

REQUEST TO MODIFY A CONTRACT DURING ITS TERM

CUMBRIA COUNTY COUNCIL CONTRACT PROCEDURE RULES

Use this form from 15 January 2020 to seek approval to modify a contract during its term.

Modification is the term used in the Public Contracts Regulations 2015 and the CPRs for variations and extensions to contracts.

Please note that a contract that has terminated cannot be extended.

The Executive Director – Corporate, Customer and Community Services is responsible for approving requests to modify contracts following consultation with the Chief Legal Officer.

The Executive Director – Corporate, Customer and Community Services is not authorised to approve requests for modifications which would cause the Council to breach the Public Contracts Regulations 2015.

SUMMARY

MODIFICATION PROVIDED FOR IN CONTRACT	Y
VALUE	Up to £1.5m
DATE DECISION REQUIRED	13th August 2021

DIRECTORATE INFORMATION

DIRECTORATE	Economy and Infrastructure
NAME OF OFFICER REQUESTING MODIFICATION	John Ranson
POST TITLE	Project Commercial Manager

CONTRACT DETAILS

PARTIES	Morgan Sindall Construction
DATE OF CONTRACT	27 th April 2021
TERM	43 weeks and 4 days
TOTAL CONTRACT VALUE (including value of any options to extend the contract)	£4.5m (excluding enabling works)
SUBJECT MATTER	The contract is part of a 2-stage design and build procurement. The subject matter is enabling works required to be carried out as part of the Stage 1 contract to de-risk the Stage 2 works. Provision for enabling works is included in the Stage 1 Scope but could not be detailed until sufficient scheme development had been undertaken.

CLAUSE IN CONTRACT PERMITTING MODIFICATION

Insert details of the clause in the contract (if any) which permits modification

The Project Manager is permitted to issue instructions changing the Scope under Clause 14.3
“The *Project Manager* may give an instruction to the *Contractor* which changes the Scope or a Key Date.”

IMPACT OF MODIFICATION

**Use this section to explain the impact of the modification, including:
The monetary value of the modification and its impact on the contract; and
The effect on the scope of the contract (include precise information on the effect of the modification on the existing specification, contract terms and subject matter of the contract).**

The enabling works consist of the following:

- Construction of an access road to facilitate Statutory Undertakers works from the A595 to the proposed Caldew Bridge

BACKGROUND AND REASONS FOR REQUESTING A MODIFICATION

Explain the reasons why the modification is sought

The Council is undertaking Stage 1 - Detail Design work for the Carlisle Southern Link Road through its contract with Morgan Sindall Construction. This design stage started in April 2021 and the road is due for a proposed construction start date of March 2022.

In order to de-risk the activities required during the main construction works, the Council intends to undertake strategic utility diversions in advance. This requires access into the areas in question and the establishment of compounds and other associated works.

A budget estimate has been produced by the contractor at a value of £1.5m, however this will be value engineered down, and a detailed scope agreed. The contractor is required to seek 3 competitive quotes for all subcontracted work and this apply to these enabling works.

The diversion of Statutory Undertakers apparatus is on the CSLR project's critical path. Delays to the critical path, especially the earthworks movement during the summer months provides a significant risk of delaying completion of the project by a full year. As such this contract modification is the mitigating action to allowing the diversions works to occur and enabling the project to succeed.

VIEWS OF THE ASSISTANT DIRECTOR (& CABINET MEMBER)

Use this section to provide confirmation that the Assistant Director supports the request and any other comments from the Assistant Director. Where the value of the contract exceeds the Key Decision threshold, confirmation should be provided that the Cabinet Member supports the proposal.

The proposed works will provide more programme certainty for Stage 2. I fully support the request as proposed and request that this modification to the contract is approved.

LEGAL IMPLICATIONS

Comments from Legal Services

Owing to the value the contract is regulated by the Public Contract Regulations 2015 PCRs. The contract was advertised as a two-stage design and build contract with an advertised value of up to £75million. In the additional information section notice an indicative value of £2m - £4m was provided for the stage 1 contract the awarded value was £4.58m

The form of contract for the Stage 1 works relating to the design and construction of the CSLR is a NEC 4 Engineering and Construction Contract June 2017 (with amendments January 2019 and October 2020) and further specific amendments by the Council. The terms and conditions at clause 30 of the contract provide for Compensation Events (this is a term used in NEC contracts to mean an event which can affect the cost to the Client (the Council) of the work being carried out, the time when the works will be completed, or both. A compensation event is the only way in which the contract can be varied – the issuing of an instruction under clause 14.3 to change the Scope is a specified Compensation Event.

It was noted in the Invitation To Tender that the stage 1 element of the contract would be likely to include enabling works as yet undefined.

“The Stage 1 Works will include, but not limited to the following...

1. Contractor to assess necessity of works being undertaken in advance of main works thus mitigating time impact on Stage 2 construction by providing; reasoning, methodology, timeline, risks/issues/opportunities and cost for following potential advance works,
 - Statutory diversions e.g. gas main (Northern Gas Networks) and water main (United Utilities)
 - Environmental works aligned with ecology timelines e.g. clearance of vegetation / translocation of species / protection of species in advance of main works / diversion works
 - Works necessary to accommodate the commencement of the main works which otherwise would be delayed either due to environmental factors or timing allowed to carry out the works
 - Network Rail – constraints may in time force an early start of works to facilitate the main works being started within the availability of railway possessions, especially on the WCML.
 - Highways England / Connect - constraints may in time force an early start of works to facilitate the main works.”

The Executive Director may therefore approve this modification request on the basis it complies with Regulation 72(1)(a) of the PCRs i.e. the modification has been unequivocally provided for in the procurement documentation and does not alter the overall nature of the contract or in the alternative reliance on regulation 72(1)(3) i.e. that the modifications irrespective of their value are not deemed to be “substantial”.

Solicitor: E Lawson

Date: 13.08.21

Likelihood of claim against Council being successful	Impact of claim against Council being successful	Risk Score
2	5	10

FINANCE IMPLICATIONS

Comments from Finance		
<p>Modifying the contract with Morgan Sindall Construction for the delivery of enabling works, is permitted within the contract. It is intended that by delivering these works in advance of the main works this work will be de-risked.</p> <p>The estimate of the works is up to £1.5m but is anticipated to be less through value engineering and detailed scoping. Morgan Sindall Construction is required to seek 3 quotes for the works proposed to ensure VFM.</p> <p>There is £89.014m funding within the Main Works v34 of the Expenditure Plan to support the cost of this work.</p> <p>Finance Officer: Pauline Cameron Date: 13 August 2021</p>		
Likelihood	Impact	Risk Score
1(<10%)	5 (>£1m)	5

REQUESTING OFFICER SIGNATURE AND DATE OF REQUEST

SIGNED	DATE
John Ranson	13 th August 2021

COMMENTS OF THE SENIOR MANAGER – CORPROATE PROCUREMENT AND CONTRACT MANAGEMENT [OR PROCUREMENT & CONTRACT MANAGER IF BEING AUTHORISED BY THE SENIOR MANAGER]

<p>Allowed for in the contract docs, and also not seen as substantial by definition, therefore I'd recommend it be approved</p>		
OVERALL RISK ASSESSMENT		
Likelihood	Impact	Risk Score
1	5	5
<p>Officer Name: Debbie Heard Date: 16/8/21</p>		

DECISION OF THE EXECUTIVE DIRECTOR - CORPORATE, CUSTOMER AND COMMUNITY SERVICES [OR SENIOR MANAGER – CORPORATE PROCUREMENT AND CONTRACT MANAGEMENT UNDER DELEGATED AUTHORITY FROM EXECUTIVE DIRECTOR – CORPORATE CUSTOMER & COMMUNITY DATED 9 SEPTEMBER 2019]

MODIFICATION APPROVED	Conway Stewart
MODIFICATION NOT APPROVED	
COMMENT	As per legal, finance and proc comments above
DATE OF DECISION	16/8/21

PROCEDURE

The Executive Director – Corporate, Customer and Community Services will only consider requests for modification of contracts made on the Request for Exemption form.

Corporate Procurement and Contract Management can provide assistance in completing the form and this is advised to ensure that sufficient relevant information is included in the request.

The manager requesting the modification must:

1. complete all sections of the form;
2. circulate the form for comment to Legal Services and Finance;
3. e-mail the completed form to the Executive Director – Corporate, Customer and Community Services or the Senior Manager – Corporate Procurement and Contract Management.

The Executive Director – Corporate, Customer and Community Services will log the request and consult with the Senior Manager – Commissioning, Procurement and Contract Management and the Chief Legal Officer (Monitoring Officer) before determining the request.

The Executive Director – Corporate, Customer and Community Services or the Senior Manager – Corporate Procurement and Contract Management will return the signed decision to the requesting officer.

The Executive Director – Corporate, Customer and Community Services or Senior Manager – Corporate Procurement and Contract Management will retain a record of the request and the decision.

		Impact				
		1	2	3	4	5
		Insignificant	Minor	Moderate	Major	Most severe
Likelihood	V Likely	5	10	15	20	25
	Likely	4	8	12	16	20
	Possible	3	6	9	12	15
	Unlikely	2	4	6	8	10
	V Unlikely	1	2	3	4	5