



EDINBURGH TRAM NETWORK

Clarification Note to Tenderers participating in the procurement for the provision of System Design Services (SDS)

[.....] April 2005

General

tie has carefully considered each Tenderer's proposed amendments and comments in relation to the Terms and Conditions of Appointment ("Terms and Conditions") to be entered into by the successful Tenderer. Any amendments which were acceptable to **tie** have been included in the revised final version of the Terms and Conditions which accompanies this Clarification Note. Amendments which were not acceptable to **tie** have not been included in the revised Terms and Conditions where at least one Tenderer accepted the Clause on an unamended basis.

In order to clarify **tie's** position in relation to certain aspects of the Terms and Conditions and to address some of the issues which featured in the Tenderers' commentaries and marked-up amendments, various explanatory comments have been set out below.

In addition to the revisions to the Terms and Conditions, **tie** has also amended the Scope of Services to reflect additional services which the SDS Provider will be required to provide in relation to risk management.

Also, set out below are four clarification questions. Tenderers should include their response to these questions with their Tender Submission.

As stated in Section 8 of the ITT, no negotiation on the Terms and Conditions will be permitted after the issue by **tie** of the revised Terms and Conditions accompanying this Clarification Note, or at the time of contract award. However, **tie** has decided to offer Tenderers the opportunity to propose a second Optional Variant Tender. In this second Optional Variant Tender, Tenderers may propose drafting amendments to the revised Terms and Conditions but only in relation to issues where Tenderers can identify that there would be a material price reduction attached to such amendment if **tie** should choose to accept such amendment. Further Tenderers should propose such drafting amendments and the associated price reductions for each of Line One, Line Two and a combination of Line One and Two. If **tie** choose a Tenderer on the basis of this second optional variant Tender, **tie's** decision will be final as to which of the successful Tenderer's proposed amendments are accepted. This optional variant will not be considered by **tie** unless a Standard Tender and both Mandatory Variant Tenders have been submitted to **tie**.

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Comments on Specific Clauses

Clause	Comment
3.4/3.20	<p>Given that The the SDS Provider is required to procure and manage all items of research, investigation and survey activities pursuant in to delivering a cost effective and easily constructible design that meets the tie's requirements, of the System. it is appropriate for the risk associated with such research, investigation and surveys to be managed by the SDS Provider with regard to the performance of its Services. The SDS bidders Tenderers shall should use their experience and expertise in assessing what constitutes necessary and relevant research, investigation and surveys (including those elements which may be intrusive and those which are non-intrusive). (See clarification question) SDS bidders shall state in their formal submissions how they have approached this aspect and describe the elements of research, investigation and survey they have included in their offer.</p>
<p>3.21</p> <p>Words in brackets deleted – Line 5</p> <p>Delete “or”</p>	<p>In order to support the procurement of the Infraco and the Tram Supplier. The the SDS Provider shall will be required to make the Deliverables available to the bidders for the Infraco and Tram Supply contractssupplier. representatives that project documentation including specifications, analysis, drawings, reports calculations etc relevant to the design solution. Such documentation Deliverables could can be made available by providing a data room facility and premises and via the central computerised repository/ database [which is correct ?] as required under clause Clause 4.4 of the ITTTerms and Conditions.</p> <p>The SDS Provider shall will also be required to make available human resource available to answer reasonable questions, queries that may be made by the bidders for the Infraco/ or Tram Supplier Supply contracts.</p>
3.25	<p>It is tie's intention to work closely with Transdev Edinburgh Tram Limited and involve Transdev not only in relation to systems integration but also as part of tie's team (where relevant) in relation to the review of Deliverables under the Review Procedure.</p>
<p>4.9 (4.14 of Sch 8 App1)</p> <p>Clause ammended</p>	<p>As specified in the ITTTerms and Conditions, the SDS Provider shall is required to provide 5 hard copies and 1 soft copy of each and every deliverable Deliverable [and source document thereto], required to complete the project. Further copies of the Deliverables will be supplied at no cost. In addition to this and in conjunction accordance with clause Clause 4.4 of the ITTTerms and Conditions, the SDS provider Provider is required to provide a central computerised repository database for all deliverables Deliverables, possibly with a GIS front end. This repository/database should be robustly configuration managed by the SDS Provider and accessible in 'real-time' to relevant [Change to "Parties"]. [not defined - is this Approval Bodies? Please list] as agreed with tie, through an appropriate login/security regime. Leave as both –DR/IK.</p> <p>Through this repository it is deemed that The SDS Provider shall ensure that the [Change to "all Parties" Stakeholders] should be able with the</p>

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Clause	Comment
	<p>perquisite <u>requisite</u> access can to view and print, if necessary, such documentation that they require in pursuance of their roles and responsibilities for in relation to the project <u>Edinburgh Tram Network</u>. <u>[Confirm that Clause drafting is to be amended as none of this is currently stated in the drafting]</u>. Yes –DR/IK</p> <p><u>[Paul - please also look at clause 4.14 which is located in Appendix 1 of the Novation Agreement (Schedule 8). I am not sure but was there to be further consideration of putting a number on the Deliverables ? Not sure that words give enough comfort on this. Please advise.]</u></p>
5	<p>The SDS Bidder is specifically requested to detail separately, within the SDS Management section (s), the value attributed to Clause 5, Consents. <u>The obligation on the SDS Provider to be responsible for obtaining the Consents is a fundamental requirement of the SDS Agreement. (See clarification question).</u></p>
11.3/11.5/11/6	<p>Included as part of the payment mechanism in the SDS Agreement is a milestone payments regime. It is tie's intention that tie will pay the SDS Provider to "account" up to a specified level during the Requirements Definition Phase, the Preliminary Design Phase and the Detailed Design Phase. Tenderers should note that the Requirements Definition Phase is anticipated to be a fairly short phase and that the milestone payments during the Preliminary Design and Detailed Design Phases are in respect of Sectors or Sub-Sectors. tie does not consider the operation of these Clauses to be "retention" provisions. (See clarification question).</p>
12.2.4	<p>The use of P3e is required - P3 will not suffice.</p>
12.7	<p>The principle of a 3% retention to ensure that the Novation Agreement and any Funder's Direct Agreement are signed is a fundamental requirement for tie.</p>
27	<p>Proposed caps on liability based on the SDS Provider's insurance cover are not acceptable to tie in the context of the value of the Services required under the SDS Agreement.</p>
28.7	<p>Tenderers have commented that a provision to require Disputes to be raised within 3 months will create an adversarial relationship between the Client and the SDS Provider. It is tie's preference to "flush out" any Disputes to the Internal Resolution Procedure. Rather than being adversarial, this approach is preferred so as to curtail/prevent any larger or long term Disputes.</p>
29.6	<p>The collateral warranty in favour of tie will require to be executed at the same time as the Novation Agreement.</p>
Insurance	<p>Tenderers' comments on Clause 17 and Schedule 6 have been referred to tie's insurance advisers for review and to advise as to what would be</p>

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Clause	Comment
	reasonable to expect in the insurance market. Only appropriate amendments have been made as a consequence.
Novation Agreement	<p>tie's ability to novate the SDS Agreement is a fundamental requirement of tie's procurement strategy for the Edinburgh Tram Network.</p> <p>For the avoidance of doubt, the SDS Provider will not be able to comment on or amend the Infraco Contract. Also, no further opportunity will be given to the SDS Provider to revisit the terms of the Novation Agreement.</p>
JRC/SDS Agreement	The requirement on the SDS Provider to be jointly and severally liable for the development of the SDS-JRC Modelling Suite is another fundamental requirement of tie's procurement strategy. The rationale behind the SDS-JRC Agreement is that this Agreement creates a contractual relationship between the SDS Provider and the JRC which would allow those parties to dispute with one another in the event that either or both Parties were sued by tie .

Clarification Questions

- **Contracting Entity**

As part of the Tender Submission, Tenderers should state the identity and contractual status of the contracting entity which it is proposed will enter into the SDS Agreement with **tie**. If this is an entity with joint and several liability, Tenderers should specify any impact on the provision of the Required Insurances and how your policies will provide cover for you and your joint venture partner.

- **Alternative payment option**

Tenderers may propose a variant pricing option based on milestone payments during the Preliminary Design and Detailed Design Phase being made up to a cumulative value of 90% instead of 80%. Should variant pricing be proposed, Tenderers shall price the impact on Line1, Line 2 and Line 1 and 2. **[Gerry - does this question work for you ? Yes - GH]**

- **Research, Investigation and Survey Activities**

SDS Tenderers should state in the Tender Submission how the requirement to carry out research, investigation and survey activities as part of the Services has been approached and describe the research, investigation and survey activities which have included in the Tender Submission. Remind Contractors to price separately. GH. **[Is any related question on pricing required ?]**

- **Consents**

Tenderers are requested to detail separately, within the SDS Management section(s) in the Pricing Schedule to be submitted as part of the Tender Submission, the value attributed to the Services to be provided in respect of Clause 5 (Consents).

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