



STRICTLY PRIVATE & CONFIDENTIAL

Mr Joachim Enenkel
Bilfinger Berger AG
Civil
Gustav-Nachtigal-Strasse 3
65189 Wiesbaden
Germany

Our Ref: DJM/JPT

23rd August 2010

Dear Mr Enenkel,

Edinburgh Tram Project

Dear Mr Enenkel,

Many thanks for your letter dated 16th August 2010. I am pleased to hear confirmation of you being actively engaged in this project and of course I understand that you have many other responsibilities and cannot make it your sole interest. But, I do hope that you will be available, as you were in 2008, to get matters settled.

I hear from our "Project Carlisle" Team that they are working to a timetable agreed with Mr. Kitzman which may see you and me at opposite sides of a table in early September. We do recognise Mr. Kitzman's efforts and I am sure you also recognise that it has been built on the mutual goodwill created by our team and that it should be the basis of better relationships in the future.

Your letter raises some points which are better answered by our Project Director. I would however ask that you keep an open mind on "cause and effect" in respect of Changes. Naturally I am much closer to the day-to-day facts than you are and also receive un-biased reports from our advisors. Responsibility is by no means one-sided as you imply.

The question of Preliminaries is a good example. I have given Mr. Darcy a copy of Anthony Rush's independent opinion (he thought us both wrong to an extent) and I am satisfied, if anything, that it is reasonable to conclude that you have been overpaid for Preliminaries. You may of course dispute this through the usual channels.

You refer to the On-street Works. I can if you wish provide you with a schedule which shows that there is only 1 km of On-street works where you could not presently work to a programme which takes account of traffic management and embargoes. Moreover, I am advised that you would have continuity to complete those Works.

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I think that this may go to the very kernel of the problems which dog the project. Firstly you have not recognised the true meaning of "Designated Works Areas" or "mitigation" in your programming. Secondly, you have not as yet produced an integrated assured design for the On-street Civil Engineering Works, which is approved by the Roads Authority.

I am of course very grateful to hear it reported that you intend to correct the defective work on Princes Street, but my pleasure is tinged with the fact that many weeks have elapsed since you said you would produce a remediation plan. I am sure that you will be aware that we have had to ask for you to rectify the programming issue and the remedial works plan to Princes Street by using Clause 90.1.2. It was to my regret, but these two issues are amongst a number whose resolution is critical to this project.

Finally, it seems self evident to me that the City of Edinburgh Council, as Guarantor, is backing the project. Mr Richard Walker has already written a letter on this subject and received a response immediately. I do not see the linkage between our proper scrutiny of your opening Carlisle proposal – which you concede in your letter has its limitations – and funding for the project. **tie** has and will continue to meet all of its obligations to settle the Infraco's legitimate and contractually assessed and certified payment entitlements.

You will appreciate that this letter is written on entirely a without prejudice basis.

Yours sincerely,



David Mackay
Chairman

cc: Mr A Goss, Siemens
Mr A Campos, CAF