

From: John Ramsay
Rail Delivery
Transport Scotland
13 March 2009

Minister for Transport, Infrastructure and Climate Change

EDINBURGH TRAMS: Update on current dispute between Tie and Bilfinger Berger

Purpose

1. To advise you, of the situation regarding the current contractual dispute affecting the Edinburgh Tram Project.

Timing

2. Normal.

Background

3. The Minister was advised on 23 February 2009 that Tie has been conducting negotiations throughout the past six months with Bilfinger on both the development of a "recovery" programme to mitigate the scale of slippage, since Financial Close last May together with sensitive commercial talks on consequent contractors' claims emerging from slippage. Throughout, Tie has remained confident that if agreement can be reached, the recovery programme will largely ensure that the operational milestone of July 2011 remains realistic. However, Tie has been less certain about its impact on base costs and Transport Scotland has been less confident than Tie about the likelihood of service delivery by July 2011 and considers early 2012 more realistic.
4. Negotiations between Tie and Bilfinger have reached an impasse. Transport Initiatives Edinburgh (Tie) and City of Edinburgh Council (CEC) have decided that it would not be commercially prudent to accept the terms proposed by Bilfinger Berger prior to commencement of works on Princes Street on 23 February following closure of Princes Street on Saturday 21 February (for 9 months). Therefore they commenced formal Dispute Resolution Procedures with Bilfinger Berger on 19 February on receipt of Bilfinger Berger's ultimatum. In pursuing the dispute resolution procedure, Tie has adopted a very robust negotiating line to ensure that there is an equitable commercial outcome.

Progress

5. Transport Scotland was advised of the background to this dispute process at the recent Project Quarterly Review on 3 March. Having formally commenced the Dispute Resolution on 19 February, both sides exchanged their position statements on 2 March and now have until 19 March to meet and agree or disagree in which case the dispute will continue to mediation or adjudication. Tie does not anticipate any agreement by that date, indeed there is now a pattern emerging of delayed work across city, other than Princes Street (the issue of the current dispute) and Tie and CEC consider that Bilfinger Berger are actively

delaying to increase pressure on Tie to abandon the current contract terms. Tie and CEC consider, with good reason that this would be likely to lead to significant cost increases.

6. Meantime under the terms of the contract, Bilfinger Berger is formally obliged to continue working and Tie has issued instructions to them accordingly. The two other parties in the BSC Consortium, Siemens and CAF continue to work well with Tie, particularly Siemens, who have been supportive of Tie's position and are attempting to broker agreements with Bilfinger Berger within the terms of the contract.
7. The Cabinet Secretary for Finance and Sustainable Growth discussed this ongoing dispute with Transport Scotland on 27 February and 4 March regarding potential outcomes and options for further action. Transport Scotland agreed to establish regular briefings with Tie and CEC. These briefings are being obtained daily together with weekly tri-partite conference calls with senior managers in both Tie and CEC.

Recommendations

1. Ministers are invited to note;
 - That Transport Scotland, CEC and Tie now maintain regular briefing discussions;
 - That Tie does not anticipate that the current dispute with Bilfinger will be resolved before the next key date within the formal dispute resolution process – 19 March and that they believe adjudication is the most likely outcome.
 - That Bilfinger Berger are actively delaying commencement of work on Princes Street (and at other sites) to increase pressure on Tie to abandon the current contract terms.
 - That CEC / Tie are currently unable to advise Transport Scotland of their estimation of the unmitigated impact of both costs and programme slippage.

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Finance and Sustainable Growth					X

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