

# DRAFT

## Edinburgh Tram Contracts Acceptance

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The City of Edinburgh Council

20 December 2007

### 1 Purpose of report

- 1.1 To seek approval of Final Business Case version 2 (FBCv2) prepared by **tie** for the Edinburgh Tram Network.
- 1.2 To seek approval for the award by **tie** of the contracts for the supply and maintenance of the infrastructure works (Infraco) and tram vehicles (Tramco) subject to price and terms being consistent with the Financial Business Case.
- 1.3 To seek approval of the governance arrangements of the Tram through completion of the above contracts, commissioning and commencement of integrated transport operations.

### 2 Summary

- 2.1 A detailed report recommending approval of the Tram Final Business Case version 1 was presented to Council on 25 October this year. This is materially unchanged from the FBCv1 approved in October in respect of scope, programme, risk allocation and estimated capital cost. This current report summarises progress over the last two months drawing particular attention to developments and issues associated with project risks, project funding and governance arrangements.

### 3 Main Report

#### Recent Developments

- 3.1 Detailed negotiations between **tie** and the preferred Infraco contractor, Bilfinger Berger and Siemens (BBS), and the preferred Tramco contractor CAF have progressed satisfactorily with a programmed financial close date of 11 January 2008 and programme contract award on 28 January 2008. Negotiations have focussed on the following issues:
  - Novation of Tramco and SDS contracts.
  - Design Matters
  - Price and Risk allocation

- Construction Programme

3.2 The cost estimates for the project reflect provision for evolution as the detailed design will be completed in the coming months. The design is completed under the Infraco contract from the point of award of that contract through novation of the System Design Services contract with Parsons Brinckerhoff to Infraco.

## 4 Project Governance

### Tram Project Board

- 4.1 On 23 August the Chief Executive reported to Council that the role of the Tram Project Board required to be considered afresh. Council was advised that the TPB was not a legal entity. This report addresses the issues described in August and formally delegates certain powers to the TPB.
- 4.2 It has been stated by TEL that they would wish TPB to be a committee of the company. That is competent, and the Council requires to delegate powers in the first place to TEL. There will be a seamless delegation of authority from the Council through TEL to TPB to ensure proper governance and accountability. With effect from approval of this report, and looking to future actions of the parties, it is recommended that Council formally delegates authority to TEL in accordance with the Operating Agreement, which terms are to be agreed shortly. This agreement is not critical for the purposes of the award of the main contracts by **tie**. However, it is essential that from approval of this report today, TPB is empowered through TEL to take all relevant decisions in respect of the project. For that to be completed TEL would have to take a decision at board level resolving to further delegate its powers from the Council on to TPB. The Governance structure is detailed in Appendix 1.
- 4.3 Council is also asked to nominate the Director of City Development and the Director of Finance to represent the Council on the TPB.
- 4.4 To further ensure that all aspects of governance are in place Council is asked to authorise through **tie** that this company also has a firm delegation of appropriate powers to engage with the TPB.
- 4.5 The **tie** operating agreement has been agreed and is included as Appendix 2 of this report.

### Tram Monitoring Officer

- 4.6 The Operating Agreement with **tie** envisages a " Tram Monitoring Officer ", described as a Council officer nominated by the Council to monitor the Company in relation to the Tram Project. A variety of controls will be vested in this officer by virtue of the Operating Agreement. Council is asked to designate The Head of Transport as the Monitoring Officer.

### Tram Sub Committee

- 4.7 Clarity requires to be established on a number of other issues concerning governance. Council has previously considered the remit of the Tram Sub-

Committee of the Transport, Infrastructure and Environment Committee, and this report now brings forward more definition of that remit.

- 4.8 Some issues will require to be referred to Council, including the approval of the annual business cases for **tie** and TEL respectively, including their annual accounts. Any issues which require to be referred to Scottish Ministers will be reserved to Council. Any significant changes to Council liabilities within the Tram Project will also be reserved to Council.
- 4.9 All other Tram matters will be referred to the Tram Sub-Committee, together with the general discretion to decide when matters are referred to its parent Committee or to Council.
- 4.10 The range of matters within the remit of the Tram Sub-Committee will include the following, all as approved by Council through this report.
- Changes to the Infraco, Tramco and Mudfa contracts, including claims' settlement of sums in excess of £1 million annually.
  - Financial statements: monthly/annual and borrowings (including Section 75 Developers Contributions).
  - Risk Register updates.
  - Traffic Regulation Orders and Traffic Management Issues
  - Operating Issues
  - Changes to governance with tie and TEL Boards.
  - Third Party Agreement issues.
  - Section 75 Developer Contributions update.
  - Public Relations updates
  - Notification of disputes
  - Roads Demarcation Agreement: (approval of the division of responsibilities between the Council and TEL.)
  - Updates on Audit and third party reviews
  - Other non-delegated matters arising.

## **5 The Final Business Case**

- 5.1 FBCv2 is included as a background paper to this report and reflects no material changes since FBCv1 in respect of:
- Scope and functionality of the project

- Overall programme which still reflects tram operations commencing in 2011 for revenue services
- Risks retained by the public sector
- Estimated capital costs which remain consistent with the final business case for Phase 1a (Airport to Newhaven) and for Phase 1b (Roseburn to Granton) inclusive of allowance for risks retained by the public sector.
- Funding currently available for the project of £545m comprising £500m from the Scottish Government and £45m from CEC.

5.2 The FBCv2 repeats its recommendation of proceeding initially with Phase 1a within the funding of £545m committed to the project. Funding available from the Scottish Government will be 91.7% of the total cost and capped at £500m (excluding the costs of the new Gogar Station to serve Edinburgh Airport).

## **6 Bikes on Trams**

- 6.1 An addendum to the motion passed by the Council on the 25<sup>th</sup> October 2007 was made by the Green Party to investigate ways whereby bicycles can be carried by Trams.
- 6.2 **tie** and TEL have reviewed the issue of cycle carriage on the Tram and concluded that at present this cannot be achieved in a safe and efficient manner without causing undue discomfort and risk to other passengers.
- 6.3 The preferred bidder for vehicle supply will be asked to investigate, as part of the tram internal design finalisation, whether potential capacity for safe cycle carriage is possible to achieve so as not to preclude a future review of this policy.
- 6.4 It is obviously vital to ensure a robust operational service at opening, however it is considered possible that when the system is operational, a trial of cycle carriage could then be evaluated in detail.

## **7 Financial Implications**

7.1 The report to Council in October 2007 provided a detailed financial analysis of the Final Business Case, based on the design work completed at that time and upon the firm bids received for tram vehicles and infrastructure. This section reflects upon the financial implications and risks associated with the project in the context of the continuing contractual negotiations with BBS, the Infracore preferred bidder, and the design and value engineering work aimed carried out since October.

### **Capital Costs**

7.2 The Final Business Case estimates costs to be £498m for Phase 1a inclusive of a risk allowance as reported in October 2007. The estimated costs for Phase 1b is £87m. The current price estimate is based on a compressed construction programme designed to reduce the time spent on the on-street works and minimise disruption to stakeholders.

### **Funding**

7.3 The available funding for the project remains at £545m. £45m of this sum has been committed by the City of Edinburgh Council with the remaining £500m as grant funding from Transport Scotland. The terms of the grant award have been agreed in principle with officials from Transport Scotland. The award letter will confirm the annual sums that will be provided by the Transport Scotland.

- 7.4 The funding percentage has been agreed at 91.7% Transport Scotland and 8.3% City of Edinburgh Council. Transport Scotland have set yearly limits on the amount of grant available, negotiations are on going with Transport Scotland to facilitate acceleration or slippage if spend where it is commercially advantageous.
- 7.5 It should be noted that an independent assessment has been made on the Council's £45m contribution by DTZ PwC following the Conservative addendum to the motion passed by the Council on the 25<sup>th</sup> October 2007. This independent assessment confirms the scale of contributions that can be expected. Their report states *"that the Council's tram funding strategy is realistic, based on sound assumptions and achievable within the timescales"*. The findings are subject to a separate report within the agenda of the Full Council.
- 7.6 The revised Tram Developer Contribution Guideline was due to be considered on the 19<sup>th</sup> September and the Director of City Development will provide a verbal update on the outcome. This will allow the Council to borrow against future developers contributions for the tram for up to 20 years after completion of the tram project.

#### **CEC Guarantee and Designation of Authority**

- 7.7 A Draft Designation of Authority between the City of Edinburgh Council and **tie** has been prepared, with the approval of the Council, and will be required to be executed on behalf of the Council before BBS will agree to sign the Infraco contract. This is provided in Appendix 3.
- 7.8 A Draft Guarantee Agreement between the City of Edinburgh Council and the Infraco contractor BBS has been prepared by the Council Solicitor and, with the approval of the Council, will be required to be executed on behalf of the Council before the Infraco contractor will agree to sign the Infraco contract. This agreement commits the Council to honour contract payments, in the event of **tie** default. This is provided in Appendix 4.

#### **Risks**

##### **Public Sector Risks**

- 7.9 Risks retained by the public sector and which therefore bear upon the Council are explained in the Final Business Case section 11. These risks include:
- Agreements with third parties including delays to utility diversions
  - Finalisation of technical and prior approvals.
- 7.10 Negotiations are on going to secure access to railway property with Network Rail and First Scotrail.
- 7.11 It should be noted a risk contingency is included on the cost of Phase 1a. There is further headroom between the cost of Phase 1a and total available funding of £545m.
- 7.12 The risk contingency does not cover major changes to scope.
- 7.13 Additional scope elements that will be separately funded include

- Bernard Street urban streetscape £1m (funded from Scottish Enterprise Edinburgh and Lothian and the Heritage Lottery Fund)
- Leith Walk- completion of footways as betterment with £2m funding from CEC spread over 3 financial years )
- St Andrew Square- on-street capital works - (optional with £6m funding from SEEL and City's Growth Fund)

### Due Diligence

7.14 A number of issues remain to be negotiated prior to financial close. The Council needs to ensure appropriate due diligence has been applied and that risks can be minimised and costs remain within agreed budget.

### Next Steps

7.20 The table below summarises the milestone events in the final stages of the procurement and construction of the Edinburgh Tram Network.

Date	Milestone
11 <sup>th</sup> January 2008	Financial Close.
28 <sup>th</sup> January 2008	Tramco/Infraco contracts awarded following CEC/TS approval and cooling off period.
1 <sup>st</sup> February 2008	Construction commences - phase 1a.
6 <sup>th</sup> February 2008	Planning Committee approval of Landscape Habitat Management Plan.
31 <sup>st</sup> March 2009	Latest decision to instruct <i>tie</i> /BBS to commence 1b
17 <sup>th</sup> November 2009	TRO process complete.
27 <sup>th</sup> August 2010	Commencement of test running - phase 1a.
2011	Operations commence

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## 8 Conclusions

- 8.1 Contractual negotiations with the preferred bidders for Infraco and Tramco have been progressed by **tie**.
- 8.2 The preferred bidder negotiations, in terms of price, scope, design, and risk apportionment, give further assurance that Phase 1a can be completed within the available funding and are consistent with the Final Business Case.
- 8.3 The total forecast project cost including the price, being negotiated by **tie**, is consistent with business case. **tie** is confident that risk contingencies and the final approved design can be accommodated within the funding available.
- 8.4 A decision on whether to proceed with Phase 1b, within the Infraco contract, can be made at any time until March 2009.

## 9 Recommendations

- 9.1 To approve the Final Business Case version 2.
- 9.2 To authorise the Directors of Finance, Corporate Services and City Development to instruct **tie** to enter into contracts with the Infraco bidder (BBS) and Tramco bidder CAF, (subject to compliance with the Final Business Case and Employer's Requirements and subject to remaining due diligence issues being resolved to the satisfaction of the named Council Director's above) as reflected in the draft resolution in Appendix 4.
- 9.3 To note that the formal award of these contracts are programmed to take place in January 2008 and will be reported to the Tram Sub-Committee.
- 9.4 Approve the issue of the Guarantee by the Council to the Infraco bidder as reflected in the draft resolution at Appendix 4.
- 9.5 To note the terms of the Draft Grant Award have been agreed in principle.
- 9.6 To approve the governance structure and the **tie** operating agreement and note the status of the operating agreements.
- 9.7 To note the schedule of milestones presented at Section 7.20 above.

**Donald McGougan**  
Director of Finance

**Andrew Holmes**  
Director of City Development

**Appendices**

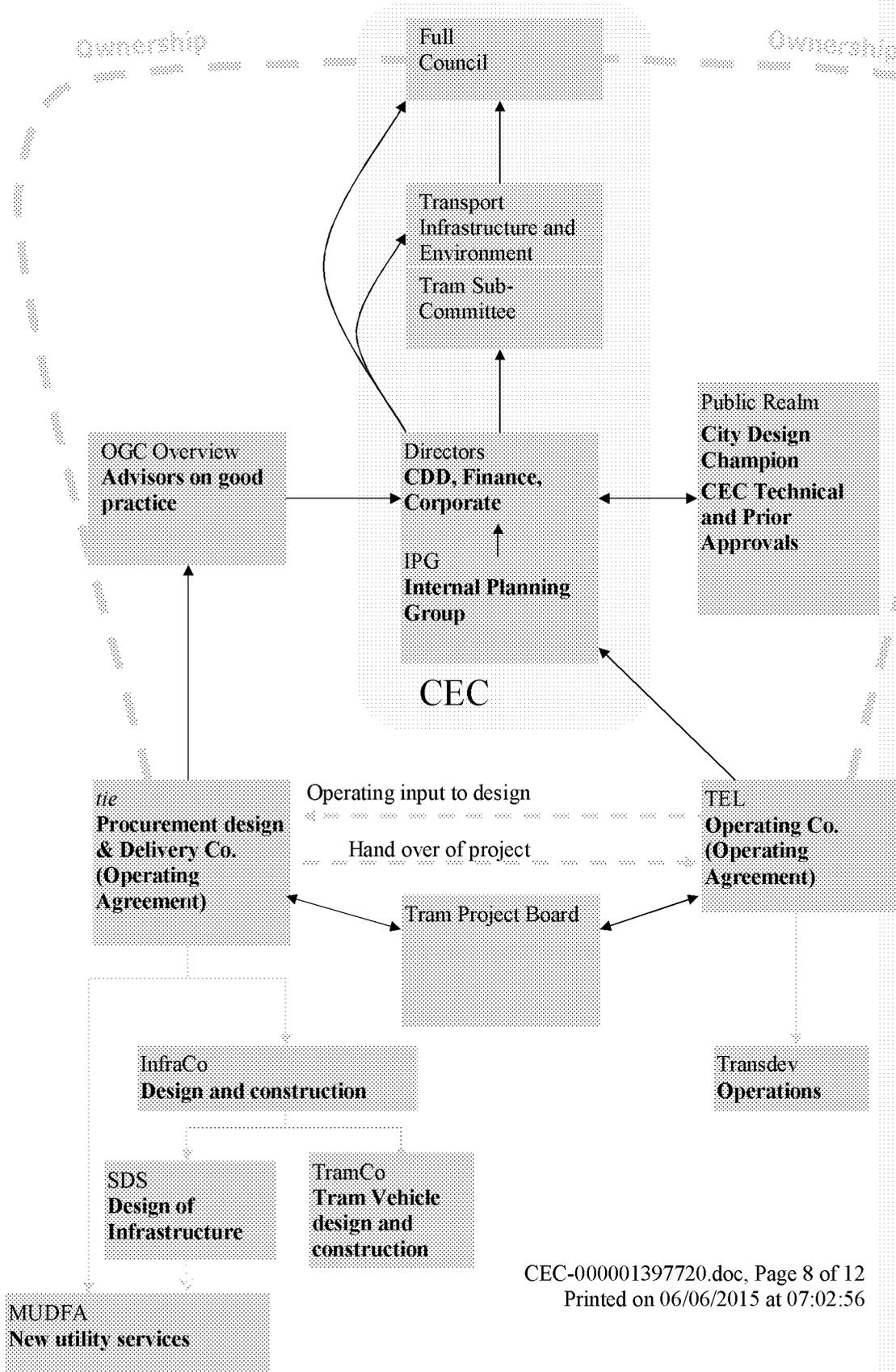
- Appendix 1** Tram Governance Organogram
- Appendix 2** Draft tie Ltd Operating Agreement
- Appendix 3** Draft Designation of Authority
- Appendix 4** Draft CEC Guarantee

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**Wards affected** All

**Background Papers** Edinburgh Tram Final Business Case Version 2

**Appendix 1 Tram Organisational Structure**





**Appendix 2 Draft tie Operating Agreement**

### **Appendix 3 CEC Delegation of Authority**

- The Council Resolves

### **Appendix 4**

### **CEC Guarantee**

### **Resolution**

- The Council Resolves:

