

INFRACO works are expected to commence in the vicinity of Murrayfield in August 2008. Risk to award of INFRACO Contract is considered low.

Formatted: Highlight

6.6 Royal Bank of Scotland Agreement

Purpose of Agreement

This agreement builds upon the existing Section 75 Agreement between RBS and CEC which sets out the funding arrangements for the Gogarburn Tram Stop. The current proposal is for the INFRACO contractor to undertake the works within RBS land under licence, and sets out the procedure for CEC to later acquire the operational land based on the 'as built' (and at nil cost) using the GVD process. The agreement also covers the desire of RBS to maintain the landscaping between the Gogarburn Tram Stop and the A8 Glasgow Road.

Current Status of Agreement

The agreement is currently in draft format, with finalisation expected on completion of the detail design, as this will allow final costs for the tram stop to be calculated. RBS have provided written confirmation that access to the land will be secured under licence.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of Gogarburn from June 2008. Risk to award of INFRACO Contract is considered low.

Formatted: Highlight

6.7 Local Code of Construction Practice – Forth Ports *

Purpose of Document

The existing Minute of Agreement between Forth Ports and CEC requires the development of a Local Code of Construction Plan to govern how the construction works are to be undertaken within the Forth Ports area. This would include method statements, programme details and consultation/notification requirements to be agreed prior to the commencement of construction. The Forth Ports Minute of agreement is included with Schedule 13 of the INFRACO Contract.

Current Status of Document

tie are currently drafting a local COCP for the Forth Ports area to a template format. This will require BBS input which will need to be included prior to engagement with Forth Ports. tie meet with the Forth Ports Project Manager on a weekly basis and will arrange confirmation by side letter that matters are in progress and on schedule and that Forth Ports do not intend imposing further restrictions beyond those placed within the existing agreement that would impact negatively on either INFRACO costs or programme.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the Forth Ports area from June 2008. MUDFA works will recommence in the Leith Docks area following the Easter embargo period from April 2008, and is currently being undertaken on a work by works licence basis, which contains the relevant elements that INFRACO will include within the final Local Code of Construction Practice document.

Formatted: Highlight

On confirmation of Forth Ports' position as indicated above, risk to award of INFRACO Contract is considered low.

6.8 Local Code of Construction Practice – New Edinburgh Limited *

Purpose of Document

The existing Minute of Agreement between New Edinburgh Ltd and CEC requires the development of a Local Code of Construction Plan to govern how the construction works are to be undertaken within Edinburgh Park. This would include method statements, programme details and consultation/notification requirements to be agreed prior to the commencement of construction.

Current Status of Document

tie are currently drafting a local COCP for Edinburgh Park to a template format. This will require BBS input which will need to be included prior to engagement with New Edinburgh Ltd. tie to meet with NEL and arrange for confirmation by side letter that there are no other restrictions beyond those placed within the existing agreement that would impact negatively on either INFRACO costs or programme.

Risk to INFRACO Contract Award

INFRACO works (track) are expected to commence in Edinburgh Park from June 2008, with construction of the Edinburgh Park Station Bridge commencing in August 2008. On confirmation of NEL position as indicated above, risk to award of INFRACO Contract is considered low.

Formatted: Highlight

6.9 Local Code of Construction Practice – Edinburgh Airport *

Purpose of Document

The licence between EAL and CEC sets out construction requirements in Schedule Part 5 – Development Rights and Obligations. This agreement has been drawn down into Schedule 13 of the INFRACO Contract.

Current Status of Document

tie are currently drafting a local COCP based on the obligations set out in Schedule Part 5 to a template format. This will require BBS input which will need to be included prior to engagement with EAL. tie meet with the EAL Project Manager on a four weekly basis and will arrange confirmation by side letter that matters are in progress and on schedule and that EAL do not intend imposing further restrictions on construction beyond those placed within the existing agreement that would impact negatively on either INFRACO costs or programme.

Risk to INFRACO Contract Award

MUDFA programme within Airport expected to commence on 30 March 2008; INFRACO works are expected to commence in September 2008. On confirmation of EAL position as indicated above, risk to award of INFRACO Contract is considered low.

Formatted: Highlight

Network Rail (NR) agreements – general

The suite of NR agreements comprises the following :

[List only – bullet summary state of completion]

CEC requirements here are as follows :

Full statement from tie on current status of every proposed agreement between CEC and NR, including Depot and Station Change Procedures. Full risk analysis in respect of each agreement explaining consequences for CEC in terms of time and cost relative to any delays in concluding agreements. This analysis to cross refer to BBS programme. CEC expects the Network Rail Suite of documents to be in agreed form apart from the Operating Agreement which should be substantially agreed before tie contract with BBS - as Depot and station change will not be concluded until 1st March, the APA will not be signed until at least that point in time. Update required on status of NR agreements required.

NR is contracting with third parties re other works at the Depot. Risk analysis to be provided regarding impact on BBS contract (time and cost) arising from late completion of NR works. Full statement required from tie on the following NR agreements. PPA, Framework Agreement, APA, Neighbourhood Agreement, Lease, Bridge Agreement, Haymarket Car Park, Servitudes incl Balgreen and Haymarket, Lift & Shift, Immunisation, Station & Depot Change and Oil Tanks.

Plan B to take account of any delays in achieving agreement with NR on all matters, including Caley Ale House, Lift and Shift and Immunisation. This to be included in QRA report.

Written confirmation from First Scotrail (and from other TOCs in respect of Station Change) that they are not objecting to Depot and Station Change.

Formatted: Highlight

6.10 Network Rail Asset Protection Agreement *

Purpose of the Agreement

The APA is an agreement between NR and CEC which governs design/construction activities as well as access to Network Rail land. The APA is designed to ensure that the heavy rail network can operate in tandem with the construction and commissioning of the ETN.

Current Status of Agreement

There are issues to resolve between NR and CEC in relation to indemnities and future costs. These have been referred to Transport Scotland and the Office of Rail Regulation (ORR) for resolution. Closure on this issue is currently being pursued.

Setting the indemnities issues aside, a final APA draft was received from NR on 18/01/08, which is currently being reviewed and an agreed form of wording is expected to be confirmed by CEC and NR on 25/01/08.

The finalisation of the APA is suspensive on the approval of the Station and Depot Change Proposals (these are Regulated Processes also covered in later sections below). The APA will require to be signed before the INFRACO contractor can take access to Network Rail land.

Risk to INFRACO Contract Award

The most significant risk relates to the proposed BBS construction programme in the vicinity of Haymarket Station Car Park. The demolition of the Caley Ale House followed by the construction of the Haymarket Tram Stop viaduct is scheduled from commencement on 31 March 2008. At this stage therefore, reaching agreement on the principal terms of the APA and related agreements is an important risk to the date of financial close.

Formatted: Highlight

6.11 Network Rail Depot Change *

CEC comments here are :

NR is contracting with third parties re other works at the Depot. Risk analysis to be provided regarding impact on BBS contract (time and cost) arising from late completion of NR works. Full statement required from tie on the following NR agreements. PPA, Framework Agreement, APA, Neighbourhood Agreement, Lease, Bridge Agreement, Haymarket Car Park, Servitudes incl Balgreen and Haymarket, Lift & Shift, Immunisation, Station & Depot Change and Oil Tanks.

Formatted: Highlight

Purpose of Document

This is a regulated process between Network Rail and First ScotRail, the operator of the Haymarket Light Maintenance Depot. Depot change is the process which defines the revised lease arrangements which will be required as a result of the tram construction and operation. This procedure also defines the methodology of undertaking works in the vicinity of the Haymarket Depot and sets out the interface requirements of the Depot Manager. A key requirement of FSR is that only one contractor (at a single work site) will be permitted to conduct works within the depot area at any given time. BBS are aware of this constraint, and have sequenced their programme and depot construction methodologies accordingly.

Current Status of Document

The formal submission of the Depot Change (by NR) to FSR was completed on 11/01/08. The regulated process allows for a maximum review period of 45 calendar days for comments to be submitted. If no comments are received then the proposal receives deemed consent. The review period expires on 28 Feb 2008.

tie and BBS met with NR and FSR on 08/01/08 and agreed the content and detail contained within the Depot Change Proposal. Whilst the formal regulated change will not be completed by Financial Close, tie are seeking written confirmation from FSR that they have no objection to the proposals. It is expected that this confirmation will be provided by 25/01/08.

Risk to INFRACO Contract Award

The risk arising from depot change agreement in itself is considered low. However, the INFRACO works at Haymarket Depot are scheduled for commencement after completion of the NR Pollution Prevention Works Contract (PPLMD). It is a legislative requirement for NR to comply with environmental standards, and the proposed works involve a number of activities within the Haymarket Depot, including the relocation of diesel fuel tanks, in close proximity to the proposed Roseburn Street viaduct. These NR managed works are scheduled for completion at the end of July 2008.

There is a residual risk that should the PPLMD works be delayed, which is outwith the control of tie, then the INFRACO programme in this area would also be delayed.

Risk to award of INFRACO Contract is considered moderate and we are seeking confirmation from NR as to progress in order to fully assess this risk.

Formatted: Highlight

6.12 Network Rail Station Change *

Purpose of Document

This is a regulated process between Network Rail and First ScotRail as the operator of Haymarket Station. The Station Change procedure also requires the consent of the other Train Operating Companies (TOC's) using the station and these are; Arriva Cross Country, Virgin, Trans Pennine Express, National Express East Coast and EWC.

The station change concerns the permanent loss of 49 parking spaces at Haymarket Station Car Park and the temporary closure of the car park as a result of the construction of the Haymarket Viaduct and Tram Stop, as well as the relocation of taxis currently operating from the forecourt of station.

Current Status of Document

NR formally submitted the Station Change proposal to FSR on 16/01/08, which triggers the start of the 45 calendar day consultation process which ends on 01/03/08.

tie are working with NR and FSR to fast track this process and are aiming to get written confirmation from the TOC's at a workshop scheduled for 24 January 2008 that they have no in principle objection to the Station Change Proposal pending conclusion of the formal regulated consultation process.

Risk to INFRACO Contract Award

Risk to award of INFRACO Contract is considered low.

Formatted: Highlight

6.13 Car Park Compensation Agreements

Purpose of Document

The loss of income generating car park spaces at Haymarket Station is a compensation matter for both NR and FSR. Under Station Change, FRS receives a standard indemnity from Network Rail to cover losses, so the commercial arrangements can be negotiated separately and do not form part of the Station Change approval process.

Current Status of Document

tie are awaiting FSR to provide a date to commence these discussions, and FSR have confirmed that the compensation formulae adopted for the Platform Zero settlement can be used as a basis for this negotiation.

Risk to INFRACO Contract Award

The compensation settlement to both NR and FSR are commercial arrangements which have a budget allocation within the FBC and are not part of the Station Change approval process. There is therefore minimal risk to the award of the INFRACO contract.

Formatted: Highlight

6.14 Network Rail Framework Agreement

Purpose of Agreement

This is an overarching document beneath which reside a suite of construction, property and operations related agreements.

Current Status of Agreement

The Framework Agreement is in largely agreed form, pending NR confirmation that they accept the CEC negotiating position that the use of CPO Powers will be limited to resolving any future title issues in relation to the proposed lease.

A side letter from NR is to be provided confirming the status of this agreement.

Risk to INFRACO Contract Award

The Framework Agreement is not a construction related document, so the Risk to award of INFRACO Contract is insignificant.

Formatted: Highlight

6.15 Network Rail Lease Agreement

Purpose of Document

This is a 175 year lease between NR and CEC to allow operation of the ETN.

Current Status of the Agreement

The lease is substantially in agreed form, pending drafting on protecting CEC position in relation to the treatment of contamination in the vicinity of Haymarket Light Maintenance Depot. The lease does not become active until after construction and commissioning have been completed, and is suspensive on the execution of an Operating Agreement with Network Rail.

A side letter from NR is to be provided confirming the status of this agreement.

Risk to INFRACO Contract Award

The lease is not a construction related document, so the Risk to award of INFRACO Contract is insignificant.

Formatted: Highlight

6.16 Forth Ports Agreement

Purpose of Agreement

A variation of the existing Minute of Agreement between CEC and Forth Ports is currently in draft. This agreement is based around changes to the design in the Leith Docks area, which will be funded by Forth Ports.

Current Status of Agreements

Heads of Terms have been agreed and signed by CEC and Forth Ports. The highways and track design activities will be completed by October 2008, and a full understanding of the cost implications of these changes will not be attained until then. It is envisaged that the Stanley Casinos agreement will be concluded at the same time as the Forth Ports agreement.

The transfer of land from Forth Ports to CEC will be part of the FP contribution to the project, and this is part of the existing Section 75 agreement.

Risk to INFRACO Contract Award

INFRACO under novation assume responsibility for the SDS Programme, which will dictate the construction programme in the Forth Ports area. CEC risk to award of the INFRACO contract is therefore considered low.

Formatted: Highlight

6.17 Stanley Casinos Agreement

The Stanley Casinos side agreement is also design dependant, and takes cognisance of the revised junction and access proposals at the Constitution Street/Ocean Drive junction. The agreement will also include provision for remodelling the Casino car Park.

Formatted: Highlight

6.18 Other Site Specific Code of Construction Plans

Purpose of Documents

As part of the suite of side agreements drawn down into Schedule 13 of the INFRACO Contract, there is a requirement in several agreements for the contractor to develop a local construction plan or CoCP as part of the notification/consultation process in advance of the works commencement. The relevant agreements are:

- USS
- Safeway/Morrisons
- Murrayfield Indoor Sports Club
- ADM Milling
- Ocean Terminal
- Royal Yacht Britannia
- Baird Drive Residents (Community Liaison Group undertaking)

Current Status of Documents

tie have prepared a suite of drafts setting out the construction related requirements of the relevant side agreements. BBS input will be required as these plans are developed and presented to the relevant 3rd parties.

It is notable that the construction requirements laid down in these side agreements generally relate to those aspects of site working such as confirmation of programme, maintenance of access during the works, pedestrian management, dealing with dust/noise, site cleanliness, reinstatement of property etc, that one would normally expect a competent contractor to be cognisant of.

Risk to INFRACO Contract Award

All relevant 3rd Party agreements are detailed within the INFRACO contract in Schedule 13. The requirements on Infraco are entirely in line with normal construction practice and the risk to CEC for award of the INFRACO contract is considered low.

Formatted: Highlight

6.19 Licence – The Gyle

Purpose of Document

The licence will allow the INFRACO contractor to undertake the works within Gyle owned land prior to permanent acquisition. In agreeing to undertake this work under licence, CEC will be able to meet the terms of the existing side agreement whereby permanent land take is to be minimised. At this stage in the design process, SDS cannot define with certainty the extent of the operational land. The proposal made to The Gyle is therefore to defer permanent acquisition until this certainty is available.

The acquisition of the 'as built' operational land will eliminate the risk of not meeting the obligations of the side agreement. The existing side agreement already makes provision for a licence to undertake works.

Current Status of Agreement

tie have put this proposal to The Gyle and are seeking confirmation in writing that this is acceptable. It is expected that a positive outcome will be received by 25/01/08.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of The Gyle from June 2008. Risk to award of INFRACO Contract is considered insignificant, as CEC still has the ability to invoke the GVD for this land, a process that can be concluded in 28 days.

Formatted: Highlight

6.20 Licence – West Craigs

Purpose of Document

The licence will allow the INFRACO contractor to undertake the works within West Craigs owned land prior to permanent acquisition. In agreeing to undertake this work under licence, CEC will be able to meet the terms of the existing side agreement whereby permanent land take is to be minimised. At this stage in the design process, SDS cannot define with certainty the extent of the operational land. The proposal made to West Craigs is therefore to defer permanent acquisition until this certainty is available.

The acquisition of the 'as built' operational land will eliminate the risk of not meeting the obligations of the side agreement. The existing side agreement already makes provision for a licence to undertake works.

Current Status of Agreement

tie have put this proposal to West Craigs and are seeking confirmation in writing that this is acceptable. It is expected that a positive outcome will be received by 25/01/08.

Risk to INFRACO Contract Award

INFRACO works are expected to commence on the proposed licence site from January 2009. Risk to award of INFRACO Contract is considered insignificant, as CEC still has the ability to invoke the GVD for this land, a process that can be concluded in 28 days.

Formatted: Highlight

6.21 Network Rail – Neighbour Agreement

Purpose of Agreement

This agreement sets out the ongoing relationship between CEC and Network Rail for managing the interface between tram lease land, NR operational land and other CEC land which is adjacent to the railway. The Neighbour Agreement will be updated as required over the period of lease.

Current Status of the Agreement

This agreement is approaching agreed form with NR, the latest draft is with the NR legal team for review.

Risk to INFRACO Contract Award

The Neighbour Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

Formatted: Highlight

6.22 Network Rail – Operating Agreement

Purpose of Agreement

The purpose of the operating agreement is to set out operational interface arrangements and procedures for running tram passenger services adjacent to the railway line. This agreement will be an evolving document which will be updated periodically during the lifetime of the project.

Current Status of Agreement

A draft is current under review by tie and TEL. The intention is to develop this document into draft agreement form during the first quarter of 2008, and complete the agreement prior to commencement of passenger services.

Risk to INFRACO Contract Award

The Operating Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

Formatted: Highlight

6.23 Network Rail – Bridge Agreement

Purpose of Agreement

The purpose of the Bridge Agreement is to set ongoing maintenance and operational responsibilities for the Carrick Knowe and Edinburgh Park Station Bridges, as these structures interface directly with the heavy rail network

Current Status of Agreement

A draft is current under review by CEC, and subject to finalisation of the detail design of the relevant structures (scheduled for July 2008), the intention is to finalise this agreement by end of August 2008.

Risk to INFRACO Contract Award

The Bridge Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

Formatted: Highlight

6.24 Telewest utility agreement

COMMENTARY REQUIRED

Formatted: Highlight

6.25 Scottish Power utility agreement

COMMENTARY REQUIRED

Formatted: Highlight

6.26 DPOFA 2007 Revision

A negotiation was concluded with Transdev to amend the DPOFA signed in 2004. The process is now complete and the principal agreed changes relate to :

- Improved performance bond underpinning both mobilisation and operating obligations
- Alignment with Infraco contract where previous drafting was based on anticipated Infraco terms
- Scope revised to reflect the Phase 1a / 1b configuration from the originally anticipated Lines 1 and 2
- Revisals to KPI performance regime based on up to date commercial view.
- Replacement of original tram revenue incentive mechanism with a reduced cost recharge, reflecting a fully integrated bus and tram system
- Alignment of insurance arrangements under OCIP
- Obtained tram cost synergy savings with introduction of TEL being responsible for transport integration

6.27 Mobilisation agreements (Infraco and Tramco)

Formatted: Highlight

ISSUES TO UPDATE

The pre-close mobilization agreements with Infraco and Tramco are designed to enable works necessary to maintain programme. The agreements are The Advance Works and Mobilisation Contract ("AWM") and Tram Advance Works Contract ("TAW").

Formatted: Highlight

The core of the AWM is that Infraco will perform a schedule of works with payment determined by "Agreed Element Estimates" agreed by the parties in respect of each element of work.

The AWM does not overlap with the Infraco Contract because, when the Infraco Contract is entered into, the AWM automatically terminates. The Infraco Contract therefore deals with payment and other terms relating to advance works underway at that time. The

AWM also states that it terminates if the Infraco Contract is not entered into by 28 January and an extension will therefore need to be agreed. The TAW works similarly, in that it ends automatically when the Tram Supply Agreement is entered into. Again, the deadline for this to occur is 28 January subject to agreed extension.

The work on utility diversion under the MUDFA contract and related arrangements is described in Section 11 below.

(7) Land acquisition arrangements

Purpose of process

The process of assembling land required for the construction and operation of the Edinburgh Tram Network has been managed using a combination of Compulsory Purchase (using the General Vesting Declaration Procedure), and entering into long term lease arrangements with Network Rail and Edinburgh Airport Limited.

Current Status of Agreement

By financial close, the position in regard to Land available to INFRACO is as follows:

Nature Of Land	Land Area (sqm)	Available to INFRACO	Land Take Achieved	Target Date	No Plots
Pre GVD	498	Yes	0.1%	Nov-05	3
GVD 1&2	177467	Yes	21.0%	Feb-07	43
GVD 3	167854	Yes	19.9%	Jul-07	22
GVD4	43323	Yes	5.1%	Sep-07	19
GVD5	2381	Yes	0.3%	Dec-07	5
GVD6	83588	Yes	9.9%	Dec-07	17
Licences	24885	Yes	2.9%	Jan-08	14
BAA Licence	18388	Yes	2.2%	Nov-07	17
NR APA	42480	See above	5.0%	Feb-08	37
Forth Ports (S75)	80293	Yes	9.5%	Mar-08	51
Adopted Roads	202521	Yes	24.0%	Achieved	78
	843679		100.0%	Total	306

Of the total land required, 85.5 % is under the control of CEC through ownership or license, a further 9.5% is committed under Forth Ports existing S75 agreement with the balance of 5% subject to the Network Rail APA agreement discussed above.

(8) Governance & corporate arrangements

8.1 Governance & delegations

The Governance model deployed to oversee and control the project has evolved as the project itself has moved through different stages of development. Appendix 5 is a detailed paper which was approved by the Boards on 23rd January. The paper sets out :

- 1) the proposed governance model for the construction period ; and
- 2) the proposed levels of delegated authority

The paper is an update of previous submissions to the Boards and differs only in two material respects – the inclusion of specific levels of delegated authority and alignment with the terms of the tie and TEL Operating Agreements (see below). Neither of these factors should cause concern : the levels of delegated authority are in line with those previously deployed by the TPB and the terms of the operating agreements have been subject to significant scrutiny by senior people over recent months.

8.2 Operating agreements

These agreements are now in final agreed form and are attached at Appendices 5 and 6.

tie

The tie agreement was previously reviewed by the tie Board in December 2007 and the changes since then are in line with the request made by the tie Board. The tie agreement supercedes the existing agreement and sets out tie and the Council's mutual responsibilities for delivering the tram project.

TEL

The TEL agreement reflects TEL's role but the detailed wording is consistent with the tie agreement. The TEL agreement sets out the specific authority delegated to it by the Council with acknowledgement that TEL will sub-delegate its authority to the TPB.

8.3 Taxation

Advice has been taken from PwC on two principle areas :

- 1) The tax effect of the Infraco contract suite structure ; and
- 2) The VAT status of the grant funding

The main objective in tax planning has been to ensure that the arrangements were VAT neutral such that there would be no irrecoverable input VAT and that no unforeseen output VAT would require to be accounted for. We have a formal report from PwC addressed to tie, CEC and TEL confirming this. We have also engaged with HMRC and have a clearance letter from them confirming that the objective is achieved.

The contract structure has also been assessed by PwC to ensure that it will be possible in due course to establish a cost base in TEL by either selling or leasing system assets owned by CEC which will create corporation tax shelter in TEL. This could prove very valuable over the operating period of the integrated system.

~~(9) Risk allocation matrices and DLA Report [ANDREW F]~~

~~[THIS SECTION IS DEPENDENT UPON THE FINAL TERMS OF THE INFRACO CONTRACT SUITE]~~

(10) Risk assessment of in-process and provisional arrangements

[STEWART TO REFRESH]

This section contributed by Stewart McGarrity, who reviewed those areas of the documents which are provisional in nature and the documents which will be in draft form at Close.

10.1 Overview

tie's approach to identifying and managing risks was fully explained in the Final Business Case. This section reviews the current status of the risks relating to the Infraco and Tramco contracts which were identified as wholly or partly retained by the public sector beyond financial close which were:

- The process for granting of approvals and consents;
- The process for granting of permanent TRO's
- The interface with the implementation of utility diversion works
- Delays to design approvals for reasons outside the control of the Infraco
- Stakeholder instructed design changes

Specific areas covered are:

- Price certainty achieved through the Infraco and Tramco contracts with a view on items included in the contract price which will remain provisional at Financial Close
- Specific exclusions from the Infraco contract price
- Responsibility for consents and approvals

And as an area of particular concern to stakeholders:

Formatted: Highlight

- The risks associated with significant 3rd Party Agreements not concluded in full at Financial Close.

10.2 Price certainty achieved

The Tramco price agreed at £54.4m is a fixed sum in pounds sterling for the supply of trams. The overall capital costs estimate for Tramco also includes a fixed sum of £2.3m for mobilisation costs associated with the maintenance contract and to be paid prior to the commencement of operations.

The Infraco price of £216.3m comprises

- £219.9m of firm costs
- less £13.8m of Value Engineering initiatives taken into the price with the agreement of BBS but with qualifications attached
- plus £10.2m of items which remain provisional at Financial Close.

A thorough risk appraisal has been carried out on the deliverability of the Value Engineering initiatives with reference to the qualifications which attach to them. As a result a prudent allowance of £4m has been made (in the Base Cost estimate for Infraco) against the possibility that for certain items these qualifications will not be removed.

Provisional items comprise a defined list of 13 Items each with a clear process for and programme for resolution. The estimate for each item has been reviewed by the technical consultants and by BBS and the risk of understatement is considered to be low. The most significant item is a £6.3m allowance for civil works, including utilities, at Picardy Place as the design for the approved layout is not yet complete. The cost of the actual tramway, tram stop and associated works at Picardy Place are included in the firm element of the price.

The overall capital cost estimate for Infraco includes a further £3.4m comprising £1.4m for maintenance mobilisation (as for Tramco), £1m for major spare parts based upon a schedule of prices provided by Infraco and a £1m provision for known design changes at the Airport tram stop where the changes are yet to be included in the design which formed the basis of the Infraco price.

10.3 Infraco price basis and exclusions

Appendix 7 provides a detailed analysis of exclusions.

The Infraco price is based upon the Employers Requirements which have been in turn subject to thorough quality assurance including synchronisation with the current SDS design. Crucially the price includes for normal design development (through to the completion of the consents and approvals process – see below) meaning the evolution of design to construction stage and excluding changes in design principle, shape, form and outline specification as per the Employers Requirements. The responsibility for consents and approvals is further considered below.

Formatted: Highlight

Significant exclusions from the Infraco price are items not included in the Employers Requirements in respect of (responsibility for securing incremental sources of funding in brackets):

- Additional works at Picardy Place, London Road and York place (CEC)
- Additional works at Bernard Street (CEC)
- Full footway reconstruction in Leith Walk (CEC)
- Additional works in St Andrew Square outwith the tram alignment (CEC)
- Changes within the Forth Ports area (Forth Ports)
- Any other scope required by third parties not already included in the Employers Requirements by virtue of a commitment in an existing agreement

10.4 Responsibility for consents and approvals

As previously tie/CEC will retain the risk associated with the process of obtaining TROs and TTROs whilst Infraco (together with their novated designer SDS) will bear the cost and programme consequences of not delivering the information in sufficient quality and timeliness to process the applications. Full provision has been made in the Risk Allowance for the costs associated with a public hearing and other costs associated with obtaining the TROs.

For all other required consents and approvals (either design or construction related) the principles which apply are:

- Infraco (including SDS) bear the costs and programme consequences associated with not delivering the required information in a timely and sufficient manner to the consenting or approving authority
- tie/CEC bear the incremental cost and programme consequences associated with a delay in granting consent or approval having received the required information in a timely and sufficient manner and/or the cost and programme consequences of changes to design principle shape form and outline specification (as per the Employers Requirements) required to obtain the consent or approval.

To clearly delineate responsibility and therefore risk allocation the Infraco contract and associated schedules, including the SDS Novation Agreement, clearly defines in detail and in a manner agreed by Infraco, SDS and tie/CEC:

- The necessary consents and approvals already obtained at Financial Close
- The remaining consents and approvals and whether the information to obtain such rests with Infraco or SDS
- The expectations with regard to quality of information including compliance with relevant law and regulation
- The programmed dates for delivering information and obtaining the necessary consents and approvals consistent with achieving the overall programme for the project

The role of tie in this complex process is to carefully manage the programme of delivery and take mitigating action as necessary to avoid any cost or programme implications

from slippage on individual items. tie also retains responsibility for obtaining specific items including obtaining NR possessions which align with the construction programme agreed with Infraco.

The Risk Allowance does not provide for the cost or programme consequences associated with a wholesale failure of this process – see QRA alignment & Risk Allowance below.

10.5 3rd Party Agreements

All relevant agreements with 3rd parties form part of the Infraco contract (at schedule [13] and the Infraco price includes for the costs of any works and/or any construction constraints imposed by these agreements and as reflected in the Employers Requirements [Important issue still under debate with BBS]).

Formatted: Highlight

A thorough risk assessment has been carried out with regard to all third party agreements which will not be concluded at Financial Close and attention is drawn to the following significant matters which are significant for the award of Infraco:

Network Rail Asset Protection Agreement (APA) – The APA, which provides Infraco with access to NR land for construction, cannot be formally concluded until the Station Change and Depot Change processes above have been concluded. However even if a side letter were to overcome this obstacle, the APA as currently drafted contains wide ranging Indemnity clauses in respect of all future events which CEC cannot regard as tenable. It is not possible to determine a quantified risk allowance in respect of these indemnities and no provision is made in the Risk Allowance for the project.

Station Change (actually between NR and First Scotrail/TOCs) - The risk here relates to the programme implications of not getting access to the car park at Haymarket for Infraco to commence demolition of the Caley Ale House at the end of March 2008 and the acquisition of car parking spaces for the permanent Tram works. A statutory consultation period is in process and we hope to have confirmation of no objection in principle agreement by the date of financial close. The Infraco's also has responsibilities to obtain all necessary construction consents prior to commencing the works. tie is of the opinion that a delay of 3 to 4 weeks to the start of this activity could be absorbed with no impact on critical path or costs.

Depot Change (actually between NR and First Scotrail) - The risk again relates to the programme implications of Infraco not getting access to the depot site at Roseburn for Tram works programme to commence in July 2008. Again the statutory consultation process has begun and tie is seeking a comfort letter confirming no objection to the proposals before financial close. The risk of undue delay to the agreement (or prior pollution prevention works by Network Rail at the depot) is considered to be small.

Local Codes of Construction Practice – Existing agreements with Forth Ports, New Edinburgh Limited and Edinburgh Airport require that such local agreements be concluded with these parties. Any additional requirements by these parties which might have cost or programme consequences which tie and the Infraco cannot effectively mitigate would be an additional cost to tie/CEC. Tie considers that the likelihood of significant additional costs arising from these agreements is minimal.

10.6 QRA and Risk Allowance

tie's risk identification and management procedures as detailed in the FBC describe a process whereby risks associated with the project which have not been transferred to the private sector are logged in the project Risk Register. Where possible the cost of these risks is quantified by a QRA in terms of a range of possible outcomes, probability of occurrence and thereby the Risk Allowance which is included in the capital cost estimate for the project.

The project Risk Register also details the "treatment plans" being followed to mitigate individual risks and thereby avoid all or part of the cost allowance.

As the Infraco and Tramco procurements have progressed tie has maintained and reviewed contractual Risk Allocation Matrices, which reflect the risks retained by the public sector arising from the contracts, and has exercised prudence in ensuring the Risk Register, QRA and therefore Risk allowance provide adequately for risks retained for the public sector including the major areas or risk assessed above. There has been no material change in the Risk Allocation Matrices between Preferred Bidder stage and the position now.

The Final Business Case cost estimate of £498m includes a risk allowance of £49m which in turn includes

- £17.5m in respect of procurement stage risks on Infraco and Tramco including all the risks associated with achieving price certainty and risk transfer to the public sector as has been effectively achieved in the Infraco contract as summarised above. The negotiated Infraco and Tramco prices, inclusive of provisional sums and other allowances as described, will result in an aggregate crystallisation of the Risk Allowance in the amount of £14.2m thus leaving a balance £3.3m to be held as a contingency against residual risk during the construction phase.
- £3.2m in respect of specifically identified risks held by and to be managed by tie during the construction phase including adverse ground conditions, unidentified utilities and the interface with non-tram works.
- £4.3m in respect of post Financial Close consents and approvals risks which provides for the cost or programme consequences of imperfections which may arise in elements of the consents and approval risk transfer as described above.
- £[3.3]m [To be confirmed] to provide for the cost of minor Infraco / Tramco programme slippage of up to [X] months (other than as a result of delays to MUDFA which is provided for elsewhere in the risk allowance).

tie has assessed these amounts as providing adequately for the residual risk retained by the public sector arising from the Infraco and Tramco works and the post Financial Close consents and approvals process. However the Risk Allowance does not provide for the costs of:

Formatted: Highlight

Formatted: Highlight

- Significant changes in scope from that defined in the Employers Requirements – whether such changes were to emerge from the consents and approvals process or otherwise
- Significant delays to the programme as a result of the consenting or approving authorities failing to adhere to the agreed programme (Infraco/SDS having met their own obligations) or any other tie/CEC initiated amendment to the construction programme which forms part of the Infraco contract.

All other things being equal any such changes falling into these categories would give rise to an increase in the cost estimate for Phase 1a of the project above £498m.

10.7 Value Engineering Opportunities [STEWART / JIM]

Formatted: Highlight

CEC requirements are :

[VE summary included in the final deal and highlighting other potential savings.]

Statement on % of costs fixed and % outstanding as provisional sums with programme for moving these to fixed costs. ASSUME THIS COULD BE RELATED TO THE PRICING SUMMARY IN THE INFRACO SECTION.

(11) Update on critical workstreams and readiness for construction

[STEVEN]

- Design due diligence
 - Run-time due diligence
 - TTRO / TRO process
 - MUDFA including interface with Infraco programme
-
- Management team and handover
 - Safety
 - Commercial management
 - Insurance
 - Risk management

(12) Specific confirmations

On the basis of the content of this report and supporting documentation, it is considered that :

- **The Infraco Contract Suite is in terms acceptable for commitment ; and in particular**
 - **The Tramco Novation Agreement is in terms acceptable for commitment**
 - **The SDS Novation Agreement is in terms acceptable for commitment**
- **The CEC Financial Guarantee is in terms acceptable for commitment and is aligned in all material respects with the Infraco Contract Suite**
- **The tie Operating Agreement is in terms acceptable for commitment**
- **The TEL Operating Agreement is in terms acceptable for commitment**

