

# Edinburgh trams

Update for Sue Bruce

5<sup>th</sup> Nov 1010

# Format

- Where are we now?
- How did we get here?
  - (maybe for another day)
- Where next?

# 1. Where are we now?

- 1.1 Progress
- 1.2 Contract
- 1.3 Relationships
- 1.4 PR/image
- 1.5 Governance (tie/TEL/LB)

# 1.1 Progress

- Original budget £512m
- Currently approved funding £545m
- Project spend £387m (71% of £545m)
- Utilities 97%, original budget £48m plus £11m risk, actual work nearly double original scope, (50k vs 27k) AFC £61m
- Tram vehicles 17 out of 27 complete (59%) other 10 all in production AFC £60m – on budget
- Ancilliary works (Murrayfield, Park and ride etc) 96% complete
- Infraco Contract original budget £240m, AFC?
  - Spend £120m (including advanced payments)
  - Overall progress 25.7%
    - Off street 37%
      - Depot 65%
    - On street 10%
- Other costs include project management, legal, technical, land acquisition, small business support scheme, Open for Business etc
- Work now almost stopped, some work in isolated places, especially at depot

# 1.2.1 Contract

- Fixed price lump sum, with opportunity to vary
- Design and build, but design obligations confused
- Attempt to parcel up risk and pass it on
- Ambiguous, non standard, heavily negotiated contract
  - The alleged ‘gentleman’s agreement’
  - No real effort to make the contract work, “this contract will never get a tram built”
  - Vigorous attempt to switch to a ‘cost plus’ contract
- What was included in the price, what was not?
  - Schedule part 4 pricing assumptions
  - Changes from the Base Date Design Information
  - “this was only ever a price for a 3 wheeled car”
- Do BSC have an obligation to proceed with the works where there is a dispute? (clause 80)
  - Behaviours caused by this approach, difference between BB and S
  - “this contract allows us to hold you to ransom”
- Disputes so far
- Legal advice so far
- Contract management

# 1.2.1 Changes and disputes to date

- 779 INTC (notice of claim) 779,126 withdrawn, leaving 653
- 380 estimates submitted, 185 settled, the rest rejected or not yet agreed
- Of those settled £21m paid against £41m claimed (51%)
- Of those settled through informal means, paid £11.4m vs £20m claimed (57%) (Included in above)
- At DRP (included in total) paid £9.6m vs £21m claimed (43%)
- At adjudication (as part of DRP) paid £4m vs £8.9m claimed (45%)
- DRPs shared with CEC legal, but not for public consumption, summary being produced for CEC CEO

# 1.2.2 Legal advice to date

- We have not done as well as predicted on some DRP issues, confirms ambiguity of the contract.
- DRP is by necessity a process designed to reach a solution on narrow issues, but 'not binding' can be re-opened in litigation
- Extensive use of QC advice
- Lead DLA, supported by McGrigors
- Principles
  - What was/was not included in the price? (design development)
  - What is their obligation to progress works/mitigate delays?
  - Who has caused the delays?
    - Utilities
    - Administration of the contract
    - Design

# 1.2.3 Contract management to date

- Attempted partnership working
- Mediation
- DRP to bring clarity/progress
- Robust administration
- Project Carlisle
- Preparing for the possibility of termination (does not rely on overturning any adjudications)
  - Failure to progress the works
  - Failure to manage design (SDS agreement)
  - Failure to administer the contract
  - Poor supervision/quality of workmanship
  - In total 99 separate breaches of contract



# 1.3 relationships

- CAF
- BB
- Siemens
- CEC
- LB
- TS
- Minister
- Stakeholders (see over)

# 1.4 PR

- Strategic rationale for trams has been lost in the noise
- Now a damage limitation exercise because of
  - Cost and programme uncertainty
  - Progress
- TEL
- Press relationships
- Stakeholders
- Special interest groups
- Respect for the city

# 1.5 Governance

- Tie
  - Damaged organisation (see lessons learned)
  - No long term future
  - Too disruptive to disband now
  - Needs nursing to a new place
  - Retention a real issue
- TEL
  - Move to TEL has been slow and bureaucratic, still lacks legitimacy
- LB
  - On the fence
  - In need of 'modernising'
  - Questions over governance?
  - Still some negative forces at work!
  - At a critical juncture

# TEL/LB

- TEL lacks legitimacy/ buy-in, too many terrorists
- Still those who would see it 'disappear'
- Requires strong public leadership, starting with CEC, and cross party support, a visible champion at the council, a strong chairman, and I can do the rest
- LB requires 'modernising'

2. How did we get here?

Or

Lessons from the Edinburgh tram  
project

Or

Who is to blame?

This could be for another day!

## 2.0 Key causes (not in order of importance)

2.1 lack of political unity

2.2 poor management of early stages, especially design, risk allocation

2.3 lack of buy in from key stakeholders (especially TEL)

2.5 wrong procurement strategy

2.9 underestimate of the risks (esp. utilities and design)

2.10 tie culture

## 2.1 lack of political unity

- Used by
  - Objectors
  - Third parties
  - Press
  - Individuals
- Political commitments on cost/time become 'hostage to fortune'
- Undermines the company and the project
- Leaking of sensitive information by councillors
- Who to trust? Who to inform?

## 2.2 poor management of early stages

- Design is at the root cause of many issues
  - Quality
  - Lateness
  - Approvals
  - CEC and 3<sup>rd</sup> party inputs
- Tie's consultation style
  - (especially in relation to 3<sup>rd</sup> parties)
  - On design related issues
- Procurement strategy (see later)
- Perverse incentives to sign the contract?
- Political pressure to sign?



## 2.3 lack of stakeholder buy-in

- CEO of TEL openly hostile to trams
- LB board resistant
- Lack of legitimacy of TEL
- Aggressive approach by third parties, e.g. Airport, Utility Companies, Forth Ports, Network Rail, NIL.
- Tie's style

## 2.5 wrong procurement strategy

- Too big, should be done in sections
- Too keen to pass risk to contractor, limited appetite in Scotland (only 2 bidders)
- Risk allocation causes cost, was this properly understood?
- Bespoke (ambiguous) contract
- Driven by political timetable?
- Design delays (again)
- Approvals not in place
- Poor due diligence on contractors
- 'preferred bidder' status awarded too soon

## 2.9 Underestimate of the risks

- Utilities
- Design
- 3rd parties
- Planning
- Approvals
- Disruption – respect for the city

## 2.10 Tie culture

- No organisational clarity (no OEM), make it up as we go along
- No proper governance
- Excessive use of contract staff
- High turnover of senior personnel
- No partnership ethos with other organisations (especially CEC)
- No reward and recognition policy
- Inappropriate use of bonuses (e.g. Incentivising on contract price alone)
- Expenses culture not consistent with public sector
- No culture of thrift

# 3.0 where next?

- Terminate infraco
- Close infraco
- Complete design, including all approvals (e.g. TRO)
- Produce new cost and programme targets by summer 2011
- And, in the meantime continue with some works as sensible
  - Trams
  - Depot
  - Remedial
  - reinstatement
- Return to CEC for approval once we have certainty (6+ months)
- Re-procure on a phased, sequential basis (small is beautiful)
- Delivery

# RJ

- Why did you not realise sooner that the contract was ‘unworkable’ and reach a deal
- The overwhelming advice that I was getting, both from my in-house team, and external lawyers was that the contract was workable, and that BSC were wrong in their approach. This is still not proven one way or the other.
- It is normally always best to work with the contract you have rather than renegotiate (EU Procurement) or terminate. We had to leave no stone unturned in trying to make it work
- Other than completely unsubstantiated ‘claims’ that they would need at least £80m -£100m BSC had not come forward with any reasoned argument or proposition
- To negotiate a settlement we needed to strengthen our position, and weaken theirs, reducing some of our vulnerabilities and exposing theirs.