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Our Ref: ULE90130A-SW-SW-LET-00005-1

Date: 11 November 2005

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Attention: Ian Kendall

Dear Ian,

SDS: Legal Support for Traffic Regulation Orders

I refer to the discussion at our meeting on Saturday 29 October 2005, to your letter of 4 November 2005 and to the further discussion at the Progress Meeting on 10 November 2005 regarding the legal support for TROs and TTROs.

Our position is that this was never within our remit as SDS Provider. We consider that tie made it clear throughout the procurement process that legal advisers were within tie's existing team and that we would be working with them in our role as SDS Provider. We consider that the following extracts from the various documents provided during the procurement process illustrate this.

1.0. In the original OJEU Notice 2004/S 252-217951 it states:-

II.1.6 Description/object of the contract:

In connection with the activities described above, the SDS provider will be required to assist tie and its advisors in various activities associated with land acquisition and compulsory purchase; relevant planning consents and permissions; Traffic Regulation Orders; utilities, stakeholder and other third party agreements.

Also in the OJEU was the following

CPV Code	74200000 - Architectural, engineering, construction and related technical consultancy services
	74231120 - Transport systems consultancy services
	74231130 - Infrastructure works consultancy services
	74232000 - Engineering design services
	74240000 - Integrated engineering services
	74250000 - Urban planning and landscape architectural services

It should be noted that Legal Services is not included in the above list.

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2.0. In the MOI/PQQ at Clause 5 it states:-

5. Anticipated range of competency/capability required from the SDS Provider

The disciplines likely to be required from the SDS provider will include but will not be necessarily limited to:-

- *building design (depot and substations);*
- *building services (M&E) design;*
- *cable co-ordination;*
- *control and communications system design;*
- *cost engineering, estimating and value engineering;*
- *DC power system design;*
- *EMC/EMI control and suppression (e.g. protection of NR's S&T infrastructure);*
- *engineering disciplines generally;*
- *environmental;*
- *fare collection systems design;*
- *geotechnical;*
- *hard and soft landscape design;*
- *highway design;*
- *hydrology/drainage design;*
- *noise and vibration;*
- *OLE design;*
- *operating and maintenance (Tram system asset management expertise);*
- *pedestrian modelling;*
- *programming;*
- *street lighting;*
- *systems integration and coordination;*
- *traffic management and engineering;*
- *tram and transport system modelling and analysis;*
- *transport planning;*
- *urban planning, architectural design and design consistent with the installation of the tram within a World Heritage Site;*
- *utility diversions; and*
- *tram workshop design*

As can be seen from the foregoing, again there is no mention of legal services in the above list and, as we would expect, all are technical disciplines.

Furthermore at Clause 7 in the MOI/PQQ it states:-

7. Working with other Advisers and the Tram Operator

Throughout the term of its contract in relation to the Edinburgh Tram Network, the SDS provider will be required to engage and liaise with other consultants who have been or are to be appointed to provide other specialist services (e.g. marketing and communications, financial and legal services) relating to the Edinburgh Tram Network, as well as all operators, contractors and suppliers involved in the Edinburgh Tram Network. As stated earlier, tie has already appointed Transdev Edinburgh Tram Limited and other technical advisers.



3.

tie recognises the need for all the advisers, operators, contractors and suppliers to work closely together as part of an integrated team. To this end, *tie* will seek to appoint an SDS provider, who has a commitment to and experience of working in partnership with others. The successful SDS provider will be required by the contract to be entered into with *tie*, to provide a duty of care for all its work for *tie* and also to provide reciprocal warranties to the other advisers appointed by *tie*.

3.0. In the ITT Documentation it states:-

***tie's* Advisers**

tie has established an integrated advisory team to develop and implement the Edinburgh Tram Network and intends to maintain this approach throughout the procurement. The advisory team includes:

Legal: Bircham Dyson Bell, DLA Piper, Dundas & Wilson

Financial: PwC

In the ITT Scope of Services it states in summary that

1.1 The SDS Provider shall:

- 1.1.1 perform all Design and Technical Services;
- 1.1.2 give all general technical support described in this Schedule One;
- 1.1.3 perform all management services described in this Schedule One; and
- 1.1.4 assist the Client as may be required in accordance with this Agreement.

Again it can be seen that the focus is on the technical input required from the SDS Provider.

From all of the foregoing it is our contention that the legal services required for the project were to be provided by the legal advisers already on your team. The SDS Provider is to provide all technical input into the Tram Project.

This issue requires to be agreed as soon as possible and I will call to arrange a meeting to discuss the situation to hopefully reach agreement to our mutual satisfaction.

Regards,

David Hutchison
Parsons Brinckerhoff Ltd

CC. Paul McCauley
Jes Hansen

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