

◆ EDINBURGH ◆

THE CITY OF EDINBURGH COUNCIL

EDINBURGH TRAM PROJECT

With reference to Act of Council Number 14 of the City of Edinburgh Council of 20 December 2007.

I, Andrew Holmes, Director of City Development of the City of Edinburgh Council, I Donald McGougan, Director of Finance of the City of Edinburgh Council and I Gill Lindsay, Council Solicitor of the City of Edinburgh Council are pleased to report to you today on the current position proceeding to financial close and focussing on the authority to permit **tie** to lodge the formal Notice of Intention to Award document. As Chair of the Council's internal Steering Group, you have been managing the internal support for this Project and requiring and obtaining close liaison and update on all matters relating to the delivery of this Project by **tie** Limited. As you know, on 20 December 2007, the Council delegated to you, in consultation with ourselves, the authority to complete due diligence issues and to authorise **tie** to undertake financial close.

The closure of due diligence issues have been progressing well as you aware. In essence, the position which is now closing at the Notice of Intention to Award stage, shows some adjustment in price and risk consistent with the further negotiations which have been undertaken since the period from financial close. In essence, as reported to you personally on 13 March 2008, the headline figure for the Project including costs and risk contingency in the final business case version 2 was £498 million as the best estimate to be put into the public domain. This was shown as being the estimate in the Report of 20 December 2007. Following closure of a number of issues and further negotiations and resolution of a number of issues, including the extensive issue relating to the SDS novation, the final contract price estimate is now, as advised by **tie** to us, the sum of £508 million. In approximate figures the risk contingency within this has been reduced from £49 million to £33 million as part of the closure process.

As discussed at our meeting yesterday in addition to this alteration to finance, the negotiations have required and provided for a 3 month extension to the programme and a range of adjustments to the risk allocations. Many of these adjustments to risk allocation are positive, reflecting the reduced risk contingency. There are some which do pass additional risk to the public sector. Of these, the most important is considered to be SDS. As you are aware, this has been a very difficult point for **tie** to negotiate and they have provided for the best deal which they advise us is currently available to themselves and the Council. In essence, the contractor BBS will accept the design risk for SDS to a high financial ceiling, whereas the Council and **tie** must remain financially liable for delay by SDS in relation to the provision by them of information for a range of consents and approvals. Both **tie** and the Council have worked diligently to examine and reduce this risk in practical

terms and **tie** advises that the new risk contingency contains suitable adjustment for this residual risk.

At our meeting of 13 March 2008 we advised that the outstanding matters related to obtaining clarification on SDS novation, further update and progress on Network Rail issues and the provision to the Council of a suitable letter of comfort from DLA, Legal Advisors to the Project.

We can now advise that, following a further meeting with the Chairman of **tie** Limited this morning and a range of Officers within **tie** and the Council, the Chairman of **tie** has advised that he has now received sufficient assurances in relation to the SDS matter, the APA Agreement with Network Rail has now finally been signed and DLA have today provided an updated letter, qualifying their earlier letter of 12 March. We were pleased to receive the qualifying letter from DLA today which details substantial progress on a number of outstanding and detailed financial, technical and legal issues present in the letter of 12 March. In addition to price and risk issues, the Council were seeking from DLA and **tie** further comfort in relation to assurances on there not being any particular procurement risk as we reach close on the Project. **Tie** have now provided DLA with a range of figures and DLA are now in a position where they have modified considerably their earlier caveat relating to procurement risk as they did not have the extent of required financial information as at 12 March. In particular their letter of today states "presented carefully, **tie**'s explanation should reduce the risk of a losing bidder sensing any weakness to exploit". They also state "**tie** has a detailed and cogent story and this is an important piece of **tie**'s armour against challenge". It is important to recognise that in a project such as this there is no possibility of reaching a position where there is no risk of procurement challenge.

As you know, since 14 March the issue of indemnities to be provided by the BBS Consortium and the relationship with OCIP insurance has been the subject of intense negotiation. The result of this is an agreement today that the amendment which will be accepted is that BBS will not be liable for only uninsured consequential economic loss arising from third party claims. Any residual risk is being actively managed by consideration to additional insurance in relation to economic loss and by **tie** requiring BBS to set aside a fund of some £3 million to be available to meet any such uninsured consequential economic loss. This is considered as being a suitable position in all the circumstances.

We are also advised by **tie** in writing and verbally today of the requirement to immediately lodge the Notice of Intention to Award and the financial and commercial risks which will accrue to the Project if this is not done immediately, with particular reference to the period of 10 days from lodging of Notice of Intention to Award to contract signing and the financial advantage of signing and booking expenditure prior to 31 March.

Having considered all of the above, we consider that it is appropriate to accept **tie**'s recommendation to you to authorise and permit them to immediately lodge the Notice of Intention to Award.

Andrew Holmes, Director of City Development

Signed ..

Donald McGougan, Director of Finance

Signed

18th March 2008

Gill Lindsay, Council Solicitor

Signed .

18.3.2008

I, Tom Aitchison, Chief Executive of the City of Edinburgh Council, having received the request from **tie** and the information detailed above, agree and confirm that **tie** Limited may immediately lodge the Notice of Intention to Award Contract.

18/03/08.