

Edinburgh Tram SDS Contract – Weekly Report

1 Client Relations

Two significant events have occurred this week. The Council has approved the Final Business Case submission, (*see appendix*), and the Preferred Bidder for the Infraco Contract has been confirmed as Bilfinger Berger Siemens, (BBS). Negotiations with BBS are now progressing in earnest with a view to meeting the Business Case requirements ahead of a recommendation for contract award before 31 December. Provided this deadline can be met the Infraco contract is scheduled to be signed on 28 January 2008. Hence, whilst the final business case has been approved funding has so far only been guaranteed to the end of this year with the balance due for release if negotiations with BBS are successful. There is much to be done as I have been advised by David Crawley that the current price on the table is some £30m over budget.

Against this background client relations have focused this week on working as part of a small group headed by Willie Gallagher with Jim McEwen responsible for value engineering in *tie*, Duncan Fraser as the CEC person responsible for tram, and David Crawley to determine the strategy for conducting the negotiations with the Preferred Bidder. Willie and the *tie* management team had been focusing on the need to reduce the price bid by BBS for the Structures construction, because the price schedule had suggested that this component had been over-priced. At the first meeting with BBS held on Thursday afternoon though it became clear that BBS had provided a fixed price tender so specific components could not be treated in isolation. As might be expected BBS's view was that negotiations should concentrate on the totality of the offer. Having only been introduced to BBS on Tuesday I have yet to develop a full understanding of the offer, which I need to do in the context of Novation of the SDS contract. A second meeting is to be held on Tuesday next week to review the structures subject in more detail but David Crawley and I concluded from Thursday's discussion that a more productive approach to secure the required target price is likely to be to work with BBS to identify risks which could be better managed outwith the Infraco contract – for example the approvals and consents required to complete all the pre-construction works which are currently deemed to be the responsibility of the Infraco but which a number of people are now realising should probably be transferred to *tie* and the CEC.

On the subject of risk assessment an interesting point made by BBS at the meeting was that the structures design supplied by *tie* as part of the invitation to tender was in many cases highly detailed and more than a design /build contractor would have expected. Apart from this being a useful rejoinder to some of Geoff Gilbert's earlier assertions of incomplete information in this area it raises a question as to how the contingency included by BBS in the bid against design completion can be as high as it is. During a discussion with Willie Gallagher recently he told me that the figure was almost on a par with the SDS detailed design contract price. What this may suggest is that BBS is contingencing not so much against design uncertainty but against the risks introduced by Novation.

Further to my meeting with Willie two weeks ago where I put to him the idea that *tie* may be better served by not novating the SDS contract so as to retain the services of PB through the design for expansion of the network I have had other conversations with him and others in *tie* to develop the theme. (*Note the wording of the Business Case approval in this context*). I have reached the point this week where Willie is now seriously considering delaying Novation until June and even Geoff Gilbert is considering an option for dual agreements between PB and the Infraco and PB and *tie*. Apparently DLA has advised that something along these lines may be feasible. The options are still emerging and I need to manage the consultations carefully so that we can get to a position which delivers the lowest risk solution and provides the best opportunity for further business development with *tie*. For the moment, having helped to steer the discussion on Preferred Bidder negotiations to the point where risk allocation needs to be considered rather than detailed pricing, I have suggested to

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David Crawley that he adds Novation to his list of risk issues to be reviewed. Willie Gallagher has called a meeting with the **tie** senior management team today (Friday) off-site in Glasgow to review negotiation strategy and David is to present a set of risks that **tie** should consider treating differently by allocating responsibility more appropriately. I have suggested to David that it would be worth enquiring of BBS what change in price might be forthcoming should SDS Novation not be taken up as an option by **tie**.

Finally on client relations **tie** continues to reorganise in advance of award of the Infraco contract. Damian Sharpe, ex Transport Scotland, has been appointed this week as SDS Contract Manager, reporting to David Crawley. Tony Glazebrook is now to concentrate on engineering issues full time, particularly on the interaction with Network Rail. (Transport Scotland is currently a target for substantial downsizing as a consequence of the new SNP Transport Policy)

2 Commercial

2.1 Contract

Preparation for Novation is continuing with Chris Atkins becoming more heavily involved. Discussion with **tie** aimed at avoiding novating is proceeding as outlined above.

2.2 Change Requests

Nothing to report.

2.3 Claim for Prolongation

The negotiation meeting with Geoff Gilbert went ahead as planned on Thursday. We went through the terms and conditions of the **tie** draft settlement with me working from the modifications proposed by Grant. With the exception of one clause I was able to reach a satisfactory conclusion and I shall work with Grant separately on the wording of that outstanding clause. On the terms of payment I was able to reach agreement essentially in line with the revisions I had proposed to **tie** in my letter of 04 October. In that letter I requested part payment against design packages delivered recognising that the design is going to be substantially complete early in the New Year but that the final package is not scheduled for delivery until June. My contention was that it was unreasonable for 100% of the sum to be outstanding until the final deliverable was delivered. **tie** has accepted this and agreed that payments against a total sum of £1.5m will be made in proportion to progress achieved by mid January (ahead of Novation). **tie** has also confirmed that the balance of payment will be paid when due direct by **tie** and will not be subject to the terms of the Novation agreement with Infraco. On this latter point I was also able to secure agreement that it was unreasonable to withhold 3% retention from the payments as originally proposed by **tie**.

One tranche of £500k had been proposed by **tie** to be linked to completion of the MUDFA IFC delivery programme. I had argued that this was unreasonable since delivery of IFC's is dependent upon earlier compliance by the SUCs with MUDFA programme milestones. Whilst **tie** now accepts my reasoning there is a concern that with MUDFA commanding such a high profile at Tram Project Board level there remains a requirement to be seen to be tying payment of our claim to MUDFA performance. With the events of the last four weeks the position has now improved and the commitment of the SUCs has been secured such that the January completion date for IFC submission shouldn't be in doubt. What **tie** has proposed is

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that the payment clause remains as worded but that should the end date not be met due to failure by one of the SUCs then payment will still be made. Payment will only be delayed if slippage is due to inadequate PB performance. Clearly this arrangement is going to require to be subject to weekly review but is probably the best I can achieve in the circumstances.

In summary I am now in a position to secure agreement on much better terms than proposed by *tie* and *tie* is to provide a revised draft next week. On signing the first tranche of £500k will be released.

2.4 Cashflow

Payment against the last application has finally been made in the sum of £2.1m. This was achieved by the end financial year deadline but only after applying significant pressure to Matthew Crosse. On Wednesday I had to resort to refusing to give the presentation on runtime modelling described below until I received assurance that the payment to bank was in progress.

3 Operations

3.1 Detailed Design

The delivery of completed design packages to *tie* remains substantially on schedule although some problems have been experienced in completing Tram Stop designs. These are not on the critical path so forecast end date remains as previously.

CEC has now completed a review of a particularly important city centre location, (Picardy Place), through which the tram alignment runs. A new design proposal has resulted but clearly at this late stage any attempt to introduce it will result in severe programme impact. I am working with *tie* to determine how best to respond to CEC's proposals (which apparently have not yet been agreed with Transport Edinburgh, (TEL)).

Informal consultation is continuing with CEC ahead of formal technical approval of the detailed design packages. Some problems were identified last week with Halcrow's drainage design integration and these have now been turned round and are available for resubmission, thereby proving the benefits of the informal review process.

3.2 MUDFA

Jim Rosek has now produced his report on MUDFA and I am proposing that some amendments be made to generate an external version for submission to Willie Gallagher.

The MUDFA Sub-committee meeting went ahead on Wednesday and was a very positive and problem-free meeting. Clearly the efforts which have been made by all concerned over the past four weeks have produced good results with targets for SUC collaboration and IFC production all met. The MUDFA contractor now has sufficient information to maintain construction activities through until April next year. (Note that as reported above funding is currently only guaranteed until the end of this year).

The key area of concern raised by Graham Barclay as the *tie* MUDFA project manager related to BT support to *tie* through construction. It is encouraging to note that *tie* now understands the true nature of the roles and responsibilities of the parties involved in MUDFA and is also clear on the specifics of PB's scope of work. A justifiable criticism of the PB team would be

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that with better reporting this position should have been arrived at much sooner, (despite it being a **tie** responsibility to manage the MUDFA contract). I believe we are now at the point though where the potential for serious disruption to the project from MUDFA has been removed and that PB's position is secure.

3.3 Procurement

PB met with Mathew Crosse and Susan Clark of **tie** who has now been given a special role in the management of the Infraco procurement through to contract award and beyond. We had been asked to provide a presentation on run-time modelling to identify issues which needed to be closed out to allow Infraco to sign up to commitments on this critically important business case topic and this was given by Jason Chandler. The presentation lasted for two hours and was well received.

I have provided to Susan a set of issues to be addressed from my point of view as part of the Preferred Bidder negotiations and have emphasised the need for a structured programme of meetings with roles, responsibilities, and communications policy clearly defined. I prepared this having become very concerned on Tuesday that nothing of the sort had been put in place by **tie** so that the whole process (in my view) was at risk of quickly becoming confused. My main concern is that clear reference points are defined prior to any detailed discussions taking place between PB and BBS such that any later Novation can be executed on a firm foundation

4 Other Issues

Nothing to report

5 Weekly Look-ahead

- Tuesday. Structures design review meeting with BBS.
- Thursday. Weekly meeting with Willie Gallagher and SCR.
- Thursday. Tram Project Board.
- Friday. Weekly critical issues meeting. (Chair D Crawley, **tie**).



Internal Communication

I am absolutely delighted to advise you all that earlier this afternoon the City of Edinburgh Council overwhelmingly voted to endorse the final business case for the tram project.

This is a great decision for all of us involved in the project and for the city of Edinburgh. As well as voting for our tram scheme, Edinburgh councillors were deciding on how Edinburgh is going to grow and develop in the future. Our tram project is a catalyst for investment, jobs, regeneration and cleaner air and I am delighted that our goal is one that the councillors share. I've no doubt that if we carry on working hard and achieving great results it won't be long until we are back at the Council, proposing business cases for extensions to the tram network.

I would just like to say that today's vote is a direct result of all the tireless effort and hard work that the team at **tie**, and all our partners in the project, have invested in procuring this world class tram scheme. I ask you to ensure that this commitment continues as we move into the crucial construction phase.

On behalf of myself and the **tie** Ltd Board I would like to congratulate you all on a tremendous achievement and the passing of another critical milestone.

Thanks

Willie
Executive Chairman