

---

**From:** Anthony Rush [rush\_aj@██████████]  
**Sent:** 10 August 2010 19:16  
**To:** Fitchie, Andrew  
**Cc:** david\_mackay@██████████; Richard Jeffrey; Jim Molyneux  
**Subject:** Carlisle.

Andrew

First the positive news – the Carlisle Team have had good day, we are slightly ahead of our programme despite Jim and me spending three hours “ducking and weaving” with Michael Flynn and Ed Kitzman (Ed had left Jack Daniels at the flat). I will give you a distilled report rather than a verbatim minute.

They were trying to get an idea of what our response would be and when it would be. I told them it would be professionally prepared and we had a programme to have it complete in two weeks. By complete I meant in a position to present it to tie and to Ed before putting it in writing. I expect to have it substantially drafted by this week-end, subject to us not being distracted by events.

I made the point strongly how important the track-workshop was tomorrow. Flynn responded by saying that they didn't have resources to attend because they were all engaged responding to our RTN's. I made it clear that I took this as a threat because I couldn't believe that companies the size of BB, Siemens and SDS would be so short of resources to respond to two RTN's which were the subject of admitted breaches and which they had undertook to give us in any case.

After going round the houses they do not want to agree a best value design for the trackwork because they fear that we will use it to not pay them for PSSA. I said that we weren't going to pay them for what they ask on PSSA and that resolving the design issues made no difference.

They want us to revise the Employer's Requirements to accommodate the DMRB Solution. I said it didn't need revising because that is the Employer's Requirement. The issues are we have is that we partook in workshops which didn't deal with it as a DMRB design (the standard design for highways determined by the DpT and the Scottish Government). Moreover we need a designer to assure the design to satisfy the ICP.

Flynn then got battered over the head for implying that I had come to my opinion on Preliminaries artificially to favour tie's position and that we hadn't done what the Chairman had agreed on PSSA Costs. I made it very clear that the latter had been stopped by Foerder and that I resented the former.

Despite all of this they thought it a good idea to suggest that we should be involving them in our review. I said I had a number of reasons for not doing so. Firstly, the Proposal departed from the form that EK and I had agreed – so it required us to re-evaluate and advise stakeholders. Secondly, whilst Jim had been able to get transparency from BB, the Siemens and CAF parts are a problem. Thirdly, I wasn't really interested in having a running negotiation unless it was with a person or persons who could commit Infraco. I explained that I took Infraco's behaviour and letter to confirm that EK is just what they say a “point of contact”. We don't think we have met the man or men who will make the decisions. They tried to persuade me that it would be Kitzman and Flynn with powers of attorney.

The RTN's and UWN have rattled them. I told them they should have more “savvy” and that I was preparing more – my parting shot to Jim as we were all taking our leave of each other was “was it five I had drafted today?”.

A number of times Michael made the “I think we are getting nowhere” comment and I merely said that it didn't influence me at all what he thought. I did attempt to split them by being soft on EK and hard on MF – something of a reversal from RW and MF.

Finally, just for Richard, they were canvassing strongly for termination at Haymarket. My response was I wouldn't say no – but they should make us a “cash-offer”.

CEC00216187\_0001

They just don't want to do the On-street works. But, Siemens have the material bought and I think big problems with BAM.

Please let them dangle on this one tomorrow – I am sure they will raise it – and it's as we said at the outset, a valuable negotiating point.

I will be in DLA Piper's Glasgow Office from 9.30in the morning – leaving BoW at 845 tomorrow if you require any explanation – home all of this evening.

Tony

This message is confidential and may contain privileged information. If you are not the addressee (or responsible for delivery of the message to the addressee) any disclosure, reproduction, copying, distribution or use of this communication is strictly prohibited. If you have received this email in error, please notify the sender immediately and then delete it. No liability is accepted for any harm that may be caused to your systems or data by this message or attachments. It is your responsibility to scan for viruses.

BoW Tel [REDACTED]  
Mobile 0 [REDACTED]  
email [rush.aj@dlapiper.com](mailto:rush.aj@dlapiper.com) [REDACTED]