

## Draft Negotiations Paper: 29 February 2008

### Introduction

The purpose of this paper is to summarise the key areas which tie propose to close in order to conclude the procurement process for Contract Award of the InfraCo Contract, TramCo contract and novation of the SDS Design Contract together with the Novation of the TramCo contract.

Bilfinger Berger Siemens Consortium has been Preferred Bidder for the InfraCo Contract since 25 October 2007 and CAF has been the Preferred Bidder for the TramCo Contract since xx September 2007.

The original procurement timetable and programme anticipated Contract Award on the 28 January 2008. This was not achieved as a result of outstanding issues between tie and the Bidders. Several deadlines have come and gone, with the end result the need to complete final negotiations w/c 3 March in order to confirm necessary authorisation with CEC (council meeting on 13 March 2008) and ensure funding in 2007/08 is available.

### Overall Approach

There needs to be a momentum created to close out the remaining differences between tie and BBS.

Our aim is to resolve the outstanding points of principle and take due account of any material financial, time and risk impacts. It is expected that there will be pressure from BBS to amend the current price levels upwards, leave options open post contract award and negotiate risk transfer.

In order to complete this, tie need to be very clear on our position (and any potential for movement) on all of the key items of principle.

Currently there are too many gaps in quantification to finalise tie's position with satisfactory confidence levels. This will be significantly improved following the Programme and Schedule 4 work taking place on Monday 3 March.

### Major Areas outstanding Agreement

The following areas remain as at 3 March 2008.

- Contract Programme
- Employers Requirements (Commercial Impact)
- InfraCo Works Proposals
- Schedule 4 Pricing
- SDS Novation Agreement
- InfraCo Contract Terms and Conditions
- TramCo Supply Agreement & Maintenance Agreement

## Contract Programme

Overall Programme submitted is within 1 month of previously advised submission. Now 16 July 2011 for full 1a route.

Contract Award date critical as funding availability biased to 07/08 utilisation of early milestone payments.

Expect BBS to seek recovery of 3 or 4 month movement despite Rutland Square Agreement.

Once Critical resource constraints made explicit, there will be some options to supplement resource to reduce critical elements (at a cost). To be flushed out during Monday – Wednesday. This could be considered after Contract Award.

Issue	Current status	Way Forward
Confirmation of Commencement and Completion dates  AWARD CONTRACT – 2/5/8 Mobilisation – 2/5/8 – 2/6/8 Depot Completion – 23/3/10 Revenue Service Phase 1a Edinburgh Airport to Haymarket – 3/5/11 Revenue Service Phase 1a Haymarket to Newhaven – 16/7/11	Review of Milestone dates and Critical Path underway. Tie review will be completed 3/3/08.	<b>Must be agreed as part of this week's discussions. Contract Award shown as 2/5/08. To be confronted on Monday.</b>  <b>Expect BBS to seek trade re "cost" of 3 or 4 month movement despite Rutland Square Agreement. No formal quantification of this yet (informal numbers range up to £3m per month).</b>
Confirm and Agree Design Programme and MUDFA Programme as subset of Contract Programme and Consents Programme	Review and agree in conjunction with Contract Programme review and Update based on V26 / V27, CEC approvals and check with MUDFA Constraints	<b>Finally Agree as part of Contract Programme review tie / BBS / SDS on 5 March.</b>
Visibility of resource constraints and assumptions underpinning the key activities	BBS submission needs to demonstrate this explicitly. Being analysed by tie for 3/3/08	<b>Tradable item regarding volume of critical resources to obtain float / programme benefits. [£??] -Explain</b>
Critical Path Analysis and linkage to Depot Completion and CAF Tram supply.	Currently shows 4 month delay from original programme. Depot Completion now – 23/3/10	<b>Conclude in conjunction with item above.</b>
Confirmation of likely material amendments from SDS Design and any programme impact	Change Notice to be issued for assessment and then output to be considered item by item by tie / BBS / SDS	<b>Linked to Alignment of ER / Design / InfraCo Proposals</b>  <b>Actual change likely to be Change Control.</b>

## **Employers Requirements (Commercial Impact)**

Summary position appears to be near to agreement with a range of £1.1m - £1.5m excluding tapered poles and any Depot Equipment final deal.

<b>Issue</b>	<b>Current status</b>	<b>Way Forward</b>
Turnout design	No standard design used in SDS design.	<b>Agree impact as per output of meetings set up 4 &amp; 6 March. Range £0 - £338k. [Allow up to £169k] Tradeable.</b>
Additional Trackwork	Additional Road crossings and isolation joints – Re-railment platforms at depot area due to SDS design	<b>Agree impact as range £0 - £216k. [Allow up to £108k] Tradeable.</b>
Guard Rails	Additional requirements in SDS design.	<b>Agreed at £32k [50/50] by MC</b>
Scottish Power Interface	Scottish Power requirements for additional isolator in substation	<b>“Jim McEwan to pursue BBS with evidence that they should have covered it. Would not recommend changing.” [if accepted then £120k - £502k]</b>
OCS sectioning	Cubicle mounted line isolators considered for on street sections only required all along the line (add 10)	<b>Agreed and ER's changed to reflect. [£nil]</b>
tie back anchors	Based on information in SDS design considered in proposal – thicker poles and foundations required	<b>Agreed and ER's changed to reflect. [£nil]</b>
Auxiliary Transformer	Change to 1.0 MVA procured from Scottish Power	<b>Agreed to accept BBS position [£nil]</b>
5.2m requirement in City Centre	Requirements for additional poles	<b>Not required if design to SDS spec. need to get BBS acceptance. Andy Steel.</b>
Combined Poles	Additional forces on poles to be considered	<b>Open item. A Steel to pursue with BBS cost delta (reduction from civils poles. [£?]</b>
Modified Track Layout	Impact on turnout drive, point position indicators, loops, point heating	<b>Agreed changes shown in ERs [£66k?]</b>
Trackwork	Change in Trackwork BoQ	<b>Agreed changes shown in ERs [-£199k?]</b>
Trackwork	Use of concrete sleepers instead of wooden sleepers	<b>Agreed changes shown in ERs [£nil]</b>
Radio System	One additional RBS	<b>Agreed changes shown in ERs [£nil]</b>
Central Data Recording	Upgrade to 25 f/sec	<b>Agreed no changes required. [£368k?]</b>
Rugby Time System	Modification required	<b>Agreed changes shown in ERs [£nil]</b>
[Legal] Review of finalised version of ER	BBS partial review submission of 29/02/08 identifies proposed deletions. Not acceptable to tie.	<b>Put into play as part of the negotiations with BBS. Date for conclusion to be agreed first</b>

Depot Equipment: scope split between BBS & CAF	Final agreement and instruction from tie.	<b>Agreement and commercial impact outstanding. To be resolved with A Richards &amp; Geoff Gilbert on 3/3/08. Impact [£TBC]</b>
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### **InfraCo Works Proposals**

Confirmation of acceptability and compliance with the Employer's Requirements, together with linkage to Schedule 4 pricing assumptions.

Level of definition of civils proposals needs to be improved and agreed with tie. Must be a clear statement that BBS will deliver the scheme to the SDS designs save for specified different proposals i.e. roads finishes

Obligations on Utilities, Traffic Management, TRO & TTRO support need to be committed to and, if necessary a price delta agreed and addressed in Schedule 4.

Pricing impact to be addressed under Schedule 4.

### **Schedule 4 Pricing**

Consideration in all of the items listed below required to identify:

1. Identification if item must be agreed at Contract Award or if it can be addressed by Change Control post award – Nothing can go to post award.
2. Range of cost exposure (whether Pre or Post Contract Award)
3. Material Impact (if any) on Risk Transfer – No difference with Preferred Bidder position

Range information to be concluded as part of assessment by DM & co on Monday 3 March.

Summary position not yet clear. There is likely to be a significant push by BBS to either leave items very loose for future opportunities post contract award or seek a risk premium whilst still leaving opportunity for change.

Item	Schedule 4 Reference	Wiesbaden Ref	Information/Action Required / Way Forward
<b>Principles</b>			
<b>Precedence of Sch 4</b>			Get agreement that is subsidiary to terms, ERs and IPs
<b>Definition of "normal design development"</b>		3.3	Get agreement that words in Wiesbaden stand
<b>Level of Pricing Detail</b>	N/A		Need at least Schedule of Rates for both systems and civils. For civils also need BoQs

<b>Price for SDS Design QA issue</b>			BBS propose £2.8m. tie lower figure as BBS are generally happy with the level of detail of design and want PCG from PB
<b>Immunisation</b>		Incl in Price	BBS are stepping back from this. Need to get them to commit to standing by their letter.
<b>Level of Detail and definition in InfraCo Systems Proposal</b>	N/A	N/A	Dennis to confirm satisfactory detail provided. Subject to some clarifications expected to be adequate.
<b>Level of Detail and definition in InfraCo Civils Proposal</b>	N/A	N/A	Dennis to confirm satisfactory detail provided. Currently not acceptable. Specifically highlighted in items noted below in exclusions / assumptions.
<b>Exclusions</b>			
St Andrews Square Public Realm Works	2.3.b	3.6.b	Marked up Drawing showing extent of work included/excluded. Narrative to describe scope. Identify/Price any delta.
Highways/Drainage Works at Picardy Place etc	2.3.c	3.6.d	Marked up Drawing and Narrative to describe the work included in firm bid. Check against Prov. Sum for extra over cost.
Ground Conditions	2.3.d	3.6.e	Statement on contractual position to be agreed
Full footway Construction on Leith Walk	2.3.f	3.6.g 3.6.c	Sketch showing max allowances of reinstatement to be agreed. Identify any delta.
Work at Tower Place/Victoria Dock Bridges	2.3.i	3.6.c	Statement of work to be carried out by BBS
Work in respect of Lindsay Place Retaining Wall	2.3.i	3.6.c	Statement of work to be carried out by BBS
Work at Morrison Supermarket wall	2.3.i	3.6.c	Statement of work to be carried out by BBS
<b>Assumptions</b>			
Highway works allowances at odds with SDS design in relation to road construction	2.4.c	3.9	BBS have stated that they have not priced in line with SDS designs in relation to road reconstruction. SDS to review design and BBS to assist in achieving optimum design. Drawings used in price assumptions to be reviewed against current SDS design drawings to identify any delta. Estimate cost of any risk
Depot	2.4.d	3.7	Depot Earthworks profile sketch. Narrative on assumptions on use of material to be agreed.

			Identify any delta and cost.
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## SDS Novation Agreement

Draft Proposition laid out with SDS & BBS on Tuesday 26/02/08. Response received from SDS on 29/02/08.

Cutting through the caveats it appears that they are reluctant to commit to a LAD Cap and Run rate without final agreement on detailed operation of the design and consents process, together with any changes to their design.

\*\*\* SDS/tie issues not BBS issues

<b>Issue</b>	<b>Current status</b>	<b>Way Forward</b>
PCG from PB Inc. or similar to BBS	Currently required with SDS concerned over difficulty to deliver.	<b><i>Must have for BBS and tie. See item below to achieve.</i></b>
Liability Cap & run rate for damages ***	Current tie proposal is Cap of £1m and run rate of £25k / week. This appears to be too high for SDS to accept.	<b><i>Put into play in the negotiations with SDS on Monday. Potential tradable to reduce run rate to ~£15k per week if acceptable PCG is delivered.</i></b>
Confirmation of likely material amendments from SDS Design	Change Notice to be issued for assessment and then output to be considered item by item by tie / BBS / SDS	<b><i>Linked to Alignment of ER / Design / InfraCo Proposals</i></b>
Confirm and Agree Design Programme as subset of Contract Programme and Consents Programme	Review and agree in conjunction with Contract Programme review and Update based on V26 / V27	<b><i>Agree as part of Contract Programme review tie / BBS / SDS on 5 March.</i></b>

## InfraCo Contract Terms and Conditions

Some progress was made on Thursday and Friday with the following items outstanding. There appears to be a fair number of sticking items which tie and BBS need to discuss and see some movement on quickly on Monday.

Main tradable issues may affect risk transfer and need to be considered with Andrew Fitchie.

Issue	Current status	Way Forward
Liability Cap	Agreed except for:- 1. Treatment of SDS liability cap for quality – flow up. BBS want inside their 20% aggregate liability tie want outside 2. Maintenance Phase formula for establishing liability cap for maintenance phase Legal team taking ties position back to BBS	<b><i>Put into play in the negotiations with BBS on Monday</i></b>
APA Flow downs	BBS not prepared to discuss until NR Immunisation issue is resolved.	<b><i>Put into play in the negotiations with BBS on Monday. Retreat on Immunisation would put VE saving (up to £4m) and programme at risk.</i></b>
Release of Infraco Contract to NR	BBS not accepting release of any part.	<b><i>Get BBS to agree minimal release – ‘words of comfort’ on liability cap being market norm, copy of indemnity clause (without cap levels), copy of compensation event provisions – Put into negotiations on Monday</i></b>
PCGs	BBS believe PCG indemnity levels stepped down at issue of Reliability Certificate. Tie position is that this was never the position until Rutland Square Deal discussions.	<b><i>Use as a trade to get tie position on above and substantial reduction on BB expectation for £2.8m for SDS design quality.</i></b>
10% trigger level for tie default definition for failure to pay	BBS wish to qualify the drafting to avoid 10% trigger level being used as a retention	<b><i>Use as a trade to get tie position on above and substantial reduction on BB expectation for £2.8m for SDS design quality.</i></b>

## Subsidiary items

The following items are now closed or appear to be second tier. Suitable for an action plan in parallel with main discussions.

<b>Issue</b>	<b>Current status</b>	<b>Way Forward</b>
Third Party Obligations/Agreements	Principles and drafting agreed	Closed
LADs	Principles and Drafting Agreed	Closed
Consents	<b>Issues of principle and drafting concluded</b> – except 1. TRO support programme required 2. Cost of TTROs in maintenance to be settled	1. TRO support programme required (GG seeing KR to resolve) 2. Cost of TTROs in maintenance to be settled (GG to clarify magnitude of charges with KR)
Compensation Events and Dispute Resolution Procedure	Principles and Drafting agreed except for:- 1. CEs – BBS want a time limit on the assessment of value and impact of CEs 2. DRP – tie want a stay on BBS ability to go to adjudication for 20 days whilst the Internal Resolution Procedure is concluded	Paper outlining principles acceptable to tie put to BBS. BBS have not instructed their lawyers. Scheduled to be discussed on Monday 3/3/08
DEPOFA Changes	Minor points left	Get BBS confirmation that all issues closed
Building Fixing Agreements	BBS not take planning/prior approval risk	GG to draft amendments
Tramco/SDS Flow Ups	Principles all agreed	BBS/tie final checks – to be completed for cob 3/3/08
EAL Flow downs	Not discussed with BBS	

## **TramCo Supply Agreement & Maintenance**

Current position to be confirmed with Alastair Richards and Geoff Gilbert on Monday 3 March 2008.

<b>Issue</b>	<b>Current status</b>	<b>Way Forward</b>
Bringing CAF into the Consortium	BBS state will do this pre preferred bidder	Discuss with BBS and get agreement that this is done post contract award. Need details of what they propose to do
Advance Payment Bond	Negotiations with CAF ongoing	Needs to be closed out
Depot Equipment	Not finalised	Needs to be finalised pre award
Firming up hedge figures		Schedule of payments needs to be aligned with final programme agreed with Infracore

## **Risk Allowances and QRA**

To be updated following M Hamill work

Will be available Monday am