

PERSONAL & COMMERCIALY SENSITIVE

Frank McFadden

LESSONS LEARNED FROM SDS CONTRACT

1. This note sets out my personal observations on the SDS contract covering the period from contract drafting to today based on the perspective I have had of being both inside and outside the **tie** tent and also based on the evidence trail that does exist in tie.

Design performance

2. No one disputes that design is very significantly behind where it originally should have been. Few people dispute the quality of design that has been produced – in fact, the issue is sometimes whether the design quality of some elements is gold plated and doesn't pay sufficient regard to affordability.
3. Differences in opinion arise about the causes of the delay but all of the below are undoubtedly factors:
 - flawed contract
 - poor initial SDS management
 - tie contract management practices
 - adversarial behaviour
 - CEC behaviour
 - third party negotiations
 - "do it my way"
 - looking backward not forward
 - tie/Transport Scotland dynamic
 - failure to nail issues down completely
 - lack of mutually supportive relationships
4. I have set out more detail on each of these in an annex but look at some more positive steps we have taken and can take to manage the BSC contract more successfully.
5. It is worth noting that most of these issues are people issues rather than technical or commercial in origin.

Doing things differently with BSC

6. We haven't got off to a good start with BSC – despite good intentions and some definite efforts to facilitate a joint team approach. That those efforts have not yet borne fruit is a reason to renew efforts not to withdraw into our separate camps. Independently facilitated engagement needs to continue for the respective top teams and could usefully be extended to those on both sides who will have to work together most frequently on a day-to-day basis.

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7. **tie**'s contract management practices for BSC are certainly far better than for the SDS contract. We do have much more focus on managing the relevant issues but we need to make sure that we do not try to step in to fill any gaps left by BSC – that will only lead to us always having to fill those gaps.
8. We also need clearer processes for our formal interactions with BSC and we need to make sure that everyone (whether in the Infraco team or not) understands those processes.
9. I would then put closing issues first time (and keeping them closed) as the next priority in managing the BSC contract. This requires us to make the Change Control process work and holding firm positions with CEC, TEL and Transdev all of whom have sought to re-open past issues in recent weeks.
10. I will comment separately on things we might do differently on Phase 1b and Line 3 as those comments are more suitable for wider consumption.

DPS
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SDS CONTRACT LESSONS

Flawed contract

1. Often I hear from tie colleagues (and have indeed used the line myself) "...but SDS has the contractual obligation to..." This is usually true but gets us absolutely nowhere in terms of design progress.
2. The SDS obligations include things that are legally impossible to deliver (such as TROs) and others that are practically impossible without significant support. Quite simply tie let a contract that made whole areas of the project "somebody else's problem". This reflected the skill set and interests of the then tie leadership team.
3. Getting your consultant to handle the detail of third party negotiations, seeking consents etc is a reasonable practice but the contract gave responsibility not just for the detail but for all aspects. This was doomed to be ineffective and as a result tie has had to step in with additional resource to support the process. Issues arising with key consents and key third parties should always have been owned by tie supported by SDS and legal advisers.

Poor initial SDS contract management

4. It appears that SDS got their management wrong at the start and have never fully recovered. I never met their original project manager but SDS were in a situation where they were behind programme from the very start. Jason provides a level of discipline and structure that was not there right at the start but Jason suffers too much from "do it my way" (see below) and is a competent manager rather than a leader of change. This is where we have needed Steve Reynolds. His arrival in January 2007 has made a very big difference to SDS performance.

tie contract management practices

5. At the level of the detail of managing the contract tie has not always kept complete records, issued relevant contractual notices, processed applications for payment promptly. The exercise to close out changes reveals a significant problem around completing the necessary paperwork by both tie and SDS; actions were agreed at change meetings and both sides have failed to complete by the next change meeting weeks later.
6. This was compounded by a period of very harsh and narrow management of SDS when Ailsa McGregor was the contract manager. This did nothing to create supportive relationships (see below) and provoked a similar response from SDS. I have heard people complain that SDS required instructions to breathe in and then breathe out – but the timing suggests

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that **tie** started that way of working by taking advantage any time SDS did something out of goodwill without a contractual instruction.

7. The SDS contract has also suffered from a lack of continuity in **tie** management and often a lack of attention – it has not always been possible to identify the single individual who was really responsible for managing the SDS contract. As a result SDS has at times been given conflicting “instructions” and the culture has grown in **tie** that it is fair game for anyone to ask SDS to do things and fair game for anyone to convey criticism to SDS.

Adversarial behaviour

8. Linked heavily to my previous comments on contract management, some of the behaviour shown by both **tie** and SDS has been adversarial in the extreme. This varies from the niggling to the downright offensive. One very clear lesson of the SDS contract is that shouting at a consultant to do things better does not produce results.
9. Steve Reynolds was fond of saying “who will **tie** find to blame once SDS is novated?”. Although not strictly fair there is an element of truth in this. I have seen people in **tie** and CEC choose SDS as the convenient scapegoat to cover up their own failings and/or someone on whom they can displace their own stress. Not all of this behaviour is conscious but it is very marked and is very obvious to SDS who for all their weaknesses are not stupid.

CEC behaviour

10. In Transport Scotland, Bill Reeve and I used to describe the tram project as suffering from “absent client syndrome”. CEC has only recently started to behave as if it really wants a tram project and only even more recently started to show any willingness to grapple with any of key choices that involve being a good client.
11. Despite repeated statements to the contrary by government officials and Ministers, CEC has behaved as if optional extras could be slipped into the tram project at the Government’s expense. Regularly I have heard people say that the Government’s position on funding changed in May 2007 – this has only ever been true about cost overrun over £545m. Nothing has changed below that figure – CEC has just started to believe that it has to do something.
12. CEC has persistently changed its mind, refused to make decisions, given third parties additional opportunities to re-open agreements and allowed the tail of smaller projects to wag the tram dog. In short, CEC has never behaved like the tram is the biggest project that Edinburgh will see in 50 years.

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13. Privately at least, someone should convey to CEC that their approach to planning matters in particular has cost a large amount of time and money. It has not been in SDS's interests to seek judicial review of the way in which CEC has approached planning matters but I wouldn't want to bet against SDS if they sought to demonstrate in court that CEC had unreasonably withheld and delayed consent on tram stops. The goalposts have moved so many times we are not even playing the same sport any more.

Third party negotiations

14. Failure to close out 3rd party negotiations has dogged this project and has undoubtedly prevented SDS from completing design. We can look to the contract all we like to say that SDS is responsible for managing these issues but that has never been realistic and neither **tie** nor CEC has been willing to give SDS a free hand.

“Do it my way”

15. At various times different people in SDS, tie and CEC have all been guilty of being convinced that there is only one way to do things – “my way”. From observation this has typically come from people who frame the problem narrowly to fit how they understand the world – but there are few narrow problems with a project as complex as the tram.

16. In the face of the complexity and enormity of the tram project people in leadership positions cannot afford to take a simplistic view of problems. The result of this has been people turning the handle on the sausage machine without understanding. This works on aspects of the project that are going well but flounders completely in the face of some of the difficult problems – and the typical result has been adversarial behaviour.

17. In short it is necessary to break the project down into little pieces to understand the pieces but too many people in both SDS and **tie** have failed to put the pieces back together again and have not understood that a complex project is more than the sum of its parts.

tie/Transport Scotland dynamic

18. The tie/TS dynamic has not always helped. TS has not always been sufficiently clear about its goals and requirements in return for funding and **tie** at times sought to step around TS's requirements. As a result there were lengthy debates about governance that delayed improvements in governance. That proved a distraction to efforts to focus on better performance from the design contract.

Failure to nail down issues completely

19. The most striking thing about getting to grips with the detail of the tram project has been the very large number of issues that (a) never get

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completed and (b) are allowed to come back once they have allegedly been closed.

20. Failure to close out issues completely has been a characteristic of all the organisations involved in the project. It has been particularly frustrating to discover that in many cases everyone agrees what the right answer is but no one has completed the necessary project documentation to give effect to that agreement. At best that has left scope for confusion and at worst has allowed people to change their position and deny that they ever agreed to the earlier position.
21. Bringing issues back from the dead has mainly been a CEC behaviour although TEL has been guilty of it as have individual technical people who haven't liked the solution to a particular problem. In my view CEC's failure to decide what the tram is for and then make that stick has been the biggest single cause of deadlines being missed and cost increase on the project – particularly in the SDS contract but actually throughout the whole of the scheme.

Lack of mutually supportive relationships

22. Projects are fundamentally a people business but that regularly gets forgotten in technical detail.
23. Few parties to the project demonstrate mutually supportive behaviour. Certainly members of the **tie** leadership team have at times been quite happy to criticise other members of that team to and in front of other **tie** staff and SDS. I am not an advocate of closing ranks completely but the level of "public" disagreement is not healthy.
24. SDS has felt unappreciated by **tie** and the individual members of their team have taken it very personally. They have drawn together in the face of adversity and demonstrated signs of siege mentality but that drawing together has cut them off from **tie** until David Crawley and I consciously built bridges with key SDS team members.