

EDINBURGH TRAMS: CONTRACTUAL DISPUTE BETWEEN TIE.LTD and BILFINGER

ISSUE

Since Financial Close (May 2008) Tie has been conducting negotiations with Bilfinger on a “recovery” programme to mitigate the scale of slippage together with commercial talks on consequent claims.

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 prior to commencement of works on Princes Street (due to start 23 February) following closure of Princes Street on Saturday last (for 9 months). Therefore they have commenced the formal dispute resolution procedure with Bilfinger and this is being followed. This development has been made public, and has been reported widely in the media starting with last Friday’s Edinburgh Evening News.

KEY POINTS

- The Tram Project remains the responsibility of City of Edinburgh Council.
- Ministers will continue to meet the funding obligation of up to £500m, as determined by the Scottish Parliament. Any costs in excess of this are the responsibility of City of Edinburgh Council.

THIRD PARTY SUPPORTIVE QUOTES

The dispute is being widely reported in the media. So far the CEC / Tie position has been most widely supportive on the basis of the statements released. Bilfinger has been slow to respond but have made clear their view that the contractual failure has been Tie’s not theirs.

Steve Cardownie, (SNP) Deputy Leader of City of Edinburgh Council
“The best scenario would be for Bilfinger to get back to work .. it ill behoves a company to demand more money on a fixed price contract”
Daily Mail 23 February 09

BACKGROUND

Following the decision of Parliament on 27 June 2007, the Scottish Government accepted Parliament's decision that financial support for the Tram project should continue for Phase 1a (Newhaven to Airport) at a contribution of no more than £500m with the proviso that the promoter, City of Edinburgh Council, accepts full responsibility for all project risk including cost and programme over-run.

City of Edinburgh Council must continue to ensure and demonstrate that the scheme:-

- remains affordable,
 - continues to demonstrate a Benefit Cost Ratio of above 1 and
 - requires no ongoing operating subsidy from the government.
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- Tie has adopted a very robust negotiating line with Bilfinger to ensure that there is an equitable commercial outcome with Infracore.
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- Before the current dispute began, CEC / Tie had estimated the impact of the previous negotiations would lead to increases in overall project costs from £512m to between £528m and £546m. Also that the programming discussions with Bilfinger would ensure the scheduled milestone for revenue service of July 2011 was maintained (however Transport Scotland is of the view that both programme and cost are now be under threat)

Programme slippage on this project has been developing since Financial Close on 14 May 2008. While the key weaknesses in design at the time of contract signature, together with subsequent changes necessitated by CEC's planning and technical requirements, remain contributory factors, Tie and CEC consider that the main cause of current slippage continues to be the failure of the main infrastructure contractor, Bilfinger Berger, to mobilise according to contract timescales with construction milestones missed and costs rising accordingly.

Tie has been in discussion throughout recent months with Bilfinger on both the development of a "recovery" programme to mitigate the scale of slippage, together with commercial negotiations on consequent contractors' claims emerging from the slippage. The negotiations between tie and Bilfinger have reached an impasse and Tie and CEC have decided that it would not be commercially prudent to accept the

terms proposed by Bilfinger prior to commencement of works on Princes Street tomorrow. Therefore they have commenced the formal dispute resolution procedure with Bilfinger. Urgent talks began on Friday with Bilfinger and the rest of the BSC consortium (Siemens and CAF).

	Budget	Spend
2007/08		£75.5m
2008/09	£109m	£101m (SR07 capped)
2009/10	£149m	£149m (SR07 capped)
2010/11	£ 75m	
2011/12	£outstanding balance due	

Opposition Parties position

David McLetchie – “This Trams saga is bearing all the hallmarks of the fiasco of the Scottish Parliament.... My message to the contractor is get back to work..”

The Herald 24 February 2009

Nigel Griffiths Labour MP for Edinburgh South and former Minister for Construction – “ Questions should be asked whether to continue with this scheme”

Daily Telegraph Scotland 24 February 2009

Colin Howden Director of Transform Scotland (the national sustainable transport alliance) “The Government should consider all contracts with Bilfinger (referring to the £320m M80 contract)

Transport Scotland’s Director responsible for the M80 is due to meet Bilfinger Berger’s UK Managing Director on the afternoon of 25 February to seek assurances that the current dispute will in no way affect their ability to perform their contractual obligations on the M80.

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