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Our Ref: DMac/JPT

12th February 2009

Dear Dr Keysberg

It is unfortunate that weather conditions prevented our meeting taking place on Monday 9th February 2009. As I mentioned when we spoke that afternoon, there were, and still are, critical issues which I had wanted to raise with you in person and in the combined presence of our respective management teams.

I have set out in this letter four matters which are at the heart of our serious concerns about the Edinburgh Tram Network Project's progress since contract signature with BSC on 14th May last year.

BSC approach to Estimates

The process to deal with contract variations, valid or otherwise, is clearly set out in the contract and was the subject of prolonged negotiation. Despite this, the key terms of the contract in this area are not being adhered to by the BSC management team in Scotland. It is totally unacceptable that:

1. BSC provides tie with a standard form letter claiming that there is a need to address a contract variation, without support for that assertion and accompanied by a statement that the change is too complex for BSC to be able to submit a properly calculated Estimate;
2. BSC fails to provide the Estimate required by the contract and furthermore fails to provide tie with a reasonable proposal or any proposal at all as to when an Estimate will be provided.

This behaviour means that tie cannot operate the Contract in order to fairly evaluate BSC's entitlement and has difficulty understanding what BSC requires and what tie itself should be reporting to stakeholders. This approach by BSC is leading to a massive and unnecessary backlog of evaluation tasks which will fall to tie when BSC eventually produces competent Estimates. This is not in either party's interests and is not serving what should be our common objective: efficient delivery with a fair attribution of responsibility for cost.

No cogent explanation has been given by BSC as to why this is being allowed to happen and BSC's approach is causing immense frustration and disappointment at **tie**. I have to emphasise that if this is aimed at forcing **tie** to agree ill prepared claims because of time pressure it will certainly not succeed.

An attempt was made by the BSC management two weeks ago to establish a priority listing of outstanding Estimates. Yet no Estimates have been received for the items within the priority list despite several meetings prompted by **tie**, at which the BSC team then stated that the prioritisation was in fact incorrect.

We need a swift and permanent solution to this impasse and I want to make it clear that **tie** will not accept any responsibility whatsoever for delay to programme as a result of BSC failing to provide Estimates in a timely way.

Quality of Estimates

Unfortunately, where Estimates have been submitted by BSC, the quality of the documents has been far below normal professional standards. **tie** has challenged a range of examples of where the content and quality of Estimates submitted by BSC has been very poor or have contained a significant exaggeration of entitlement evident from BSC's own records. **tie** has endeavoured to assist BSC in pointing out improved ways to allow a speedier evaluation but it is not **tie's** function to compensate for BSC's inability to produce competent Estimates. Again, I would make it clear that **tie** will not be held accountable for delay or cost which arise from basic failures for which BSC is responsible.

Project Progress

I am also extremely concerned about the general state of BSC's engagement on the project eight months after contract signature. As examples:

I am informed by my team that:

- BSC does not yet have its key supply chain contractors under formal contract.
- Opportunities for effective construction (particularly along the Rail corridor) are being stalled by an unwillingness to commence until InfraCo Notices of tie Change are agreed
- There is little visible evidence of management of the SDS Provider
- There is little evidence of the demonstration of system integration activities or compliance with the Design Review obligations

I would like your views on how BSC is ensuring that this situation has no affect on programme and BSC's ability to deal with contract variations in particular.

Compliance with basic contractual obligations

In this letter, I have sought to highlight those matters where the approach which BSC is adopting falls short of the express contractual obligations regarding behaviour and what a client could reasonably expect and is indeed entitled to receive on a project of this profile and from a consortium with your international reputation. Among the other detailed obligations, there are simple but explicit responsibilities on BSC to:

- work collaboratively on changes;
- avoid unnecessary disputes;
- manage, minimise and mitigate costs;
- employ competent technical staff;
- maximise construction productivity;
- not hinder **tie** in the performance of its obligations and exercise of its rights.

Regrettably, **tie** considers that these are obligations which BSC are not honouring at this time. I look forward to meeting with you on Tuesday evening next so that these topics and the status of BSC's performance can be discussed openly. Together, we need to endeavour to reconstruct our relationship to assume a more positive and productive way forward, beginning with our meeting. I count on your support.

In the meantime, you will see that I have copied this correspondence to Siemens and CAF as well as our key stakeholders, CEC and Transport Scotland.

You may well consider it appropriate to be accompanied by Senior representatives from Siemens and CAF when we next meet.

Yours sincerely



David Mackay

c.c.

Siemens
CAF
CEC
Transport Scotland