

Opening Statements Notes

Opening Statement

Date: Tuesday, 08 March 2011

Orator: Mike Shane

Notes:

- MS was clear that [we] all know more about this project than he does, he is here to manage the discussion but the discussion is between the parties not through him (not an arbiter)
- We need to listen for and be prepared to say something new, otherwise we are all on a fools errand
- Resolution is the motivator, best of a bad position is the target
- Focus on high level issue first then delve down to detail.
- The project can remain a source of pride
- Benefit for Edinburgh
- It is a great project
- Simple infrastructure project
- Focus is on 4 days
- This will be heavy work and will require buy-in.
- Needs to temper remarks
- Process must remain 'open'

Opening Statement

Date: Tuesday, 08 March 2011

Orator: Sue Bruce

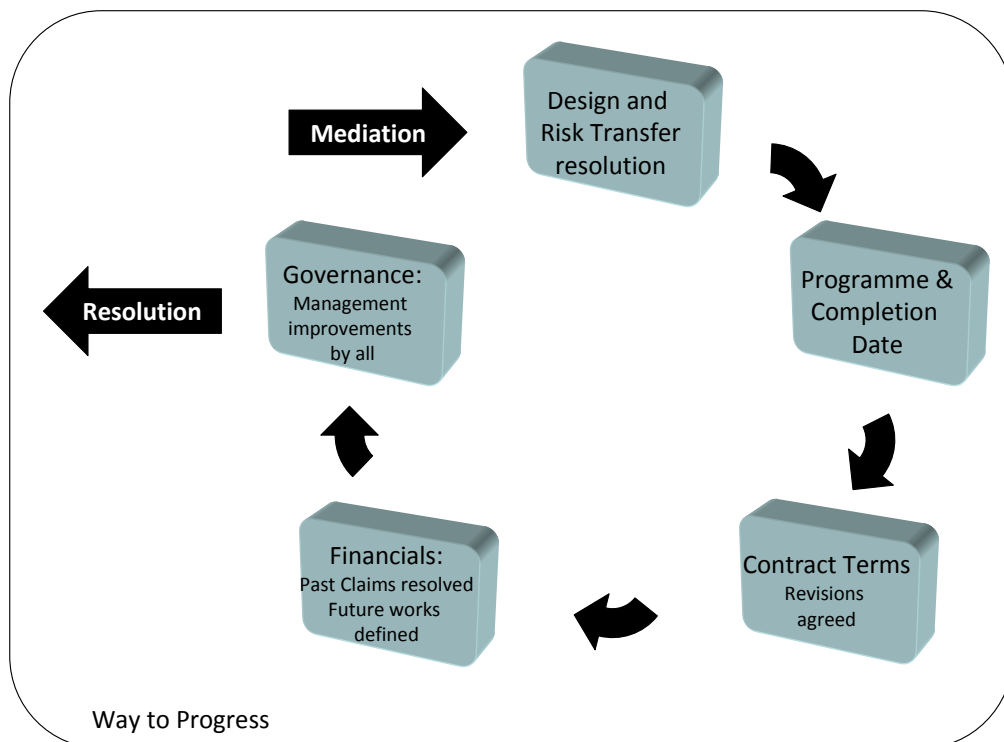
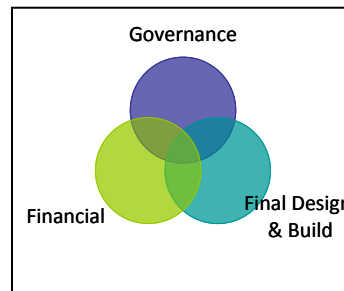
Notes:

Litmus Tests

1. Phoenix (for the Council) represents a working Tram from the Airport to St Andrew Square
2. We need 'Design and Build', or 'Design' then 'Build' with price certainty and a programme and delivery date
3. We have contract naivety – change process, but need new heads of terms
4. The outcome needs to result in reputational recovery and a new 'team' approach
5. There needs to be a new Management Structure / Governance arrangement in place.

6. Mediation should result in:

- Plan
- Process
- Date
- Price



Opening Statement

Date: Tuesday, 08 March 2011

Orator: Jochan Keysberg

Notes:

- Suggested he was speaking on behalf of the Consortium
- Thanked for the opportunity
- Reputational impact for all
- Commitment for conclusion
- No alternative solution
- One of 'us' will pay price [for failure]
- Here to consider Phoenix – exchange of information
- He is available
- 1 day to agree the 'principals'
- Not involved in the detail to date.

Handed over to Richard Walker.

Opening Statement

Date: Tuesday, 08 March 2011

Orator: Richard Walker

Notes:

Opening

- Appeared serious and solemn in manner and presentation
- Pleased to be here but clear only prepared to discuss INFRACO Phoenix
- Clear statements that tie are at fault [seeking to create a scapegoat?]
- Fixed price lump sum option being proposed.

Objectives

- Wants to get agreement on INFRACO Phoenix
- Wants to get agreement on Terms and Conditions
- Wants to get agreement on bolt on to St Andrew Square
- Separation remains on the table, as tie suggestion [appeared to be inference]

Contract Interpretation

- There appears to be conflict between tie and the Council (client/PM roles?)
- Remove tie
- Adjudications

Benefits (of INFRACO Phoenix)

- £400M sunk funds in the project already: Council will want a return on investment
- Price certainty
- Revenue rearing service critical
- Avoid future [long running] disputes

Success (of INFRACO Phoenix)

- Definition and agreement on the scope
- Definition and agreement on the programme
- Clear Terms and Conditions
- Identified price and funding certainty (there appears to be some concern on their part about funding certainty)
- Effective delivery

Budget Access

- There was **clear concern** about budget access, and the need for commitment from the client
- Basic accounting appears to suggest that only £270M is still available to conclude the project.

Tender Concept

- Original PQQs were concluded on the basis of:
 - 'Build' only
 - Utilities work would be concluded before 'Build' began
 - Design work would have been concluded

Contract reality

- Project Contract was let on the basis of:
 - *Design and Build*
 - Utilities work had not been concluded
 - Design work had not been concluded
 - Cost reimbursement agreement for changes
- There were clear risks associated with this. Tie Ltd were advised and caution was counselled.
- Option was proposed to delay award of contract to allow these matters to be concluded - **Tie retained risk**
- There were clear exclusion to the contract, and pricing assumptions were proposed.
- Clauses 3.2.1 and Clause 4.3 were referenced by Richard Walker at this point [ability to get paid].

Contract details

- Primacy of Clause 4
- Payment for differences
- Exclusive access to the site (after MUDFA)
- There is also a clear issue around Clause 80 (specification) and how it is interpreted (performance)
- At this point a range of examples were used to illustrate some of the issues with this.

Scope Changes

- Design Development
- The consequences of design development
- Clause 80 application
- Tie Ltd refusal to acknowledge of this

Delay - Approval Process

- The approval process was described as disorderly
- Conflicting commentary from 3rd parties, planning and technical leads to delays
- Tram Stops, Airport kiosk, SRU viaduct were referenced as examples
- The issues with the approval process seems to be one misunderstood on principle rather than the cost/value

Delay - Access to site

- Depot example was referenced

- Time and cost entitlement.
- Detailed explanation given using Gantt Charts of the programme slippage: 27 months referenced

Post Princes Street

- On Street Supplemental Agreement (OSSA) was prepared
- tie Ltd rejected this.
- 'Proposal on the table' that it could still be used

Why not to St Andrew Square?

- Video detailing the [potential] impact of existing utilities on the ability to deliver the tram track along the length from Haymarket to Lothian Road, referenced in relation to their '*exclusion zone*'.
- Potentially 368 utilities 'events' in this area
- One to eighteen months potential for these works to be sorted by Utility companies

tie Mediation Statement

- Made reference to Audit Scotland Exhibit 5, specifically paragraphs 44 and 54.
- Paragraph 44 makes reference to savings made: adjudications not covered and figures not recognised
- 'Cost to budget' do not appear to balance. If this is the case then sure need for move to Full Council.
- No new arguments: same old points raised by tie.
- **'Tie is the problem'**

Way Forward

- THE COUNCIL becomes the client (e.g. no arms length client surrogate)
- New Project Manager [body] brought in
- INFRACO contract arrangements moved directly to THE COUNCIL
- New Project Board established; with all parties represented.

Summary and Analysis

This was clearly structure to protect a position, perhaps separate from that of BB (corporate).

Body language, tone and language were controlled but tense, and became more openly hostile throughout the presentation. Stopped several times, as if to gather himself.