



SHEPHERD+ WEDDERBURN

**EDINBURGH TRAM PROJECT**

**INFRACO CONTRACT**

**REMIABLE TERMINATION NOTICES**

In order to advise CEC with regard to the procedural validity, or otherwise, of the various notices served by tie upon Infraco it is necessary to understand the extent to which there is an evidential basis for each of the defaults founded upon by tie. In order to do so CEC require to have sight of the information identified in the following list.

For the avoidance of doubt, CEC will not be able to form an independent view on the matters of fact which are at issue between tie and Infraco. CEC have relied, and will continue to rely, upon tie to present a complete and balanced analysis of the matters in dispute to allow reasoned and informed decisions to be taken as to (i) the validity of each notice and (ii) the potential consequences arising from the service of each notice.

The purpose of requesting the information identified is to allow CEC to understand the evidential basis for the grounds of default upon which tie wish to rely and for the purpose of CEC obtaining independent legal advice.

The following items are requested:

1. **With reference to the notice served in respect of "Defects on Princes Street" on 9 August 2010,**
  - 1.1 The evidence which supports the conclusion that:
    - 1.1.1 The bituminous bond pavement materials, at a number of locations along Princes Street, have cracked and broken from a lack of support;
    - 1.1.2 There is a significant step down from the top of the rail and wearing surface, at a number of locations, causing a potential hazard to users of Princes Street;
    - 1.1.3 The regularity and application of the joint sealant is unsatisfactory;
    - 1.1.4 The workmanship on the granite setts is of an inadequate standard;
    - 1.1.5 The life expectancy of the pavement is only for a few months, before further maintenance is required; and
    - 1.1.6 The road surfacing laid is not technically compatible with the track form installation in Princes Street and is already starting to dilapidate.
  - 1.2 In particular, with reference to the above, any expert opinion instructed on behalf of tie or notes/minutes prepared in relation to the inspections carried out on behalf of tie.
  - 1.3 Infraco's letter (ref: 25.1.201/Bdo/5937) of 9 June 2010.
  - 1.4 Tie's letter (ref: INF CORR 5400) of 18 June 2010.

2. **With reference to the notice served in respect of "Clauses 10.4 and 10.16" on 9 August 2010,**
  - 2.1 Tie's letter (ref: INF CORR 5526) of 13 July 2010.
  - 2.2 Tie's letter (ref: INF CORR 5464/RB) of 30 June 2010.
  - 2.3 In the context of the audit on management of the design, the following documents showing tie's request for such facilities:
    - 2.3.1 Note of Minutes, with relevant highlighted passage, from audit meeting at 14 June 2010;
    - 2.3.2 E-mail from Bob Bell to Stefan Rotthaus on 17 June 2010 at 14:31; and
    - 2.3.3 E-mail from Bob Bell to Stefan Rotthaus on 24 June 2010 at 14:41.
  - 2.4 Infraco letter (ref: ETN (BSC) TIE\$Q&ABC#051041) of 5 July 2010.
3. **With reference to the notice served in respect of "Clause 60" on 16 August 2010,**
  - 3.1 The evidence relied upon which supports the conclusion that:
    - 3.1.1 The Infraco has not applied measures to limit the over-run to the Programme; and
    - 3.1.2 The Infraco has wrongly assumed that ' Designated Work Area' means a full intermediate section of the Infraco Works.
  - 3.2 Tie's letters dated 15 March 2010 (ref: INF CORR 4426), 1 April 2010 (ref: INF CORR 4648), 20 May 2010 (ref: INF CORR 5092), 2 July 2010 (ref: INF CORR 5549/MJ) and 16 July 2010 (ref: INF CORR 5632/MJ).
4. **With reference to the notice served in respect of the Bilfinger Berger/SDS Minute of Agreement,**
  - 4.1 The Minutes from the audit meeting of 14 June 2010, with the highlighted passage, in which tie sought confirmation that no amended or additional agreement had been entered into between the Infraco and the SDS provider.
  - 4.2 In addition please provide:
    - 4.2.1 E-mail from R Bell to B Ochoa of Bilfinger Berger ("BB") on 14 June 2010 at 16.36;
    - 4.2.2 E-mail from R Bell to S Rotthaus of BB on 16 June 2010 at 15:39;
    - 4.2.3 Note of Minutes from General Issues Meeting on 21 June 2010;
    - 4.2.4 Note of Minutes from General Issues Meeting on 28 June 2010;

- 4.2.5 Letter from tie to Infraco (ref: INF CORR 5464/RB) on 30 June 2010;
- 4.2.6 Letter from tie to Infraco (ref: INF CORR 5526) on 13 July 2010; and
- 4.2.7 Letter from DLA Piper to Infraco on 5 August 2010. (no reference provided in Notice).

**5. With reference to the notice served in terms of the design for the trackworks:**

- 5.1 The expert reports or other evidence which supports the claim that Infraco fell below the reasonable level of professional skill care and diligence in the design of the trackworks.
- 5.2 Letter from tie to Infraco (ref: INF CORR 5860) on 2 September 2010.
- 5.3 E-mail exchanges listed between Steven Bell and Miguel Berrozpe, entitled 'Design Assurance', dated from 2 July 2010 until 5 July 2010, and between Anthony Rush and Miguel Berrozpe, entitled 'Trackform Workshop', dated 11 August 2010 and 30 August 2010.
- 5.4 Letter from Infraco to the SDS Provider (ref 25.1.201.CBr.2707) dated 28 May 2010.
- 5.5 The Nichols Audit Report dated 1 March 2010 and the subsequent letter to Infraco enclosing this report (ref: INF CORR 4510/RB) dated 10 March 2010.
- 5.6 Letter from Infraco (ref: 25.1.201/Bdo/5937) of June 2010.
- 5.7 Letters from tie to Infraco, (ref: INF CORR 4736, INF CORR 5133, INF CORR 5346 and INF CORR 5400) dated 8 April, 24 May, 15 and 18 June 2010.
- 5.8 Evidence of Infraco's failure to attend workshop, 'Trackform Workshop', dated 11 August 2010.

**6. With reference to the notice in terms of failure to progress Demolition Works at Plots 97 and 102 Russell Road,**

- 6.1 Any opinion or report received which concludes that the length of time taken to provide an Estimate in respect of the design element to gain a Building Warrant for these works, fell short of the standard required in clause 7.2 of the Contract.

**7. With reference to the notice in terms of Clause 80- Tie Change.**

- 7.1 Copies of the original Estimates provided by Infraco for INTC and the subsequent issued tie Change Orders in their respect which show a value of 53% less than the value of the Estimate originally submitted.
- 7.2 Any further evidence or opinion, which supports the conclusion that the Estimates represent an over-valuation.
- 7.3 Details of the outcomes of the Dispute Resolution Procedures specified.

8. **With reference to the notice in terms of Breaches Evincing Course of Conduct,**
- 8.1 A summary of the evidence that supports the conclusion that the Infraco failed to provide adequately qualified superintendence and its direct causation of the alleged defects on Princes Street.
- 8.2 A summary of the evidence that supports the statement that Infraco operate as a 'dysfunctional consortium'.
- 8.3 Any opinion or reports that support the view that the 'design is often of poor quality, does not comply with the Employer's Requirements and is not fit for purpose'. Further, that shows that Infraco's actions fell below what a 'properly qualified and competent professional' would have delivered.
- 8.4 Documentation detailing Infraco engaging with the media without the approval of tie, and further misrepresenting information that discredits tie and undermines the Project.
9. **With reference to the notice in terms of failure to manage design at Gogarburn retaining wall W14C and W14D**
- 9.1 Any expert reports or other evidence that supports the contention that the failure to complete the prescribed works fell below the reasonable standard expected.
- 9.2 Any report or advice received that supports the contention that the lack of progress on these works has made it impossible to commission the Edinburgh Tram Network.

18 October 2010