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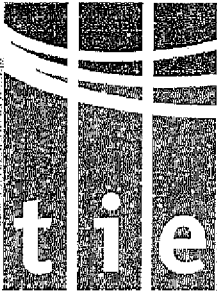
Control Number : Fathom-01-00098546  
Group Identifier : Fathom-01-00098545  
Attachment Status : Child  
Key Date : 13/12/2007 14:59  
Sort Date : 14/12/2007 12:13

# **Edinburgh Tram Project**

## **Risk**

**13 December 2007**

**Presentation to CEC**



# Risks

Different risks and allocations for each phase of Project

- Development (now Preferred Bidder Phase)
- Construction (to delivery into fare paying service)
- Maintenance



tie

# This Review

- Concentrates on risk allocation position once contracts are awarded and novations effected
- Applies during construction and maintenance phase



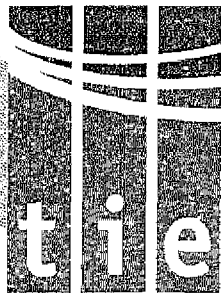
# Status Of Review

- Risk matrices prepared based on negotiations to date
- Position on contract negotiations are:
  - Tramco largely complete (minor alignment issues to conclude)
  - Infraco well advanced (all 'big ticket' issues done)
  - Programme prepared for resolution of remainder by week commencing Monday 07/01/2008)
- Final check of contract by DLA Piper
  - week commencing Monday 07/01/2008

# Mitigations

Main mitigations are:

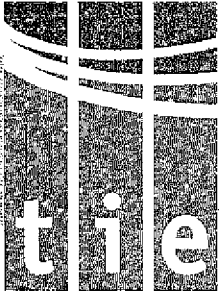
- Effective Project Management – timely decisions, processes, judgement, anticipating problems
- Effective Contract Management – understanding and applying contract
- Insurance – OCIP
- Risk Provisions
- Divine providence!



# CEC Infraco Contract Risks

## Construction Period

- Delays to completion for client default
- Breach of liability caps due to Infraco failure –
  - Overall 20% of Infraco Construction Price (circa £40m) + on demand performance bond (circa £20m) + insurable events
  - Sub cap of 20% of Tramco Price (circa £10million) if solely due to Tramco + performance bond
- Liquidated Damages –
  - LDs 10% of Infraco Construction Price (circa £20m) which would be equivalent to 81 weeks
  - Sub caps of 10% of Tramco Price (circa £5m) if solely due to Tramco
- Infraco/Tramco insolvency
- Late or non payment where payment is above 10% of contract sum – circa £20m



# CEC Infraco Risks Events

Delays to completion for client default

- Client Changes
- Delay in granting Prior Approval
- Unforeseeable Ground Conditions
- CEC stopping up streets
- Delay by MUDFA
- Discovery of unexploded ordnance
- Fire, flood etc
- Accidental loss or damage
- Strike or industrial dispute
- Force Majeure Event





# CEC Infraco Risks Events

Breach of liability caps due to Infraco failure

- Termination for Infraco Default
- Delay beyond 81 weeks
- Breach of indemnity provision
- Breach of Third Party obligations set out in contract

# CEC Infraco Risks - Mitigations

Delays to completion for client default

- Client Changes – Effective Project Management
- Delay in granting Prior Approval – Do before Contract Award
- Unforeseeable Ground Conditions – Agreed GBR and negotiation buy out
- CEC stopping up streets – Agree On Street Methodology
- Delay by MUDFA – Effective Project Management, Contract Management
- Fire, flood etc - OCIP
- Accidental loss or damage - OCIP
- Strike or industrial dispute – Apply political pressure
- Force Majeure Event – Providence!
- Discovery of unexploded ordnance – Provide info' but MoD will respond quickly!



# CEC Infraco Risks Mitigations

Breach of liability caps due to Infraco failure

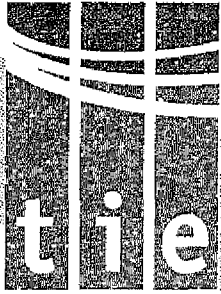
- Termination for Infraco Default – Effective Project Management and Contract Management
- Delay beyond 81 weeks – Effective Project Management and Contract Management, termination option
- Breach of indemnity provision – Effective Project Management and Contract Management, OCIP
- Breach of Third Party obligations set out in contract – Effective Project Management and Contract Management



tie

# CEC Infraco Risks Mitigations

- Infraco/Tramco insolvency
  - PCG
  - Joint and several liability
  - Credit Checks (before award and annual)
  - Group Company FD presentations



# CEC Infraco Risks Mitigations

- Late (by 30 Business Days) or non payment where payment is above 10% of contract sum – circa £20m
  - Provide cash drawdown forecasts to CEC
  - CEC fund **tie** cash positive



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# Next Steps

- Complete Risk Matrices
- Issue to CEC
- Further presentation/Q&A session with CEC

Control Number : Fathom-01-00099930  
Group Identifier : Fathom-01-00099929  
Attachment Status : Child  
Key Date : 14/12/2007 12:27  
Sort Date : 14/12/2007 13:55

## tie Limited

**Minutes of Meeting:**            Infraco Debrief  
**Bidder:**                            Tramlines  
**Date:**                                26th November 2007  
**Time:**                                11:00am  
**Venue:**                              Isambard, Citypoint II

In attendance:    Colin Neil — Tram lines  
                          Mike Burgess — Tramlines  
                          Jon Nicholls — Tramlines  
                          Iain Fell — Tramlines  
                          Bob Cussans — Tram lines  
                          Andrew Fitchie — DLA Piper  
                          Matthew Crosse — tie  
                          Geoff Gilbert — tie  
                          Bob Dawson — tie

Item	Comments	Action
1.0	<b>Introduction</b>	
1.1	Matthew Crosse thanked Tramlines for attending and for their support though the bid process.	
1.2	It was noted that this debrief would need to be on an informal interim basis as tie is still in a competitive situation with BBS until the other side of financial close, following which a more detailed briefing could be provided if required. Tramlines accepted this position, provided that the formal debrief should take place during the stand still period before the sign up of the contract between BBS and tie.	tie
1.3	Furthermore, in the event of unforeseen circumstances, meaning inability to reach close with BBS, there remained the possibility that tie might wish to engage in further discussion with Tramlines in respect of the project.	
1.4	Tramlines confirmed that their objective was to learn how their bid could have been improved so that their approach as a bidding consortium in the market would benefit. Their e-mail of 20th November 2007 to tie was used as an agenda. Tramlines asked for commercial and technical feed back on their bid and asked if tie Technical would be in attendance and tie confirmed that this was not planned but could be arranged if any particular issue came up.	
2.0	<b>Overview of tie's procurement process</b>	



2.1	Tramlines stated their concerns as to the length of the procurement process and that they had been affected appreciably by the limited design available	
2.2	tie understood these concerns and commented that the political situation had not been envisaged and probably had an impact of 3 to 4 months.	
2.3	Additional issues have arisen out of the evolving designs and CEC approvals, again the political situation having had an effect.	
2.4	Tramlines's bid had been very professionally presented, technically good but tie had noticed that Tramlines may have peaked too early in the expectation that tie would be looking to close down the competition at the beginning of the summer.	
3.0	<b>Evaluation Methodology</b>	
3.1	Tramlines requested tie's advice as to the weighting applied to various factors of the bid i.e. price, programme, technical, commercial and contract terms.	
3.2	tie reminded Tramlines that the process was to arrive at the most economically advantageous tender evaluation had not used a balanced scorecard' approach but had been carried out exactly as set out in the ITN. Essentially the methodology was price oriented, lowest price being the sole criterion, assuming comparability of proposals.  Tramlines stated that they had started to work on a comprehensive bid as early as October 2006 with a concentration on technical and price.	
3.3	Tramlines queried the phasing issue as they had concentrated on Phase 1a and tie reaffirmed that the decision was based on Phase 1 a only.	
3.4		
4.0	<b>Interim assessment of Tramlines's bid</b>	
4.1	Tramlines queried where they were on price at various stages and tie advised: <ul style="list-style-type: none"> <li>• January — slightly less than BBS but very close • May — still very close</li> <li>• August — slightly more than BBS but still very close</li> <li>• September — although Tramlines reduced their price, BBS reduced their price more such that the gap widened</li> </ul>	

5.0	<b>Final assessment of Tramlines bid</b>	
5.1	Tramlines requested the basis on which their bid was finally assessed.	
5.2	tie advised that this was as per the draft deal documentation.	
5.3	Technical competence and offerings had been evaluated on a 'Gateway' basis both bidders being acceptable. The second step was financial evaluation, with prices being subject to normalization. Finally, commercial and contract approach were examined to place pricing and technical offering into the context of risk acceptance and acceptable terms of contracting. Financial evaluation had produced a financial delta position with BBS appreciably ahead and the further evaluation had not improved Tramlines's position	
5.4	Tramlines inquired as to differences with regard to the pricing of the principal elements. tie observed that structures and highways had appeared broadly similar with 'swings and roundabouts' in respect of track and systems; however tie could not be more definitive due to differing allocations generally and within preliminaries.	
5.5	The normalization covered scope related differences or straight pricing issues. Any other differences such as risk in respect of Network Rail immunisation, programme overlap and the like were adjusted in the final evaluation. Tramlines asked tie for a copy of the pricing schedule in the final offer which had been used by tie (applying normalization & final evaluation) and tie agreed to send this to Tramlines.	tie
5.6	The Network Rail immunisation was an issue that tie expressed concern about, tie commented that it was a long established value engineering target and whilst Tramlines's final paper on the subject had been good and well received, BBS had done far more precise work in the final three weeks and had been prepared to take a winning view in respect of savings and risks (they accepted £4 million as a fixed and firm figure, despite the SDS report suggesting a cost of £7.2 million which identified risk areas amounting to an additional indicative cost of up to £17.5 million) Tramlines commented that they would not get corporate approval to take such risks, tie noted that Tramlines had done something similar on the Nottingham project.	
5.7	The programme overlap in Tramlines's final bid related to the increase risk of significant clash with the MUDFA works.	
5.8	tie stated that it had been meticulous in affording both bidders equal opportunity for, and guidance on, pricing refinement opportunities leading to the final pricing submission.	
6.0	<b>Recommendation process</b>	
6.1	Tramlines asked as to how their bid had been presented and tie advised the approach was:	

	<ul style="list-style-type: none"> <li>• Evaluation Teams for each of the various sections described in the ITN</li> <li>• Teams analysed and evaluated, raising queries where appropriate</li> <li>• Internally reviewed, checked and consolidated evaluation report prepared</li> <li>• Matthew Crosse and Geoff Gilbert presented resulting recommendations to the Procurement Sub-Committee of the Tram Project Board on a strictly confidential basis</li> <li>• Matthew Crosse and Geoff Gilbert (with specialist support) then presented to a combined tie and Tram Project Board</li> <li>• Recommendation then endorsed by TPB</li> </ul>	
7.0	<b>Why did tie pick BBS over Tramlines?</b>	
7.1	<p>The key issue was:</p> <ul style="list-style-type: none"> <li>• Price</li> </ul> <p>Other reasons where the BBS approach was preferred compared to Tramlines's included:</p> <ul style="list-style-type: none"> <li>• Risk balance</li> <li>• Programme and related issues</li> </ul> <ul style="list-style-type: none"> <li>• Contract terms more favourable with superior clarity of position and more pragmatic approach</li> </ul>	
8.0	<b>Any issues surrounding Tramlines bid i.e. areas of weakness</b>	
8.1	<p>tie advised that areas of weakness were essentially the opposite to the above, particularly:</p> <ul style="list-style-type: none"> <li>• Tramlines's price was higher on a capital, maintenance and overall NPV basis both before and after the two stages of normalization</li> <li>• Tramlines's draft contract response was more difficult to evaluate as they had reserved their position on many remaining issues</li> <li>• One specific issue was that their stance was less favourable (with capping) in respect of indemnities, particularly pertinent</li> </ul>	

	<p>given that known third parties could be affected in such a complex scheme of this nature and location and the bidder needed to stand behind their ability to manage performance within these constraints.</p> <ul style="list-style-type: none"> <li>• Intellectual Property Rights is another area where Tramlines's mark-up fell short of a solution that could be evaluated</li> <li>• Network Rail immunisation approach</li> </ul>	
8.2	<p>Tramlines commented that they had not liked the contract but an earlier attempt to rewrite this (investing in external advice) had been abandoned after realising that this was not going to be acceptable to tie. Tramlines felt that tie's change in legal personnel during contract discussions had been unhelpful and that agreed positions had been revisited, however tie cited areas where Tramlines had gone back over issues and thus felt that this criticism was not valid and that Tramlines were not able to give suitably comprehensive answers on contractual matters in the final and vital rounds. Tramlines's approach had indicated to tie that they wished to reserve important risk allocation discussions until preferred bidder, impeding ties ability to asses their mark-up and this had been evaluated against BBS's more open attitude and communication. tie had held deadlines open to the very last to accommodate Tramlines in submitting a variety of important contract responses but in the end these had not been forthcoming.</p>	
8.3	<p>tie recalled the principals meeting held in Dartford as being critical and felt that Tramlines had heard the message but not acted aggressively whereas the similar meeting held with BBS elicited a stronger, more competitive and clear response. Tie pointed out that BBS as new entrant on the market were prepared to take a strategic view on price.</p>	
9.0	<b>Confirmation of Contractual Status</b>	tie
9.1	<p>Tramlines requested written confirmation of their contractual status, tie advised that it had held off from writing as Laing O'Rourke had not signed the Draft Deal / Preferred Bidder Agreement and thus could not be Reserve Bidder; however tie undertook to formally confirm that Tramlines was not the Preferred Bidder.</p>	

\*\*\*\*\* Meeting closed at approximately 1:00pm \*\*\*\*\*

Control Number : Fathom-01-00011646  
Group Identifier : Fathom-01-00011645  
Attachment Status : Child  
Key Date : 18/12/2007 14:43  
Sort Date : 19/12/2007 09:45

**Paper to** : Legal Affairs Committee  
**Subject** : CEC Chief Executive approval to tie for contract award  
**Author** : Susan Clark

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## **Background**

The CEC Report being presented to the full Council meeting on 20<sup>th</sup> December seeks to delegate authority from the full Council to the Chief Executive of CEC to determine when it is appropriate to permit tie to sign the contracts for the Edinburgh Tram project. The paper states that :

“The Chief Executive will be supported by the Directors of City Development and Finance respectively, together with the Council Solicitor. A mandate will be given to tie when it is deemed that the relevant aspects of due diligence have been completed by tie. Only then will the Council become contractually committed through execution of the guarantee supporting tie’s financial obligations to BBS.”

This paper outlines proposals in respect of the mandate to be given to tie and identifies the “aspects of due diligence” that should be completed to allow tie to be given authority to enter into the contracts along with the process for achieving this.

## **Deliverables for Contract Award**

The following lists activities and deliverables that are expected to be achieved by 28<sup>th</sup> January to allow formal award of contracts by tie on that date.

### 1) Contract

All contract terms finalised and ready to be signed  
Performance securities (PCG & retention & handback bonds) agreed  
Novation agreements completed and ready to be signed  
Risk allocation matrices completed and in a form agreed with CEC and confirmed by DLA.  
CEC guarantee  
Due diligence on approvals signatures for Infraco/Tramco  
Operating agreements signed – both tie & TEL

### 2) Programme

Confirmed dates for 1a & 1b and understanding of programme risk  
Agreement of On-Street Construction Methodology as agreed with BBS, CEC and TEL

3) Employer's Requirements

Final version agreed and reflective of all contract/commercial & technical discussions

4) Due Diligence

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.

5) Risk

Confirmation that QRA is in line with final commercial deal.

6) VE

Statement on VE included in the final deal and other opportunities still available to the project.

7) Pricing

Statement on % of cost fixed and % outstanding as provisional sums with programme for moving these to fixed costs.

Statement on any exclusions from the deal including a mechanism for firming up these exclusions.

(The conclusion of the items 1) to 7) above will be delivered as an overall package as the price is linked to final agreement on contract, programme, ER's, risk etc.)

8) Statement showing final costs including risk funding.

9) NR Assurances

Statement from tie in relation to the NR APA being signed with depot & station change concluded. The alternative to this is to have the APA signed with carve outs for the depot station and depot change.

10) SDS Assurances

A statement on status on SDS design and design approvals, particularly prior and technical approvals, including risks that are being transferred to Infracore along with any contractual impacts

11) Funding letter from TS in place

12) Status report on all 3<sup>rd</sup> party agreements

**Approval Process**

The Legal Affairs Committee (LAC) was created in August 2007 to ensure that CEC Legal and finance were fully engaged in the process of finalising contracts for the Edinburgh Tram Project and to act as an enabler for all

**Transport Edinburgh**  
**Trams for Edinburgh**  
**Lothian Buses**

FOISA exempt

Yes

No

Agreements to be in a state of readiness for contract award. It would appear sensible, given that the Directors for City Development and Finance and the Council Solicitor all sit on this committee along with **tie**, that this should act as the clearing house to be used to confirm that all aspect of deliverable for contract award have been completed so that a recommendation can be made to the Chief Executive in respect of award of contracts.

Contract award is scheduled to take place on 28<sup>th</sup> January 2008. It is proposed that the deliverables listed above are presented to the LAC on Monday 21<sup>st</sup> January for approval. This allows a few days for these to be discussed with the Chief Executive and if required a formal presentation made to allow full delegated authority to be given, in writing to **tie's** Executive Chairman to sign contracts.

In order that these recommendations can be made, the following sign off will be put in place across **tie**, CEC, TEL:

Topic	tie	CEC	TEL
Contract	Geoff Gilbert	Colin McKenzie	Alastair Richards
Programme	Steven Bell	Duncan Fraser	Bill Campbell
Employer's Requirements	Steven Bell	Duncan Fraser	Alastair Richards
Due Diligence	Steven Bell	Colin McKenzie	NA
Risk	Steven Bell	Rebecca Andrew	Alastair Richards
VE	Jim McEwan	Rebecca Andrew	Alastair Richards
Pricing	Geoff Gilbert	Rebecca Andrew	Alastair Richards
NR Assurance	Alasdair Sim	Colin McKenzie	NA
SDS Assurance	Steven Bell	Duncan Fraser	NA
TS funding letter	Stewart McGarrity	Rebecca Andrew	Alastair Richards
3 <sup>rd</sup> party agreements	Alasdair Sim	Colin McKenzie	



**Transport Edinburgh**  
**Trams for Edinburgh**  
**Lothian Buses**

FOISA exempt  
 Yes  
 No

**Programme**

TPB / TEL	09/01
All issues finalised	14/01
Issue notification of award	18/01
LAC	21/01
IPG	tbc
TPB/TEL	23/01
Letter of delegated authority to tie	25/01
Contract award	28/01
tie Board	29/01

**Recommendation**

LAC is requested to approve the information that is to be provided to the LAC, and the process for approvals as outlined in this paper.

**Proposed:** Susan Clark  
Deputy Project Director **Date:**

**Recommended:** Steven Bell  
Project Director **Date:**

**Approved:** **Date:**

**Control Number :** Fathom-01-00010591

**Group Identifier :** Fathom-01-00010590

**Attachment Status :** Child

**Key Date :** 19/12/2007 10:04

**Sort Date :** 19/12/2007 10:06