

DRAFT LETTER TO Nick Flew – Managing Director PB from AJR on ET paper

STRICTLY PRIVATE & CONFIDENTIAL

Dear Mr. Flew,

Your Mr. Peter Banks gave me your name as Managing Director of Parsons Brinkerhoff so that I could write to you on a matter which I feel you would wish to be informed of and assist with. I write in my capacity of Senior Advisor to **tie** Limited and with their authority.

Parson's Brinkerhoff have been engaged by **tie** Limited as the designer for the new Edinburgh Tram Network since 2005 and you were novated to the Infraco Consortium in May 2008. The Consortium consists of three parties; Bilfinger Berger (UK) Limited (Civil Engineering Works), Siemens PLC (E&M and track work) and CAF A/S (supply of trams). Each Consortium Member is jointly and severally bound under a bespoke Contract and Siemens assumed responsibility for the design of their works at the time the Contract commenced in May 2008 – we understand that under the Consortium Agreement they are charged with integrating the design.

Progress on the Contract has been extremely disappointing. Amongst other causes of delay are delays to diversion of utilities (**tie**'s responsibility) and delay to completing an integrated design (the Consortium's responsibility). The delay caused by the utility diversions is not denied by **tie** and they have offered to extend the Contract duration in the absence of a fully detailed claim from the Contractor. However, the design is still incomplete. A critical part of the Works which is not designed being the On-street track. The attached abstract from **tie**'s letter to the Consortium shows the extent to which **tie** are prepared to assist the Consortium and you in resolving this issue.

As the Consortium has not offered any explanation for the substantial delay in completing the design, we are minded that they may be concerned that they believe that you can defend any claim against you for late delivery because of defaults by the Consortium, or a Consortium Member. This may have led to an agreement between you and the Consortium, or a Consortium Member to work together to mitigate the impact on the Consortium, or a Consortium Member. In the circumstances where the delay is so acute **tie** would expect there to be some such agreement subject to it being referred to them for approval pursuant to Clause 11.5. If such an agreement exists it hasn't been approved by **tie**.

My role at this juncture is to consider options open to **tie**. Options will include Termination of the Contract with the Consortium or an arrangement whereby responsibility for constructing the On-street trackworks is removed from that Contract. Both would need your agreement to some extent and sadly I imagine you may consider either to be preferable to continuing as we are.

I would assure you that **tie**'s Chairman has written to the Chief Executive Officers of all three Consortium Members expressing **tie**'s hope that a solution, which is collaborative and in the spirit of open mutual cooperation, can be found. However, in the meantime we cannot let the search for a solution cause further delay to the project. I am authorised therefore to meet with you (at your convenience) to discuss how you may assist with:

Firstly, expediting the completion of the design.

Secondly, what it is you may do to assist with reaching a decision on the options open to **tie**.

I look forward to hearing from you soon on this urgent and important matter.

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Yours sincerely,

Anthony Rush

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