

REPORT

to

EPPING FOREST DISTRICT COUNCIL

in connection with

BUILDING CONTRACT

with

INTERSERVE BUILDING
(formerly TILBURY DOUGLAS CONSTRUCTION)

for

NEW LEISURE FACILITIES

at

LOUGHTON

Prepared by

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Parties

Client	Epping Forest District Council
Project Monitoring Agent	Castons (Ipswich)
Architect	GLR Architects
Quantity Surveyor	Leonard Stace Quantity Surveying
Contractor	Interserve Building (previously Tilbury Douglas Construction Ltd)

Abbreviations

In this report the following abbreviations have been used

EFDC	Epping Forest District Council
GLR	GLR Architects
JCT	JCT Standard Form of Contract Local Authorities Edition with Quantities (1998 Edition) incorporating Amendment TC/94/WCD and Amendment 1:1999 with Contractors Designed Portion Supplement as amended by Schedule of Amendments prepared by Rowe and Maw (Solicitors)
IB	Interserve Building (previously Tilbury Douglas Construction)

Instructions

This Report has been prepared following telephone instructions from Colin Crudgington of EFDC, in which Castons were requested to prepare a Strategic Overview Report in connection with the Project carried out by IB at Loughton Leisure Centre.

It is understood that this Report is to consider the strategic issues arising from the Contract, and is issued in compliance with the requirements of EFDC Standing Orders for a Strategic Report to be issued in connection with Large Projects, to identify any relevant matters of good and/or poor practice which have arisen in connection with the Project.

This report is prepared by Castons, direct to Members, as part of their role as Project Monitoring Agent.

Contract Arrangements

1. Contract

EFDC entered into a contract (as referred to above) dated 17th April 2000, with IB for the construction of New Leisure Facilities at Traps Hill, Loughton.

2. Contract Dates

- The Date for Possession was 17th April 2000.
- The Date for completion was 15th October 2001.
- The Contract Period was 77 weeks.

3. Extensions of Time Granted

4 Nr Extensions of Time were granted extending the Date for Completion to 19th March 2002.

4. Actual Completion Date

Practical Completion was achieved in mid November 2002

Building Suitability & Defects

Castons consider that, subject to the following points, the Leisure Centre, as constructed, has met and fulfilled the Councils, the Leisure Services Department and users requirements and has met the original brief for the project.

For a significant period of time, following the opening of the Leisure Centre, there were problems with the cooling of the Fitness Suite. Whilst this problem has now been rectified, there were serious delays in the resolution of these defects, and execution of the necessary remedial works, which arose from competing contentions from the Main Contractor's Subcontractor and the Architect's Services Design Sub-Consultant. These Parties both contended, respectively, that the cause of the problem, was a consequence of the design, and a consequence of failure to install works correctly. Resolution of these competing views was protracted and not assisted by the fact that both these Parties were Subcontractors, with all issues being dealt with through the principal Parties, (the Main Contractor and the Architect). Contractually, the responsibility for resolution and rectification, lay with the Main Contractor/and the Architect, but both Parties left the respective subcontractors to deal with matters. Whilst this situation was a direct result of the contractual arrangements selected it is considered that this difficulty did not outweigh the benefits of a single appointment for both "Design" and "Construction" as utilised on this project.

If a similar circumstance were to occur on a future project we consider that greater pressure should be applied to the Parties directly responsible to address and achieve a resolution of their contractual liabilities, rather than the Client acknowledging and accepting that issues were to be dealt with by other Parties, with whom the respective Parties had a contractual relationship, who were not contractually linked to the Client.

Suitability of Procurement Method

In light of experiences with previous large scale projects, EFDC decided to procure both Construction and Design Services on the basis of a single "point of contact" contract, rather than procurement through the appointment of a Main Contractor and Nominated Subcontractors for major specialist trades, (for Construction Work) and appointment of separate Architect, Structural Engineers, Services Engineers and other consultants (for Design Services).

The scheme was to be fully designed prior to tender and procured utilising full bills of quantities.

Castons concurred with this decision and still believe that it represented the most appropriate form of procurement for this project.

Cost Consultancy/Quantity Surveying and Health & Safety Services were procured separately, and in order that full independence of these services was maintained, these commissions were not to be incorporated within the designer's appointment.

Castons consider this approach was beneficial and should be retained for future projects.

Castons provided regular reports on the status, progress and financial position of the project throughout the pre and post contract stages. These reports were presented at Management Board meetings and Cabinet Meetings which were attended by Castons to assist in answering members questions and clarifying any points raised.

This reporting mechanism provided an "executive summary", to members and officers, on project progress and exposure to risk throughout the process which was beneficial to the management of the project.

This procedure should be adopted for future large scale and complex projects.

Appointment of Contractor and Designers

A rigorous pre-qualification and tender procedure was implemented prior to the appointment of both the Consultants and Contractor.

Castons attended all interviews and contributed to the selection process appropriately.

With regard to design consultants, this process led to the appointment of GLR Architects, one of the leading consultants in the provision of wet leisure facilities in the UK.

A select list of suitable contractors was established from the pre-qualification process. This selection was made on the basis of past experience, resources and capability.

Following receipt of tenders, further interviews of the tenderers under consideration were held and a contractor selected.

In light of issues which became apparent during the contract it is considered that the review the suitability and experience of the Contractor to carry out a contract for a new Local Authority Leisure Centre did not address some points which lead to later problems. Although it was anticipated that all potential issues had been addressed by the review of the Contractor's capabilities and resources, it was subsequently identified that the construction team utilised on site did not have the in-depth experience indicated in their pre-qualification documentation and through the review process. For future large projects, a more detailed investigation of the Main Contractors and principal Subcontractors capabilities and their experience of similar projects should be carried out and, in particular, references should be obtained in connection with similar projects from previous Employers and Contract Administration/Design Teams and site visits made to view their completed work.

Suitability of Appointment Documents

A JCT Standard Form was utilised, but the Contract was significantly amended by Lawyers retained by EFDC. Whilst these amendments did not ultimately cause any major problems, they did lead to misinterpretation and confusion at the outset of the Contract. Furthermore, we are not aware of any specific benefit arising from the bulk of the amendments and we would recommend that consideration be given to the use of Standard Forms of Contract without amendment (or with minimal amendment) for future projects.

Castons were consulted about the proposed contractual amendments. Castons consider that these amendments did not substantially reduce the risk to EFDC.

With regard to the Design Consultants appointment, the appointment of a single point of contact for all services other than Cost Consultancy and Health & Safety was beneficial to the success of the project.

A review of the capability of principal Sub-consultants retained by the proposed Consultant (particularly with regard to similar projects) could have been beneficial. As the Consultant appointed for the design service will retain control over and responsibility for the other design consultants, this verification process will clearly be limited, but a request for experience and reference details should be made for future projects to cover performance, possession of appropriate skills and extent of past collaborative working on projects of a like nature. Further, the Council should be aware of the terms of appointment of Design Consultants to ensure that there is a correlation of duties with the Design Sub-Consultants appointment, and to establish whether Sub-Consultants are carrying out a full or limited service.

EFDC could not influence the appointment of the sub-consultants and indeed this would be inappropriate.

Resolution of Problems on the Contract

The use of a single point of contact for both Design Services and Construction was selected to avoid the potential pitfalls of divided responsibility and issues relating to co-ordination, particularly of design.

Overall, this route has generally proved successful and justified its selection.

1. Resolution of Design Issues

As referred to above, the resolution of design issues, in particular relating to the overheating of the Fitness Suite was not assisted by the fact that the principal parties involved in the resolution were subcontractors to both the Main Contractor and the Architect.

There are limited, if any, steps which could be taken to ensure prompter resolution of design issues in these circumstances, save for the comments made earlier in this Report, that the Client should only be prepared to deal with the principal parties, and not with the Sub-Contractor, and/or Sub-Consultant and that early resolution of problems should be more rigorously demanded.

2. Contractual Issues with Contractor

Significant problems were encountered with the resolution of the final account and extension of time issues with the Contractor.

Many of these problems arose as a direct result of the Main Contractor's own actions and desire to seek recovery for costs of their own actions. There are limited, if any steps that can be taken to preclude such an approach being taken by a Main Contractor.

Whilst not established at the outset of the Contract, and only established after a number of serious issues had arisen, a cycle of "Principals Meetings", attended by relevant key personnel from the Client, Consultants and Main Contractor, were utilised to assist in resolution of matters, and to maintain dialogue with the Main Contractor throughout. Castons would recommend that in connection with any future contract, a provision for the establishment of a regime of "Principals Meetings" should be included within the Contract procedures. These "Principal Meetings" should only be convened when necessary on each project.

The Contract allowed for reference of disputes to adjudication, which is a contractual legal entitlement, and cannot be opted out of and for further resolution of disputes, litigation was selected in the contract rather than arbitration on the advice of independent lawyers. As referred to below, subsequent to the commencement of the work, mediation became an established method of resolving disputes, and on the advice of specialist Construction lawyers, this method of dispute resolution was utilised rather than litigation as provided for in the Contract.

Whilst the option to refer disputes to adjudication was viewed during the contract as a potential problem, the monitoring of such problems and issues was beneficial in that this ensured that the design team reviewed and responded to issues appropriately and in a timely manner. This also minimised the risk that the contractor would refer any disputed issue to adjudication, together with minimising the exposure of EFDC. A similar review procedure should be implemented on future large scale projects.

Subsequent to the drafting of the Contract, mediation has become established within the building industry as a method of alternative dispute resolution and, following changes in Court procedures and recent case law precedents, is a preferred route which Parties are encouraged to undertake prior to commencing litigation.

As occurred on this project, the use of mediation as a means of resolving disputed issues will often result in resolution of a dispute more speedily than litigation and at a lower cost.

Mediation is a consensual matter, and a mediator cannot impose a resolution upon any Party. It may also be inappropriate to refer a particular matter to mediation. Castons would therefore recommend that for future contracts EFDC incorporate a mediation provision in accordance with the Court procedures. The new suite of JCT 05 Contracts which are being released during the latter half of 2005, include a non-binding reference to mediation within the contract terms, and, as Castons envisage that future projects will utilise the JCT 05 suite, this issue will not require separate incorporation into the Contract.

Conclusion

In conclusion Castons consider that:

1. The project was completed without significant Client induced variations or amendment to the original brief.
2. The Leisure Centre is operating successfully, fulfilling the Councils, Leisure Service and users requirements.
3. Generally, the methodology applied to the procurement of the project was appropriate and worked satisfactorily, avoiding some of the problems which typically affect projects of this scope, nature and complexity.

Castons consider however that this Contract has identified three principal issues that the Council should consider in terms of future large scale projects:

1. The taking of specific references supporting the verification of the Contractors abilities should be carried out prior to inclusion on the tender lists, and prior to appointment particularly relating to key personnel abilities to deliver projects of the relevant scope, nature and complexity.
2. Requirement for disputes to be referred to mediation (now dealt with by JCT Contracts).
3. Retention of Standard Contractual Clauses, whenever possible.

Signed

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Dated