

Paper to : Legal Affairs Committee

Subject : CEC Chief Executive approval to tie for contract award

Author : Susan Clark

Background

The CEC Report being presented to the full Council meeting on 20th December seeks to delegate authority from the full Council to the Chief Executive of CEC to determine when it is appropriate to permit **tie** to sign the contracts for the Edinburgh Tram project. The paper states that :

“The Chief Executive will be supported by the Directors of City Development and Finance respectively, together with the Council Solicitor. A mandate will be given to **tie** when it is deemed that the relevant aspects of due diligence have been completed by **tie**. Only then will the Council become contractually committed through execution of the guarantee supporting **tie**'s financial obligations to BBS.”

This paper outlines proposals in respect of the mandate to be given to **tie** and identifies the “aspects of due diligence” that should be completed to allow **tie** to be given authority to enter into the contracts along with the process for achieving this.

Deliverables for Contract Award

The following lists activities and deliverables that are expected to be achieved by 28th January to allow formal award of contracts by **tie** on that date.

1) Contract

All contract terms finalised and ready to be signed
Performance securities (PCG & retention & handback bonds) agreed
Novation agreements completed and ready to be signed
Risk allocation matrices completed and in a form agreed with CEC and confirmed by DLA.
CEC guarantee
Due diligence on approvals signatures for Infraco/Tramco
Operating agreements signed – both **tie** & TEL

2) Programme

Confirmed dates for 1a & 1b and understanding of programme risk
Agreement of On-Street Construction Methodology as agreed with BBS, CEC and TEL

3) Employer's Requirements

Final version agreed and reflective of all contract/commercial & technical discussions

4) Due Diligence

Statement from the preferred bidder that they accept the performance run-time model and "law of physics" results and confirmation of acceptance of the emerging quality of design.

5) Risk

Confirmation that QRA is in line with final commercial deal.

6) VE

Statement on VE included in the final deal and other opportunities still available to the project.

7) Pricing

Statement on % of cost fixed and % outstanding as provisional sums with programme for moving these to fixed costs.

Statement on any exclusions from the deal including a mechanism for firming up these exclusions.

(The conclusion of the items 1) to 7) above will be delivered as an overall package as the price is linked to final agreement on contract, programme, ER's, risk etc.)

8) Statement showing final costs including risk funding.

9) NR Assurances

Statement from **tie** in relation to the NR APA being signed with depot & station change concluded. The alternative to this is to have the APA signed with carve outs for the depot station and depot change.

10) SDS Assurances

A statement on status on SDS design and design approvals, particularly prior and technical approvals, including risks that are being transferred to Infracore along with any contractual impacts

11) Funding letter from TS in place

12) Status report on all 3rd party agreements

Approval Process

The Legal Affairs Committee (LAC) was created in August 2007 to ensure that CEC Legal and finance were fully engaged in the process of finalising contracts for the Edinburgh Tram Project and to act as an enabler for all

Agreements to be in a state of readiness for contract award. It would appear sensible, given that the Directors for City Development and Finance and the Council Solicitor all sit on this committee along with **tie**, that this should act as the clearing house to be used to confirm that all aspect of deliverable for contract award have been completed so that a recommendation can be made to the Chief Executive in respect of award of contracts.

Contract award is scheduled to take place on 28th January 2008. It is proposed that the deliverables listed above are presented to the LAC on Monday 21st January for approval. This allows a few days for these to be discussed with the Chief Executive and if required a formal presentation made to allow full delegated authority to be given, in writing to **tie**'s Executive Chairman to sign contracts.

In order that these recommendations can be made, the following sign off will be put in place across **tie**, CEC, TEL:

Topic	tie	CEC	TEL
Contract	Geoff Gilbert	Colin McKenzie	Alastair Richards
Programme	Steven Bell	Duncan Fraser	Bill Campbell
Employer's Requirements	Steven Bell	Duncan Fraser	Alastair Richards
Due Diligence	Steven Bell	Colin McKenzie	NA
Risk	Steven Bell	Rebecca Andrew	Alastair Richards
VE	Jim McEwan	Rebecca Andrew	Alastair Richards
Pricing	Geoff Gilbert	Rebecca Andrew	Alastair Richards
NR Assurance	Alasdair Sim	Colin McKenzie	NA
SDS Assurance	Steven Bell	Duncan Fraser	NA
TS funding letter	Stewart McGarrity	Rebecca Andrew	Alastair Richards
3 rd party agreements	Alasdair Sim	Colin McKenzie	

Programme

TPB / TEL	09/01
All issues finalised	14/01
Issue notification of award	18/01
LAC	21/01
IPG	tbc
TPB/TEL	23/01
Letter of delegated authority to tie	25/01
Contract award	28/01
tie Board	29/01

Recommendation

LAC is requested to approve the information that is to be provided to the LAC, and the process for approvals as outlined in this paper.

Proposed: Susan Clark
Deputy Project Director **Date:**

Recommended: Steven Bell
Project Director **Date:**

Approved: **Date:**