

1 Client Relations

1.1 *tie*

With the current focus from *tie* entirely on the achievement of financial close of the Infraco contract communications this week have involved detailed discussion with Gallagher, Bell, Gilbert, Crosse and Sharp. *tie* is clearly concerned at the complex issues to be resolved ahead of financial close, particularly in respect of novation of the SDS Contract. This has led to attempts by each of the above individuals to link attention to PB commercial issues with progress towards agreement of the Novation Agreement. In a lengthy telephone call with Gallagher on Wednesday I had to remind him that signing of the claim settlement Legal Agreement, for example, should be treated as entirely separate from the issues to be resolved for successful novation. The amicable nature of the conversation suggested that he knew his position to be weak and I resisted his repeated attempts to link the two subjects.

On novation, I have continued to adopt a constructive approach and this has been recognised particularly by Bell. A proposed revised draft Novation Agreement was received from *tie* on Wednesday morning and is to be the subject of detailed review on Tuesday next week. Three points have been highlighted by Gallagher as priority issues, namely the agreement of an appropriate cap on PB liabilities; the agreement in principle to the commercial terms proposed by *tie* as part of the Novation Agreement; and the desirability of PB providing to BBS a form of Parent Company Guarantee. On the first of these points it is in our interests to work with *tie* to agree an acceptable cap on liabilities which will be considerably less than that included in the current SDS agreement. On the generality of the proposed commercial terms we have no particular concerns. On the subject of a Parent Company Guarantee Willie saw fit to contact New York direct, largely I believe because he is now away on leave now for two weeks and he felt the need to kick start the process. Key to any negotiation on the terms of a PCG is to ensure that the form of any guarantee we may be prepared to offer is consistent with the PCG under which we are currently operating. This means that the subject of the PCG can't be treated in isolation; it has to be addressed as an integral part of the scope of the Novation Agreement.

In my view the most important area of debate at the moment arises from the misalignment between the SDS Design and the BBS Offer. The revised draft Novation Agreement contains proposed terms which have clearly been introduced by *tie* under pressure from BBS. One of those terms suggests that PB should be prepared to declare compliance of the SDS design with the BBS Offer. From any informed point of view this is ridiculous. The BBS Offer was made with the full knowledge of the development of the SDS Design so if any warrant is to be given it should be from BBS to the effect that the Offer conforms to the SDS Design. This is but one example which serves to demonstrate that the negotiations have some way to go before reaching a satisfactory conclusion from PB's viewpoint

On the subject of the Legal Agreement for settlement of the claim we are reviewing our position. Steven Bell has now indicated that signature will be forthcoming on Tuesday next week. Greg and I will review on Monday the options available and potential consequences of serving notice under clause 28 to invoke dispute resolution on this topic.

On the subject of Infraco Contract Financial Close the revised date of 13 February for the issue of a Letter of Intent to BBS has indeed slipped as envisaged last week. The revised date of 29 February has been approved by the Tram Project Board for a notice of intent to award, with Infraco Financial Close, (and novation), taking place on 10 March. In separate discussion with BBS these dates are viewed as highly unrealistic, with BBS assuming a date for financial close later in April. BBS's view is that the scheme is not in jeopardy, believing the political investment at Holyrood to be too great. I do not share that view and I believe

there is a serious and increasing risk of cancellation with repeated revisions to the Financial Close forecast date.

1.2 City of Edinburgh Council (CEC)

Nothing further to report.

1.3 BBS

Nothing further to report.

2 Commercial

2.1 Contract

2.1.1 Employer's Requirements

Following PB's completion of the review of the revised set of Employer's Requirements produced by **tie** as version 3.1 a five hour meeting was held with Matthew Crosse on Monday. Matthew is now to report back on his conclusions and I expect these to form part of the upcoming negotiations on novation and on agreement of scope to be completed with BBS. It is worth noting that **tie** is now working on version 3.3 of the Requirements with the intent that a final version be produced by Friday next week. The truth is that **tie** has lost control over the development of the Employer's Requirements.

PB has performed a review of the BBS Offer for the systems scope of the scheme. Comments have been relayed to **tie**. Once again these comments should provide **tie** with the information required to finalise the scope of work expected of BBS and should also allow clarification of the scope expected of PB post novation.

On the subject of the BBS Civils Offer, this has still not been received from **tie** for review. I have expressed (to Steven Bell) serious concern that there is likely to be a significant disconnect between the scope of the BBS Offer and the current status of the SDS Design.

2.1.2 Novation

As outlined above:-

- The proposed revisions to the draft Novation Agreement were received on Wednesday. The revisions were extensive in nature.
- Detailed discussion of the revised draft Agreement is due to take place in Edinburgh next Tuesday.

An updated form of Infracore Contract Was also received on Wednesday.

On the subject of a separate contractual arrangement between **tie** and PB for the provision of services not subject to novation there has still been no progress.

2.2 Change Requests

tie has advised that further Change Orders are in preparation as agreed previously. I have been advised by Damian Sharp that six significant Change Requests submitted to Wednesday's TPB were approved. **tie** is now preparing the follow-up paperwork.

2.3 Claims for Prolongation

As highlighted above, signature of the Legal Agreement for the outstanding prolongation claim has now been indicated for Tuesday 19 February.

2.4 Cashflow

£428,000 (plus VAT) has been certified by **tie** against the November AFP and should be in the bank on Friday this week

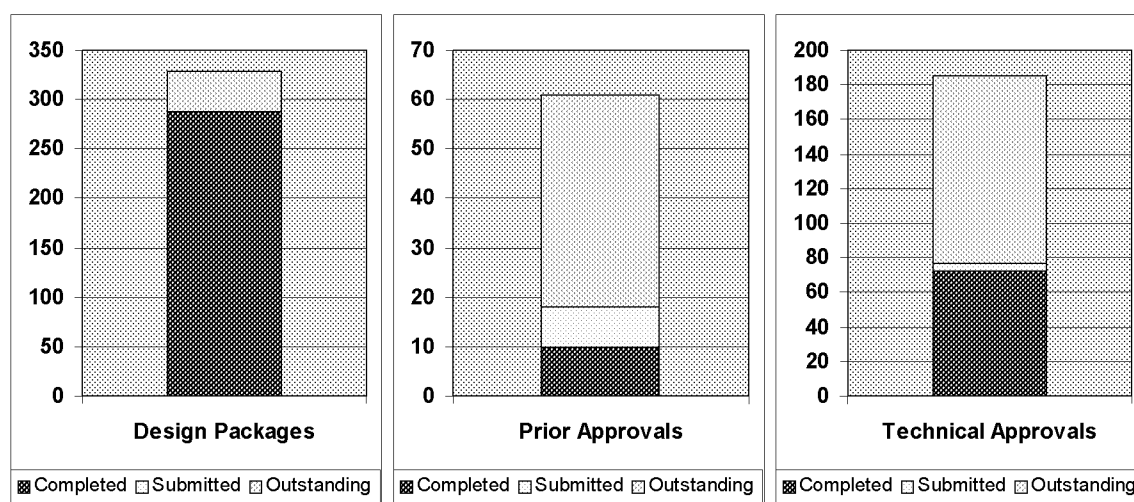
£605,000 (plus VAT) is due for certification imminently by **tie** against the December AFP.

The meeting to review the detailed make-up of the January AFP - potentially the final AFP to be submitted to **tie** pre-novation - has been scheduled for Wednesday next week.

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

Progress is continuing in line with forecast. The target for substantial completion of all remaining IFC's remains end February.

tie has this week requested that we review actions required to restart work which had been suspended in 2006 on the Phase 1B utilities diversions. (Phase 1B being the line for which there is currently no funding approval from CEC /Transport Scotland)

4 Other Issues

A date has now been agreed for Matthew Crosse's departure from *tie*: Friday 15 March is to be Matthew's last day.

David Crawley leaves the project on Friday 15 February.

5 Weekly Look-ahead

- Tuesday. Meeting with Steven Bell to finalise signatures on the Legal Agreement for the PB Prolongation Claim.
- Tuesday. SDS Novation meeting with PB, *tie*, and DLA.
- Wednesday. Continuation of the SDS Novation meeting.
- Wednesday. January AFP Meeting.
- Friday. Critical Issues Meeting. (D Sharp, *tie*, Chair)
- tba. Scope of work definition meetings with *tie* and BBS – to define any changes to design scope post novation

6 Timetable to Infraco Contract Award – *tie* Update

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|-------------------------|---|
| ▪ 29 February. | Final Report to Council from <i>tie</i> . |
| ▪ 29 February + 2 weeks | Novation of the SDS Contract. |
| ▪ 29 February + 2 weeks | Infraco contract award |

The informal view expressed by BBS is that an April date for Financial close is more realistic.