

Office of the PPP Arbiter

Press Notice 02/09

17 December 2009

PPP Arbiter announces draft decisions on Tube Lines Periodic Review

Chris Bolt, the Arbiter for the London Underground Public-Private Partnership (PPP) Agreements, today published his draft directions and guidance on Tube Lines' costs for the 7½ years from 1 July 2010. He proposes to set the figure at £4.4 bn. This compares with Tube Lines' revised bid of £5.75 bn and London Underground's figure of £4.0 bn.

Chris Bolt said: "I have reviewed carefully the submissions from Tube Lines and London Underground, and taken expert advice. On the basis of my analysis, I consider that a company operating in an overall efficient and economic manner and in accordance with Good Industry Practice – the test in the PPP Agreement – could deliver its obligations at a substantially lower cost than projected by Tube Lines, though not as cheaply as suggested by London Underground."

A key difference between the Arbiter's proposed costs and those of Tube Lines are in respect of line upgrades. The Arbiter has taken the view that Tube Lines, operating in effective partnership with London Underground, could have delivered the Jubilee Line upgrade on time and to budget, and could now be progressing well with the Northern Line upgrade. However, the Arbiter recognises that Tube Lines has made significant contractual claims against London Underground, including in respect of the Jubilee Line upgrade, reflecting its view of the impact of London Underground's approach to the contract. If these claims are successful, the Arbiter would expect Tube Lines to make further claims relating to the upgrade projects which would add to its future income.

The next stage in the Periodic Review is for Tube Lines and London Underground to make representations on the Arbiter's draft directions. He will finalise his directions

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on costs in early March. These final cost figures will then form the basis of draft directions on future charges and on financing.

Chris Bolt added: “Before I make draft directions on charges, I am seeking an assurance from London Underground that it is able to afford the cost figure I propose to direct. If it cannot give that assurance, it will need to review the scope of its requirements for the next 7½ years. I am also seeking its views on whether it would offer better value for money for any additional financing to be raised by Tube Lines or by Transport for London. TfL has already agreed to provide finance for the purchase of new Piccadilly Line trains because this provides better value.”

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Notes for editors

1. The PPP Agreements contain provisions for a Periodic Review to take place every 7¹/₂ years. On 8 December 2008, London Underground issued restated contract terms for Tube Lines and set its Affordability Constraints; Tube Lines responded to this on 30 June 2009 with updated pricing. The contract allows time for a period of negotiation or for a reference to the Arbiter for directions on future pricing, prior to the start of the second 7¹/₂ year review period for Tube Lines on 1 July 2010.
2. The current reference sought directions or guidance on a number of matters including:
 - costs;
 - performance revenues;
 - Infrastructure Service Charge (ISC) payments; and
 - financing requirements

The draft directions and guidance published today cover the first two issues. The full text of the Arbiter's draft decisions and the supporting analysis is published on his website: <http://www.ppparbiter.org.uk>. A draft Analytical Approach to ISC setting has also been published today for consultation.

3. The dates for the key remaining stages in the Periodic Review were modified on 16 December, following representations from Tube Lines, and are as follows:
 - 1 February 2010: final date for representations on draft directions and draft guidance and responses to initial thoughts consultation
 - 4 March: publication of final directions and final guidance on costs and related matters; publication of draft directions on ISC and financing
 - 6 April: final date for representations on draft directions on ISC and financing
 - 29 April: publication of final directions on ISC and financing:
 4. Directions given by the Arbiter modify the contract unless both Parties agree to set the direction aside. The Arbiter also has powers to make directions on matters which are ancillary or incidental to the matter referred to him.
 5. The PPP Agreements contain a Dispute Resolution Agreement. Claims for breach of contract are resolved, ultimately by the courts, and are not within the scope of the Arbiter's functions.
 6. The remit of the PPP Arbiter is set out in the GLA Act and is supplemented by contractual provisions included within the PPP Agreements. Under the terms of the GLA Act, the Arbiter gives directions on matters specified in the PPP Agreements or guidance on any matter relating to a PPP Agreement, when requested to do so by a PPP Party. The PPP Arbiter's role is principally to ensure that any differences between London Underground and the relevant Infraco about the ISC to be paid to the Infraco or about efficiency and economy can be resolved independently, swiftly and with certainty.
 7. The Arbiter is appointed by the Secretary of State, but is independent of Government and of the PPP Parties. Chris Bolt was appointed as the first Arbiter on 31 December 2002 and his appointment runs until 30 June 2011.
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