

From: John Ramsay
Rail Delivery
Transport Scotland

13 March 2009

Minister for Transport, Infrastructure and Climate Change

EDINBURGH TRAMS: Update on current dispute between Tie and Bilfinger Berger

Purpose

1. To advise you, of developments regarding the current dispute affecting the Edinburgh Tram Project.

Timing

2. Normal.

Background

3. The Cabinet secretary requested Transport Scotland officials to maintain close contact with tie and CEC in the light of current contractual problems with Bilfinger Berger, the lead civil engineering contractor for the Edinburgh Tram project.

4. Transport Scotland officials have maintained daily contact with tie. A weekly 'phone conference has been established involving David McKay, acting Chairman of tie, Donald McGougan, Finance Director of CEC, and Bill Reeve, Director, Rail Delivery at Transport Scotland. This note provides an update following the latest such 'phone conference held this afternoon.

Progress

5. Transport Scotland was advised of the background to this dispute process at the recent Project Quarterly Review on 3 March. Having formally commenced the Dispute Resolution on 19 February, both sides exchanged their position statements on 2 March and now have until 19 March to meet and agree or disagree in which case the dispute will continue to mediation or adjudication. Tie does not anticipate any agreement by that date.

6. There is now a pattern emerging of delayed work across the length of the tram route, not just in Princes Street (the issue of the current high profile dispute). Tie and CEC consider that Bilfinger Berger are using delay to increase pressure on tie to abandon the current contract terms. Tie and CEC consider, with good reason, that this would be likely to lead to significant cost increases.

7. Under the terms of the contract, Bilfinger Berger is formally obliged to continue working and tie has issued instructions to them accordingly. The two other parties in the BSC Consortium, Siemens (supplier of tramway electrical equipment)

and CAF (tram vehicle supplier) have been involved with discussions. Privately, Siemens has expressed concern about the behaviour of Bilfinger Berger as its consortium partner, and is believed to be attempting to secure a change of behaviour and to broker agreements with Bilfinger Berger within the terms of the contract.

8. The Cabinet Secretary for Finance and Sustainable Growth discussed this ongoing dispute with Transport Scotland on 27 February and 4 March regarding potential outcomes and options for further action. It was agreed to await the outcome of the 19 March dispute meeting. Estimates of cost and programme will be updated following this deadline.

Recommendations

9. Ministers are invited to note;

- That tie does not anticipate that the current dispute with Bilfinger will be resolved before the next key date within the formal dispute resolution process – 19 March and that they believe adjudication is the most likely outcome.
- That Bilfinger Berger are perceived to be delaying commencement of work on Princes Street (and at other sites) to increase pressure on tie to abandon the current contract terms.

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Finance and Sustainable Growth					X

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