

DLA Piper Rudnick Gray Cary

1. Mott Macdonald - Faber Maunsell

FORMAL OFFER

MM did not submit the Formal Offer letter as provided in the ITT but instead provided their own Letter of Offer ("the Offer"). When reviewing the ITT and preparing their Tender MM identified various project risks in achieving programme. Their methodology (chapter 15 of their Offer) indicates how they propose to approach the project and confirm that they will accept responsibility only for the risks which they can control and mitigate.

The Offer is dependent on MM's methodology and on the following points forming part of their contract:

- Offer is dependent on agreement with **tie** as to programme, appropriate allocation of risks for achieving it and a mutually satisfactory payment schedule. The Offer is made on the basis of scope set out in the ITT and the programme stipulated, however MM have reservations about the feasibility of achieving programme in 20 months. One possibility they suggest is that the scope is reduced with work carried out at later stage in procurement process. On the basis of a reduced scope and 20 month programme, MM envisage cost of services to be £16-17 million. However, MM require discussions on what can be achieved in 20 months. They believe that this will be dependent on **tie's** procurement strategy.
- MM have not developed an Optional Variant Tender because they think that **tie's** views are required to take this forward. In addition, the clarification note introducing the opportunity to submit an Optional Variant Tender provided insufficient time to prepare the same.
- Over-riding standards of performance shall not exceed those set out in clause 3.2 of the contract and any liability between **tie** and MM is dependent on breach of the same.

MM's Offer comprises:

- Letter of Offer
- methodology
- SDS Provider Agreement as amended

MM confirmed that they did not submit the Formal Offer letter provided in the ITT because the Terms and Conditions of appointment contain obligations that are not insurable through professional indemnity insurance policies available to consultants in the current market. MM do not think it is in the interests of MM or **tie** for them to undertake obligations that as professional consultants they are unable to insure.

MM's schedule of deliverables provided at Appendix A is provisional. It is still under development and should be considered as work in progress, only indicative of MM's intent. (page 5.2).

A programme has been provided (**tie** to evaluate). MM are confident that key dates can be achieved subject to clear agreement with **tie** on requirements output definition, timely provision of survey and third party inputs and varied approvals requirements.

MM/FM METHODOLOGY (CHAPTER 15 OF OFFER)

The Offer is dependent on the correctness of MM's assumptions and methodology. The Offer assumes that MM and **tie** will meet as an initial activity to agree a detailed integrated project programme and associated information transfer schedule with key dates for fixed information. MM base their Offer on the duration of **tie**'s programme. Any rework required through no fault of MM will be treated as additional work for which an additional fee will be due.

Scheme Development

MM do not know the basis of how **tie** believe their programme is achievable. MM require to understand **tie**'s anticipated approach (Page 15.1)

MM have reserved their position regarding compliance with the programme so that the Offer is based on provision of services with all reasonable diligence rather than strict programme compliance. Once they have satisfied themselves that the programme is achievable, they undertake to agree with **tie** a programme for delivery of services and further undertake to use all reasonable diligence to provide the services in accordance with the same.

In recognition of interface process [with TSS and CEC], MM's obligations and liabilities in relation thereto with regard to achievement of all approvals and consents necessary for the Project are limited to the use of reasonable endeavours to obtain the same on behalf of **tie** and the certification for payment (by **tie**) of consent and approval fees as they arise (Page 15.2)

Programme

MM recognise that the timescales are tight. Where approvals are sought, MM have assumed they will receive a timely, one off and comprehensive set of responses from the relevant authorities.

Contractor investigations & surveys

The programme is challenging and MM would like to explore the approach that **tie** anticipated in achieving programme dates as specified in the contract. The programme does not take account of procurement delays on investigation contracts (Page 15.6).

Offer based on provision of a number of non-invasive surveys and investigations.

Utilities

To meet programme, MM have assumed comments from third parties will be returned within the 20 day approval period defined by **tie** (Page 15.8).

System wide - rolling stock procurement

The programme takes no account of significant changes to tram specification to the agreed track spacings, clearance envelopes, loadings or power requirements (Page 15.10).

Requirement specification

Additional work/delay by inability of **tie** to approve performance specification has not been priced for and will be treated as additional work (Page 15.11).

Interface spec

MM priced for production of interface specifications and delivery to other parts of the team to enable work on detailed stage of scheme to be progressed as soon as possible. Timetable and staff allocation set out in the bid is dependent on early/timely supply of data from Tramway operator, **tie** etc. Any delays will be treated as additional work (Page 15.11).

Run-time simulation

Allowance was made in the estimate for time and cost of MM's element of this work but it is dependent on timely provision of information/agreement from third parties, including **tie** and operator. Any delay in provision of this information has a knock on effect on programme and cost of delivery (Page 15.12).

Assistance to tie during procurement process

Programme is critical for this element of the work and any delay in delivery of information from **tie**, operator or other stakeholders will have a knock-on effect on timetable and cost of delivering these and other elements of the scheme, potentially leading to overall programme delay.

MM have not priced for assistance during second phase of the project.

Track formation and highways

Due to tight programme constraints, MM assume timely, full responses etc will be provided as discussed above (Page 15.13).

Traffic engineering: general (Page 15.22)

Delivery of highway and junction design - joint JRC/SDS model suit is not available at this stage. Reliance on existing detailed assignment models (DAMH & DAMPPT) is therefore necessary. This requirement to progress highway and traffic management design in parallel with alignment design could potentially lead to abortive work. Any re-work required as a result of this will be considered by MM as additional work.

MM assume they will have unlimited access (at no cost) to DAM models and that they accurately reflect current traffic management scheme.

MM require (at no cost) on appointment all existing traffic count data in the corridors.

MM will work with the JRC modelling consultant to deliver as far as reasonably practicable simulation of likely demand and patronage. Their Offer does **not** include joint and several liability. Instead it is anticipated that **tie**'s objective of integrating technical work will be achieved by collateral warranties between the two consultants.

General: SDS Management (Page 15.42)

MM included in the price additional sums for items currently unquantifiable in nature. They are happy to discuss the sums based on assumptions.

Infraco Procurement Services - they will offer six months support to **tie** which is 61 man weeks at £3,000 per week.

No price for accommodation for **tie** in MM's offices.

General approach to commission (Page 15.43)

MM require to agree conditions acceptable to them and a payment schedule providing positive cash flow to MM.

(Page 15.44) MM require information in fixed and final format to enable design to proceed. If information changes and rework is required, it will be regarded as additional work and therefore will incur additional fees.

(Page 15.44 to 15.45) Lists issues on which tender is based (assumes no delays by third parties):

- all costs for delay to clients account;
- client accepts delayed design programme;
- no responsibility to MM in event of delay;
- MM reserve right to appoint alternative team members prior to and during contract;
- offer excludes acceptance of risks (obligations and liabilities) relating to circumstances over which they have no control. Anything requiring re-performance or additional services, MM are entitled to additional payment and adjustment to programme;
- offer excludes acceptance of risks etc regarding Background Information including inaccuracy, error, defect, omission, unfitness, except where it has been prepared by MM and not performed with reasonable skill and care;
- don't accept terms of novation agreement as it contains irreconcilable conflicts of interests between **tie**, MM and Infracore. Any novation has to be in construction industry council standard form;
- exclude strict obligation to maintain PII cover. Only obliged where it is available at reasonable rates and terms;
- offer excludes acceptance of risk associated with Review Procedure in schedule 9 of the SDS Provider Agreement except to the extent where deliverables have been provided in breach of clause 3.2 of the SDS Provider Agreement;
- notwithstanding terms to the contrary in SDS Provider Agreement - no party to the contract shall have the right to finally determine another party's rights and obligations under the contract and all disputes/differences in relation thereto shall be capable of being referred for resolution under the Dispute Resolution Procedure contained in the SDS Provider Agreement;
- in addition to offer for full scope, MM provided variant offers for Line 1 only and Line 2 only. The Offer is based on undertaking work associated with complete scope and not parts.

Comments on pricing schedule (Page 15.45)

- General

Priced following: standard bid Lines 1 and 2; variant bid Line 1 only; variant bid Line 2 only

MM have priced up to completion of detailed design - thereafter they novate to Infracore:

- PII
Included in general rates.
- Other insurances
Included in general rates.
- Direct costs
Included reasonable expenses in price. For any expenses incurred at **tie's** request MM are entitled to recovery plus 5%. This includes provision of presentation materials and further copies of drawings and documents.
- Allowance for price inflation
Included in lump sum price. Allowance identified separately in pricing schedule.
- Commissioning support
Nominal sum included within pricing schedule. Assumes provision of four technical staff for three months.
- SDS support for management of defects
Unable to price accurately within current Offer as the scope is undefined. Nominal sum included for provision of two technical staff for two months.
- Existing **tie** commission
Offer doesn't include for any work currently required of technical support to **tie** during parliamentary process. Deemed to be included in existing commission.
- EMC resolution
Price doesn't include for Network Rail EMC compatibility studies required as deliverable in preliminary design phase. MM recommend that an additional £250,000 is set aside by **tie**.
- Rates
Time charge rates included in pricing schedule - valid until 31 December 2005.

2. **Parsons Brinckerhoff**

FORMAL OFFER

The PB offer is compliant with the requirements of the ITT apart from in one crucial respect. The statement that the tenderer acknowledges that there is to be no further negotiation of the terms and conditions has been deleted and therefore the formal basis on which the PB tender has been priced is not clear and will require to be clarified with them as a matter of priority.

PRICING

(Page 183) The introduction to the pricing schedule contains a number of statements which affect the basis on which the numbers are to be considered. These reservations require to be considered as part of the financial evaluation and are briefly as follows:

- Note that the discounts identified have not been carried forward into the tender sums.
- The mobilisation charge is indicated (*but is this obvious from the pricing schedule?*)
- PB has added pages in respect of the sector Airport - Ingliston Park & Ride. The design fee is linked to the design programme and *timely responses to design submissions for review, comment and approval*. (Note that this final statement may affect fixed nature of pricing and acceptance of the terms and conditions as they currently stand);
- The payments stated in respect of statutory and other bodies reflect uncertainty. (Note that the effect of this is not clear from the statement given).
- Note that rates are valid to end 2009 and are exclusive of travel and subsistence.

INSURANCE

Note that the Professional Indemnity part of the Insurance questionnaire has been fairly heavily amended.

OTHER MATTERS

(Page 141) **tie** to note the statement in that after 18 months, the reduced team will co-locate with Infracore at the cost of Infracore.

3. Scott Wilson

(Section 3.2) **tie** to note the statement made with regard to deliverables.

(Section 8) Despite the fact that SW appear to fully price the terms and conditions as stated and have signed the Formal Offer acknowledging that there is to be no further negotiation of the terms and conditions beyond the tender stage, there are various statements with regard to (a) terms that will be unacceptable to sub-contractors and (b) obligations which take them beyond the scope of their insurances.

4. Atkins

FORMAL OFFER

The Formal Offer is in the form required in the ITT, apart from the fact that Atkins have deleted the statement that there will be no negotiation of the terms and conditions beyond the tender process. As with PB, this makes the basis on which Atkins has priced the Contract unclear.

PRICING

There are a number of specific statements made with regard to the Pricing Schedule. These can be summarised briefly as follows:

- There is an assumption that payments will be made "on account" as per the Clarification Note of 29 April. Atkins rates and prices assume that an agreed position can be reached regarding neutral cash flow.

- There is a carve-out regarding site investigations and surveys
- Atkins are looking for a cap on liability
- Atkins have inserted a carve out with regard to JRC
- Atkins has provided a *non-comprehensive* list of components which it would expect Infracore to procure separately