

PROJECT BOARD MINUTES

- Project:** North Herts Museum & Community Facility
- Date:** 25th March 2013
- Classification:** Confidential
- In Attendance:** Councillor Tricia Cowley, John Robinson (Project Executive), Steve Crowley, David Scholes, Brent Smith (Hitchin Town Hall Ltd), Morag Norgan (Hitchin Town Hall Ltd)
- Circulation:** Those attending, Vaughan Watson, Ros Allwood, Rosemary Read, Project Librarian,
- Publication on the web following the next meeting by the Project Librarian [following inclusion of notification on 15 Brand Street]

Project Board noted that negotiations had been suspended for 6 weeks and that this had an effect on negotiations in terms of 15 Brand Street.

The Project Executive formally thanked Neal Charlton, Steve Crowley and their teams for all their time and efforts in meeting the very tight deadlines set by ACF to award the contract by 28th March 2013.

1 Apologies

Vaughan Watson, Rosemary Read, Ros Allwood

2 Minutes of the Last Meeting 11th February 2013

These were agreed subject to including Cllr. Cowleys apologies
[Subsequent note: Project executive has determined these minutes would not be published until the inclusion of notification on 15 Brand Street]

3 Highlight Report No 4

The Highlight Report detailed all activity between 17th December 2012 to 28th March 2013. SC tabled the Gantt Chart (Appendix 1) at the meeting and Project Board took time to consider this document. SC explained that the current scheme was still on time and, subject to an amendment to the fit out element of the plan, was still scheduled to complete the development by November 2014.

| Stage four 10/12/03 - 28/03/13 | Date completed |
|----------------------------------|---------------------------------|
| Construction contract | |
| Advertise contract | End of December 2012 |
| Expressions of interest | 7 th January 2013 |
| Evaluate expressions of interest | 18 th January 2013 |
| Draft Tender document | 17 th January 2013 |
| Formalise Tender document | 2 nd February 2013 |
| Tender period | 4 th February 2013 – |

| | |
|--|--------------------------------|
| | 15 th March 2013 |
| Evaluate Tenders | 15 th March 2013 |
| Award contract | 28 th March 2013 |
| | |
| Exhibition designer | |
| Evaluate PQQ's | 4 th January 2013 |
| Produce specification and tender documents | 18 th January 2013 |
| Tender | 28 th February 2013 |
| Evaluate tenders | 15 th March 2013 |

SC highlighted that the award of contract should be considered under section 6 of the report. NC confirmed that he needed a decision at the end of Project Board as to whether to proceed with the agreed scheme and award contract by 28th March. SC confirmed that a letter of intent to the contractor was acceptable under the Council's Procurement Rules but, it was agreed, that MN would liaise with ACF as to whether this was acceptable to them. It was noted that this confirmation was required by the end of business on 25th March 2013 to meet the existing deadlines.

Action: MN

Tender Returns for Building Contract

SC advised that three tenders had been returned on 15th March 2013, with a price range from £3,003,482 - £3,382,052, against a budget of £2,986,300. The evaluation of this tender was based on costs only as the quality evaluation has already been undertaken. Buttress Fuller Alsop Williams (BFAW) our lead consultant have undertaken a financial evaluation to ensure that the tenders are robust and their report is provided as appendix 2.

The Council has also undertaken a financial evaluation of the contractor that returned the lowest tender. The result demonstrated that this company has a good financial record.

As the lowest tender price (Borras Construction) is only £17,182 (0.57%) above the original budget (£2,986,300) it is advised that the Council award the construction contract to Borras Construction.

The Project Executive confirmed that the process followed above did demonstrate value for money and that under capital rules that provision had been made for a finite amount to cover variations. NC confirmed that the reason the costs had increased was due to a number of fit out items being included within the main contract and not the fit out contract. Therefore adjustments from one budget to another would need to be made.

MN asked whether the Council had any concerns that Borras has been successful and SC advised that the Council had worked with the previously and had no concerns. BS stated that he was pleased that a local company had been awarded the contract

Fit Out Design

The Council has completed the Pre Qualification phase of the fit out designer, seven contractors were invited to tender and all submitted a response, providing a range from £99,000 - £178,650, the average is £133,836. The

contract value for the fit out work is £900,000, therefore, it is expected that tenders should be approximately 12%-15% of this value, £108,000 -£135,000

The tender responses are currently being evaluated and are due to be complete by at the start of April 2013. When the tender evaluation is complete a report with the outcome will be presented to the project executive for approval.

Issue Log

| | Type | Description | Author | Status |
|---|---------------|---|--------|---------|
| 1 | General | Risk of delay to project because of draft proposals to add 15 Brand Street to the project. Project Executive monitoring this issue and met with Leader of the Council, Deputy Leader and Portfolio Holder. | SC | Ongoing |
| 3 | Procurement | Procurement of main contractor being awarded by 31 st March 2012. This is being controlled by BFAW. | SC | Ongoing |
| 5 | Communication | Dealing with public understanding of the project. Need to produce a communication plan to ensure regular dialogue external stakeholders | SC | Ongoing |
| 7 | Contractual | Due to the Easter weekend for NHDC and HTH to comply with the Development Agreement both parties will have to company relevant awards and exchanges by 28 th March 2013. This is only 3 days from Project Board approval | SC | Ongoing |

In terms of issue no 5, the Project Executive provided an example whereby at a recent Planning Committee a representative from one of the community organisation in Hitchin spoke about child protection issues is a further changing room was not included in the scheme. The following day, an email had been received from MN advising that this was not the case. Hitchin Town Hall Ltd therefore, are not managing the risk. MN advised that she was happy to go public but only once the scheme had been agreed. Cllr Cowley stated that this needed to be managed as these sort of statements do influence people and would be happier if Hitchin Town Hall Ltd issued statement to correct. At the moment, community organisation are all thinking that they will be getting everything they would like i.e a second changing room, larger stage with the museum storage being located elsewhere, additional café covers etc. MN stated that there were only a minority who thought this and that Hitchin Town Hall Ltd do not want to go public with any sort of statement at this stage until discussions on 15 Brand Street have been concluded. JR concluded by stating that Hitchin Town Hall Ltd needed to actively manage perception. BS confirmed that Hitchin Town Hall Ltd do have support from community groups in Hitchin and that the Town Hall will be run in accordance with the law and if that meant that only having one changing room meant that children could not performance then that is what will be done.

Due to Easter weekend and the availability of all concerned all parties need to agree by no later than Thursday 28th March 13 (next three days) This includes:-

- Formally award the contract to Borrás Construction Ltd

- Serve formal notice on HTH Ltd that the Development Pre-condition has been satisfied and to require HTH Ltd to perform their obligations under the Agreement.
- This includes (i) the exercise of the Option and completion of purchase of 14 Brand Street and confirmation of the same and
- Grant of licence to the Council to enter into 14 Brand Street to commence the Development

In terms of bullet point no 2, the Council's legal team approached David Morgan last week with a view to progressing this matter and was advised that he had been instructed by BS that this was no longer required due to the meeting held on Thursday with the Chief Executive.

BS continued by stating that the within the Development Agreement provision had been made to explore the option of including 15 Brand Street within the development. JR confirmed that as per the Development Agreement, NHDC needed to have awarded the contract by 31st March. It was agreed to defer this item until the Exception Report had been considered.

4. Exception Report

SC introduced the Exception Report which was written prior to receipt of the email from ACF. In considering the report, BS advised that ACF had expressed concern that the tendering exercise had not provided value for money. DS confirmed that this view was formed at a stage when it was not known that all three tenders had been returned. JR reiterated that NHDC had followed the process in accordance with its own rules and regulations and that any concerns were misplaced as the process was undertaken lawfully. SC referred to a clause within the Development Agreement where it states that there needed to be at least 3 tenderers to demonstrate value for money had been addressed and this clause has been met.

MN and BS concluded by stating that they were comfortable with that the tender process and that value for money had been achieved.

MN advised at this point that an email had been received from ACF. This was forwarded to the team at this point. The email from Tom Young at ACF confirmed that the request for extension for the refurbishment contract be extended until 31st July 2013 subject to the following conditions:

- **An evaluation of the scheme including 15 Brand Street vs. 14 alone. To include costs, impact on the financial forecast and the source of any additional funding required.**

The Project Board considered this request and due to NHDC's Procurement Approach considered, this condition could not be met. The Council were significantly at risk if it retendered the works for 15 or to retender for 14 and 15 together. In addition, the Council were not able to go back to the three contractors short listed to tender for the inclusion of 15 Brand Street as this would be open to challenge and if one contractor did not return, the process would have to be scrapped. In addition, this process could also be challenged. JR confirmed that officers could not endorse this approach as it would not be lawful and would be subject to

S.151 Officer endorsement. . The only lawful way to progress this would be to start from scratch.

MN sought confirmation that the Leader of the Council, Chief Executive, Project Executive and Portfolio Holder could not take this decision under emergency powers. JR confirmed that this was not possible for the reasons outlined above.

In addition, it was confirmed that an extension to 31st July 2013 was not sufficient and Project Board were referred to an indicative project plan highlighting this:-

| Task | Duration | Start date | Completion Date |
|---|-----------------|-------------------|------------------------|
| ACF to agree to extension and conditions | 2 wks | 21 March 2013 | 03 April 2013 |
| Council and Trust to agree 15 Brand Street | 2 wks | 04 April 2013 | 17 April 2013 |
| Negotiate new DA and legal approval | 2 wks | 18 April 2013 | 01 May 2013 |
| Design and tender documents | 37.5 days | 02 May 2013 | 24 June 2013 |
| Review existing scheme for statutory compliance | 0.5 wks | 02 May 2013 | 06 May 2013 |
| Develop revised areas to stage E | 2 wks | 06 May 2013 | 20 May 2013 |
| Redevelop affected adjoining areas to stage E | 0.5 wks | 20 May 2013 | 22 May 2013 |
| Develop revised areas to stage F | 2 wks | 23 May 2013 | 05 June 2013 |
| Redevelop affected adjoining areas to stage F | 0.5 wks | 06 June 2013 | 10 June 2013 |
| Prepare revised tender documents | 2 wks | 10 June 2013 | 24 June 2013 |
| Advertise for main contract | 3 wks | 02 May 2013 | 22 May 2013 |
| Evaluate Expressions of interest | 2 wks | 23 May 2013 | 05 June 2013 |
| Finalise tender documents | 1 wk | 24 June 2013 | 01 July 2013 |
| Tender period | 4 wks | 01 July 2013 | 29 July 2013 |
| Tender analysis | 4 wks | 29 July 2013 | 26 August 2013 |
| Recommend to Council successful contractor | 2 days | 26 August 2013 | 28 August 2013 |
| Council agree successful contractor | 5 days | 28 August 2013 | 04 September 2013 |
| Award contract | 1 day | 04 September 2013 | 05 September 2013 |
| Sign contracts | 1 day | 05 September 2013 | 06 September 2013 |
| Contractor Mobilisation | 5 wks | 06 September 2013 | 11 October 2013 |
| Start on site | 0 days | 11 October 2013 | 11 October 2013 |

It was noted that the contract could not be award until 5th September 2013 and that this was the date, subject to confirmation and inclusion of a contingency allowance that needed to be reported to ACF.

JR also referred to the possibility of re-tendering for BFAW works as the inclusion of 15 Brand Street would take their existing contract over the EU threshold. BS challenged this as he didn't think this would be open to challenge. NC explained the process to BS in terms that variations issued to date meant that including work around 15 Brand Street would push this over the threshold.

Project Board also advised that negotiations on the Development Agreement would need to be carried out immediately and concluded within a period of weeks and not be drawn out as per previous negotiations. MN confirmed that she would be willing to meet with NHDC to negotiate terms and changes to the Development Agreement.

Councillor Cowley advised that information needed to be more forthcoming i.e 15 Brand Street details were first presented to NHDC in October 2012, a formal proposal was then presented in January 2013 followed by a planning application which was not disclosed to this project team. MN refuted this and said that Hitchin Town Hall Ltd had never refused for this team to have sight of the application. JR referred to an email to MN on 24th October 2013 where this information was requested so that work on including 15 could be undertaken. This information was not forthcoming and the planning application was submitted without consulting NHDC. Cllr Cowley reiterated that these were the sort of delays they could ill afford if 15 Brand Street were to be taken forward.

- **Confirmation that there will be no detrimental impact on the ability to meet debt repayments.**

This was a condition on Hitchin Town Hall Ltd. MN confirmed that DLB had already forwarded this information to ACF. However, this information would also be required by NHDC to see the same reassurance.

It was noted that Hitchin Town Hall Ltd had only agreed to pay for the purchase of 15 Brand Street and were asking the Council to pay £110k, the difference in the two scheme, as their contribution for the inclusion of 15 Brand Street. Other costs incurred would be around VAT advice, State Aid advice, NHDC legal costs etc.

- **The tenders are to be reissued so that a wider range of bids may be received and evaluated. The inclusion of 15 Brand Street is to be included in a parallel and/or two option process.**

As discussed under bullet point one, this could not be undertaken for the reasons stated.

- **ACF is to be provided with: A two weekly update of the tender process**

This was not discussed or agreed at Project Board

- **Two weeks' advance notice of Project Board meetings every month, to enable a representative of ACF to attend.**

This was not discussed or agreed at Project Board

- **Two weeks' advance notice of Design and other tender/contract meetings with architects and other experts, to enable a representative of ACF to attend**

This was not discussed or agreed at Project Board

- **HTHL is also to identify the skills and additional resource and costs required to manage the project and provide a plan acceptable to ACF to recruit the necessary resource by the end of May 2013.**

This was not discussed or agreed at Project Board

MN stated that she was nervous in going back to ACF requested a 6 month extension to the timeline as she feared that they may not support it.

It was agreed to adjourn the meeting at this stage so that Hitchin Town Hall Ltd were able to consult with their Board and speak with ACF. It was agreed to meet at NHDC Officers at 1.15 pm later that day.

Project Board reconvened at 1.23 pm and MN advised that following a telephone discussion with Tom Young, a joint letter has been requested which sets out the request so that Fred Worth who is in the office this afternoon can consider our request. MN also advised that Tom Young was delighted that the tender process had been run successfully and that the contract could be awarded.

Action: JR/MN to agree wording of letter

Risk Log

The risk log was considered and it was noted that:

- Risk no 3 which had previously been shaded needed to re-activated and amended to include 'any variation to the Development Agreement'
Action: SC
- JR also referred to risk no 12, 17, 31 and 32 which were all inter-related and concerned Hitchin Town Hall Ltd. JR advised that Hitchin Town Hall Ltd's mobilisation plan would be included as an agenda item at the next meeting of Project Board. MN confirmed that ACF had recently agreed to support them and provide them with a grant in terms of mobilisation. This would be confirmed once they has received the programme from Hitchin Town Hall Ltd.

5 Recommendations

- 5.1 To award the building contract to Borrás Construction. JR confirmed that as Project Executive, he would award the contract if ACF were not able to confirm to the extension of 4 weeks to fully explore the inclusion of 15 Brand Street and to an extension of 6 months before the award of contract. In addition, a side letter to Development Agreement was also required.

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- 5.2 The Project Executive would notify Hitchin Town Hall Ltd of the award and require performance of their obligations under the Development Agreement
- 5.3 The Project Risk Log was approved subject to the changes outlined.
- 5.4 The Project Issue Log was approved.
- 5.5 Approved the completion of stage 3 subject to the award of contract
- 5.6 Approved to the commencement of stage 4