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**From:** Colin MacKenzie  
**Sent:** 12 February 2008 13:39  
**To:** Gill Lindsay  
**Cc:** Nick Smith; Alan Squair  
**Subject:** EDINBURGH TRAM: SDS NOVATION

**Importance:** High

Gill,

I refer to our discussion earlier this afternoon.

I have had a quick look at the FBC 2: this carries no express mention of the cost of SDS design risk, far less quantification of it. I note that FBC states that the public sector takes the risk for granting of Prior Approvals. This is erroneous as it does not distinguish between CEC as client and CEC as Planning Authority.

The risk matrix skirts over the issue too.

Maybe somewhere in the QRA, which we are consistently denied sight of, there is an element for the cost of design risk. On balance, I suspect not, since this is a matter only negotiated by **tie** earlier this month; way beyond the Council approval on 20 December 2007 of FBC 2. I think **tie** must be totally transparent about this risk figure and the associated cap. If the new deal is within the FBC 2 could **tie** please indicate where that is to be found.

The minute of Council on 20 December does not expressly deal with any variation to the overall price of £498 million. I would certainly urge caution here and ensure that the Chief Executive does not exceed his authority from Council by approving the award by **tie** of an Infraco contract which attracts greater liability to the Council ( by virtue of the Guarantee and Funding ) than previously envisaged.

**tie** and DLA should also be required to state whether the procurement process could survive a challenge by a third party to the change in the risk profile and liability arising from the new SDS deal.

Regards,

Colin MacKenzie  
for Council Solicitor