



FAO Mr Colin Brady
Bilfinger Berger – Siemens – CAF Consortium
Lochside House
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Our Ref: INF CORR 150

Date: 15 September 2008

Dear Sirs,

**Edinburgh Tram Network – Infraco
Outfall Consent from Scottish Water**

We refer to your letter of 8 September (25.1.201/SR/457). There are both contractual and practical issues to deal with in relation to the current situation with Scottish Water.

Contractual issues

It is categorically not the case that **tie** has failed to progress the procurement of drainage outfall consent from Scottish Water. The definition of "Design Stage Consent" in Schedule Part 1 to the Infraco Contract includes consents for Water and Wastewater Connections from Scottish Water. The obligation to secure these consents therefore lies with Infraco under Clause 19.3 of the Infraco Contract.

It is categorically not the case that consents have been subject to delay arising from unresolved issues between **tie** and Scottish Water. This has been demonstrated to Infraco and SDS by **tie**.

tie acknowledges that under Clause 19.4 of the Infraco Contract it has an obligation to "provide all reasonable assistance to the Infraco and the Infraco Parties in obtaining Consents for which the Infraco and/or the Infraco Parties are responsible".

tie has supported BSC and SDS in their efforts to secure the necessary outfall consents and has made repeated representations to Scottish Water including direct contact from our Chairman to Scottish Water's Chairman. A timeline of relevant correspondence and contact appears below.

From that timeline it is apparent that:

- no application for consent was made before signature of the Infraco Contract and the novation of SDS to Infraco on 14 May 2008
- **tie** has supported Infraco and SDS throughout that period
- on the two occasions that Infraco and/or SDS has suggested that the process was being delayed by **tie**, **tie** investigated promptly and established from Business Stream and Scottish Water that this was not so
- Infraco has not been closely involved in the management of this process

Your letter seeks an extension of time and relief from performance of your obligations. Clause 19.5.2 allows that failure to obtain a Design Stage Consent shall be a Compensation Event provided that the conditions in Clause 19.6 are met.

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Clause 19.6.2 requires the Infraco to take “all reasonable steps to manage the SDS Provider to ensure the SDS Provider obtains or renews the Design Stage Consents...” From May to August **tie** saw no evidence that Infraco took any effective steps to meet this obligation. Indeed the BSC representative persistently failed to attend the Approvals Task Force where Scottish Water consents were discussed and did not respond to the issues raised in the minutes of those meetings that were sent to Infraco.

Timeline

27 May	BSC letter to tie suggesting that tie needed to enter a contract with its chosen Licensed Provider
28 May	tie made initial contact with Business Stream to establish what contractual arrangements, if any, would be needed
29 May	SDS submitted system wide application to Business Stream for outfall consent
30 May	Business Stream confirmed that it would start consideration of the application in the absence of a contract and that contractual issues would not delay the applications
3 June	Business Stream forwarded application to Scottish Water
4 June	Business Stream confirmed that no contract was required between tie and Business Stream for the outfall consents to be considered
6 June	tie informed SDS and BSC (David Taylor) that Business Stream had agreed that no contract was required
June & July	Frequent calls from tie (Jim McEwan and Damian Sharp) to Business Stream and Scottish Water to try to get applications moving forward
16 July	SDS suggested at Infraco progress meeting that consents were being delayed by a dispute between Scottish Water and City of Edinburgh Council
17 July	tie Chairman e-mailed Ronnie Mercer (Chairman of Scottish Water) raising concerns that consents were being delayed by the unrelated dispute between CEC and Scottish Water and proposing a way forward to allow applications to be considered
21 July	Scottish Water confirmed that it was not correct that consents were being delayed by any dispute with CEC
21 July	Damian Sharp confirmed at the Approvals Task Force meeting that there was no dispute holding up the consents applications. BSC did not attend that meeting but received a copy of the minutes confirming this point
25 July	Mia Otzen of Atkins contacted SDS on Scottish Water's behalf to request further information in relation to the applications. SDS supplied copies of the original application to Ms Otzen.
29 July	Further contact from Mia Otzen to SDS but without any comment on the actual applications
1 August	tie raised progress with Scottish Water at senior levels and advised SDS to continue to press for progress with Scottish Water and Business Stream also.
5 August	tie provided contact details to SDS for the appropriate people in Scottish Water to allow SDS to arrange meetings to discuss the applications
August	SDS made attempts to secure meeting with Scottish Water finally managing to set up the 1 September meeting

Throughout this timeline **tie** has supported Infraco and SDS fully and made significant efforts to unblock consideration of the applications. This has not been matched by a similar level of effort by BSC.

In summary, **tie** is clear that it has met its obligations to support Infraco and SDS in securing the Scottish Water consents but has not seen evidence that Infraco has met its obligations in relation to these Design Stage Consents.

Practical issues

It is important that we do not allow the contractual issues above to get in the way of finding ways to minimise the impact of the problems SDS has faced in securing drainage outfall consents.

We need to see proposals from BSC to mitigate the impact to the greatest extent. As a first step it was agreed to submit the outfall consent applications to Scottish Water in the order that best fits the BSC construction programme. Timescales for delivery of the first 3 packages were agreed at the meeting. We welcome this pragmatic approach.

It was also agreed that BSC would provide further guidance to SDS about the order and timing of future packages for approval. We understand that this has not yet been forthcoming and look forward to its urgent delivery.

We can assure you that **tie** will continue to support Infracore and SDS in securing these consents and will do all it can to ensure the applications are considered promptly by Scottish Water.

Yours faithfully,



Steven Bell

Project Director – Edinburgh Tram