
From: /o=The City of Edinburgh Council/ou=First Administrative Group/cn=Recipients/cn=9000184
Sent: 07 January 2009 17:48
To: 'Colin MacKenzie'
Cc: 'Max Thomson'
Subject: FW: Tram Project - Governance model revision
Attachments: Restruc options 24.11.08 Clean.doc

Colin

You will see Graeme has also now engaged with Andrew Fitchie, as before he needs to cool his jets.

Alan

Alan Coyle | Principal Finance Manager (Acting)/Financial Services Lead (Edinburgh Tram Project) | Financial Services | City Development Team | Level 2/5 Waverley Court | 4 East Market St EH8 8BG | alan.coyle@edinburgh.gov.uk | [REDACTED]

From: Graeme Bissett [[mailto:graeme.bissett@\[REDACTED\]](mailto:graeme.bissett@[REDACTED])]
Sent: 07 January 2009 11:43
To: Alan Coyle
Subject: FW: Tram Project - Governance model revision

2 of 2.

Regards
Graeme

Graeme Bissett

m : [REDACTED]

From: Graeme Bissett [[mailto:graeme.bissett@\[REDACTED\]](mailto:graeme.bissett@[REDACTED])]
Sent: 07 January 2009 11:09
To: Andrew Fitchie (andrew.fitchie@dlapiper.com)
Subject: Tram Project - Governance model revision

Andrew, we are embarking on a revision to the governance structure for the project, following the recent management changes. The underlying activities do not change, but we are seeking a more streamlined decision-making model. The attached paper summarises the thinking, which I should note is WIP and not agreed in any formal way.

The essence is that :

- Tie Ltd would inherit TEL's system integration role and would over time become the operator of the network, the role currently anticipated for TEL
- TEL would fall away
- Tie would continue to be the main contracting party and would deliver the Phase 1A line to CEC as before, however, tie would now have the continuing role.
- Lothian buses shares would be transferred to tie and not to TEL, creating a CEC – tie – LB tax group
- Transdev would continue to be contracted to tie Ltd, with no transfer to TEL

The specific areas where your input will be appreciated are as follows :

1. Contractual obligations of the existing entities, TUPE and Council guarantees : since tie is continuing to be the main contracting party, I would not expect any issues in this area but your confirmation will be valuable.
2. Competition Law and State Aid considerations : since we are creating a "single economic entity" I'm assuming the same rules of engagement apply under this new model as those we have previously discussed. In due course, we may want a refreshed Counsel's opinion.
3. Transport Act 1985 considerations
4. Terms of the Grant Award Letter : again, I do not anticipate issues here because we are making no change to the TS / CEC / tie relationship
5. LB share transfer and position of LB minority shareholders : we need to commence analysis of this process; CEC are moving their own thinking forward but a view from you of the issues in the context of the governance revision would be valuable.
6. Health & Safety obligations : we had extensive advice previously from your colleagues, and this needs refreshed under the new proposal. Again, since tie is the continuing entity the main responsibilities would appear to be unaffected, but the hierarchy above tie would be different.
7. Constitutional documents – Memorandum and Articles of Association for each entity, Operating Agreements : I note this for completeness but do not wish any work done for now. In due course there will be a need for re-drafting across the piece, but we will address this when the structural principles are agreed and all issues resolved.
8. HR, employment and people issues : your advice on employment law implications, again should be minimal.
9. Any other fatal (or life-threatening) flaws

I have also asked PwC to update their earlier advice. The most important tax aspect I can see in this is that tie would be agent for CEC during construction but would inherit the assets under the long-funding lease proposal, instead of TEL. tie would also be both project deliverer (as CEC's agent) and operator in due course. The substance of the transactions is unchanged but tie's role is different.

At this stage, I would like to address only this option (Option B in the paper) of the three set out in the paper as it appears to offer the best solution. However, it would be helpful to have your immediate thoughts on the implications for the aspects listed above if we adopted the TEL model (Option A), particularly the issues around assigning contracts to TEL and the likely reaction of BSC.

We've touched on most of these aspects before and hopefully previous work will limit the new work required. As a deliverable, an initial report which summarises where there are possible difficulties or matters to be addressed would be useful, with more detailed follow up and opinion as necessary. Can you let me have a view on timescale and estimated cost for that first stage.

Thanks

Regards
Graeme

Graeme Bissett

m : [REDACTED]