

Tower Bridge Structure
Infraco Notice of tie Change Nr 230

1. Introduction

- 1.1. This dispute concerns the value of the works to Tower Bridge Structure and the delay associated with the issuing of an Estimate.
- 1.2. The Infraco seeks to be reimbursed for all the alleged additional works identified between the BDDI drawings and the IFC drawings whereas tie considers that the Infraco are only entitled to be paid for those items demonstrated as being a Notified Departure or a Specified Exclusion from the Construction Works Price.
- 1.3. The Infraco values the alleged additional works at (£435,519.46 +24.9%)
£543,963.80
- 1.4. Tie's primary position is that the changes to Tower Bridge Structure result from the development of the design from preliminary to construction as when applying the tests of Pricing Assumption 3.4.1 there is no change to the design principle, shape form and or outline specification.
- 1.5. Tie's alternative position that if there is a Mandatory Change, the works to Tower Bridge has reduced. The value of the design changes is a credit value of
£384,466.30
- 1.6. There is a dispute in the primary position of £543,963.80 and in the alternative position is (£543,963.80 + £384,466.30) £928,430.10

2. Dispute

- 2.1. Whether all changes identified between the BDDI drawings and the IFC drawings form part of a Notified Departure and therefore fall to be valued.
- 2.2. Whether Infraco are responsible for the delay associated with the time taken to issue a fully detailed Estimate

3. Background

- 3.1. There are only 3 number relevant BDDI drawings, these are ULE90130-01-BRG-0062 Rev D, 0064 Rev A, and 0065 Rev A.
- 3.2. There are 42 number IFC drawings ULE90130-01-BRG 00081 – 00123.
- 3.3. The IFC drawings were issued on the 8 December 2008

- 3.4. By a letter dated the 11 December 2008 Infraco issued INTC 230 "*as the IFC drawings ...for Tower Bridge differ to a greater extent and complexity than design development, the foregoing results in a Notified Departure*"
- 3.5. The said INTC requested a reasonable extension of time to the requirement of the 18 business days to provide the Estimate. No extension of time was agreed between the Parties.
- 3.6. On the 28 July 2009 Infraco issued their (incomplete) Estimate based on the re-measurement and valuation of BDDI to IFC drawings. Infraco's valuation of the alleged increase in works scope was £595,358.21
- 3.7. By a letter dated the 4 September 2009, tie assessed the Infraco additional works at a credit valuation of £384,466.30
- 3.8. At a meeting held on the 16 September 2009, Infraco revised their Estimate value to (£435,519.46 +24.9%) £543,963.80, the said re-evaluation was confirmed by Infraco their letter dated 9 October 2009 Ref 25.1.201.SK.3747.
- 3.9. The dispute between the Parties is:
- 3.9.1. In tie's primary position that there is no change £543,963.30
- 3.9.2. In tie secondary position that the changes are measured, to extent that it could be implied that the design changes are outwith normal design development, (£384,466.30 + £543,963.30) £928,429.60

4. Infraco's Position on the Dispute

- 4.1. By a letter dated the 11 December 2008 Infraco issued INTC No 230. The letter states that

"... due to the drawings changes being out with normal design development and completion of design process and therefore and therefore promoting a consequential effect on the Infraco Contract Programme. Unfortunately we are unable to provide an accurate programme assessment and estimate due to the complexity of the changes and incomplete information for adjoining sections.

In accordance with Clause 80.3 of the Infraco Contract we hereby request a reasonable extension of time to the contract requirement of 18 business days to provide an Estimate."

- 4.2. Section 2 of INTC 230 states the reason for the changes as being

"...as the IFC drawings ...for Tower Bridge differ to a greater extent and complexity than design development, the foregoing results in a Notified Departure."

- 4.3. Correspondence was exchanged between the Parties pursuing the issue of the Estimate.
- 4.4. Under cover of Infraco letter dated 28 July 2009, Infraco issued their Estimate at £595,358.231. The letter confirmed that the Estimate was issued for the IFC drawing changes. The Estimate was incomplete. Infraco confirmed that the Estimate made:
 - 4.4.1. No allowance for any delay or disruption to the Programme
 - 4.4.2. No allowance for the storage of the existing beams removed during alterations
 - 4.4.3. No allowance for the concrete or reinforcement to the steel piles
 - 4.4.4. No allowance for changes to ducts when altered by designer to reflect IF-5-SYS-CIV.
 - 4.4.5. No allowance for changes to the OLE plinths when revised to BSC-SPM design
 - 4.4.6. No allowance for earthing and bonding
 - 4.4.7. No allowance for Trackform to bridge deck and run on area
- 4.5. Following tie's opinion of the valuation of INTC 230, provided undercover of a letter dated 4 September 2009, at a credit value of £384,466.30, Infraco prepared a 'Principle Difference' report dated 16 September 2009. The report identifies the areas of dispute as being:
 - 4.5.1. The pricing assumption made by Infraco with regards to the pile lengths; where Infraco say that they only priced for a 10m pile length.
 - 4.5.2. The disagreement over the quantities measured; where Infraco re-quantified their previous submission.
 - 4.5.3. The mechanical joints: where Infraco say is additional as there were no mechanical joints identified in the BDDI drawings.
 - 4.5.4. The tram service voids: where Infraco say is additional as there were no tram joints identified in the BDDI drawings.
 - 4.5.5. The Fencing; where Infraco provide evidence which alleges supports their re-measure quantities.
 - 4.5.6. The piling rates; where Infraco re-adjust their rates to reflect the Schedule Part 4 rates adjusted to reflect the alleged increase in the driven length.

- 4.5.7. The Cofferdam: where Infraco re-adjust their rates to reflect the Schedule Part 4 rates adjusted to reflect the alleged increase in the driven lengths.
- 4.5.8. The demolition works; where Infraco allege that there is an increase in the quantity of demolition
- 4.5.9. The temporary works items: where Infraco say that as a consequence of the alleged additional increased scope of works the hire period for temporary works increase.
- 4.5.10. Ducting: where Infraco say that there is an increase in the number of ducts from the BDDI drawings.
- 4.5.11. Parapet / Barrier Work: where Infraco say that the parapet rates used by tie are the wrong rates selected from Schedule Part 4.

5. Tie Position on the Dispute

- 5.1. By a letter dated the 6 March 2009 tie requested Infraco to justify the changes to Tower Bridge which Infraco considered being outwith normal design. In the said letter tie also notifies Infraco that the Estimate had not been received and that at the 6 March 2009 the Estimate was 52 business days late.
- 5.2. By a letter dated the 18 March 2009 Infraco gave their reasons for the changes which they considered to be outwith normal design. Infraco states that the Estimate would be submitted within 30 business days to tie.
- 5.3. On the 6 June tie informs Infraco that the Estimated is still outstanding, to which Infraco responded to on the 29 June 2009 saying that the *'Estimate is currently with our estimate submission process. We will be in a position to provide our estimate changes to S17 Tower Bridge in 7 working Days'*. By Infraco's calculation the Estimate would be issued on or before the 8 July 2009.
- 5.4. By a letter dated 28 July 2009, Infraco issued their part Estimate. The Estimate was issued 160 days after the issue of INTC 230.
- 5.5. Infraco's states the reasons for the request for an extension of time for the issue of the Estimate as being due to the complexity of the design changes to the programme and the price. The part Estimate issued by Infraco on the 28 July 2009 did not provide the programme impact information and or the full price implications which Infraco sought the extension of time for. In tie's opinion there are no valid reasons for Infraco not having provided the information which they have now provided under the submission of the 28 July 2009 (albeit that tie do not agree with Infraco's valuation of the alleged change) which could not have been issued within the 18 business days of the INTC notice of the 11 December 2008 i.e. on or before the (11 December 2008 plus 18 business days) 12 January 2009. Accordingly tie considers that any delay between the 12 January 2009 and the 28 July 2009 is

Infraco's liability and such liability shall continue until the full information required by an Estimate, in accordance with clause 80 of the Agreement, is provided.

5.6. With regards to the Changes to Tower Bridge, tie has two positions:

5.6.1. On the basis that the changes to BDDI to IFC drawings are simply the result of design development, there is no change to the Contract Works price.

5.6.2. On the basis that a number of changes fall outwith the definition of 'normal design development', the works to the structure reduced.

5.7. With regards to the financial aspects of Infraco's 28 July 2009 submission tie is of the opinion:

5.7.1. With regards to the alleged tender assumption of 10m lengths piles; this is an Infraco internal assessment made by Infraco when tendering. There is no Schedule Part 4 pricing assumption which states that the piles to Tower Bridger are limited to 10m in length. Therefore applying the Pricing Assumption 3.4.1 to the BDDI drawings there is no change in design principle, shape, form or outline specification. The change to the piles is as a result of the design development from preliminary to construction. Accordingly no change in the value to the Construction Works Price.

5.7.2. With regards to the quantities for the concrete, formwork and reinforcement between the BDDI and the IFC there is a change which could be argued to be a Mandatory tie Change on the basis that the change to the bridge is considered to be outwith normal design development. On such a basis, tie considers that the quantities result in a reduction from the BDDI drawings as there is reduction in the scope of works to the substructure end supports and superstructure over the water.

5.7.3. With regards to the Mechanical Joints: the mechanical joints are as a result of the design development from preliminary to construction. Accordingly no change in the value to the Construction Works Price.

5.7.4. With regards to the Tram Service Joints; the tram service joints the design development from preliminary to construction. Accordingly no change in the value to the Construction Works Price.

5.7.5. Fencing: Any increase to the fencing is the design development from preliminary to construction. Accordingly no change in the value to the Construction Works Price.

5.7.6. Pile Rates; this item has two threads a) the reduced number of piles and b) the length the piles are driven. The development of the design reduces the number of piles but increases the length of the piles driven. There is an argument that the number of piles is outwith normal design development and accordingly tie would be due a credit (this goes against the argument at Russell

Rd retaining wall and is dependent upon the adjudication decision as to whether this item is payable or not). With regards to the driven pile rate applied by Infraco the reason for the piles being driven to the depth is simply the development of the design from BDDI to IFC, accordingly no additional payment is due.

- 5.7.7. Cofferdam: Infraco suggests that because there is additional works to the bridge the cofferdam is in place for a longer period of time. Infraco offer no sound evidence to support their argument, accordingly no additional payment is due against this matter.
- 5.7.8. Demolition Works: There is a reduction in the demolition works from DBBI to IFC. This could be argued to be a tie Mandatory tie Change, but more to do with the development of the design from BDDI to IFC.
- 5.7.9. Temporary Works: this item is time related. As the works are reduced in scope there should be a credit against the item and not an addition as sought by Infraco.
- 5.7.10. Ducting: the additional ducting is the development of the design from BDDI to IFC accordingly no additional payment is due against this matter.
- 5.7.11. Parapet / Barrier Work: any additional parapet / barrier works is the development of the design from BDDI to IFC accordingly no additional payment is due against this matter.

6. What tie expect from DRP

- 6.1. To instruct a 80.15 letter to progress the works
- 6.2. That the works are a development of the design
- 6.3. That the scope of works has reduced
- 6.4. That the delay in providing the Estimate is Infraco's liability

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