

**TRAM Project
(FOISA Exempt Commercial In Confidence)**

Paper to : **Tram Board DPD Sub-Committee**
Subject : **Outline Of The Procurement Strategy**
Date : **6th September 2006**

1.0 Introduction

1.1 The purpose of this document is to:-

- Summarise the Procurement Strategy set out within the Outline Business Case (OBC)
- Set out the problems and issues of implementing this strategy given the slippage on design
- Set out the recommendations for mitigating the impact of these problems to maintain the Strategy Objectives.

1.2 This paper deals primarily with the Capex element of the strategy rather than operation and maintenance. A separate paper will be produced to recommend the way forward in respect of maintenance. [A paper was produced in early July which reviewed the permutations - is this still live?]

2.0 Procurement Strategy Objectives

2.1 The Objectives as set out or implied in the OBC are to:-

- Transfer design and construction risks to the private sector
- Minimise the risk premium (and/or exclusions of liability) that bidders for a design, construct and maintain contract normally include. Usually at tender stage bidders would not have a design with key consents proven to meet the contract performance obligations and hence they would usually add risk premiums for this.
- Mitigation-Mitigate of utilities diversion risk (i.e. contingent pricing and potential impact of delays to utilities diversion programme on InfraCo works).
- Generate programme and cost efficiencies through a single utilities diversions contract covering multiple works.
- Select preferred vehicle independent of InfraCo procurement.

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3.0 Background

3.1 The supply chain to deliver the works tram system is, at high level:-

- SDS - system designer
- TramCo – Tram design, manufacture, and commissioning and tram maintenance
- InfraCo – Infrastructure provider and potentially maintainer
- MUDFA Contractor – Utilities diversions and enabling works provider
- Advance Works Contractors (strategy to be confirmed)
- DPOFA – Operation of tram system

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- TSS – technical engineering and cost validation support.

4.0 Strategy (As set out in the OBC)

4.1 The overall strategy is to procure the supply chain separately, to aggregate the supply chain by novation of SDS and TramCo to Infraco to create a single contracting entity to deliver the work. This single entity will then have tram system design, construction, integration and maintenance responsibility to meet the performance requirements of the tram system.

4.2 The OBC Procurement Strategy is shown graphically in Appendix A. [Not with draft at the moment] The principal steps are:-

- A Procure SDS to develop requirements definition, preliminary design, detailed design, modelling, deliver consents all of which achieve the specified project functional requirements (run time, capacity etc).
- B Concurrent with design and modelling procure first TramCo and then InfraCo
- C [The original concept that the design would be sufficiently mature to allow InfraCo's pricing to be well refined as early as possible] Progressively pass design information to Infraco through the tender and CARP period [any design release in CARP requires careful management to minimise risk of challenge from deselected bidders]
- D Award InfraCo and novate SDS and TramCo to Infraco
- E TSS validating that SDS design will deliver the tram system performance requirements (run time and capacity etc) to ensure discharge of SDS obligations to tie and tie's duty of care to mandate from CEC.

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4.3 This approach is intended to achieve the Objectives by:-

- Providing Infraco with a design that is validated [by whom? No residual design liability should lie with tie] to deliver the tram performance requirements before award of the contract thereby eliminating or reducing bidders pricing risks. This also enables the bidders to put a reliable price on the scope by giving InfraCo the preliminary designs during the tender period.
- Novating SDS to InfraCo to transfer design risk, and hence tram system performance risk to InfraCo. (Novation effectively allows InfraCo to lay off part of their tram system performance risk to SDS)
- Novating TramCo to InfraCo to transfer system integration and system performance risk to InfraCo. Effectively creating a single point responsibility for tram system performance.
- Gaining assurance that the designs will meet the trams system performance requirements through validation by TSS. [This would draw back risk to tie if any "assurance" is passed onto the InfraCo bidders. This was not part of the original procurement risk allocation. Should this not be done by the InfraCo as part of its design due diligence?]
- Resolution of consents prior to commencement of InfraCo works avoiding the risk to programme of delays due to consents not being in place. [Suggest check with Trudi Craggs on programme]

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- 4.4 To eliminate bidders pricing risks it was intended to progressively reduce bidders remaining pricing risk allowances by progressively providing detailed design information and confirming key consents with bidders during the CARP period from Oct 06 and March 07, as per the programme included in the OBC. [Original proposal was that this would be done during the initial tender period, not during CARP.]
- 4.5 Bidders are very unlikely to accept the risks of delivering utilities diversions (MUDFA) to meet the programme given that they cannot control the third party utility companies. Therefore the MUDFA works will be procured separately and undertaken well in advance of the commencement of the InfraCo works to minimise risks to InfraCo delivery programme. This strategy should also align with the tram project commitment to minimise disruption to the public whenever and wherever possible.
- 4.6 The headline delivery phase risk allocation once designs are completed and SDS and TramCo novated are:-

RISK ALLOCATION			
Risk	tie	InfraCo	MUDFA
Utility diversion scope, cost and consequential delivery performance	Y		
Utility diversion contractor delivery performance risk			Y
Performance of utility companies	Y		
Changes in tram system performance requirements	Y		
Design risk to meet specified performance		Y	
Construction – ground conditions, constructability, street possession [?] compliance		Y	
Incorrect cost estimate for InfraCo works (including tram)		Y	
System integration		Y	
Incorrect programme assumptions		Y	
Funding Availability	Y		
Land Assembly and Site Access	Y		

5.0 Current Issues

- 5.1 Since the strategy was endorsed by acceptance of the OBC the following position has developed:-
- Delivery of the assured preliminary design by SDS has slipped by three months
 - Issue of TramCo tender ITN has slipped by three months
 - Award of the MUDFA contract has been delayed by four months
 - The InfraCo tender period has been reduced by one month to enable the FBC to be informed by the returned tenders in Jan 07.
 - Utilities diversions cannot start before DFBC approval which means that the risk of delaying InfraCo works has increased.

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5.2 Delivery of the Strategy is also contingent on:-

- InfraCo accepting novation of TramCo
- Consents (TTROs, TROs and key planning consents) being obtained and communicated to the bidders/preferred bidders before conclusion of negotiations. [Check with Trudi Craggs on programme. There may be an issue with the timing of TROs and building fixing agreements.]
- InfraCo bidders having the necessary design and consent approval information at commencement of bid period and within the early stages of the bid period.

6.0 Proposals to Mitigate the Impact of the Issues and Problems

6.1 To mitigate the impact of the above and maintain the integrity of value for money risk transfer:-

- To minimise risk pricing by bidders and deliver negotiated contracts within the shortened timescales:-
 - Identify and agree with the bidders the price critical design, performance and consents information that they require. [When would this be done?]
 - Agree a priority design programme with SDS to deliver this design information and share this with bidders.
 - Develop a plan for the phased delivery of consents by SDS/Tram and share and agree this with bidders.
 - Agree bid programmes with bidders and monitor their performance against them through regular face to face review.
 - Agree the phased delivery of bid information with bidders.
 - Conduct the bid process as an ongoing negotiation (whilst maintaining parity of tendering).

[Further information is required on the above 3 bullets in order to draft the ITN. So far, we are only aware of one "mid-term" meeting with each bidder to discuss the contract.]

- To deliver a cost effective (i.e. minimum risk premium) novation of TramCo:-
 - Identify but do not announce the preferred TramCo bidder once evaluated. Hold the bids open [Not sure what is meant here. Is this to keep losing TramCo bidders as "stalking horse" if preferred TramCo fails to conclude deal with InfraCo? Would only the preferred TramCo have access to InfraCo?] until selection of a preferred InfraCo bidder and then facilitate negotiations between TramCo and InfraCo to settle all technical, commercial and programme issues. [This process requires to be completed within InfraCo CARP rather than with preferred InfraCo tenderer. Part of negotiations and final pricing will be predicted on the identity of the preferred TramCo.]
- To minimise risk pricing in respect of the capability of the SDS design to meet the tram system performance requirements:-
 - TSS to confirm that the Preliminary Design delivers these requirements. [Minimum of risk pricing by the InfraCo]

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bidders only occur if a warranty to confirm this is given by

tie/TSS. This is not recommended for reasons stated at 4.3.]

- o Negotiate [SDS is contractually obliged to novate and there is a 3% retention in the SDS Agreement which is released on novation] with SDS to enforce novation. It is not necessary for SDS to complete detailed design for the InfraCo to effect this risk transfer but purely that tie's rights under the SDS contract in respect of design work to date is transferred to InfraCo.
- To maintain, or minimise delays to, the completion date.
 - o Reduce the negotiation (CARP) period for InfraCo by four months [Significant reduction of CARP period will impact ability to drive value out of competitive process. May also result in residual contingent pricing in bids] to maintain commencement date for the works and hence completion date.
 - o Undertake Advance Works prior to award of InfraCo to take the pressure off the critical path in the early stages of the InfraCo works [Strategy to be confirmed. Anticipated that these works will be undertaken by a contractor(s) awarded outside of the InfraCo procurement?]
 - o Gain CEC agreement to a limited mobilisation of InfraCo in advance of full approval to award the contract. [Please clarify detail. This has a potential impact on the drafting of the InfraCo Contract.]

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7.0 Recommendation

7.1 It is recommended that the Sub Committee approves the proposals set out above.

Proposed	Geoff Gilbert Project Commercial Director	Date:- 5/9/06
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Recommended	Andie Harper Project Director	Date:- 5/9/06
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Approved Tram Board DPD Sub Committee	Date:-
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OBC Procurement Strategy

