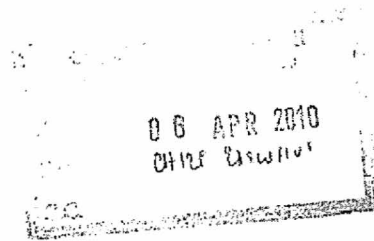


Our ref: 25.1.201/RWa/5226  
Your ref: ceo\trams\bbresp01

1<sup>st</sup> April 2010

**Mr Tom Aitchison**  
Chief Executive  
The City of Edinburgh Council  
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EH8 8BG



Bilfinger Berger–Siemens– CAF  
Consortium

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Dear Sir,

**Edinburgh Tram Network Project**

Thank you for your letter of 24<sup>th</sup> March 21010 where I note you have agreed with Richard Jeffrey – CEO tie – that he will respond directly to me in respect of the detailed issues I raised with you and the Councillors.

Whilst I accept that any detailed responses you wish to make will be dealt with by Richard Jeffrey I believe that you, as Chief Executive of the Council, need to respond directly in respect of the assurances sought from the Council, as security provider, that it has access to sufficient funding to meet tie's contractual commitments on the project given the current delays and likely additional costs arising from the Adjudication rulings.

The City of Edinburgh Council will ultimately be held responsible by the people of Edinburgh for any delay and cost over-run in the delivery of the Edinburgh Tram Project. The existence of tie, as the Council's arms length company, will not insulate the Council from criticism. This is no doubt clear to you already and, of course, the existence of the guarantee will leave the Council directly responsible for the financial consequences.

It remains my hope, despite the contents of your letter, that the Council will recognise this reality and intervene now, whilst opportunity remains, to urge a sensible way forward. Some of the challenges facing the project which remain in full effect are as follows:

- **Nearly all on-street sections of the project remain obstructed in some way by incomplete utilities.** Though recent statements made in the media would suggest that 98% of the utilities have been completed, it is common knowledge that final cabling and connections will not be complete until November 2010 (some 90 weeks late.);
- **Almost all of the on-street sections are subject to changes in scope** and to date, tie has failed to administer the terms of the contract correctly or timeously: an allegation supported by the results of recent adjudications;
- **Much of the off-street sections are also subject to changes in scope**, and again, to date, tie has failed to administer the terms of the contract correctly or timeously;

Amidst these challenges, the strategy now adopted by tie has been described as 'ensuring adherence to the contract', but it amounts to little more than deliberate frustration. For example:

- **Non agreement of Programme.** A process involving multiple stages of joint analysis by both tie and the consortium, designed to develop a realistic and operable programme for the monitoring of the works was undertaken (Revision 2). Despite programmers from both sides having spent many months meeting and agreeing the likely delays and ways of mitigating them, tie unilaterally abandoned this process in August 2009;
- **The On-street Supplemental Agreement** was a jointly proposed strategy to overcome the consequences of the grossly-delayed Utilities and Changed Works in the on-street areas, and was principally identical to the Princes Street Supplemental Agreement which facilitated the successful completion of Princes Street. Without just cause, tie has recently, unilaterally, abandoned this proposal after months of negotiation;
- **The Revision 3 Programme** was a proposed extra-contractual process involving multiple stages of joint analysis by both parties similar to the Revision 2 Programme exercise. Despite tie's unjustified abandonment of that process in August 2009, the consortium agreed once again to participate, and programmers from both sides having spent many more months meeting and agreeing the baselines, likely delays and ways of mitigating them, Again, tie unilaterally abandoned this process in February;
- **A tactic of bureaucratic time-wasting** seems to have been adopted whereby a deluge of correspondence is now being sent which requires response by those resources which might otherwise be used to progress the works. Furthermore, tie have also instigated in excess of 14 audits during which information has been requested that was already in tie's position, and in some cases generated by tie itself;
- **A continued refusal to properly acknowledge any entitlements arising from the delayed utility works** remains in effect by tie despite very public acknowledgement of tie's responsibility for those works;
- **A refusal on spurious grounds to allow Infraco to work in the Haymarket area** notwithstanding the allowance of working in other areas (eg. Tower Place Bridge) in contravention of the grounds upon which Haymarket is denied.;
- **A purported 'instruction' to immediately progress work on all disputed changes which is not valid under the Contract** (including changes which are no longer in dispute or where the scope of the change is not agreed).

I must register concern that such behaviour by tie is simply not consistent with that of an organisation wishing to progress the project in an efficient manner or act in the best interest of the City of Edinburgh. In fact it would appear that such behaviours are more consistent with an organisation wishing to substantially frustrate the process.

The current tie strategy will only serve to increase both parties' legal fees and consume management time, whilst completely failing to progress the works. The chance to address the challenges of this project is diminishing as time progresses. I urge you to reconsider the Council's approach.

Finally, I would like to assure you of our continual commitment to deliver the Edinburgh Tram Network Project in accordance with the terms and conditions of the Contract we have entered.



R J Walker

Chairman – Infraco Consortium Board