2008/15

Trams for Edinburgh
..connecting our Capital

EDINBURGH TRAM
Highlight Report to the Chief Executive's Internal Planning Group
16 April 2008

WED00000369_0001

Trams for Edinburgh
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1 Background

This 'highlight report' is an update to the Chief Executive's Internal Planning Group on the Edinburgh Tram Project to inform on the progress on this project and any decisions required, particularly regarding the tram approvals process.

2 Executive Summary

2.1 Matters Arising

Financial Close – *tie*'s Deliverables for Contract Award

Appendix 1 lists the documentation and status of the information to be provided to the Council to enable *tie ltd* to award the two major tram contracts for the vehicles and infrastructure.

Report to full Council on 1 May 2008

Based upon the above, a draft report has been prepared for the Contract Award and is attached as Appendix 2.

Draft governance letters have also been prepared to allow delegated authority to be given and these are attached as Appendix 3.

Tram Sub Committee meeting on 12 May 2008

The first meeting of the Tram Sub Committee is due soon and the topics to be covered need to be confirmed to allow the drafting of the report. Suggested topics are provided in Section 5.

Infraco Works commencing before Planning Prior Approvals in Place

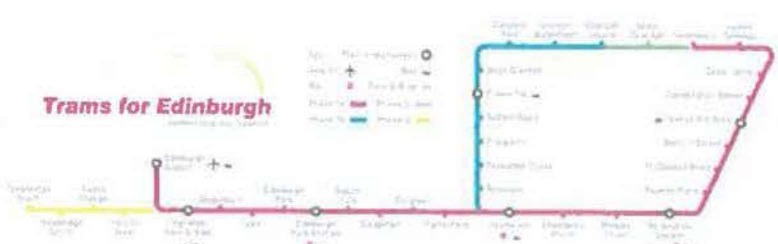
Three sites have been identified by *tie ltd* where the required Planning Prior Approvals may not be in place and the Council need to determine what action, if any, we want to take. If there is a delay to the works, then the Council will be responsible for meeting those costs.

2.2 Key Dates

24 April 2008	Financial Close and Tramco/Infraco contracts.
1 May 2008	Council Report on Financial Close and Notification of Contract Award.
19 May 2008	Construction Commences on Phase 1a (projected date).
31 March 2009	Latest date for a decision to instruct *tie*/BBS to commence 1b.
27 August 2010	Commencement of test running - phase 1a.
July 2011	Revenue Operations commence - phase 1a.

2.3 Matters to Note

- Updates on the Infraco Contract, and the concerns raised by Planning & Transport about the quality of the submissions for the prior and technical approvals.
- The position with SRU and CEC resources.



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3 *Financial Close – tie*'s Deliverables for Contract Award

- Appendix 1 lists the activities and deliverables that are expected to be achieved by 24 April 2008 to allow *tie* to award the contract. The status column indicates the current status (as of 15 April 2008).

Below is a summary of the anticipated outstanding issues, which will not be resolved prior financial close. Whilst it would be preferred to have these complete – it is not essential and does not significantly impact on project delivery.

Issue	No	Description	Status
SDS	9.3	*tie ltd* to provide written report on previous claim settlement with SDS identifying details, cause of claim and costs of settlement. Are any further claims expected from SDS? Are any further claims from SDS competent	*tie ltd* to provide – very unlikely to be provided before financial close.
Third Party Agreements	11.6	SRU side agreement	See item 6.1 below.

4 Report to full Council 1 May 2008

Based upon the above, a draft report has been prepared for the Contract Award and is attached as Appendix 2.

tie ltd has intimated that the contract award date could not take place before 24 April 2008, which may cause some difficulty in reporting to Council on 1 May 2008 since the completed reports need to be released the press on the 25 April.

Should we consider having a contingency plan with a further draft report seeking approval from Council on 1 May, instead of using delegated authority, given the short timescales between the potential contract award and the Council meeting? This would also address any potential issues with regard to whether the sign off of the change in cost and delay in delivery falls within the Chief Executive's authority.

To allow the formal contract award by *tie ltd* two letters have been prepared that need to be exchanged between *tie ltd* and CEC. These letters will become visible to the bidders – so they have deliberately been kept brief and do not refer to any changes in the Final Business Case. Draft letters are attached as Appendix 3.

A communications plan has been prepared for the announcement of tram financial close. This has been agreed by all partners – *tie ltd*, CEC, Transport Scotland and BBS. A media briefing will take place at the *tie* office on Thursday 24 May (date still subject to final confirmation) - this will include a presentation, symbolic signing and photo-call. Key Council personnel have been invited. The plan also includes a plan to brief Councillors, politicians, staff and businesses.

5 Tram Sub Committee meeting on 12 May 2008

The first tram sub committee is to take place on 12 May 2008, and a report needs to be prepared.

Agreement is required on the topics to be discussed. A suggested list of heading is noted below.

- Tram Infrastructure programme (with the justification for the temporary closure of Princes Street for 6 months, and the need to work in certain locations during the normal Festival embargo periods).
- The claim paid by *tie ltd* to SDS (there is a requirement to report claims in excess of £500K).
- Tram Traffic Regulation Orders (TROs). The law has been changed by the Scottish Government on 8 February 2008 and the process for dealing with formal objections to the Tram TROs needs to be agreed the Council.

6 INFRACO

- **Planning Prior Approvals**

Of 63 batched submissions:

- 1 Planning Permission Granted
- 18 Prior Approvals Granted
- 4 Prior Approvals currently under consideration
- 2 Submissions cancelled
- 40 Batches remaining to be submitted for formal Prior Approval
- 26 out of the 40 batches under Informal Consultation

There is concern that prior approvals may have to be revisited if there are substantial changes in design coming from inter-disciplinary coordination, technical approvals or value engineering. Planning has written to *tie* on 28 March 2008 raising their concerns.

- **Technical Approvals**

The table below lists the proposed programme (version 27) for the roads technical approvals. To date, no roads technical approvals have been obtained, and there has been significant slippage. No information is available on when Section 3 is to be provided.

Additional internal staff have been identified to assist with the compression of the programme.

Similar to the concerns raised by Planning, Transport have also written to *tie* on 3 April 2008 reiterating their concerns about the quality of the submissions being received. A copy of that letter is attached as Appendix 4. **There is potential for the approvals to cause a delay to the construction programme.**

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Roads Authority Technical Review Programme	V27	
	From	To
Section 1A – Roads & Drainage	28/04/08	23/06/08
Section 1B – Roads & Drainage	20/02/08	16/04/08
Section 1C – Roads	18/04/08	13/06/08
Section 1D – Roads	28/04/08	23/06/08
Section 2A – Roads & Drainage	06/05/08	01/07/08
Section 5A – Roads & Drainage	11/06/08	06/08/08
Section 5B – Roads & Drainage	02/04/08	28/05/08
Section 5C – Roads & Drainage	15/05/08	10/07/08
Section 6A – Roads	13/06/08	08/08/08
Section 6A – Drainage	26/08/08	21/10/08
Section 7A – Roads & Drainage	06/06/08	01/08/08

In an attempt to smooth the resources for CEC, *tie* and CEC are currently reviewing a new programme (Version 29) to agree an appropriate way forward with regard to the roads technical approvals. This programme will become the contractual programme with BBS.

Infraco Works commencing before Approvals in Place

The delay in the submissions from *tie ltd* and their designers SDS for the prior and technical approvals may leave the Council in a difficult position. It is likely that the appropriate Planning Prior Approvals will not have been obtained prior to the commencement of construction works for three locations. They include Russell Road bridge, Haymarket Tramstop and the Depot at Gogar. These three locations are on the critical path for the tram delivery and if construction is delayed, the Council is responsible for these compensation events and claims from the construction contractor BBS – these claims could easily be in excess of £2M. The only possible mitigation measure would be for Planning to allow the construction works to commence, but this would leave the Council open to negative PR from people objecting to the Prior Approvals during the consultation stage. There is also the potential for a legal challenge, although that is unlikely.

7 Miscellaneous

7.1 SRU – single point of contact

tie ltd are having difficulty concluding the legal agreement with SRU because of a dispute over future traffic management costs when events are held. Currently the Council (SfC) fund these and SRU require that this continue. It is recommended that the Directors of Services for Communities and City Development agree an acceptable position to the Council to allow the agreement to be concluded. It is also recommend that the Council identify a single point of contact for the co-ordination between SRU and the Council projects for the flood scheme and tram.

7.2 CEC Resources

- **Internal Resources**

Existing CEC staff are carrying out the statutory approvals process and the related necessary administration for the tram project. Over fifty individual internal members of staff are directly involved in the tram project at this time. A total of 14085 staff hours has been utilised on the tram for the financial year 2007/2008 totalling £528K. These costs are being borne by CEC and are contained within existing budgets.

Some minor changes occur for this financial year (2008/2009), with only approvals related staff being charged to the tram budget. This requires additional costs of £210K for Property and Legal Staff being charged to CEC for 2008/2009, and this is being charged to the 'Cities Growth Fund'.

- **Additional Resources**

To assist with the approvals process additional staff have been brought in to either carry out the necessary work directly or alternatively free-up existing resources to do that work and use the extra resources to cover that shortfall. A total of 18 FTE have been employed for the financial year 2007/2008 – totalling £580K, which was contained within the tram budget costs.

For 2008/2009 the projected additional staff costs total of £433K is to be contained within the tram budget costs.

List of Appendices:

1 – Financial Close – *tie's* Deliverables for Contract Award

2 – Report to full Council on 1 May 2008

3 – Draft Governance letters

4 – Letter to *tie* regarding Technical Approval concerns

Item	Issue		Description	tie Final Deal Countdown List Item Dated 14 Jan 2008	Notes	Status	Anticipated Completion Date	Docs 1	Docs 2
	Critical Contractual Decisions to enable Chief Executive to use delegated powers to approve tie to sign the contract with BBS							**CEC Deliverables - Link to Supporting Documentation**	
1	Contract	1.1	[redacted]	1.4		Draft Letter from DLA dated 12th March provided - Item 1 provides detail on CAF Novation	11-Feb	1.1 1.2 Novation and CEC Guarantee\DLA Letter 120308.pdf	
			[redacted]	1.3		2 issues remain outstanding (PCG's and LD's) in relation to SDS Novation. Letter required from DLA to ensure alignment.	14-Feb	1.1 1.2 Novation and CEC Guarantee\FW SDS Novation.msg	
		1.2	[redacted]	2.1		Draft Letter from DLA dated 12th March provided - Items 9.1 and 9.2 Cover CEC Guarantee		1.1 1.2 Novation and CEC Guarantee\DLA Letter 120308.pdf	
		1.3	Due Diligence on approvals for Infraco & Tramco (post notification)	8.4		This will be completed immediately before contract award. Letter required from tie confirming due diligence is complete and they are satisfied with outcome. CEC request letter from German and Spanish Lawyers with to confirm satisfaction with due diligence			
		1.4	[redacted]	4.1		tie operating agreement agreed. This will be engrossed and held for execution at a later date.	04-Feb	1.4 a tie Operating Agreement\Operating Agreement v28 180208.doc	
			[redacted]	4.2		TEL Interim operating agreement agreed. This will be engrossed and held for execution at a later date.	11-Feb	1.4 b TEL Operating Agreement\TEL Operating Agreement v10 270208.doc	
		1.5	[redacted]	5.2	explanation of risk profile	DLA Draft letter has been provided with a subsequent update. Matrices have also been provided.	14-Feb	1.5 DLA Letter and Matrices\ 18184972_1_UKMATTERS\Infraco Risk Allocation Matrix 10 3 08.DOC	1.1 1.2 Novation and CEC Guarantee\DLA Letter 120308.pdf
		1.6	OCIP exclusions	9.4		Report available for review by CEC. Presentation on OCIP given to CEC Officers on 5th February. CEC Insurance officers have reviewed tie insurance documents with a meeting set up to cover areas of concern.		1.6 OCIP\CEC OCIP Presentation.pdf	
		1.7	tie to provide a list of what is not included within the BBS contract (i.e. the items which BBS have specifically excluded) with a financial value against each item.	5.3	OCIP caps, scope of wor	Infraco price basis and exclusions is provided in section 6.3 of the Draft Close Report. Further detail is provided in Appendix 7 of the Close Report.	11-Feb	Close Report - v8 Issued 12 03 08.doc	
2	Programme	2.1	Confirm dates for 1a and 1b	5.7		Evidenced in paragraph 2.2 of the close report.		Close Report - v8 Issued 12 03 08.doc	

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Item	Issue		Description	tie Final Deal Countdown List Item Dated 14 Jan 2008	Notes	Status	Anticipated Completion Date	Docs 1	Docs 2
	Critical Contractual Decisions to enable Chief Executive to use delegated powers to approve tie to sign the contract with BBS							**CEC Deliverables - Link to Supporting Documentation**	
		2.2	Agreement of On-street Construction Methodology	1.11	closure periods v cost im	Statement provided by tie to give comfort to CEC that the programme is consistent with the constraints. Consequential impact of guided busway to be taken by CEC.			
		2.3	Mudfa - risks related to Infraco	5.5		MUDFA programme v8 is incorporated into BBS programme. Statement on QRA and what the allowance for slippage is in regard to MUDFA. MUDFA related items account for £11.4m in QRA		5.1 5.2c 5.3 5.4 QRA Transparency and Changes/Financial Analysis Spreadsheet 11 Mar 08.xls	
3	**Employers Requirements**	3.1	[redacted]	1.5/5.6	to assure CEC liabilities	DLA Letter confirming alignment of employers requirements has been provided. Graeme Bissett's Letter Dated 13/03/08 also sets out ER issues.	13-Feb	3.1 Employers Requirements - DLA Endorsement/ERs 13 03 08.doc	3.1 Employers Requirements - DLA Endorsement/DLA DRAFT update letter 14.3.08 issued.DOC
4	**Due Diligence**	4.1	Statement from the Preferred Bidder that they accept the performance run-time model and "law of physics" results and confirmation of acceptance of the emerging quality of design.	6.2	potential for additional de	Awaiting Confirmation. Response due from BBs on 1st Feb. Confirmation required on whether CAF are providing a warranty covering compliance with the DKE	01-Feb		
5	**Risk**	5.1	[redacted]	5.3		QRA updated for meeting with tie on 4th March. Explanation given on changes in QRA - tie have provided a written statement that they are satisfied that the drop from £50m to £30m is enough cover.	14-Feb	5.1 5.2c 5.3 5.4 QRA Transparency and Changes/Financial Analysis Spreadsheet 11 Mar 08.xls	
		5.2	[redacted]	5.3	be explicit even if outwith	Costs relating to project cancellation pre and post financial close have been provided by Stewart McGarrity		5.2a Black Flag/RS Risk Briefing - PRIVATE CONFIDENTIAL.msg	
			[redacted]	5.3	highlighted by OGC repo	Draft report available covering this. Susan Clark to provide			
			[redacted]	5.3	emphasis on liability to C	Confirmation of programme del	13-Feb	5.1 5.2c 5.3 5.4 QRA Transparency and Changes/Financial Analysis Spreadsheet 11 Mar 08.xls	

	Critical Contractual Decisions to enable Chief Executive to use delegated powers to approve tie to sign the contract with BBS							CEC Deliverables - Link to Supporting Documentation	
Item	*Issue*		*Description*	*tie Final Deal Countdown List Item Dated 14 Jan 2008*	*Notes*	*Status*	*Anticipated Completion Date*	Docs 1	Docs 2
		5.3	[redacted]	5.3		Spreadsheet provided by Stewart McGarrity highlights changes in QRA from October to Financial Close	14-Feb	5.1 5.2n 5.3 5.4 QRA Transparency and Changes\Financial Analysis Spreadsheet 11 Mar 08.xls	
		5.4	[redacted]			Risk allowance of £3,3m in QRA for this issue. Assurance from Stewart McGarrity that this allowance along with the management procedures in place are enough to mitigate		5.1 5.2n 5.3 5.4 QRA Transparency and Changes\Financial Analysis Spreadsheet 11 Mar 08.xls	
6	Value Engineering	6.1	VE summary included in the final deal and highlighting other potential savings with a probability value	5.8		Analysis of V/E provided in Financial Analysis spreadsheet by Stewart McGarrity - further wording in section 8.7 of close report	13-Feb	6.1 VE Summary\VE Summary (Extracted from S McGarrity Financial Analysis).xls	
7	Pricing & Funding	7.1	[redacted]	1.9/5.8	including for both construction and operation e.g. design timescale not accepted	Section 2.1 of Draft Close Report provides price breakdown. tie report on Infraco Contract Suite provides some detail on Maintenance.	13-Feb		
		7.2	[redacted]	1.9/5.8		Draft Close report section 8.3 provides information covering these items. Further Detail Provided in Appendix 7 of Close Report	13-Feb	Close Report - v8 Issued 12.03.08.doc	
		7.3	[redacted]	1.9/5.8		Draft Close report section 8.2 provides information covering these items.	13-Feb	Close Report - v8 Issued 12.03.08.doc	
		7.4	[redacted]			Report by tie on the Infraco Contract states in section "Design Expectations of the Infraco" that V26 updated from V22 of the SDS design has been used for Price and Programme - Schedule 4 on pricing received from tie.	13-Feb		
		7.5	[redacted]			Costs relating to project delay provided by Stewart McGarrity email dated 10/03/08	13-Feb	7.5a [illegible] - PRIVATE CONFIDENTIAL.msg	
		7.6	[redacted]			Document Entitled DLA Infraco Report compiled on 11/03/08 provides comfort that any advance purchases made by BBS in relation to items they do not have approval for will be entirely at their risk		18203488_1 (2) 11 03 08 version of DLA Infraco report 12 03 08 Issued.doc	
8	Network Rail	8.1	[redacted]			Amendment Signed			

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Critical Contractual Decisions to enable Chief Executive
to use delegated powers to approve tie to sign the contract with BBS

Item	Issue		Description	tie Final Deal Countdown List Item Dated 14 Jan 2008	Notes	Status	Anticipated Completion Date	CEC Deliverables - Link to Supporting Documentation: Docs 1	Docs 2
		8.2	[redacted]			Signed			
		8.3	[redacted]			Signed			
		8.4	[redacted]			In framework as final form			
		8.5	[redacted]			In framework as final form			
		8.6	[redacted]			In framework - parties to agree acting reasonably			
		8.7	[redacted]			In framework as final form			
		8.8	[redacted]			In framework as final form			
		8.10	[redacted]						
		8.11	[redacted]			Programme and cost			
		8.12	[redacted]			Awaiting confirmation from NR on taxi rank.			
		8.13	[redacted]			Programme and cost			
		8.14	[redacted]			Needs to accelerate and become substantially complete			
9	SDS Assurances	9.1	[redacted]	1.4	including risks of failing to deliver in terms of quality and in time to meet BBS programme	Awaiting Draft	01-Feb		
		9.2	[redacted]	1.4		Programme now agreed	01-Feb		
		9.3	[redacted]	1.4	showing justification and	[redacted]	01-Feb		

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Item	Issue		Description	tie Final Deal Countdown List Item Dated 14 Jan 2008	Notes	Status	Anticipated Completion Date	Docs 1	Docs 2
	Critical Contractual Decisions to enable Chief Executive to use delegated powers to approve tie to sign the contract with BBS							CEC Deliverables - Link to Supporting Documentation	
10	Funding Letter	10.1	[redacted]	2.2	letter from CEC required to say the "best endeavours" reference in the tie operating agreement will not expose TS or Scottish Ministers	Complete - CEC Finance to provide copy of signed Grant Letter to Susan Clark and Colin MacKenzie		10.1 Funding [illegible]	
11	Third Party Agreements	11.1	[redacted]	5.9		Closure of West Craigs access and Gyle Licence required	13-Feb		
		11.2	[redacted]	5.9	check for exclusions	In close report			
		11.3	[redacted]	5.9		Telewest agreement signed			
		11.4	[redacted]	5.9		Cost issues now resolved agreement in process of drafting and should be signed by a fortnights time	30-Apr		
		11.5	[redacted]			Now signed by CEC,BAA and tie.			
		11.6	[redacted]			Working well towards signature.			
12	Licence between CEC and tie	12.1	To be concluded before financial close	3.3		Signed	28-Jan		
13	Land Acquisition	13.1	Statement of land acquisitions	5.10		In close report			
		13.2	Confirmation that GVD completed	5.10	any outstanding matters	In close report			
		13.3	[redacted]	5.10	check programme/cost of	Statement required from tie to confirm this issue			

Other Issues

Issue re protection re advance purchase of steel to be added to 1.6 in tie list.

7.1 – 7.5 inclusive in tie's list to be moved to Section 3.

Street traders issue to be added to Section 3.

SRU issue in 3.4 in the tie list to be expanded upon and explained further.

APPENDIX 2

•EDINBVRGH•
THE CITY OF EDINBURGH COUNCIL

Item no
Report no

Edinburgh Tram – Financial Close and Notification of Contract Award

The City of Edinburgh Council

1 May 2008

1 Purpose of report

1.1 To notify the Council of the award of the two major contracts for the Edinburgh Tram Network (ETN) and to provide an update on financial close and the capital costs.

2 Summary

2.1 A report updating the Council on the progress of the contractual negotiations for the ETN was submitted to Council on 20 December 2007. Delegated authority was given to me to allow **tie ltd** to enter into contracts to deliver the ETN subject to suitable due diligence and providing remaining issues were resolved to my satisfaction.

2.2 **tie ltd** have now concluded the contractual negotiations and recommended to me that the two contracts for the supply of the tram vehicles (Tramco) and the tram infrastructure (Infraco) be awarded to CAF and Bilfinger Berger Siemens respectively. I granted approval to **tie ltd** on (enter date) and the contracts were awarded on (enter date). This included the novation of CAF and the System Design Services (SDS) contracts to the main Infraco contract.

2.3 The achievement of this substantial milestone means that the Council's exposure to financial risk has been minimised with significant elements of risk being transferred to the private sector. This has resulted in 95% of the combined Tramco and Infraco costs being fixed with the remainder being provisional sums which **tie ltd** have confirmed as being adequate. The net result of the negotiations is a final estimate for Phase 1a of the ETN of £508m. This figure secures the best deal possible for the Council and Transport Scotland, and is well within the agreed funding envelope of £545m.

2.4 Infrastructure construction work will commence in May 2008 and Phase 1a is programmed to be substantially complete by January 2011. Revenue services are planned to commence in July 2011.

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3 Main report

Recent Developments

3.1 The statutory notice to award the contracts to CAF (for the Tramco contract) and Bilfinger Berger Siemens (for the Infraco contract) was issued on 19 March 2008, following satisfactory close out by **tie ltd** of the remaining issues required by the Council. Following the mandatory minimum cooling off period, the contracts were signed by **tie ltd** on (enter date), following further approval from me.

Financial Close and Capital Cost

3.2 The protracted yet progressive nature of the contractual negotiations highlight the work undertaken by **tie ltd** and written confirmation has been received from **tie ltd** stating that the contracts represent the best possible value to the Council.

3.3 The Final Business Case (FBC) aggregate estimate for Phase 1a was £498m as reported to Council on 25 October 2007.

3.4 Over the period of negotiations with the preferred bidder there have been changes to the overall cost of the project. The make up of the estimated cost of Phase 1a in the FBC was £498m which included base costs of £449m and a Quantified Risk Allowance (QRA) of £49m. The base cost has now increased to £476m with a revised QRA of £32m giving a final estimated cost of £508m. Firm costs represent 95% of this sum with the remainder being provisional sums which **tie ltd** have confirmed as being adequate.

3.5 The baseline aggregate costs for infrastructure and tram supply (including the negotiated Infraco and Tramco contracts) has increased from £278m at FBC to £302m – an increase of £24m. This increase is largely due to the firming up of provisional prices to fixed sums, changes to the employers requirements, currency fluctuations and the achievement of the risk transfer to the private sector as described in the FBC. Changes in price were expected and were included in the risk provision reported to Council on 25 October 2007.

3.6 These costs are based upon the construction programme with works commencing in May 2008 and Phase 1a being substantially complete by January 2011. Revenue services are planned to commence in July 2011.

Quantified Risk Allowance (QRA)

3.7 The QRA has reduced from £49m at FBC to £32m. The material change in the QRA relates to procurement risks for Tramco and Infraco closed out at the signing of the contracts. The significant changes from FBC are as follows:

- Reduction of £24m reflecting the removal of major elements of the procurement stage risks in the negotiated base costs.
- Reduction of £3m reflecting the removal of other risk items into the negotiated base costs.
- Increase of £10m to provide for risks and uncertainties to be managed by **tie ltd** during construction.

3.8 A written statement from **tie ltd** has been provided stating that they are satisfied that £32m is an adequate level of risk allowance.

APPENDIX 2

4 Financial Implications

4.1 The baseline cost of the project has increased from to £449m to £475m with the QRA reducing from £49m to £32m resulting in the final price of the project increasing from £498m to £508m. The estimate remains well within the agreed funding envelope of £545m.

5 Conclusions

5.1 The Tramco and Infraco contracts were awarded to CAF and Bilfinger Berger Siemens respectively on (enter date) securing the best deal possible for the Council and Transport Scotland. The awarding of these two contracts represents a significant milestone in the development of the Tram project. A significant level of risk has been assumed by the private sector considerably reducing the Council's financial exposure.

6 Recommendations

6.1 The Council note the formal award of the two contracts with a final price for the Edinburgh Tram Network of £508m which is within the funding envelope of £545m.

Tom Aitchison
Chief Executive

Appendices	None	
Contact/tel	Andy Conway Alan Coyle	[redacted]
Wards affected	All	
Background Papers	None	

Item	Description of Provision Sum	trigger date	duration	£
1	Pumped surface water outfall at A8 underpass (by depot)	01-Jun-08		£100,000
2	Scottish Power connections to the Depot and Ingliston Park & Ride	not applicable		£750,000
3	Relocation of Ancient Monuments – this relates to those monuments noted on the route [SDS drawings ULE 90130-01-HRL 0003B, 6B, 7B, 10B, 12B, 13B, 14B, 15B & 24B refer] – it does not include cleaning and/or restoration	20 Business Day after BBS raise any queries in respect of issued information		£53,700
4	Additional cost of Network Rail compliant ballast	20 Business Day after BBS provide spec.		£300,000
5	Extra over for revised alignment to Picardy Place, York Place and London Road junctions (see also next item)	01-Jan-08		£3,340,324
6	Extra over for major utility diversions Picardy Place, York Place and London Road junctions	01-Jan-08		£3,000,000
7	Extra over for shell grip at junctions	01-Aug-08		£319,343
8	Allowance for Scottish Power connections to new street lights and new traffic signals	not applicable		£115,287
9	Allowance for demolition of existing Leith Walk substation (if required) [SDS drawings ULE 90130-01-SUB- 00023 rev 2, 00046 rev 1,00047 rev 1 and 00051 rev 1 refer]	20 Business Day after BBS raise any queries in respect of issued information		£55,662
10	Urban Traffic Controls [UTC] associated with the delivery of the alignment	01-Aug-08		£2,500,000
11	Scottish Power connections to Phase 1a sub-stations (8nr x £50,000)	not applicable		£400,000
12	Various Forth Ports requirements including the revised alignment of track at Casino Square, relocated tramstop, junction amendments and removal of 'kink' in alignment from Constitution Street, footpath on south side of Tower Place Bridge and Victoria Dock	01-Oct-08		£150,000
13	Forth Ports requirements at Ocean Terminal amendments	01-Oct-08		£350,000
	Total			**£11,434,316**

Item	Description of Provision Sum	Trigger date		£
1	Accommodation Works	not applicable		£1,000,000
2	Allowance for minor utility diversions	01-Oct-08		£750,000
3	PICOPS / COSS / Possession Protection Staff support when undertaking works adjacent or over the railway	not applicable		£755,307
4	Archaeological Officer – impact on productivity	not applicable		£405,755
5	Additional Crew Relief Facilities at Haymarket [SDS drawings ULE 90130-02-STP-000126 REV 1 and 000127 rev 1 refer]	20 Business Day after BBS raise any queries in respect of issued information		£49,950
6	Urban Traffic Controls [UTC] associated with the wider area impacts	01-Jan-10		£2,500,000
7	Forth Ports requirements for design and construction of by-pass road to adoptable standard	01-Oct-08		£400,000
8	Forth Ports requirements for Lindsay Road amendments	01-Oct-08		£1,750,000
9	Royal Bank of Scotland requirement for enhancement of Gogarburn Tramstop	01-Oct-08		£400,000
	Total			**£8,011,012**

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EDINBURGH TRAM
Highlight Report to the Chief Executive's Internal Planning Group
14 May 2008

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1 **Background** - *Robin Goodwin*

This 'highlight report' is an update to the Chief Executive's Internal Planning Group on the Edinburgh Tram Project to inform on the progress on this project and any decisions required, particularly regarding the tram approvals process.

2 **Executive Summary**

2.1 **Matters Arising** - *Robin Goodwin*

Update on tie's negotiations for Financial Close

Last minute negotiations between *tie ltd* and BBS have led to an increase in the final costs from £508m to £512m, which is still within the funding envelope of £545m. This will require a further report to be presented on 13 May 2008.

Report to Policy and Strategy Committee on 13 May 2008

A report went before for the Policy and Strategy Committee on 13 May 2008. The report is attached as Appendix 2, and is based upon the information received from *tie ltd* regarding the conclusion of contractual negotiations.

Feedback from Tram Sub Committee meeting on 12 May 2008

The first meeting of the Tram Sub Committee occurred on 12 May 2008. Three reports were considered along with a Tram Update presentation from Willie Gallagher.

tie's Deliverables for Contract Award

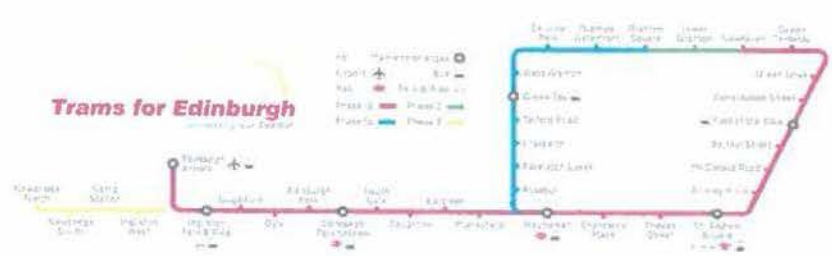
Appendix 3 lists the documentation and status of the information to be provided to the Council to enable *tie ltd* to award the major tram contracts for the vehicles and infrastructure.

2.2 **Matters to Note or for a Decision** - *Robin Goodwin*

- To note the position with CEC resources.
- To decide if £25K can be identified within SfC's budget to fund alteration to the refuse bins on Leith Walk.

3 **Update on *tie's* negotiations for Financial Close**

Since selection of the preferred bidders in October 2007, *tie Ltd* has been involved in complex and lengthy negotiations with the bidding consortium to conclude the contractual arrangements for the delivery of the tram system. During this period, tight governance has been applied to ensure that the approval requirements of the Council are fulfilled.



Most recently, the Council approved a report on 1 May 2008 which described the progress made. The final contracts are now concluded and ready for signature. The final terms differ marginally from those anticipated in the recent report of £508m, with the capital cost now standing at £512m, a sum which remains well within the available funding of £545m.

As was noted in the Council Report, underlying costs have been subject to the firming up of provisional prices to fixed sums, currency fluctuations and the crystallisation of the risk transfer to the private sector as described in the project's Final Business Case. The finalisation of the contracts required further amendment for similar reasons and supply chain pressure on the bidding consortium has been accommodated in the marginal increase over the most-recently reported cost estimate. Offsetting the increased cost is a range of negotiated improvements in favour of *tie ltd* and the Council, in the areas of programme delay mitigation, cost exposure capping and more advantageous contractual positions.

In addition, and as is normal in these circumstances, there is an imperative to bring the contractual matters to an efficient near-term close in order to mitigate against potential cost exposure and programme delay, which could represent a material risk. *tie ltd* has recommended that the final terms negotiated represent the best result achievable for the public sector. *tie ltd* has maintained a focus on the competitiveness of the developing contract terms to ensure they remain best value and are fully aligned with relevant regulations. They have confirmed to Council officials that the final terms of the contract meet these parameters.

Further background information from *tie ltd* is included as Appendix 1.

Works on utility diversion works continue on time and to budget. Works in Leith Walk are now coming to a close and earlier than planned completion is anticipated for the works in Shandwick Place. The construction programme for the tram system remains as previously reported with revenue service planned for July 2011.

4 Report to Policy and Strategy Committee on 13 May 2008

As a result of the last minute negotiations noted above, a report went before the Policy and Strategy Committee on 13 May 2008. This report notified members of the changed commercial position and sought to refresh the delegated powers of the Chief Executive.

A copy of the report is attached as Appendix 2.

5 Feedback from Tram Sub Committee meeting on 12 May 2008

The first meeting of the Tram Sub Committee occurred on 12 May 2008. Three reports were considered along with a Tram Update presentation from Willie Gallagher – *tie's* Executive Chairman.

The three reports considered following:

- Construction Programme
- Additional Design Costs
- Edinburgh Tram and Public Realm

DRAFT FEEDBACK TEXT FROM MEETING – see DMF

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6 *tie's* Deliverables for Contract Award - *Alan Bowen*

Appendix 3 lists *tie's* deliverables for the Contract Award.

INSERT TEXT FROM LEGAL REGARDING DLA LETTER AND CLOSE REPORT

7 Miscellaneous

7.1 Co-ordination of the emerging design and Council Services

As the detailed design develops, it has become apparent that operational matters regarding refuse collection on the tram route may need to be reviewed once the tram system is operational. The first stage of this process has identified that to retain as much of the on-street parking and loading on Leith Walk it will be necessary to rationalise the amount of refuse bins and where possible increase the size of the bins to reduce the amount of space they take up on-street.

Ongoing discussion with Margaret Williamson in SfC has identified that many existing 1280litre wheelie bins could be altered to 3000litre static bins. This reduces the overall number of bins and also improves the overall operational collection time for Leith Walk. However, it is estimated that this rationalisation will require new bins to be procured at a cost of £25K. Due to the funding restrictions from Transport Scotland it is not possible to attribute these costs to the tram budget, and internal sources would need to be found.

It is recommended that £25K be identified within SfC's budget for this work to be undertaken.

7.2 CEC Resources - *Andy Conway*

- **Internal Resources**

Existing CEC staff are carrying out the statutory approvals process and the related necessary administration for the tram project. Over fifty individual internal members of staff are directly involved in the tram project at this time. A total of 262 staff hours has been utilised on the tram since April 2008 at a cost £9K. These costs are being borne by CEC and are contained within existing budgets.

- **Additional Resources**

To assist with the approvals process additional staff have been brought in to either carry out the necessary work directly or alternatively free-up existing resources to do that work and use the extra resources to cover that shortfall. A total of 18 FTE have been employed since April 2008 at a cost of £45K, which was contained within the tram budget costs.

The budget for the additional staff costs for 2008/2009 totals £433K.

List of Appendices:

1 – Update on tie's negotiations for Financial Close (Paper produced by *tie ltd*)

2 – Report to Policy and Strategy Committee on 13 May 2008

3 – *tie's* deliverables for Contract Award

Update on tie's negotiations for Financial Close (Paper produced by *tie ltd*)

(1) Background and record of events

This document is intended to be an objective synopsis of the evolution of the Infraco contract suite negotiations in order to put on record in one place the key events and to support approval of the final negotiated position.

Preferred bidder selection, business case approval and Wiesbaden

BBS were appointed preferred Infraco bidder in October 2007 along with CAF as preferred Tramco bidder. The procurement process and evaluation was conducted under normal rules of public procurement and the appointment decisions were approved within the project governance structure.

In December 2007, the Final Business Case was approved by the Council and appropriate delegated authorities created to execute the project. A series of negotiations culminated in a meeting of senior representatives at Wiesbaden when the contract price was concluded within the business case budget of £498m, supporting revenue service in Spring 2011. This became known as "the Wiesbaden Agreement". The anticipation was that Close would be executed within a few weeks allowing for the Xmas break.

Continuing negotiations, Rutland Square and Award Notification

Negotiations in the period from October to December 2007 were conducted in a constructive if robust manner. However, from January 2008, it became increasingly concerning that the BBS consortium was operating in a manner which militated against an efficient Close. The behaviours included lack of competent senior commercial management involvement, leadership on commercial as well as legal issues by BBS's lawyers, lack of a cohesive approach between the consortium partners and their use of different law firms, consistent re-opening of apparently agreed positions and lack of focus on important matters in favour of volumes of detailed points.

A consistent additional problem was the under-performance and unhelpful approach of PB. This was critical as PB needed to enter into the tri-partite Novation of their design contract. CAF played a more constructive and passive role.

Extended negotiations took place in which the prevailing theme was the attempt by tie to remain close to the draft terms which supported preferred bidder selection in the face of attempts by BBS to improve their position. These negotiations led to a further summit meeting in March 2008, when a further series of lines were drawn. This "Rutland Square Agreement" included different (offsetting) cost and risk transfer terms which drove the overall cost to £508m. The delay in reaching close meant that revenue service could not now commence until July 2011. The negotiations at this stage were substantially driven by Siemens.

Both the Wiesbaden and Rutland Square Agreements were documented and signed by senior representatives of the parties. Tie proceeded to report to the Council that terms were agreed and that Notification of intent to award letters could be sent to the unsuccessful bidders. This was duly approved and the letters were issued on 18th March 2008. De-briefs with Tramlines and Alsthom were held in early April, which were based on the terms agreed at Rutland Square.

Period to Financial Close

Negotiations over detailed documentation continued, although BBS's approach continued to cause concern and delay. On 24th April, senior representatives of BB and S visited tie and marginal residual issues were agreed. The meeting concluded with confirmation that all terms were agreed and the final documents should proceed to final legal quality control and then signing on 2nd May.

On 30th April 2008, in a telephone call to Willie Gallagher, BB (Richard Walker) requested a last minute and largely unsupported price increase of £12m. This was at the final point before the pre-agreed timing of contract approval for signature. No such request had emerged from Siemens or from CAF or indeed SDS. The anticipation had been that the contracts would be signed on 2nd May and a preparation period of 36 hours was needed.

An emergency meeting of those members of the Tram Project Board who were available plus tie / TEL / CEC representatives was held on 30th April. The options available were discussed and it was concluded that we should deploy tough tactics, but not stonewall the BB request completely as it was felt that the alternatives were likely to be worse notwithstanding the intense frustration at BB's tactics.

Final process

BB senior management visited Edinburgh on 5th May 2008, met by messrs Gallagher, Mackay and Bell. Their support for the price increase was sketchy and confused, focussing around an admitted failure on their part to assess or control their supply chain prices, £ / € movement and a claim for underwriting of central demobilisation cost which they had allocated to their bid for Phase 1B in the light of a more cautious view on the execution of 1B.

All signs pointed to last-minute unprofessional brinkmanship. BB claimed their costs were actually £17m wrong, but that they had reworked internally to arrive at £12m, casting further doubt on their credibility. There were veiled threats that failure to meet the demand now would force BBS to seek every opportunity to create claims during the construction period to achieve their financial target. As a matter of record, tie is comfortable with its contractual position and the experienced people recruited to manage the contract effectively.

The 5th May meeting culminated in a proposal from tie that tie would:

- Absorb £3m of additional cost in return for tangible contractual and risk improvements ;
- Agree to meet BBS allocated demobilisation costs of £3.2m in event that Phase 1B does not proceed

The BBS response on 6th May was disjointed (different responses from different senior people in the BB team). A series of meetings involving messrs Gallagher, Mackay, Bell, Fitchie and Bissett concluded that a formal latter to BBS in the form of an ultimatum was needed to bring matters to a close. In addition to the continuing delay and attendant costs, and the unpalatable alternatives to concluding with BBS, there were concerns that Siemens, CAF and PB may also seek price increases if BB were seen to be making inappropriate progress.

A letter was sent to BBS late on 6th May which reiterated the tie proposal described above. A response was received on 7th May which proposed:

- A payment of £9m to BBS
- Further examination of the contract terms surrounding the design management process, which although unclear pointed to an extended design and consent programme with potentially material adverse consequences for the construction programme.

The letter was silent on tie's contractual requirements.

A combined meeting of the TPB and tie Board was held (as scheduled) in the morning of 7th May. The meeting reviewed the position thoroughly and concluded that the approach which best protected the public sector's position would be to seek a conclusion with BBS within their demand for £12m.

Conclusion to negotiations

Further negotiations were conducted on 7th, 8th and 9th May and an acceptable conclusion reached. The final terms negotiated reflect agreement by tie to increased consideration and contingent cost underwriting in return for early progress to contract signing, improvement in terms and capping of cost exposures.

The specific terms are as follows:

Financial amendments:

1. <u>Incentivisation bonus</u> – tie will pay a series of incentive bonus payments over the life of the contract on achievement of specified milestones. The aggregate cost will be £4.8m.

2. <u>Phase 1B cost allocation</u> – tie will underwrite demobilisation costs allocated to Phase 1B in the BBS bid in the event that Phase 1B doesn't proceed. The quantum is £3.2m and this will not be paid if Phase 1B does proceed.

3. <u>Loss reserve</u> – tie has agreed to waive its interest in any residual value from the £3m BBS pot for settling uninsured third party economic and consequential loss claims. This is a theoretical concession of one-third of £3m but has never been accounted for in project cost estimates and is therefore neutral to tie.

The incentivisation bonus should support programme adherence. In return for the financial amendments, tie has secured a range of improvements to the contract terms and risk profile. The elements of the aggregate risk contingency of £32m which are relevant to the improved position are:

General programme delay	£6.6m
Delay due to design & consents	£3.3m
Contamination risk	£3.4m
Road reinstatement – direct costs	£2.0m

1. <u>Immediate contract close on preferred terms</u> - all of tie's preferred positions in the Infraco contract which were under query by BBS and their lawyers would be accepted. As a consequence, the contract execution can proceed forthwith. The documents concluded include the Review and Design Management Plan arrangements which assist management of the design and consents risk and which carries a £3.3m allowance in the QRA. <u>The attempt by BB to revise the design process in a manner which would have created delay was also successfully rebuffed</u>. The early close also stifles extended legal and management costs which are a component of the £6.6m QRA allowance for overall programme delay. The running rate of management and legal costs is £0.8m per month, so a saving of £0.6m would arise over a 3 week period. The risk of any further price increases from the bidder side is also mitigated.

2. Elimination of risk of claims arising from works underway - closing out the Mobilisation and Advance Works Contract and waiving any entitlement to claims or relief gives tie a clean financial start to the contract management of the InfraCo contract. This creates an immediate forward-looking focus and the avoidance of difficulties in dealing with immediate claims, spurious or otherwise. Tie has not been notified of any claims to date, but there have been some difficulties in the early works which could have given rise to claims in the hands of a determined contractor. An outline might be in the range of £1.7m. This would be resisted, but the new agreement eliminates the risk.

3. Capping of road reinstatement cost exposure – for reasons that have been well-rehearsed previously, an exposure exists in relation to the roads reinstatement pricing assumption. The QRA allows for £2m above the bid price to cover the exposure. BBS have agreed to cap their claim under this heading at £1.5m resulting in a saving of £0.5m.

4. Capping of roads related prolongation – the consortium will take the risk on prolongation beyond 8 weeks enabling the contingency to be limited to that level and reducing the need for provision by £1.3m. Other improvements affecting contamination and design & consents risk are evaluated at £0.5m.

5. Entry of CAF into Consortium – while welcoming the entry of CAF into the consortium because of improved consortium cohesion, tie had concerns about the potential implications of aspects of the mechanism. BBS have now confirmed they will follow the terms requested by tie, removing excessive negotiation timescales and costs. Specifically, the terms of the BB and Siemens PCGs will be amended to reflect CAF's entry into the consortium, express amendments will be made to the two bonds provided by the BBS sureties and an additional indemnity up to £8m will be provided by BBS covering contingent adverse consequences of CAF joining the consortium (note this indemnity is over and above the full set of existing security arrangements and will expire when all parties determine that there is no residual risk, leaving the full security package intact). There is no change to the CEC guarantee in any respect but CEC will be requested confirm knowledge of CAF's entry into the consortium in a letter.

In summary, the late price pressure from Bilfinger Berger arising from their claimed supply chain pressure has been contained at £4.8m with a further agreement that tie will underwrite contingent 1B demobilisation costs of £3.2m if Phase 1B does not proceed with BBS. Some £4.6m of exposures have been removed acknowledging that their evaluation is judgemental. £0.5m is explicitly reflected in the QRA and can be reduced and the balance represents elements of the other provisions noted above. Tie recommends that c one-third of the remaining specific evaluated risk improvement be reflected in the risk contingency, reducing it by a further £1.3m. A range of additional unquantifiable exposures are also eliminated.

Although the funding challenge surrounding Phase 1B remains, there is an intention to pursue this aggressively, sustaining confidence that Phase 1B can be funded and delivered. The balance of evaluated risk improvement amounts to £2.8m which implicitly offsets the risk that the Phase 1B demobilisation payment should become due. It should be borne in mind that Phase 1B design costs of £3m sit outside the Phase 1A budget and other Phase 1B costs may be authorised before it is certain that the phase will proceed. It is therefore logical that the contingent demobilisation costs should be shown separate from the Phase 1A budget for consistency.

Finally, tie recommends that a general risk provision of £1m be included to provide a final level of cushion.

Taking all these matters together, the net result is that tie has negotiated a cash and contingent price amendment in favour of exposure elimination which substantially offsets the majority of the price amendment. tie would recommend that the budget be increased to accommodate the agreed cash amendment of £4.8m ; and that the risk contingency be reduced by a total of £1.8m reflecting a conservative portion of the improved specific risk positions then augmented by an increased general provision of £1.0m resulting in a net increase to the headline budget of £4.0m. This will result in the overall budget moving from £508m to £512.0m. The underyling base cost is now £480.8m and the risk contingency is £31.2m. Although a case could be made for further reduction in the risk contingency, it would be tie's recommendation that the balance be retained.

(2) Alternative approaches

The last minute demand by BBS was the worst form of unprofessional negotiating conduct. However, an evaluation of tie's alternatives concluded that there was no commercial alternative which would better protect the public sector's interests. The evaluation was performed with input from DLA.

A summary of the alternatives is as follows :

A. Siemens to restructure consortium by incorporating a new civils contractor
B. Tramlines re-introduced
C. Full-scale re-procurement
D. Project termination

Tie would have been entitled to terminate the BBS consortium's preferred bidder status because BBS were seeking to materially change the price.

(A) Siemens led consortium

The process would involve :

- Siemens exiting BB from the consortium
- Identification and presentation by Siemens of a new consortium
- Re-qualification by tie of the new consortium
- Re-engagement on the contract suite

The implications included :

- The timescale is likely to be around +3 months if matters progressed reasonably well. Programme will move out by this extent.
- There will be important changes to the current Infraco contract terms to accommodate 1) passage of time (eg programme, design & consents, MUDFA interface) ; 2) requirements of new contractor (unknown).
- No guarantee that the revised consortium would adhere to previous deal and a strong likelihood that both consortium members would seek increments for inflation and other factors
- Probable need to re-assess SDS Novation Agreement (driven by SDS)
- Presumption that CAF will happily go along with this and not seek incremental costs

Although unpalatable, this was the best alternative to completion with BBS and we could reasonably expect both CEC and TS to be supportive given the level of investment already made.

A financial evaluation pointed to cost risk of c£9m but with material risk to the downside.

(B) Reintroduce Tramlines

Tramlines were an entirely credible partner and the preferred bidder decision was close. There were no knock-out defects in the Tramlines bid. However, Tramlines have recently won the Manchester extension work and may not have been willing or able to execute Edinburgh simultaneously.

The process would best involve :

- Tie terminating BBS
- Tie revising the original Tramlines contract to accommodate tie's preferred (and reasonable) position as reflected in the current Infraco contract, but with all undesirable concessions removed
- Agree a one-month "hot review" by Tramlines to confirm all material contract terms or flag variations ; if parties in the same ballpark -
- Finalise all material terms

The implications included :

- The timescale is likely to be around +6 months if matters progressed reasonably well. Programme will move out by this extent.
- There will be important changes to the current Infraco contract terms to accommodate 1) passage of time (eg programme, design & consents, MUDFA interface) ; 2) requirements of Tramlines (unknown)
- Introduction of entire Tramlines Proposal replacing BBS's version and need to align with design and ER's
- Loss of other advantages perceived to be in BBS proposal which supported their selection as preferred bidder.
- No guarantee that Tramlines would adhere to previous deal and a strong likelihood that they will require increments for inflation and other factors ;
- Probable need to re-assess SDS Novation Agreement (driven by SDS)
- Presumption that CAF will happily go along with this and not seek incremental costs

A financial evaluation pointed to cost risk of c£22m but with material risk to the downside.

(C) Full re-procurement

This is the worst-case alternative short of termination. The procurement programme would extend out to around +1 year, adverse programme and cost ramifications are inevitable and it may be difficult to generate sufficient market interest from the limited number of possible players, including those rejected under the current procurement programme. Notwithstanding the extent of public investment already made, it is highly questionable whether the public pound is best protected by embarking on an immediate full-scale re-procurement. CEC and TS's support for this approach is unlikely.

A financial evaluation pointed to cost risk of c£28m but with material risk to the downside.

Recommendation

A range of second order issues was identified, further reinforcing the relative unattractiveness of the alternative options. Over and above all of the analysis, is the loss of revenues from delayed service commencement and the delayed flow of economic benefit.

Against this background, tie's rationale for supporting the final deal is set out below.

- The late price pressure from Bilfinger Berger arising from their claimed supply chain pressure has been contained at £4.8m. Some £4.6m of specific exposures have been removed, of which £1.8m is explicitly reflected in the QRA. The balance relates to general programme risk and other factors reflected in the QRA and which are prudently retained as risk provision. A further £1m has been added as a general risk contingency. A range of additional unquantifiable exposures are also eliminated.
- If Phase 1B proceeds there is no exposure to the £3.2m demobilisation payment; if 1B doesn't proceed the payment will become a real cost, in line with a principle already established. Some Phase 1B sunk costs (management and legal) are absorbed by the Phase 1A budget, but others (design costs of £3m by 31 March 2008 and potentially utilities works) are not incorporated into the capex budget for Phase 1A. The demobilisation costs would be an extension of the latter category. Although the funding challenge surrounding Phase 1B remains, there is an intention to pursue this aggressively, sustaining confidence that Phase 1B can be funded and delivered.

  - There is substantial, if unquantifiable, benefit in enabling the contracts to be signed in the near term.

  - Alternative options exist but are highly risky in programme and cost terms.

Accordingly, it was tie's recommendation that the deal be concluded with BBS.

(3) Procurement regulation compliance

In addition to the commercial and public pound considerations described above, it was necessary to assess whether the conclusion to the negotiations was in compliance with procurement regulation and in particular whether there could be credible grounds for a challenge.

The threat of a challenge arises from under-bidders but also from any interested third party. The latter can never be discounted and the question then becomes whether there are credible grounds for challenge which an investigating body could found on.

In support of the Rutland Square deal which resulted in a revised budget of £508m and the issue of the Notification letters, tie performed a detailed evaluation of the risk of a challenge by the under-bidders. This included the examination of the movement since preferred bidder selection and a shadow comparison of the under-bidder's position. The conclusion was that there was no basis for a credible challenge. This was documented and was the subject of review for legal validity by DLA.

The Notification letter to Tramlines highlighted the following differentials in BBS' favour:

- Capex assessed at 4% lower
- Programme shorter due to MUDFA overlap
- Stronger financial liability caps
- Approach to Network Rail immunisation and lower public sector risk
- Maintenance costs lower by 16%

In addition, although not mentioned in the letter, the assessment highlighted the BBS trackform construction as being materially better. The assessment noted that the fully-normalised capital cost difference at the time of preferred bidder selection was c£8m in favour of BBS. The analysis of changes since selection identified that a small percentage of the differential could be challenged based on the changes.

The final deal is described above. The incentivisation bonus of £4.8m is substantially offset by £4.6m of evaluated risk improvement. Although not all of this is reflected in a reduced final risk contingency, the full quantum is relevant to the assessment of the bid value. The contingent nature of the Phase 1B demobilisation cost makes it difficult to evaluate in this context, but even if full allowance were made for the £3.2m payment, there would remain price headroom in favour of BBS. The other advantages of the BBS bid – programme, liability caps, technical (trackform and approach to NR immunisation), lower maintenance costs - would sustain their preferred position.

Accordingly, it is not proposed that any further communication be made to the under-bidders.

The entry of CAF into the consortium after the conclusion of matters with BBS was anticipated at the time of the preferred bidder selection and would be as likely to be beneficial to Tramlines as BBS.

In summary, the final negotiated changes imposed by BBS, although unwelcome, do not constitute a credible basis for procurement challenge.

(4) Future relationship with BBS and contract management

The final matter addressed by tie and discussed at the TPB / tie Boards on 7th May 2008 is the suitability of BBS as a contract partner in view of their behaviour during the negotiations. There are three reasons why this concern should not be a barrier to entering into the contracts :

1. Tie has established a strong commercial team to manage the contract obligations and risks. These experienced operators have had a lengthy period to familiarise themselves with the contract and to anticipate where and how disputes may arise in future.

2. Tie will have the strength of the contract terms as support in future disputes, which will provide a considerably stronger defence against unsupportable positions taken by BBS; in addition, tie is in position to pursue recompense against BBS under the contract, where no such leverage exists pre-Close

3. A considerable degree of uncertainty currently arises from the activities of SDS, which will become much less of a feature after 3-4 months once all design work is complete.

A fourth reason is that BBS is the devil tie knows, there is no guarantee that other contractors would be a more amenable partner.

(5) Conclusion

The process to reach Financial Close has been tortuous and a partnerial approach from BBS has been notable by its absence. However, the final terms are within 2.8% of the business case budget of £498m and 0.8% of the budget most recently notified to the Council.

The programme points to a construction period some 3 months longer than the 39 months envisaged in the business case. The project risk profile remains broadly in balance with the business case and the scope of works is unchanged.

On this basis tie recommends that Close be executed.

tie Limited

12.05.08