

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 v6 07.03.085.02.08

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
- 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.

The purpose of this report is to provide a comprehensive view of the principal terms of the contracts and related documentation which are being committed to at Close. 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 approved 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.

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| 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 |
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| | |
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| 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 |
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| 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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Report Contents [Status in brackets]

DRAFTING NOTE : THE SECTIONS BELOW HIGHLIGHTED IN YELLOW REQUIRE TO BE UPDATED BY THE PERSONS NAMED.

1. Introduction

2. Infraco Contract Suite – brief commentary [Work in progress]

3. Council financial guarantee

4.3. Grant Award letter

5.4. Notification of Award stage and risk of challenge

6.5. Third party agreements [Work in progress]

7.6. Land acquisition arrangements

8.7. Governance arrangements & corporate matters

9. Risk allocation matrix and DLA letter [awaited]

10.8. Risk assessment of in-process and provisional arrangements [Update required]

11.9. Update on critical workstreams and readiness for construction [awaited]

12.10. Specific confirmations

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Appendices

Appendix 1 – DLA Report – Infraco Contract Suite, Risk matrix, Council Guarantee

Appendix 2 – Management of Consents Risk [Steven to update paper]

Appendix 3 - Summary presentation on Employer's Requirements [11.03.08 VERSION]

Appendix 42 – Infraco / Tramco pricing summary and tie-in to total project budget

Appendix 53 – Summary of programme

Appendix 64 – Governance & Delegations paper

Appendix 75 – tie Operating Agreement

Appendix 86 – TEL Operating Agreement

Appendix 97 – Synopsis of Infraco contract exclusions

Appendix 108 – OCIP exclusions report

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(1) Introduction

The significant stages in the project to date include :

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| 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 |
| 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 |
| March January 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 tie, TEL and the Council along with principal consulting and contractual partners. Throughout, progress has been monitored by the Project Board and the tie 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.

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.

(2) Infraco contract suite

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IDLA – ALL AREAS, USING EXISTING MATERIAL AS APPROPRIATE. PLEASE NOTE THAT THE HEADINGS / FORMAT MUST SURVIVE BECAUSE IT HAS BEEN PRE-AGREED WITH CEC TO ENSURE ALL OF THEIR QUESTIONS ARE COVERED]

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Content of this section

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- 2.1 Process of drafting, negotiation, review and quality control
- 2.2 General description of scope, parties and contract structure
- 2.3 Overview of Infraco contract terms
- 2.4 SDS Novation Agreement and design delivery and approval process
- 2.5 Confirmation of BBS acceptance of modelling
- 2.6 Employer's Requirements and Infraco & Tramco Proposals
- 2.7 Advance purchase materials
- 2.8 Infraco payment mechanism
- 2.9 Infraco performance security arrangements
- 2.10 Overview of Tramco contract terms
- 2.11 Tramco payment mechanism
- 2.12 Tramco performance security arrangements
- 2.13 Summary pricing statement - Infraco and Tramco
- 2.14 Summary of programme – Infraco and Tramco
- 2.15 Risk profile

2.1 Process of drafting, negotiation, review and quality control

The structure, membership and competence of the tie / TEL negotiating team have been assessed previously and have remained largely consistent since the bid evaluation process commenced. Council officers have operated in an integrated manner with the main negotiating team, which has also had extensive support from our legal advisors, Transdev and other advisors.

Appropriate quality control procedures have been applied to finalisation of the Infraco contract suite. In a number of critical areas, senior tie and TEL people have performed a review of terms independent of the main negotiating team, the important elements of which are set out in this report. The TPB, TEL and tie Boards have been regularly kept abreast of progress in all important areas and have confirmed or redirected effort as

appropriate. Communications on these key matters with senior Council officers has been conducted both through the TPB and its sub-committees and also through frequent informal contact. Finally, the OGC Gateway 3 Review Team examined key areas of the contract suite before approval in advance of the October 2007 Council meeting.

In broad terms, the principal pillars of the contract suite in terms of programme, cost, scope and risk transfer have not changed materially since the approval of the Final Business Case in October 2007. It is felt that the process of negotiation and quality control has operated effectively to ensure the final contract terms are robust.

2.2 General description of scope, parties and contract structure

The Infraco contract suite comprises the following principal contracts :

- Infraco system construction and maintenance contract between tie and BBS ;
- Tramco supply and maintenance contracts between tie and CAF ;
- Tramco Novation Agreement establishing Infraco – Tramco arrangements ;
- SDS Novation Agreement establishing Infraco – SDS arrangements
- Security documentation, ancillary agreements and schedules including Employer's Requirements

2.3 Overview of Infraco contract terms ~~[DENNIS WITH INPUT FROM ALASTAIR R ON MAINTENANCE]~~

This section to cover (please insert sub-headings):

Duty of care and general obligations

Systems integration

Title to assets created

Novation – SDS, Tramco

Infraco maintenance

Interfaces – Operator, NR

Consents

Safety & Security

Milestones and payment schedule

Phase 1b and network expansion

Termination

Dispute resolution

Joint & Several liability

Conditions precedent

Approval process and signatories

Warranties and Indemnity

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The Infraco Works are to be carried out pursuant to an Infraco Contract between tie Ltd and Bilfinger Berger (UK) Limited and Siemens plc. Bilfinger Berger (UK) Limited and Siemens plc have formed a consortium to carry out the Infraco Works and are together called the 'Infraco', each company separately being an Infraco Member. Both Bilfinger Berger (UK) Limited and Siemens plc have joint and several liability for the performance and discharge of the Infraco Contract.

The Infraco Contract comprises an Agreement executed by tie Limited, Bilfinger Berger (UK) Limited and Siemens plc and a series of referred to Schedules to the Infraco Contract which fully details and further amplifies the scope of the Infraco Works.

Under the Agreement the 'Infraco' has a duty of care and general obligation to carry out and complete the Infraco Works fully in accordance with the Agreement. Infraco are further obligated to procure that the Infraco Parties which shall include the Infraco member and their agents, advisors, consultants and sub contractors carry out the Infraco Works in accordance with inter alia, the Agreement, the Employer's Requirements, the Infraco Proposals, tie and CEC policies to enable the Edinburgh Tram Network to be designed, constructed, installed, tested, commissioned and thereafter operated and maintained. The Employer's Requirements are suitably detailed such as to elaborate on the intent and to ensure that the Infraco can develop and complete the Infraco Works to enable the delivery of the Edinburgh Tram Network.

'Infraco' shall ensure that the system integration of the Infraco Works are implemented.

The Agreement contains permission for the transfer of title to CEC in all materials, goods, and equipment included to be part of the completed Edinburgh Tram Network. 'Infraco' shall procure that each Tram is supplied free from security interests.

A contract price has been agreed. The contract price and pricing schedules for carrying out the Infraco Works is contained in schedules to the Infraco Contract. A substantial portion of the Contract Price is agreed on a lump sum fixed price basis however there are certain work elements that cannot be definitively concluded in price and as such Provisional Sums are included. Section 10 below provides an up to date view on these contract sums.

The Agreement provides that 'Infraco' shall progress the Infraco Works to achieve timeous delivery and completion of the Infraco Works (or parts thereof) and in their obligations under the Agreement all in accordance with an agreed Programme which is bound into the Schedules.

The Agreement provides that, as a condition precedent, Infraco shall enter into and execute Novation Agreements to incorporate and bind previous agreements between tie and the design provider (SDS), the Tram supplier (Tramco) and the Tram Maintenance provider (Tramco), into the Infraco Contract. These agreements therefore become the full responsibility of 'Infraco' in the completion of the Infraco Works. In addition to the Novation Agreements, collateral warranties are to be provided to tie by the design provider (SDS), the Tram supplier (Tramco) and the Tram Maintenance provider.

Under the Agreement 'Infraco' acknowledges that it will require to comply with the Asset Protection Agreement (APA) with Network Rail in relation to the Edinburgh Tram Network and that tie has certain specific obligations owed to Network Rail through a framework agreement between Transport Scotland and Network Rail. Infraco are to comply with the APA and undertake that if shall not put tie in breach of the APA or the framework agreement. 'Infraco' has also obligations which concern interface or co-operation with the operator.

'Infraco' shall provide a permanent representation for the Project Safety Certificate Committee and shall develop and implement a safety management system to address all aspects of safety. tie has granted a non exclusive licence to Infraco to enter and remain upon the permanent land of the term of the contract and exclusive licence to enter and remain upon designated working area for the duration of the Infraco scheme and shall permit 'Infraco' with all necessary land consents.

Possession of permanent land or temporary site by Infraco shall always be subject to the requirements of Third Party Agreements executed by tie and/ or CEC.

Infraco shall comply with the requirements of the Code of Construction Practice and Code of Maintenance Practice with regard to the maintenance of access properties, bus stops, bus services and closure of roads.

'Infraco' shall procure the appointment of a Tram Inspector and agree the identity of such Tram Inspector to enable the execution of a Tram Inspector Agreement. It is a condition precedent that Infraco enters into with the Tram Inspector Agreement with tie and the Tram Inspector in the agreed form.

The construction sequence is broken down into construction milestones and critical milestones and procedures have been agreed for the monitoring of progress toward each milestone based upon milestone schedules. Interim Payments will be made to 'Infraco' monthly subject to and in accordance with the completion of stated Milestones. The Agreement obliges 'Infraco' to complete the Infraco Work in sections and 'Infraco's failure to complete sections by the sectional completion date will result in Infraco becoming liable to pay liquidated and ascertained damages to tie at amounts stated in the Agreement. If 'Infraco' are delayed by reason of certain prescribed events they may be able to apply for a Extension of Time and/or claim costs in connection with certain prescribed events listed in the Agreement.

The Agreement contains provisions in relation to the management of variations. Variation rules depend upon the type of change instructed whether it is a tie change or an 'Infraco' change.

'Infraco' acknowledges that tie may, subject to notice' instruct the Phase 1b works to be carried out provided that this is no later than 31st March 2008. The Agreement contains provisions for 'Infraco' to carry out Phase 1b works if so instructed.

If tie defaults on certain prescribed matters 'Infraco' may serve a termination notice in accordance with the Agreements. The Agreement sets out the rules relating to any such proposed termination. If 'Infraco' defaults in certain prescribed matters tie may, after giving required notice terminate the Agreement. The Agreement sets out the rules relating to such proposed termination.

The Agreement contains provision for the settlement of any disputes under a Dispute Resolution Procedure contained in the Schedules to the Infraco Contract.

2.4 SDS Novation Agreement and design delivery and approval process [DENNIS WITH INPUT FROM DAMIAN]

Principles of Novation

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The novation of SDS to 'Infraco' involves 'Infraco' taking responsibility for managing SDS to produce the remaining design and approvals for the Edinburgh Tram Network.

The novation also ensures that the integration of design and construction is firmly the responsibility of BBS and gives BBS recourse to the same contractual remedies against SDS as tie would have had in that situation, including critically the ability to claim against SDS's Professional Indemnity Insurance cover in relation to the design carried out by SDS.

Design expectations of the 'Infraco'

The 'Infraco' offer is based on design completed to date and a programme for future delivery of design. The offer is also based on those approvals achieved to date and a programme for achieving the remaining prior and technical approvals.

At the time of the original 'Infraco' bid price in [insert date], X of the Y deliverables had been delivered to tie ltd; P prior approvals and Q technical approvals had been granted. Design has been released to BBS as it has been completed since then. The final 'Infraco' proposal is based on the updated design at [2 February 2008] when A deliverables had been delivered to tie ltd; B prior approvals and C technical approvals had been granted.

The original 'Infraco' construction programme was based on version 22 of the SDS design programme (dated X); the construction programme included in the final 'Infraco' proposal has been updated to match up with version 26 of the SDS design programme (dated 4 February 2008)

The substantial progress with completion of the SDS design has reduced the risk of late production impacting on the construction programme and has given 'Infraco' greater certainty of the construction needed.

Managing Approvals Risk

The risk of securing approvals has been shared between SDS and tie ltd. The 'Infraco' then takes programme and construction risk based on approvals being granted in line with the agreed master programme for the project.

SDS takes the risk of achieving delivery of batches for approval on the agreed date to the agreed quality. That risk is capped at [insert details]. Provided the application for approval is made on time and the quality of application is in line with agreed expectations then tie ltd takes the risk that the Council does not process the application within the 8 week period included in the programme.

The management of this risk has begun long before the application for approval is made. Designs have been reviewed progressively throughout their development involving the relevant Council officials and representatives of other approval bodies. Before applications are made for prior approval there is an 8-week period of informal consultation on top of the earlier involvement in design development. Addressing the

comments received from informal consultation significantly improves the design and the chances of the Council being able to process an application within the 8 week formal period.

Design Guidance

In developing the current design, SDS has been under an obligation to take account of:

- the provisions of the Tram Acts
- the Environmental Statement
- statutory and supplemental planning guidance from the Scottish Government and City of Edinburgh Council
- the Tram Design Manual
- all third party agreements in relation to the project
- UK guidance on the safe design and operation of tram systems

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ADD SECTION ON SDS PERFORMANCE GUARANTEE

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[Provide here a brief overview of the key issues in this critical area]

[The Council requirements here are as follows :

- Full written explanation of SDS Novation to be provided by tie, including risks of failing to deliver design
- Full details are required from tie on status and degree of completion of SDS design work as at 14 January 2008, including prior and technical approvals. If approvals risk is not being transferred to BBS the Council needs to know the impact and likelihood of the risks and a strategy for managing the risks. Confirmation required from BBS/SDS that all prior and technical approvals and all other necessary consents will, as a minimum requirement, be fully compliant with Tram Design Manual and other relevant CEC Policies and Guidelines
- Confirmation that the public sector (tie & CEC) are not liable for delays for Planning or Road Approvals NOTE – THIS IS INCORRECT, STATEMENT OF FACTS NEEDED
- tie to provide written report on previous claim settlement with SDS identifying details, cause of claim and costs of settlement. Are any further claims expected from SDS? Are any further claims from SDS competent

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Design version What design version was the BBS contract priced against and what changes has subsequently taken place]

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2.5 Confirmation of BBS acceptance of modelling [MATTHEW]

[Provide here a synopsis of the written statement from the Preferred Bidder that they accept the performance run-time model and "law of physics" results and confirmation of acceptance of the emerging quality of design.]

2.6 Employer's Requirements [MATTHEW]

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[Appendix 1 sets out a summary of the Employer's Requirements. FURTHER SUMMARY COMMENT]

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2.7 Advance purchase materials [STEWART]

[Explain here how the Infraco contract allow BBS to pre purchase material and equipment prior to design approval? If so how is CEC protected if such materials do not meet CEC approval.]

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2.8 Infraco Payment mechanism [STEWART TO REFRESH]

Construction

Payment under the contract is entirely against a 4 weekly claim from Infraco in respect of milestones which have previously been certified by tie as having been achieved. The milestone schedule reflects the Infraco price allocated in amounts to series of construction milestones and critical milestones and to the future period in which each milestone is expected to be achieved in accordance with the agreed programme.

The milestone schedule and certification mechanism has been prepared and agreed in accordance with the following key principles:

- Infraco will not be paid in advance of its own outgoing cash flows through its own supply chain
- The individual milestones are defined such that the process of determining whether or not they have been achieved will be subject to the minimum of uncertainty or dispute
- The certification of a milestone will require evidence that all required consents and approvals have been delivered in respect of the related works

The contract provides an effective mechanism for the addition and variation to milestones (valuation or date) initiated by either tie or Infraco.

Infraco will submit a detailed claim for payment within 3 business days of the end of each 4 week reporting period in respect of milestones certified as achieved following which tie will have 5 business days to certify the total payment and a further 15 business days to make payment. There are no retentions of payment but a retention bond is provided as explained below.

Commissioning and Maintenance

Infraco will commission Phase 1a in 4 key sections, transfer title accordingly and hand over control of each section to the operator and maintainers:

- Section A – The depot, certified after system acceptance test T1 has been passed for that section;
- Section B – Depot to the Airport, certified after system acceptance test T1 has been passed for that section;
- Section C – The rest of Phase 1a, certified after system acceptance test T1 has been passed for that section and system acceptance test T2 has been passed for Phase 1a, and
- Section D – Driver training and commissioning, certified after system performance test T3 has been passed for Phase 1a.

Certification of Section D requires that in addition to passing the system performance demonstration all consents and approvals have been obtained and documentation and initial spares have been delivered.

After the period of trial running without passengers has been completed, then passenger service will commence.

During the commissioning period Infraco will be paid Mobilisation Milestone Payments according to the programme for establishing the maintenance organisation and systems. The Operator will be paid on a 4 week reporting period basis up to a maximum of a capped sum for the commissioning activities as a whole.

After the commencement of passenger operation, the Operator and the Infraco will be paid their respective operating and maintenance fees on a 4 week reporting period basis. The performance of the delivered systems in passenger service will be monitored against two final system acceptance test criteria, Network Performance test T4 and Reliability test T5. After the Reliability Certificate has been certified then the 4 weekly fees paid will be subject to the performance regime.

2.9 Infraco performance security arrangements [STEWART TO REFRESH]

Bonds during construction period

Two bonds are provided by Infraco from financial institutions of good credit, a Performance Bond and a Retention Bond. Both bonds are in substance 'on-demand', meaning there is no requirement that proof of failure by Infraco must be produced by the claimant before a claim can be made under the bond.

The Performance Bond is in the amount of £20m throughout the construction period reducing to £10m when a certificate of Revenue Service Commitment is issued and further reducing to £8m when a certificate of Network Certificate relating to the achievement of performance criteria is issued. The issue of the aforementioned certificates is subject to a rigorous testing regime as defined in the Employers Requirements, including evidence that all consents and approvals have been delivered, and provides both security for the CEC and incentive to Infraco to perform.

The Retention Bond is in the amount of £2m initially adjusting to the following amounts at sectional completion:

£4m section A – The depot
£6m section B – Depot to the Airport
£8m section C – The rest of Phase 1a
£10m section D – Driver training and commissioning
£6m at issue of Network Certificate (pertaining to reliability as defined in the Employers Requirements)

The Retention Bond is released when a Reliability Certificate is issued and the required bond for the maintenance stage of the contract has been provided.

The Operator provides a Performance Bond from a financial institution of good credit. The Bond is 'on-demand', meaning there is no requirement for proof of failure by the Operator to be produced by tie before a claim can be made under the bond.

The Performance Bond provided by the Operator is in the amount of £10m.

Infraco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 to reinstate the Edinburgh Tram Network assets to the Handback Condition, This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value.

The bonds are provided by banks of global standing.

Parent Company Guarantees (PCGs)

PCGs are provided by the ultimate holding companies of both Infraco consortium members in respect of all performance, financial and other obligations of their subsidiaries which are contracting with tie. The substance of these entities, which are the group holding companies in each case, has been subject to legal verification.

The PCGs respect the joint and several liability provisions in the Infraco contract; each claim by tie under the PCG's must be served on each of the parent companies in the proportion of their share of the Infraco consortium but in the event of either parent company to honour payment of such a claim the other parent company is liable up to the limit of overall liability specified in the Infraco contract (20% of the Infraco contract price).

The PCGs provide that in the event of a change in control or ownership of the subsidiary companies which are entering into the Infraco contract, the PCG's remain in force until a replacement PCG has been provided on terms which are acceptable to tie.

In all other respects the PCGs are constructed such that the obligations and liabilities of the parent companies mirror that of the two subsidiaries in the Infraco consortium including the dates on which obligations expire.

All necessary collateral warranties have been agreed.

Performance securities during maintenance period

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2.10 Overview of Tramco contract terms [DENNIS WITH INPUT FROM ALASTAIR R]

This section to cover :

General description of scope, parties and contract structure
Duty of care and general obligations
Systems integration
Title to assets created
Tramco maintenance
[Interfaces – Operator]
Consents
Safety & Security
Milestones
Management of variations
Phase 1b and network expansion
Termination
Dispute resolution
Joint & Several liability
Conditions precedent
Approval process and signatories
Warranties & indemnities

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Trams will be supplied pursuant to a Tram Supply Agreement between tie Limited and Contrucciones y Auxilliar de Ferrocarriles S.A (CAF) "Tramco". Tramco are to carry out the Tram works and design, manufacture, engineer, supply, test, commission deliver and provide 27 trams and if required any additional trams in accordance with the Employer's Requirements, the tram Suppliers Proposal and agreed programme. Tramco shall ensure that all data, component, systems, devices, equipment, software and mechanism incorporated in the trams are fit for purpose and compatible with each other. Tramco shall operate under good industry practice, comply with all applicable laws and consents and ensure that each tram meets the required standards. The parties have agreed to work in mutual cooperation to fulfil the agreed roles and responsibilities to carry out and complete the tram works in accordance with the Agreement.

Tramco shall provide support in respect of the key elements of system integration of the tram works with the Edinburgh Tram Network.

Tramco acknowledges that the operator shall be responsible for the Operator Maintenance of the Edinburgh Tram Network and that Tramco would at all times liaise with the Operator.

Tramco shall deliver and finalise the designs, design data and all other deliverables as prescribed in the Employer's Requirements.

The Agreement allows for the introduction of changes either by tie or Tramco always subject to notices and prescribed rules. tie may, subject to notice and terms, order additional trams with related spare parts and special tools.

Tramco shall at all times utilise a Project Quality Assurance Programme compliant to standards.

A tram manufacturing and delivery programme is agreed and regular monitoring of progress will take place.

There is provision in the Agreement for tie to be involved in inspecting the trams at various stages of the manufacturing process. Tramco shall deliver the trams to the designated point of delivery at the depot and delivery tests shall be conducted.

Tramco, tie and the operator shall agree a training programme and the detailed implementation.

Tramco shall provide Trams free from all security interests transferring title to CEC.

Termination of the Agreement may be made by either party subject to certain prescribed defaults and terms.

2.11 Tramco payment mechanism [STEWART TO REFRESH]

Supply agreement

The payment mechanism under the supply contract conforms substantially to that under the Infraco contract as described above with the milestone payments heavily weighted towards:

- Initial mobilisation and establishment of supply chain
- Delivery of tram vehicles
- Attainment of performance and reliability standards as specified

Maintenance agreement

Infraco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 to reinstate the Edinburgh Tram Network assets to the Handback Condition. This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value.

2.12 Tramco performance security arrangements [STEWART TO REFRESH]

Bonds during supply period

Tramco will provide a Reliability bond in the defined amount of 5% of the Tramco price such bond to be provided on or before the due date of delivery of the first Tram vehicle.

Parent Company Guarantee (PCG)

The supply and maintenance contracts with Tramco are with the ultimate holding company so the issue of a PCG does not arise. The liability cap of Tramco under the tram supply agreement is 20% of the Tramco supply price.

Performance securities under maintenance agreement

Tramco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 required to reinstate the Tram assets to the Handback Condition. This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value of the remedial work outstanding. The liability cap of the Tramco under the tram maintenance agreement is 18.5% of the aggregate 30 year Tram maintenance price.

2.13 Summary Pricing Statement – Infraco and Tramco [STEWART]

Appendix 2 provides a summary of the total Infraco and Tramco contract cost and a tie-in to the total project budget.

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[The Council requires a detailed analysis of prices, costs and risks allowance tie required to explain how prices for maintenance, etc. impact on operating cost assumptions]

2.14 Summary of Programme – Infraco and Tramco [STEVEN]

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Appendix 3 contains a summary of the agreed programme. The critical milestones are :

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[To reflect Phase 1a and 1b]

[MUDFA – relationship to Infraco programme and statement of slippage allowance]

2.15 Risk profile [MARK H / SUSAN / STEWART]

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A full analysis of the risk matrix is contained in Section 9 of this report, together with a letter from DLA relating the matrix to the final form of the Infraco contract suite.

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[Updated QRA and relationship to 25 October version] tie written statement to CEC on risks at 25/10/07 compared to risks immediately before contract close

[Commentary on updated risk register :

- Black flag risks – Provide a list of these items and what is the likelihood of any of these risks occurring ? What is tie's strategy to avoid said risks materialising ? What is the cost of exiting from a Black Flag item ?
- Details of the risk management strategy for the key risks through delivery
- Detailed analysis of programme risk. Confirmation of the risk allowance for programme delay. Detail of items on critical path and what is being done to ensure they do not cause (further) delay.
- Risk register updated to reflect risk of prior and technical approvals not being obtained prior to financial close]

[Updated QRA and relationship to 25 October version] tie written statement to CEC on risks at 25/10/07 compared to risks immediately before contract close

Cost per week of not signing on time to be estimated by tie.

Third Party Agreements disclosure list and acceptance of these by BBS

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OCIP exclusions – text needed

(3) CEC Financial Guarantee

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[DLA TO UPDATE]

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CEC are required to provide a guarantee to Infraco of the financial obligations (including future variations) of tie under the Infraco contract in recognition of the fact that tie on its own has no capacity to bear any financial commitment insofar as it is not 'back to back' with the funding of the project which is channelled through CEC. In this sense it is materially consistent with the provisions of the PCGs (including periods allowed for payment of amounts due and duration of the agreement) provided by Infraco except that it is a guarantee of financial obligations only and not of performance.

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The guarantee is provided to Infraco meaning either or both of Bilfinger & Berger UK Limited or Siemens PLC or their assignees as permitted and approved under the Infraco contract. The guarantee remains in force until the Infraco contract ceases, or when tie has met all payment obligations if earlier, and would remain in force in the event of any change in function, control or ownership of tie.

The provisions of the guarantee ensure that tie will not be compromised in its management of the contract by virtue of an ability on the part of BBS to go directly from CEC for recompense. CEC will benefit from the same contractual rights and remedies as tie and will have no liability greater than tie's. No claim can be made for an amount which is in dispute if it has been referred under the dispute resolution provisions of the contract.

The practical day to day implication of the guarantee is that its provisions will not be invoked so long as the process for drawdown of cash from CEC to tie to meet payment obligations as they fall due is uninterrupted.

(4) 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 month 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 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 support from DLA. See Section 8 for taxation assessment.

(5) Notification of Award, challenge process and cooling-off period

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

DLA AND JIM TO UPDATE BASED ON TERMS OF FINAL DEAL

Summary

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Over the last 12 months tie has pursued the procurement of both the Infraco contract for the construction of the Tram infrastructure in its entirety and the Tramco contract for the supply and delivery 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 the Infraco contract.

CAF has been awarded the Tramco contract.

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.

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

[In the period post the selection of preferred Infraco bidder, there has as was expected been movement in the commercial pricing of the contract based on a number of key drivers:

- The substantial revision of the Employer's requirements, which are now at version 3.5 (Version x.x at conclusion of preferred bidder selection). These changes in requirements have been crystallised as both parties went through a process of harmonising and clarifying the requisite specifications. Included amongst these were the CEC's requirement for tapered poles in the heritage areas.
- Completion of further elements of the overall design which were not available at the time of the preferred bidder selection.
- Following the recognised changes to employer requirements and the completion and refinement of further aspects of the overall design a review of the programme timescale has seen the programme move from delivery at the end of March 2011 to 16th July 2011 with concomitant effect on price.
- Review of the Depot equipment base with the TRAMCO preferred bidder has seen a number of changes to said base to assure compliance.

It is not considered that this price movement from £xxxm to £xxxm represents an issue which requires review of the selected party, the volume of change as described was to be expected and would have occasioned similar price movement, ceteris paribus, with other competing suppliers]

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.

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(6) Third Party Agreements [ALASDAIR S / SUSAN]

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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 109.

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.

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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 :

- 6.1 Edinburgh Airport Limited - Licence *
- 6.2 Edinburgh Airport Limited – Lease *
- 6.3 Edinburgh Airport Limited – Operating Agreement
- 6.4 CEC/tie Licence *
- 6.5 SRU Side Agreement
- 6.6 Royal Bank of Scotland Agreement
- 6.7 Local Code of Construction Practice – Forth Ports *
- 6.8 Local Code of Construction Practice – New Edinburgh Limited *
- 6.9 Local Code of Construction Practice – Edinburgh Airport *
- 6.10 Network Rail Asset Protection Agreement *
- 6.11 Network Rail Depot Change *
- 6.12 Network Rail Station Change *
- 6.13 Car Park Compensation Agreements

- 6.14 Network Rail Framework Agreement
- 6.15 Network Rail Lease Agreement
- 6.16 Forth Ports Agreement
- 6.17 Stanley Casinos Agreement
- 6.18 Other Site Specific Code of Construction Plans
- 6.19 Licence – The Gyle
- 6.20 Licence – West Craigs
- 6.21 Network Rail – Neighbour Agreement
- 6.22 Network Rail – Operating Agreement
- 6.23 Network Rail – Bridge Agreement
- 6.24 Telewest utility agreement
- 6.25 Scottish Power utility agreement
- 6.26 DPOFA 2007 Revision
- 6.27 Mobilisation agreements (Infraco and Tramco)

6.1 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.

6.2 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.

6.3 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 for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

6.4 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.

6.5 SRU Side 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 Retaining Wall, the Wanderers Clubhouse remodelling 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 will also include 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 agreement is currently in near final draft format. However it is now unlikely that this will be signed by financial close. This is because of a number of technical matters which will take some time to resolve, including VE savings arising from design of Roseburn Viaduct and the specification of pitch relocation and ancillary works related to flood prevention. The latter point is being pursued to optimise works and lower overall cost. The fallback arrangement should final execution of the agreement be held back whilst technical/design matters are concluded, is that SRU will provide a letter confirming that the wording of key elements of the document is in agreed form.

Risk to INFRACO Contract Award