

IA. Novation of Tram Supply Agreement and Tram Maintenance Agreement from Infraco to tie;

IB. Certain works (namely Princes Street Remedial Works, Haymarket Yard, minitest track and tram depot (including access))

ETN MEDIATION WITHOUT PREJUDICE MAR HALL AGREED KEY POINTS OF PRINCIPLE to be commenced by the Parties by 1 May 2011 and the remaining works for Project Phoenix to be commenced by the Parties by September 2011;

1. Price - £362.50 million for the Edinburgh Tram Network from Airport to Haymarket (excluding CAF but including integrated Design to Newhaven) pursuant to Project Phoenix.
2. Consider proposed Infraco Price for the Edinburgh Tram Network from Haymarket to St Andrew Square (excluding Utilities) of £39 million, to be adjusted by reference to Target Price mechanism to be agreed;
3. Additional price to be agreed for Edinburgh Gateway / Gogar Interchange enabling works as part of the Project Phoenix;
4. Absolute price certainty with the Design meeting the Employer's Requirements;
5. Price includes all Siemens materials and equipment to Newhaven;
6. Price includes full remediation of Princes Street to meet the Employer's Requirements;
7. One month interactive process between the Parties culminating in a meeting of the Principals during 1st week of April to resolve outstanding issues and issue positive instructions;
8. Infraco to self-certify Infraco Works as meeting Employer's Requirements;
9. CEC Planning Approvals – 3 weeks for CEC to confirm acceptance of outstanding issues on Technical and Planning Informatives;
10. Substantive cultural shift in the behaviour of all Parties including interaction, co-location and empowerment;
11. Joint Communications Protocol to be established with immediate effect to cover all external communications by the Parties in respect of the Edinburgh Tram Project ;
12. Non-binding, indicative Heads of Terms to be entered into between the Parties to give effect to these non-binding agreed key points of principle, by close of business 11 March 2011. These key points of principle are subject to contract and
13. CEC and tie's commitments in respect of these key points of principle are subject to and conditional on availability of funding.

Signed on behalf of Siemens plc Sheppards Hill, 10th April 2011

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W. McEwan 10/3/11. Siemens plc.

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EDINBURGH TRAMS PROJECT
HEADS OF TERMS FOLLOWING MEDIATION – MARCH 2011
AGREED BY
CITY OF EDINBURGH COUNCIL
TIE LIMITED
BILFINGER BERGER CIVIL UK LIMITED AND SIEMENS PLC
(the "parties")

1. PREAMBLE

- 1.1 The parties have participated in a mediation with Mr Michael Shane, Mediator, on 8-12 March 2011, in order to resolve disputes and differences arising from the Edinburgh Tram Project. The parties have reached agreement on certain matters which are recorded in these Heads of Terms;
- 1.2 These Heads of Terms reflect the "ETN Mediation - Without Prejudice - Mar Hall Agreed Key Points of Principle" statement signed by the parties, the Mediator and CAF on 10 March 2011 at Mar Hall, Bishopton (the "Mar Hall Principles") which are incorporated herein; and
- 1.3 These Heads of Terms are non-binding and subject to Contract.

2. DEFINITIONS

- 2.1 Unless otherwise specified capitalised terms referred to herein have the meaning set out in the contract entered into between tie, Bilfinger Berger Civil UK Limited and Siemens plc dated 14 May 2008 in relation to Edinburgh Tram Network, as amended by Minute of Variation between the parties dated 14 May 2008, the Princes Street Supplemental Agreement entered into between the parties in March 2009 and re-executed on 29 May 2009, a Minute of Variation between the parties dated 3 June 2009 and a Minute of Variation between the parties dated 23 April 2010 (such contract as so amended being referred to herein as the "Infraco Contract").

3. GENERAL

- 3.1 The Infraco Contract shall not be amended and shall remain in force save as amended by the minutes of agreement to be entered into between the parties to give effect to these Heads of Terms and the principles herein.
- 3.2 The parties shall agree all amendments to the Infraco Contract, the Tram Supply Agreement and Tram Maintenance Agreement and any other documents which are necessary in order to implement these Heads of Terms on or before 1 July 2011.

4. PARTIES

- 4.1 On or before 15 April 2011 the parties will agree: (a) changes to their respective management teams and working practices; and (b) the basis for carrying out the Prioritised Works.

5. **SCOPE**

- 5.1 Infraco shall not be required to carry out further Infraco Works related to the section St Andrew Square to Newhaven except as provided for below.
- 5.2 The Infraco shall complete the integrated Design from Airport to Newhaven (Phase 1A) to meet the Employer's Requirements.
- 5.3 The Infraco will supply to CEC materials and equipment in relation to systems and trackwork for the section St Andrew Square to Newhaven and the parties shall agree a supply and payment schedule.
- 5.4 The Infraco Works from Haymarket to St Andrew Square shall be defined as the On-Street Works and shall be agreed between the parties. tie shall take the risk relating to all utility diversion works required to complete the On-Street Works.
- 5.5 The remaining Infraco Works from the Airport to Haymarket shall be defined as the Off-Street Works including the enabling works to be performed at Lindsay Road Retaining Wall, Lindsay Road lowering and the civil works at Tower Place Bridge including rail installation.
- 5.6 The works at the Depot (including depot access), mini-test track (to be defined by agreement), Haymarket Yards, Princes Street Remedial Works (to be agreed) and any other works agreed by the parties shall be defined as the Prioritised Works and form part of the Off-Street Works.
- 5.7 The Employer's Requirements shall be amended to reflect the revised scope.

6. **PRICE**

- 6.1 The Total Price for the Infraco Works other than the On-Street Works shall be the sum of THREE HUNDRED AND SIXTY TWO MILLION FIVE HUNDRED THOUSAND POUNDS (£362,500,000.00) and shall relate only to the Off-Street Works. The price for the On-Street Works shall be dealt with in accordance with clause 6.3.
- 6.2 An additional price and any programme changes will be agreed in respect of the carrying out of the Edinburgh Gateway Interchange enabling works and added to the Total Price.
- 6.3 The On-Street Works will be paid for on a Target Sum basis. A Target Sum of £39 million is proposed. The mechanism for calculating and amending the Target Sum will be agreed.
- 6.4 A revised, simplified milestone payment schedule shall be agreed.
- 6.5 Infraco shall procure that the current parent company guarantees, performance bonds and retention bonds will be retained at the presently required levels for the Off-Street Works.

7. **FUNDING**

- 7.1 The parties acknowledge that tie will require additional funding for works beyond the Prioritised Works. CEC shall use reasonable endeavours to obtain such additional funding.
- 7.2 Unless CEC confirms to Infraco's reasonable satisfaction that sufficient funding is available to meet its obligations under the Infraco Contract, as amended by these Heads of Terms, the Infraco Contract shall automatically terminate at 5pm on 1 September 2011 (the "Funding Deadline").

7.3 Upon automatic termination, the parties shall have no rights or obligations in respect of future performance save as provided for in clause 94.6 of the Infraco Contract. CEC/tie will make payment to Infraco of the sum to be agreed by 1 July 2011 which shall include a payment in respect of all materials (whether acquired or contracted to be acquired to date) by Infraco. The parties shall agree the position regarding Bonds and Guarantees procured or provided by Infraco and its parent companies.

8. **TIME**

8.1 The programme and Sectional Completion Dates for the On-Street Works and the Off-Street Works shall be agreed between the parties to provide an optimum programme. The intention is to have a single commissioning date for Airport to St Andrew Square. With regard to the key date for commissioning of the mini test track and Depot (including access) and all ancillary works the parties shall use reasonable endeavours to procure that this shall be 15 October 2011.

8.2 The definition of each Section will be amended to remove any conditions associated with the Tram supply.

8.3 The Programme shall be amended to reflect these Heads of Terms.

8.4 Infraco shall commence the Prioritised Works on or before 1 May 2011 subject to (a) all relevant approvals having been given by CEC and other Third parties and (b) a minute of agreement being entered into between the parties in respect of the Prioritised Works on an agreed basis. The parties will enter into an additional minute of agreement in respect of the Off-Street Works (other than the Prioritised Works) and the On-Street Works not later than 1 July 2011. These minutes of agreement will be prepared by the legal advisers to tie/CEC for review and agreement by the legal advisers to Infraco and the Infraco Members. Infraco shall not carry out any works other than the Prioritised Works without tie/CEC agreement prior to Funding Deadline referred to above. In the event that the parties do not enter into these minutes of agreement prior to 1 July 2011 the parties shall discuss project separation.

8.5 tie shall procure that all permits and access are given timeously to permit Infraco to work in accordance with the agreed amended programme.

9. **CLAUSE 80, CLAUSE 65 AND SCHEDULE PART 4**

9.1 The parties shall agree amendments to Clause 65, Clause 80 and Schedule Part 4 to give effect to the principles of these Heads of Terms including the Mar Hall Principles.

10. **CAF**

10.1 The Tram Supply Agreement and Tram Maintenance Agreement shall be novated from Infraco to tie on terms to be agreed. These Heads of Terms are conditional upon (i) heads of terms being entered into between tie and CAF in respect of this novation and (ii) heads of terms being entered into between CAF and Infraco on or before 31 March 2011.

10.2 Liquidated and ascertained damages in respect of the delivery and commissioning of Trams shall be removed from the Infraco Contract.

10.3 The Infraco Contract and ancillary documents shall be amended to remove all rights and obligations relating to the supply and maintenance of trams. Interfaces between Infraco, Infraco Members, tie and CAF in relation to completion, delivery, commissioning and integration of the Trams shall be agreed.

11. DESIGN AND APPROVALS

- 11.1 CEC shall procure that CEC Roads Department shall meet with Infraco and its designers in order to agree and resolve all outstanding, Technical Informatives and critical issues with the design within 1 month of the date of execution of the Heads of Terms.
- 11.2 CEC shall procure that CEC Planning Department shall notify Infraco of all outstanding issues which preclude discharge of Planning Informatives within 3 weeks of the date of execution of the Heads of Terms.
- 11.3 Infraco shall "self-certify" the civils and systems technical Design and tie shall have no right or obligation to review and/or approve the civils and systems Design.
- 11.4 Any remaining unresolved issues in respect of Approvals shall be dealt with at a meeting of senior representatives from CEC and Infraco on 7 April 2011.
- 11.5 The parties shall work together to ensure that the statutory approvals for the On-Street Works are obtained before 1 September 2011.

12. EXISTING REMEDIABLE TERMINATION NOTICES AND UNDERPERFORMANCE WARNING NOTICES

- 12.1 The parties agree that tie/CEC will not terminate the Infraco Contract on the basis of any Remediable Termination Notices and/or Underperformance Warning Notices served prior to the date of execution of these Heads of Terms and that all existing claims and further claims by Infraco will not be prosecuted subject to parties agreeing amendments to the Infraco Contract in accordance with clause 3.2 before 1 July 2011.
- 12.2 Tie/CEC agree it shall not seek to recover liquidated and ascertained damages in respect of any delay in achieving the Planned Sectional Completion Dates in the Infraco Contract as unamended.

13. COMMUNICATION

- 13.1 There will be a substantive cultural shift in the behaviour of all parties including interaction, co-location and empowerment.
- 13.2 A Joint Communications Protocol will be established with immediate effect to cover all external communications by the parties in respect of the Edinburgh Tram Project.

14. OTHERS

- 14.1 Each of the Infraco Members will be entitled to enter into its own Key Subcontracts. There will be no requirement for all the Infraco Members to be a party to the Key Subcontracts. No restriction shall be placed on the management of Key Sub-Contractors and the replacement of them.
- 14.2 The parties shall agree a variation to the Infraco Contract via the minute of agreement to be entered into on or before 15 April 2011 to address any potential procurement challenge or other challenge to the validity of any agreement entered into by the parties to implement these Heads of Terms pursuant to the Remedies Directive or any other public procurement laws.
- 14.3 The parties shall bear their own professional and other costs and expenses associated with these Heads of Terms.
- 14.4 No announcement (whether internal or external) or press communication or release of information concerning these Heads of Terms shall be made by any Party other than

as agreed between all the parties in accordance with the confidentiality agreement signed by the parties and their representatives at Mar Hall on Tuesday 8 March 2011.

14.5 The parties acknowledge that these Heads of Terms reflect their present intentions in relation to the matters set out herein, but except for this paragraph, paragraphs 14.3 and 14.4 above and paragraph 14.6 below, these Heads of Terms shall not be legally binding on the parties.

14.6 These Heads of Terms shall be governed and construed in accordance with Scots law. Each Party hereby irrevocably submits to the exclusive jurisdiction of the Court of Session as regards any claim, dispute or matter arising out of or in connection with these Heads of Terms and their implementation and effect.

