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## **EDINBURGH TRAM OUTLINE BUSINESS CASE**

1. I would like to offer you my personal thanks for preparing the paper on the complex Edinburgh Trams project so that some thought could be given to this before a formal IDM meeting. At Wednesday's Board Meeting it was agreed that Board Members should have a look at your paper and provide you with comments on areas where further information would help them perform a view on how the project should go forward. I would appreciate your assistance, whether by discussion or a minute of clarification on the following points:

### **Procurement Strategy**

2. My understanding is that the procurement strategy hinges around the advance appointment of an operator. In that context I am not clear of the role of Transdev and TEL. In essence:

- is there a contract in place procuring the future services of an operator;
- if so, who is that contract with, what delivery responsibilities does that company have in relation to procuring the infrastructure or vehicles, or alternatively what obligations lie with the Council to provide infrastructure and vehicles by a certain point?
- If such a contract exists, was that contract negotiated between the City of Edinburgh, or TIE, at arms length and following a competition in line with EC requirements for a public services contract or concession.

3. Further, in relation to Annex B, who are the Joint Revenue Committee and what is their statutory/contractual status. If they have a joint and several liability with design contractor to TIE, what are the limits of recourse?

4. Addressing paragraph 10 of your note, on the first bullet point and subsequent paragraphs 11-15, three firm responses to your prequalification would seem quite a good outcome provided that can be translated into three qualified bidders committed to tendering. The question of whether you need to novate the procurement of the vehicles to the infrastructure company must hinge on your belief of whether commissioning problems will arise when you match the vehicles to the track and if so, who should take the risk of resolving the difficulties? Your strategy, and Industry's response to date does not, therefore, seem unreasonable.

5. I would be interested to know whether the infrastructure contract was being procured on a design and build lump sum basis or whether the client carried responsibility for cost and time consequences of a wide range of potential emerging risks.

6. On the second bullet point, and paragraphs 16-19, the issue is whether the cost of financing charges associated with the creation of an extraordinary retention fund is more expensive than the cost of money to the client plus the cost of an equivalent on demand performance bond. The financial consequences for the contractor and us are likely to be the same with either option, since the on demand bond will sit as a liability on the contractor's balance sheet, whilst, I believe, an extraordinary retention fund is likely to be seen as no more than a deferred payment for a prior accrued debt on the public sector. Nor do I think there would necessarily be any difference between the two structures in the contractor's response. I am not sure why this exercise requires financial modelling, rather than some basic financial advice, or why the management structures should be different for the two opportunities. The management would revolve about the contractual delivery schedule and the assessment of liquidated damages in default rather than whether the response was to withhold retention payments or demand payment from the bond holder.

7. We have used each of the two strategies on roads schemes and presently adopt a 5 year maintenance period to correct early life defects, and retention at normal Industry levels, with, more recently, the option of providing an equivalent value bond in lieu.

#### **Content of Draft Final Business Case**

8. I believe that Frances will give you information on the list you have set out in paragraph 22, based on further advice from Andy Park. I would suggest you may wish to consider providing a statement of position on environmental review. I presume that an Environmental Statement was published prior to the Parliamentary processes, but it may be worth reflecting on environmental mitigation obligations identified and being researched within the comprehensive risk management strategy.

#### **Procurement of Trunk Road Land**

9. You refer in Annex A to the land procured at Gogarburn by TRIPS (or their predecessors). Our position can be quite simply stated, we would expect CEC to purchase the whole of the plot which we own there (and was initially bought for the provision of a rapid transit system proposed in the early 90s, in relation to its interface with the then promoted Barnton Bypass). We would expect the value of the plot to be settled by way of an arms-length market value negotiation. We would appoint the Valuation Office Agency to act on our behalf in any such negotiations.

#### **Timing**

10. I am due to depart on leave next week and will be unavailable after 3 May, returning to the office on 23 May. I will be in the office on 1 May.

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