

Edinburgh Trams – Project Separation

1.0 Introduction

Mediation is being undertaken during March 2011. This mediation involves discussion on a reduced scope for BSC (airport – Haymarket) known as Project Phoenix. Alternatively, should Phoenix fail then an alternative option is a mutually agreed termination of the Infraco Contract. This paper outlines the strategy and plan which would follow on from a mutually agreed Termination and outlines what we know as Project Separation. This paper outlines the :

- assumptions made;
- pause;
- steps/options available including:
 - ✓ Design
 - ✓ Systems
 - ✓ Trams
 - ✓ BSC works to complete
 - ✓ Surveys/warranties
 - ✓ Step-in
 - ✓ Re-instatement works
 - ✓ Re-procurement
 - ✓ Utilities
 - ✓ Third Party
 - ✓ Budgetting/programme/risks

2.0 Assumptions

For the purposes of this paper it is assumed that:

- The Infraco contract is terminated by mutual agreement and there is no litigation thereafter;
- That the project continues;
- The TSA and TMA contracts are novated back to **tie**;
- Infraco pass the design as it is to **tie**;
- **tie** agree to take all the Siemens materials;
- Siemens agree to complete the systems design and work with **tie**'s designer to complete and integrate the systems design and complete the delivery of the systems (excluding track) to SAS;
- **tie** negotiate with TSS to complete and integrate the design, or alternatively procure a new designer;
- Work proceeds on leasing options for the surplus trams;
- No on-street construction works commence until January 2012;



- The indicative timetable for construction which has already been agreed with CEC is as follows (*assumes using existing contractors to continue or a short re-procurement):

	Q1 2011	Q2 2011	Q3 2011	Q4 2011	2012	2013	2014	2015	2016	2017
Design – Negotiate terms with TSS										
Complete design										
Off street : Airport – Haymarket										
Haymarket – Lothian road Junction										
Waverley Bridge - St Andrews Sq										

3.0 Pause

Following mediation, there will be a period of time where there is a general construction pause to allow:

- Design to be procured and completed
- Remaining consents to be granted
- Re-procurement exercise carried out
- Re-baselining of price, programme and risks

Whilst this is progressing, certain limited works will be underway as described below as BSC and re-instatement works.

4.0 Steps and Options

The following outline the core decisions to be made to allow progress on continue. It is anticipated that if Project Phoenix fails.

4.1 Design

There are a number of options available for completing the design.

The options available are:

- 1) BSC complete, integrate and assure the design – this would not allow a quick separation between the parties and so if not the favoured option.
- 2) Novate SDS back to **tie** - The Infraco Contract allows for the SDS contract to be novated back to **tie**. Under a contentious termination this might have been a difficult novation to achieve.

However, regardless of the method by which termination is achieved, it is unlikely that **tie**/CEC would wish to retain the services of the current designer given the history to date. This option is not favoured.

- 3) Negotiate with Scott Wilson to complete the design – **tie** currently has a Design Support Services (TSS) with Scott Wilson. They have been heavily involved in the design review process, have supported **tie** since this contract was awarded in 2005 and have a deep understanding of the design, or
- 4) Re-procure an alternative designer.

Scott Wilson have recently been involved in a review of the design completeness and have advised that if they were undertaking the design they would take 6 months to complete the design, including consents. However, if a new system (not Siemens) were to be implemented then this could take 12-18 months to complete this design.

tie aims to have the designer take on design integration risks.

The designer would focus on the off street sections first and throughout the route, where time permits, will explore value engineering possibilities..

4.2 Systems

It is assumed that **tie** will take over all the Siemens materials (maintenance and storage plan to be agreed) and that Siemens will agree to stay involved in the project to finalise the systems design, work with **tie**'s designer to integrate this systems design and to complete the systems implementation of construction works (excluding track).

Should this not be the case then **tie** will need to undergo a procurement exercise to appoint a new systems designer and supplier.

4.3 Trams

It is assumed that CEC take title of the trams and that the TMA/TSA novates to **tie**. A maintenance schedule will be agreed with Caf.

4.4 Works BSC to Complete

There are some minimal works that we would want BSC to complete prior to demobilising from site. These have been listed in the Separation HoT's and the final scope will be negotiated as part of Separation. It would be **tie**'s intention that BSC would complete the depot to a point where trams could be delivered.

4.5 Surveys/Warranties

Full surveys will be carried out with BSC to agree handover state and also check against warranties provided. This will include materials and will also include any required testing such as stray current.

4.6 Step In

Where possible and agreed under the Project Separation HoT's and where a completed design permitted, **tie** would step into existing contracts with BSC sub-contractors to complete specific pieces of work.

4.7 Re-instatement works

These are works which are required given that temporary arrangements are in place in a number of locations, or remedial works are required. The full scope of this must be agreed with CEC and management/funding of these works must be agreed. An indicative list has been identified with indicative funding identified. These works would be procured by either **tie** or CEC.

4.8 Re-procurement

Re-procurement will be carried out under OJEU rules and it is anticipated that it will be carried out on a phased basis :

- 1) Airport to Haymarket
- 2) Haymarket – Lothian Road Junction
- 3) Lothian Road Junction – St Andrew Sq
- 4) St Andrew Sq – FOTW
- 5) FOTW - Newhaven.

To assist with the decision on best fit for this procurement exercise, **tie** has already engaged the services of Cyrill Sweett to provide some specialist procurement advice and pricing. This was particularly focused at the on-street sections but also covers on street.

It is **tie**'s current opinion that the best procurement option is for a designer working directly for the client taking design risk and that the contractor is appointed on a traditional basis by the Client. However, this will be explored further in light of the work underway by Cyrill Sweett and dependent on any decisions made through a Separation HoT's.

It is recommended that standard forms of contract are used and the actual type will be dependent on the work content. A robust risk allocation matrix will be developed and agreed for the completion of the project. Additionally a risk allocation matrix will be produced for each contract to be tendered to show start and end position.

Additionally, Cyrill Sweett and GHP have been involved in production of Bills of Quantities and these have been produced and costed as follows:

	BoQ's Produced	BoQ's Costed
On street	By GHP	Priced by tie using Schedule Part 4
Off Street	By Cyril Sweett	Priced at market rates by Cyrill Sweett Priced by tie by Schedule Part 4

4.9 Legal Support

Tie will procure new legal advice for the procurement exercise through a competitive process.

4.10 Ground Investigations

tie will procure additional ground investigation to ensure that the ground risks are more fully understood prior to award of any on-street contract. A cost and programme for this is to be established.

Robustness of off street GI will also be reviewed.

4.11 Utilities

tie will agree with CEC any final utility diversion to be completed. The most significant of these is Baltic Street.

tie will also undertake another review of the "unknown utility" risks based on information gathered through the utility works and Princes Street construction works.

4.12 Third Party Risks

tie/CEC to close all outstanding third party agreements, leases, wayleaves in each section prior to construction contracts being awarded.

5.0 Other Issues to be Considered

5.1 Insurances

tie took out an Owner Controlled Insurance Policy for the MUDFA and Infracore works. This has currently been extended until April 2011 and it is expected that we will want to consider another such policy for the completion of the works. Discussions will be held with our Insurance Brokers and insurers to establish the best value options given the change in procurement strategy and the ongoing costs.

5.2 Network Rail

CEC has entered into a third party agreement with Network Rail and this includes an Asset Protection Agreement which is industry standard practice for working alongside NR assets. Any alterations required to this to take account of the prolongation of the delivery of Tram, alternative procurement methods and new contractors should be undertaken.

5.3 Edinburgh Gateway

Transport Scotland will be consulted on the continuation of the works being undertaken by **tie** in relation to the Edinburgh Gateway project and agree how best to ensure delivery aligned with the Network Rail part of the project to build a new heavy rail station.

5.4 Third Parties

There are 41 3PAs, 100 letters of comfort and 6 letters on undertaking set out in Schedule Part 13 of the Infraco Contract. Of these, the 3PAs are legally binding documents, executed and signed by all relevant parties – generally businesses or commercial entities. The letters of comfort and undertaking are generally to private individuals or SMMEs.

These agreements set out various obligations on CEC (and tie) in respect of the delivery of the Tram Works as defined in the Acts. Where appropriate, the obligations relevant to the Infraco are passed down to the contractor in Schedule Part 13 of the Infraco Contract.

Consideration will be given to communicating with these Stakeholders on the current status of the project and also in how to step these commitments into any new contracts.

6.0 Budgetting/Programming/Risk

tie will develop an overall programme and retain the risk of integrating and achieving this overall programme.

Risks – a risk register has been produced and is attached. This will continue to be populated and a full QRA will be run at the time the budget & programme is baselined.

Budgets - a revised budget will be developed with an aligned risk profile and programme and scope.

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
3PA's												
Complete design												
Procure legal advice for procurement												
Agree procurement route, packaging and contracts												
Procurement – On street												
Procurement – Off Street												
Commence other off street works												