

1 Client Relations

1.1 *tie*

Despite Willie Gallagher's return from leave client relations this week have continued to focus on meetings chaired by Jim McEwan and Steven Bell, once again to do with the negotiations surrounding the SDS Contract Novation Agreement. Matters arising on novation are dealt with below.

1.2 City of Edinburgh Council (CEC)

Nothing to report

1.3 BBS

PB's relations with Richard Walker, MD Bilfinger Berger UK, remain cordial and with the scheduling of three party meetings there has been more opportunity to exchange views on the procurement process. It is clear that Bilfinger Berger has serious reservations over *tie*'s conduct of the bidder negotiations. Equally *tie* continues to express frustration with BBS's negotiation tactics – one consequence of this being that PB has been largely immune from any direct criticism or levelling of blame for the prolongation of the Infraco negotiations.

2 Commercial

2.1 Novation of the SDS Contract

2.1.1 Novation Agreement

Following our commitment of 29 February to deliver a revised draft Novation Agreement updated with Watson Burton's comments back to *tie* this was done on Thursday this week. Watson Burton has stated that the draft now represents a good Agreement from PB's perspective, (better than that contained in the SDS Contract at Schedule 8), provided a sensible final position can be agreed on the subject of LDs. With reference to *tie*'s request for a Parent Company Guarantee, Watson Burton's (Roddy Gordon's) firm advice is that this should not be offered by PB and that *tie* will have to deal with the consequences in their negotiations with BBS.

An email was received from *tie* on 06 March setting out the urgency of securing signature to the SDS Novation Agreement and suggesting that only two significant issues remained to be resolved, namely LDs and the PCG. This of course was not the case – PB had made it clear in all negotiations that three key issues had to be addressed:-

- Completion of *tie*'s negotiations with BBS to secure a Final Offer
- Agreement on the scope of work required to construct the scheme and PB's share of that scope of work, including any redesign work to accommodate BBS's proposals in place of the current SDS Design
- Agreement of a programme of works, including the programme elements associated with PB's scope of works.

In addition to these key items is the continuing issue of reconciliation of the BBS Offer and the SDS Design with the Employer's Requirements although in reality this is not a showstopper. The critical action is to secure alignment between the SDS Design and the

BBS Offer. That said, it would be possible, were we provided with a final version of the Employer's Requirements, to commence the exercise to review alignment with the SDS Design. A *tie* change instruction has still not been received to that effect.

This position was set out in an email back to *tie* on the 6th:-



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An updated BBS Civils Proposal was received on Friday (07 March) but with the *tie* rider that this was still yet to be agreed. My question on progress to completion of negotiations on the related Schedule 4 received the response that the aim was to conclude negotiations on Friday 7th.

On Friday I was contacted by Willie Gallagher who told me that *tie* had reached agreement with BBS at Friday's negotiation meeting, hence all that was now standing in the way of signature of a Novation Agreement was resolution of the SDS PCG and LDs. I questioned his statement on the basis of information received earlier in the day which indicated that agreement on the Civils Offer was some way off and asked him also about the conclusions with regard to Schedule 4. Willie then changed tack, stating he was unaware of the detail and that he would ask Jim McEwan and Steven Bell to join him on the call. There then ensued a robust conversation which revealed that agreement had not been reached on a final Civils offer and that negotiations were continuing "over the next two days" in respect of Schedule 4. That allowed me to reiterate my position that PB would not be in a position to sign up to a novation agreement in the absence of a firm definition of scope and programme, and that this clearly required that *tie* complete its negotiations with BBS. I also stated that any proposition on LDs could only be contemplated with full knowledge of the programme of works so that issue was essentially on hold.

I didn't on this call tell *tie* that a PCG would not be forthcoming. What I did do was take the opportunity in Willie's presence to remind *tie* that despite declaring BBS as Preferred Bidder more than four months ago, (end October 07), a Civils Offer had only been delivered on 26 February. In these circumstances it was unreasonable to be expecting signature on an Agreement next week. Willie then suggested he had some sympathy with my stance on LDs and also commented that in light of the absence of a clear definition of scope it was unlikely that we would be in a position of full agreement by Wednesday next week. He then suggested that in fact formal signature of a Novation Agreement didn't have to be on Wednesday and that what he really needed by then was a clear understanding of remaining activities prior to novation – which could, he added, be programmed for two and a half weeks hence. What Willie really needs is to be able to stand in front of CEC next week and present a confident position on closure negotiations. So, finally, some sense and an agreement from me that we would work closely with *tie* to arrive at a sensible point with a form of words which described the reality of the current position early next week. Monday is now planned to be an intensive round of debate on the subject.

One final point worthy of note. Despite the Civils Offer received on Friday not being an agreed document it is BBS's declared final basis of pricing – this I picked up from a discussion with Richard Walker on Friday evening. I asked him about the assertion that agreement had been reached with *tie* and he told me that the only agreement that had been reached was on a final price – caveated by the content of Schedule 4, the Civils Offer, and the other contract documents. So, the Civils Offer should be treated more as a set of pricing assumptions and should any aspects of the offer have to be amended BBS's price will change.

The Civils Offer contains the same major departures from the SDS design as it did at first draft, notably that the Roads design is a much simpler lower quality offering. **tie**'s view is that we should now carry out an exercise to determine the degree of misalignment between that Offer and our Design. In my view there is insufficient detail to allow us to do that and that will be subject to debate on Monday. But, more importantly, the philosophy adopted by BBS is radically different from the SDS designs which have already been through informal consultation with CEC and, in some cases, been submitted for formal technical approval. I have been making the point to **tie** since the issue of misalignment with the Requirements first emerged that in addition to achieving alignment **tie** must manage the stakeholders to ensure no surprises in future. From informal discussions over the last few weeks with senior members of CEC it would appear that this has not been done. So, in the position we now find ourselves, (which is frankly indefensible from **tie**'s point of view – an incomplete Civils offer so late in the process), I believe the first action, rather than PB undertaking an assessment of misalignment, should be for **tie** to put the BBS proposals in front of CEC to see if they are acceptable. If CEC declares itself content that is the time for PB to embark on the misalignment assessment. To do so before receiving this endorsement would incur unnecessary cost and would simply move the real problem – the likely refusal of CEC to approve the revised design – some weeks beyond novation. That would introduce all sorts of contractual and commercial problems.

In summary, then, the key issues remaining to be cleared in my view are:-

- **tie** to conclude its negotiations to secure a final offer from BBS
- **tie** to engage CEC to secure endorsement of the BBS final Offer especially in respect of Roads (& Structures)
- **tie** to instruct PB to execute an assessment of misalignment between the Employers's Requirements (when finalised) and the SDS Design
- **tie** to instruct PB to execute an assessment of misalignment between the BBS Offer (when finalised and endorsed) and the SDS Design
- **tie** to determine the course of action on instructions for change, either to the SDS Design or the BBS Offer
- All parties to agree a practical programme of works

2.1.2 Employer's Requirements

We understand that **tie** has produced version 3.5 and that this has been passed to BBS for legal review.

2.1.3 BBS Offer

BBS has now prepared a draft of the services which would be required from PB to provide construction support. This document is to be reviewed and agreed as part of the continuing novation discussions.

2.1.3 Infraco Contract Terms & Conditions

Nothing further to report

2.1.4 Separate Contract between *tie* and PB

The following exchange of emails took place this week:-



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2.2 Change Requests

As reported last week a small number of change requests remains to be agreed. These more difficult issues were to be addressed at a special commercial meeting which had been convened by Damian Sharp on Monday afternoon this week. In the event the meeting was postponed due to Dennis Murray (*tie*'s new Commercial Director, replacing Geoff Gilbert), being engaged full-time with the unfolding BBS commercial issues.

2.3 Claims for Prolongation

Nothing further to report.

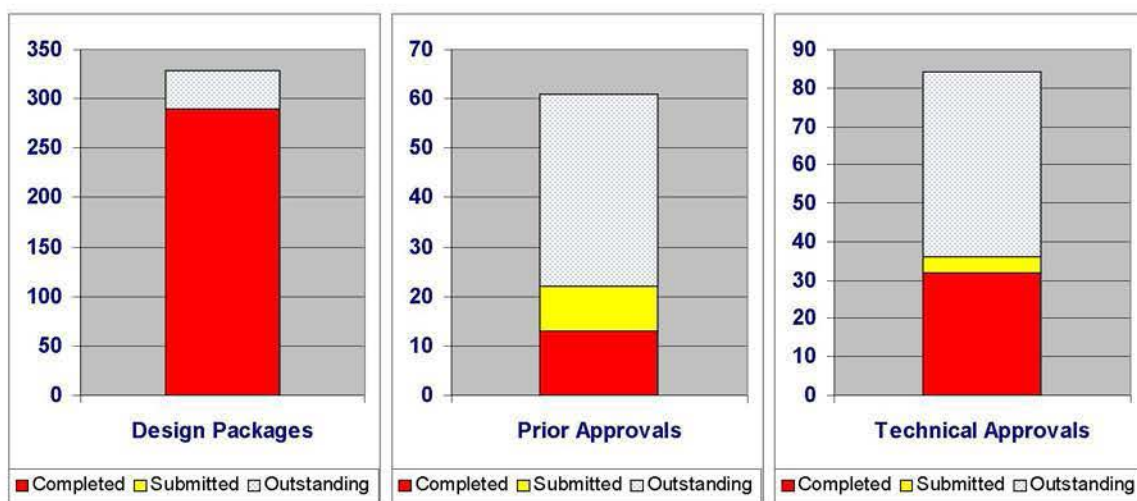
2.4 Cashflow

The February AFP has now been submitted.

3 Operations

3.1 Edinburgh Tram Network

Current status on design package submission to *tie*; prior approvals secured from CEC; and statutory technical approvals secured from the Approval Bodies is as follows:-



3.2 MUDFA

Nothing to report.

4 Other Issues

The date for the meeting with Stuart Glenn and Willie remains provisioned for Wednesday 12 March, starting at 1600.

5 Weekly Look-ahead

- All next week as required. Infraco Contract close-out meetings with *tie* and BBS.

6 Timetable to Infraco Contract Award – *tie* Update

The schedule of key dates is now under review.

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| ▪ tba. | Final Report to Council from <i>tie</i> . |
| ▪ tba. | Novation of the SDS Contract. |
| ▪ tba. | Infraco contract award |