

Edinburgh Tram Project: Status Report

Policy & Strategy Committee

24 February 2009

1 Purpose of report

- 1.1 This report informs members of the current position of Edinburgh's tram project and the status of the contract between **tie** and BSC, the tram infrastructure consortium.

2 Background

- 2.1 In May 2008 **tie** concluded a fixed price contract for the delivery of Edinburgh's tram project with BSC, a consortium of three companies; Bilfinger Berger (Construction and Civil Engineering contractor); Siemens (power systems) and CAF (rolling stock). Committee will recall that I reported to Council on 1 May 2008 on financial close and notification of contract award. A copy of that report is attached as Appendix 1.
- 2.2 Prior to financial close of the contract negotiations **tie** agreed an additional sum with BSC for completion of the tram project and, in so doing, cemented the risk allocation position agreed by client and consortium, whose three members are jointly and severally liable for its successful completion within the terms of the fixed price contract.
- 2.3 In the first phase of the tram project work has been underway under the multi utilities diversion framework agreement (Mudfa) to divert gas and water pipes and electricity and telecommunications cables away from the route of the tram lines. This has also enabled the city to update and upgrade a significant amount of its utilities infrastructure. This work is now well underway and on target to be substantially completed by July 2009.
- 2.4 A central part of the next phase of the tram project involves preparation for the laying of tram track. This involves digging a trench along the route of the tram and laying a bed on which to place the tram rails.

3 Update

- 3.1 Over the last two weeks a number of meetings have taken place at senior level between **tie** and BSC. At these meetings significant issues arose over contractual matters, financial consequences and the commencement of work which had been scheduled to start on Princes Street on 21 February 2009.

- 3.2 The **tie** Board met on 19 February 2009, when an update on the discussions with BSC was given. The Board unanimously agreed that the chairman of **tie** should write to the members of the BSC consortium insisting that they should commit to enter Princes Street and to execute works within the terms of the contract agreement and give a commitment by 12 noon GMT on 19 February 2009 to do so. No such commitment was forthcoming by the deadline stipulated.
- 3.3 On Friday 20 February 2009 **tie**, with the full support of the Council, issued the following statement:

"The Edinburgh Tram project has had to announce today [09:30] that the planned tram infrastructure work due to commence on Princes Street cannot start as planned this weekend. The ongoing utility diversion work will, however, continue and the diversion of traffic from Princes Street will still take effect from 5am on Saturday 21st February.

The decision was brought about because the Project was given 48 hours notice before the commencement of Princes Street works that the tram project consortium, BSC, comprising Bilfinger Berger, Siemens and CAF wished to impose unacceptable conditions as a requirement to start in Princes Street.

This announcement is supported by the City of Edinburgh Council, the project client, and Transport Scotland, the principal funder, is fully aware of this situation.

We will issue a further update in due course. Meantime, we will continue to work with all stakeholders over the coming days."

- 3.4 An extensive communication initiative, involving a wide range of key stakeholders, was put into place to explain the decisions taken by **tie**.
- 3.5 Discussions between **tie** and BSC have continued over the last few working days. **tie** have formally activated the Dispute Resolution Procedure within the contract. For legal reasons, it is not appropriate for me to say anything further at this point in time.

4 Traffic Diversions

- 4.1 Over recent weeks a huge effort has gone into planning for the traffic diversions necessary in the city centre. For both traffic management and contractual reasons it was decided to proceed with the traffic diversion measures over the weekend just past. The Head of Transport has reported that these changes have generally gone well. The utility diversions are continuing and the closure of Princes Street is facilitating this work

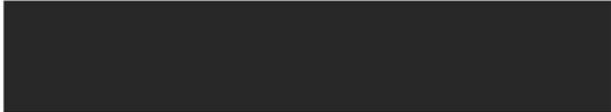
5 Financial Implications

5.1 Given the ongoing nature of the discussions between **tie** and BSC it is not possible to report at this time on the financial implications. **tie** are working within the financial parameters set by the Council and Transport Scotland.

6 Recommendations

6.1 The Policy and Strategy Committee is recommended to:

- note this update on Edinburgh's tram project and the contractual issues which have arisen between **tie** and BSC;
- strongly support the position taken by the **tie** Board; and
- note that I will ensure that the Council is kept fully informed on the contractual issues referred to in this report.


Tom Aitchison
Chief Executive

24/02/09

Appendices 1 Edinburgh Tram – Financial Close and Notification of Contract Award – report to Council on 1 May 2008

Contact/tel/Email Tom Aitchison – 

Wards affected

Single Outcome Agreement

Background Papers

Edinburgh Tram – Financial Close and Notification of Contract Award

The City of Edinburgh Council

1 May 2008

1 Purpose of report

- 1.1 To notify the Council of the progress on the suite of contracts for the Edinburgh Tram Network (ETN) and to provide an update on financial close and the capital costs.

2 Summary

- 2.1 A report updating the Council on the progress of the contractual negotiations for the ETN was submitted to Council on 20 December 2007. Delegated authority was given to me to allow **tie Ltd** to enter into contracts to deliver the ETN subject to suitable due diligence and providing any remaining issues were resolved to my satisfaction.
- 2.2 **tie Ltd** are about to conclude the contractual negotiations and have recommended to me that the contracts for the supply and maintenance of the tram vehicles (Tramco) and for the construction and maintenance of the tram infrastructure (Infraco) be awarded to Construcciones y Auxiliar de Ferrocarriles SA (CAF) and Bilfinger Berger Siemens (BBS) respectively. The contracts include the novation of the CAF and the System Design Services (SDS) contracts to the main Infraco contractor.
- 2.3 Negotiations have taken longer than expected due to the complexity and scale of contractual and related issues arising from the contract suite. There has also been a substantial amount of work undertaken to minimise the Council's exposure to financial risk with significant elements of risk being transferred to the private sector. This has resulted in 95% of the combined Tramco and Infraco costs being fixed with the remainder being provisional sums which **tie Ltd** have confirmed as being adequate. The net result of the negotiations is a final estimate for Phase 1a of the ETN of £508m. This figure secures the best deal possible for the Council and Transport Scotland, and is well within the agreed funding envelope of £545m.
- 2.4 Infrastructure construction work is planned to commence in May 2008 and Phase 1a is programmed to be substantially complete by January 2011. A period of testing, driver training and shadow running (to test the entire system meets the performance requirements) overlaps with the Construction phase. Trams will be visible running along the route during this period. Revenue

services are planned to commence in July 2011. The Final Business Case (FBC) highlighted commencement of revenue operations in Quarter 1 of 2011. The changed timescales reflect the positive work undertaken in negotiating major contracts which provide greater price certainty, reduced risk exposure and better overall quality and value for the Council and Transport Scotland.

Main report

Recent Developments

- 3.1 The required notice of intent to award the contracts to CAF (for the Tramco contract) and BBS (for the Infraco contract) was issued on 18 March 2008, following satisfactory close out by **tie Ltd** of the remaining issues required by the Council. Following the mandatory minimum cooling off period, the contracts will be signed once final due diligence on the documentation is completed by **tie Ltd** and BBS.

Financial Close and Capital Cost

- 3.2 The protracted yet progressive nature of the contractual negotiations highlight the work undertaken by **tie Ltd** and written confirmation has been received from **tie Ltd** stating that the contracts represent the best possible value to the Council.
- 3.3 The FBC aggregate estimate for Phase 1a was £498m as reported to Council on 20 December 2007.
- 3.4 Over the period of negotiations with the preferred bidder there have been changes to the overall cost of the project. The make up of the estimated cost of Phase 1a in the FBC was £498m which included base costs of £449m and a Quantified Risk Allowance (QRA) of £49m. The base cost has now increased to £476m with a revised QRA of £32m giving a final estimated cost of £508m. Firm costs represent 95% of this sum, with the remainder being provisional sums which **tie Ltd** have confirmed as being adequate.
- 3.5 The increase in baseline aggregate costs is largely due to the firming up of provisional prices to fixed sums, currency fluctuations and the crystallisation of the risk transfer to the private sector as described in the FBC. An element of change in price was expected and was included in the risk provision reported to Council on 20 December 2007 based on the assessment of the bids when the preferred bidders were appointed.
- 3.6 The revised costs are based upon the construction programme as advised by **tie Ltd** with works anticipated to commence in May 2008 and Phase 1a being substantially complete by January 2011. Revenue services are planned to commence in July 2011. **tie Ltd** continues, through its appointed contractor, to execute the work under the contract for utility diversion along the tram route on behalf of the Council and reports that this work, which is part of the authorised works under the statutory authority granted to Council under the Edinburgh Tram Acts, is progressing to programme and budget.
- 3.7 The Council approved on 20 December 2007 the draft **tie Ltd** operating agreement and delegated authority to the Council Solicitor to execute the operating agreements with **tie Ltd** and TEL on behalf of the Council. The draft operating agreements have been amended to reflect the fully up to date position including the revised date of service commencement. Provision has also been made for the Tram Project Board (TPB) to oversee all matters affecting the programme, cost and scope of the project, although TPB will have to obtain

further authorisation from the Council (or the Tram Sub-committee, as appropriate) with regard to (i) further costs increases in excess of £10m; (ii) any further delays of over three months; (iii) settlement of claims in excess of £500,000; or (iv) any substantial change to the design, scope or services pattern set out in the FBC.

- 3.8 On the 20 December 2007 Council delegated authority to the Council Solicitor to conclude and execute the Guarantee on behalf of the Council for the benefit of BBS.

Quantified Risk Allowance (QRA)

- 3.9 The QRA has reduced from £49m at FBC to £32m. The material change in the QRA relates to procurement risks for Tramco and Infraco closed out at the signing of the contracts offset by allowance to provide for risks and uncertainties to be managed by **tie Ltd** during construction.
- 3.10 A number of the adjustments to risk allocation are positive, reflected in the reduced QRA. As a result of the overlapping period of design and construction a new risk area has emerged which has been the subject of extensive and difficult negotiation. **tie Ltd** advise that the outcome is the best deal that is currently available to themselves and the Council. Both **tie Ltd** and the Council have worked and will continue to work diligently to examine and reduce this risk in practical terms.
- 3.11 A written statement from **tie Ltd** has been provided stating that they are satisfied that £32m is an adequate level of risk allowance.

4 Financial Implications

- 4.1 Following closure of procurement risks the baseline cost of the project has increased from to £449m to £476m with the QRA reducing from £49m to £32m resulting in the final price of the project increasing from £498m to £508m. The estimate remains well within the agreed funding envelope of £545m.

5 Conclusions

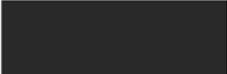
- 5.1 It is proposed that the Tramco and Infraco contracts should be awarded to CAF and BBS respectively, securing the best deal possible for the Council and Transport Scotland. The awarding of these two contracts will represent a significant milestone in the implementation of the Tram project. A significant level of risk has been assumed by the private sector considerably reducing the Council's exposure to future uncertainty. Communications about the commitment to these important contracts will be co-ordinated with **tie Ltd** and Transport Scotland.

6 Recommendations

- 6.1 It is recommended that the Council:
- note the imminent award of the two contracts with a final price for the Edinburgh Tram Network of £508m which is within the funding envelope of £545m;

- refresh the delegated powers already given, to authorise me to instruct tie Ltd to enter the contracts with Infracore bidder and Tramco bidder, in light of recent changes noted in this report;
- note that the FBCv2 which was approved by Council on 20 December 2007 is modified to reflect the above position;
- note the tie Ltd and TEL operating agreements have been amended to reflect the fully up to date position; and
- note that the Guarantee to be executed on behalf of the Council for the benefit of BBS will be provided at financial close.

**Tom Aitchison
Chief Executive**

Appendices	None
Contact/tel	Andy Conway Alan Coyle 
Wards affected	All
Background Papers	Draft tie Ltd operating agreement Draft TEL operating agreement Council Guarantee