

Annex A – extract from A9 Dualling: Tomatin to Moy – Procurement outcome paper

To update the First Minister, Deputy First Minister/Acting Cabinet Secretary Finance, Cabinet Secretary for Net Zero, Energy and Transport and Minister for Transport on the outcome of the procurement process for the above project:

To recommend not awarding the contract for the A9 Dualling: Tomatin to Moy project;

That the First Minister, Deputy First Minister/Acting Cabinet Secretary Finance, Cabinet Secretary for Net Zero, Energy and Transport and Minister for Transport are invited to:

Note the outcome of the tender process;

Confirm agreement with the recommendation to end the procurement competition and issue a letter to [REDACTED] advising we have decided not to award the contract;

Context and Issues

In December 2011, the Scottish Government published its Infrastructure and Investment Plan (IIP) which included a commitment to convert the existing A9 single carriageway into a dual carriageway between Perth and Inverness by 2025.

The proposed project from Tomatin to Moy is the most northerly section of the A9 Dualling Programme and consists of 9.6km of dual carriageway upgrading of the existing single carriageway.

Upon completion, the Tomatin to Moy project will result in 33km of continuous dual carriageway between Slochd and Inverness. The completed route will generate economic growth, improve journey times and reliability and improve road safety.

The procurement process was launched in August 2021 with the publication of a Contract Notice. Following the prequalification process, three bidders were invited to participate in a Competitive Dialogue procurement procedure on 10 December 2021.

Following the issue of the invitation documents, one of the bidders withdrew from the procurement competition, citing **[REDACTED]**

On the basis that genuine competition would still be achieved with two bidders, the procurement continued with the two remaining bidders. The process included Consultation Meetings with each of the remaining two bidders to discuss and develop their outline proposals.

On 11 October 2022, a day prior to the Final Tender Submission deadline, one of the two remaining bidders formally notified Transport Scotland of its decision to withdraw from the competition

Only one tender was submitted before the deadline on 12 October 2022, from [REDACTED]

While the tender was both compliant and complete, the tender 'Price' was [REDACTED]. Note this figure shall remain confidential should we not award the contract. Such a figure represents a significant increase from the original pre-tender estimate and from that indicated by the Tenderer during the dialogue period.

While supply chain issues remain a persistent theme within the industry, the indices from the Office for National Statistics for new infrastructure works in the UK represented a 15.5% rise in construction costs compared to the same point in 2020 (when the pre-tender estimate was calculated).

The tender received is for an inflation adjusted fixed price, with significant risk transfer to the Contractor. The terms and conditions are the standard Design and Build contract terms used for other Transport Scotland major road projects with the exception of inclusion of a price fluctuation clause. In line with the Scottish Government's CPN 03/2021, a price fluctuation clause was introduced to maintain competition and to mitigate the current effects of price volatility which exists within the market, thereby reducing the pricing risk to the Contractor.

It is also important to note that confidential Consultation Meetings were held in July 2022 to discuss development of tender pricing, held with both [REDACTED] during the dialogue process. Such meetings indicated [REDACTED]. The meetings also [REDACTED] if a price fluctuation clause was included within the contract, which was subsequently effected on 16 September 2022.

Given market volatility in the construction industry at present, it is difficult to predict the liability Scottish Ministers would have for price fluctuation over the course of the 3 year construction period, however, the latest five-year forecast from the Royal Institute of Chartered Surveyors suggests that inflation might increase the contract price by approximately [REDACTED] above the tendered sum over the course of the project.

As a result, we are unable to endorse award of the contract and would recommend that Ministers **do not award** the contract to [REDACTED] under this procurement competition.

Following Ministerial confirmation to the recommendations in this briefing, we are required to advise [REDACTED] as soon as possible of the outcome of the procurement process. Once a decision is made, we will write to formally inform [REDACTED] of this decision.

Given the sensitivity of this issue, it is recommended that the outcome of this decision be announced in a Parliamentary Statement which will be delivered as soon as possible after the issue of notification to [REDACTED].

In conclusion, it is recommended that Ministers:

Note the outcome of the tender process;

Confirm agreement with the recommendation to end the procurement competition and issue a letter to [REDACTED] advising we have decided not to award the contract;