

Rotherwas Access Road

Termination Clause Report

Issue 1

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1 Introduction

Herefordshire Council Requested details on the Termination Clause within the contract for the Rotherwas Access Road and an estimated cost associated with terminating the contract.

The costs quoted in this report are not based on any detailed analysis of the work required but a rough estimate for each activity.

No consultation with the *Contractor* has been undertaken in deriving the figures given in this note. The final costs may therefore differ significantly from those given.

2 Contract Clauses

There are no Z clauses which alter or add to the standard NEC termination clauses 94, 95, 96 and 97.

Clause 94.2 states “The *Employer* may terminate for any reason” and that “The procedures followed and amounts on due on termination are in accordance with the Termination Table”.

The termination table refers to a number of standard reasons for termination (R1 to R21) The reason for termination will not fall within these standard reasons.

Using the termination table, procedures P1 and P2 should be followed and the amount due should be calculated using A1, A2 and A4.

3 Procedures

P1 – “On termination, the *Employer* may complete the *works* himself or employ other people to do so and may use any Plant and Materials to which he has title.” This contract would not be terminated in order that it could be awarded to a different contractor so this procedure should not be required.

P2 – “The *Employer* may instruct the *Contractor* to leave the Site, remove any equipment, Plant and Materials from the Site and assign the benefit of any subcontract or other contract related to performance of this contract to the *Employer*.” Again this should not be relevant as we would not be intending to maintain any subcontractor or other contracts.

4 Amount Due

Code	Contract Clause	Assumptions	Cost
A1	An amount due assessed as for normal payments.	Completed Activities to end of July 07	£2.72M
	The Actual Cost for Plant and materials within the Working Areas to which the <i>Employer</i> has title and of which the <i>Contractor</i> has to accept delivery	Plant and Material on site and about to be delivered for structures.	£0.25M
	Other Actual Cost reasonably incurred in expectation of completing the whole of the <i>works</i> . (Partially completed Activities + all other reasonable costs).	Partially completed Activities as forecast for August + payment of 50% of CEs (0.2M).	£1.06M
	Any amounts retained by the Employer	Retention	£0.14M

	A deduction of any unrepaid balance of an advanced payment.	None	£0
A2	The forecast Actual Cost of removing the Equipment.	demobilisation cost – Assume 1 month preliminaries	£0.07M
A4	The <i>fee percentage</i> applied to any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date.	(£4.96M - £4.24M) x 8%	£0.06
Total			£4.30M

5 Fees

The agreement of the amount due is not a simple exercise and is likely to require long and detailed negotiation. It would be likely that this would take more than a year and require significant fees to be allowed. For the purposes of this note a figure of **£200K** has been used.

6 Additional Activities Required

Stop work and return to pre-construction state*	Stop Work for Commencement at a later stage*
<p>Zone 1</p> <ul style="list-style-type: none"> • Removal of temporary road construction, earthworks and fencing. Replace topsoil and return to agriculture. • Divert back BT apparatus to original line. • Re-construction of A49 bound layers. • Backfill earthworks cut, topsoil and return to agriculture. • Remove stock proof fencing. • Re-establish any damaged land drains. • Remove underground drainage. 	<p>Zone 1</p> <ul style="list-style-type: none"> • Removal of temporary road construction, earthworks and fencing. Replace topsoil and return to agriculture. • Re-construction of A49 bound layers. • Complete stock proof fencing and accesses. • Backfill earthworks with layer to protect formation.
<p>Zone 2</p> <ul style="list-style-type: none"> • Remove Norton Brook Culvert, backfill and re-establish original brook course. • Excavate bund with material taken to backfill the Hoarwithy bridge cutting. • Remove stock proof fencing. • Backfill ditches and re-establish field drains. • Remove underground drainage. • Backfill balancing ponds. 	<p>Zone 2</p> <ul style="list-style-type: none"> • Complete Norton Brook Culvert wingwalls. • Planting along realigned brook course to prevent scour. • Completion of ditch and outfalls • Backfill earthworks with layer to protect formation.
Zone 3 & 4 - Hoarwithy Road Bridge	Zone 3 & 4 – Hoarwithy Road Bridge

<ul style="list-style-type: none"> • Demolition works to bridge constructed to date or bury. • Place and compact earthworks to fill cutting. • Divert Welsh water main back to original course. • Divert BT back to original course. • Remove fencing and re-establish stock proof fencing. 	<ul style="list-style-type: none"> • Complete bridge structure and road tie-ins. • Complete permanent Welsh Water and BT diversions • Finish stock proof fencing. • Remove temporary carriageway. • Backfill earthworks with layer to protect formation.
<p>Zone 5</p> <ul style="list-style-type: none"> • Backfill cutting and balancing pond. • Remove fencing and re-establish stock proof fencing. 	<p>Zone 5</p> <ul style="list-style-type: none"> • Finish stock proof fencing • Backfill earthworks with layer to protect formation.
<p>Zone 6</p> <ul style="list-style-type: none"> • Backfill cutting and re-excavate embankments. • Remove fencing and re-establish stock proof fencing. • Backfill above archaeological feature and return to agriculture. • Re-establish fencing and hedges. 	<p>Zone 6</p> <ul style="list-style-type: none"> • Construct temporary protection for archaeological feature. • Finish stock proof fence. • Backfill earthworks with layer to protect formation.
<p>Zone 7</p> <ul style="list-style-type: none"> • Backfill cutting and re-excavate embankments. • Remove fencing and re-establish stock proof fencing. • Return site to grazing pasture and remove temporary newt fencing. • Divert BT and electrical diversions back to original. • Remove all drainage works completed to date. 	<p>Zone 7</p> <ul style="list-style-type: none"> • Complete badger and newt fencing and multi species tunnel. • Complete newt ponds and other ecological requirements of the DEFRA licence. • Complete security fencing and accesses for industrial units. • Finish all part complete drainage.
<p>Zone 8 & 9</p> <ul style="list-style-type: none"> • Reconstruct removed carriageway. • Excavate new roundabout road construction. • Divert BT and electrical diversions back to original. • Remove fencing and temporary footpath. 	<p>Zone 8 & 9</p> <ul style="list-style-type: none"> • Complete partially complete roundabout construction. • Complete drainage works
<p>Estimated Total Cost = £2Million</p>	<p>Estimate Total Cost = £1.5Million</p>

* Assume works would be carried out by the *Contractor* Alfred McAlpine.

7 Conclusion

The total cost of terminating the contract in August is estimated to be the total of the amount due, fees and additional work (£6.0M to £6.5M) less the amount already paid to McAlpine for completed activities (£2.7M).

Cost to terminate = £3.3M to £3.8M)

Appendix A – Scheme Zone Plan