

## Private & Confidential

### Report of Edinburgh Trams: 5<sup>th</sup> Quarterly Review 4 March 2010

Attendees-			
Dave Anderson	City of Edinburgh Council	Bill Reeve	Transport Scotland
Donald McGougan	City of Edinburgh Council	Jerry Morrissey	Transport Scotland
Andy Conway	City of Edinburgh Council	John Ramsay	Transport Scotland
Alan Coyle	City of Edinburgh Council		
Richard Jeffrey	Tie.Ltd		
Apologies-			

Item	Notes
<b>Purpose of meeting</b>	<p>1. Quarterly Reviews are held under the terms of the formal Financial Agreement between City of Edinburgh Council and Transport Scotland;</p> <p>2. In respect of ongoing Ministerial concerns regarding the impact of the continuing contractual dispute and its potentially damaging impact on the project, this review meeting is convened to consider current status and development of the project.</p>
<b>Minute of Previous Meeting</b>	The minute of the previous Review held on 13 November 2009 was agreed
<b>Attendance,</b>	Richard Jeffrey confirmed that he had been invited by CEC to attend to represent tie and aid discussion of current developments.
<b>Contractual Dispute:</b>	<p>Richard Jeffrey began by reminding the Review that at present all options are in the context of the full Phase 1a – tie has not considered truncation at this stage.</p> <p>Tie had been tasked by the Tram Project Board (TPB) in January 2010 to bring the ongoing dispute to a head to enable a comprehensive report and recommendations to be made to the full CEC Council in late March 2010.</p> <p>To break the current impasse, tie had identified that a range of options were developing but as yet no clear decision could be identified. An Executive Summary could probably be made available soon. This would look at options – all north of £545m, the costs over which tie is required to go back to full Council.</p> <p>Currently there was no change of drive from Bilfinger Berger so Tie's strategy was now to dismantle and undermine and force BSC to provide proper estimates and programme management.</p> <p>Richard Jeffrey explained that Tie's view of BSC's principle arguments to date were;</p>

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<p><b>Emerging Recommendation &amp; Current Thinking</b></p>	<ul style="list-style-type: none"><li>○ They had only priced for BDDI in Part IV of the contract</li><li>○ They couldn't proceed until value of changes were agreed. Tie also believed that BSC were using this for delay – if so Tie thought this would present evidence of BSC not working to contract)</li><li>○ Delay caused by Utility works – (it was confirmed that this had already been agreed with BSC)</li><li>○ Design changes particularly at Picardy Place and Gogar</li><li>○ In summary tie believed that BSC's view was that the "Contract just doesn't work"</li></ul> <p>Regarding the question of why BSC couldn't be made to behave, Richard Jeffrey added that</p> <ul style="list-style-type: none"><li>○ BSC hasn't signed a single contract yet so Tie couldn't apply any upward pressure on BB</li><li>○ BSC were entitled to some payment but not everything they had asked for</li><li>○ Tie had noted that BSC had upped their lobbying efforts</li><li>○ Relationships between BB and Siemens were not good and while Siemens considered that BB might be right on the Part IV issue they were wrong on everything else</li><li>○ BB had accused tie of not being a public authority and therefore had no requirement to deliver best value</li></ul> <p>In summary, tie believed that the biggest sanction remaining was to get BSC to finish the job.</p> <p>Richard Jeffrey advised on the 3 current developing options but added there were also 6 sub options within these</p> <p><b>1) Termination:</b> There was no "slam dunk" case yet apparent and tie are not assuming this as it has potential to effectively end current project. It will be up to the TPB to challenge this view</p> <p><b>2) Manage BB out of Infraco</b> While this was economically attractive it was also contractually fraught and could equal full re-negotiation. Assuming this could be achieved it could also lead to Consortium rights that could revisit on tie</p> <p><b>3) Grind on:</b> Current thinking is that this presents the best of all current available options</p>
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	<p>Dave Anderson advised that CEC however took the view that whatever strategic option is eventually taken, it would be necessary to consider phasing, particularly Haymarket to Airport and then assessing further development</p> <p>Accepting that point, Richard Jeffrey added that any review must also include truncation as well as re-phasing. However, it must be noted that;</p> <ul style="list-style-type: none"> <li>○ BB has not put any re-phasing option to the tie</li> <li>○ No revised programme had yet been agreed with BB</li> <li>○ Couldn't estimate the costs of various options at this stage but the AFC would still be in range of £610m onwards</li> <li>○ There was also the danger with any number taken out of context - that implies incorrect levels of certainty. Accordingly Tie wouldn't be putting forward numbers that were realistic but pessimistic.</li> </ul>
<p><b>Summary</b></p>	<p>Transport Scotland summarised the discussion: It appeared that while BSC believed it couldn't deliver for the Financial Close fixed price, tie couldn't afford the apparent increased price that the contractor now demanded.</p>
<p><b>Funding:</b></p>	<p>On behalf of CEC, Donald McGougan advised that the basis of any contingency funding did not mean additional Council Tax and that contingency funding of final costs up to £600m would be achieved by the following - anything above would require deferral of other capital projects.</p> <p>Up to £600m, additional costs would be met by prudential borrowing. Contingency funding around this had already been agreed and would be capable of being supported by;</p> <ul style="list-style-type: none"> <li>○ existing reserves against future capital programme would support some additional borrowing ; and</li> <li>○ utilising profits already identified The TEL Business Plan –would support any further borrowing necessary.</li> </ul> <p>From a Transport Scotland perspective, Bill Reeve reminded CEC that one of the conditions of the grant was that the project would be built for under £545m. From the discussions so far it appeared that all current options would take the project beyond £545m. Accordingly, that would be something that Ministers would have to consider and it would be helpful if CEC were to consider this context in terms of overall affordability.</p> <p>Appreciating this, CEC's instructions to tie for the TPB on 10 March would now have to be to provide information on contingency planning for £545m. tie would give the clear advice to the TPB that Phase 1a was no longer do-able for £545m and in that context the TPB may well ask tie to go back and consider what could be done for £545m e.g. truncation.</p>

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	<p>Regarding the apparent vagaries of the contract, Transport Scotland requested further clarity on whether tie thought it was necessary to move to a mutually acceptable fixed price contract – a new contract that worked?</p> <p>In response tie advised that the problem with settling a new fixed price was that as yet there was no fixed scope. Richard Jeffrey also added that in his opinion, the current contract was not the problem – rather what it represented as an acceptable price for the contractor. Just giving contractors money wouldn't represent best value for money - it would only provide a short-term fix and without longer term certainty there would be nothing to prevent it happening again. Tie also believed that there was still more that could be done to maintain pressure on the Consortium. The meeting was advised that tie were about to add £10m negative valuation which would cause the Consortium to reconsider their strategy.</p> <p>Bill Reeve advised that Transport Scotland remained uncertain about the remaining scope and sought confirmation of what remained to be agreed?</p> <p>Tie confirmed that they weren't currently able to answer that because BSC hadn't yet provided details of all changes required. It was confirmed that of the 523 changes noted to date, 220 hadn't yet been submitted. In addition, the value of current additional charges = £23m of which so far the Consortium had only accepted £9m</p>
<p><b>Programme management Overheads</b></p>	<p>Bill Reeve suggested that while the impact of the dispute on tie's overheads was generally understood, it was unclear what tie's perception over complaints about scale of their overheads was?</p> <p>In response, Richard confirmed that if it was accepted that where action could have been taken, it would have been.</p> <p>On behalf of CEC, Dave Anderson added that the Council were conscious of the overheads question and agreed that where possible tie should work to make them more efficient, adding that there were already a number of CEC staff helping tie.</p>
<p><b>Actions required from the Review Meeting:</b></p>	<ol style="list-style-type: none"> <li>1. CEC agreed to consider and refer to the Grant Conditions in the run up to the full Council meeting on 27 May 2010</li> <li>2. Tie agreed to provide Transport Scotland with a Change analysis</li> <li>3. Transport Scotland noted the work of tie and CEC regarding their efforts to bring their ongoing dispute to a reasonable conclusion.</li> </ol>

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