 2 contract with RLD to February 16<sup>th</sup> 2023 and including cost of any direct payments to key subcontractors was £3.2M (c. 45%) and the anticipated Completion Date was November 10<sup>th</sup> 2023.

Following RLD entering administration on Thursday February 16<sup>th</sup> 2023 the site was secured and appropriate actions taken. Following this news and after obtaining necessary approvals within DCC, a Termination Notice was served on RLD and their appointed Administrator on Monday February 20<sup>th</sup> terminating the Contract between DCC and RLD as allowed for under the NEC4 form of contract in use on the scheme. On termination the subcontractors and their tendered packages fall back to DCC. A Report was taken to Cabinet on 25<sup>th</sup> March on the initial award of and subsequent termination of the contract with RLD.

In the short term an Exception Report has been produced in order to appoint the key subcontractors required to keep the works progressing while a decision is made on the longer term way forwards for delivering the scheme and also to enable payment of subcontractors in the short term. This Exception Report has allowed key works on the site to progress in order to minimise delay to programme as far as is possible. We are using the NEC4 Engineering and Construction Short Subcontract for the appointment of subcontractors and Procurement and Legal have and are being consulted on this.

Listed below is a number of Options for discussion on possible ways forward in the longer term.

## **WAY FORWARD – OPTIONS**

### **OPTION 1:**

Description: Re-tender Contract

- 1) Would put significant cost on the scheme due to delay and repricing via new tender
- 2) Would impact the scheme programme and would delay waste roll out
- 3) Storage costs for materials and equipment already procured would be significant

Not Recommended

### **OPTION 2:**

Description: Appoint Second Place Tenderer to Main Contractor

- 1) Second place tenderer priced scheme in Q2 2022 at £8.1M which was £1.9M more than the lowest price tender (RLD)
- 2) Following a review of the Tender price, applying BCIS Price Inflation since Q2 2022 when initial Tenders were prepared, and based on c. 50% of works to still be completed on Phase 2 it is estimated this Option would cost c. £570K more than the recommended Option
- 3) It is likely there will need to be a period of negotiation before the Contract can be novated and could only be novated if the Contractor was willing to take on all liabilities including design as per the original contract, initial discussions indicate this is not likely
- 4) This option will cause delay and is likely to be more expensive, and given work will be progressing on site in interim, by Contract award main elements of work will be complete
- 5) Have limited knowledge of the scheme after initial tendering or working knowledge of the subcontractors inherited so would be heavily reliant on DCC working knowledge
- 6) The scheme will be substantially completed before any Contract Award (more than 50%).

Not recommended

### **OPTION 3:**

Description: Appoint Civils Subcontractor to Main Contractor

- 1) Discussions have been held with Civil Subcontractor to sound out option
- 2) They have a working knowledge and understanding of the scheme

- 3) Other subcontractors may want to continue with direct payment after their difficulties with RLD
- 4) The scheme would be open book with DCC in a partnering arrangement
- 5) Subcontractors may be nervous of accepting sub contracts
- 6) To date the Civil Subcontractor have been unable to get Design Liability Insurance which prevents novation of the original contract as it can only be novated if it remains fundamentally unchanged
- 7) This Option would cost c. £400K more than the preferred Option
- 8) At present subcontractors approached have accepted subcontracts from DCC so to change this approach would have a cost / time impact.

Not Recommended

#### **OPTION 4:**

Description: Management Contract – DCC continue to manage subcontractors

- 1) Bring the Contract in house and issue sub contract packages using the NEC4 Short Sub Contract Package using the main Contract terms – this is the approach DCC has been following since RLD entered Administration in order to keep works progressing on site – subcontracts have been issued for packages of work
- 2) The Civils Subcontractor has been appointed to expand their role to include Principal Subcontractor role to manage the site on behalf of DCC and cover CDM, H&S, provide Contractors All Risks Insurance and take on management of a limited number of the subcontract packages.
- 3) The scheme was originally designed by the DCC Works Unit with specialist designer's employed to undertake certain tasks. The design responsibility will revert to DCC as the Principal Designer and the RLD specialist designers have been taken on by DCC to complete their packages of work. All designers have the relevant level of Professional Indemnity Insurance and as DCC undertake design works on a regular basis the necessary design insurance is already in place.
- 4) It has partially mitigated costs pressures compared to other Options
- 5) We are employing an open book policy with all subcontractors
- 6) This approach has mitigated delay
- 7) This approach allows completion to remain as close as possible to the RLD completion date on Nov 10<sup>th</sup> 2023

8) This will help minimise disruption and minimises cost increases

### **Recommended Option**

**NOTE 1:** Phase 1 Enabling Works Contract cost £1.84M. Estimated cost, including Contingency, for Phase 2 via Option 4 is £7.9M – Total WTS works costs £9.74M. Excludes Fees, Surveys, and Equipment costs.

**NOTE 2:** In Q2 2019 via a Framework an initial outline design estimate for the scheme of £13M was prepared based on the outline design at that time, this excluded Client Fees, subsequent changes to the design scope (e.g. inclusion of second weighbridge, dust & odour suppressions system) and any of the collaboration work undertaken in Phase 1 with local businesses.