

1 Client Relations

1.1 *tie*

With Willie Gallagher on leave client relations this week have been concerned with the intensive effort on negotiations surrounding the SDS Contract Novation Agreement. Several essentially constructive meetings have been held with Steven Bell and Geoff Gilbert.

Willie Gallagher did feature in this week's activities - on a conference call to which I was invited which had been set up to address Willie's concerns on slow progress to closure of the Novation negotiations. Originally the call had been limited to *tie* and BBS but BBS insisted that I also take part. The text of the *tie* email which follows had been the precursor to the call:-

*From: Jim McEwan
Sent: Thu 21/02/2008 00:14
To: Geoff Gilbert; Steven Bell; Stewart McGarrity; Matthew Crosse
Cc: andrew.fitchie@dlapiper.com; Dennis Murray; Richard.Walker@bilfinger.co.uk;
Scott.McFadzen@bilfinger.co.uk
Subject: RE: SDS Novation Issues 240208*

All

I had a discussion with Willie tonight and he has asked me to forward the following message:

Message from Willie Gallagher

I have been informed of the disappointing progress in concluding the negotiations and in particular the completion of the novation of the SDS contract. Unless there is substantial progress over the next 2-3 days to complete this vital aspect of the overall programme then I will return early from my holiday in South Africa next week with a view to making the necessary representations to our key stakeholders to cessate the current process.

It is entirely untenable in my view that this deal will go ahead without the completion of this novation and it will be my duty in safeguarding the public purse to advise the City of Edinburgh Council that we should now deselect the current preferred bidders and pursue a different route. There should be no false illusions about my determined intent on this, whilst this will represent a disappointing setback it is altogether preferable to the alternative of concluding this contractual process without said novation being completed.

In the event of this unsatisfactory outcome we will explore fully the options and redress available to us.

Willie

The call covered a lot of ground but the impression I was left with was that Willie's main concern was the poor performance of his own team in failing to move things on at an acceptable pace since declaration of the Preferred Bidder. His singling out of BBS beyond the criticism of *tie* and the absence of PB from the initial circulation of the email may be significant but clearly the risk of scheme cancellation remains and will be dependent upon

BBS's response to Willie's demands. Equally of course all of this is part of the continuing pressure to secure an acceptable price from BBS.

In separate conversations with Richard Walker, BBS UK MD, he has declared himself content that the political investment in the project is such that an April rather than March submission to Council can be tolerated. He feels that BBS cannot commit to closing out the remaining issues from their point of view on Novation to accommodate the March date currently targeted by *tie*.

On PB Commercial matters, a very productive meeting went ahead on Thursday with Damian Sharp. This meeting achieved significant progress on resolution of the outstanding changes on the change control register and resulted in a substantial increase in PB secured revenue from the project.

1.2 City of Edinburgh Council (CEC)

Nothing further to report.

1.3 BBS

BBS has confirmed that it wishes to receive a proposal from PB for the provision of 10 to 12 staff to be employed on construction supervision services post novation. This proposal is to be presented as part of the continuing negotiations on novation.

2 Commercial

2.1 Novation of the SDS Contract

2.1.1 Novation Agreement

As reported previously *tie* has been seeking to amend the terms of the draft Novation Agreement to take account of current circumstances.

For ease of reference the draft Novation Agreement to which PB signed up as part of the contract awarded in September 2005 can be accessed here:-



C:\Documents and Settings\reynoldss\M

On 01 February a set of proposed principles was provide by *tie*. The principles did not contain any major obstacles from PB's point of view. A proposed revised draft Novation Agreement prepared by DLA was then received on 12 February. This draft did contain proposals to which PB could not agree. Clause 4, Acceptance of Liability by the SDS Provider to the Infraco, was particularly onerous and is shown here in full against Clause 4 from the SDS Contract Novation Agreement in the right hand column for comparison.

4. ACCEPTANCE OF LIABILITY BY THE SDS PROVIDER TO THE INFRACO	4. ACCEPTANCE OF LIABILITY BY THE SDS PROVIDER TO THE INFRACO
4.1 The SDS Provider undertakes to continue to perform all the duties and to discharge all the obligations of the SDS Provider under the SDS	4.1 The SDS Provider undertakes to continue to perform

<p>Agreement and to be bound by its terms and conditions in every way as if the Infraco was and always had been a party to the SDS Agreement in place of tie.</p>	<p>all the duties and to discharge all the obligations of the SDS Provider under the SDS Agreement and to be bound by its terms and conditions in every way as if the Infraco was and always had been a party to the SDS Agreement in place of tie.</p>
<p>4.2 The SDS Provider warrants and undertakes to the Infraco that:</p>	<p>4.2 The SDS Provider warrants to the Infraco that, in respect of the duties and obligations which it has already performed under the SDS Agreement, it has performed those duties and obligations in accordance with the standards of skill and care set out in the SDS Agreement; and</p>
<p>4.2.1 in respect of the duties and obligations which it has already performed under the SDS Agreement, it has performed those duties and obligations in accordance with the standards of skill and care set out in the SDS Agreement; and</p>	<p>4.2.1 in respect of the duties and obligations which it has already performed under the SDS Agreement, it has performed those duties and obligations in accordance with the standards of skill and care set out in the SDS Agreement. The SDS Provider warrants to the Infraco that it shall be liable for any loss or damage suffered or incurred by the Infraco arising out of any negligent act, default or breach by the SDS Provider in the performance of its obligations under the SDS Agreement prior to the date of this Agreement. The SDS Provider shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by tie (or suffered or incurred to the same extent by tie).</p>
<p>4.2.2 subject to Clause 12.1:</p>	<p>(a) the SDS Provider is not aware of any breaches by tie of the SDS Agreement and there is no dispute or claim subsisting nor are there any circumstances existing which might give rise to any dispute or claim relative to the SDS Agreement;</p>
<p>(a) the SDS Provider is not aware of any breaches by tie of the SDS Agreement and there is no dispute or claim subsisting nor are there any circumstances existing which might give rise to any dispute or claim relative to the SDS Agreement;</p>	<p>(b) the information set out at Appendix Part 3 (<i>Consents Programme</i>) and Part 5 (<i>Design and Deliverable Status</i>) is true, complete and accurate in all respects and is not misleading;</p>
<p>(b) the information set out at Appendix Part 3 (<i>Consents Programme</i>) and Part 5 (<i>Design and Deliverable Status</i>) is true, complete and accurate in all respects and is not misleading;</p>	<p>(c) the design set out in the Deliverables produced to the date of this Agreement and listed in Appendix Part 5:</p>
<p>(c) the design set out in the Deliverables produced to the date of this Agreement and listed in Appendix Part 5:</p>	<p>(A) is in all respects in compliance with the SDS Agreement and, without prejudice to the foregoing generality:</p>
<p>(A) is in all respects in compliance with the SDS Agreement and, without prejudice to the foregoing generality:</p>	<p>(i) the Employer's Requirements (in their form at the date of this Agreement);</p>
<p>(i) the Employer's Requirements (in their form at the date of this Agreement);</p>	<p>(ii) the Tram Legislation;</p>
<p>(ii) the Tram Legislation;</p>	<p>(iii) all applicable Law and Consents;</p>
<p>(iii) all applicable Law and Consents;</p>	<p>(iv) the Parliamentary Undertakings;</p>
<p>(iv) the Parliamentary Undertakings;</p>	<p>(v) the Environmental Statements, and all other applicable environmental regulations and requirements;</p>
<p>(v) the Environmental Statements, and all other applicable environmental regulations and requirements;</p>	<p>(vi) the Infraco Proposals; and</p>
<p>(vi) the Infraco Proposals; and</p>	<p>(vii) the Third Party Agreements;[</p>
<p>(vii) the Third Party Agreements;[</p>	<p>(B) is so as to enable the Edinburgh Tram Network to be constructed, installed, tested and commissioned[, and thereafter operated and maintained] within the limits of deviation under the Tram Legislation,</p>
<p>(B) is so as to enable the Edinburgh Tram Network to be constructed, installed, tested and commissioned[, and thereafter operated and maintained] within the limits of deviation under the Tram Legislation,</p>	<p>and the design as fully developed pursuant to the SDS Agreement following the date of this Agreement shall continue to meet the requirements of Clause 4.2.2(c)(A) and (B);</p>
<p>and the design as fully developed pursuant to the SDS Agreement following the date of this Agreement shall continue to meet the requirements of Clause 4.2.2(c)(A) and (B);</p>	<p>(d) save in respect of any Consents which are the responsibility of tie¹ in terms of Clause 19 of the Infraco Contract, the Consents listed at Appendix Part 3 (<i>Consents Programme</i>) are all the Design Stage Consents which are required to enable the Edinburgh Tram Network to be procured, constructed, installed, tested and commissioned[, and thereafter operated and maintained] in accordance with the Infraco Contract;</p>
<p>(d) save in respect of any Consents which are the responsibility of tie¹ in terms of Clause 19 of the Infraco Contract, the Consents listed at Appendix Part 3 (<i>Consents Programme</i>) are all the Design Stage Consents which are required to enable the Edinburgh Tram Network to be procured, constructed, installed, tested and commissioned[, and thereafter operated and maintained] in accordance with the Infraco Contract;</p>	<p>(e) it has received no Client Notice of Change or any other instruction from tie to vary any term of the SDS Agreement (including without limitation, the scope of the Services) and, subject to Clause 9.1 below, it has agreed no variation, alteration or construction of the SDS Agreement; and</p>
<p>(e) it has received no Client Notice of Change or any other instruction from tie to vary any term of the SDS Agreement (including without limitation, the scope of the Services) and, subject to Clause 9.1 below, it has agreed no variation, alteration or construction of the SDS Agreement; and</p>	<p>(f) to the best of the SDS Provider's knowledge and belief, no Change in Law has come into effect or is anticipated to come into effect which would</p>
<p>(f) to the best of the SDS Provider's knowledge and belief, no Change in Law has come into effect or is anticipated to come into effect which would</p>	

¹ BBS construction consents to be carved out.

<p>have a material adverse impact on the Deliverables completed or to be completed pursuant to the SDS Agreement (whether before or after the date of this Agreement).</p>	
<p>The SDS Provider warrants and undertakes to the Infraco that it shall be liable for any loss or damage suffered or incurred by the Infraco arising out of any negligent act, default or breach by the SDS Provider in the performance of its obligations under the SDS Agreement prior to the date of this Agreement. The SDS Provider shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by tie (or suffered or incurred to the same extent by tie) or is different to or arises on a different basis to any loss or damage which would have been suffered or incurred by tie.</p>	
<p>4.3 The liability of the SDS Provider to the Infraco pursuant to the SDS Agreement shall not be affected by the Infraco's assumption of liability for design to tie pursuant to the Infraco Contract.</p>	<p>4.3 The liability of the SDS Provider to the Infraco pursuant to the SDS Agreement shall not be affected by the Infraco's assumption of liability for design to tie pursuant to the Infraco Contract.</p>
<p>4.4 The SDS Provider acknowledges that the Infraco has and shall continue to rely upon all Services carried out by the SDS Provider.</p>	<p>4.4 The SDS Provider acknowledges that the Infraco has and shall continue to rely upon all Services carried out by the SDS Provider.</p>

tie had convened a meeting on Tuesday 19 February to negotiate on the terms of the Novation Agreement and BBS and PB were invited to the meeting. The meeting lasted six hours. Chris Atkins and I attended and voiced our serious concern over the expectation that PB should be prepared to declare compliance with the Employer's Requirements and the Infraco Proposals. The Employer's Requirements form no part of the contractual SDS Agreement: - they were effectively the substance of the invitation to tender advertised for the Infraco procurement. As for the Infraco proposals, a more logical approach would be to require compliance of those proposals with the SDS Design, that philosophy being at the core of the procurement strategy.

As a result of the discussions at Tuesday's meeting PB prepared a position paper which focused on the real need - to achieve alignment between the BBS Proposals and the SDS Design under instruction from **tie**. The two key bullet points from a total of thirteen presented by PB in the paper were as follows:-

- | |
|--|
| <ul style="list-style-type: none"> • tie to instruct SDS to amend the design in order that it is aligned to the Employer's Requirements (in their form at the date of this Agreement) and the Infraco Proposal. Such instruction to be issued through the Change Order process with suitable financial values and programme impact agreed. Such amendments to be included in Appendix Part 5 of the Novation Agreement. As the Infraco becomes the client under the terms of the SDS agreement, sufficient warranty from the SDS is provided in the SDS agreement. |
| <ul style="list-style-type: none"> • Any further design development that may be required to align the design with the Infraco's installation works to be instructed as a Change Order to the SDS in accordance with terms of the SDS contract. |

On Thursday I met with Geoff Gilbert to review the position and secured from him an understanding of the PB stance and a commitment to revise the wording of the draft Novation Agreement. Geoff then produced a revised set of principles, as follows:-

<p>1.0 Introduction</p>

1.1	Consistent with the ETN Procurement Strategy and Business Case it is proposed to novate the SDS Contract to Infraco concurrent with the award of the Infraco Contract.
1.2	A novation agreement containing core novation terms are included in Schedule 8 to the SDS Contract. However, there are a number of matters that need to be dealt with to bring about an arrangement which is aligned to the requirements of each party – tie , SDS and BBS. Key to the success of the novation is the alignment of ERs, Infraco Proposals and SDS Design.
2.0	Alignment of Infraco Proposals and SDS Design
2.1	A 'blanket warranty' by SDS of that their design is consistent with the Infraco Proposals is not appropriate as it ignores the role of Infraco in working with SDS to bring about alignment.
2.2	tie cannot and will not take the technical interface risk between Infraco Proposals and SDS design as to do so runs contrary to the principles of the novation.
2.3	tie and SDS agree that the key to resolving the novation is to bring about alignment of the SDS design and Infraco Proposals. There are three aspects to this:-
A	Civils – mismatches between the SDS design and the Infraco Proposals
B	Systems – mismatches between the performance specs or procurement specs and Infraco Proposals
C	Interfaces - conflicts or gaps between BBS Infraco Proposals for systems and the civils work to which this relates
2.4	The resolution of these are as follows:-
A	Civils – BBS have not provided their civils Infraco Proposals. This is expected to say that they will build in accordance with the SDS design. Assuming this to be the case and to the extent that it is then a warranty from SDS for this aspect is irrelevant. The alignment of SDS design for roads and BBS's approach are to be reconciled.
B	Systems – The mismatches need to be identified, some of this may well already be picked up in the review of ERs as such specs are probably already in the ERs, and probably in less constrained form. The work to bring about alignment here should not be extensive.
C	Interfaces – This is where there is more extensive work required. SDS have not designed their civils and building works with any particular proprietary products or systems in mind. Also they have not done the detailing of interfaces. The interfaces, any mismatches or gaps need to be identified together with the work needed to close them and a programme for closing them. tie need SDS to work with tie to quickly develop a process and plan to achieve this. This will then be agreed between SDS, tie and BBS. It is envisaged that this could be to agree a programme and adjustment mechanism for the identification and resolution of the mismatches and include that into the novation agreement, accepting that much of that will drift into the post award period.
2.5	It is not in tie's gift to bring about a resolution on this without the active participation and support of both SDS and BBS as the detail of the respective parties designs and proposals are best known and understood by them. Both SDS and BBS need to work with us to identify the detail to enable tie to instruct either:-
	<ul style="list-style-type: none"> • A change to the SDS design, or further SDS design work • A change to the ERs • A change to the Infraco Proposals • Or some combination of the three.
2.6	The mismatch in OLE systems needs to be resolved, at least in principle before any novation and with CEC's agreement to the solution. SDS's support will be required to bring this about.
3.0	Employer's Requirements
3.1	tie need to issue instructions on any misalignments and then we need BBS to warrant that their design does and will conform to the Employer's Requirements as a minimum to the extent that of their design obligations under the scope split. The scope split between BBS and SDS needs to be resolved first.
4.0	Commercial Aspects
4.1	tie accept that, to the extent that it is not one of SDS's obligations under the contract, that changes to the SDS designs completed to date that are required to bring about alignment are instructed by tie (pre novation) and BBS (post novation) and that SDS are paid in accordance with the contract. Management time to provide such support and assistance as tie may require in order to develop plans and processes for dealing with this and

reviewing the Infraco Proposals are part of the Services required by the SDS contract. To enable the objective of delivering a novation to **tie's** programme to be achieved **tie** requests flexibility from SDS on the response times set out in the contract.

4.2 Warranties – **tie** requires SDS to provide the warranties as set out in the novation plan and as reconfirmed by the note produced after the teleconference with SDS on 5/2/08. It is accepted that the warranties are not as stark as set out in the current terms in respect of Employer's Requirements and Infraco Proposals. In the case of Employer's Requirements the warranty provided by SDS could be along the lines of "for the designs which SDS is obliged to provide under its contract and as modified by the 'scope split agreement' SDS warrant that they meet the Employer's Requirements subject to the resolution of the identified divergences as set out in Appendix ??". The ERs are also to be appended to the Novation Agreement.

4.3 The remaining warranties that relate to the status of the SDS designs and supporting consents etc should be unqualified.

4.4 Obligations to obtain consents aligned to those in the Infraco Contract – see proposed Infraco Contract Clause 19 as previously passed to SDS. This effectively provides for relief where consents are not forthcoming where SDS have provided the required information within the timescales agreed with the consenting authority. SDS agreed in principle. Final draft to be sent to SDS (latest draft will be sent today).

4.5 A programme for delivery of the remaining designs is agreed between **tie**, SDS and BBS which aligns with the programme for delivery of the construction works. This programme will include a programme for delivery of the CEC Prior Approvals and Technical Consents as agreed between **tie**, CEC, SDS and BBS. This programme will be included as a schedule to the Novation Agreement and the Programme section of the Infraco Contract. This programme will become the SDS programme. SDS agreed in principle. SDS wish to see how this fits into the BBS construction programme (to be satisfied that there are no disconnects).

4.6 SDS 'stand behind' the programme for delivery of the remaining designs and are liable to Infraco for the consequences of any failure to do so, subject to the reliefs and terms in the SDS contract and Novation agreement terms i.e. SDS to propose LDs level and cap for this aspect of their delivery (this is required by cob 25/2/08 at the latest). LDs level and cap to be meaningful such that SDS suffer significant loss should they fail. SDS confirmed that they stand behind the contract requirement to provide designs to standard i.e. to fulfil the reasonable skill and care obligation (as distinct from the obligation to deliver remaining designs to programme).

4.7 SDS provides the warranties and confirmations as described in the Disclosure Statement section of the SDS Novation Plan.

4.8 SDS currently have a problem with Novation Agreement clause 15.15. This issue will be resolved if alignment of Infraco ERs with SDS design is brought about.

4.9 Incentivisation arrangement – To be considered by **tie**.

4.10 Milestone payments due under the SDS Contract are included as discrete milestones in the Infraco Contract milestone payment schedule. Payments will be made to Infraco on satisfaction of the criteria contained within the SDS Contract. The timescales for payment will be aligned so that those in the SDS Contract are not extended. SDS agreed in principle.

4.11 All amendments to the SDS contract to establish a sub contract between SDS and Infraco will be contained in the SDS Novation Agreement. The only other document will be any purchase order necessary to enable payment of SDS by BBS. This must be signed concurrent with the Infraco award and SDS novation and will contain only payment process details and a cross reference to the Novation Agreement. Pro forma to be passed to SDS. BBS to provide.

4.12 SDS undertake to support BBS in providing information to support compensation events claims. SDS agreed in principle. SDS to review proposed terms in the Novation Agreement (provided 24/2/08).

4.13 **tie** and BBS require a PCG from SDS US Parent in the form advised 24/2/08. This is being reviewed by PB UK Board.

4.14 SDS deliver their designs in accordance with the BBS quality management system and design management procedures. SDS to review BBS proposed QMS. Agreed to substitute **tie** Design Management Process for current contract review process (Steve Reynolds to confirm).

4.15 Halcrow provide a collateral warranty to both **tie** and Infraco. **tie** to provide a copy of the EARL CW to SDS. SDS to provide Halcrow proposal to **tie**.

4.16	Office space for the SDS provider. Working space and all office facilities to be provided free of charge to the SDS provider for the staff currently located in tie's offices.
4.17	Construction Support. SDS are currently preparing an organisation chart with CV's and day rates. We anticipate being able to provide this on or before 29 February.
4.18	All payment issues are to be resolved prior to novation. This is subject to all requisite information being provided to tie .
4.19	Collateral Warranties to NR and BAA. SDS position is that this is not a requirement of the SDS contract. Clause 29.11 of appendix 1 of the Novation agreement should therefore be removed. In addition there is no need for clause 29.10 as clause 29.6 already requires the SDS to provide a warranty to tie . SDS will provide this warranty to tie at novation.
4.20	SDS to review and comment on the Novation terms provided on 24/2/08 by cob 25/2/08

Clearly a number of important issues remains to be addressed but on the core scope issue **tie** has moved significantly in PB's favour.

Having recognised the need for paid instruction to achieve alignment between the BBS Proposals and the SDS Design Geoff then asked that PB provide **tie** with the support required to achieve this. Geoff freely acknowledged that **tie** no longer has the technical capability in house to be able to undertake the exercise in isolation. (**tie's** inability effectively to review the BBS Offer in the context of the SDS Design over the period since declaration of BBS as Preferred Bidder has contributed significantly to the slippage to the Infracore Contract Award date).

I agreed that PB would provide support but pointed out that any alignment exercise would need the active involvement of BBS. This Geoff accepted and agreed to negotiate further with BBS to achieve this aim. We await the outcome of those negotiations but in the meantime PB is working the weekend with a view to providing Geoff on Monday with a headline report of priority issues to be addressed.

Following from Geoff's revised principles a revised draft Novation Agreement was received on Thursday from DLA. This is now under review with Watson Burton. **tie** has called the next negotiation meeting on Monday next week. This meeting will again be attended by all parties together.

In summary, whilst ambiguities and some core issues remain to be addressed, I believe that real progress has been made this week in terms of reaching agreement on the key issue to be addressed – that of correcting the misalignment between the BBS Offer and the SDS Design – and agreeing that the Novation Agreement should be revised to reflect reality. Provided that can be achieved I believe the contractual and legal terms should fall into place much more readily than had been the case with **tie** attempting to pressurise PB into accepting an unrealistic form of words.

My stance now is along the lines of **tie** should be securing a commitment from BBS on compliance of the BBS Offer with the Employer's Requirements. **tie** should then be instructing and paying for any changes required in consequence to the SDS design to achieve practical alignment of the SDS Design and the BBS Offer. If this can be accepted the whole process can be simplified considerably and wrapped up in short order. (Without PB having to make any form of commitment in relation to compliance with the ERs).

One potential problem that may emerge is that the required redesign work may be of sufficient magnitude to impact the construction programme. If that is deemed unacceptable

then the alternative of BBS amending the offer to align with the SDS Design would have to be considered, but I understand that such an approach would add significantly to BBS's price. Hence, some serious work potentially remains to be done to arrive at an acceptable conclusion.

2.1.2 Employer's Requirements

PB has continued to provide assistance to **tie** with the review of the Employer's Requirements, (ERs).

As reported previously PB has completed the review of version 3.1 of the ERs

PB has now been asked to consider version 3.2 of the ERs in light of changes made by **tie** as a consequence of comments on version 3.1

I have continued to emphasise that PB is providing support to **tie** such that **tie** can achieve a higher level of confidence in the final ER document for use in its negotiations with BBS. Whilst PB is able to comment on issues which come to light, given the complexity of the documentation and the short period of time, the exercise cannot be considered exhaustive. Hence **tie** should not expect that PB will be prepared to sign up to any form of blanket "compliance" between the SDS Design and the ERs. The following text from an email from Matthew Crosse dated 15 February gives an indication of the disarray that **tie** is currently in:-

Steve,

Whilst you have completed the ERs review and we are getting towards the end of this aspect of the closure programme, there is still a fair amount to do, so I need SDS' full cooperation please. I thought it would be helpful if I outlined the steps.

Employer's Requirements

After Monday's review of your comments/compliance statement on ER v3.1 (using your response work sheet) and my discussion with Jason yesterday, we agreed to do the following:

- 1. We would review your response worksheet and make specific comments to let you know what action we were taking to enable SDS to remove most of the qualifications. This will be finished today.*
- 2. We would give you a copy of DPOFA and the Tram Supply Agreement for your quick review of the relevant parts. We don't regard these as critical, since all of the technical obligations are contained with the ERs. These were handed over yesterday – please note that these are extremely sensitive commercial documents between other parties.*
- 3. You would review a copy of v3.2 with track changes from v3.1, noting that we have advised that in reality most of v3.2 changes are either: improvements to v3.1 to improve consistency; relaxations to enable BBS equipment; dealing with legal inconsistencies; or to remove poor drafting.*
- 4. You actually already have a copy of v3.2 – this was submitted a couple of weeks ago. Please can look through the changes asap so that your comments on ERs are in sync' with BBS.*

5. We do not think it worth you having any subsequent ER revisions now because these are few in number and in some case are yet to be finalised with BBS and won't be complete until early next week.

6. We would then jointly review any additional comments you might have on the v3.2 and we would tell you about other changes in v3.3.

7. We would finally have a three way meeting with BBS to discuss/finalise, prior to your disclosure statement being issued. (Meeting planned for next Friday 22nd).

.....

Kind regards

Matthew

tie is currently working on version 3.4 of the ERs

2.1.3 BBS Proposals

PB is now to perform a shortform review of the key differences between the BBS Proposals and the SDS Design as described above. Some work has already been completed in respect of the Systems Offer and this will be brought together with a review of the Civils Offer to provide the input to **tie** required to facilitate the alignment exercise referred to above.

2.1.3 Infraco Contract Terms & Conditions

PB has requested that **tie** provide a copy of the latest version of the Infraco terms and conditions ahead of Monday's Novation meeting.

2.1.4 Separate Contract between **tie** and PB

On the subject of a separate contractual arrangement between **tie** and PB for the provision of services not subject to novation there has still been no progress.

2.2 Change Requests

Substantial progress has been made this week. Change orders totalling £419k have been received and agreement confirmed on other Change Requests totalling a further £875k. Within the £875k sum one Change Request worthy of special note is for £360k is for additional traffic modelling work. Another is a Change Request valued at £130k for some of the Forth Ports work which has now been approved.

The resource and cost plan to completion is now being revised accordingly.

2.3 Claims for Prolongation

tie is clearly holding signature of the Legal Agreement for the outstanding prolongation claim whilst negotiations continue on the conclusion of a Novation Agreement. The next step in the process to secure resolution should be a formal meeting with Willie Gallagher on his return from leave.

On the subject of the claim for Additional Management Services dated February 08 and totalling £598k Steven Bell has now committed to provide an initial response within the next few days with a view to securing resolution ahead of Novation.

2.4 Cashflow

£428,000 (plus VAT) has now been paid by *tie* against the November AFP.

£605,000 (plus VAT) has been certified by *tie* against the December AFP and is contractually due for payment by 28 February.

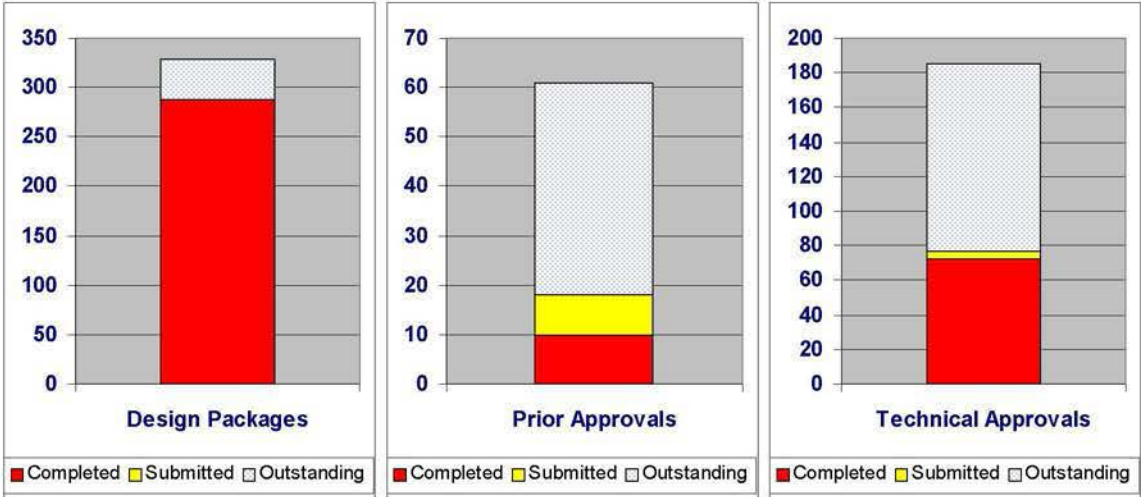
The January AFP has been submitted. The meeting to review the detailed make-up of this AFP which had been scheduled for Wednesday this week has now been postponed until next week.

With the slippage to the Infraco Financial Close date the February AFP will now also be submitted to *tie*.

3 Operations

3.1 Edinburgh Tram Network

Current status on design package submission to *tie*; prior approvals secured from CEC; and statutory technical approvals secured from the Approval Bodies is as follows:-



3.2 MUDFA

Progress is continuing in line with forecast.

4 Other Issues

A provisional date of late afternoon on Wednesday 12 March has been agreed for a meeting with Stuart Glenn and Willie, with a possible fallback to the morning of Thursday 13 March. (The Tram Project Board is due to be held on the 12th and this is currently scheduled to be the forum for signature of the Infraco Contract).

5 Weekly Look-ahead

- Monday. SDS Novation meeting with PB, *tie*, BBS, and DLA.

6 Timetable to Infraco Contract Award – *tie* Update

- | | |
|----------------|---|
| ▪ 29 February. | Final Report to Council from <i>tie</i> . |
| ▪ 13 March. | Novation of the SDS Contract. |
| ▪ 13 March | Infraco contract award |