



BILFINGER BERGER
Civil

Mr. David Mackay
CEO tie Ltd.
Citypoint, 65 Haymarket Terrace
Edinburgh, EH12 5HD

Scotland

Bilfinger Berger
Ingenieurbau GmbH
Executive Board
P.O. Box 1509
65005 Wiesbaden
Germany
Gustav-Nachtigal-Strasse 3
65189 Wiesbaden
Germany
Phone: 
Fax: 
jochen.keysberg@bilfinger.de

GF-JK-al
23 February 2009
20090223JKalB0051.doc

Project: Edinburgh Tram Network

Dear David,

Further to your letter dated 12th February 2009 (ref.BMac /JPT) received on 16 February 2009, our meeting on 17th February 2009 and tie letter dated 19th February 2009 (ref.PD CORR 147), I wish to respond, not only to the points raised therein, but also comment on subsequent developments which I fear do not appear to properly reflect the facts. I have asked the project to respond to the more detailed points made in your above letters - it follows that both letters must be read in conjunction with one other constituting the formal response to your letters.

Initially as I made quite clear in our meeting we are not making and indeed never have made any demands for £ 80 million. In fact we gave a range of the likely additional costs being between £50 and £80 million. Likewise that the joint exercise carried out between tie's and Infraco's planner identified an agreed overrun of 16 months to the completion date. These are the facts. I am honestly surprised at tie's reaction to this genuinely intended gesture, since I felt that, as an experienced contractor, bringing these matters to your attention as early as possible would allow your team to take the appropriate action and avoid being confronted with these actual costs and delays at a later time when corrective action was no longer possible. I believe that the citizens of Edinburgh deserve to know what the final cost outcome of the tram project will be.

Turning to the Princes Street area, we are not and have never made it a condition to commencing works that the above mentioned sums be agreed to. Clearly since the sums mentioned above are largely estimated amounts any prior agreement would simply not have been possible. A matter that appears to have been misunderstood is the fact that despite our contractual position, we had offered in subsequent correspondence to commence work in Princes Street under a clause 80.15 instruction.

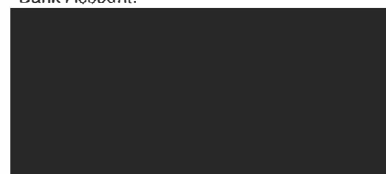
.../2

Corporate Headquarters and
Registered Office: Wiesbaden
District Court Wiesbaden
Register of Companies: HRB 23348

www.civil.bilfinger.com

Executive Board:
Joachim Enenkel, Chairman
Axei Bock
Matti Jäkel
Dr. Jochen Keysberg

Bank Account:



CEC00942804_0001

Page: 2

Another very troubling matter to me is the apparent firm belief by tie that this project is a fixed price contract and that all the risks with respect to time and remuneration are to be borne solely by the contractor. Nothing could be further from the truth. As you know Schedule 4 clearly sets out a long list of areas expressly attributing liability for changes to tie. Current progress on changes is protracted even on simple and straightforward changes (e.g. Russell Road Retaining Wall) and does nothing to reassure me that other entitlements will be recognized without protracted negotiations and subsequent disputes.

I can only reconfirm our commitment to the project but clearly we are bound by the contractual agreement we have made and the rigid change mechanisms therein which tie insisted upon in the negotiation phase. Our current position, contrary to being obstructive, is simply in compliance with those change mechanisms set out in the contract.

Sadly since tie have chosen to trigger the dispute resolution process we have no alternative other than to comply with the contractual procedures therein and let the matter take its course although I am disappointed to learn that our initially agreed proposal for our respective lawyers to meet has been declined. I still believe that this is worthwhile given that the three current issues i.e. design development, the change mechanism and access, still remain unresolved. Clearly with the bulk of the work ahead of us and these issues unresolved it makes sense to deal with them in the coming weeks.

Finally, despite the dispute process being ongoing and the current public awareness through the media we should not allow these events and circumstances to bring about a cessation in contact between us. Therefore if you wish to discuss the above or indeed any other matters, please do not hesitate to contact me.

Yours faithfully

Bilfinger Berger Ingenieurbau GmbH



Dr. Jochen Keysberg



cc: Dr. Scheppendorf, Siemens
Mr. Campos, CAF