

Edinburgh Tram Network

The City of Edinburgh Council

13 March 2008

1 Purpose of report

- 1.1 Notify the Council of the notice to award the contract for the Edinburgh Tram Network (ETN) to Bilfinger Berger Siemens (BBS).

2 Summary

- 2.1 A report updating the Council on the progress of contractual negotiations for the ETN was reported to Council on 20th December 2007.
- 2.2 The report also sought delegated authority for the Council's Chief Executive to give approval for **tie** to enter the contracts with the Infraco and Tramco contractors subject to suitable due diligence and providing remaining issues are resolved to the satisfaction of the Council's Chief Executive.
- 2.3 The report also authorised the governance arrangements of the project and noted that the Council meeting of February 7th 2008 would have noted the formal award of the Infraco and Tramco contracts.

3 Main report

Recent Developments

- 3.1 Due to on going negotiations with the preferred bidder, BBS, the formal award of the contracts could not be reported to Council based on the previous timetable and a verbal update was provided by the Executive Chair of **tie**.
- 3.2 The most recent programme received from **tie** would indicated notification of award will be March 10th 2008 with Contract Close 10 days later following the mandatory cooling off period.
- 3.3 The reasons for slippage in contract signing are due to prolonged negotiations with BBS around 3 principal areas.
 - SDS (Contract for Advanced Design) Novation Agreement
 - Alignment of SDS design (and related warranty) with Infraco Proposal

- Alignment of Employers' Requirements with Infraco Proposal

4 Explanation of Negotiations

- 4.1 Negotiations have covered project scope, price and risk. Base costs have risen by £1.6m due to changes in scope; other changes are part of commercial negotiations around ownership of project risks.

5 Explanation of Award

- 5.1 The process to award following the selection of preferred bidder requires a number of steps other than negotiation of the contract and all related issues.
- 5.2 A review was be undertaken by **tie** of all critical areas and a detailed management plan put in place.
- 5.3 There were a number of meetings on the Infraco contract proposal, SDS design issues and employer's requirements alignment meetings between all parties.
- 5.4 SDS Novation, Infraco terms and finalisation of alignment matter then would take place.
- 5.5 Once all contractual areas were finalised Notification of Award would be made. It is at this point that the reserved bidder is no longer in place. There is then a mandatory 10 day cooling off period to allow for any potential challenges before formal contract close.

6 Price and Risks

Price

- 6.1 Over the period of negotiations there have been changes to the base cost of the project. The make up of the estimated cost of Phase 1a in the Final Business Case was £498m which included base costs of £449m and a Quantified Risk Allowance (QRA) of £49m. The base cost has now increased to £468m, an increase of £19m. The QRA has been re-run and the risk allowance reduced.
- 6.2 The increase in base costs can be attributed to an increase in Infraco of £11.4m which is a result of firm prices on provisional sums, increases in scope of employer's requirements and reductions in value engineering options.
- 6.3 Tramco base costs have increased by £5.3m which is largely a result of adverse currency fluctuations and maintenance mobilisation.
- 6.4 Other base costs have increased by £2m as a result of additional project management/other resources costs and additional design costs.

Risks

- 6.5 The report to Council on 20th December 2007 highlighted risks to the Council in relation to third party agreements and finalisation of prior and technical approvals.
- 6.6 The risks associated with prior and technical approvals are of particular concern to the Council.
- 6.7 The risks which arise from the overlap of design and construction periods are:
- Packages submitted by SDS are not of requisite standard, preventing the Council from providing consent timeously and creating delay to the construction programme.
 - SDS fail to provide the outstanding packages on a timely basis relative to the agreed programme, preventing the Council from providing consent timeously and creating delay to the construction programme.
 - SDS fail to provide the outstanding packages to the requisite standard, requiring rework and delay, preventing the Council from providing consent timeously and creating delay to the construction programme.
 - The Council provide consents and approvals timeously, but SDS then fail to provide Issued For Construction drawings to BBS timeously creating delay to the construction programme.
- 6.8 It is not anticipated that the outstanding design packages will be delivered until autumn 2008.
- 6.9 Negotiations have taken place over a lengthy period of time with the objective of defining a process and set of contractual terms which will enable **tie** and the Council to manage the risks arising from the overlapping design and construction periods. This problem was not anticipated when the SDS contract was concluded in 2005. The recent discussions have taken place under the umbrella of the SDS Novation Agreement, but it is important to distinguish two groups of issues :
- **Cost certainty:** The primary objective of the Novation approach was to ensure that design work could commence long before commitment to the construction contract suite generating maximum construction price certainty and transferring design risk to the construction partner.
 - **Outstanding design risk:** SDS have resisted accepting liability to BBS for the timeliness of submission and approval of design packages after financial close. Their concern is that the risk is different from (and incremental to) the underlying risk arising from the quality of their work. A delay, they argue, could result in hefty exposure because of the linkage to construction programme delay. SDS did not anticipate this risk when committing to their contract - the expectation was that the majority of design scope and certainly all approvals would be complete prior to

financial close. However, the SDS contract did not include deadlines by which the design process had to be completed.

- 6.10 The approved packages which have been delivered to BBS, are subject to the Novation terms, which result in BBS accepting the design quality risk, with resort to SDS in the event of failure under the terms of the existing SDS agreement. The exposure to SDS could be potentially onerous, but was accepted when they entered into the existing contract and is not currently contentious.
- 6.11 This means that the primary objective above of cost certainty and risk transfer has been achieved relative to Approved Packages only.
- 6.12 The Council are exposed to risks relating to timeliness of submission and or quality. The risk could be heightened by deliberate or inadvertent actions by BBS or SDS.
- 6.13 The means by which these risks primarily can be contained are through an effective management process controlled by **tie** and the Council.
- 6.14 Development of the design submission and approval management process has resulted in recent improvements.
- 6.15 Building on the existing Tram and Roads Design working groups, a number of important initiatives have been implemented to improve all round performance of the design and reduce risk.
 - **Co-location of staff** - The co-location of tie, Council and SDS staff has shortened lines of communication and promoted a healthy working relationship that has led to quicker resolution of issues.
 - **Improved contract management arrangements** - tie has increased the number and calibre of resource devoted to managing the design contract, strengthening both its capability to deal with engineering issues and to manage the overall relationship including commercial management and issues resolution.
 - **Focus on resolution of outstanding design issues** - By instituting a weekly critical issues meeting with attendance from tie, the Council and SDS aimed at clearing critical issues so that they do not hold up design production, tie brought together the relevant individuals, assigned clear responsibility for securing resolution and monitored progress. Recently this has resolved almost all issues holding up SDS design and allowed a number of designs that were almost complete to take the critical final step to full completion and submission for approval.
 - **Closing out third party agreements** - Many of the outstanding design issues involved reaching final agreement with third parties. Although progress has been made with many third parties a small number of third party negotiations were not moving to a satisfactory conclusion. tie devoted additional resources to closing out these issues and worked

closely with the Council and SDS to ensure final agreements were reached.

- 6.16 These improvements have improved both the rate of design production and the quality of those designs.
- 6.17 **tie** and the Council [have/had] undertaken a task to look at focussed risk analysis which has meant the programme has been adjusted to identify design packages which carry the most risk and prioritise the processing of these designs to mitigate risk.
- 6.18 **tie** have also been tasked with looking at the critical designs along the programme and provide a quantification of the residual risks. The current allowance in the QRA for risks relating to consents stands at £3m.
- 6.19 It must be noted that any delay in the approvals process which may delay the BBS programme will be entirely a risk to the project and hence the Council.

7 Changes to Risk from 20th December Report

- 7.1 [Awaiting revised QRA]

8 Third Party Agreements

- 8.1 At the time of the last report to Council on the 20th December 2007 a number of critical third party agreements were outstanding. A benefit which has arisen from the delay in contract close is that it has given **tie** more time to progress these agreements.

Forth Ports

- 8.2 The tram design in the Ocean Terminal area focuses, as it should, on providing the tram. Forth Ports as part of their development of the area have requested additional design features as they have aspirations for a Plaza at Ocean Terminal. As a result they are funding the additional costs of this. There have been negotiations with **tie** and the Council on the agreement to facilitate this. The agreement requires some minor drafting changes however Forth Ports board have approved the agreement. [agreement targeted sign off 29th Feb]

BAA/SRU

- 8.3 Lease and licence agreements with BAA have been signed off. Agreement with the SRU around tram works and relocation of pitches under the flood prevention scheme are progressing well.

Telewest/Scottish Power

- 8.4 Agreements with Telewest and Scottish Power are now signed off. [target sign off week ending 29th Feb – ensure this is in place]

9 Network Rail

9.1 A number of critical agreements were outstanding at the date of the last Council report on the 20th December 2007. Agreement with Network Rail is essential for the project to progress. Progress has been made on these agreements, however, as the suite of Network Rail Agreements is so essential to the project a brief update of each of the agreements has been provided in [Appendix 1 – to be attached].

10 Conclusions

11 Recommendations

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Appendices Appendix 1 Network Rail Agreements

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Wards affected All

**Background
Papers**