

**Mandy Wilson**

**From:** Fitchie, Andrew [Andrew.Fitchie@dlapiper.com]  
**Sent:** 05 October 2007 17:44  
**To:** Gill Lindsay; Colin MacKenzie  
**Cc:** susan.clark@tie.ltd.uk; Geoff Gilbert  
**Subject:** Bidder negotiations  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Gill  
Colin

**tie Covenant:** to keep you informed - one bidder is content with the so called level two letter- a qualified form of guarantee of tie's payment obligations. The other bidder will require a formal guarantee from CEC -full financial and performance undertaking. I have explained to them that this will require approval at full Council level, not forthcoming until much later and that, in return, I expect that CEC would wish to be a direct beneficiary of the corporate holding companies' PCGs taken by tie.

Kind regards

**Andrew Fitchie**  
**Partner, Finance & Projects**  
 DLA Piper Scotland LLP

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2007/2(b)

2007/2(c)

**Mandy Wilson**

**From:** Gill Lindsay  
**Sent:** 08 October 2007 22:46  
**To:** Fitchie, Andrew; Gill Lindsay; Colin MacKenzie  
**Cc:** susan.clark@tie.ltd.uk; Geoff Gilbert  
**Subject:** RE: Bidder negotiations

2007/2c

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Andrew thanks for this advice. Finance will be able to comment on their awareness. In purely practical terms would CEC be guaranteeing to step in and perform TIE,s obligations. If so do they have the necessary resources and contractual relationships with Tie,s contractors to facilitate this. Does this not increase the risk exposure for CEC and reduce that of the bidder. If not what is the bidders reasons for seeking and what do they gain. Presumably CEC and TIE,s relationship would also require to facilitate this. It also mitigates against the purpose of Tie as an entity. Appreciate project delivery reasoning. Look forward to meeting. Gill

-----Original Message-----

**From:** "Fitchie, Andrew" <Andrew.Fitchie@dlapiper.com>  
**To:** "Gill Lindsay" <Gill.Lindsay@edinburgh.gov.uk>;  
"Colin.Mackenzie@edinburgh.gov.uk" <Colin.Mackenzie@edinburgh.gov.uk>  
**Cc:** "susan.clark@tie.ltd.uk" <susan.clark@tie.ltd.uk>; "Geoff Gilbert"  
<Geoff.Gilbert@tie.ltd.uk>  
**Sent:** 08/10/07 22:11  
**Subject:** RE: Bidder negotiations

Gill

We can perhaps elaborate at the LAC meeting tomorrow on this. In the meantime my view would be:

1. I believe that Level 1, 2 and 3 draft letters were exposed to CEC Finance a while back and there is already an understanding that a full performance and financial guarantee from CEC might be required by the Infraco provider - given the size of the contract. This is the case with one bidder.
2. The risk profile for CEC is not altered by this requirement, unless it were the case that tie's covenant is not fully supported by its owner. Tie has no balance sheet of its own and the project grant funding commitment is provided to CEC.
3. Though administratively the issue of a financial and performance guarantee by CEC is different from the approach accepted by the other bidder (who is content with sight of the Ministers' funding commitment (if permitted) and the provision of the Level 2 comfort letter, I do not consider that this is a significant evaluation issue since under both situations CEC (as tie's Client) will be underwriting the public sector side risks (subject to insurance, PI and mitigation).
4. In strictly financial terms then, I do not consider that the provision of the formal guarantee by CEC, provided it is drafted in the correct terms, creates any greater liability than that established by tie letting the Infraco Contract, supported by the letter of comfort Level 3. In legal terms, it does create a more formal direct contractual nexus between the Infraco and CEC but that is all.

Kind regards

\*-----Original Message-----

**From:** Gill Lindsay [mailto:Gill.Lindsay@edinburgh.gov.uk]  
**Sent:** 08 October 2007 10:16  
**To:** Fitchie, Andrew; Gill Lindsay; Colin.Mackenzie@edinburgh.gov.uk  
**Cc:** susan.clark@tie.ltd.uk; Geoff Gilbert  
**Subject:** RE: Bidder negotiations

2007/2b

Andrew this is a significant issue for us. Both Directors of Finance and City Dev

were aware that level 2 was likely to be required from our last meeting and I updated them on this. Much more info on risks costs and deliverability of this will be required. Can you consider how this can be presented and if indeed this is a cost issue in bidder negotiations and how it is being dealt with in evaluation. 1 option is to provide both letters to Finance consultants and include in their costings of risk. Can you please provide any updated info including any analysis you have of if and how CEC could provide this and what contingency would require to be in place even to consider. Presumably this would also require to be reflected in the business case and OGC review Finance are completing. Gill

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To: "Gill Lindsay" <Gill.Lindsay@edinburgh.gov.uk>;  
"Colin.Mackenzie@edinburgh.gov.uk" <Colin.Mackenzie@edinburgh.gov.uk>  
Cc: "susan.clark@tie.ltd.uk" <susan.clark@tie.ltd.uk>; "Geoff Gilbert" <Geoff.Gilbert@tie.ltd.uk>  
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2007/2d

**Mandy Wilson**

**From:** Geoff Gilbert [Geoff.Gilbert@tie.ltd.uk]  
**Sent:** 09 October 2007 08:26  
**To:** Gill Lindsay; Colin MacKenzie  
**Cc:** Susan Clark; Fitchie, Andrew  
**Subject:** RE: Bidder negotiations

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear all

Please note that it was a condition laid down by both bidders at the outset that such guarantees are provided by CEC and Transport Scotland at that time. This issue and requirement has been flagged in the TPB minutes since last year.

I agree with the points that Andrew makes on this issue.

Regards

Geoff Gilbert - Project Commercial Director TRAM Project

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