

EDINBURGH TRAM PROJECT REPORT ON TERMS OF FINANCIAL CLOSE (“CLOSE REPORT”)

FOR THE ATTENTION OF THE TRAM PROJECT BOARD, TEL BOARD AND TIE BOARD

DRAFT v10 28.04.08

Purpose of report

The principal contractual commitments to be entered into at Financial Close are :

- Infraco Contract Suite – incorporating Infraco and Tramco construction / supply and maintenance ; Tramco and SDS Novation ; security documentation ; ancillary agreements and schedules including Employer’s Requirements. A comprehensive list of the documents to be entered into by tie is included as an Appendix to this report
- Council Financial Guarantee
- Grant Award Letter
- Operating Agreements between the Council and respectively tie and TEL

Various important agreements with third parties have also been completed or are in substantially agreed form.

Two documents have been prepared to provide a comprehensive view of the principal terms of the contracts and related documents which are being committed to at Close. This report from tie provides information across a number of key areas. A parallel report from DLA covers the content of the Infraco contract suite including the legal underpinning to the final contract positions, addressing specific CEC concerns. The DLA Report is a separate document in order to protect the confidentiality of the legal advice offered to tie and CEC. Specific issues of interest to CEC are addressed in each document.

A reasonable degree of prior knowledge is assumed. A draft version was reviewed at the meetings of the TPB, tie Board and TEL Board on 23rd January 2008 and the approvals below were granted on that date. The delegated structure has been implemented.

It is understood that the Council will prepare appropriate papers for its own approval purposes, specifically to support the provision of delegated authority to the tie Executive Chairman to execute the contracts. The Council will also require to confirm its approval of the Grant Award Letter and the Financial Guarantee in addition to the contracts which will be entered into by tie.

TPB	approval of terms of Infraco and all related documents including note of main open areas, recommendation to TEL on those terms and on the proposed delegated authority to approve and sign ; approval of governance and delegation paper
TEL	approval of terms of Infraco and all related documents including note of main open areas, recommendation to Council on those terms and the proposed delegated authority to approve and sign ; acknowledgment of terms which will be assigned to TEL in due course ; approval of the TEL Operating Agreement and; approval of governance and delegation paper
Tie	approval of terms of Infraco and all related documents as basis for commitment, including note of main open areas; acknowledgement of the proposed delegated authority to approve and sign ; approval of the tie Operating Agreement ; approval of governance and delegation paper

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(1) Introduction

The significant stages in the project to date include :

April 2003	Ministerial approval of initial Business Case and grant award
December 2003	Finalisation of STAG and submission of Bills to Parliament
May 2004	Commencement of early operator involvement with Transdev
October 2005	Commencement of design work under SDS
April / May 2006	Royal Assent to Tram Bills
October 2006	Award of Multi Utility Diversion Framework Agreement to AMIS
April 2007	Commencement of utility diversion work under MUDFA
May / June 2007	Change of government and re-confirmation of project
October 2007	OGC Gateway 3 Review
October 2007	Final Business Case for fully integrated system approved by CEC
December 2007	Resolutions to proceed approved by CEC
December 2007	Mobilisation & advance works contracts awarded to Tramco & Infracore
April 2008	Financial Close – construction and vehicle supply

Although there have been several key events, the completion of the contract suite which commits delivery of the system is highly significant in terms of the scale of commitment and the definitive nature of the programme to complete the project.

To reach this stage has involved close collaboration over a number of years between the Council, TEL and the Council along with principal consulting and contractual partners. Throughout, progress has been monitored by the Project Board and the Council and TEL Boards, with full Council approval at key stages. Until mid-2007, Transport Scotland (and predecessor departments) played an active role in the project, since then a more arms length role has been played but crucially this has supported the commitment to the majority of the funding.

In addition to the routine involvement and monitoring of progress by stakeholders through the governance procedures, the project has been cleared through periodic Gateway Reviews, under the Office of Government Commerce rules and executed by experienced external assessors. A further independent review of the project was performed by Audit Scotland in June 2007, following which the principle of the Scottish Government's grant award was confirmed.

The balance of this report summarises the main features of the project and its supporting documentation as a basis to assess readiness for commitment. More detailed information is available on every aspect on request, subject to commercial confidentiality.

(2) Infraco contract suite

The DLA Report provides extensive commentary on the development and final content of the Infraco Contract Suite.

The narrative below addresses three fundamental areas :

- Price
- Programme
- Scope

A section has also been included to address the interface between the Infraco contract Suite and the agreements with third parties relevant to construction.

THE MATERIAL IN THIS SECTION IS COMMERCIALY CONFIDENTIAL AND FOISA EXEMPT.

2.1 Summary Pricing Statement – Infraco and Tramco

The following table summarises the final pricing for Infraco and Tramco in the context of the budget provisions made in the Final Business Case.

	£m
Infraco	
Negotiated Infraco Price	233.5
Other items / adjustments (see 8.2 below)	5.0
Net other items in Infrastructure budget	5.3
Total budget required for infrastructure	243.8
<i>Increase in Base Cost compared to FBC</i>	<i>17.8</i>
<u>Tramco</u>	
Negotiated Tram Supply Price	55.0
Other items (see 8.2 below)	3.0
Total budget required for Tramco	58.0
<i>Increase in Base Cost compared to FBC</i>	<i>6.6</i>

The increase in Base Costs for Infraco is a result of a negotiated position on a large number of items including the contractual interfaces between the Infraco, Tramco and SDS contracts and substantially achieving the level of risk transfer to the private sector anticipated by the procurement strategy. It also reflects capital expenditure required on lifecycle related costs including mobilisation of the maintenance teams and acquisition of spare parts.

The increase in Base Costs for Infraco of £17.8m approximates closely to the allowance which was made in the FBC for procurement stage risks i.e. the increase in Base Costs which might have been expected to achieve the level of price certainty and risk transfer which has been achieved.

The increase in Base Costs for Tramco results from lifecycle related costs required and, significantly, a material weakening of Sterling against the Euro in the period between Preferred Bidder appointment and the fixing of the exchange rate in late December following FBC approval.

A simple reconciliation of the total Risk Allowance for the project between FBC and Financial close is:

	£m
Risk Allowance in FBC	49.0
Risks crystallised in contract costs :	
Infraco	(17.8)
Tramco	(6.6)
Other risk items now in base cost	(2.2)
 Increase in Phase 1a risk estimate deemed necessary as a consequence of previous increases and taking cognisance of updated QRA	 9.9
 Risk Allowance at Financial Close (see 8.6 below)	 <u>32.3</u>

The total Phase 1a project cost budget is settled at £508m, of which £133m has been incurred by 31st March 2008.

2.2 Summary of Programme – Infraco and Tramco

The critical milestones are :

Contract Award	April 2008
Commence on site (demolitions)	April / May 2008
Commence on Street Works	August 2008
Commence Princes Street Blockade	January 2009
Decision on 1b	By March 2009
Take Delivery of 1 st Tram	March 2010
Complete Depot & Test Track	March 2010
TRO made	April 2009
Construction substantially complete	January 2011
Commence Shadow running	April 2011
Edinburgh Tram Line 1a Open for Revenue Service	July 2011
Line 1b Open for Revenue Service (if instructed)	January 2012

This programme has been developed around key assumptions and constraints such as:

- Operation within Construction Code of Practice working hours
- Compliance with embargoes affecting key city centre and Forth Ports areas
- Design and approvals early start constraints
- MUDFA diversion early start constraints
- Critical BBS skill resource constraints (e.g. track welders / Overhead line staff)

The most significant of these are outlined below:

Design and Approvals relationship with INFRACO Construction Programme

The SDS design and approvals programme (including CEC and other 3rd Party approvals e.g. Network Rail) has been used during the development of, and to agree, the INFRACO Programme.

There are a number of areas where the Design and Approvals Programme is the early start constraint for INFRACO, principal amongst these are:

- Section 1A: Forth Ports area
- Section 2A: Haymarket Viaduct
- Section 5A Structures at Roseburn / Murrayfield
- Section 5B Balgreen Road, Carricknowe Bridge, South Gyle Access Bridge
- Section 5C A8 underpass
- Section 6 Depot
- Section 7A Gogarburn Structures

Sections which link to the critical path within 1 month are:

Section 1A:	Forth Ports area
Sections 1B, 1C, 1D	Track
Section 5A	Structures at Roseburn / Murrayfield
Section 5B	Carricknowe Bridge
Section 5C	A8 underpass
Section 6	Depot

Tie has clear visibility of these critical path linkages and is actively managing their delivery within the management processes described in Appendix 1.

MUDFA relationship with INFRACO Construction Programme

The MUDFA Rev06 programme has been used during the development of and to agree the INFRACO Programme.

There are a number of areas where MUDFA is the early start constraint for Infraco, principal amongst these are:

- Section 6: Depot
- Section 2A: Haymarket Junction
- Section 1C: Princes Street, Picardy Place and St Andrews Square
- Section 1A Ocean Terminal – Newhaven & Ocean Drive at Victoria Bridge

The sections which link to the Construction Critical Path within 1 month are:

Section 6	Depot
Section 2A:	Haymarket Junction
Section 1C:	Princes Street, Picardy Place and St Andrews Square

TRAMCO relationship with INFRACO Programme

The TRAMCO design, manufacture, testing and commissioning programme has been used during the development of the INFRACO programme and has been fully interfaced with the Infraco programme.

2.3 Scope of works – Employer’s Requirements

The scope of the project is defined in the Employer’s Requirements Schedule to the main Infraco contract and the stated scope has been aligned to the contractor’s proposal defining the construction approach and to the scheme design prepared by Parsons Brinckerhoff. This interlocking set of detailed documents combine to form the scope of the project in contractual terms.

The Employers Requirements (ERs) are a comprehensive set of specifications which set out the project obligations and responsibilities against which the construction consortium (BBS) must comply. It runs to some 650 pages and sits as a schedule within the Infraco contract. The document has evolved as the business case and design has been developed and reflects the inputs of the key ‘user’ stakeholders such as the Council, TEL and Transdev as well as the requirements of the Tram Design Manual and CEC design guidelines.

The document contains sections relating to how the project as a whole is to be delivered (for example project management, testing and commissioning and maintenance) as well the detailed systems and equipment requirements. The document was issued as part of the ITN package. Because it is essentially a procurement specification, wherever possible (and appropriate) tie have avoided being prescriptive and detailed because this would limit the freedom of bidders to propose their own specific, competitive solutions.

Since preferred bidder award, all of the ER terms have been reviewed in a three way technical alignment process:

- BBS proposal → ERs.
To ensure that BBS proposals comply with the ERs. This has involved removing all of the stated non-compliances noted at the preferred bidder stage by either relaxing the ER clause (without affecting the output requirements) or by updating the proposal to make it compliant. Commercial alignment of the ERs and the Infraco proposals has been concluded.
- SDS design → ERs
Because the SDS Design had responded to an up to date though not final draft of the ERs, the final alignment process produced no material mis-alignment issues. The final alignment review identified potential mis-alignment which was documented and assessed for its cost and programme implications and some minor amendments were agreed.
- Proposal → SDS design
To ensure that in areas where the ER terms allow flexibility in approach, it was necessary to ensure that the BBS proposed solution was consistent with the SDS design. A review of the final Proposals against the SDS design was executed and again some minor amendments were agreed. The main issue was the extent of road reinstatement and adequate allowance has been made in the final budget to accommodate this factor.

In addition to these processes the ERs have also been reviewed in varying degrees of detail by three legal teams, DLA, BB’s lawyers and Siemens lawyers (because a far larger part of the ERs relate to Siemens scope). In these cases the ERs were checked for consistency and alignment with the contract suite. All evident ambiguities, duplications and gaps have been dealt with to ensure that as a vital contract document it can be used effectively in the future.

The tie team is confident that the final version of the ERs, the contract version fully meets the requirements of the client, i.e. is consistent with the technical principles of final business case; and is consistent with both the SDS design and BBS proposals.

2.4 Interface of Infraco with relevant third party agreements (“3PAs”)

During the process of preparing the parliamentary Bills and their passage to Royal Assent, a number of agreements were reached with third parties which affect or could affect tram construction. The objective of these agreements was to mitigate risk that construction could be impeded while accommodating all reasonable requests from the third parties. These arrangements are common in any major project of this type. The commitments entered into were reflected as follows :

- commitments in the Act and related documents (CoCP, Noise & Vibration policy etc)
- 3rd party formal legal agreements
- letters to 3rd parties

Although the legal status is different, it would be tie’s objective that the commitments are fulfilled.

There are broadly two groups of agreements – those major agreements where the terms have been stepped down into the Infraco Contract Suite (and which BBS have reviewed) ; and those which are independent of Infraco. The stepped down terms are covered by the full protection against breach implicit in the Infraco contract. The risks from the independent agreements are covered by a general obligation by Infraco not to put tie in breach so long as the terms of the independent 3PAs are reasonable in the context of a normal construction process.

The terms of the agreements and their relationship to the Infraco Contract Suite were the subject of a review by DLA which has been summarised and reported to CEC. Nine Utility Agreements exist but are not stepped down into Infraco and four other agreements (with RBS, FP, SRU & Stanley Casinos) are stepped down into Schedule 13, but not in their final form as these agreements are not yet signed.

Infraco are likely to undertake some utility diversions where MUDFA are unable to do so. This will be instructed as a tie change. At the same time the nine agreements with utility companies will be varied into Infraco as these are required for the implementation of such works.

The final RBS, Forth Ports, SRU and Stanley Casino agreements will be varied as a tie change once completed. There is low risk in that either budget provision has been made for these items or additional funding is being provided by that 3rd party.

(3) Grant Award Letter

Transport Scotland will provide up to £500m of the total capital cost and the balance will be provided by CEC, which has initially allocated £45m for this purpose. The source of these funds is a matter for the two funders. The Government grant is documented in an award letter which is specific to the project but follows standard terms for grants under S70 of Transport (Scotland) Act 2001. CEC has identified a range of sources and an independent review confirmed the validity of the assumptions made by the Council.

The programme concentrates on Phase 1a initially and the parties have the opportunity to commit to Phase 1b before 31 March 2009 on pre-agreed terms with BBS. During 2008-9, an assessment will be made of funding availability to support Phase 1b. Government contribution will not exceed £500m under the current arrangements.

Grant will be drawn down pro rata with Council contribution. The amounts of grant available in each financial year will be capped, with the balance of any undrawn grant added to the sum available in 2010-11. There are detailed arrangements for payment approval and audit.

With the contributions agreed, the pro rata drawdown mechanism becomes an accounting process each 4-week period and within tolerances will not create any difficulty. The annual capping does have potential to create difficulty, but it is felt there is sufficient tolerance in the spend plans versus funding availability that this limitation is manageable. The funding position will be actively managed and CEC anticipate receiving recovery from Transport Scotland for any interest cost incurred if borrowing is necessary to meet contractual commitments beyond the funding available from Transport Scotland in a particular period.

The terms of the grant letter are weighted in favour of the awarding body and fall short of the sort of protection which a borrower would seek from a commercial lending bank. This is however normal and the Council are satisfied that the terms of the award offer sufficient protection bearing in mind the relationship between Government and the Council.

The letter was negotiated with TS by tie and Council Finance and Legal officials with comment from DLA. See Section 7 for taxation assessment.

(4) Risk of procurement challenge

This section contributed by Jim McEwan, who performed a review of procurement process integrity independent of the main procurement team.

The legal advice provided to tie and CEC is summarised in the DLA Report.

Summary

Over the last 12 months tie has pursued the procurement of both the Infraco contract for the construction and maintenance of the Tram infrastructure in its entirety and the Tramco contract for the supply, delivery and maintenance of the Tram vehicles. The focus of the procurement strategy was to deliver fixed price contracts for each.

The process followed for each contract was consistent with that specified by the EU directive on Public procurement and details of the evaluation methodology employed are outlined below.

The Bilfinger Berger and Siemens (BBS) consortium have been duly awarded preferred bidder status for the Infraco contract.

CAF has been awarded preferred bidder status for the Tramco contracts.

In the event of any challenge to these awards tie is well placed to successfully defend the fairness and integrity of the process undertaken in the selection.

Opportunities have been provided for de-briefing on the procurement to unsuccessful suppliers for both Tramco and Infraco. This was undertaken on 4th April 2008 with one further Tramco debrief to be arranged. No further action is expected from any bidder.

The BBS consortium are in the process of finalising arrangements to include CAF in the consortium. In principle, tie is content that this should happen and indeed the concept was acknowledged at the time of preferred bidder selection, though with CAF Novation being the required approach to support Financial Close. Tie and DLA are monitoring the BBS / CAF arrangements to ensure that no perception of a change in bid terms could be construed.

Infraco

The Evaluation Methodology employed by tie in the Tram Project is detailed in a document dated 8th January 2007 'Evaluation Methodology for submissions in response to the invitation to negotiate issued on 3rd October 2006 for the procurement of the Infraco for Edinburgh Tram Network' .

In the process 6 key areas were identified in the evaluation and a stream leader appointed to each :

- Financial
- Programme and Project Execution Proposals
- Project Team and Resources
- Technical and Design proposals
- Legal and Commercial
- Insurance

Evaluation team members were identified in the methodology together with stream leaders for each of the key areas

Each team was charged to prepare a 'consensus' score matrix on each of the key areas, these have been duly completed and lodged in the central document repository.

Proper probity on the process was maintained with financial information being restricted to only those in the finance stream and to the tie executive team.

Security employed on maintaining confidentiality was consistent with best practice with documentation stored in a locked room and the financial documentation stored in a locked cabinet within the room. (Note: The details of the financial bids were only available to those in the Financial stream, the evaluation of the other streams was therefore carried out without prejudice on costs.)

All meetings with Suppliers were documented and the notes of said proceedings are held in the central repository.

Financial position was reviewed as was the normalisation process which ensures bids are viewed on an equal footing basis

Tramco

The Evaluation Methodology employed by tie in the Tram Project is detailed in a document dated 11th October 2006 and titled Tramco Evaluation Methodology.

The process employed was identical to that employed in the Infraco evaluation as detailed above with 6 streams and the same methods of approach on scoring, confidentiality, probity and security. All required documents have been lodged in the central document repository.

(5) Third Party Agreements

This section contributed by Alasdair Sim, who took the lead role developing the agreements. A second (and consistent) view on risk is provided by Stewart McGarrity in Section 8.

In addition to the principal Infraco Contract Suite, there are a number of agreements which are of varying significance to Financial Close. This section describes the purpose and status of these agreements, together with an assessment of the level of risk to programme / cost arising from the agreements remaining open at the date of Financial Close.

THE AGREEMENTS ASTERISKED ARE REGARDED AS THE MOST IMPORTANT IN RELATION TO REACHING A ROBUST POSITION AS AT FINANCIAL CLOSE.

The agreements addressed in this section are as follows :

- 5.1 Edinburgh Airport Limited - Licence *
- 5.2 Edinburgh Airport Limited – Lease *
- 5.3 Edinburgh Airport Limited – Operating Agreement
- 5.4 CEC/tie Licence *
- 5.5 SRU Agreement
- 5.6 Royal Bank of Scotland Agreement
- 5.7 Local Code of Construction Practice – Forth Ports *
- 5.8 Local Code of Construction Practice – New Edinburgh Limited *
- 5.9 Local Code of Construction Practice – Edinburgh Airport *
- 5.10 Network Rail Asset Protection Agreement *
- 5.11 Network Rail Depot Change *
- 5.12 Network Rail Station Change *
- 5.13 Car Park Compensation Agreements
- 5.14 Network Rail Framework Agreement *
- 5.15 Network Rail Lease & Servitude Agreements
- 5.16 Forth Ports Agreement
- 5.17 Stanley Casinos Agreement
- 5.18 Other Site Specific Code of Construction Plans
- 5.19 Licence – The Gyle
- 5.20 Licence – West Craigs
- 5.21 Network Rail – Neighbour Agreement
- 5.22 Network Rail – Operating Agreement
- 5.23 Network Rail – Bridge & Bridge Lease Agreements
- 5.24 Telewest utility agreement
- 5.25 Scottish Power utility agreement *
- 5.26 DPOFA 2007 Revision
- 5.27 Mobilisation agreements (Infraco and Tramco)

5.1 Edinburgh Airport Limited - Licence *

Purpose of Agreement

This is a licence agreement between Edinburgh Airport Ltd and City of Edinburgh Council, the purpose of which is to enable/facilitate the construction of the Edinburgh Tram within the boundary of Edinburgh Airport. This agreement covers MUDFA and INFRACO works as well as the construction of the Burnside Road alternative access route, and sets out the working arrangements between EAL, tie/CEC and contractors working on the Edinburgh Tram Network.

Current Status of Agreement

The agreement is signed. This agreement has been drawn down into Schedule 13 of the INFRACO Contract.

5.2 Edinburgh Airport Limited – Lease *

Purpose of Agreement

This is a 175 year lease between Edinburgh Airport Limited and City of Edinburgh Council to facilitate the operation of the Edinburgh Tram Network. This lease follows the terms of the Minute of Agreement signed by the two parties during the Parliamentary process in September 2005.

Current Status of Agreement

This agreement is signed.

5.3 Edinburgh Airport Limited – Operating Agreement

Purpose of Agreement

The purpose of the operating agreement is to set out operational interface arrangements and procedures for running passenger services to and from the airport. This agreement will be an evolving document which will be updated periodically during the lifetime of the project.

Current Status of Agreement

An outline document is current under review by tie and TEL. The intention is to develop this document into draft agreement form during the first quarter of 2008, and complete the agreement prior to commencement of passenger services.

Risk to INFRACO Contract Award

The Operating Agreement is a non-construction related document and the risk to award of INFRACO Contract is considered low.

5.4 CEC/tie Licence *

Purpose of Agreement

The purpose of this licence is to pass over responsibility for land acquired for the ETN from CEC to tie. This will enable tie to manage the process of making land available to INFRACO on a programme/needs basis using the agreed Land Access Permit Procedure. CEC will manage the land/asset until the point that INFRACO take occupation of each worksite.

Current Status of Agreement

The agreement is signed.

5.5 SRU Agreement

Purpose of Agreement

This agreement governs design and construction activities in the vicinity of the Murrayfield Stadium. The agreement includes the construction of the Murrayfield Tram Stop, Roseburn Street Viaduct, Murrayfield Stadium Retaining Wall, the Wanderers Clubhouse remodelling, access accommodation works and the relocation of the training pitches. The agreement also sets out the requirement to develop a local construction plan which the INFRACO contractor will be obliged to comply with. This includes arrangements in relation to the temporary occupation of land within the Murrayfield site. The draft SRU agreement has been stepped down into Schedule 13 of the INFRACO Contract.

Current Status of Agreement

The last important outstanding matter related to the S75 agreement, which CEC intend will replace the current Section 50 agreement and it is tie's understanding that this matter is now resolved. All residual minor matters are in process of being finalised and it is not anticipated that there will be difficulty in concluding the agreement..

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of Murrayfield in June 2008. Risk to award of INFRACO Contract is considered low.

5.6 Royal Bank of Scotland Agreement

Purpose of Agreement

This agreement builds upon the existing Section 75 Agreement signed in 2002 between RBS and CEC which committed RBS to fund the design, procurement and construction of the Gogarburn Tram Stop. The current proposal is for the INFRACO contractor to undertake the works within RBS land under licence, and sets out the procedure for CEC to later acquire the operational land based on the 'as built' (and at nil cost) using the GVD process. The agreement also covers the desire of RBS to maintain the landscaping between the Gogarburn Tram Stop and the A8 Glasgow Road.

Current Status of Agreement

The agreement is currently in draft format, with finalisation expected on completion of the detail design, as this will allow final costs for the tram stop to be calculated. RBS have provided written confirmation that access to the land will be secured under licence.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of Gogarburn from mid-2009. Risk to award of INFRACO Contract is considered low.

5.7 Local Code of Construction Practice – Forth Ports *

Purpose of Document

The existing Minute of Agreement between Forth Ports and CEC requires the development of a Local Code of Construction Plan to govern how the construction works are to be undertaken within the Forth Ports area. This would include method statements, programme details and consultation/notification requirements to be agreed prior to the commencement of construction. The Forth Ports Minute of agreement is included with Schedule 14 of the INFRACO Contract.

Current Status of Document

tie and BBS are currently drafting a local COCP with Forth Ports and have reached agreement with Forth Ports on the general approach to construction in the Leith Docks area. tie meet with the Forth Ports Project Manager on a weekly basis and will continue to evolve the local construction plan as certainty on programme is established.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the Forth Ports area from November 2008. MUDFA works will recommence in the Leith Docks area following the Easter embargo period from April 2008, and is currently being undertaken on a work by works licence basis, which contains the relevant elements that INFRACO will include within the final Local Code of Construction Practice document.

Forth Ports, tie and BBS have been undertaking preliminary discussions around programme and approach to construction. Forth Ports have expressed a willingness to work with BBS to have the works completed in the Leith Docks area as quickly and seamlessly as possible. As a result, the risk to award of INFRACO Contract is considered low.

5.8 Local Code of Construction Practice – New Edinburgh Limited *

Purpose of Document

The existing Minute of Agreement between New Edinburgh Ltd and CEC requires the development of a Local Code of Construction Plan to govern how the construction works are to be undertaken within Edinburgh Park. This would include method statements, programme details and consultation/notification requirements to be agreed prior to the commencement of construction.

Current Status of Document

tie and BBS are currently drafting a local COCP for Edinburgh Park and have consulted with Edinburgh Park Management Ltd and New Edinburgh Ltd on programme and approach to construction. NEL have confirmed in writing their acceptance of the construction programme.

Risk to INFRACO Contract Award

INFRACO works (track) are expected to commence in Edinburgh Park from June 2008, with construction of the Edinburgh Park Station Bridge commencing in August 2008. NEL have confirmed their acceptance of the programme and as a result, risk to award of INFRACO Contract is considered minimal.

5.9 Local Code of Construction Practice – Edinburgh Airport *

Purpose of Document

The licence between EAL and CEC sets out construction requirements in Schedule Part 5 – Development Rights and Obligations. This agreement has been drawn down into Schedule 14 of the INFRACO Contract.

Current Status of Document

tie and BBS are currently drafting a local COCP based on the obligations set out in Schedule Part 5 of the EAL Licence Agreement. tie meet with the EAL Project Manager on a four weekly basis and are currently working with EAL to ensure that tram construction activities integrate with other works ongoing within the Airport. EAL are content with the approach and tie/BBS will continue to evolve the local construction plan as certainty on programme is established

Risk to INFRACO Contract Award

INFRACO works are expected to commence in September 2008. Positive engagement between EAL and BBS is ongoing and as a result, risk to award of INFRACO Contract is considered low.

Network Rail (NR) agreements – general

The suite of NR agreements comprises the following :

- Asset Protection Agreement
- Station & Depot Change (NR with the Train Operating Companies)
- Framework Agreement
- Lease and Servitude Agreements
- Neighbour Agreement
- Bridge Agreement and Lease
- Lift & Shift Agreement
- Immunisation

5.10 Network Rail Asset Protection Agreement *

Purpose of the Agreement

The APA is an agreement between NR and CEC which governs design/construction activities as well as access to Network Rail land. The APA is designed to ensure that the heavy rail network can operate in tandem with the construction and commissioning of the ETN.

Current Status of Agreement

The APA has been signed.

Risk to INFRACO Contract Award

This allows INFRACO to undertake works on NR land and there is consequently no material risk.

Additional comment provided by DLA

The Asset Protection Agreement with NR has been concluded. This has been an arduous process, however the outcome is a document which achieves significant commercial improvements for tie/CEC on what was originally offered by Network Rail. The arrangement is nevertheless heavily tilted in Network Rail's favour, as is inevitable given the starting point of the biased regulatory template agreements. The main improvements secured have been:

- *Significant widening of the circumstances in which tie can recover money from Network Rail;*
- *Reasonableness in Network Rail actions and ability to refer to the Infraco ETN Suite form of Dispute Resolution Procedure;*
- *Dilution of indemnities given by tie to Network Rail to a mutually acceptable level.*

The unreasonable position taken by Network Rail regarding the indemnities contained in the Protection Provisions Agreements (entered into to remove Network Rail's objection to the tram scheme) delayed closure for a considerable time. This has now been resolved to restrict the scope and duration of this indemnity, particularly during construction.

5.11 Network Rail Depot Change *

Purpose of Document

This is a regulated process between Network Rail and First ScotRail, the operator of the Haymarket Light Maintenance Depot. Depot change is the process which defines the revised lease arrangements which will be required as a result of the tram construction and operation. This procedure also defines the methodology of undertaking works in the vicinity of the Haymarket Depot and sets out the interface requirements of the Depot Manager. A key requirement of FSR is that only one contractor (at a single work site) will be permitted to conduct works within the depot area at any given time. BBS, NR and First ScotRail are working together to ensure that this requirement can be met.

Current Status of Document

The formal submission of the Depot Change (by NR) to FSR was completed on 11/01/08. The regulated process allows for a maximum review period of 45 calendar days for comments to be submitted. FSR notified NR on 04/03/08 of their acceptance of the Depot Change proposal. The confirmed Depot Change Proposal was sent to the ORR for ratification on 07/04/08.

Risk to INFRACO Contract Award

INFRACO works at Haymarket Depot are scheduled for commencement after completion of the NR Pollution Prevention Works Contract (PPLMD). tie, BBS and NR are currently working to integrate the two programmes in order to minimise the risk of delay to INFRACO. At present, NR expect the PPLMD works to be completed at the end of September 2008, with INFRACO works scheduled to commence on the Roseburn Street Viaduct in January 2009. The Risk to award of INFRACO Contract is therefore considered low.

5.12 Network Rail Station Change *

Purpose of Document

This is a regulated process between Network Rail and First ScotRail as the operator of Haymarket Station. The Station Change procedure also requires the consent of the other Train Operating Companies (TOC's) using the station and these are; First Cross Country, Virgin, Trans Pennine Express, National Express East Coast and EWS.

The station change concerns the permanent loss of 49 parking spaces at Haymarket Station Car Park and the temporary closure of the car park as a result of the construction of the Haymarket Viaduct and Tram Stop, as well as the relocation of taxis currently operating from the forecourt of station.

Current Status of Document

NR formally submitted the Station Change proposal to FSR on 16/01/08, which triggers the start of the 45 calendar day consultation process which ended on 01/03/08. FRS notified NR on 04/03/08 of their acceptance of the Station Change proposal. The confirmed Station Change Proposal was sent to the ORR for ratification on 07/04/08.

Risk to INFRACO Contract Award

As the Station Change proposal has been accepted by FSR and the other train operating companies who use Haymarket Station, the Risk to award of INFRACO Contract is considered minimal.

5.13 Car Park Compensation Agreements

Purpose of Document

The loss of income generating car park spaces at Haymarket Station is a compensation matter for both NR and FSR. Under Station Change, FSR receives a standard indemnity from Network Rail to cover losses, so the commercial arrangements can be negotiated separately and do not form part of the Station Change approval process.

Current Status of Document

FSR have confirmed that the compensation formulae adopted for the Platform Zero settlement will be used as a basis for this negotiation, reflecting the duration of the FSR franchise. An estimate of the likely compensation to NR has been prepared with input from the District Valuer. tie's internal calculations on this basis indicate that the final compensation settlement is likely to be within the current budget allowance. .

Risk to INFRACO Contract Award

The compensation settlement to both NR and FSR are commercial arrangements which have a budget allocation within the FBC and are not part of the Station Change approval process. There is therefore minimal risk to the award of the INFRACO contract.

5.14 Network Rail Framework Agreement *

Purpose of Agreement

This is an overarching document beneath which reside a suite of construction, property and operations related agreements.

Current Status of Agreement

The Framework agreement has been approved and signed by Network Rail management and legal advisors and is with CEC for signature.

Risk to INFRACO Contract Award

The agreement is not construction related and therefore represents minimal risk to award of the INFRACO contract.

5.15 Network Rail Lease Agreements & Servitudes

Purpose of Document

Two leases are proposed, the first; with NR as landlord is a 175 year lease to allow operation of the ETN on NR owned land. The second lease is with CEC as landlord and allows NR to use the relocated car park at Haymarket Depot. The servitude agreements for Balgreen Road and Haymarket Station allow NR rights of access to the railway and NR owned infrastructure over CEC owned land.

Current Status of the Agreements

The documents are in agreed and final form. The tram lease does not become active until after construction and commissioning have been completed, and is suspensive on the execution of an Operating Agreement with Network Rail.

Risk to INFRACO Contract Award

These documents are not construction related, so the Risk to award of INFRACO Contract is insignificant.

5.16 Forth Ports Agreement

Purpose of Agreement

The original "Minute of Agreement" between CEC and Forth Ports was signed in February 2006 and sets out a range of requirements for the SDS design in key areas of Forth Ports land. A variation of the Minute of Agreement was documented in Heads of Terms in November 2007. The variation related to changes requested by FP to the design which will be funded by Forth Ports.

Current Status of Agreements

The commercial principles are agreed and progress is being made toward concluding the agreement. The transfer of land from Forth Ports to CEC will be part of the FP contribution to the project, and this is part of the existing Section 75 agreement.

Risk to INFRACO Contract Award

This agreement should not impede signing of the Infraco contract.

5.17 Stanley Casinos Agreement

The Stanley Casinos side agreement is also design dependent and is in agreed form and takes cognisance of the revised junction and access proposals at the Constitution Street/Ocean Drive junction. The agreement will also include provision for remodelling the Casino car Park. There is no risk to award of the INFRACO Contract.

5.18 Other Site Specific Code of Construction Plans

Purpose of Documents

As part of the suite of side agreements drawn down into Schedule 14 of the INFRACO Contract, there is a requirement in several agreements for the contractor to develop a local construction plan or CoCP as part of the notification/consultation process in advance of the works commencement. The relevant agreements are:

- USS
- Safeway/Morrisons
- Murrayfield Indoor Sports Club
- ADM Milling
- Ocean Terminal
- Royal Yacht Britannia
- Baird Drive Residents (Community Liaison Group undertaking)

Current Status of Documents

tie and BBS have prepared a suite of drafts setting out the construction related requirements of the relevant side agreements.

It is notable that the construction requirements laid down in these side agreements generally relate to those aspects of site working such as confirmation of programme, maintenance of access during the works, pedestrian management, dealing with dust/noise, site cleanliness, reinstatement of property etc, that one would normally expect a competent contractor to be cognisant of.

Risk to INFRACO Contract Award

All relevant 3rd Party agreements are detailed within the INFRACO contract in Schedule 13. The requirements on Infraco are entirely in line with normal construction practice and the risk to CEC for award of the INFRACO contract is considered low.

5.19 Licence – The Gyle

Purpose of Document

The licence arrangements are intended to allow the MUDFA and INFRACO contractors to undertake the works within Gyle owned land prior to permanent acquisition. In agreeing to undertake this work under licence, CEC will be able to meet the terms of the existing side agreement whereby permanent land take is to be minimised. At this stage in the design process, SDS cannot define with certainty the extent of the operational land. The proposal made to The Gyle is therefore to defer permanent acquisition until this certainty is available.

The acquisition of the 'as built' operational land will eliminate the risk of not meeting the obligations of the side agreement. The existing side agreement already makes provision for a licence to undertake works.

Current Status of Agreement

The Gyle have accepted the proposal to construct the works under licence. Works to relocate utilities outside the LOD at The Gyle commenced on 21 April 2008, with the main INFRACO works scheduled to commence in August 2008. It has now been agreed that the works will be undertaken under two licences. The first is in agreed & final form and allows for utilities works to take place outside the LOD. A letter from CEC was issued to The Gyle on 21 April 2008, confirming that the utilities licence will be signed by CEC within 3 working days. The second licence will cover the main INFRACO works. There is currently a conflict with the programming of the works on the A8 underpass, elements of which are scheduled to take place over the Christmas Shopping period. INFRACO are obliged under the Gyle Side Agreement to develop a works method statement (to be agreed with The Gyle) which seeks to avoid works causing disruption to businesses in The Gyle during the peak retail periods.

Risk to INFRACO Contract Award

BBS, tie and The Gyle will work to develop an appropriate solution to the current programme issue in advance of commencement of the INFRACO works. Although there is no material risk to the award of the INFRACO contract, the programme revision is being addressed as a priority.

5.20 Licence – West Craigs

Purpose of Document

The licence will allow the INFRACO contractor to undertake the works within West Craigs owned land prior to permanent acquisition. In agreeing to undertake this work under licence, CEC will be able to meet the terms of the existing side agreement whereby permanent land take is to be minimised. At this stage in the design process, SDS cannot define with certainty the extent of the operational land. The proposal made to West Craigs is therefore to defer permanent acquisition until this certainty is available.

The acquisition of the 'as built' operational land will eliminate the risk of not meeting the obligations of the side agreement. The existing side agreement already makes provision for a licence to undertake works.

Current Status of Agreement

The licence to undertake the works on West Craigs land was incorrectly executed by West Craigs. The engrossed document has been returned unchanged and tie has been informed that it is now signed by West Craigs and is available for CEC signature. Works to relocate the 800mm water main at Gogar Depot will commence on 28 April 2008.

Risk to INFRACO Contract Award

INFRACO works are expected to commence on the proposed licence site from January 2009. There is no risk to award of the INFRACO contract.

5.21 Network Rail – Neighbour Agreement

Purpose of Agreement

This agreement sets out the benefited and burdened property between CEC and Network Rail land. This agreement ensures that access to the railway network across tram land is maintained at specified points, and defines the various structures supporting the adjacent heavy rail property.

Current Status of the Agreement

The neighbour agreement is in agreed and final form and does not get signed per se, but rather the agreed burdened property plans are registered with The Keeper (Registers of Scotland). This will happen after the framework agreement is finalised.

Risk to INFRACO Contract Award

The Neighbour Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

5.22 Network Rail – Operating Agreement

Purpose of Agreement

The purpose of the operating agreement is to set out operational interface arrangements and procedures for running tram passenger services adjacent to the railway line. This agreement will be an evolving document which will be updated periodically during the lifetime of the project.

Current Status of Agreement

A draft is current under review by tie and TEL. The intention is to develop this document into draft agreement form during the third quarter of 2008, and complete the agreement prior to commencement of passenger services.

Risk to INFRACO Contract Award

The Operating Agreement is a non-construction related document and the risk to award of INFRACO Contract is considered low.

5.23 Network Rail – Bridge Agreement & Bridge Lease

Purpose of Agreement

The purpose of the Bridge Agreement and Bridge Lease is to allow operation of the ETN and set ongoing maintenance and operational responsibilities for the Carrick Knowe and Edinburgh Park Station Bridges, as these structures interface directly with the heavy rail network. The APA governs the construction of these bridges.

Current Status of Agreement

The framework agreement sets out that NR and CEC will work together, both acting reasonably, to develop a post construction Bridge Agreement. CEC will not be exposed to future network enhancement costs in relation to bridges.

Risk to INFRACO Contract Award

The Bridge Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

5.24 Telewest utility agreement

Purpose of Agreement

The purpose of the Agreement is to set out how the diversion of utilities owned by Telewest are to be managed during the MUDFA works.

Current Status of Agreement

The contract has now been signed by Telewest and is with CEC for signature.

Risk to INFRACO Contract Award

This is a MUDFA related agreement, and as a result it offers insignificant risk to CEC for award of the INFRACO Contract.

5.25 Scottish Power utility agreement

Purpose of Agreement

The purpose of the Agreement is to set out how the diversion of utilities owned by Scottish Power are to be managed during the MUDFA works.

Current Status of Agreement

The agreement has now been signed by Scottish Power and tie and is with CEC for signature.

Risk to INFRACO Contract Award

This is a MUDFA related agreement, and as a result it offers insignificant risk to CEC for award of the INFRACO Contract.

5.26 DPOFA 2007 Revision

A negotiation was concluded with Transdev to amend the DPOFA signed in 2004. The process is now complete and the principal agreed changes relate to :

- Improved performance bond underpinning both mobilisation and operating obligations
- Alignment with Infraco contract where previous drafting was based on anticipated Infraco terms
- Scope revised to reflect the Phase 1a / 1b configuration from the originally anticipated Lines 1 and 2
- Revisals to KPI performance regime based on up to date commercial view.
- Replacement of original tram revenue incentive mechanism with a reduced cost recharge, reflecting a fully integrated bus and tram system
- Alignment of insurance arrangements under OCIP
- Obtained tram cost synergy savings with introduction of TEL being responsible for transport integration

5.27 Mobilisation agreements (Infraco and Tramco)

The pre-close mobilization agreements with Infraco and Tramco are designed to enable works necessary to maintain programme. The agreements are The Advance Works and Mobilisation Contract ("AWM") and Tram Advance Works Contract ("TAW").

The core of the AWM is that Infraco will perform a schedule of works with payment determined by "Agreed Element Estimates" agreed by the parties in respect of each element of work.

The AWM does not overlap with the Infraco Contract because, when the Infraco Contract is entered into, the AWM automatically terminates. The Infraco Contract therefore deals with payment and other terms relating to advance works underway at that time. The TAW works similarly, in that it ends automatically when the Tram Supply Agreement is entered into.

(6) Land acquisition arrangements

Purpose of process

The process of assembling land required for the construction and operation of the Edinburgh Tram Network has been managed using a combination of Compulsory Purchase (using the General Vesting Declaration Procedure), and entering into long term lease arrangements with Network Rail and Edinburgh Airport Limited.

Current Status of Agreement

By financial close, the position in regard to Land available to INFRACO is as follows:

Nature Of Land	Land Area (sqm)	Available to INFRACO	Land Take Achieved	Target Date	No Plots
Pre GVD	498	Yes	0.1%	Nov-05	3
GVD 1&2	177467	Yes	21.0%	Feb-07	43
GVD 3	167854	Yes	19.9%	Jul-07	22
GVD4	43323	Yes	5.1%	Sep-07	19
GVD5	2381	Yes	0.3%	Dec-07	5
GVD6	83588	Yes	9.9%	Dec-07	17
Licences	24885	Yes	2.9%	Jan-08	14
BAA Licence	18388	Yes	2.2%	Nov-07	17
NR APA	42480	Yes	5.0%	Feb-08	37
Forth Ports (S75)	80293	Yes	9.5%	Mar-08	51
Adopted Roads	202521	Yes	24.0%	Achieved	78
	843679		100.0%	Total	306

Of the total land required, 85.5 % is under the control of CEC through ownership or license, a further 9.5% is committed under Forth Ports existing S75 agreement with the balance of 5% subject to the Network Rail APA agreement which has now been signed.

Land required but outwith Limits of Deviation

In a number of areas, land is required, mostly for temporary access, which is outwith the LoDs laid down in the Acts. These have been reviewed and can be summarised as follows : it is concluded that there is minimal risk of disruption to the programme.

Works Outside LOD Summary

Status of Land	No.	Risk of Access Problem
Within Adopted Road (Covered by Roads & Streetworks Act)	131	Nil
CEC Owned Land (Covered by CEC/tie Licence)	55	Nil
Forth Ports Land (Agreement for tram land transfer as contribution signed)	15	Nil
Covered by signed Licence or Agreement	19	Nil
Licence proposal agreed as yet unsigned *	2	Very Low
More design detail required but Low Risk	12	Low
	234	

The asterisk refers to West Craigs and The Gyle licences which are addressed in Section 5.

The residual 12 locations have been specifically addressed and it has been concluded that there is minimal risk of disruption to the programme.

(7) Governance & corporate arrangements

7.1 Governance & delegations

The Governance model deployed to oversee and control the project has evolved as the project itself has moved through different stages of development. Appendix 2 is a detailed paper which was approved by the Boards on 23rd January 2008 and which has been updated to reflect the final position as at Financial Close. The paper sets out :

- 1) the proposed governance model for the construction period ; and
- 2) the proposed levels of delegated authority

The paper is an update of previous submissions to the Boards and differs only in two material respects – the inclusion of specific levels of delegated authority and alignment with the terms of the tie and TEL Operating Agreements (see below). Neither of these factors should cause concern : the levels of delegated authority are in line with those previously deployed by the TPB and the terms of the operating agreements have been subject to significant scrutiny by senior people over recent months.

7.2 Operating agreements

These agreements are now in final agreed form.

tie

The tie agreement was previously reviewed by the tie Board in December 2007 and the changes since then are in line with the request made by the tie Board. The tie agreement supercedes the existing agreement on matters relating to the tram project and sets out tie and the Council's mutual responsibilities for delivering the tram project.

TEL

The TEL agreement reflects TEL's role but the detailed wording is consistent with the tie agreement. The TEL agreement sets out the specific authority delegated to it by the Council with acknowledgement that TEL will sub-delegate its authority to the TPB.

These internal agreements have been settled, where possible, taking account of DLA Piper's advice to tie and CEC in relation to (i) their acceptability as evidence of agency authority to transact and (ii) their potential adverse impact on the project's strategy towards competition law.

7.3 Taxation

Advice has been taken from PwC on two principle areas :

- 1) The tax effect of the Infraco contract suite structure ; and
- 2) The VAT status of the grant funding

The main objective in tax planning has been to ensure that the arrangements were VAT neutral such that there would be no irrecoverable input VAT and that no unforeseen output VAT would require to be accounted for. We have a formal report from PwC addressed to tie, CEC and TEL confirming this. We have also engaged with HMRC and have a clearance letter from them confirming that the objective is achieved. The contract structure has also been assessed by PwC to ensure that it will be possible in due course to establish a cost base in TEL by either selling or leasing system assets owned by CEC which will create corporation tax shelter in TEL. This could prove very valuable over the operating period of the integrated system.

(8) Risk assessment of in-process and provisional arrangements

This section contributed by Stewart McGarrity, who reviewed those areas of the documents which are provisional in nature and the documents which will be in draft form at Close.

THE MATERIAL IN THIS SECTION IS COMMERCIALY CONFIDENTIAL AND FOISA EXEMPT.

8.1 Overview

tie's approach to identifying and managing risks was fully explained in the Final Business Case. This section reviews the current status of the risks relating to the Infraco and Tramco contracts which have been identified as wholly or partly retained by the public sector beyond Financial Close which are:

- The process for granting of approvals and consents;
- The process for granting of permanent TRO's
- The interface with the implementation of utility diversion works
- Delays to design approvals for reasons outside the control of the Infraco
- Stakeholder instructed design changes

Specific areas covered are:

- Price certainty achieved through the Infraco and Tramco contracts with a view on items included in the contract price which will remain provisional at Financial Close
- Specific exclusions from the Infraco contract price
- Responsibility for consents and approvals

And as an area of particular concern to stakeholders:

- The risks associated with significant 3rd Party Agreements not concluded in full at Financial Close.

8.2 Price certainty achieved

The Tramco price agreed at £55m is a fixed sum in pounds sterling for the supply of trams. The overall capital costs estimate for Tramco also includes fixed sums totalling £3.0m for mobilisation costs associated with the maintenance contract and items of equipment for the depot which will be paid prior to the commencement of operations.

The Infraco price of £233.5mm comprises

- £227.0m of firm costs
- less £12.9m of Value Engineering initiatives taken into the price with the agreement of BBS but with qualifications attached
- plus £19.4m of items which remain provisional at Financial Close.

A thorough risk appraisal has been carried out on the deliverability of the Value Engineering initiatives with reference to the qualifications which attach to them. As a result a prudent allowance of £4m has been made against the possibility that for certain items these qualifications will not be removed (of which £2m has been included in the base cost estimate for Infraco and £2m has been included in the overall risk Allowance for the project).

Provisional items comprise a defined list of 22 Items each with a clear process for and programme for resolution. The estimate for each item has been reviewed by tie's technical consultants and by BBS and the risk of understatement is considered to be low. The most significant items are a £6.3m allowance for civil works, including utilities, at Picardy Place as the design for the approved layout is not yet complete. (the cost of the actual tramway, tram stop and associated works at Picardy Place are included in the firm element of the price) ; £3.1m in respect of works which may be carried out on behalf of 3rd parties (eg Forth Ports) and which are recoverable from those third parties and a £5.0m allowance for Urban Traffic Control works (traffic lights) associated with the implementation of the project.

The overall capital cost estimate for Infraco includes a further £5.0m, comprising £2.6m for maintenance mobilisation (as for Tramco), and £1m for major spare parts based upon a schedule of prices provided by Infraco and a £1.0m provision for known design changes at the Airport tram stop yet to be included in the Infraco price and £1.4m for other items for which the status or procurement method are yet to be finalised.

8.3 Infraco price basis and exclusions

The Infraco price is based upon the Employers Requirements which have been in turn subject to thorough quality assurance and the significant areas where post contract alignment of the SDS design will be required. Crucially the price includes for normal design development (through to the completion of the consents and approvals process – see below) meaning the evolution of design to construction stage and excluding changes if design principle shape form and outline specification as per the Employers Requirements. The responsibility for consents and approvals is further considered below.

Significant exclusions from the Infraco price are items not included in the Employers Requirements in respect of (responsibility for securing incremental sources of funding in brackets):

- Additional works at Picardy Place, London Road and York place (CEC)
- Additional works at Bernard Street (CEC)
- Full footway reconstruction in Leith Walk (CEC)
- Additional works in St Andrew Square outwith the tram alignment (CEC)
- Changes within the Forth Ports area (Forth Ports)
- Any other scope required by third parties not already included in the Employers Requirements by virtue of a commitment in an existing agreement

Full details of all significant such matters have been summarised and reported to CEC. In particular, the cost of tapered OLE poles in the City Centre and Waterfront areas has been provided in the fixed cost.

8.4 Responsibility for consents and approvals

As previously tie/CEC will retain the risk associated with the process of obtaining TROs and TTROs (some for TTROs post-Service Commencement which are Infraco's responsibility). Full provision has been made in the Risk Allowance for the possible costs associated with a legal challenge to the TRO process which it is not anticipated will include a formal public hearing.

As fully detailed in Appendix 1, for all other required consents and approvals (either design or construction related) the principles which apply are:

1. Infraco (including SDS) will bear any costs and programme consequences associated with design quality and constructability for all consented and/or approved design.

2. in respect of consents and approvals outstanding at Financial Close, tie/CEC will bear any incremental construction programme cost consequences of SDS failure to deliver design outputs in a timely and sufficient manner to the consenting or approving authority insofar as the cost is not recoverable by Infraco from SDS under a capped liquidated damages provision or can otherwise be mitigated by the Infraco.
3. tie/CEC will bear the incremental cost and programme consequences associated with a delay in granting consents or approval having received the required information in a timely and sufficient manner and/or the cost and programme consequences of changes to design principle shape form and outline specification (as per the Employers Requirements) required to obtain the consent or approval.

Taking due cognisance of all mitigations described in Appendix 1, the Risk Allowance (see 8.6 below) includes provisions totalling £3.3m for delays associated with outstanding design work at Financial Close in addition to a £6.7m provision for general programme delay.

To clearly delineate responsibility and therefore risk allocation the Infraco contract and associated schedules, including the SDS Novation Agreement, clearly defines in detail and in a manner agreed by Infraco, SDS and tie/CEC:

- The necessary consents and approvals already obtained at Financial Close
- The remaining consents and approvals and whether the information to obtain such rests with Infraco or SDS
- The expectations with regard to quality of information including compliance with relevant law and regulation
- The programmed dates for delivering information and obtaining the necessary consents and approvals consistent with achieving the overall programme for the project

The role of tie in this complex process is to carefully manage the programme of delivery and take mitigating action as necessary to avoid any cost or programme implications from slippage on individual items. tie also retains responsibility for obtaining specific items including obtaining NR possessions which align with the construction programme agreed with Infraco.

The Risk Allowance does not provide for the cost or programme consequences associated with a wholesale failure of this process – see QRA alignment & Risk Allowance below.

8.5 3rd Party Agreements

There are three groups of residual third party related risks :

- EAL – there is a legal matter to resolve around a future redevelopment of the Airport terminus area. This issue and some contract alignment issues are described in the DLA Report and are not anticipated to create any material risk. .
- NR – a number of mostly programme related risks arising from the NR agreements which are in the normal course of business for doing business with NR. The QRA covers for these in the general delay provision
- Forth Ports - risk that the contribution to extra construction costs of their revised design requirements as capped in their agreement proves to be insufficient to cover the costs. However, tie is comfortable that there will be no material overrun and that the underlying design is sufficiently clear to both parties that future dispute risk is minimal. In the final analysis, resort can be had to imposition of the original design to force an acceptable result.