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EDINBURGH TRAM INQUIRY: CALL FOR WRITTEN EVIDENCE

Thank you for the opportunity to submit written evidence to the Edinburgh Tram Public Inquiry. This submission is from both the Auditor General for Scotland (AGS) and the Accounts Commission, prepared by Audit Scotland.

Audit Scotland has produced two performance audit reports on the Edinburgh trams project. *Edinburgh transport projects review* was published on behalf of the AGS in June 2007, and *Edinburgh trams interim report* was published on behalf of the AGS and the Accounts Commission in February 2011. Both reports can be found on the Audit Scotland website at Edinburgh transport projects review 2007 and Edinburgh trams interim report 2011 respectively.

Previous AGS and Accounts Commission work on the Edinburgh trams project has been relatively limited in scope. The June 2007 report was undertaken at the request of the Cabinet Secretary for Finance and Sustainable Growth to provide a high-level review of the arrangements in place for estimating the costs and managing the Edinburgh trams and Edinburgh Airport Rail Link projects. Both projects were at a very early stage of their lives at this time. In respect of the Edinburgh trams project, the report considered:

- Whether the approach to estimating project costs was robust.
- Whether project management and governance arrangements were appropriate.

The February 2011 report was undertaken at a time of significant public interest in the project, fuelled by reports of time delays, cost overruns and a contractual dispute between Transport Initiative Edinburgh (TIE) - the City of Edinburgh Council's (CEC) arm's-length organisation responsible for managing the project - and the Bilfinger-Berger Siemens Consortium (BSC) responsible for infrastructure construction. The report considered:

- The project's progress and costs to date.
- Project governance arrangements

In addition to these reports, the annual audit reports for CEC have commented on the trams project each year since 2007/08. These reports have considered issues such as the accounting treatment of grant received from Transport Scotland, project governance arrangements, spend and progress to date, and the implications of cost overruns on CEC borrowing levels. In particular, the report on the

2010/11 audit of CEC (presented to CEC in October 2011) reviews events since the publication of the AGS/Accounts Commission performance audit report in February 2011, including the introduction of revised project management and governance arrangements following CEC's decision to wind-up TIE and replace it with Turner & Townsend as project managers. These reports can be found on the Audit Scotland website at local government annual audit reports.

A brief summary of the findings of the performance audits reports and the annual audit reports is provided at Annex 1.

Lord Hardie's public call for evidence outlined that the Inquiry was now keen to hear from the public on two themes:

- What issues should the Inquiry be investigating in detail?
- What direct evidence does the public have on the consequences of the failure to the deliver the project in the time, within the budget and to the extent projected?

We also note that the Inquiry has published a list of issues that it is currently considering. Given my earlier comments on the limited scope and objectives of our previous performance audit work, Audit Scotland would be unable to comment in detail on all of the issues identified, other than to note that it appears a very full and comprehensive list. If Audit Scotland had undertaken a full audit of the Edinburgh trams project, we would have been likely to have considered four key issues:

- Project costs.
- Project delivery to timetable.
- The procurement and form of the main infrastructure contracts.
- Project management and governance.

At Annex 2 we provide a list of the sort of questions we would have asked associated with each of the key issues. You will note that there is a lot of similarity between this list and the Inquiry's own list of issues it is currently considering. It is, of course, for Lord Hardie to decide on which areas of the trams project to concentrate, but we hope this submission is of use to the Inquiry in formulating its own line of questioning. Given the public inquiry, Audit Scotland has no plans to undertake any more work on the project as it currently stands. Should you have any queries on the above, or wish to discuss this submission in more detail, then Audit Scotland would be happy to assist.

Yours sincerely

[redacted]

Fraser McKinlay
Director of Performance Audit and Best Value

Annex 1

Summary of previous Audit Scotland findings in relation to the Edinburgh trams project

The June 2007 performance audit report found that:

- The current anticipated costs of Phases 1a (Edinburgh Airport to Leith Waterfront) and 1b (Roseburn to Granton Square) were £501.8 million and £92 million respectively. The then Scottish Executive had committed to provide £500 million, with the balance being provided by CEC (£45 million) and private sector developers. Sufficient funds were therefore in place to proceed with Phase 1a. (CEC subsequently postponed Phase 1b in April 2009 due to the economic downturn.)

- Project cost estimates had been subject to robust testing through independent review by consultants, and benchmarking with other UK tram projects. Initial bids for infrastructure construction received in January 2007 provided tie with further confidence in its cost estimates, although these were still subject to negotiation.

- A clear corporate governance structure for the project was in place. Senior representatives from tie, Transport Scotland, CEC and Transport Edinburgh Limited (TEL) sat on a Tram Project Board (TPB) responsible for delivering the project to agreed cost, timescale and quality standards.

- Project management and organisation was clearly defined, and there were sound financial management and risk management arrangements in place. In particular, the procurement strategy had been designed to minimise risk and ensure successful delivery of the project through the use of separate contracts for different elements of the project. These contracts were intended to be fixed price where this was reasonable i.e. where bidders could be expected to have a high degree of cost certainty.

The February 2011 performance audit report found that:

- The original plan to have trams operational by summer 2011 was not achievable. Utilities work was 97 per cent complete and good progress was being made with the delivery of tram vehicles. But greater than expected utilities diversion works and the contractual dispute with BBS was delaying progress. Further mediation talks between TIE and BSC were planned for March 2011.

- TIE had spent £402 million on Phase 1a by the end of December 2010. It considered that it could predict the final outturn expenditure for most elements of the project but the final cost could not be determined until the cost of resolving the infrastructure construction dispute was known. Nonetheless, TIE had concluded that it was unlikely that all of Phase 1a could be delivered for £545 million i.e. the Scottish Government's grant support plus CEC's contribution.

- The Tram Project Board continued to be the project's main governance body, although it was now a sub-committee of TEL. Transport Scotland was no longer represented on the TPB because, following Ministers' decisions that the Scottish Government's contribution would be capped at £500 million, it considered it did not have the same oversight role for the trams project as it did for other Scottish Government transport projects. However, Transport Scotland continued to meet with CEC on a quarterly basis to review the project's progress.

- CEC was providing regular reports on the project's progress to elected members at full Council meetings. The commercially sensitive nature of the dispute with BSC and future financial projections meant the elected members not directly involved in the project were frustrated at the limited amount of information made available.

The October 20011 final report on the 2010/11 audit of CEC reported that:

- Mediation talks in March 2011 between CEC and BSC had been successful in moving the project forward. Following further consideration, in September 2011 elected members agreed that the project would run from Edinburgh Airport to York Place within a cost envelope of £776 million. The additional cost was to be funded by £231 million prudential borrowing. The cost of this additional borrowing was put at £30 million per annum for 30 years.

- CEC had appointed Turner & Townsend as project managers in place of tie. A revised governance structure had been agreed which included a Joint Project Forum, chaired by CEC's chief executive and including senior representation from all key parties involved to provide improved strategic direction; a Project Delivery Group responsible for operational delivery; and an all-party Elected Members Oversight Group. Transport Scotland was now represented in the new arrangements, although it was still too early for auditors to comment on the effectiveness of the new arrangements.

The final report on the 2011/12 audit of CEC considered that the revised governance arrangements appeared to be working as planned except that the requirement to report the general performance of the tram project to CEC's Audit Committee was not being followed. CEC management advised that the new Governance, Risk and Best Value Committee's scrutiny plan included regular updates on the trams project. As at September 2012, the project remained within the £776 million revised budget with £669 million spent to date. The 2012/13 final report confirmed that CEC still expected to deliver the project for £776 million which would be operational by May 2014.

Annex 2

Suggested key issues and lines of questioning

On project costs:

- What was the final cost of the project compared to initial budget?

  This would include the cost of additional borrowing necessary to complete the project.

- What were the main elements of project expenditure and how did these compare to budget?

  This would include the cost of the main construction contracts, project management costs and the cost of external advisors.

- How robust was the approach to estimating project costs?

  This would include consideration of the form of the main construction contracts and the extent to which they provided cost certainty.

- What were the key reasons for cost overruns?

On project delivery to timetable:

- Was the project delivered to original timetable?

- What were the key reasons for the delays in project completion?

  This would include consideration of the impact and reasons for the delay in completing utilities diversion works and the Princes Street Supplemental Agreement.

On the procurement and form of the main infrastructure contracts:

- Did the City of Edinburgh Council/TIE develop an appropriate procurement strategy to minimise risk and lead to a satisfactory delivery of the project?

  This would include consideration of the design work, the form of the separate construction contracts and the transfer of contracts to the Bilfinger-Berger Siemens Consortium (BSC).

- Was appropriate legal and other advice obtained on the form of the main contracts, especially the infrastructure construction contract?

- Did the form of the main infrastructure construction contract provide a sound basis for discussing and settling contractual disputes, including identifying responsibilities for taking corrective action?

- Was the number and nature of contractual disputes more or less than expected for a project of this nature?

On project management and governance:

- Did the City of Edinburgh Council/TIE appoint a project team with sufficient skills and experiences to manage the project?

- Were project governance arrangements appropriate, based on recognised good practice?

  This would include project governance arrangements as they applied to TIE and the City of Edinburgh Council, and the involvement of Transport Scotland in the project.

- Did project governance arrangements provide a sound basis for reporting the project's progress to relevant stakeholders?

  This would include reporting of progress within TIE, to the City of Edinburgh Council and to Transport Scotland.

- Was the project's progress against cost and time budgets reported regularly and in sufficient detail to identify problems arising?

- Were the project's risk management arrangements satisfactory?

- Did the City of Edinburgh Council/TIE adopt a clear and appropriate strategy for negotiating contractual disputes?

  This would include consideration of events in early 2011, such as the mediation exercise between the City of Edinburgh Council and BSC, which led to a new Agreement.