

## 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 two suite of major 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 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 two 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 contract.
- 2.3 Negotiations have taken longer than expected due to the complexity and scale of legal issues regarding the contract. 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. [INCLUDE A COMMENT ON THE COMMISSIONING PHASE WHEN TRAMS WILL BE VISIBLY RUNNING PRE REVENUE ? SUSAN TO MAKE A SUGGESTION] Revenue services are planned to commence in July 2011. The

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

## Main report

### Recent Developments

- 3.1 The statutory notice to award the contracts to CAF (for the Tramco contracts) and BBS (for the Infraco contract) was issued on 19 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 BBS.

**Comment [MSOffice1]:** Don't think its statutory -- it is driven by procurement regulations ? Andrew F to comment

### 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 25 October 2007.

**Comment [MSOffice2]:** Alan, this was also the number approved in December, so it might be better to refer to the later date.

- 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, ~~changes to the employers requirements,~~ currency fluctuations and the ~~achievement crystallisation~~ of the risk transfer to the private sector as described in the FBC. Changes in price were expected and were included in the risk provision reported to Council on 25 October 2007.

**Comment [MSOffice3]:** Need to be careful here -- we must be accurate because of the interests of the under-bidders

**Comment [MSOffice4]:** See above

- 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 to execute the work under the contract for utility diversion along the tram route on behalf of the Council and reports that this work is progressing to programme and budget.

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**Comment [MSOffice5]:** I suggest we refer to MUDFA as it is an integral part of the construction, explains what is currently happening and is going well.

- 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 and TEL on behalf of the Council. The changes noted above have required to be reflected in the operating agreements with **tie ltd** and TEL.

- 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. The latter has requested the granting of a certificate in terms of the Local Government Contracts Act 1997.

**Comment [MSOffice6]:** Does this need explanation for the Councillors ?

### 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. The significant changes from FBC are as follows:

- Reduction of £24m reflecting the removal of major elements of the procurement stage risks in the negotiated base costs.
- Reduction of £3m reflecting the removal of other risk items into the negotiated base costs.
- Increase of £10m to provide for risks and uncertainties to be managed by tie ltd during construction.

3.103.9 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 The baseline cost of the project has increased from to £449m to £476.5m 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 The Tramco and Infraco contracts are intended to 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 development of the Tram project. A significant level of risk has been assumed by the private sector in line with the procurement strategy set out in the FBC and considerably reducing the Council's financial exposure.

#### 6 Recommendations

6.1 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.

6.2 The Council confirm/refresh the delegated powers given, to which authorise me to instruct tie ltd to enter the contracts with Infraco bidder and Tramco bidder, in light of the matters recent changes noted in this report.

6.3 To note that the FBCv2 which was approved by Council on 20 December 2007 is modified to reflect the above position.

6.4 To note the tie and TEL operating agreements have been modified to align with the changes/matters highlighted in this report.

6.5 To delegate powers to the Council Solicitor to grant a certificate in support of the Guarantee in favour of BBS.

Comment [MSOffice7]: As above, I'd prefer if this detail were more limited

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**Tom Aitchison  
Chief Executive**

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<b>Appendices</b>	None	
<b>Contact/tel</b>	Andy Conway	0131 [REDACTED]
	Alan Coyle	0131 [REDACTED]
<b>Wards affected</b>	All	
<b>Background Papers</b>	None	