

## Edinburgh Tram SDS Contract – Weekly Report

### 1 Client Relations

My weekly meeting with Willie Gallagher focused on progress to date on the negotiations with BBS and on arrangements for Technical Approvals with CEC.

Willie had talked with me earlier in the week about his concerns over the lack of apparent convergence by BBS on an acceptable price for the Infraco contract. I shared with him my views on BBS continuing to run the clock down by making apparently reasonable requests for further design information when in reality they have more information than they can assimilate. Especially in the time remaining before the CEC imposed 20 December deadline for recommendation by *tie* that the scheme should go ahead. A deadline of 13 December has now been imposed by *tie* for BBS to provide answers which would allow the remaining procurement issues to be closed out such that *tie* can compose a final report for Council approval.

In the circumstances Willie has decided to cancel the visit planned this weekend with TEL, BBS, and me for the propose of seeing a CAF tram system in action in Montpelier. Willie rightly sees that more effort is required of BBS over the two weeks to 13 December on procurement matters.

Matthew Crosse joined our meeting this week and updated us on progress with Structures VE. As predicted last week, from a total target of £9m *tie* is confident only of some £600k and even Matthew's best figure is only around £1.5m. Clearly the approach outlined by BBS at the very first meeting of significant reductions only being achieved by reductions in scope has been carried through. With the dependency of a number of the structures designs on third party agreements, (with New Edinburgh, Forth Ports and so on), it was never likely that the major structures could be changed substantially.

Matthew also raised the subject of Geotech engineering and asked for my advice on how to approach the problem over BBS suggesting that more information is needed to allow a precise cost estimate to be generated. I suggested that BBS is unlikely to say anything else at this stage in the cycle – seemingly reasonable requests for more and more information can always be used to justify delay and uncertainty. I advised that one way out of the problem is to put the spotlight on clarifying the offer already made rather than asking SDS for yet more information. After all BBS is expert in the Geotech field and should be able to come up with innovative proposals. In any event the issue is not so much a technical problem as a commercial problem and the real aim should be to set up a mechanism which delivers fair and reasonable pricing for both parties at some time in the future when the absolute technical scope has become certain. Willie took all this on board and as ever at these meetings the discussion took place in a constructive atmosphere.

On the subject of CEC's concerns over technical approvals, the reality is that with the delays to major junction design up to June and with continuing delays to key junctions at Picardy Place and in the Forth Ports area the goal of completion for a variety of design packages prior to inter-disciplinary checking could never have been achieved by now. I had met with Duncan Fraser prior to my meeting with Willie and had gone through the real status of information needed for technical approval. In the absence of formally complete design assurance statements for the sections in question – the city centre sections – SDS has provided Duncan with advance presentations of the characteristics of the designs in progress. These presentations coupled with work undertaken by CEC themselves at the Roads Design Working Groups should ensure that there are no surprises when the designs are eventually submitted as complete. To add to this we have arranged for a special session next week with CEC to ensure everyone is on the same page with the most up-to-date design status possible. In presenting all of this I also took the opportunity to reaffirm my opinion that the roads designs are high quality, using comments from Siemens from one of

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the clarification meetings that Siemens was exceptionally impressed with the standard of the roads designs.

In summary, from a client relations standpoint as we enter December the timetable to completion is:-

13 December	Receipt of a final clarified offer and price from BBS
13 – 20 December	<b>tie</b> decision on recommendation to proceed
20 December	Submission of the complete Infraco contract report to CEC
21 December	Debate in Council over approval of the recommendation to proceed
31 December	End of current funding period – decision must be reached by then
28 January	Infraco contract award

In discussion this week with Scott mcFadzen, BBS Project Director, he suggested to me that **tie**'s procurement process is in disarray – no comment back from me – and that in his opinion he was unlikely to be signing a contract before April. In reality contract signature date, whilst important, is lower in the priorities than securing the agreement to fund by 31 December.

One of the other topics raised at my meeting with Scott was the extent of the SDS design for Systems – one of my concerns reported last week being a perception that **tie** may believe the SDS system design to be more detailed than it is contracted to be. The SDS design for systems is supposed to be of a reference nature, recognising that an organisation such as Siemens would be in the correct position to deliver the required level of detail properly integrated with its own products. Scott confirmed that Matthew Crosse had actually stated that SDS would be providing BBS with a fully detailed design but fortunately Scott understood that this would not be forthcoming. Discussions this week detailed below with Geoff Gilbert and David Crawley have also confirmed that this misperception has been corrected.

## **2 Commercial**

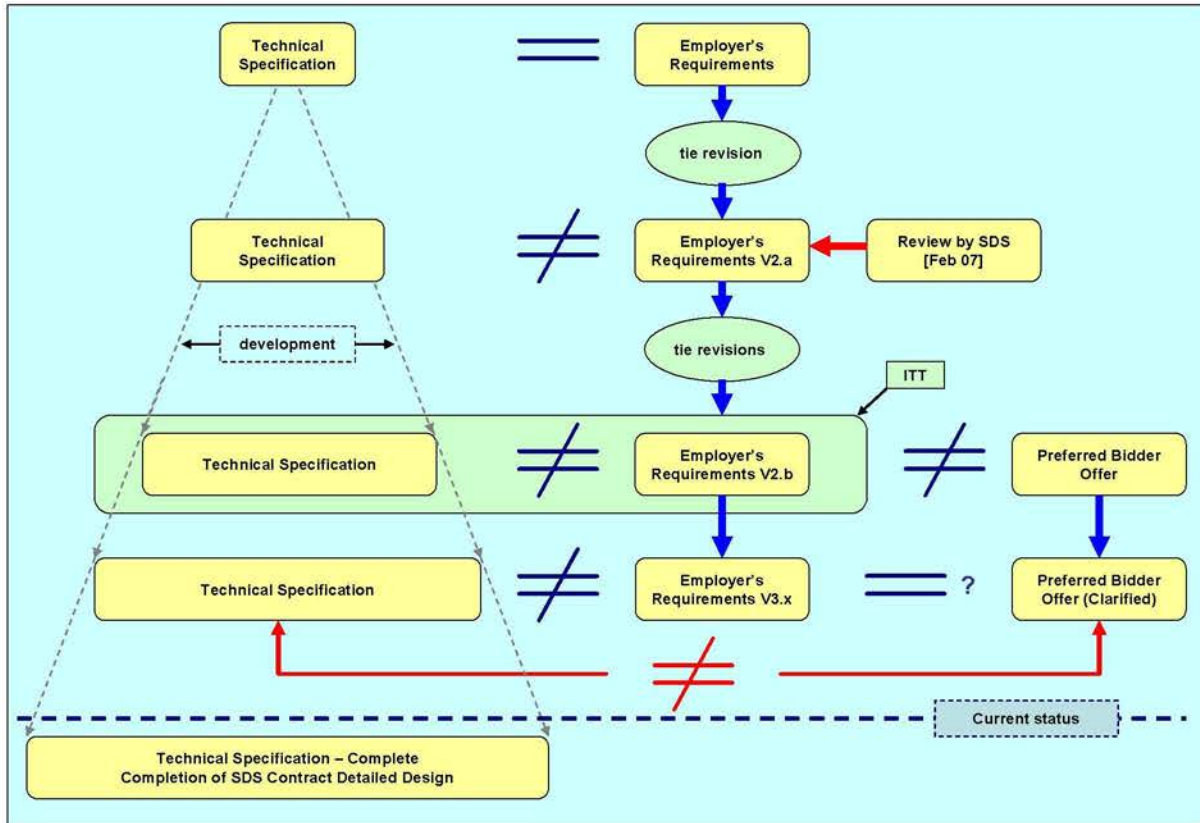
### **2.1 Contract**

As requested last week **tie** has now provided a copy of the terms and conditions proposed for the Infraco contract. The document runs to 244 pages exclusive of schedules. The content of Clause 11 which deals with novation of the SDS contract is attached for reference along with the table of contents. Chris Atkins is currently reviewing the full document.

Schedule 2 of the Infraco Contract contains the Employer's Requirements. The original set of Employer's Requirements was prepared by PB /SDS at an early stage in the design development. It was intended that the Technical Specification which would ultimately form part of the Infraco Invitation to Tender should be produced in line with the Employer's Requirements but **tie** has introduced a number of changes to the Requirements without reference to SDS. The following diagram shows the evolution of the Technical Specification and the Employer's Requirements and also indicates the status of the BBS offer. **tie** is currently proposing to amend the version of the Employer's Requirements included with the Infraco ITT to align the (clarified) Offer and the Requirements but this still leaves the question of misalignment of the Offer with the SDS Design (Technical Specification). Having raised this matter last week with David Crawley I arranged a meeting with Geoff Gilbert on Tuesday evening this week to ensure that he as **tie** Commercial Director appreciated the significance on this misalignment. I was encouraged to find out that he was fully aware of the matter and understood that the concerns that I was raising would have to be addressed prior to any agreement on novation. The proposed solution is for **tie** to work with SDS to determine the

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scope of the difference between the SDS design and the BBS Offer and for **tie** to issue change notices as appropriate. Clearly that is a prerequisite ahead of novation and I took the discussion one step further to ensure **tie** understand that any changes not highlighted through this process and which emerge subsequently will still be viewed on the understanding that the SDS design is the **tie**-approved reference.



Our meeting moved on to other commercial topics with Geoff concentrating on the need to produce a final account together with a detailed programme for SDS activities remaining to be completed beyond novation. This must take place sensibly in advance of 28 January but need not be completed prior to 20 December. Agreement to programme is potentially a more onerous task than agreement to price, with the commitment by **tie** to a Christmas 2010 opening and the Scottish parliamentary elections due in May 2011. BBS understands all this of course and I am sure the offer of the alternative Trackform proposal reported last week in order to meet programme is one consequence.

Geoff also asked from our meeting for a schedule of consents required from third parties other than the headline organisations such as Network rail and BAA. The utility companies and the Scottish Environmental Protection Agency are two examples.

SDS also needs to work with **tie** on the alignment of tram run-time calculations ahead of novation.

Finally Geoff requested that we put in place arrangements to deliver the necessary warranties for the novation process including specifically a collateral warranty from Halcrow.

We still await **tie**'s proposed form of heads of agreement for any additional contract to be drawn up between **tie** and PB following novation of the SDS contract. However, at my meeting with Geoff he again raised the topic – it is clear that **tie** sees great value in continuing the relationship – and updated me on discussions with DLA. Apparently DLA and **tie** are now considering the use of the collateral warranty required of SDS in favour of **tie**



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post novation as a possible vehicle for promoting a separate contractual arrangement for the direct provision of services by PB /Halcrow.

### **2.2 Change Requests**

Nothing to report.

### **2.3 Claim for Prolongation**

I have now passed the final draft of the legal agreement to Grant and received comments back. I have also met with Halcrow and now need to get the agreement finalised and signed with *tie*.

I have been reviewing ahead of completing a final account for SDS services with *tie* the options for submitting a further claim for prolongation., This is justified by the extended decision making by CEC on a number of issues and also by *tie*'s failure properly to manage the MUDFA works. Rather than present a new claim to *tie* which would potentially be viewed as inflammatory I believe the most constructive approach and the one likely to deliver optimum results is to submit a detailed break-down of a final account including the consequences of these delaying issues. Halcrow are aligned with this view and have committed to me to have a view of potential areas for consideration by next Thursday when I shall meet with them again. I have stipulated the 13 December date for full clarity on all outstanding commercial issues.

### **2.4 Cashflow**

Nothing to report this week.

## **3 Operations**

### **3.1 Detailed Design**

Concerns remain over the completion of the SDS Tramstop designs. Whilst these are not critical the failure to deliver 18 stop designs has impacted the weekly design package delivery KPI.

### **3.2 MUDFA**

Three out of the four IFC package deliverables planned for November have been delivered. The remaining package has not been delivered due to delays in securing Scottish Water approval. Seven packages remain to be delivered to complete the MUDFA IFC design package delivery programme; five of them Halcrow and two PB. One of the Halcrow packages is to be delivered next week.

### **3.3 Procurement**

Clarification meetings continue with BBS. I have attached a summary table to the end of this report showing key meeting dates over the last four weeks together with some observations on the process. This is not intended to be exhaustive but the observations have been raised with Matthew Crosse and David Crawley at various points.

With reference to my summary of key issues from last week, prioritisation of:-

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- completion of the outstanding investigations on Earthworks and Trackform
- Review of the Infraco T's & C's as part of the clarification of any scope gaps between completion of the SDS contract and commencement of the Infraco contract.

The second of these is now firmly on my agenda with Geoff. On the first, I have successfully transferred the decision on Trackform to **tie** as a decision to be made by them. On earthworks, my recommendation as outlined above to Matthew on Geotech should ensure that this issue remains under proper control, although I acknowledge it remains the key technical topic to be closed out over the next two weeks.

#### **4 Other Issues**

Nothing to report

#### **5 Weekly Look-ahead**

- Wednesday. Tom O'Neill visit to Edinburgh including a meeting and dinner with Willie Gallagher.
- Thursday. Weekly meeting with Willie Gallagher and SCR.
- Friday. Weekly critical issues meeting. (Chair D Crawley, **tie**).

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### **Clause 11 Extract from the “INFRACO CONTRACT RELATING TO THE EDINBURGH TRAM NETWORK -REVISED VERSION”**

#### **PART 3 - NOVATION OF SDS AGREEMENT, TRAM SUPPLY AGREEMENT AND TRAM MAINTENANCE AGREEMENT, AND PROVISION OF INFRASTRUCTURE MAINTENANCE SERVICES**

[Clauses 11-14 subject to refinement following Infraco Due Diligence]

#### **11. NOVATION OF THE SDS AGREEMENT TO THE INFRACO**

- 11.1 tie has entered into the SDS Agreement with the SDS Provider. It is one of the conditions precedent to this Agreement coming into full effect and it shall further be a condition precedent to Clauses 11.2 to 11.9 coming into full effect, that the Infraco shall enter into and execute a novation agreement with tie and the SDS Provider in the form set out in Schedule 23 (SDS Novation Agreement) . tie shall execute and shall procure the execution by the SDS Provider of such novation agreement.
- 11.2 On the last date of execution of the novation agreement referred to in Clause 11.1:
- 11.2.1 tie and the Infraco shall, and the Infraco shall, procure that the SDS Provider shall execute a collateral warranty agreement in favour of tie in the form contained in Schedule 24 (SDS Collateral Warranty in favour of tie) and the Infraco shall provide the same as executed to tie on that date; and
- 11.2.2 tie shall deliver to the Infraco the SDS Agreement Letter
- 11.3 The Infraco shall procure that the SDS Provider shall carry out and complete the SDS Services in accordance with the SDS Agreement.
- 11.4 The Infraco shall carry out all required management activities in order to manage the performance of the SDS Services and, subject to any express limitations in this Agreement, the Infraco shall be wholly liable for the performance of the SDS Services.
- 11.5 The Infraco shall not amend the SDS Agreement (including the SDS Services) without the prior written approval of tie (such approval not to be unreasonably withheld or delayed) provided that tie's consent shall be deemed to have been given in relation to any amendment to the SDS Agreement (including the SDS Services) which is directly required as a result of any Permitted Variation in so far as such amendment has been raised by the Infraco as part of the process of approving such Permitted Variation in accordance with this Agreement.
- 11.6 As reasonably required by tie, the Infraco shall procure the attendance of the SDS Provider at any meeting in relation to the Infraco Works.
- 11.7 Subject to the provisions of the SDS Agreement, the Infraco shall procure that the SDS Provider shall perform any additional services which are required by tie in respect of the Edinburgh Tram Network and the requirement for any additional services shall be treated as a tie Change in accordance with Clause 80 (tie Changes).
- 11.8 The Infraco shall not terminate in full the appointment of the SDS Provider without the prior written approval of tie, such approval not to be unreasonably withheld. If tie approves any such termination, a replacement designer shall be proposed by the

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Infraco in accordance with Clause 28 (Sub-Letting and the Appointment of Sub Contractors).

11.9 If required by tie, on termination or expiry of this Agreement, the Infraco shall novateassign or otherwise transfer the whole of the SDS Agreement as directed by tie, to:

11.9.1 tie, the Scottish Ministers, TEL, CEC, Transport Scotland or their successors with no worse financial standing than that of tie; or

11.9.2 to any other person whose obligations under the SDS Agreement are unconditionally and irrevocably guaranteed by a person falling within Clause 11.9.1.

In the case of such a novation or assignation, the Infraco shall be entitled, and tie shall assist the Infraco, to obtain a collateral warranty from the SDS Provider.

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### Summary Table of Clarification Meetings held with BBS together with key observations

Date		Event	Observations
Wed	24 - Oct	Introduction to BBS	Misalignment between tie procurement and structures VE initiative
Thu	25 - Oct	Structures VE	
Fri	26 - Oct		
Mon	29 - Oct		No-one from tie at the first Geotech meeting who had actually read the BBS offer
Tue	30 - Oct	Structures VE	
Wed	31 - Oct		
Thu	01 - Nov		06 Nov letter expressing concern over conduct of meetings
Fri	02 - Nov	Geotech & Earthworks	
Mon	05 - Nov		
Tue	06 - Nov		Quality presentation - only 1 person attended
Wed	07 - Nov	Depot & CAF	
Thu	08 - Nov	Depot & CAF	Meetings schedule continually changing - 6 attempts to hold Trackform meeting
		Landscaping	
		Quality Presentation	Definition of roles and responsibilities not agreed in advance and SDS asked on several occasions to work with BBS to develop solutions. tie has the role to decide on the response to non-compliances
		Tramstops	
		Special visit to PB Birmingham to review structures design	
Fri	09 - Nov	Roads Drainage	
Mon	12 - Nov	Performacnec Modelling Presentation	Issue of access to work in progress elevated beyond reasonable levels - a major concern w/c 12 Nov; SDS deliver after reprioritising work; nothing heard subsequently other than BBS now has more information than they can deal with - as warned to tie in advance
Tue	13 - Nov	OLE	
		Traction Power Supplies	
		Structures	
Wed	14 - Nov	Supervisory & Comms Auxilliary LV Power Supplies	
Thu	15 - Nov		
Fri	16 - Nov		Misalignment on understanding of the extent of the SDS E&M design - resolved by David Crawley /Geoff Gilbert
Mon	19 - Nov	Maintenance	
Tue	20 - Nov	Depot	
Wed	21 - Nov	Utilities	
Thu	22 - Nov	EMC	Misalignment between the Employer's Requirments, SDS Design, and BBS Offer
Fri	23 - Nov	Trackform	
Mon	26 - Nov	Systems	BBS attempts to avoid taking risk
Tue	27 - Nov		
Wed	28 - Nov		
Thu	29 - Nov		
Fri	30 - Nov		
Mon	03 - Dec		
Tue	04 - Dec		
Wed	05 - Dec		
Thu	06 - Dec		
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