
From: Alan Coyle
Sent: 13 October 2010 12:00
To: John.Ramsay@transportscotland.gsi.gov.uk
Subject: RE: Value and Bonds

Sensitivity: Confidential

John,
Q2 first. The bonds are payable within the timescales set out, this protects our cash position as the cash would be in our bank account rather than Infraco's. This doesn't mean to say Infraco would not dispute the position amongst all the other issues in due course.

Q1. Of the c30m delta between certified payments and value £39m relates to certified prelims and value, this essentially is as a result of tie paying the prelims in accordance with the milestone schedules set out in the contract despite the lack of value from BSC.

I hope this helps.

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8 8BG | alan.coyle@edinburgh.gov.uk |
Phone - Waverley Court [REDACTED]
Phone - Citypoint [REDACTED]
Mobile [REDACTED]

From: John.Ramsay@transportscotland.gsi.gov.uk [mailto:John.Ramsay@transportscotland.gsi.gov.uk]
Sent: 13 October 2010 10:49
To: Alan Coyle
Subject: RE: Value and Bonds
Sensitivity: Confidential

Alan

Thanks for this further explanation. I have again been asked to make clear hand certain of the key questions;

1. can you provide a brief explanation of your 3 columns, particularly why there is such a disparity between the P6 certified and the QS View and which represents the amount which will be disputed in event of termination today?
2. Also and assuming that tie follows the established recovery procedures, can you briefly confirm whether CEC remain 100% guaranteed to recover the total from the bonds without going through the courts?

I tried your Citypoint number but had to leave a message with Andy - hopefully you can give me a call back on this asap - (mobile please)

Cheers

John Ramsay

Project manager - Edinburgh Trams

Rail Directorate

Transport Scotland

Buchanan House

Glasgow G4 0HF

Tel [REDACTED]

mobile [REDACTED]

From: Alan Coyle [mailto:Alan.Coyle@edinburgh.gov.uk]

Sent: 12 October 2010 17:27

To: Ramsay J (John)

Cc: Morrissey J (Jerry); Reeve W (Bill)

Subject: Value and Bonds

Sensitivity: Confidential

Commercially Sensitive - FOISA Exempt

John,

The discussion with J Swinney last week centred round the aggregate level of certification to date versus the value of work done by the contractor and entitlement in the event of a termination. This should not be confused with the advance payment, though given the similar amounts it's easy to see why there is this confusion.

The table I have attached may help you to see where the numbers RJ/JS discussed last week come from;

	COWD P6	Certified P6	QS View of Liability P6
BB & S – Prelims (incl milestone payments £45.2m)	83.0	80.5	41.4
BB & S – Milestones and Change	45.4	37.9	45.2
BB & S - Total	128.4	118.4	86.6
Accounting Prepayment	(14.4)	-	-
CAF	46.0	46.3	46.3
SDS (Post Novation)	7.7	7.7	7.7
	167.7	172.5	140.6

This would obviously have to be confirmed by measures etc but does take account of known change. Hopefully this provides the clarification you seek.

In relation to the Bonds, I've attached a document which may help you understand the process.

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8 8BG |
alan.coyle@edinburgh.gov.uk |
Phone - Waverley Court [REDACTED]
Phone - Citypoint [REDACTED]
Mobile [REDACTED]

From: John.Ramsay@transportscotland.gsi.gov.uk [mailto:John.Ramsay@transportscotland.gsi.gov.uk]
Sent: 12 October 2010 15:51
To: Alan Coyle
Cc: Jerry.Morrissey@transportscotland.gsi.gov.uk; Bill.Reeve@transportscotland.gsi.gov.uk
Subject: RE: Edinburgh Trams: Advance payments made to BBS:
Sensitivity: Confidential

Alan

Thank you for your assistance earlier today and the information provided.

However having discussed this, it appears that the explanation of the "advance payments" doesn't accord with the context and understanding of Richard Jeffrey's statement to the Cabinet Secretary last week and to which Donald McGougan appeared to concur. Transport Scotland representatives noted that Richard Jeffrey clearly advised that "some £30m or so has been paid in excess of the value of work delivered" - a reference that could be readily interrelated as a reference to payment in advance of need. It would be useful to have confirmation from Richard Jeffrey or Donald as to what was actually said / intended here as the Cabinet Secretary is obviously concerned about potential implication of any payments in advance of need that might incur great difficulty in recovery.

On the last point, it would be useful to have more information about the process for calling on the bonds, particularly where the total amount seems well in excess of that potentially available from the total performance and retention bonds to hand. We would also greatly appreciate a better understanding of the processes under which these bonds will be released - what tests have to be met and whose judgement (CEC or legals) is required etc.

John Ramsay

Project manager - Edinburgh Trams

Rail Directorate

Transport Scotland

Buchanan House

Glasgow G4 0HF

Tel [REDACTED]

mobile [REDACTED]

From: Alan Coyle [mailto:Alan.Coyle@edinburgh.gov.uk]
Sent: 12 October 2010 10:22
To: Ramsay J (John)
Cc: Ailie Wilson
Subject: RE: Edinburgh Trams: Advance payments made to BBS:
Sensitivity: Confidential

John, I response to your queries yesterday, please see the answers below.

Is it correct to assume that such advance payment (s) is in addition to the original £24.2m prepayment to CEC?

No it is not correct to assume that. The prepayment of £24.2m is the proportion of the aggregate mobilisation payments (estimated advance material purchases element) we agreed with TS to be treated as an accounting prepayment of which we have now reversed £9.8m leaving an accounting prepayment of £14.4m.

If so what is the total of the additional advance payment (s) and what do they cover?

There are no additional advance payments – the £30m referred to is an internal **tie** estimate of the amount BB and S would be entitled to for work done only in the event of termination (including what they have spent on prelims)

In the event of termination, how much is recoverable?

On the face of it the full £30m is recoverable but this is all subject to an actual valuation of the work done and demonstration of their entitlement in respect of prelims.

How will any recovery be achieved? and

Depends on the nature of the termination. If it were amicable there might be sensible commercial settlement. If this were not the case we would secure cash by calling the bonds – we have a performance bond total of £23m plus a £2m retention bond – a total of £25m – plus the value of whatever materials on site came into our hands. If this still left a gap cash wise we'd likely be waiting till any subsequent litigation or other determination of the final account to settle. The bonds are on demand and so long as we go through the correct process with reference to the Cl90.1.2 notices then validity of the calls should not be a problem.

Can you confirm Transport Scotland's understanding that recovery may be via bonds and parent company guarantees, and if so will involve require legal action to secure

See above – we don't need legal action to call the bonds or the PCGs. It's likely a call under the PCGs would be disputed.

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8 8BG | alan.coyle@edinburgh.gov.uk |
Phone - Waverley Court ([REDACTED])
Phone - Citypoint [REDACTED]
Mobile [REDACTED]

From: John.Ramsay@transportscotland.gsi.gov.uk [mailto:John.Ramsay@transportscotland.gsi.gov.uk]
Sent: 11 October 2010 11:00
To: Alan Coyle
Cc: Ailie Wilson
Subject: Edinburgh Trams: Advance payments made to BBS:
Importance: High
Sensitivity: Confidential

Alan

Advance payments made to BBS:

It appears that at last week's update meeting with the Cabinet Secretary, CEC and tie.Ltd, Mr Swinney asked for an explanation concerning the level of advance payments made to BBS by tie under the Infraco contract. I am advised that Richard Jeffrey suggested that some £30m or so has been paid in excess of the value of work delivered and this would have been made in exchange for some discount to the price reflecting factors such as the financing of material purchase.

This raises a number of questions and it would be helpful if you could provide further commentary to this matter and in particular detailed response on the following:

- Is it correct to assume that such advance payment (s) is in addition to the original £24.2m prepayment to CEC?
- If so what is the total of the additional advance payment (s) and what do they cover?
- In the event of termination, how much is recoverable?
- How will any recovery be achieved? and
- Can you confirm Transport Scotland's understanding that recovery may be via bonds and parent company guarantees, and if so will involve require legal action to secure

My apologies for the urgency of this request but David Middleton wishes to provide a response to the Cabinet Secretary on this as soon as possible this week, ideally by COP tomorrow. Happy to discuss

John Ramsay
Project manager - Edinburgh Trams
Rail Directorate
Transport Scotland
Buchanan House
Glasgow G4 0HF

Tel [REDACTED]
mobile [REDACTED]

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