

EDINBURGH TRAM NETWORK

SUPPLEMENTAL INSTRUCTIONS TO TENDERERS

1. INTRODUCTION

The purpose of these Supplemental Instructions is to provide Tenderers with guidance on the process **tie** expects to follow once Proposals (as described in Section 3) have been received from Tenderers on 12 January 2007. These instructions, therefore, amplify Sections 5.7 and 6.10 of Volume 1 of the ITN and are released in accordance with Section 4.5 thereof.

The current indicative outline programme of key dates for the proposed dialogue and negotiation, Preferred Candidate selection and the Infraco Contract close process is set out at Section 10.

The steps required to move from receipt of Proposals on 12 January 2007 to the submission of final Consolidated Proposals on 16 April 2007 rely upon clarification, progressive dialogue, flexible engagement, information exchange and issue resolution through negotiation.

Section 11 below comprises certain specific modifications to the ITN, consequent upon the detailed process described in these Supplemental Instructions. All other instructions, requirements and conditions of participation contained in the Infraco ITN remain unchanged and applicable.

2. SETTLING THE TERMS AND CONDITIONS OF THE INFRACO CONTRACT AND THE INFRASTRUCTURE MAINTENANCE AGREEMENT

Tenderers have already been instructed to submit their initial comments on the Infraco Contract so that any major obstacles, lack of comprehension or risk allocation issues can be considered and resolved at the earliest date.

During the tender period following submission of both the Proposals and the final Consolidated Proposals, **tie** will review each Tenderer's commentary on both the Infraco Contract and the Infrastructure Maintenance Agreement and, where necessary, **tie** will negotiate contractual terms and conditions with each Tenderer. This process will be managed in parallel with technical and commercial clarifications and evaluation, with the objective of resolution of all remaining contractual issues before return of final Consolidated Proposals on 16 April 2007.

An updated Infraco Contract will be issued by **tie** after return of the Proposals by the Tenderers.

It is recognised that there may be certain issues around which complete agreement on the Infraco Contract and the Infrastructure Maintenance Agreement cannot be reached until after return of the final Consolidated Proposals and on-going engagement in the Facilitated Negotiations phase. At return of final Consolidated Proposals, Tenderers will be required to provide full mark-up (using the Infraco Contract Compliance Matrix (see ITN Volume 1 at 6.8)) to delineate clearly any remaining issues on the Infraco Contract. Tenderers will be provided separately with an Infrastructure Maintenance Agreement Compliance Matrix. Save in exceptional circumstances, Tenderers will not be permitted to introduce any further proposed contract revisions or to re-open issues from the position taken in the final Consolidated Proposal Infraco Contract and Infrastructure Maintenance Agreement mark-ups. Tenderers should note that open positions, qualified acceptance or unclear mark-up will be taken into account in evaluation and may result in disqualification where such matters prevent proper evaluation and / or comparison or are contrary to fundamental principles of the procurement.

Following submission of the Proposals, Tenderers are invited to comment on the Tram Supply Agreement and the Tram Maintenance Agreement. The original versions of these Agreements were issued with the ITN. It is **tie's** intention to re-issue these Agreements and ask Tenderers to comment on these re-issued Agreements by the date shown in Section 10.

3. PROPOSALS

The Return and Opening of Proposals

Proposals are to be returned by Tenderers to **tie** by 17:00 hours on 12 January 2007 ("**the Return Date**"). **tie** reserves the right to either treat as valid or disregard any Proposals which are not received by the Return Date or which otherwise do not comply with the ITN and/or these Supplemental Instructions. The Proposals will be opened in accordance with **tie's** procedures.

The Proposals should include the Standard Tender with 8/16 trams per hour delivered to Phase 1a based on a contract award in October 2007 and delivery into revenue service for December 2010. The option for Phase 1b should be priced on the basis of a mobilisation instruction by March 2009 and delivery into revenue service by December 2011. Tenderers should return as much as possible of the required Tender submission requirements set out in Volume 2 of the ITN and these Supplemental Instructions by the Return Date. Any outstanding, amended or updated tender information will require to be submitted by Tenderers as part of the Consolidated Proposals by 16 April 2007 (see Section 5).

Tenderers must ensure that, as a minimum, the Proposals should include the Standard Tender comprising a price for Phase 1a and a price for Phase 1b, as an option to be instructed by the Employer, with assumptions, provisional elements and risk items with supporting programmes and methodology proposals together with;

- Infraco Proposal (Scope definition);
- Tenderer's Organisation details;
- Risk Register; and
- generic Systems Integration and Acceptance proposals.

tie will use the Proposals to:-

- conduct formal meetings with each Tenderer as part of the progressive evaluation process and to carry out tender clarification;
- confirm the Final Business Case affordability test for the ETN;
- provide the basis for progressive negotiation and re-assessment of normalised tenders; and
- complete an initial review and initial evaluation of the Proposals (after substantial clarifications and when Tenderers' submissions are comparable).

Should a situation arise where a Tenderer's Proposal (after normalisation) demonstrates unacceptable variance from **tie's** ETN affordability criteria, this will be communicated at review stage to the relevant Tenderer.

4. RELEASE OF FURTHER PROJECT INFORMATION

During the period currently scheduled from 12 January to 16 April 2007, Tenderers will be provided with further project information relating to:

- **tie's** responses to certain key commercial issues identified by Tenderers;
- updated Employer's Requirements;
- significant development to the Preliminary Design, including surveys, carrying price or risk implications;
- updated traffic modelling;
- current programme for the MUDFA Works;
- key structures detailed design;
- any information or explanation answering initial written clarification requests from Tenderers; and
- the revised draft Infraco Contract and any further updates to this Contract and the other contracts forming part of the ETN contractual suite.

Tenderers will incorporate their responses to these releases in their Consolidated Proposals.

5. SUBMISSION OF CONSOLIDATED PROPOSALS

At the culmination of dialogue and negotiation based upon the Proposals, Tenderers will be required to submit a formal final Consolidated Proposal which reflects the outcome of the dialogue, information provision, negotiations and issue resolution. The Consolidated Proposal will include a fully developed Standard Tender for Phase 1a, an updated proposal for Phase 1b taking account of the feedback from **tie** and a fully marked-up Infraco Contract and Infrastructure Maintenance Agreement, following the ITN instruction on use of Compliance Matrix together with any outstanding, amended or updated Tender submission requirements as required by the ITN and/or as subsequently instructed by **tie**. The principal activities following submission are:-

- analysis and evaluation by **tie** of each Tenderer's Consolidated Proposals;
- detailed individual negotiation sessions and provision of any further required written submissions;
- the release of detailed design from SDS (after nomination of the Infraco Preferred Candidate);
- final Consolidated Proposal evaluation and preparation of recommendation on ranking and selection of Preferred Infraco Candidate;
- commencement and completion of facilitated Infraco/TramCo negotiations involving **tie** and proposed Preferred Infraco and TramCo Candidates;
- Preferred Infraco Candidate and SDS engagement (concurrent with facilitated Infraco/TramCo negotiations);

- due diligence by the proposed Infraco Preferred Candidate on price and risk critical items in the SDS design;
- final negotiations to settle the agreed Infraco Contract package, including firm price and scope for Phase 1a, with the parameters for negotiating a firm price option for Phase 1b; and
- the submission of the Preferred Infraco Candidate's Final Offer (aligned with the Preferred TramCo Candidate's Final Offer) which shall be valid for acceptance until April 2008.

This phase will end with the final evaluation and recommendation by **tie** confirming Preferred Candidate for award of the Infraco Contract.

The Infraco Tenderer not selected to proceed into the Facilitated Negotiations will be informed by **tie** once the Preferred Candidate has accepted its nomination. The second ranked Tenderer may be held in reserve until 12 January 2008 unless released by **tie** at an earlier stage. In the event that the Facilitated Negotiations do not proceed or conclude to **tie's** satisfaction, **tie** expressly reserves the right to unilaterally rescind the Preferred Candidate nomination and to engage in the new Facilitated Negotiations with the Reserve Preferred Candidate on the terms of its final Consolidated Proposal.

Tenderers are put on notice that **tie** has similarly reserved the right to unilaterally rescind the TramCo Preferred Candidate nomination and to require that the reserve TramCo Candidate to engage. Preferred Candidates will be required to hold to their final Consolidated Proposal in the event that any change of Facilitated Negotiations partner is directed by **tie**.

The reserve Candidate is to be in a position to remobilise its bid negotiation team within 2 weeks of receiving an instruction from **tie** to engage.

6. FORMAT OF FORMAL MEETINGS WITH TENDERERS AND CLARIFICATIONS/NEGOTIATION SESSIONS

Having regard to the need to maintain evolution and delivery of the programme whilst maintaining the probity of the procurement process, **tie** will schedule meetings with each Tenderer on a one to one basis. An equal number of meetings of equal duration will be offered to each Tenderer and will be held at an appropriate point during clarification and negotiation on the Proposals and the final Consolidated Proposals. The meetings will allow a structured opportunity for the parties to check that each fully understand the scope of the Infraco Contract, the format for all proposals and that Tenderers are able to resolve any queries arising regarding process and timing.

Each Tenderer will be given an agenda of the matters that are to be the subject of clarification/negotiation.

Each Tenderer's responses and, where relevant to the evaluation criteria, the Tenderer's performance at meetings will be taken into account in the evaluation of that Tenderer. Where appropriate, the Tenderers will be asked to confirm in writing statements made at meetings.

The meetings will be minuted and will be conducted in accordance with the conditions of participation in the ITN and **tie's** duties as a contracting authority.

As part of the evaluation process:

- **tie** may contact the client references given as part of the pre-qualification process;

- **tie's** team may conduct a number of visits to:
 - reference project(s) where trams or other major projects delivered by the Tenderer are currently in operation;
 - reference project(s) where they are currently carrying out maintenance;
 - the projects where the Tenderer's Key Personnel have been or currently are closely involved in delivery of complex construction and systems integration.

The feedback obtained on each Tenderer's performance derived from such visits will form part of the evaluation process.

7. Infraco/TramCo Facilitated Negotiations

The purpose of these negotiations is to ensure that all issues between Infraco and the proposed novated TramCo partner are closed and to ensure alignment on commercial, programme and technical aspects including any response to any additional design refinement. For example, the negotiations will ensure that any perceived or actual scope gaps in the contractual arrangements are removed. In particular, **tie's** key objective is to identify and reduce any significant risk allowances proposed by either Preferred Candidate. The negotiations will close with the two Preferred Candidates jointly submitting their re-confirmed Consolidated Proposals ("Final Offers") for acceptance.

Satisfactory conclusion of these negotiations will provide a "de-risked" novation by identifying and resolving any such issues and deliver interlocking the proposals from the Infraco and TramCo Preferred Candidates.

tie shall be entitled to (but may choose not to) attend, observe, participate and lead at all of the Facilitated Negotiations. **tie** will establish a recommended timetable for the negotiations and communicate this to each Preferred Candidate. Tenderers are reminded of the importance of adherence to their duty of confidentiality and good faith in negotiation during this phase.

8. Infraco/SDS Interface

The engagement will centre around:

- any specific requirements or changes required to the SDS designs to be commenced before novation;
- the design service to be provided by SDS to Infraco after novation;
- programme for delivery;
- due diligence on existing designs; and
- comprehension of SDS function remaining with **tie** post novation.

9. NEGOTIATION OF PHASE 1B OPTION AND AWARD OF INFRACO CONTRACT

During this closing Stage, final proposals for Phase 1b Option will be settled, the award recommendation finalised, the due diligence of SDS design by the Preferred Candidate concluded and the Infraco Contract awarded. Sequentially, the principal activities will comprise:

- continuation and completion of due diligence by the Preferred Infraco Candidate on SDS designs and the receipt of further developed non-critical design;
- negotiation and settling of option price for Phase 1b and inclusion of all relevant pricing mechanics in the Infraco Contract;
- completion and close of specific contractual financial, commercial and technical documentation relevant to Phase 1b;
- submission of Final Evaluation Report and Recommendation;
- Tram Board approval of Final Evaluation Report and recommendation;
- submission of Final Evaluation Report and recommendation to City of Edinburgh Council and Transport Scotland;
- Contract Award notification for both Infraco and TramCo procurements and required formal debriefing process;
- Contract execution (concurrent with contract execution and novation of TramCo and SDS to Infraco); and
- close out EU procurement process with Contract Award Notices for Infraco and TramCo;

tie will issue a detailed timetable for this phase following the close of Facilitated Negotiations.

10. INDICATIVE OVERALL TIMETABLE

tie currently anticipates that the clarification, evaluation and negotiation process will be carried out in accordance with the indicative timetable set out below:

12 January 2007	Submission of Proposals.
31 January 2007	Initial clarification requests to be issued to Tenderers.
14 February 2007	Responses to be received from Tenderers to initial clarifications (provisional date, may be varied depending on quantity of clarifications).
5 March 2007	Submission of comments on the Tram Supply and Tram Maintenance Agreements
To be advised	Formal Meetings with Tenderers.
16 April 2007	Receipt of final Consolidated Proposals from Tenderers.
17 - 27 April 2007	Further Negotiations and clarifications leading to selection of Infraco Preferred Candidate. Reserve Candidates informed
11 May – 7 June 2007	Facilitated negotiations between Preferred Candidates for TramCo and Infraco. Submission of Infraco and TramCo Preferred Candidates' aligned Final Offers.
7 June -12 July 2007	Completion of dialogue with preferred Infraco Candidate (to include Phase 1b offer and pricing) and update to Final Recommendation.
19 July 2007	Tram Board Meeting to approve the proposed Preferred Candidates' Final Offers.

23 July – 5 October 2007	Submission of Final Offers to CEC and TS for full Approval and permission to proceed to Contract Award.
October 2007	Award of Infraco and TramCo Contracts and novation of TramCo and SDS, including mandatory 10 day "cooling off" period.

4. 11. SPECIFIC AMENDMENTS TO VOLUMES 1 AND 2 OF THE ITN

Volume 1

Section 4.4

This section is replaced by Section 10 above.

Section 5

Any references to "8 Mandatory Variant Tenders" should be replaced with "4 Mandatory Variant Tenders".

Any references to the "Infraco Contract" should be replaced with the "Infraco Contract and the Infrastructure Maintenance Agreement". Please note that a compliance matrix for the Infrastructure Maintenance Agreement will be issued separately.

Section 5.4.1 - the Formal Offer included in Volume 2 will be revised and issued to Tenderers. A new covering letter for the submission of the Proposals will be issued separately to Tenderers.

Section 5.5 - delete and replace with the revised information for Mandatory Variant Tenders MV1, MV2, MV3 and MV4 issued by **tie**.

Section 5.8 - delete all but the final sentence of this section.

Section 6

Any references to the "Infraco Contract Compliance Matrix" or "Compliance Matrix" should be replaced with the "Infraco Contract and the Infrastructure Maintenance Agreement Matrices (as appropriate)". Please note that a compliance matrix for the Infrastructure Maintenance Agreement will be issued separately.

Section 6.8 - The reference to "contract documentation" and "Infraco Contract" shall include the Tenderer's response to the Infraco Contract, the Infrastructure Maintenance Agreement, the Tram Supply Agreement and the Tram Maintenance Agreement.

Volume 2

Part 1 - The Formal Offer letter will be revised and issued to Tenderers.

Part 10 - delete and replace with the revised information for Mandatory Variant Tenders MV1, MV2, MV3 and MV4 issued by **tie**.