

1 Client Relations

1.1 *tie*

Despite the failure to secure formal sign-up to the proposed Infraco contract “deal” from BBS before Christmas *tie* is still targeting financial close for the Infraco contract on 28 January. *tie* has also confirmed that financial close is to include novation of both the CAF Tram Supply contract and the PB SDS Contract. At my weekly meeting with Willie on Thursday I revisited his thinking from one of our December meetings that there may be benefit to delaying novation of the SDS contract. Having reviewed the pros and cons in some detail I told him that my view is that there would be benefits to both parties from delay. However, in the interim the Tram Project Board has decided to continue with novation coincident with financial close on the basis that this maintains the business case strategy for risk transfer from CEC to the private sector. In reality what is now being termed novation is different from that originally envisaged when the Business Case and procurement strategy were defined some three years ago and there are significant programme risks now arising from the unapproved status of the design. From PB’s point of view it is important that the changed circumstances are reflected in any novation agreement with *tie* and I have made clear to *tie* that there are provisions within the original draft documentation that cannot be accepted by PB. I am working with Damian Sharpe of *tie*, (SDS Project Manager), to develop documentation for a final agreement.

In the current circumstances Willie is requesting of all parties that they put maximum effort into achieving the 28 January deadline and he has made the direct offer to me to become involved in any problems which arise from PB’s perspective over the next three weeks. That may well be necessary given the need to agree contract valuations; a further claim for prolongation costs; and the wording of a novation statement; all in addition to holding our position on Employer’s Requirements. Experience to date on this project suggests this would be a tall order for *tie* even in the absence of the other severe pressures to close deals with BBS and CAF whilst also maintaining the confidence of CEC and Transport Scotland. It is fair to say that PB commands a very strong position up to the point of novation and it is important that we use that strength to protect our interests and improve our commercial position. We must also manage events so as to command the respect of BBS.

1.2 City of Edinburgh Council (CEC)

CEC has expressed serious concern over the practicalities of the BBS bid programme, principally because of the onerous requirements for technical approvals. CEC is even suggesting this may be sufficient reason not to sign up to the contract as currently presented.

1.3 BBS

I am continuing to work closely with Richard Walker, MD Bilfinger Berger UK, to ensure BBS and PB are aligned on the expectations for novation and on the scope of work requirements post novation. Richard has identified with *tie* that there is a gap arising from the absence of any construction design support services in any of the current contract scopes. He has told me that he is keen to develop a solution with PB which would potentially result in a team of ten people continuing to work on the contract. This over and above any requirements under the current SDS contract to complete the outstanding design scope and to provide the services defined for commissioning support services. (approximately £1.2m of fees).

2 Commercial

2.1 Contract

2.1.1 Employer's Requirements

The previous report is still current:-

*A meeting has now been scheduled for w/c 07 January with **tie** to review the potential consequences of implementing the revised set of Employer's Requirements produced by **tie** to reflect changes required to accommodate the BBS Offer. At a preliminary meeting on Thursday [this] week I emphasised that the action remains with **tie** to advise where any changes to the SDS design should be instructed but that we would assist by attending the proposed Requirements Review meeting. I also advised Matthew Crosse that the risk to **tie** is unlikely to be that the SDS design will not meet the revised requirements, since these are likely to be a relaxation of those that BBS was invited to tender against. The key risk is that CEC and other Stakeholders will not be satisfied with them. Matthew has undertaken to manage the stakeholders to avoid any problems but this is unlikely to be a straightforward task based on the experience of delaying events by CEC and TEL over the last eighteen months. Once the review meeting has taken place BBS is to be asked by **tie** to submit an updated compliance matrix.*

In the event BBS did not accept the invitation to a meeting this last week. The meeting is now to be held Tuesday next week, the 15th.

One development worthy of note is Matthew Crosse's suggestion this week that after the proposed very brief review of the latest documentation SDS should be prepared to warrant that the SDS design conforms to the revised set of requirements. Others within **tie**, notably David Crawley, appreciate that this is a completely unreasonable proposal. My position is that the SDS Design conforms with version 1.2, the version upon which the preliminary and detailed designs have been developed. Whilst PB is prepared to assist **tie** in a review of the latest proposal this is on the basis of reasonable endeavours to identify differences and the responsibility rests with **tie**, (a), to warrant any revised set of requirements, and, (b), as stated previously to **tie**, to instruct any changes to the SDS design which may be deemed desirable by **tie**.

At this week's Critical Issues meeting I took the opportunity to ask the question of the CEC representative as to whether he had had any input into the Requirements Review process. He confirmed that he had not.

2.1.2 Novation

The meeting scheduled for 03 January with **tie** and PB went ahead with Damian Sharpe, Jason Chandler, and me. The meeting proved to be a constructive review of the current status of the project and the implications for novation. I had prepared a commentary on the "novation plan" prepared by **tie** but I made sure the meeting addressed the subject from the SDS Contract Reference point. As a result of the meeting I have now prepared and submitted to **tie** a summary of key issues to be addressed prior to any agreement on novation. This report highlights a small number of significant concerns, one of which arising from the requirements to indemnify BBS against all costs (without limit) arising from any failure by PB to deliver to programme is a "show-stopper". The next meeting on the subject is scheduled for next Tuesday, the 15th.

2.2 Change Requests

A commercial meeting was held with **tie** on Thursday this week at which agreement was reached on the current status of the change control register. No change requests are

outstanding from Halcrow or PB and the action is now with **tie** to close out the paperwork required for the change orders. The meeting was constructive with Damian Sharpe in the chair. A small number of change requests remains to be agreed but the pressure is on **tie** as all items have to be resolved prior to novation.

2.3 Claims for Prolongation

I have now prepared the new claim for prolongation to take account of the current status of the project programme. I have worked closely with Halcrow this week to arrive at a comprehensive analysis for additional Design and Project Management costs through to completion. The sum total is £598k.

I had advised Geoff Gilbert of **tie** at the commencement of the discussions on novation planning in mid-December that a further claim would be submitted for prolongation. I had also advised Damian Sharpe before Christmas. Hence, there should be no surprises when the document is submitted, although I am presenting it as a component of the final account rather than as a claim. The document will be submitted on Monday next week.

On the subject of the outstanding legal agreement on the first claim, I have again reminded **tie** of the need for the document to be signed. I have also pointed out that this needs to be executed prior to novation otherwise the whole £2.5m sum becomes payable.

2.4 Cashflow

Reconciliation of all outstanding applications for payment is due before novation. The December AFP was submitted this week.

2.5 Contract Valuation and Payment Certification Prior to Novation

It is a requirement that a valuation of the SDS Contract is agreed prior to novation. Valuation is on the basis of the current status of:-

- Detailed design deliverables
- Prior Approvals
- Technical Approvals
- MUDFA IFC packages

The valuation may be impacted by any changes to scope directed by **tie** prior to novation as a result of any agreement with BBS. The SDS Contract provides for reductions in scope and changes to scope as a result of changes proposed by the Infracore Contractor.

Entitlement to payment certification prior to novation will be based on this valuation plus any instances of frustration which have delayed PB and which have therefore impacted the payment profile.

A full valuation report is in preparation and will be submitted to **tie** next week.

3 Operations

3.1 Edinburgh Tram Network

3.1.1 Detailed Design Submissions

Current status on submission of detailed design packages is 80% complete

3.1.2 Prior Approvals

Current status on achievement of Prior Approvals is that 6 of 61 total Approvals have been secured from CEC Planning Department.

3.2 MUDFA

MUDFA design is not included in the SDS Contract scope to be novated to BBS. Hence, if a separate contract is not signed between *tie* and PB any remaining MUDFA design work outstanding at the point of novation will not be completed by PB. This topic is to be discussed *moiré* fully with *tie* next week. My proposal is that if PB is to agree a separate deal with *tie* then the services should be supplied on a time and expenses basis with the remaining MUDFA scope the principal component of those services.

4 Other Issues

Nothing to report

5 Weekly Look-ahead

- Tuesday. Novation Planning meeting with *tie*.
- Tuesday. Novation Planning meeting with *tie* and BBS
- Thursday. Weekly meeting WG /SCR
- Friday. Critical Issues Meeting. (D Crawley, *tie*, Chair)
- *tab*. Prolongation Claim meetings with *tie*
- *tba*. Follow-up Prolongation Claim meetings with Halcrow
- *tba*. SDS Contract valuation meetings with *tie*
- *tba*. Scope of work definition meetings with *tie* and BBS – to define any changes to design scope post novation
- *tba*. Employer's Requirements review meetings with *tie*

6 Timetable to Infraco Contract Award - Update

- | | |
|--------------|---|
| ▪ 18 January | Final Report to Council from <i>tie</i> . |
| ▪ 28 January | Novation of the SDS Contract. |
| ▪ 28 January | Infraco contract award. |