
From: Duncan Fraser
Sent: 08 May 2008 14:00
To: Nick Smith
Subject: RE: Report on Terms of Financial Close (4)

Negotiations on going and we expect a figure to be agreed today/tomorrow with a sign off next week.

From: Nick Smith
Sent: 08 May 2008 08:50
To: Duncan Fraser; Andy Conway; Alan Coyle; Rebecca Andrew
Cc: Colin MacKenzie
Subject: RE: Report on Terms of Financial Close (4)

I don't know what the outcome was from Germany yesterday, but I know that Gill wanted to ensure that tie closed out all the remaining issues noted by the B team below. Any idea how these are progressing?

Kind regards

Nick

Nick Smith
Senior Solicitor
Legal Services Division
City of Edinburgh Council
City Chambers
High Street
Edinburgh EH1 1YJ

(t) 0131 [REDACTED]
(f) 0131 [REDACTED]

From: Nick Smith
Sent: 06 May 2008 12:05
To: Duncan Fraser; Andy Conway; Alan Coyle; Steve Sladdin; Stephen Hajducki; Colin MacKenzie; Rebecca Andrew
Subject: RE: Report on Terms of Financial Close (4)

Please see comments in blue below. All the others are not strictly for Legal, but clearly have to be satisfied by Fin Close.

Was the issue re storage of trams by CAF as commencement is now delayed sorted (may have been a non-issue in any event if they just build them later)?

Kind regards

Nick

Nick Smith
Senior Solicitor

Legal Services Division
 City of Edinburgh Council
 City Chambers
 High Street
 Edinburgh EH1 1YJ

(t) 0131 [REDACTED]
 (f) 0131 [REDACTED]

From: Duncan Fraser
Sent: 02 May 2008 17:47
To: Nick Smith; Andy Conway; Alan Coyle; Steve Sladdin; Stephen Hajducki; Colin MacKenzie; Rebecca Andrew
Cc: Dave Anderson; Marshall Poulton
Subject: Report on Terms of Financial Close (4)

please give me your comments on this based on our discussions and advise me by tuesday PM please

Report on Terms of Financial Close (“Closed Report”) Draft v 28.04.08

Comments by CEC 30 April 08

| Item | Comment | Proposal | Action | tie Comments |
|-------------|--|--|--|--|
| 2.2 | Programme inconsistent with version 31 and confirmation | Modify to comply with 31 and be consistent with Mudfa programme rev 6 | Confirm all parties have agreed to V31 and any date revisions are made | V31 will be contained within the SDS novation agreement. Any variance between V26 and V31 which has an impact on the BBS programme will be dealt with through the contract change process. at whose risk is the change - if tie/cec is this risk catered for in QRA? |
| | Risk of delay to Infraco and Mudfa is this adequately taken account of | Review the risk allocation/mitigation | Report on outcome of risk and cost/time | BBS programme based on V6 of MUDFA. Continual reviews of MUDFA programme to avoid conflicts with Infraco undertaken by tie. This evaluation has been consistently evaluated & updated in the QRA CD TO CONFIRM HAPPY |
| 2.3 | ER Requirements have only been partially considered according to the DLA letter 28 March section 1.2 | Clarification of the core conditions and any gaps identified between contract and ER | Review risk implication to CEC | DLA have undertaken a legal review to ensure that within Within the Infraco Contract there is a contractual mechanism for precedence of T&C's over the ER's in the event of ambiguity and for tie to instruct how any |

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| | | | | ambiguity or inconsistency is dealt with. tie do not anticipate any significant risks to CEC in this respect. ARE CD HAPPY WITH THIS? |
| 2.4 | it appear that BBS have not considered the detailed proposal rather assume what is reasonable-reference DLA letter 28 March | This exposes contract to risks which can be closed out by BBS | BBS to agree to all third party agreements | All relevant 3 rd party agreements are contained within Schedule 13 of the Infraco Contract & BBS are (i) obliged to carry out certain identified obligations in stepped down third party agreement (ii) required to avoid putting tie /CEC in breach of these commitments provided these commitments are normal/ foreseeable by an experiencedexperienced contractor. THIS STILL DOES NOT GUARANTEE COMPLIANCE WITH THOSE AGREEMENTS WHICH DLA HAVE ONLY "SAMPLED". TIE WERE ASKED IN JANUARY TO CLOSE OUT THIS ISSUE. |
| 2.4 (4) | Every thing that can be done has been done to mitigate risk of procurement challenge | Risk still exists | Accept? | For CEC to consider based on tie report NEEDS TO BE CONSIDERED IN LIGHT OF PROPOSED RECENT CHANGES |
| 5 | Third Party risk assessment only related to construction risk | Recommend the potential impact on operation of the tram be identified e.g. Bridge | Tie to note this as part of the risk assessment | There remains a <u>very</u> low risk that residual agreements will not be agreed prior to operation. tie is creating a plan for completion of these agreements to ensure that they are in place well in advance of operation |
| 5.5 | tie can use its tram powers | Can progress without SRU agreement thus enabling SfC to put in place their new policy on payment of TM | Confirm latest position | SRU agreement will be concluded by end May. |

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| 5.18 | Gyle and Gogar Underpass | Potential for conflict between programme and retail needs of the Gyle | Clarify and confirm there is adequate cover either for delay in programme or compensation | tie confirm that there is sufficient risk allowance for this scenario. |
| 5.23 | Bridge Agreement | operational risk and the later this is concluded the more difficult CEC position for negotiation with the new form of agreement | Close out agreement with possible support from TS | See comment for clause 5 above |
| 5.24 & 5.25 | No signed off | CEC to sign | Close out issue | These have both been signed by the 3 rd parties and are with CEC for signature. |
| 6 | Clarification from BBS on land required for construction as it assumed that all land bought to date meets design requirements | BBS to advise | Tie to close out matter with BBS | Schedule 31 of the Infraco contract contains all the land drawings which identify the land being made available under the Tram Acts and temporary sites and sites and this has been agreed by BBS. <u>TIE SHOULD CONFIRM THAT LAND ACQUIRED IS SUFFICIENT FOR PROJECT</u> |
| 8.4 | Review risk associated with consents and approvals on the basis of SDS delivery of programme to date and in relation to programme 31 | Tie re-assess risk £3.3m risk is this adequate? (it is noted that there is a £6.6m general risk cover) | Does SDS design and consents risk cover require to be increased? | tie's view is that risk allowance is sufficient <i>DO CEC AGREE WITH THIS ASSESSMENT? GIVEN DELAY TO DATE IT IS FORSEEABLE THAT FURTHER DELAY COULD HAVE MAJOR COST IMPACT</i> |
| 5.2/7.1 | Risk costs of delay seem to vary perhaps because of mitigation factors £6.6m = 2/3 months £3.3m = 3 months | Clarify evaluation of risk cost | review | These are 2 different costs. The £6.6m deals with the entire programme moving out by 2-3 months. The £3.3m deals with BBS costs for standing time and other prolongation costs. <i>NOT SURE I UNDERSTAND THE DISTINCTION - THIS ISSUE IS WHAT THE</i> |

| | | | | <i>COST OF DELAY IS AND WHETHER IT IS APPROPRIATELY CATERED FOR IN TERMS OF RISK</i> |
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| 8.3 | Picardy Place | All costs within tie provisional budget –all other items listed have a CEC or FP budget | confirm | Contained within provisional sums – close report to be amended. |
| 9.4 | Mudfa impact on Infraco requires clarification including buy in from stakeholders | Agree a deliverable and TM acceptable programme | Assess impact on Mudfa and/or Infraco | Ongoing reviews of MUDFA will be taken with Stakeholders to ensure no conflict with InfraCo. |
| 9.6 | Issue have arisen at several locations | Review process in place | Confirm change in process | tie has received CEC letter and confirm reviews underway |
| 9.8 | Coverage of OCIP to be confirmed | Agree with Margaret Rae | Achieve acceptable cover | Meeting set up with Margaret Rae & Heath Lambert for week commencing 5 th May |
| 10 | Infraco Suite | Gill to confirm DLA and tie reports provide adequate cover for CEC Tramco Bond Information missing | Report to Directors (Finance, Corp. and CDD) | tbc <i>GL TO CONFIRM</i> |
| <u>Appendix 1</u> | | | | |
| 44 | LB transfer to TEL | Check tax liability | Report on tax efficient out come | Tax matters will be considered with all other issues when transfer is being considered. <i>PRESENT WORDING NEEDS CHANGED TO REFLECT THAT IT MAY BE A BUSINESS/ASSET TRANSFER AS OPPOSED TO SHARES</i> |
| 44 | Andrew Holmes | Change to D Anderson | correct | Noted |
| 45 | Tie provides services to TPB and CEC | review | Amend as necessary | Noted <i>PLEASE CHANGE TO SHOW TIE IS PROVIDING SERVICE TO CEC</i> |
| 46 | Tie's role is to provide a service to its client, in this case TEL | Please review | Correct if necessary | Noted <i>PLEASE CHANGE TO SHOW TIE IS PROVIDING SERVICE TO CEC</i> |
| <u>DLA Matrix</u> | Revised version | Provide a list of revisions and impact | Advise on any necessary changes in cost or risk | Changes are explained in DLA letter. No change to QRA |

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| <u>DLA letter</u> <u>28 March</u> | Consents | 7.1 beyond the cumulative caps there is adequate cover in the £508m and taking account of prolongation costs | Please advise | Above the cap of £1m in respect of delay caused by SDS failure during design permitting process, CEC will be liable exposed to prolongation claims except of course where there is deficient design where BBS is exposed for the first £10 million on each and every event. There is adequate cover in the QRA for this. NEEDS FURTHER EXPLANATION ON EXACTLY WHAT CEC/BBS LIABLE FOR? |
| | ER | 1.2 Limited legal reviews | This should be comprehensive | ER's are a technical document. DLA have undertaken a legal review to ensure that within Infracore there is a contractual mechanism for precedence of T&C's. See above. <u>tie dot tie</u> does not anticipate any significant risks to CEC in this respect. |
| | Third Party Consents | 6.1 What are the recommendations to tie and have these been enacted Have BBS agreed to all these agreements | What impact have these on the contract if any | <u>tie</u> has a matrix outlining all obligations and responsibilities to ensure the tie/CEC obligations are managed to avoid programme/cost impact – See commentary at end SEE ABOVE |
| <u>Report on Infracore Suite</u> | ER | DLA cannot give legal assurances regarding current contents of ER and their consistency with Infracore core terms | Does this increase the risk allowance (discrepancies) and can this not be close out? | Do not anticipate any risk in this. This is not an assurance that can be sought from tie's legal advisers. |
| <u>QRA</u> | Contract negotiations | Advise on changes to contract through negotiations and the implications for QRA | Have there been any changes and if so cost | QRA & close report reflects appropriate provisions for risk given the risk remaining with public sector as a result of negotiations |
| <u>Critical</u> | Documents | Provide final | Complete | |

| <u>Contractual Decisions spreadsheet</u> | OCIP | documents for closure Cost implication of extension of contract period | documentation Is this contained within budget? | Yes |
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Third Party Agreement steps down into Infraco;

In summary:

202 Agreements or undertakings exist

47 are stepped down into Schedule 14

70 are dealt with under INFRACO's COCP Obligations – NO ACTION REQUIRED

10 are already within SDS Design Scope – NO ACTION REQUIRED

45 have no obligation on INFRACO – NO ACTION REQUIRED

15 relate to Phases 2 or 3 – NO ACTION REQUIRED

9 Utility Agreements exist and will be stepped varied once Infraco instructed to divert residual utilities

4 Agreements (RBS, FP, SRU & Stanley Casinos) are in Schedule 13, but not in their final form– RECOMMEND INCLUDING AT LATER STAGE

2 Are covered off under Bill Amendments – NO ACTION REQUIRED

WHICH ARE THE AGREEMENTS WHICH WERE NOT SHOWN TO BIDDERS AND WHICH WERE SAMPLED BY DLA?