

EAST RENFREWSHIRE COUNCILCABINET18 August 2016Report by Director of EnvironmentVARIATION TO CONTRACT – CROSSMILL BUSINESS UNITS AT GLASGOW ROAD,
BARRHEAD**PURPOSE OF REPORT**

1. The purpose of this report is to advise the Cabinet of a variation to a contract in accordance with Contract Standing Orders Clause 14.

RECOMMENDATIONS

2. It is recommended that the Cabinet note:
- (a) The variation to the contract with WH Malcolm of £85,195 from the approved contract sum; and
 - (b) That the increase in cost is able to be funded from within the overall budget allocated against the project.

BACKGROUND

3. Following a tender exercise, WH Malcolm were appointed as the contractors to undertake the construction of 10 new commercial units at Crossmill Business Park, Glasgow Road, Barrhead. This contract is part of the wider City Deal programme of work and is funded from a combination of City Deal, Regeneration Capital Grant funding and Council capital.

4. The contractor has performed to a very high standard. The industrial units are now substantially complete and are already over 40% pre let. This contract was the first City Deal infrastructure project to start on site.

5. Whilst on site, the Council and contractor have had to deal with several unforeseen situations which are outlined below and which required the contract sum to be varied whilst the contractor was still on site.

REPORT

6. WH Malcolm were appointed as the contractor for the Crossmill and Lavern Works at a cost of £981,528.

7. As the contractor took occupation of the site, travellers moved onto the access road of the site, effectively blocking the contractor's entry. Following legal action, the travellers were moved on but the delay in commencing works coupled with the necessary clean-up cost £11,500. To prevent travellers accessing the site again and in response to complaints from resident businesses, action was taken for the contractor to install bollards on the footway at a cost of £12,350.
8. Within the contract there was an allowance of £3000 for signage for the Council site. In discussion with our Marketing Team, it was agreed to provide enhanced signage across the wider site in the form of "totem pole" signs to better identify the Business Park from the Glasgow Road and to identify the units themselves. The additional cost associated with this signage was £18,900.
9. During the course of the works, Japanese Knotweed was discovered on the site. In order to treat the problem it was necessary to incur expenditure of £6,500 to install a root barrier to run the full length of the industrial units to prevent the knotweed roots spreading across the site and affecting the foundations of the buildings.
10. The main costs associated with contract variation relate to contract delays associated with the supply of power to the site, specifically in relation to the electricity cabling from the street into the site and into each constructed unit. The suppliers' apparatus (electrical pillars, underground cables etc.) are installed on site and the supplier requested a legal right to access this apparatus at any time. Delays occurred as a result of protracted negotiations between the utility contractor, respective solicitors and the Council in relation to the wording of the legal document relating to this right of access. Until this was agreed and signed, the supplier would not turn on the power to the site meaning that WH Malcolm could not conduct final commissioning and testing and provide electrical certificates to evidence that the units were safe. The Council was not therefore able to grant Practical Completion to accept the units. The cost associated with this delay was £2,500 per week which arose from the contractor continuing to provide a 24 hour on site presence at the Council's request. This was for security purposes and to avoid having to re-engage the Contractor once power was subsequently available at the site. These delays accounted for over £30,000 of the total variation. This matter is now however concluded and the site has recently been energised.
11. The Cabinet should note that delays arising from a dispute of this nature have never been experienced in the past and this was not able therefore either to be predicted or planned for. In the past, utility companies have usually agreed a wayleave which can be agreed through making a request and agreeing pro forma documentation, without the need for solicitors being instructed and no requirement for title investigations etc.
12. More recently, there seems to have been a move towards utility companies approaching the matter of laying power cables in a completely different manner - processing such transactions through solicitors who treat these in a way similar to full conveyancing transactions which involves title investigations, formal offers, warranties etc. These are all new requirements not previously seen in such development activity.
13. From Legal Services perspective, some of the demands and requirements of the utility company were either unreasonable and/or unnecessary and the Council's position needed to be protected. The utility companies took a robust line on negotiations and, as a result, negotiations took a protracted period of time. As indicated in paragraph 10 above, the matter is now however concluded.
14. Discussions are taking place with Legal Services to establish how we might be able to avoid, or plan for, such eventualities arising in the future in order to prevent similar contract delays or contract variations.

15. In terms of contract standing orders, Clause 14 of the agreed Contract Standing Orders state that *“Variations over £50,000 must be reported to Cabinet for approval prior to the variation being instructed. If the variation is urgently required, approval may be given by two members of Cabinet. The variation should be reported to Cabinet as soon as practicable after such approval”*.

16. In view of the urgency of these matters and in order to ensure that the contract could progress to its completion whilst the contractor was still on site, Councillors Buchanan and Fletcher were approached and approved the contract variations, subject to this Cabinet report.

FINANCE AND EFFICIENCY

17. The total additional expenditure amounted to just under £86,000. However, this sum is able to be funded from within the approved budget for these works as savings have been achieved during the procurement of the contract.

CONSULTATION

18. The Chief Procurement Officer has been consulted in relation to this report.

PARTNERSHIP WORKING

19. There was no partnership working associated with this report.

IMPLICATIONS OF THE PROPOSALS

20. There are no IT, sustainability, staffing or other implications arising from this report.

CONCLUSIONS

21. A number of unforeseen issues arose during the course of this contract which required variations to the contract sum to be agreed. These do not in any way relate to the quality of the contractor, who has performed well throughout the duration of this contract.

RECOMMENDATIONS

22. It is recommended that the Cabinet note:

- (a) The variation to the contract with WH Malcolm of £85,195 from the approved contract sum; and
- (b) That the increase in cost is able to be funded from within the overall budget allocated against the project.

Director of Environment

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KEY WORDS

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