Project Authorisation [1]

The Basic Asset Protection Agreement (BAPA) was signed in November 2008 by the then Director of Highways and Transportation. BAPA provides the legal basis for a third party (MKC) to carry out work on Network Rail land. The BAPA also sets out the fees that are due to be paid to Network Rail and the design and construction warranties that Network Rail requires before it can allow work to commence on its land. The BAPA marks MKC's commitment to the Wolverton project and is normal practice if a third party wants to work on rail land. The time for discussions with Network Rail on the matter of who should carry out the works and the fees due would have been discussed before the BAPA was signed. While I do not know why MKC chose to carry out the works (it is possible that Network Rail or Silverlink did not want to do so) the decision to proceed and which department was best placed to do it would have been taken at the highest level in MKC.

Section 7.8.4 refers to a sum of £118,000 being unanticipated and acceptance being the responsibility of the Assistant Director: this is a misunderstanding. These fees are identified clearly in the BAPA and were included in the project budget. The BAPA entitles Network Rail to be paid for checking and approving the design, their day-to-day management and support by their sponsor and technical team on site. In addition, there is a fee of approximately £42,000 for the (Rail) Industry Risk Fund (IRF), which Network Rail was due. NR made their demand for the IRF near the end of the project rather than at the beginning; the project manager managed to negotiate this sum to zero on this basis and on the premise that the wording in the agreement was ambiguous, thereby making a saving for MKC.

Network Rail required a design collateral warranty from the designers Mouchel Business Services (MBS). MBS did not want to provide the warranty and this became the major stumbling block to construction ever getting underway. The project manager was assigned in May 2010 and it took him many months of working with Mouchel Rail's Director of Rail, his legal team and Network Rail and its legal team in order to ensure that Mouchel would provide an acceptable design warranty. During this time there was frankly little support from outside the transport department. The consequence of obtaining the warranty was that the project could then go ahead. As an added bonus, the project manager managed to negotiate a refund of fees from MBS of approximately £13,000 in lieu of the cost of legal work expended by MKC on matters relating to the collateral warranty.

Silverlink was the Train Operating Company (TOC) for the franchise at Wolverton Station. Silverlink withdrew its support for the Wolverton scheme in May 2007. London Midland, who took over the franchise from Silverlink in November 2007, it is understood provided scant support to the project. It is the responsibility of the TOC to prepare and submit to DfT and Network Rail

[1] References in this document are to the Wolverton Station Project Overspend Audit Report

the various documents for approval to proceed with a project that removes railway assets; in this case some parking spaces and the access from Stratford Road. London Midland could have been more pro-active and supportive in this important aspect of the project. Instead, the loss of parking spaces (approximately thirteen), which in turn affected the terms of their franchise, became a major issue for them. It took many months, meetings and reviews, to persuade London Midland to proceed with the application to DfT and Network Rail. More weeks passed in which DfT consulted the necessary twenty-six parties involved and before approving the scheme by April 2011.

The project manager, following his appointment in May 2010, had begun to review the cost of the retaining wall that would enable the widening of the footpath along Stratford Road; footpath widening was a condition of the planning permission. This would involve MKC ultimately accepting liability for this retaining wall structure and the stability of Network Rail's embankment in perpetuity. The project manager proposed an alternative approach of widening the footpath within highway land, which would be a less expensive solution but a solution that could be constructed as a separate contract. It will be appreciated that this solution still needed further work on technical and legal aspects but as a strategy it could be made to work.

Funding for the Wolverton Project was uncertain in the lead up to construction. The GAF element, £1.8 million, became part of protracted discussions and negotiations within the Council and the Finance Directorate in 2010. This was a time of national financial crisis where councils were required to reduce their budgets. Even small amounts of expenditure were not allowed; for example £1,500 for a commission to motivate London Midland to prepare the DfT application was refused. The allocation of GAF between competing capital projects was subjected to scrutiny at the highest level in the Council. As a result funds were in doubt until January 2011 when the Cabinet decision was ratified to allocate £1.8 million to the project. The formal application for the funds through the Council's resource approval process then followed. It should be noted that until the funding was ratified in January 2011, the future of the Wolverton project was in doubt. The project manager had intended to secure the services of a quantity surveyor to check the bills of quantity (section 7.6.3 and 7.11.2) but as noted above no new contracts could be awarded until funds were confirmed. This is not noted in the Report but is a material fact that could have mitigated against inaccuracies in the bills.

Furthermore, it is important to note that the project funding had been set some years before. Its value had been eroded by inflation and by work carried out to establish an acceptable scheme design and by extensive design considerations to provide a design acceptable to Network Rail. There is reference in the Audit Report (7.3.3) to there being additional finance to bridge the funding gap. The project manager had no knowledge of this "additional funding" and it would appear to be completely opposite to the situation described above whereby there was an embargo on any new contract being awarded.

The project manager identified an issue that had not been included in any funding allocation. Normally MKC can reclaim VAT on the cost of works. However, this project was to be carried out on third-party land and the project manager negotiated special arrangements with Network Rail and the Council for the recovery of VAT. The result was that there was no additional net cost to MKC.

During 2010 and 2011 in the lead up to the construction phase, the project manager was working on the delivery of two other projects; Granby Roundabout and the Bletchley Transport Strategy both of which were complex but successful projects. Consequently this was a very busy period for the project manager with no additional support available.

Lead up to Construction Phase

The end of the financial year and the local elections then loomed large. During this very busy period of preparation for the construction phase, the following needed to be put in place.

- Bring the Project Team together
- Set up the contract for engineering support and CDMc services for the construction phase
- Set up the contract with a quantity surveyor familiar with the JCT form of contact
- Finalise the tender list of Network Rail approved contactors
- Finalise the tender documentation including assembly of the Bills of Quantities
- Establish the procurement assessment methodology for choosing the contractor
- Issue the ITT (Invitation to Tender) and assess returns
- Prepare and get approval for the Delegated Decision to proceed to construction

The Project Team

This project had gone on for many years. The Wolverton Station Steering Group (WSSG), led by Marie Osborne and supported by the local MP, Town Councillors and Ward Councillors, had had a consistent presence throughout its life. The project manger and architect / engineer discussed and explained the design at presentations. There was a general air of expectation now that the project was nearing the construction phase.

The Architect BPR, who had completed the layout and the design of the building by February 2008 after two previous iterations and two planning applications, had remained with the project. BPR was commissioned in March 2008 to take the project through to completion and handover (RIBA stages E – L) and provide contract administration.

There had been a number of project managers and management companies; Hyder Business Services which later merged with Mouchel Business Services

(MBS). MBS stood down in July 2010 and MKC employed a project manager with building and rail experience who had worked with the Council on a number of other projects. Prior to this, MKC utilized two in-house project managers who had left the Council. Consequently, there was little continuity between these parties for information and decision-making particularly on design issues.

MBS provided the design and engineering input via a sub-contract with Mouchel Rail who had the necessary qualified personnel for this type of project. Inevitably over a period of three years (up to construction start) there were a number of changes of engineering personnel.

Mouchel Rail also provided the Construction Design and Management Co-ordinator (CDMc) who essentially ensures safety in design and construction methods. There had been a number of CDM co-ordinators over the life of the project and the project manager was fortunate to secure the services of an experienced railway engineer for the construction phase who had worked with Network Rail.

There had been at least two quantity surveyors employed through MBS. They had prepared the bills of quantities as part of a JCT with Quantities form of contract. In addition they had prepared a tender pack to match the JCT form of contract. In the lead up to construction, a local quantity surveyor was then selected to check the tender documentation (but not the detail of the quantities), assemble the ITT and support the team through the tender and construction phase and verify contractor valuations.

Set up the contract for engineering support and CDMc services for the construction phase

The project manager requested that Mouchel Rail be appointed to support the project through the construction phase. A Single Tender Action was finally secured, having satisfied Finance and Procurement regulations. The benefit of this approach was that a design collateral warranty was written into the contract (at no cost) and that a continuity of design and CDMc responsibility was maintained. The alternative proposed by MKC senior management of a complete redesign from scratch (including the cost of new approvals by Network Rail) with attendant costs and time implications was averted.

On-site support was discussed with Mouchel Rail so that it could be built into their quotation. This comprised attendance on site during key aspects of the work; actions such as piling, pile testing, erection of the steel and glulam structure. A full time presence on site was not affordable. The CDMc, his engineering colleagues, the architect and project manager were frequent visitors to site.

Set up the contract with a quantity surveyor familiar with the JCT form of contact

JCT with Quantities is one form of contract that MKC has approved and this was chosen in 2008 by Mouchel as they were managing the project at that

time. The project manager found that MKC's Legal department and its Contracts & Procurement department were unable to advise on this common form of contract. For example, companies usually have modified forms of the contract to suit their specific needs, which have been tried and tested over time. Knowledge of this form of contract was made a requirement in the QS tender: a local quantity surveying company was selected through competitive tender in early March 2011. This particular company had also worked with MKC on a number of occasions. They immediately began to review the ITT documentation in the lead up to the tender process.

Finalise the tender list of Network Rail approved contactors

As noted in the Report, Network Rail (NR) will only allow suitably qualified contractors to work on the railway. NR has lists of qualified contractors in a number of categories as not all contractors can work on all aspects of rail projects. A list of eight contractors had been pre-qualified 12 – 18 months previously. The project manager reviewed the NR lists and found he needed to replace three. In the event, seven contractors went forward to the tender process. It should be noted that the project manager had made contact with each contractor in the weeks leading up to the tender to inform them of an imminent tender so that they could prepare their team.

Finalise the tender documentation including assembly the Bills of Quantities

The project manager did have discussions with Contracts and Procurement regarding reducing the scope of the works to that which would be within budget. In particular, the retaining wall was considered to be a part of the scope that could neatly be removed should this be required. The project manager did consider a reduced-scope tender with C&P; this did not materialize.

The project manager had reviewed the tender package with Contracts and Procurement (during 2010 and 2011) and had planned for a quantity surveyor to review the ITT. The tender period was to be for a minimum 4-weeks followed by a 2 / 3 week assessment period and 2 weeks to issue the contract. This would be followed by a minimum 4-week mobilization period for the contractor [2]. The issue of the ITT was planned for early November 2010 following the anticipated funding allocation. Had this schedule been achieved the construction phase would have commenced in February 2011, well before the end of the financial year. The late confirmation of allocation and ratification of the funding (January 2011) put pressure on the project.

Establish the procurement assessment methodology for choosing the contractor

Tender assessment was based on a balance between cost and quality. The project manager consulted Contracts & Procurement (C&P), the engineer and architect on the assessment process: having conducted a number of assessments previously he sought their advice on the weighting of cost and quality. He also set up a number of criteria for the assessment of quality,

[2] Reference - Project manager's briefing paper to Chief Executive and colleagues 27 September 2010

which were approved by C&P. The assessment criteria were included with the ITT. The Contracts Handbook noted that the weighting for cost could not be less than 50% of the marks; a figure of 60% cost and 40% quality was agreed.

Issue the ITT (Invitation to Tender) and assess returns
Seven contractors were identified; one of these failed to submit its PQQ (Pre-qualification questionnaire) and so was excluded from the tender. The tender went live on 16th March but the files of drawings were too large to submit on Intend. Instead pre-prepared CDs were posted on 17th March; C&P needed to get approval to send by first class post! YJLi confirmed receipt of drawings on 18th March; two further contractors received the drawings on 18th March, then one each on 22nd, 23rd and 24th March following reissue of duplicate sets. This situation was unacceptable. Three contractors lost at least a day following the problem with Intend and the first class post: it is possible the remaining three contractors had internal postal delivery problems and this contributed to their subsequent withdrawal. Following contractor withdrawals, the project manager requested that the tender process be stopped but was instructed to continue.

The Audit Report provides an opinion for the withdrawal of the contractors, but there is a perfectly valid alternative explanation based on facts noted above.
The team carried out the tender assessment; representatives included the architect, engineer, quantity surveyor, project manager and representatives of Network Rail. The team noted that the contractor with the lowest price was 4% lower than the price estimated by the Quantity Surveyor (with a +/- 10% level of confidence). There was therefore no reason to doubt the efficacy of the lowest bid price.

The “caveats” referred to in the Report (7.5.3) were clarified with the contractor who realised that they were unfounded and withdrew them. This did not affect the tendered price.

The MEAT assessment demonstrated that YJLi were the preferred contractor. The financial aspect of their bid (and that of the other contractor) was remarked following the reduction in scope and this did not change the result. C&P was involved in ensuring that the MEAT documentation was correctly completed. The MEAT process is there to provide a clear audit trail for contractor selection and demonstrate that the highest scoring contractor becomes the preferred contractor. The result of the MEAT process is open to challenge during the call-in period.

The reduction in scope was reviewed in conjunction with the Quantity Surveyor and carried out by removing two of the bills of quantity; that relating to the retaining wall and footpath works and that related to the drainage and car park works. This was a fairly straightforward task for a contractor to re-price and amend for prelims.

Prepare and get approval for the Delegated Decision to proceed to construction

As noted above, there was a real desire by the external stakeholders for the Council to get on with this project. The delays caused by the collateral warranty, the delayed confirmation of funding and London Midland's late submission to DfT for approvals, were probably not fully appreciated by them. They wanted to see progress before the end of the financial year.

Cabinet had previously agreed (December 2009) going out to tender and contract award; this delegated the Corporate Director Environment (OTP) to award the contract following a MEAT assessment. The Delegated Decision was set for 15 April 2011 and ratified 10 days later following the call in period.

The project manager was surprised that the Delegated Decision had been approved. The tender process and the assessment were not questioned as C&P had been consulted throughout and had found no fault with the assessment process. However, it was known that in order to function the project needed the excluded scope in some form or other. The project then became the reduced scope.

The project manager later became aware of pressure being placed by an external party on a close colleague to get on with the project. It is important to note that project managers within MKC were kept very much kept at arms length; they were not party to decisions, actions and other factors that affect their project and so the full extent of this pressure is unknown.

Early stages of the contract

The START document was revised to reflect the contracted scope. This was approved by the Assistant Director and lodged with Portfolio office. This then reflected the scope of the project awarded to the contractor (YJLi) at £1.1 million. There was no contractor contingency in this price as the project manager ensured that MKC owned the contingency rather than the contractor (section 7.8.2). The contingency was £185,000 making £1.285 million available for construction.

The project manager prepared a paper for the Capital Programme Review Panel (CPRP) so they were kept informed of issues relating to the funding of the project and the need for further funding. The project governance documents, site plan and summary of finances were made available.

Exception and Change reports were prepared that reflected the need to secure funding for the re-introduction of the footpath works and the car park / drainage.

The table in section 7.1 is inaccurate. The start–up phase was certainly not compressed (as stated); it was generous in recognizing that the contractor had internal difficulties getting construction underway.

The contract was formally awarded on 27th April 2011. The Team then met with the contractor and London Midland (6th May and 27th May) and a Project Board meeting to approve the scope reduction (12th May). The contractor was

allowed a further two weeks (to allow for the method statement production and approval process), which provided a 6½ weeks mobilization period. Start on site was set at 13th June and hoardings around the site should have been erected by this date; instead hoardings were not complete until 20th June. Furthermore, the contractor failed to utilize the extra two weeks to get the method statements (MS) underway.

These first few weeks and months of the contract were chaotic. The contractor had seriously under-resourced the start up phase; groundworks had commenced four weeks late on 11th July; the piling rig ordered for 11th July did not have an approved MS, the contractor had not anticipated the need for a piling mat (temporary works are the responsibility of the contractor) and works to prepare for it had only just started. By the 3rd Progress Meeting (19th July), the team estimated the works to be 5 weeks behind schedule. The piling rig arrived on site 5th August and the full complement of 24 piles was completed by 12th August. The contractor raised issues about the piling mat; the reinforcement in the piles and the testing requirements and this formed the contractor's first extension of time claim.

The situation did not improve. By 15th August the contracts manager, the site manager and the quantity surveyor had been made redundant and YJLi had merged with AMCO. Furthermore two key sub-contractors – M&E and the company who had designed and were to provide the glulam structure - had ceased to trade. By mid September the project had had:

- Five site managers
- Two Contracts Managers
- Two quantity surveyors
- Two Contract Engineering Managers

This led to further delays while the new team got up to speed and methods of working were renegotiated. This is not noted in the Report but is a material fact relating to the contractors performance and progress.

Observations on aspects of the Report

Section 7.8. Reference is made to this being a rail project. It fails to recognize that this was a building constructed in a rail car park. In agreement with Network Rail (before the project started) and with London Midland, it was agreed that this was a project constructed in a "High Street" environment that would not interfere with rail operations. Consequently the site hoardings were carefully sited to ensure separation from the operating railway and the method statements and Form Cs (for temporary works) were drafted and managed on this basis.

7.8.3 - the instances of London Midland asking the contractor to carry out works were rare and were stopped by the team.

7.11.5 - It was never the intention that the QS did not check the quantities as part of the valuation process.

7.12 - Platform 4 Services. Finding services in Platform 4 was a concern at the time but it was handled in an exemplary way by the design team, project manager, contractor and Network Rail. The delay was kept to a minimum and the extra costs due to the contractor were judged to be reasonable. The project manager later established that survey information was reviewed during design, trial holes dug in the platform and services were found at a location away from the building. Having found one run of services, the survey failed to pick up a duplicate run of services in a location within the building envelope and not shown on the Network Rail drawings.

7.12.1 to 7.12.5 - The Report also draws a conclusion that the building did not need to encroach on the platform. This “conclusion” appears to have been made in contradiction of the work of those who had worked on the design over months and years in consultation with Network Rail, Silverlink and London Midland and so at this stage must be considered to be speculation, without foundation.

7.14 - The surface water and foul water drainage is a complex topic and the Report has raised issues of which the project manager or the team were unaware. The project manager had the right to expect that the drainage design was necessary, accurate and that it was the most cost-effective design for the circumstances.

Having removed the scope of the car park and drainage before contract award, the project manager was able to challenge the design levels for the car park and the scope of the drainage. There is a long history of the efforts made by the team to clarify the extent of the drainage, why such large pipes and chambers were needed and how the separate needs of foul and surface water could be accommodated. The contractor was instructed (in the mobilization phase) to carry out investigations but these were never adequately achieved. The investigations were intended to find more economical solutions for the foul and surface water. A solution for the foul was found (use of a septic tank) but not for the surface water.

At the same time the project manager had tried to secure funding for the reintroduction of the drainage and the car park surfacing. This had been the intention all along as had been made clear in board meetings and governance documentation. It was necessary to integrate the drainage installation with the external works around the building and Stratford Road steps but the late acquisition of funds and design issues defeated this plan. However, the Report does adequately capture the end result - errors and late instruction contributed to increased costs.

Summary

Over the long life of this project many people had been involved, including English Partnerships and external pressure groups representing the citizens of Wolverton. People moved on and in some cases knowledge was lost and the reasons for design decisions were not always understood or clear. Even

during the construction phase there was a significant turnover of personnel, particularly within the contractor's team.

There is scant mention in the Report of the uncertainties that surrounded this project before construction got underway. The uncertainty of securing a collateral warranty is noted but it may not have been appreciated that London Midland were distinctly lukewarm when it came to its support; the loss of parking spaces was a serious issue for the LM franchise and certain people within LM did not want the station to go ahead: the Minor Modifications and Station Change applications were drafted very late and almost became a show-stopper.

It should not be forgotten that during 2010 there were significant funding issues as the limited GAF funds were to be shared between competing projects; the confirmation of funding for the station building was confirmed by Cabinet in December 2010 and ratified in January 2011. The late approval of funds put pressure on the construction start date as the race to start the project before year-end got underway.

MKC was also trying to cut its budget and instructions came down to the project manager that prevented any new contracts being set up. As noted above, one of these contracts could have been for an independent review of the bills of quantity.

There was also pressure on the size of the funding pot. Although granted in 2008, its value had been eroded with inflation and the design had cost more than anticipated. There was certainly no mention of further funding available, so the statement in the Report that funds were available is incomprehensible.

The role of the contractor is not examined in as much detail as it ought to be. The contractor proved in the first weeks and months of the project that he was not sufficiently resourced for the project, did not really understand the requirements for method statements and temporary works and their impact on programme and consistently made mistakes in method statements. YJLi / AMCO brought in a new team that needed to get up to speed, made promises that were not kept despite the Client paying for overtime to help improve performance on programme-critical activities. The Contractor did not put in place a credible cost reporting process and only put in a large team to assemble back-up for claims near the end of the contract period. The contractor had problems with sub-contractors that caused delays at critical times. Mistakes were made in setting out and in workmanship (in the external works), which the contractor tried to suggest were Client errors; some workmanship issues lasted weeks and months. It is with great concern that I read a settlement has been proposed of almost £500,000 over and above what the professional team assessed in August 2012 was due to the contractor.

Project management in MKC is somewhat down the pecking order. Project managers are generally at the end of a hierarchical chain whereby they are

not always party to decisions and information that affects their work. This is an antiquated way of working and I trust that the role of the project manager will become more inclusive in the future.

John McLaughlin
May 2013