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July 09

Minister for Transport, Infrastructure and Climate Change

EDINBURGH TRAMS: Update on current status and progress with contract dispute negotiations.

Purpose

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

Timing

2. Immediate.

Background:

3. Ministers will recall from previous briefings that Tie has been engaged in sustained intensive negotiations with BSC consortium (most notably the "civils" contractor Bilfinger Berger) over the slippage on the Tram construction programme to both mitigate delays and base cost increases.

Issue:

4. At their meeting on 8 May last with Richard Jeffrey (the newly appointed Chief Executive of Tie) Ministers were advised that these issues had been at the heart of the very public contractual dispute in late February / early March when Bilfinger had refused to begin contract work on Princes Street unless their claim for further costs (in addition to the agreed contract sums) was accepted. Although this dispute was settled within the terms of the existing contract, continuing progress across the city was patchy, working relationships with the Bilfinger was uncertain and negotiations were proving to be difficult. Ministers were advised by Richard Jeffrey that he considered the project could no longer be delivered for £512m and nor would it be opened in summer 2011 as had been previously announced: It would require the summer months to fully understand these issues and reach a full commercial settlement with their contractors. Only then could he provide ministers with greater certainty on both cost and time. He also advised that it was the intention to return to full Council on 20 August for their approval to any agreement, given that it would require increased project cost and delayed opening.

5. Since then, although attitudes and working relationships with the BSC consortium, particularly Bilfinger Berger, has generally improved and work at some key sites, notably Princes Street is progressing well, negotiations towards a comprehensive agreement on the key issues has been less successful and BSC continue to resist the key arguments presented so far by Ttie which essentially have

been focussed on mitigating the accumulated slippage and cost increases resulting from differences in programme timescales and serious contractual disagreements (on works pricing and additional costs)

Way Forward:

6. Given that the consortium has resisted all negotiations attempted so far and has re-iterated their demand for an additional overall sum of up to £100m to settle all these issues, the recent Tram Project Board on 8 July, agreed that this level of additional demand was both unacceptable and unaffordable. They agreed that of the strategies available, they should now abandon their previous attempts to persuade BSC through intensive negotiations coupled with mediation, to now pursue an agreement based on formal contract dispute procedures. This would also be coupled with other formal contract mechanisms i.e. audits etc to increase overall certainty.

7. At present Transport Scotland appreciate that there is considerable uncertainty of the potential impact that this approach will have on the project. It is known for instance that there is a gap of some 5 -7 months on key milestone completion dates in the respective mitigation programmes; Tie having identified the spring to summer of 2012 for opening and BSC, summer to autumn. It is also worth noting that Bilfinger have quoted a 2013 completion date if a commercial agreement is not forthcoming.

8. CEC / Tie had previously advised Transport Scotland that their expectations of the impact of the current slippage and their recovery programme would result in an increase on the current publicly quoted cost of £512m to a range between £528m to £546m. It has been clear to Transport Scotland for some time now that the lower limit of this range being sustained by CEC and Tie at £533m overall is not attainable and this is more apparent to all, now that negotiations with BSC have failed to reach an equitable commercial outcome. Currently however, it is proving difficult for Tie to advise Transport Scotland of what impact this might have on overall costs particularly given BSC's sustained claim for an additional £100m..

9. Tie have been tasked with the development of the new strategy (see above) together with an analysis of overall cost increases and key area sensitivities (to avoid further adverse contractor reactions viz the Princes Street dispute). This will be fully considered by the next Tram Board on 29 July following which a report will be made to full Council on 20 August.

10. Transport Scotland is closely monitoring developments and being kept fully appraised and will provide further advice to ministers once CEC and Tie have confirmed the detail of their intended course of action. Both have been advised that it is important that Ministers are informed of key decisions before the papers for full Council on 20 August have been circulated. Meantime key representatives of the main parties in the Council have also been kept advised (in general terms) about developments and the unwillingness of the contractors to negotiate a mutual agreement.

Gogar Station:

11. While any continuing dispute with Tie's contractors may have an impact on the planned works which Transport Scotland have indicated at the Gogar Tram Depot, Transport Scotland continues to work closely with CEC and Tie to progress current development and design requirements.

Recommendations:

12. Ministers are invited to note that;

- Over the course of the last few months, Tie's strategy based on intensive negotiations and mediation has not proved successful and that BSC are sustaining their demand for a cost plus settlement or an additional sum – up to £100m;
- CEC are now considering a strategy based on formal dispute resolution procedures to maintain pressure on BSC to reach mutual agreement on programme and costs within the terms of the existing contract.
- That Tie is currently working-up this approach together with amended cost and time impact assessment and that this will be fully considered at the next Tram Project Board on 29 July.
- Transport Scotland is continuing to closely monitor progress and developments and will advise Ministers, as soon as possible of key developments before the full meeting of Edinburgh City Council on 20 August.

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Ext:
Mobile

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister, for Transport, Infrastructure and Climate Change			X		
Cabinet Secretary for Finance and Sustainable Growth					X

Comment [A1]: Annex D of the Guidance on Preparation of Minutes to Ministers provides advice on the construction of copy lists – including a flow chart which provides an easy-to-use mechanism for applying the guidance. For Ministers, mark the relevant box (or boxes) with an ‘X’ to indicate why the Minister is being copied in. Where a paper contains details of Financial Implications, the Minister for Finance and Public Services must be included on the copy list – and the Portfolio Interest box should be marked with an ‘X’. Delete any unused rows or insert additional rows if required. For officials, include details of their Department and Division. Only use group names in copy lists if there is a relevant e-mail distribution list.

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Comment [A2]: Click in the field below and then click on Option(s) from the toolbar to select a pre-set copy list. Note that you may choose any combination of Options. However, since Options 2 and 3 are subsets of Option 1 you should NOT select Options 2 or 3 if you have already selected Option 1. **OPTION 1: Ministers:** Select this option if the minute relates to a matter which is, or may become, the subject of significant media interest. **OPTION 2: Ministers:** Select this option if the minute conveys advice on a significant or sensitive policy issue and you have not already selected Option 1. **OPTION 3:** Select this option if there are significant or sensitive presentational issues and you have not already selected Option 1. **OPTION 4:** Select this option if there are significant financial implications. Once you have selected the relevant options, you will need to complete any variable fields within the pre-set lists (eg ‘Relevant Press Office Desk’). If you select more than one option, please re-order the names appropriately and check for duplicates. Remember that ALL minutes to Ministers should ALSO be copied to other Ministers with an interest, PS/Relevant Departments, Relevant Group Heads, Relevant officials in other areas and relevant Special Advisers. More detailed guidance on the construction of copy lists is set out in Section 5 of the Guidance on Preparation of Minutes to Ministers.