

T: 0300 244 4000
E: scottish.ministers@gov.scot

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee
Scottish Parliament
By email: netzero.committee@Parliament.Scot

31 July 2024

Dear Edward,

I write to update the Net Zero, Energy and Transport Committee regarding the A9 Dualling: Tomatin to Moy contract.

Further to my letter dated 9 July 2024, I am now in a position to confirm that following the successful completion of the mandatory standstill period the contract has been awarded to Balfour Beatty at a cost of £184.7 million at May 2024 prices.

Having now awarded the contract, which followed a competitive procurement process that achieved three bids being received, I am able to provide some further context in relation to the prior procurement process which resulted in no award, which I know is of interest to the committee.

Having considered carefully our obligations around confidentiality and transparency, and following consultation with the contractor involved, I can advise that the contract value for the single bid received in October 2022 in relation to the previous procurement for the A9 Dualling: Tomatin to Moy project was £169,986,287.00 at October 2022 prices.

At the time of receipt of this tender, which was the first procurement of a major roads project undertaken by Transport Scotland following the occurrence of the COVID-19 pandemic, the Scottish Ministers were unable to conclude that the tender submission represented best value for the taxpayer. As only a single tender was received on that procurement, no direct market comparator cost was available at that time. The cost of the tender received was significantly higher than both the original £115 million cost estimate for this project, even after allowing for significant inflationary effects, and a cost comparator bid of £136,945,150 compiled by Transport Scotland's technical advisors.

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I am delighted that the recent procurement process has led to a successful contract award and I am pleased to see progress with the delivery of the dualling. I am strongly of the view that the conclusion reached in respect of the previous procurement was appropriate based on the information available at that time. It is imperative that the Government ensures appropriate use of public funds and as best value for the taxpayer could not be demonstrated as outlined above, it was clearly not appropriate for the Government to proceed with a contract award at that time.

As the committee will be aware, following the conclusion of the initial procurement process for this contract, Transport Scotland undertook significant work to update its contract form and terms and conditions ahead of the new procurement commencing (as noted in a letter to you from the then Cabinet Secretary for Transport, Net Zero and Just Transition dated 5 September 2023). Market consultation undertaken by Transport Scotland ahead of the new procurement indicates that Contractors' appetite for risk is less than it has been in previous years. There is a high level of investment and a pipeline of work in other sectors, in particular the energy industry. Taken together with other clients and contracting authorities offering more favourable terms and conditions, and challenges in the labour market this has left contracts that place all risk on the contractor, such as Transport Scotland's previous Design and Build contract terms and conditions, unattractive in the current market,

In recent years, Transport Scotland and the Scottish Ministers have been subject to significant criticism from the UK contracting market as a result of the terms and conditions used on its major infrastructure projects. In addition to providing the platform for an effective procurement competition on the recent procurement process, these changes were absolutely necessary to attract contractors to the roads major infrastructure procurements delivered using design and build contracts. The committee should be aware that the contract used for the previous procurement placed the majority of contractual risks with the Contractor, whereas for the recent procurement with its new contract form, more risk is held by Transport Scotland. In addition, some design requirements for the project were changed for the recent procurement. As a result of these changes in the contract form and related terms and conditions, along with inflationary effects during the intervening period and changes in the market, it is not appropriate to directly compare the tender submission received in 2022 and the contract awarded in July 2024.

This procurement has successfully maintained competition from the market and resulted in receipt of three independent and competitive bids representing best value in the current market at this time. Transport Scotland will, of course, work with the contractor and monitor the progress of this new contract to ensure that it operates as intended. I am committed to dualling the A9 between Perth and Inverness and award of this contract represents a significant milestone in progressing that.

I hope you find the above information helpful.

Yours sincerely,



FIONA HYSLOP
Cabinet Secretary for Transport

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