



tie Limited

Minute of the CEC/tie Legal Affairs Group Meeting

Date: Monday 26th November 2007

Time: 16:00 to 17:30

Venue: CityPoint

In attendance	Duncan Fraser CEC	CEC	DF
	Alan Coyle CEC	CEC	AC
	Colin MacKenzie	CEC	CM
	Rebecca Andrew	CEC	RA
	Nick Smith	CEC	NS
	Willie Gallagher	tie	WG
	Graeme Bissett	tie	GB
	Matthew Crosse	tie	MC
	Alasdair Sim	tie	AS

Apologies	Jim Inch CEC	Susan Clark tie
	Andrew Holmes CEC	Barry Cross tie
	Gill Lindsay CEC	Alan Squair CEC
	Andrew Fitchie tie /DLA Piper	

Circulation Above

		ACTION By	Target Date
1.	Programme Update No changes to programme from that presented last week. Key targets – to conclude BAA agreements this week, and to reach agreement with NR on wording of property and APA agreements.		
2.	Land Assembly Fifth tranche GVD executed on 20 November 2007. This was for 5 plots in the vicinity of Gogar Castle Road. The balance of GVD's scheduled for issue on 14 December 2007. CEC/ tie licence agreement to be progressed and concluded as soon as possible. The target date pushed out to 07/12.	AS/CM	7/12



<p>3.</p>	<p>Forth Ports</p> <p>Detail of FP agreement being drawn up by D&W.</p> <p>Design has been agreed in principle with FP and this is being progressed by SDS. Establishing the cost delta between the parliamentary design and the revised design will form a key element of the FP agreement.</p> <p>SDS programme indicates that design in Forth Ports area will be completed in March 2008.</p>		
<p>4.</p>	<p>BAA</p> <p>Meeting with BAA on 27/11 to conclude the licence and lease agreements.</p>		
<p>5.</p>	<p>Network Rail</p> <p>WG, AH and AH met with Ron MacCaulay (NR) on 26/11/07 to agree outstanding points of principle.</p> <p>NR agreed that the lease should refer to the Operating Agreement provisions to protect the integrity of the tram network for repair and maintenance works.</p> <p>tie/CEC to meet with NR on 28/11/07 to work through Ops Agreement and resolve outstanding points in the lease draft. AS to arrange.</p> <p>A conference call between WG and RMc has been arranged for 28/11 to catch up. Aim to close out all issues and agree wording with NR on 30/11/07.</p> <p>AS to set up meetings with NR and First ScotRail to progress Depot and Station Change procedures – before 5/11/07 if possible.</p> <p>This remains a concern to CEC as the ability for INFRACO to start works on NR land will depend on third parties (FSR and TOC's). May be able to seek TS assistance to progress change processes as quickly as possible.</p>	<p>AS</p> <p>CM</p> <p>AS</p>	<p>28/11</p> <p>30/11</p> <p>5/11</p>



6.	<p>Roads Demarcation Agreement</p> <p>Nothing further to report this week. The RDA is not on the project critical path at present.</p>		
7.	<p>Funding Agreement</p> <p>Outstanding issues around the inflexibility of the proposed TS cash drawdown profile. This does not appear to be commercially acceptable.</p> <p>WG to raise outstanding matters with Bill Reeve on 27/11/07.</p> <p>MC to progress obtaining the BBS spend profile estimates. This will assist in progressing matters with TS.</p> <p>DMcG has sent a letter on the Funding Agreement to TS – WG to pass over a copy of this letter to Bill Reeve.</p>	WG	27/11
8.	<p>INFRACO</p> <p>Meetings during the week commencing 19 November enabled a second revised full draft Infraco Contract to be issued (bidder commentary on Friday 23 November). This was reviewed and reissued with tie's responses within 24 hours on Saturday 24th November.</p> <p>Feature of negotiations is the consortium using two law firms whereby maintenance (Siemens) matters are discussed separately; this has showed the process, though fully developed positions are now drafted for refinement. (Two examples have been maintenance provisions and performance security bonding).</p> <p>The key remaining topics which require both commercial/financial discussion and then legal drafting to reflect outcome are:</p> <ul style="list-style-type: none"> ▪ <u>Consents</u> - this issue is also related to the SDS novation and the Infraco Preferred Bidder acquiring a better understanding of the full status and scope of consents. AS to progress with DF. ▪ <u>Alignment of Tramco/Infraco</u>: - the main question is the liability level Infraco is prepared to absorb for a failure in Tram supply causing Infraco to accrue liquidated and 	AS/DF	28/11



	<p>ascertained damages. Commercial proposals are to be discussed this week. A session on BBS's detailed concerns on the Tramco Supply Agreement is scheduled for Tuesday, a detailed paper on this has been received this morning.</p> <ul style="list-style-type: none">▪ <u>Performance Security</u>: - there has been discussion (20/11/07) over the questions which arise (from an accounting standpoint and internal policy) for the German parent companies guaranteeing the obligations of a party which is not in their group (this arises because of the Infraco member's joint and severe liability for the entire scope of the Infraco Contact). This has delayed meaningful engagement on the Parent Company Guarantees, drafts of which sat in the tender documentation. tie have taken this up at UK director level but it stems from the guarantee/legal functions in Siemens AG and Bilfinger Berger AG. Bond instruments are under negotiation with a view to BBS reviewing these with the proposed sureties this week.▪ <u>SDS Novation</u>: - following constructive discussion with BBS and exchange of detailed position papers, it is agreed that SDS and tie will make certain affirmations financial, claims, design status, consents at novation. BBS have been reviewing the SDS Consents Register and the exercise of deciding how consent responsibility should be allocated in detail is urgent.▪ <u>Program</u>: - Contract meetings are being held daily back-to-back to maximise time available. However, response times in terms of lawyers taking instructions and translating this into drafting has impacted ability to close out to the degree needed to match tie's timetable aspirations. Aiming to have agreed position with BBS to enable reporting to 20 December Council Meeting. <p><u>Recommendations</u></p> <ul style="list-style-type: none">▪ Meetings on Friday this week and possibly Wednesday must allow for full team representation from Bilfinger and Siemens, even if some time is abortive for some team members.▪ LAC receives an interim status report on 29/11/07 in order to be fully aware of progress towards objections for 03/12/07.		
--	--	--	--



	<ul style="list-style-type: none"> LAC considers deferring the 03/12/07 meeting by 48 hours to permit more close out time. It was agreed that the LAC for next week would be rescheduled to 5/11/07 to replace the Procurement Sub Committee Meeting. AS to inform the LAC members. 	AS	27/11
9.	<p>tie/TEL Operating Agreements</p> <p>GB requested that CEC respond back on his tie operating agreement draft comments. These are with AH and DMcG – NS to revert back to GB by 28/11 if possible, with a follow up meeting with GB on Thursday/Friday to be arranged.</p> <p>The intention is for GB to prepare a paper for the TPB on 12/12.</p> <p>NS inquired about the authority and mandate of the TPB – GB referred him to the remit presented by AH in Autumn 2006 and approved TPB structure.</p> <p>The TEL Operating Agreement is much less advanced than the tie draft. WG asked if it would be appropriate to split out the TEL ops agreement into immediate tram governance related elements now, with the arrangements for Lothian Buses to be integrated into TEL to be finalised at some later date – suggested Summer 2008.</p> <p>This suggestion was supported by the LAC members present.</p> <p>MC noted that a CEC funding guarantee was still a requirement of BBS – AF has prepared a draft for consideration. CM to revert back to MC after meeting with TS on 27/11.</p> <p>NS noted that CEC would be concerned about committing to financial guarantees without confirmation that funding for the project has been fully secured.</p>	NS	28/11
10.	<p>AOB</p> <p><i>PWC Duty of Care & Clearance from Revenue</i> RA to respond to GB on PWC Duty of Care letter proposal and to revert back to Tracy O'Connor (PWC) on the clearance letter draft prepared by PWC.</p> <p><i>CEC Contribution</i> The results of the DTZ review of the CEC Funding Contribution are expected this week.</p>	RA	30/11



tie Limited

	<p><i>DLA Duty of Care</i> CM asked about the status of AF in relation to signing off the INFRACO Contract. It was noted that DLA would report to the Council independently of AF who would be acting in his tie Contracts Director role.</p> <p><i>Council Report 20 December 2007</i> The Draft Council Report is currently report running at around 6 pages (plus appendices). AH is scheduled to review the current draft on 27/11.</p>		
	<p>Next Meeting</p> <p>Wednesday 5th November @ 4:00pm at Citypoint</p>		