

Document Transmittal

Project: Edinburgh Tram Network Infraco
Transmittal No: 3249
03.02.2010
Addressee: ATTN: RICHARD JEFFREY, TIE LTD.


Dear Sir / Madam,
 Please find attached the documents listed below which are forwarded to you for your action / information as appropriate.
 Please confirm receipt of the documents indicated by signing and returning a copy of this transmittal to the sender.

 Transmittal Issued by:
 Richard Walker

 Signature: *R Walker*

Originators Drawing/Document No.	Rev/ Date	Status	Document Title	Copies	Reason for Issue	Response Required by
RJW/RJ03022010	03.02.2010		RESPONSE TO LETTER	1	For info	

Note: Failure to respond by the date stated will be construed as meaning "no comments "or drawing approved" as appropriate, unless otherwise stated in writing.

Reason for Issue Codes		Acknowledgement of Receipt	
Drawing Status Codes A - Approved B - Approved Subject to Comments C - Not Approved D - Issued F - No Comment	Action Codes 1 - For Construction 2 - For Comment 3 - For Approval 4 - For Design 5 - For Information 6 - Revise And Resubmit 7 - Refer To Covering Letter 8 - Return To Originator 9 - As Built	Name: JULIE THOMPSON	Title: PA TO RJ
		Signature:	
		Date:	3/2/10

Our ref: RJV/RJ03022010

03 February 2010

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**Bilfinger Berger-Siemens- CAF
Consortium**

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For the attention of Richard Jeffrey - CEO

Dear Richard,

This letter is in response to your letter dated 19 January 2010 to Mr Darcy of Bilfinger Berger and so, correspondingly, is without prejudice.

Before dealing with the material content of your letter, you refer early on to an aspect bearing on communication channels for correspondence. In that vein, we respectfully request that future letters from tie's senior management, that are not correspondence between our respective Project Directors, be directed to the Chairman of the Infraco Consortium Board. This channel will correspondingly be followed by the Infraco Consortium Board.

We refute certain aspects you have brought forward in your letter and respond as follows:

- Infraco has fully discharged its obligation to take all reasonable steps to mitigate the substantial delays to the progress of the Infraco Works, notwithstanding that such delays are the responsibility of tie under the Contract; in particular the delay, which you refer to, caused by the MUDFA works. Infraco produced a fully mitigated programme (Revision 2) taking all known facts into consideration as at 31 March 2009. There was no agreement reached on this fully mitigated programme and in November 2009 we mutually agreed to jointly develop a mitigated programme (Revision 3) taking all known facts into consideration as at 31 October 2009 and thereafter identify possible acceleration measures.

The offer to grant 9 months extension of time to the Programme (Revision 1) on all Sections, and to pay 6 months of prolongation costs, was a mutually agreed interim arrangement. As part of this, on 2 November 2009 we agreed to suspend progressing the dispute we lodged based on non agreement of the impact of the MUDFA Rev 8 programme delays up to 31 March 2009. What we agreed was to jointly work through the process described on the attachment to tie's letter dated 13 November 2009 and complete this exercise by 31 January 2010.

- Infraco has not suspended parts of the works without due cause in order not to prejudice its entitlement. The Contract, under clause 80, does not permit Infraco to commence work in respect of a tie Change (including Notified Departures) until instructed through receipt of a tie Change Order or instruction after the Change has been referred to DRP.
- Infraco has never argued that all changes from BDDI to IFC are Notified Departures. Infraco's position on this issue follows its entitlement as set out in Pricing Assumption 3.4.1 of Schedule Part 4.

This position has been confirmed in all three Adjudications relevant to BDDI to IFC (two being referred by tie and one referred by Infraco). In fact, the Adjudicators found in favour of Infraco in 12 of the 14 issues tie raised on Gogarburn Bridge – S29, 9 of the 12 issues tie raised on Carrick Knowe Bridge – S23 and all the issues disputed by tie in respect of Russell Road Retaining Wall - W4. This does not suggest an irrational operation of Schedule Part 4, merely the protection by Infraco of its contractual entitlements under the Contract.

- The initial payment made to Infraco was for the achievement of a milestone reached – mobilisation - and was not in any shape or form an advance cash payment.

Notwithstanding the above, we had hoped that, following the Adjudicators' decisions on the BDDI to IFC issues put for adjudication, tie would accept to change their view on the apportionment of risk in the Contract. However, tie's referral to dispute of two more similarly-principled issues, and on our understanding with more to come, risks further material delay to the project and further increase costs.

Nevertheless, we remain committed to trying to find, together with tie, realistic and fair solutions to the difficulties both of us face.

Yours faithfully



Richard Walker
Chairman – Infraco Consortium Board

cc Michael Flynn - Infraco Consortium Board (Siemens)
Antonio Campos - Infraco Consortium Board (CAF)