



Committee report

Committee	CORPORATE SCRUTINY COMMITTEE
Date	9 MARCH 2021
Title	FLOATING BRIDGE 6 UPDATE
Report of	CABINET MEMBER FOR INFRASTRUCTURE AND TRANSPORT

EXECUTIVE SUMMARY

1. This report sets out the background to the procurement of the floating bridge; the main issues experienced, the current legal position, options and corresponding recommendations.
2. The background provides information on the following elements of project which culminated in it entering service on 13 May 2017: -
 - Procurement processes
 - Permissions
 - Project Board
 - Project management
 - Issues since entering service

BACKGROUND

3. After some considerable negotiation the possible replacement of the floating bridge was included in the Solent Local Enterprise Partnership's (SLEP) first ever Solent Strategic Economic Plan, submitted to government in March 2014. It was aligned to a project to improve connectivity across the Solent and the terminal access roads, cycling and walking routes, high quality waterfront areas, and a new 'floating bridge' between East and West Cowes. This came to be known as the Solent Gateways Project.
4. Following its inclusion in the SLEP's plan, approval was given to proceed with the first stages of the procurement of a new floating bridge by the council's Executive Committee on 5 August 2014. This was necessary to provide a business case for funding to the SLEP by October 2014 with a view to the funding being confirmed in January 2015. This report was presented by the Head of Economy and Executive Member for Finance and Highways PFI
5. The following paragraphs set out the key steps in the delivery of the project concept through to commencing service.

6. SUPPLIER'S DAY - 2 DECEMBER 2014

7. At the outset of the process it was agreed with the Council's Procurement team to hold a supplier's day and this was advertised on iweight.com and in the marine section of the European Journal.
8. The aim of the event was to present the project to a range of naval architects and ship builders and canvas opinions on the best way to deliver the project given the likely tight deadlines associated with the SLEP's grant funding.
9. The event was attended by 10 shipbuilders and 3 naval architects and the consensus of the attendees was that, in order to deliver the project to the likely timescales, the traditional route (as set out below) would be the best option: –
 - Naval architect – prepare outline design, general arrangement and technical specification
 - Shipbuilder – tender, detailed design and build (checked by naval architect)
10. The council was represented at the supplier's day by Head of Economy, Commercial Services manager, Team Leader Procurement and the Executive Member for Economy and Tourism.

11. NAVAL ARCHITECTS

12. Following the supplier's day, and based on advice from the Council's Procurement team, it was agreed to seek a waiver from further advertising the Invitation to Tender (ITT) on the basis of 'urgency not of the Council's own making' which had been imposed through the terms of the LEP grant funding; this was duly granted by the Council's Procurement Board on 18th December 2014.
13. The (ITT) was subsequently issued to the 3 naval architectural companies that had attended the supplier's day on 2 December 2014.
14. At the closing date on March 2015 only two submissions had been received and one of these would not have passed the stage one evaluation; as the value of the other remaining submission had the potential to go above the EU threshold the award could have been subject to challenge
15. Due to the value and profile of the overall project it was proposed to halt the current process and re-advertise through the OJEU – this was subsequently agreed by the Deputy Managing Director and Procurement Board were verbally informed of this at the meeting held on the 16th April 2015.
16. The ITT was revised to include the requirement for the companies submitting the top 4 scoring submissions to make a presentation which would form part of the evaluations. The OJEU notice was advertised on 14 April 2015 with a return date of 22 May 2015 for the submissions.
17. A total of six submissions were received; out of which one failed the financial checks whilst another failed to meet the stage one threshold of 70% of the questions answered adequately to be able to pass to stage two.
18. The top 4 scoring companies were then invited to make a presentation on 1 July 2015; these were evaluated by Commercial Services Manager, Fleet and Floating bridge Manager; Owners Representative.

19. The contract was duly awarded to Burness Corlett Three Quays (Southampton) Limited (BCTQ) on 9 July 2015.

20. OWNERS REPRESENTATIVE

21. The Managing Director of the King Harry Ferry was providing consultancy services to the Council to assist with re-writing the Domestic Safety Manual (DSM) for floating bridge number 5 in 2015. He had purchased, with a small syndicate, a floating bridge and set about the funding case, design and build of a replacement bridge for the service.
22. The company prepared a bid to gain EU funds through the Objective One Programme and were successful. Profits were increased from £100k to £280k in 5 years allowing the company to gain a combination of reserves and bank funding to make up the funding gap and set about the design and build with wide stakeholder interaction and a really innovative design process that was in principle aimed at reducing annual downtime and making the crossing a visitor attraction in its own right as well as part of a sub-regional destination marketing hub. The project was delivered on time and with a 3% overage primarily due to fluctuations in material costs and the inclusion of some shore side civil engineering work
23. On the basis of these skills and experience he was subsequently asked to provide a fee bid to undertake the role of Owner's Representative, the principal duties of which were to:-
- Phase 1 – assist with planning, up to the selection of the shipbuilders and including assistance with evaluation of the ship builders (approximately 20 days)
 - Phase 2 – liaising between the ship builders, naval architects and Council on the build, delivery, acceptance trials, commissioning and staff training (approximately 50 days)
 - Phase 3 – over the first year's operation to include snagging, latent defects and look at potential development opportunities (approximately 10 days)
24. The initial proposal was at a cost of £40,000 and was approved as a waiver (through direct award) by the Council's Procurement Board on 4 June 2015.

25. CONTRACT LEGAL ADVICE

26. Following consultation with the Council's Procurement (including the councils contract lawyer) it was agreed that, due to the specialist nature of the contract required, it would be preferable to engage the services of a law firm with extensive marine experience to draft the contract for the build.
27. On behalf of the council, BCTQ obtained proposals from three specialist companies; following a review of these by BCTQ and officers from both Commercial Services and the procurement team the contract was awarded to Ince and Co. at a cost of £8,000.

28. SHIP BUILDERS

29. Following completion of the technical specification and preparation of the Invitation to Tender documentation a notice was placed in the European Journal with the Pre-Qualification Questionnaire (PQQ) documentation being issued to 23 companies. This included two companies based on the Isle of Wight.

30. Eight companies returned the PQQs and these were evaluated by the Council's Commercial Services Manager; and its Fleet and Floating Bridge Manager and the Fleet and Technical Director at Red Funnel.
31. Of these companies one failed the PQQ evaluation and 7 passed (including the two island-based companies); these were then issued the Invitation to Tender (ITT) pack that consisted of the tender documentation and the technical specification as prepared by BCTQ. ITT's were issued on Oct 2015 and to be returned by Nov 2015
32. Three tenders were received, and these were: -
- Mainstay Marine Solutions Limited (MMSL) - £3,171,249
 - Pendennis - £4,997,500
 - Malin Marine Consultants - £3,735,000
33. These were evaluated by the Council's Commercial Services Manager; the Owner's Representative and the Engineering Manager from, BCTQ.
34. After the evaluation MMSL were the preferred tenderer but, in accordance with the provision made in the ITT, a visit to the shipyard was undertaken by the three evaluators on 7 January 2016. This was to view their facilities, review processes, meet the project team and talk to the shipyard staff.
35. The consensus of the evaluators was that MMSL had excellent facilities, capabilities, staff and suitable processes to ensure the delivery of the replacement floating bridge; subsequently the contract award was ratified through an officer decision record signed on 27 January 2016 by the, Chief Executive in consultation with the Executive member for Regeneration, Economy and Public Transport.

36. SLIPWAY – CIVIL ENGINEERING CONSULTANT

37. Part of the scope of works for the overall project was to reconstruct the slipways at Cowes and East Cowes to ensure that they were fit for purpose and would, as a minimum, have an operational life commensurate with the expected life of the new vessel.
38. A fee bid was requested and received from PTR Consulting Engineers Limited; this was for £14,995 and was accepted as a single quote as it was below the relevant Isle of Wight Council procurement threshold.
39. This included for the following elements: -
- Site Investigations
 - Design Development
 - Full civil engineering design for East and West slipways and associated chain pits and retaining walls
 - Project specification, AutoCAD plan and details
 - Tender evaluation assistance (working with IWC in-house team)
 - Site supervision of works
40. The detailed design and specification were incorporated into the Council's standard Invitation to Tender (ITT) documentation.

41. SLIPWAY CIVIL ENGINEERING CONTRACTOR

42. The scope of the works to be undertaken was as follows: -
- Repositioning the northern chain to accommodate the increased width of the replacement bridge; this included the construction of a new chain pit in Bridge Square, East Cowes
 - Reconstruction of both the Cowes and East Cowes slipways
 - Alterations to the pedestrian footways on the northern sides of both slipways; this was to enable foot passengers to queue and board from this side without the need to cross vehicles that are being loaded/unloaded. All works were agreed with the Council's PFI client team and Island Roads
 - Relocation of one of the existing ticket machines at East Cowes to the north of the slipway
 - Conversion of the existing waiting room to a store
43. Due to the estimated value of the works this was advertised as an open tender which was advertised on the South Eastern Business portal as well as the procurement section of the Council's website.
44. The tender period was from 21 July 2016 to 09 September 2016 and when it closed a total of 2 tenders had been received. These were evaluated by the Council's Commercial Services Manager, Principal Officer for Corporate Property and Principal Officer, Environment.
45. The contract was awarded to Geomarine Limited on 18 October 2016 with work commencing on site on 3 January 2017 and completion on 4 May 2017.

46. PERMISSIONS

47. The works to the slipways and surrounding areas required the benefit of the following permissions all of which were obtained in advance of the works starting on site: -
- Cowes Harbour Commission - works licence
 - Environment Agency – flood risk activities permit (F.R.A.P.)
48. In addition to this an Ecological Impact Assessment was commissioned through ARC Consulting and formal advice on undertaking the works was obtained from Natural England which was provided through their Discretionary Advice Service (DAS).
49. Planning officers considered the extent and nature of works proposed, and additional other factors including jurisdiction, land ownership, and duties the Council undertakes and were of the view that the works would constitute permitted development. Subsequently an application was made under Regulation 73 of the Conservation of Habitats and Species Regulations 2010 – this set out the scope of the works and demonstrated that the project would not have a "likely significant effect" considered against the requirements of Regulation 73 and was subsequently approved as permitted development.
50. Works of this nature often require a licence from the Marine Management Organisation (MMO); however, as the work to reconstruct both slipways took place within the existing footprints the Isle of Wight Council considered that Section 19(b) of the Marine Licensing (Exempted Activities) Order 2011 was applicable. This was accepted by the MMO and was exempted from the need for a Marine Licence.

51. PROJECT BOARD

52. At the outset of the project a project board was set up with the aim of ensuring the business case was completed and submitted to the SLEP.
53. The board consisted of:
- Cowes Harbour Commissioners, Harbour Master
 - Red Funnel, Fleet and Technical Director
 - IWC, Commercial Services Manager
 - IWC, Senior Surveyor
 - Parose Projects, consultant leading on the regeneration business case
 - Owners representative

54. PROJECT MANAGEMENT

55. Once the shipbuilding contract had been awarded a contract set up meeting was held at BCTQs offices in Southampton on 11 February 2016 which was attended by representatives from IWC, BCTQ and MMSL; in addition to reviewing key design elements this also established the project team. This team consisted of:
- Commercial Services Manager Isle of Wight Council
 - Managing Director King Henry Ferry
 - Technical Consultant BCTQ
 - Technical Consultant BCTQ
 - Managing Director Mainstay Marine Solutions Ltd
 - Operations Director Mainstay Marine Solutions Ltd
 - Technical Director Mainstay Marine Solutions Ltd
 - Operations Manager Mainstay Marine Solutions Ltd
 - Financial Director Mainstay Marine Solutions Ltd
 - Project Manager Mainstay Marine Solutions Ltd
56. The project team then met on 9 occasions throughout the build process (15.03.16, 12.04.16, 24.05.16, 06.07.16, 16.08.16, 14.09.16, 13.10.16, 29.11.16 and 10.01.17); all meetings took place at MMSL premises in Pembrokeshire.
57. After the delivery of the vessel conference calls were scheduled between the three parties as required.
58. In addition to the scheduled contract meetings additional visits were undertaken the Owners Representative; these were to review progress and discuss any issues that cropped up between formal meetings in a timely manner.
59. BCTQ's principal consultant also undertook 6 build inspections at key points throughout the process and submitted detailed reports - these were undertaken on the following dates: -
- 28 & 29 July 2016
 - 31 August & 1 September 2016
 - 28 & 29 September 2016
 - 13 & 14 December 2016
 - 23 & 24 February 2017
 - 20 & 21 March 2017

60. Throughout the process both MMSL and IWC maintained risk logs which were reviewed at contract meetings and on a monthly basis respectively.

61. ISSUES SINCE ENTERING SERVICE

62. A considerable number of issues have been experienced since the vessel entered service on 13 May 2017; these include: -
- Lack of adequate clearance over the chains at all states of the tide
 - Electrical faults
 - Excessive Noise
 - Mechanical/system failures
 - Ramp hinge and ram failures
 - Excessive wear to the guide wheels
 - Hydraulic system issues
63. A schedule detailing the dates, times and reasons for withdrawing the vessel from service forms appendix 1 to the report.

INDEPENDENT REVIEWS

64. In 2017 the council commissioned Price Waterhouse Coopers (PWC) to undertake a review, the scope of which was “the project procurement and project management processes and the documentation that was available to support the decisions made to ensure that this was in line with the Council’s requirements and internal procurement procedures”. A copy of their report is attached as appendix 2 to the report.
65. The PWC report did not provide any recommendations relating to the project specification and tendering, the tendering review and recommendation or the contracting element. However, several recommendations were made in relation to communication, project oversight and delivery of the bridge to the Island and commissioning the bridge into service.
66. In September 2017 the Leader of the Council established a review team to look at the actions and decisions that were taken by the Council throughout the project to deliver Floating Bridge 6, the report was presented to Scrutiny Committee on 9 January 2018 and a copy forms appendix 3 to this report.
67. The report set out a number of considerations and recommendations which will improve the delivery of future strategic projects and enable lessons to be learned. These included: -
- Ensuring project governance is in place and that responsibilities of roles are defined and structured so there is a clear escalation route of any issues to an operational project team and strategic project board;
 - Ensure adequate resourcing of the project management function and not just adding this responsibility to an officer’s day job
 - Improving communication and engagement plans established within project documentation to identify and inform stakeholders, to ensure that this is owned and kept under constant review by the project board
 - As with any change programme consideration also needs to be given to ensuring process changes that affect the functions undertaken by staff are clearly understood
 - Ensure adequate time for staff training is planned with the project timeframes to ensure they are familiar and competent with new systems / functionality.
 - Ensure appropriate political oversight

LEGAL

68. Whilst there are issues with the floating bridge, for the purpose of bringing a claim against any party the council must be able to fully particularise and evidence:
 - (i) the issues;
 - (ii) the causes of the issues;
 - (iii) any breaches of contract and / or specific allegations of negligence (i.e. any failures by Mainstay and or BCTQ where they fell short of what was required of them).
69. These points involve very technical engineering issues and the council has necessarily been heavily reliant upon external experts in order to formulise its claims. Many of the issues requiring expert input are complex and the expert opinion has taken time to put together, in some cases because it has been dependent on tidal cycles or construction of digital modelling which takes time to compile. In addition to providing input into the substantive claim, the experts involved have also been assisting the council in finding solutions to the issues experienced. Whilst this will result in an increased workload and possibly delays for the expert, this is considered to be preferable given their knowledge of the floating bridge, the issues and the background.
70. The council was in a place to begin the litigation process in January 2020 when, pre-action letters were sent to BCTQ and Mainstay. At this stage, there was sufficient expert input to outline the main issues and breaches of contract / allegations of negligence (although it was expected at this stage that further expert input would be needed).
71. Further expert opinion was sought after receipt of responses from BCTQ and Mainstay in March 2020, with the benefit of some knowledge of the other parties' positions. There are experts involved from a number of different disciplines.
72. Advice was sought from a barrister that specialises in marine/commercial disputes in / around July 2020, who suggested a few discreet points on which further expert input was required, which was then obtained.
73. In July 2020 the floating bridge suffered hydraulic issues. Following investigations and remedial work over approximately the next 3 months, further expert input was sought from a hydraulics expert to determine whether there was any design issue with the hydraulic system. Delays in the expert report were caused by the reluctance of one of the parties to provide our expert with documents. To overcome this the expert inspected the Vessel in January 2021 and his report was received in February 2021.
74. Mediation was arranged for January 2020 in an attempt to bring the matter to a resolution. Mediation did not go ahead as one of the parties was unable to attend. The Council is awaiting alternate dates from this party. In advance of mediation, letters were sent to BCTQ and Mainstay with the benefit of expert opinion received between July 2020 and January 2021, to address (as far as possible) the issues raised in BCTQ and Mainstay's letters of March 2020.
75. Ultimately, if agreement cannot be reached at mediation (or for some reason any one of the parties decides it is not willing to enter mediation), the Council will need to issue court (or arbitration) proceedings.

CONCLUSIONS AND RECOMMENDATIONS

76. This paper summarises the background to the acquisition of the floating bridge to the point of the actions the council has initiated under the terms of its contracts for the design and build of the bridge. It is not able to go further until these actions have been concluded, ideally through the mediation process.
77. In the interim the Corporate Scrutiny Committee is asked to consider the recommendations below:
- (i) Note that there were no issues with the approach taken to procurement, tendering and contracting.
 - (ii) Note the recommendations from both the PWC and Internal Review Board and provide a view on these documents.
 - (iii) Acknowledge that the committee cannot delve deeper into all of the efforts made to resolve the boat's challenges until the action under the contract is concluded.
 - (iv) That a future Corporate Scrutiny Committee review the outcomes of the mediation as a basis for making recommendations on lessons learned for the whole council from this project.
 - (v) That Corporate Scrutiny Committee notes the questions from the Chairman and agrees that where these have not been addressed through the report or cannot be addressed due to the legal situation, they will form the basis of the review of the outcomes of the mediation process.

APPENDICES ATTACHED

Appendix 1 - Schedule of withdrawal from service

Appendix 2 - PWC Internal Audit Report on Cowes Floating Bridge, 27 November 2017

Appendix 3 - Floating Bridge Review Report Final for Scrutiny Committee 9 January 2018

Appendix 4 - Scrutiny Committee minutes relating to Cowes Floating Bridge; January 2018 to February 2021

Appendix 5 - Questions from the Chairman of Scrutiny, 29 November 2020

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