

Edinburgh Tram SDS Contract – Weekly Report

1 Client Relations

Attention this week has again focused on:-

- Resolution of the PB Commercial concerns, with Geoff Gilbert and Matthew Crosse
- Acceleration of the SDS programme to completion with David Crawley
- Change control and other day-to-day project management issues with Tony Glazebrook.
- Meeting MUDFA performance commitments with Mathew Crosse and Graham Barclay.

These topics are discussed in the following sections.

2 Commercial

2.1 Contract

The Introductory Meeting on commercial resolution with **tie** following the draft response to the claim received and reported upon last week went ahead on Wednesday. Attendance was Geoff Gilbert for **tie** and me and we both agreed that the meeting was exploratory in nature and should be conducted 'without prejudice'.

The agenda proposed by Geoff was as follows:-

- The "Protocol" for completion of the programme
- Changes
- Grounds for settlement of the PB Claim for Additional Services, (routinely referred to by **tie** as the "Prolongation Claim")
 - **tie**'s view of the merits of the claim
 - the need for PB to take into consideration adverse impact on programme due to SDS failures
 - Conditions which may be attached to any proposed settlement

Protocol

Geoff stated that he needed the Protocol to be signed. I said that I couldn't see that signing the Protocol would achieve anything and asked for Geoff's reasoning. Referring to an incident this week where CEC has attempted to revisit a competed design on a complex junction Geoff suggested that the Protocol could be invoked to prevent the Stakeholders engaging in activities which would delay the programme. He stated that the Protocol was needed to underpin **tie**'s ability to impose pressure on all parties should it be required. He suggested signing up to the Protocol signifies confirmation by all concerned of the approach to be adopted to completion and that this would provide the Tram Project Management Team with a solid statement of intent to secure Board (TEL Board) support for the future.

I said that I was still not prepared to sign the Protocol at that point, although I agreed that pressure will be required to bring CEC and TEL to book and that we would consider our position in light of **tie**'s overall position re our commercial issues.

In subsequent discussions with Grant we have talked through the merits of signing the Protocol now that it has been de-risked with Grant's amendments on the basis that this may

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deliver improved client relations and enhance our prospects of an acceptable commercial settlement.

Changes

I secured Geoff's agreement that his proposal to include changes in the discussion today was limited to the first 100 changes on the Change Control Register, i.e. the previously agreed range of "Historic Changes" which were in place prior to the introduction of the revised change control procedure on 01 April 2007. I confirmed my view that the revised procedure was working well with the changes being addressed at the two weekly project management meetings. Accordingly none of the changes from number 101 onwards should be considered in dispute. (I have no wish to have the current change requests subject to the unreasonable assessment process which had been applied prior to Tony Glazebrook assuming control of the day-to-day management of the project). To my surprise, Geoff accepted that his proposal related only to those changes from the agreed range which are still outstanding for resolution.

I allowed Geoff to develop his thinking on the subject and with reference to the 21 changes still to be agreed, Geoff confirmed **tie's** agreement or agreement in principle to 4 of them. This leaves a figure of approximately £1.1m in some form of dispute, categorised as either rejected thus far; requiring further information; or where final value is to be agreed.

Geoff acknowledged the point that PB had provided additional information on several change requests as instructed by **tie** and that the response promised for the project management meeting held on 04 July had not been forthcoming. He reiterated **tie's** stance that these changes can now be dealt with as part of any wrap-up commercial settlement.

Claim for Additional Services

Turning to the Claim for Additional Services Geoff confirmed the amount claimed as the sum of the claim dated 09 April plus the supplementary claim dated 28 June - a sum total of £2.857m. This removed any confusion which had arisen in my mind due to **tie's** statement in the draft letter of response referring to PB's "intention to submit a further claim for £600,000". This week's meeting confirmed that we are both in accord on the value of claim submitted.

In Geoff's view, therefore, the total sum outstanding for settlement, (equating to the change sum plus the historic claim sum), is approximately £3.9m

Turning to the substance of the claim Geoff stated that:-

- **tie** sees merit in the claim arising from delays in reviewing the preliminary design
- **tie** sees merit in the claim arising from the impact of the Critical Issues

I then took Geoff through the sections of the claim and secured the following responses for each topic, {with my subsequent notes in *(bracketed italics)*):-

Charrettes

- PB has already been paid for the impact of the Charrettes up to November 2006. Geoff's view that the sum of £600k paid cleared all issues arising from the Charrettes to that date. *(There is some merit in this assertion)*

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- With reference to the Structures Charrettes all matters arising subsequent to November 2006 have been addressed – or are still to be addressed - through the Critical Issues initiatives. (*This could be acceptable pending agreement on values of the Critical Issues items given that tie sees merit in that part of the claim*)

Consents

- **tie** sees no merit in this claim for additional services relating to Consents arguing that PB has a contractual obligation to secure Consents and that whilst that may be an onerous obligation that is the contract requirement. The discussion moved to the question of consents being unreasonably withheld (due for example to the design being judged against new requirements introduced post Preliminary Design submission as a consequence of the Charrettes). Geoff suggested that **tie** would provide reasonable support to PB and was not convinced that this was a real issue. I developed the debate on this topic by pointing out that the exemplar Preliminary Design, (PD), which had been submitted in April 2006 ahead of formal submission of the PD itself, had received very few adverse comments and sought to contrast this with the reception of the final PD and the large volume of changes introduced through the Charrette process. Extrapolating this to potential problems securing Consents against the detailed design drew an acknowledgment from Geoff along with a suggestion that the different context of detailed design may mean that Consents would have been more difficult to obtain in any event at Detailed rather than Preliminary status.

tie's failure to provide programme management consistent with the responsibility to manage the maser programme

- **tie** sees little merit in this claim. I developed the conversation along the lines of the disruption caused to PB due to lack of co-ordinated management by **tie** of the various strands of the project (MUDFA, SDS, Procurement etc), and suggested that as a direct consequence of this PB had become involved in providing Delivery Partner services in addition to those contracted for detailed design. Geoff's response to this was that PB had been employed as a "World-leading Infrastructure Design Company", (cf PB Bid Documents), and that **tie** had every right to expect more innovative input from PB. Geoff developed the argument to cover Value Engineering and tabled the Value Engineering Report prepared by Robert Blackadder and submitted to **tie** on 23 August 2006. Geoff suggested this report had been weaker than it should have been and used the specific example of PB's failure at that point to push harder on the subject of depot levels: a topic that has since been subject to extensive investigation and is the cornerstone of **tie's** current VE initiative. Geoff added to his argument by again referring to the PB Bid Document with the reference to the need for control of costs and management of affordability issues.

Additional 3rd Party Agreements.

3rd party emerging designs.

tie changes.

Changes due to the requirement to interface with the EARL Project.

- In each of these cases Geoff suggested that they would be dealt with as part of the Critical Issues topic settlement.

Turning to the detailed content of the submission Geoff acknowledged that the claim had been prepared accurately in terms of time being booked to specific areas of additional service provision. Geoff suggested that there were some areas of double counting in the

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quantification of the claim vs. charges already requested under the change control process. I re-presented the way in which the claim had been prepared and stated that I didn't believe there was such double counting, but if there were any instances this was due to mistakes and not intent. Geoff seemed to accept this but went on to question the rates we had used, pointing out that the rates for additional services include for admin, management expenses and so on. I confirmed that I had understood this and that the claim being for management services over and above anything required to supervise the detailed changes was consistent with the provisions of the contract

The debate then got down to the pivotal points of **tie's** counter argument, namely that the Preliminary Design submitted on 30 June 2006 should have been submitted under the requirements of the contract on 28 February 2006. Geoff was adamant that the PD was late, therefore, by some four months. This was the most surprising statement of the afternoon since I have been assured from the outset of my involvement with this claim that the PD was submitted "on-time". Geoff also suggested that the PD had been incomplete, but I was ready for that having been informed previously of Ailsa MacGregor's, (**tie** commercial), position on this. The allegation can readily be discounted by reference to the TSS (Scott Wilson) "Preliminary Design Review Report" submitted by TSS to **tie** on 06 December 2006. I stated this clearly to Geoff and tabled the document at which point he backed off, saying that had been the advice he had been given and that he would review the point. But on the central point of the PD being late contractually he stuck to his guns.

On the basis of late delivery of the PD Geoff developed the argument that **tie** had incurred substantial additional costs. He backed up this position with reference to late delivery of the Requirements Definition Report which he suggested was due 30 November 2005 plus an agreed extension of three weeks. Geoff stated that whilst the Report was submitted on 20 December 2005, on review it was found to be incomplete - "inadequate" in Geoff's terms. Geoff went on to say that an 80% complete Report was not received until 30 April 2006 and that the Trackform definition was delayed further until December 2006, the rumour being that we had been unable to deliver the Trackform Requirements as part of the Report due to lack of resources.

Geoff tabled in support of **tie's** assertion of poor performance through the Requirements Definition and Preliminary design phases a letter sent to **tie** by Mike Jenkins dated 15 March 2006 and entitled "SDS Action Plan". This letter outlined an action plan which referred amongst other things to "Strengthening the PB Management Team". Geoff's clear inference was that this letter together with the alleged delayed delivery dates amounted to proof of the **tie** case.

Geoff went on to highlight two other areas of PB /SDS poor performance, namely:-

- Late provision of Survey information with Ground Investigation data particularly poor, to the extent that Geoff has been unable to transfer ground risk to the Infracore contractor.
- Poor performance on project risk management, a duty allocated to PB but which has not been delivered effectively in **tie's** view.

At this point having presented, (in an unemotional and objective fashion it has to be said), **tie's** view of PB's shortcomings Geoff then acknowledged the upturn in performance since the early part of the year with the introduction of me and David Crawley singled out for special mention. Geoff acknowledged my role in taking control of the Critical Issues initiative, but suggested that prior to that point **tie** had not been provided with the sort of information that would have allowed **tie** to respond in the manner which David Crawley has since demonstrated **tie** is capable of. (I did point out that the whole exercise had taken

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considerably longer than it should have done with reference to the Critical Issues clearance progress table).

Concluding Remarks

Geoff returned to the sum of £3.9m being the figure to be addressed for settlement. He confirmed that he had not yet arrived at a final figure to propose to us and asked that PB now reconsider the sums being claimed against **tie**. He stated clearly that **tie** requires acknowledgement from PB that the case as put across by him has merit and that as a consequence PB should review its stance with a view to settling on a figure lower than the total sum of £3.9m. Geoff stated that **tie** believes it has a strong counter case, but also stated that to pursue PB for the full consequences would not deliver a mutually acceptable sum. He then stated that he was open to offers for reduction either in the outstanding sum of £1.1m against changes or in the sum of £2.9m for additional services.

I pointed out to him that if I took that suggestion at face value it would deliver a minimum value of £2.9m for settlement. This on the basis that being presented with the choice of reducing either the change sum or (*exclusively*) the additional service sum, even if chose to withdraw the £1.1m change sum in its entirety, I would be left with a sum of £2.9m. Geoff nodded in agreement and suggested that could be an acceptable figure. We did not pursue the debate further, and the interpretation of this exchange clearly needs to be considered very carefully as we determine the next steps.

Geoff Gilbert and Mathew Crosse are both on leave for two weeks and **tie** has offered two meetings during w/c 13 August with a commitment to completing negotiations that week and securing settlement on a mutually acceptable sum.

Interpretation of the Meeting

The meeting had only taken place this week as a result of significant pressure applied during the second half of last week, including the threat to invoke Independent Dispute Resolution, (IDR). The distinct impression then was that **tie** was attempting to introduce delay so the question naturally arises, "is that still the case?"

It may well be that **tie** would still prefer to delay arriving at a settlement with PB but nothing that happened during this week's meeting provides evidence of that. Quite the opposite it could be argued with Geoff's commitment, (reinforcing what had been set out in **tie**'s draft letter of response), of intent to arrive at a final settlement during w/c 20 August.

This leads on to the question of whether Geoff is really acting with the full authority of **tie** or whether he is acting more in his own interests and attempting to provide PB with a false sense of security. I believe it's the case that having fought hard to recover the client relationship over the last five months **tie**, or more particularly Mathew and Geoff as far as this topic goes, feel comfortable with the working relationship they have with me. It's entirely possible they would try to play that relationship to secure some sort of respite but whilst that may conceivably deliver two weeks more they both know from the message I personally delivered to them that PB is more than willing to invoke IDR should it feel it has not been treated in a reasonable fashion. Matthew and Geoff also know the strength of feeling that I have put across in forcing them both to confront the facts behind programme slippage to date and an important factor in this is that they know for sure that I believe wholeheartedly in the strength of this claim. That's before we get to any input from Greg which merely adds weight to our position of course. So, I may be being strung along but I don't think so and if that were the intent I believe **tie** would have laid the ground for a delay of more than two weeks.

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In any event, on the specific question of whether Geoff is acting with the full authority of **tie** that can be addressed by a request to Willie Gallagher as part of PB's next submission.

As to settlement, can any value be placed on Geoff's closing remarks? The straight answer of course is "no". We await a formal offer of settlement and Geoff has set out sufficient grounds during this week's meeting to be able to backtrack. However, it's clear things have moved on from previous instances of claim discussion which have ranged from the early days of Mathew's assertion that we aren't entitled to anything because of the fixed price nature of the scheme, through "maybe £1m", again from Matthew, through "yes you have a claim but **tie** has a larger counter claim" from Geoff, to the point now where we have an acknowledgement from Geoff that a mutually acceptable settlement has to be the goal.

In conclusion, my view is that we should continue to work through the next two weeks with **tie** on the basis that **tie**'s position as delivered by Geoff at this meeting was put across in good faith, whilst preparing ourselves to go to IDR should it prove to be necessary when we receive **tie**'s final response during w/c 13 August.

Next Steps

Irrespective of **tie**'s actual position on the claim, the most important question remains "has **tie** got a strong counter case?" We now have some work to do to pick up on each of the points of the case put across by **tie**. I have started working on a response to the key points raised by Geoff, namely:-

- Late submission of the Requirements Definition Report
- Poor quality of the Requirements Definition Report
- The specific allegation on Trackform Requirements
- Late submission of the Preliminary Design
- Poor quality of the Value Engineering Report
- Poor execution of the Project Risk Management function
- Poor execution of Surveys

I aim to have the substance of the response complete by Tuesday having asked for input from the key PB staff who have knowledge of these particular aspects of the project. I have already ascertained that the quality of Issue 1 of the Requirements Definition Report was questionable although I have also received feedback on shortcomings on **tie**'s part in providing information. I shall review the position from the different viewpoints to arrive at an objective assessment which can form the basis for our response and which can also be used to inform any modification which we feel may be required to the sums claimed.

2.2 Change Requests

Nothing more to report this week.

2.3 Claim for Prolongation

As discussed above

2.4 Payments

Nothing more to report this week. This issue is effectively on hold pending progress on the claim negotiation.

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3 Operations

3.1 Detailed Design

Friday 27th was the final day of the project reporting period - Version 18 of the programme will be defined as at Monday 30th. The next DPD meeting is next Thursday and the SDS contract performance will be reported as usual. In normal circumstances the DPD would be concerned with the last complete set of formal information which would be up to 02 July. However, we now have an opportunity to relay a very positive message because performance through the 4 week period from 02 July has been the best we have achieved on the project thus far. The forecast lodged on 02 July envisaged the delivery of 31 design packages, featuring complete landscape designs, tramstop designs, structures design and so on. Quantified at this level there are approximately 310 PB design deliverable packages in total to be delivered to **tie**. For the first time PB has met its period target.

I have included the progress chart as attachment 1 showing forecasts contained in versions 14, 16, and 17 of the programme, version 17 being the programme dated 02 July. A highly relevant fact is that the meeting which unlocked virtually all the remaining Critical Issues was held on 21 June, with instructions confirmed by **tie** on 28 June. Re-mobilisation of the design teams then followed. So, not only are we now able to declare to the Stakeholders that we have met our targets; we are also in a position to reiterate the point made repeatedly in the past that progress was being delayed due to lack of decision making by others.

As reported last week, **tie** has asked that we look at the options for accelerating completion of the SDS programme. In large part this is driven by the need to secure the specific deliverables required to allow the procurement programme to be achieved, with selection of Preferred Bidder due in September and Final Deal during October ahead of final contract signature in January 08. A meeting was held on Monday with Matthew Crosse, Geoff Gilbert and Tony Glazebrook where Jason Chandler and I went through the logic of the dependencies to completion. After the initial concerns from Matthew had been dealt with, (with the opportunity once again to demonstrate that the reasons for slippage are due to Stakeholder inaction), the meeting proceeded in a constructive fashion with PB as usual able to demonstrate a far deeper understanding than **tie** of priority requirements. The discussion focused on the opportunities simply for bringing forward completion dates in particular disciplines, (with only limited results), and the possibility for providing partial deliverables which would satisfy the requirements of the bidders ahead of more complete packages. This resulted in agreements related to track and structures. The results are shown on the attached chart as version V17+, and whilst the apparent difference on the chart versus V17 is minimal Geoff Gilbert expressed himself satisfied with the outcome of the meeting and confirmed that the procurement process could now proceed efficiently.

Evidence of our ability to perform is clearly very valuable in support of our case for recovery of our commercial position and proof of improved performance in the period immediately following resolution of the Critical Issues should really encourage the Stakeholders to review their previous thinking.

Pressure is being maintained to ensure equally impressive performance through the next four week period where we need to deliver 51 packages.

3.2 MUDFA

PB has presented a proposal to the MUDFA Project Manager, Graham Barclay, for detailed weekly review of programme and upcoming priorities. This has been accepted. Internal

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meetings have been held with PB and Halcrow staff and the strong message conveyed by me that we need to perform better, not just in terms of a right-first-time attitude to drawing submission, but also in the communication of potential problems in advance. Many of the problems on the MUDFA contract are due to lack of timely delivery by others and to changes to design requirements brought about by betterment aspirations from the Statutory Utility Companies, (SUCs). These issues together with under-resourcing at the SUCs have meant that final approvals have slipped and this has inevitably led to compression of the time available to complete detailed designs. The thrust of the revised approach is to get ourselves ahead of the curve such that we're working collaboratively and efficiently with the client to deliver on our commitments. This message is being emphasised at Halcrow Director level.

3.3 Procurement

As reported in 3.1 above

3.4 Value Engineering

Nothing further of significance to report this week.

4 Other Issues

Nothing to report

5 Weekly Look-ahead

5.1 Events

- Thursday. Design, Procurement, & Delivery Sub-committee (Chair, W Gallagher)
- Friday. Weekly critical issues meeting, (Chair D Crawley)

5.2 Immediate Challenges for the week ahead

5.2.1 From Last Week

- Commencement of detailed negotiations on the claim for additional costs. (*Achieved*)
- Review of the options for accelerating the SDS Programme to completion. (*Achieved*)

5.2.2 For Next Week

- Response to the **tie** points raised at the commercial meeting this week
- Report to DPD on substantial improvement in SDS delivery performance through the last 4 week period.

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K:\V17 DPD Chart.xls

Attachment. SDS Programme for Delivery of Design Packages
