

[2021] EWHC 458 (TCC)

Case No: HT-2019-000061

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QB)

Business and Property Courts
Rolls Building
London, EC4A 2NL

Date: 4 March 2021

Before :

THE HONOURABLE MR JUSTICE FRASER

Between :

BECHTEL LIMITED

Claimant

- and -

HIGH SPEED TWO (HS2) LIMITED

Defendant

APPENDIX I
TO JUDGMENT

List of Questions in the Technical Envelope
relevant to the challenges; the factors in
respect of each Question; and the scores
awarded to Bechtel and BBVS

1. [E001] ORGANISATION

Description

- (a) Explain how you will structure your organisation to manage and deliver this Contract. Provide organisation charts of how you will manage and assure delivery of the Works from the starting date to completion date and provide a completed Management Resource Plan in the form of Appendix C3.

Please upload a zip file giving it the name 'OOC_E001_Organisation' including the following:

- a pdf document of no more than 5 A4 sides narrative giving it the file name 'OOC_E001_Narrative ',
 - a completed Management Resource Schedule in the template provided in Appendix C3 of ITT Volume 0; and
 - a pdf document of maximum 5 A3 side (Organisation Charts) giving it the file name 'OOC_E001_Charts'
- (b) To give HS2 Ltd confidence a response should include and demonstrate:
- an organisation approach that will efficiently and effectively manage and deliver in a cost effective way ("**Factor 1**");
 - that the Tenderer has a management structure tailored to support the particular challenges for Old Oak Common Station including reporting lines and interfaces with HS2 Ltd. ("**Factor 2**");
 - where the Tenderer is a Consortium, identification of the lead company with details of the responsibilities to be assumed by each Party, an explanation of how any risks associated with a joint approach will be mitigated and how any potential opportunities could be realised ("**Factor 3**");
 - organisation chart(s) showing levels of the Management Resource Plan, including all forecast interface and demarcation with the supply chain ("**Factor 4**");
 - a completed Management Resource Schedule in the form of the template at Appendix C3 detailing an efficient level of resource that the Tenderer demonstrates will effectively manage the Works over the duration of the Contract ("**Factor 5**");
 - a structure that is flexible and resilient to change over the life of the Contract and is aligned to the Works Package Strategy outlined in ITT Question [E005] ("**Factor 6**"); and

- that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 7**" or the "**Alignment Factor**").

Tenderers' scores awarded in the evaluation

	Overall score
Bechtel	Very Good
BBVS	Concerns

Result contended for by Bechtel in these proceedings

- (c) No change to Bechtel's score
- (d) BBVS' score should have been Major Concerns; it should have been disqualified

Factors under consideration in the evidence

- (e) a completed Management Resource Schedule in the form of the template at Appendix C3 detailing an efficient level of resource that the Tenderer demonstrates will effectively manage the Works over the duration of the Contract (Factor 5)
- (f) that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E (the Alignment Factor)

2. [E002] RESOURCE MANAGEMENT:

Description

- (a) Given the long term nature of this Contract, explain your resource strategy and how you will recruit, retain, develop and deploy the management team across the Contract lifecycle to successfully deliver the relevant station.

Please upload a pdf document of no more than 5 A4 sides, giving it the file name 'OOC_E002_Management'

- (b) To give HS2 Ltd confidence a response should include and demonstrate:
- bespoke Old Oak Common proposals in relation to resource management ("**Factor 1**");
 - the ability to mobilise the proposed management team efficiently and effectively demonstrating key people and management utilisation and expedient recruitment in readiness for contract award ("**Factor 2**");
 - a resourcing approach to ensure a high quality, sustainable management team ("**Factor 3**");
 - proposals to establish a culture that will facilitate the delivery of the South Station Objectives and effective engagement with HS2 Ltd and others ("**Factor 4**");
 - proposals to ensure key people are retained ("**Factor 5**");
 - proposals to ensure knowledge and expertise is retained with an approach to actively future proofing existing talent ("**Factor 6**"); and
 - that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 7**" or the "**Alignment Factor**").

Tenderers' scores awarded in the evaluation

	Overall score
Bechtel	Very Good
BBVS	Good

Result contended for by Bechtel in these proceedings

- (c) No change to Bechtel's score

- (d) BBVS' score should have been lower and no higher than Moderate

Factors under consideration in the evidence

- (e) that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E (the Alignment Factor)

3. [E004] CONTRACTOR'S MANAGEMENT PLAN

Description

- (a) Provide an outline Contractor's Management Plan aligned to WI 120, describing how you propose to manage and deliver the Works in accordance with the Works Information.

Please upload a pdf document of no more than 15 A4 sides, giving the file name 'OOC_E004_Contractors_Management_Plan'

- (b) To give HS2 Ltd confidence a response should include and demonstrate:
- an overview of the systems, strategies and plans approach the Tenderer considers necessary for successful delivery of the management service ("**Factor 1**");
 - that the Tenderer has considered the key management service issues to be in delivering the Contract and the proposal to mitigate these issues including a specific section on Project Controls ("**Factor 2**");
 - the Tenderers' plans to interface and co-ordinate with interfacing Works by HS2 Ltd and others specific to Old Oak Common Station ("**Factor 3**");
 - how the Tenderer will work with the developer to optimise delivery and minimise impact to Old Oak Common Station ("**Factor 4**");
 - a description of how the Tenderer proposes to manage the construction works including how Key Dates will be met for Old Oak Common Station and proposed mitigation measures for associated risk ("**Factor 5**");
 - the Tenderer's proposed approach to system integration, testing, commissioning and handover particular to Old Oak Common Station and how this will address identified issues ("**Factor 6**");
 - a summary level overview of the top 5 achievable innovations in delivery at Old Oak Common station ("**Factor 7**"); and
 - that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 8**" or the "**Alignment Factor**").

Tenderers' scores awarded in the evaluation

	Overall score
Bechtel	Moderate

BBVS	Good
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Result contended for by Bechtel in these proceedings

- (c) Bechtel's score should have been Good
- (d) BBVS' score should have been lower and no higher than Moderate

Factors under consideration in the evidence

- (e) how the Tenderer will work with the developer to optimise delivery and minimise impact to Old Oak Common Station (Factor 4)
- (f) a description of how the Tenderer proposes to manage the construction works including how Key Dates will be met for Old Oak Common Station and proposed mitigation measures for associated risk (Factor 5)
- (g) that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E (the Alignment Factor)

4. [E005] WORKS PACKAGE STRATEGY

Description

- (a) Provide a Works Package Strategy (WPS) aligned to WI 120, describing your proposed approach to packaging and the requirements of delivery of the Works.

The Tenderer is to assume land access is as per Contract Data and the Works Information for the purpose of the response to this ITT Question.

Tenderers must read ITT Volume 0 Part 3.14 and Part 3.15 before responding to this ITT Question as these provisions set out important information concerning HS2 Ltd's objectives in relation to a management contracting delivery strategy.

Please upload a pdf document of no more than 10 A4 sides narrative, giving the file name 'OOC_E005_Work_Package_Strategy'

- (b) To give HS2 Ltd confidence a response should include and demonstrate:
- proposals which are aligned to a management contracting delivery strategy ("**Factor 1**");
 - how the Tenderer proposes to package and manage the Works to efficiently optimise the number of supply chain layers with the number of Works Packages to deliver the Station within the Targets ("**Factor 2**");
 - the principles as to how the station specific works can be logically grouped and managed into packages to minimise programme and budget risk, illustrating potential efficiencies of the proposed approach ("**Factor 3**");
 - the proposed phasing and sequencing of Old Oak Common Station works package, highlighting any dependencies and rationale including design management and interface with Others ("**Factor 4**");
 - the proposed strategy of how the Tenderer addresses the delivery of the Works taking into account emerging scope and design requirements ("**Factor 5**");
 - the proposed approach to consents, licensing and third party approvals within and across Works Packages for the Old Oak Common station ("**Factor 6**"); and
 - that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 7**" or the "**Alignment Factor**".

Tenderers' scores awarded in the evaluation

	Overall score
Bechtel	Very Good
BBVS	Very Good

Result contended for by Bechtel in these proceedings

- (c) No change to Bechtel's score
- (d) BBVS' score should have been lower and no higher than Good

Factors under consideration in the evidence

- (e) In addition to the factor set out below, the evidence also considered the following sections of the E005 question wording:
 - (i) Tenderers must read ITT Volume 0 Part 3.14 and Part 3.15 before responding to this ITT Question as these provisions set out important information concerning HS2 Ltd's objectives in relation to a management contracting delivery strategy
- (f) that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E (the Alignment Factor)

5. [E006] EARLY WORKS PLAN - OLD OAK COMMON

Description

- (a) Provide an outline Early Works Plan (EWP) with a programme based on the proposed Work Package Strategy provided in ITT Question [E005] and aligned to the RIBA2 design provided in the Works Information (WI 3000).

Tenderers are also required to provide their proposals to engage specialist foundation engineering contractors to deliver the detailed design and construction of the HS2 Box foundations, and associated utility diversions to meet the key dates and deliver the station into operation in accordance with ITT Volume 0, Part 3.13.

The Tenderer is to assume land access and all consents are Contractor Consents for the purpose of the response to this ITT Question.

Please upload a zip file giving it the name 'OOC_E006_Early_Works' including the following:

- a pdf document with a maximum of 15 A4 sides giving it the filename 'OOC_E006_Early_Works';
 - a pdf document of no more than 3 A4 sides narrative giving it the file name 'OOC_E006_Narrative'; and
 - a pdf of no more than 5 A3 sides and .xer document that contains a maximum of 500 activities giving it the filename 'OOC_E006_Programme.pdf' and 'OOC_E006_Programme.xer'.
- (b) To give HS2 Ltd confidence a response should include and demonstrate:
- clear details of the Tenderer's proposed Early Works mobilisation plan and processes which achieves the HS2 Ltd Programme and all Key Dates within the first 12 months, including any programme narrative ("**Factor 1**");
 - details of the proposed Construction Partner management team that will deliver the Early Works package(s) ("**Factor 2**");
 - the identified critical path for implementation including potential issues, assumptions, opportunities and proposed mitigation and/or realisation measures ("**Factor 3**"); and
 - that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 9**" or the "**Alignment Factor**").
 - In respect of the Subcontract proposals to deliver the detailed design and construction of the HS2 Box foundations, and associated utility

diversions, to give HS2 Ltd confidence a response should also include and demonstrate:

- the Tenderer's capability to minimise the risk to the commencement date for the detailed design and construction of the HS2 Box foundations Early Works whilst maintaining the South Stations Objectives described in WI 100 ("**Factor 4**");
- details of the contracting strategy, approach and detailed logic linked programme including all programme activities and dependencies for ensuring the CP will meet Programme Milestone 4 and Programme Milestone 6 for commencement of the detailed design and construction of the HS2 Box foundations at Old Oak Common Station including proposals for securing the specialist supply chain to deliver the Works in accordance with WI 700 ("**Factor 5**");
- evidence that the Tenderer has engaged with the market during the ITT period to establish a potential supply chain of specialist foundation engineering contractors including a rationale for that supply chain which includes but is not limited to assessing capability for works of this nature, financial standing and ability to effectively resource and deliver the works ("**Factor 6**");
- how the Tenderer proposes to engage with the SDSC Consultant post Contract award to validate and progress the designs for the Early Works to enable your proposed supply chain to deliver the Early Works efficiently ("**Factor 7**"); and
- the Tenderer's contract arrangements to be put in place with the Tenderer's proposed supply chain to effectively manage any potential design changes post Contract award that will enable a cost efficient delivery of the Early Works whilst maintaining programme ("**Factor 8**").

Tenderers' scores awarded in the evaluation

	Overall score
Bechtel	Good
BBVS	Good

Result contended for by Bechtel in these proceedings

(c) No change to Bechtel's score

- (d) BBVS' score should have been lower and no higher than Moderate

Factors under consideration in the evidence

- (e) In addition to the factor set out below, the evidence also considered the following sections of the E006 question wording:
 - (i) Provide an outline Early Works Plan (EWP) with a programme based on the proposed Work Package Strategy provided in ITT Question [E005] and aligned to the RIBA2 design provided in the Works Information (WI 3000)
- (f) that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E (the Alignment Factor)

6. [E007] PROCUREMENT PLAN

Description

- (a) Provide an outline Procurement Plan that explains how the Tenderer will deliver the Work Package Strategy illustrated in ITT Question [E005], and how the Tenderer will manage the proposed supply chain for the relevant station.

Tenderers must read ITT Volume 0 Part 3.14 and Part 3.15 before responding to this ITT Question as these provisions set out important information concerning HS2 Ltd's objectives in relation to a management contracting delivery strategy.

Please upload a pdf document with a maximum of 10 sides of A4 giving it the file name 'OOC_E007_Procurement_Plan'

- (b) To give HS2 Ltd confidence a response should include and demonstrate:
- a procurement and contracting approach for each Works Package that aligns with the Works Package Strategy and is aligned to a management contracting strategy ("**Factor 1**");
 - the approach to securing and effectively managing key subcontractors and mitigation measures to manage associated risk ("**Factor 2**");
 - how the supply chain will be managed to drive value and ensure successful delivery to budget and programme and achieve supply chain collaboration across the HS2 Project ("**Factor 3**");
 - an approach to incentivising the supply chain, including how incentives will flow down from the Construction Partner contract ("**Factor 4**");
 - an approach to achieving best practice in supply chain engagement and open procurement to maximise supply chain growth ("**Factor 5**");
 - the proposed steel policy and approach to procuring steel (and other relevant critical materials aligned to the HM government Industrial Strategy) incorporating the guidance provided within the Works Information ("**Factor 6**"); and
 - that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 7**" or the "**Alignment Factor**").

Tenderers' scores awarded in the evaluation

	Overall score
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Bechtel	Moderate
BBVS	Very Good

Result contended for by Bechtel in these proceedings

- (c) Bechtel's score should have been Good
- (d) BBVS' score should have been lower and no higher than Good

Factors under consideration in the evidence

- (e) In addition to the factors set out below, the evidence also considered the following sections of the E007 question wording:
 - (i) Provide an outline Procurement Plan that explains how the Tenderer will deliver the Work Package Strategy illustrated in ITT Question [E005], and how the Tenderer will manage the proposed supply chain for the relevant station.
 - (ii) Tenderers must read ITT Volume 0 Part 3.14 and Part 3.15 before responding to this ITT Question as these provisions set out important information concerning HS2 Ltd's objectives in relation to a management contracting delivery strategy.
- (f) a procurement and contracting approach for each Works Package that aligns with the Works Package Strategy and is aligned to a management contracting strategy (Factor 1)
- (g) the approach to securing and effectively managing key subcontractors and mitigation measures to manage associated risk (Factor 2)
- (h) an approach to incentivising the supply chain, including how incentives will flow down from the Construction Partner contract (Factor 4)
- (i) that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E (the Alignment Factor)

7. [E008] DESIGN MANAGEMENT

Description

- (a) Provide an outline Design Management Plan (DMP) aligned to WI 300 describing your approach to design for the relevant station.

Please upload a pdf document of no more than 10 A4 sides giving it the file name 'OOC_E008_Design_Management'

- (b) To give HS2 Ltd confidence a response should include and demonstrate:

- that the Tenderer has a management structure that will provide design competency, design integration and efficient management of multidisciplinary design ("**Factor 1**");
- a proactive approach to the SDSC Consultant interface, incorporation of the LDAG role, constructability due diligence and early works package design co-ordination ("**Factor 2**");
- proposals to manage whole life, sustainability and safety requirements in design ("**Factor 3**");
- how the Tenderer will manage Technical Assurance of construction, maintenance, testing and commissioning and handover activities ("**Factor 4**");
- an approach to ensuring HS2's Design Vision is delivered in a cohesive way and the principles 'People, Place and Time' are not weakened or compromised by budget and programme ("**Factor 5**");
- that the Tenderer has robust procedures to ensure that an integrated design including interfaces is delivered when necessary to meet the Contractor's programme and cost plan ("**Factor 6**"); and
- that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 7**" or the "**Alignment Factor**").

Tenderers' and scores awarded in the evaluation

	Overall score
Bechtel	Moderate
BBVS	Good

Result contended for by Bechtel in these proceedings

- (c) Bechtel's score should have been Good
- (d) No change to BBVS' score

Factors under consideration in the evidence

- (e) that the Tenderer has a management structure that will provide design competency, design integration and efficient management of multidisciplinary design (Factor 1)
- (f) how the Tenderer will manage Technical Assurance of construction, maintenance, testing and commissioning and handover activities (Factor 4)

8. [E009] PROGRAMME MANAGEMENT

Description

- (a) Provide an outline programme for the delivery of the works within the Key Dates and by the Completion Date as detailed within the Contract Data. Provide supporting narrative illustrating the programme management techniques that you will use to develop the programme, manage production on site deliver the relevant station.

Please upload a zip file giving it the name 'OOC_E009_Programme' including the following:

- a pdf document of an outline programme no more than 10 sides of A3 and .xer format document containing a maximum of 1000 activities giving it the filename 'OOC_E009_Programme.pdf' and 'OOC_E009_Programme.xer' and
- a pdf document of narrative no more than 8 sides of A4 giving it the name 'OOC_E009_Programme_Narrative.'

- (b) To give HS2 Ltd confidence a response should include and demonstrate:

- that the Tenderer has suitable techniques to meet Key Dates/Completion Dates relevant to Old Oak Common Station ("**Factor 1**");
- that the outline programme is aligned with the WPS outlined within ITT Question [E005] and the programme submitted within ITT Question [E006] ("**Factor 2**");
- an understanding of the need to include relevant detail and look ahead to effectively manage and mitigate delays ("**Factor 3**");
- an understanding of the critical path for Old Oak Common Station and an explanation of how critical path threats will be mitigated pre-emptively ("**Factor 4**");
- ability to employ a robust programme recovery process ("**Factor 5**");
- station specific activities where the Tenderer considers potential efficiencies or opportunities are available ("**Factor 6**");
- that earned value management techniques will be used to manage the programme, including how productivity status and physical progress of the works will be measured and reported ("**Factor 7**"); and
- that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 8**" or the "**Alignment Factor**").

Tenderers' scores awarded in the evaluation

	Overall score
Bechtel	Good
BBVS	Good

Result contended for by Bechtel in these proceedings

- (c) No change to Bechtel's score
- (d) BBVS's score should have been Moderate

Factors under consideration in the evidence

- (e) that the outline programme is aligned with the WPS outlined within ITT Question [E005] and the programme submitted within ITT Question [E006] (Factor 2)
- (f) an understanding of the need to include relevant detail and look ahead to effectively manage and mitigate delays (Factor 3)
- (g) an understanding of the critical path for Old Oak Common Station and an explanation of how critical path threats will be mitigated pre-emptively (Factor 4)
- (h) ability to employ a robust programme recovery process (Factor 5)
- (i) station specific activities where the Tenderer considers potential efficiencies or opportunities are available (Factor 6)
- (j) that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E (the Alignment Factor)

9. [E010] RISK SCHEDULE AND MANAGEMENT

Description

- (a) Provide an outline Risk Management Plan that explains your approach and proposals for identification and the proactive management of risk across the delivery of the Works. Identify the risks that you consider will impact on the specific station and demonstrate how this will be incorporated into your risk management approach.

Please upload a pdf document of no more than 8 sides of A4 giving it the name 'OOC_E010_Risk_Management_Plan'

- (b) To give HS2 confidence a response should include and demonstrate:
- that the Tenderer will identify risk and opportunities and demonstrate the process for the quantification of risks and opportunities ("**Factor 1**");
 - that the management team will control the risk management process, progressively managing risk in the context of multiple work packages and external interfaces throughout the duration of the Contract ("**Factor 2**");
 - demonstration of clearly allocated and understood accountabilities and responsibilities for the management of the identified risks ("**Factor 3**");
 - consideration of the key risks, illustrating proposal to minimise potential threats and optimise opportunities associated with the delivery of Old Oak Common Station ("**Factor 4**");
 - that the Tenderer will collaboratively mitigate risk including interface risk with associated Third Parties relevant to the delivery of Old Oak Common Station ("**Factor 5**");
 - that the risk management plan supports cost planning methodology and change control ("**Factor 6**"); and
 - that the Tenderer's approach is aligned to its responses to the ITT Questions in this section E ("**Factor 7**" or the "**Alignment Factor**").

Tenderers' scores awarded in the evaluation

	Overall score
Bechtel	Very Good

BBVS	Very Good
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Result contended for by Bechtel in these proceedings

(c) No change to Bechtel's score

(d) No change to BBVS' score

Factors under consideration in the evidence

(e) N/A

10. **[I001] DELIVERY WITHIN INCENTIVE TARGET AND PROGRAMME TARGET**

Description

- (a) Delivery within the Incentive Target and Programme Target is a key objective of HS2 Ltd. Provide your proposal to meeting this objective including describing the approach that you will apply and demonstrate how this will enable you to design and deliver within the Incentive Target and Programme Target as detailed within WI 800. Identify the steps that you will take and issues that you would address to enable the station to be designed and delivered within the Incentive Target and Programme Target.

Please upload a pdf document of no more than 10 sides of A4 giving it the filename 'OOC_I001_Delivery'

- (b) To give HS2 confidence a response should include and demonstrate how the Tenderer will:
- apply cost planning methodology to control the emerging design of the Works, including the development of their delivery, procurement and supply chain strategies and the application of value engineering techniques ("**Factor 1**");
 - manage and control change including risk and opportunities and their implementation in and during the Works ("**Factor 2**");
 - manage the delivery of the Works including the reduction of waste, improvements to production and the application of innovative techniques to improve the overall efficiency ("**Factor 3**");
 - a comprehensive list of the issues and cost drivers affecting Old Oak Common Station and a plan that demonstrates how they will be managed and the steps taken to address them ("**Factor 4**"); and
 - that the Tenderer's approach is aligned to its responses to the ITT Questions in section E ("**Factor 5**" or the "**Alignment Factor**").

Tenderers' scores awarded in the evaluation

	Overall score
Bechtel	Very Good
BBVS	Good

Result contended for by Bechtel in these proceedings

- (c) No change to Bechtel's score
- (d) BBVS' score should have been lower and no higher than Moderate

Factors under consideration in the evidence

- (e) that the Tenderer's approach is aligned to its responses to the ITT Questions in section E (the Alignment Factor)