

Edinburgh Tram Project

Forensic Planning Exercise

undertaken for tie Limited

on the instructions of

Susan Clark (Deputy Project Director)

and

Dennis Murray (Commercial Director)

Progress Report No. 2

(for work undertaken during w/e 1st May 2009)

Author

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1 Activities Undertaken

1.1 Using information sourced in Week No. 1, examination has been undertaken of the Infraco contract provisions relating to time for completion, Compensation Events, Relief Events and entitlement to Extension of Time. This has led to examination of the clauses relating to responsibility for timeous delivery of design, utilities diversions and provision of access to areas of the site.

1.2 Meetings have taken place with the following tie staff and consultants:

- i) Tom Hickman (Programme Manager);
- ii) Damian Sharp (Design Manager); and
- iii) John Nicholson (Contract Consultant).

1.3 The principal subjects discussed in these meetings were:-

- i) Processes and contractual provisions for the development of design and securing consents to allow construction to proceed;
- ii) Identification and evidencing of delays to the delivery of design and consents and the reasons for the major delays to date;
- iii) Responsibility and liability for delivery of “issued for construction” (IFC) design packages and the reasons why in so many areas this type of activity is in substantial delay; and
- iv) Compilation, format and storage of contemporaneous evidence for use in securing tie’s contractual entitlements with regard to delivery in relation to time and price.

1.4 Work has commenced on examination of the contract programmes and the delay investigation exercises previously undertaken by tie’s planning department. This work will continue into the following two weeks.

2 Observations

2.1 Infraco is routinely presenting a progressed programme which has been impacted with a great number of delays. It currently projects that the “Open for Revenue Date” (OFRD)



will be achieved by 14th October 2012. This is almost 1 year later than the date currently set by / extended under the contract.

- 2.2 This programme appears to make no attempt to identify or allocate liability or culpability for delay. For the most part, it retains the sequencing, logic and constraints of the original programme, adds additional works (whether instructed or not) and impacts on this the actual progress to date. It is stated by Infraco that some adjustments have been made to the logic to “enable a true analysis to be provided of the current situation”. It is unclear what is meant by this statement as no details are provided by Infraco as to the logic adjustments made. We are advised that Infraco is currently preparing what they say will be an “entitlement programme”. tie staff believe this will simply be a further update of the existing approach to progress reporting and projection of the remaining works. If that is the case, Infraco’s method of analysing its entitlement to extension of time is contrary to the terms of the Contract and established legal precedents.
- 2.3 It is apparent that there are numerous and significant events which have impacted on the Infraco contract. Liability for many of these lie with tie. However, there are also many where liability would appear to rest with Infraco. The progressed programmes presented by Infraco impact many of these delays into the agreed contract programme without any attempt to differentiate where liability lies. It is understood Infraco asserts that it has no liability for any of these matters. The validity of such an assertion appears doubtful. That said, it is too early in our investigations to form a clear opinion on this matter and its materiality relative to Infraco’s proper entitlement.
- 2.4 It is important to note there are many complex contractual issues attaching to liability for some of the impacted delay events. This is particularly so in relation to delays associated with late delivery of design, approvals and consents. It brings more uncertainty to the correct allocation of liability. This will be examined in more detail in the coming weeks in conjunction with other tie advisors/consultants.
- 2.5 One fundamental failing in Infraco’s reporting of progress and its resultant estimate of the forecast completion date, is the apparent absence of any measures to mitigate delay. The contract contains many provisions requiring Infraco to instigate such measures. It has not done so. This would appear to be a clear breach of contract. The



work we intend to carry out over the next three weeks will seek to evidence examples of this.

2.6 During this period time has been spent with tie’s planning department staff examining some of the contemporaneous records that are being compiled. Following discussions with tie staff, further suggestions for improvement are included in section 4 of this report.

3 Proposed activities for the forthcoming week

3.1 The following table sets out the activities Acutus plan to undertake during Week 3 (w/c 4th May 2009)

Activity	Estimated remaining effort (manhours)	Indicative timetable (Week No.)	Comment/Progress
1. Review of contract to understand provisions and mechanisms relating to time for completion, programme and entitlement to relief. This to include examination of risk allocation and the inter-relationships with other project contracts.	6	Substantially complete during week Nos. 1 & 2	Further work to be undertaken in relation to any matters that arise from the more detailed examination of the programme and any further advice that may be provided by tie in relation to interpretation of the Contract.
2. Review history of programme analysis to-date and the relevant contractual correspondence.	6	(History reviewed in Week No. 1).	tie is currently compiling schedules of the relevant contractual correspondence and, in particular, schedules of Compensation Event notices. These will be examined when that information becomes available.
3. Analyse and quantify delay, disruption and prolongation in the context of specific contractual requirements, including a cause and effect analysis, concurrency of delays and identification of responsibility for addressing same.	40	2, 3 & 4	Work commenced during Week No. 2 and will intensify through Week Nos. 3 & 4.
4. Provide view on opportunities to improve confidence in tie’s	6	Weekly reports	Ongoing



Activity	Estimated remaining effort (manhours)	Indicative timetable (Week No.)	Comment/Progress
ability to negotiate a successful conclusion to programme delay and mitigation costs.			
5. Identify / recommend opportunities for recovery or acceleration, if evident.	6	Weekly reports (as appropriate)	Ongoing via. Acutus Progress Reports

3.2 It is anticipated that there will be no need to engage directly with tie staff during the forthcoming week. Acutus effort will be concentrated on examination of the data and programmes provided by tie during the preceding two weeks.

4 Proposed actions for consideration by tie

4.1 Following discussions with Tom Hickman regarding the format and content of the existing tie Project Managers’ weekly reports, the following refinement of the template is proposed for consideration.

Existing Template Headings	Proposed Report Template Headings
Executive Summary	Executive Summary
HSQE	HSQE
	Infraco Resources visible on-site Staff (Number and designation) Labour Plant Materials Sub-contractors Staff (Number and designation) Labour Plant Materials
	Days worked and typical length of working day.
Programme Critical path items due this period Critical path items due next period Key activities due this period Key activities due next period Key issues affecting progress Design issues affecting progress MUDFA issues affecting progress	Progress / Programme Activities undertaken and progress made. Key issues affecting progress Delays/Obstructions/Time lost and reasons why. Areas of inactivity and reasons why. Design and consent issues affecting progress.



Existing Template Headings	Proposed Report Template Headings
	MUDFA issues affecting progress Access or 3 rd party restrictions affecting progress. Any other known or suspected reason why available activities are not being progressed. Missed opportunities to progress available work and/or get ahead of programme. Critical path items due this period Critical path items due next period Key activities due this period Key activities due next period
General RFI status Stakeholder communications Traffic Management	General RFI status Stakeholder communications Traffic Management

4.2 It is suggested that the Project Managers be given a formal induction into its use with a view to explaining the type of information which **tie** requires to collect to secure its contractual entitlement and protect its commercial position.

4.3 It is proposed that the pertinent information from the Project Managers’ weekly reports is consolidated into one data set with each entry coded with the appropriate WBS reference. Acutus has been given sight of a similar data set that is being compiled for design issues. The format and content of the design data set is to be commended and it is suggested that a similar format and coding be adopted for the consolidation of information from the Project Managers’ weekly reports. To ensure this data is accurately coded and compiled, it is recommended this task be allocated to someone with the necessary job and WBS coding knowledge, and the personal discipline to diligently update the data on a week-by-week basis.

With reference to the suggestion made in Progress Report No. 1 in relation to requiring Infraco to routinely produce resource information, it has been agreed that Acutus will prepare a spreadsheet template for this purpose. Following review, and possibly further discussion, **tie** may wish to present that document to Infraco as the format and nature of the information it requires to be provided in accordance with Clause 72. This will be provided to **tie** during Week No. 3.

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