

---

**From:** Alan Coyle  
**Sent:** 20 April 2010 09:23  
**To:** Hugh Dunn; Ailie Wilson  
**Subject:** FW: Edinburgh Trams- STRICTLY PRIVATE AND CONFIDENTIAL

fyi

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8 8BG | [alan.coyle@edinburgh.gov.uk](mailto:alan.coyle@edinburgh.gov.uk) | Phone 0131 [REDACTED] Mobile [REDACTED]

---

**From:** Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]  
**Sent:** 19 April 2010 14:21  
**To:** Donald McGougan; Dave Anderson; Marshall Poulton; Alan Coyle; Nick Smith  
**Subject:** FW: Edinburgh Trams- STRICTLY PRIVATE AND CONFIDENTIAL

Dear all, please see note just sent to Council Leaders.

R

---

**From:** Richard Jeffrey  
**Sent:** 19 April 2010 14:19  
**To:** 'Jenny Dawe'; Iain Whyte; 'steve.cardownie@edinburgh.gov.uk'; 'steve.burgess@edinburgh.gov.uk'; 'andrew.burns@edinburgh.gov.uk'  
**Subject:** Edinburgh Trams- STRICTLY PRIVATE AND CONFIDENTIAL

Dear Jenny, Andrew, Ian, Steve C, Steve B

I have been at **tie** for very nearly a year now, and as such this provides me with a natural point to review progress over the last 12 months.

I remain optimistic about the case for trams and the benefits of the tram system to the City. I am extremely grateful for the understanding and patience (as well as personal support) that you have collectively shown me and the team during this time and for that I thank you.

However, I do not share the same optimism about the relationship with the contractor and progress of the construction works. If anything my view of their performance and my resolve to protect the City has hardened. Progress on the current construction phase is way behind that which we had all expected and hoped for because the contractor is refusing to get on with the works in an attempt to coerce us into agreeing to change the form of contract onto a 'cost plus' contract as demonstrated by their recent proposal to extend that type of arrangement across the rest of the city, the result of which would be a project which does not offer best value for money and would most likely put **tie** in breach of procurement law.

Over the last year we have tried numerous and exhaustive approaches to overcome the difficulties in the relationship with the contractor to break the deadlock. These have included varying the contract through a specific agreement relating to the work on Princes Street, meeting variously with different levels of senior management within the consortium, offering an extension of time to the programme despite there being no fully justified submission from the consortium, formal and informal mediation and generally applying a constructive approach. We have done this at both a project management level and a more senior level.

Disappointingly we have consistently met a resounding lack of reciprocal attitude, and, since the end of 2009 (Nov), and with the full support of the Board, we have adopted a more robust and assertive contractual strategy. Throughout this time (as recently as last week), we have still offered constructive and regular approaches to break the deadlock.

Instead of responding positively to any of these different ways to re-establish a productive working relationship, Bilfinger Berger (I need to distinguish here because, within the constraints of their role as junior partners within the consortium, Siemens have, in the main, responded positively) have continued with the strategy of holding the city to ransom. They have used every opportunity to deny that there is work that can be productively undertaken and to refuse to take responsibility for their own failings, for example in the management of the design or the appointment of subcontractors.

In addition it is now clear that BB are employing consultants to actively undermine both the credibility of tie, and potentially the Council and the tireless efforts (to say nothing of the time and money invested) in seeking a resolution and a means to progress the works. They appear to be more and more blatantly seeking to damage the reputation of tie, the project, and of the City.

The consortium has recently written an intentionally derogatory letter to CEC about tie, and continue with some very transparent briefings against tie. This is not a situation that any of us can tolerate. Not only is this behaviour in direct breach of their contract, it is also disingenuous and completely ignores the real issues.

In summary and for absolute clarity the real issues are;

- There is a disagreement over what is or is not included in the original 'fixed price' contract. We have always accepted that the certain things are legitimate extras, that is why we have already agreed over £16m of extra payments. We do not agree that BB are entitled to all the things they are claiming for. Whatever the disagreement, there is a clear and conventional process under the contract for reaching a conclusion on this issue. Some of these issues have been decided at adjudication, which BB are claiming tie have 'lost'. It is true that we did not get all the results at adjudication we would have liked, however it is also true that the results do not support BB's extreme view of their entitlements either. I would like to be able to fully brief you on these adjudications, but they are confidential under the contract and to do so would put tie in breach of contract. They have been discussed appropriately with CEC officers and with the Board, who have also considered the legal advice relating to these adjudications. You may be interested to note that our advice is that, BB's argument, whilst superficially attractive is in fact wrong. It should also be noted that it is a breach of contract for anyone representing the consortium to share the details of these adjudications with anyone outside the contract.
- BB have been delayed by the utility works. tie agree this and have already awarded an Extension of Time and associated costs despite the fact that BB have submitted no proper justification as required under the contract. BSC may believe they are entitled to a further Extension of Time and we have said we will assess this as and when they submit justification. Again the contract allows for this process and the resolution of any disagreements about any awards.
- The biggest issue, the one which is having the biggest impact on the project and will ultimately have the biggest cost associated is the lack of progress. BB have adopted an approach, which we, our legal advisers and our QC think is fundamentally wrong. BB's approach is to not progress any works where there is a change or an alleged change until that change is agreed on their terms. Through our robust process of challenge their estimates for these changes have been exposed as being inflated, and after significant effort and expense on our part have, on average, been agreed at just 60% of their original claims.

This behaviour is consistent with what appears to be a corporate strategy of holding the city to ransom, seeking to extract maximum financial advantage without due regard for their contractual obligations. We have recently issued a direct instruction under the contract for BB to progress the works which they are now refusing to action (arguing that the instruction is not valid, which of course we think it is). The point here is not whether or not our instruction is valid, it is what is the purpose of their tactic? Delaying the works does not entitle them to any more money, and progressing the works does not prejudice their rights to payment. When I challenge them on this their answer is that they believe the City does not have enough money to complete the project and they will end up doing work for which they will not be paid. ("we are not going to let you do to us what you did to Carillion"). I and my team can see no justifiable reason (accepting that in some areas they are delayed by the utility works) why they do not progress the works wherever and whenever they can.

At a meeting on Wednesday last week BB re-confirmed their approach not to progress works until we have agreed up front the value of any changes or alleged changes. This is despite the fact that in many cases estimates have not yet been submitted, or where they have been submitted they are not complete or contain no justification, all against a background of being inflated by, on average, a factor of 67%. In a very recent development they are now saying that they cannot progress until we pay them £15m which they allege they are entitled to for work that they have done but that we have not paid them for. We are aware of this, even though they have not formally raised any such issue with us under the contract, and we are clear that this is money that they are not entitled to, or have not demonstrated an entitlement to. Again, there are formal processes under the contract to determine what is their fair entitlement to payment.

In our duty to secure best value for public money expended (an obligation **tie** has under the operating agreement with CEC), and with the inevitable scrutiny that will accompany this project, we cannot and will not simply hand over public money with no justification in order to buy progress, which again, for absolute clarity, we have already paid for. I can assure you that we have taken full advice from leading law firms DLA Piper and McGrigors, and from leading Counsel, and are acting with the full knowledge of, and support of the Board, and in due course I expect that our actions will fully stand up to any third party scrutiny.

I am deeply unhappy about the inconvenience BB's approach causes the City of Edinburgh but I am sure that whatever your views on the project you agree that we cannot allow the city to be held to ransom.

As the delivery arm of CEC and a wholly owned subsidiary of CEC, tie has one objective, - to deliver the Edinburgh tram project at best value to the City. This contract was awarded as an entire contract under public procurement rules to achieve that aim. Given the tactics now being adopted by BB, their derogatory statements and their continued breaches of contract (all of which may be subject to future legal proceedings) I would be grateful if you would be prepared to let me have any details of any thing said or sent to you by BB or their representatives, and your interpretation of their motives in passing such information to you, as this may become important in future legal proceedings. Clearly I do not need details of anything you say to them, that is your business.

Once again, let me reassure you of the absolute commitment I and my team have to progress this project and to do so at Best Value for the City. Thank you again for your support.

I am happy to discuss any aspect of the project or the content of this e-mail.

**Richard Jeffrey**  
*Chief Executive*

**Edinburgh Trams**  
*Citypoint*  
*65 Haymarket Terrace*

Edinburgh  
EH12 5HD

Tel: (+44) (0)131 [REDACTED]  
Email: richard.jeffrey@tie.ltd.uk

Find us online (click below):

