



Pinsent Masons

BY FAX AND POST

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EH1 2AA

Your ref: AF/CDV/310299/15  
Our Ref 1.1.

FAX: [REDACTED]

26 April 2010

WITHOUT PREJUDICE

Dear Sirs

#### EDINBURGH TRAM PROJECT

We have been instructed by our clients, Bilfinger Berger Civil UK Limited to respond on their behalf to your letter of 19 April 2010 addressed to Richard Walker in his capacity as Chairman of the consortium board.

In that letter you state that you have advised your clients (the Limited) that the comments in our client's 1 April 2010 letter to Tom Aitchison were defamatory. You make other general unsubstantiated allegations of breach of contractual obligations as a result of the publication of the 1 April letter together with a specific reference to a "direct breach" of obligations under Clause 7.3.16 of the Infraco Contract.

We are instructed to advise you of our client's position on these issues which is set out below.

- **Allegation of defamatory comments.**

The comments made in the letter of 1 April 2010 were all based on facts relating to the procurement of the Edinburgh Tram Project by the Limited which are true and accurate. They represent the honestly held opinion of our clients in relation to such facts and concern matters of public interest. Our clients had every right to make such comments and to record them in the letter addressed to Tom Aitchison in his capacity as Chief Executive of The City of Edinburgh Council. Given the current status of the Project, (as evidenced by your letter), our clients believe they were acting in the public's best interests in bringing the matters set out in the letter to Mr Aitchison's attention.

In any event, as a wholly owned company of The City of Edinburgh Council which, as you say, is subject to Public Law, the Limited has no title to sue for defamation, the courts having held that defamation actions in such circumstances are contrary to the public interest.

Our clients do not and will not withdraw any of the comments made in its letter and will not make any proposals "to make amends or expunge" any alleged damage to your client as a result of the letter. Apart from anything else, our clients are not aware of any damage caused to the Limited's reputation as a result of the letter to Mr Aitchison.

Pinsent Masons LLP

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Our clients will strongly defend any legal action taken by your clients in relation to the content of the 1 April 2010 letter, including leading all evidence which may be required to establish the truth of the facts set out in the letter and the reasonableness of the comments in relation thereto.

- **Breach of contract.**

We can only deal with the specific references to breach of Clause 7.3.16 in your letter, all other references to breach of contract being unsubstantiated and vague.

Clause 7.3.16 is concerned with the execution of the Infraco Works. This clause is not relevant to the content of a letter between Infraco and the Limited's sole shareholder.

- **Facts**

You make various comments about the issues set out in our client's letter which we have not been instructed to respond to. Our clients see little point in rehearsing arguments and positions which have already been set out ad nauseam in previous correspondence.

Yours faithfully



Pinsent Masons LLP