

1 Client Relations

My weekly meeting with Willie Gallagher on Thursday focused on progress to date on the negotiations with BBS.

On the subject of Geotech engineering and ground conditions - the technical subject uppermost last week in Matthew Crosse's mind for clarification - BBS has confirmed to me that they are as capable as anyone of interpreting the ground investigation surveys produced by PB. The request for further detail has indeed been with a view to transferring risk. I have re-emphasised this point to Matthew and Willie, (without direct reference to the BBS conversation), and there has been reducing concern from **tie** over PB /SDS's position on ground conditions over the last few days.

Willie himself has been pressurising BBS to provide more complete information in support of the offer. Willie tells me he has been countering BBS's attempts to use incomplete design as a reason for incompleteness of the offer, with reminders on BBS's own observations on the high quality of the material received from SDS to date.

With reference to last week's report, we have implemented the sessions with CEC aimed at improving confidence ahead of the formal processes for Technical Approval. I have kept Willie updated on progress and CEC themselves have expressed satisfaction with what has been done to progress this initiative.

Willie has told me that as part of strengthening the **tie** contract management organisation a new Commercial Director is shortly to arrive from First Engineering.

On the subject of developing a continuing contractual relationship with **tie** for the design for future expansion of the network Willie confirmed to me on Thursday that he is intending to give us the job to design the Network Rail /Tram Interchange at Gogar, a significant piece of work, the requirement for which has arisen due to the cancellation of EARL and the need for heavy rail links between Edinburgh Airport and other parts of Scotland. We discussed some matters of principal this week. Willie is keen to see this work started as soon as practical after financial close. This could see us starting as early as March next year.

2 Commercial

2.1 Contract

2.1.1 Employer's Requirements

Continuing pressure on **tie** by PB to address and resolve the concerns arising from the misalignment of the Employer's Requirements, the SDS Design, and the BBS Offer ahead of novation has paid off with a very constructive debate taking place on Tuesday. I was able to refer **tie** to a clause in the SDS contract from Section 29, "Novation", which deals specifically with the current issue; clause 29.5:-

29.5 *"Within 10 days of any request from **tie**, the SDS Provider shall provide an Estimate of any changes proposed by the bidders for the Infraco Contract to the scope of the Services or the Deliverables, which have been notified by **tie** to the SDS Provider."*

I have also pointed out to **tie** that the Draft Final Business case also makes provision for changes to be made at this stage in the process, "with the agreement of **tie**", and, significantly, "at the risk of the Infraco"

These provisions taken together confirm the stance I had been taking with **tie** that it is up to **tie** to advise where changes to the SDS Design should be introduced – not for PB to review the BBS Offer and advise **tie** of any required changes to the SDS design.

2.1.2 Novation

tie has now produced a “Novation Plan” and a preliminary meeting took place on Tuesday to review its contents. The meeting was constructive and both parties, PB and **tie**, have adjourned to produce clarifications of certain parts of the plan. **tie** requires a number of schedules to be completed in advance of novation:-

- Collateral Warranty from Halcrow
- Scope of Direct Contract between **tie** and SDS
- Pricing Schedule of Direct Contract between **tie** and SDS
- Programme for the Direct Contract between **tie** and SDS
- SDS Design Deliverables Status
- SDS Consents Status
- SDS Programme to completion
- Summary of Financial Position

Further to the first bullet point Halcrow is now consulting with its lawyers prior to providing a response.

With reference to the second bullet point we still await **tie**'s proposed form of heads of agreement for the “direct contract”.

2.2 Change Requests

In advance of completion of the novation agreement an exercise has been initiated to reconcile all outstanding change notices, requests, estimates, and orders. This exercise is due to be complete next week and a special meeting has been scheduled for Thursday with Halcrow to ensure alignment between us. A meeting has also been arranged with **tie** for the end of next week to submit any remaining change requests and to ensure timely issuance of change orders.

2.3 Claims for Prolongation

As reported last week, I have been reviewing the options for submitting a further claim for prolongation. A review of the actual position against the forecast prepared at the end of June, the effective date of the previous claim, suggests a claim for prolongation of eight weeks can be justified. This equates to the delays introduced by **tie**'s failure to close out the issues with CEC on the redesign of Picardy Place and the Forth Ports area, and accommodates the continuing failure to reach agreement with the Scottish Rugby Union, (SRU), on approvals for the alignment through Murrayfield. Further to my discussions on the subject with Halcrow I have this week alerted Geoff Gilbert to the likely submission of a further request for prolongation costs as required by the terms of the novation agreement. Geoff has simply requested that the assessment is presented within the timescales required to complete the novation agreement so I am aiming to achieve this during w/c 17 December.

2.4 Cashflow

The latest application for payment has been provisionally approved in the sum of £1.7m

3 Operations

3.1 Detailed Design

The concerns reported last week over the delays to completion of 18 remaining Tramstop designs have been alleviated to a certain extent by the submission of 6 designs this week.

3.2 MUDFA

Nothing further to report this week.

3.3 Procurement

The focus on clarification of the technical aspects of the BBS offer over the last six weeks has essentially drawn to an end with a small number of (significant) issues outstanding. *tie* is now concentrating on final assessment prior to deciding what changes to accept in relation to the Employer's Requirements. The focus has now shifted with BBS to project programme and the commitments made by *tie* to a Christmas 2010 completion ahead of revenue earning service early in 2011. The BBS offer was for an October 2011 end date based on their analysis of the SDS and MUDFA programmes to completion and also, critically, on the constraints imposed by the Council on how many work sites could be open at any one time. BBS's view is that this CEC constraint as it currently stands makes an end 2010 completion impossible. Hence, *tie* is now working closely with CEC to determine whether sensible relaxations can be put in place to facilitate earlier completion.

Speaking with Willie Gallagher on the pricing, he is relatively comfortable that presentations can be made to Council which will secure acceptance of the current offer. I understand from talking separately with BBS that whereas *tie* had been demanding a 97% fixed price for next week an offer of no more than 75% fixed will be provided. Willie appears to be working on the basis that he has a sufficiently positive presentation to make to Council and that assuming the contract can be started well with significant progress made over the first nine months or so the question will have moved from the price for this offer for Phase 1a of the scheme to questions over affordability and funding for subsequent phases.

Unsurprisingly *tie* is still insisting on a 28 January date for Financial close and Contract award whereas BBS, equally unsurprisingly, is suggesting this date is unlikely to be achieved.

4 Other Issues

Nothing to report

5 Weekly Look-ahead

- Thursday. Final price and scope to be submitted by BBS
- Thursday. Weekly meeting with Willie Gallagher and SCR.
- Friday. Weekly critical issues meeting. (Chair D Crawley, *tie*).

6 Timetable to Infraco Contract Award

- 13 December Receipt of a final clarified offer and price from BBS
- 13 – 20 December *tie* decision on recommendation to proceed
- 20 December Submission of the complete Infraco contract report to CEC

- 21 December Debate in Council over the recommendation to proceed
- 31 December End of current funding period – date by which approval to proceed must be granted.
- 28 January Infraco contract award