

Earthworks Outline

TIE LIMITED

POSITION PAPER

relating to

the agreement between **tie** Limited

and

Bilfinger Berger (UK) Limited / Siemens plc / Construcciones y Auxiliar de Ferrocarriles consortium

in connection with the works authorised by the

Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006

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1. INTRODUCTION

1.1 As part of a “mediation marathon” with BSC, from 29 June – 6 July BSC have raised a concern regarding interpretation of the “Earthworks Outline”.

2. THE DISPUTE / DISAGREEMENT

2.1 Currently unclear why BSC are concerned. This needs to be expressed at the mediation.

3. TIE'S POSITION ON THE DISPUTE / DISAGREEMENT

3.1 tie currently do not understand the concern. Schedule Part 4 clearly defines the Earthworks Outline at Clause 3.6.

3.2 It is cross referenced as Specific Exclusion from the Construction Works Price at Clause 3.3c) and the exclusion then links as a Notified Departure in Clause 3.3.1.

4. REQUIRED OBJECTIVES OF REFERRAL OF THE DISPUTE TO THE INTERNAL RESOLUTION PROCEDURE

4.1 Clarity on the concern, and agreement on the application and effect of the relevant elements within Schedule Part 4.

5. TIE'S FURTHER COMMENTS ON AND UNDERSTANDING OF INFRACO'S POSITION ON THE DISPUTE

5.1 Unclear BSC need to lay out their concerns.

6. LIST OF SUPPORTING DOCUMENTATION

6.1 Schedule Part 4, Clauses 3.3, 3.6 in particular.

3.1 The Construction Works Price is a lump sum, fixed and firm price for all elements of work required as specified in the Employer's Requirements as Schedule Part 2 and the Infraco Proposals as Schedule Part 31 and is not subject to variation except in accordance with the provisions of this Agreement.

3.2.1 It is accepted by tie that certain Pricing Assumptions have been necessary and these are listed and defined in Section 3.4 below. The Parties acknowledge that certain of these Pricing Assumptions may result in the notification of a Notified Departure immediately following execution of this Agreement. This arises as a consequence of the need to fix the Contract Price against a developing factual background. In order to fix the Contract Price at the date of this Agreement certain Pricing Assumptions represent factual statements that the Parties acknowledge represent facts and circumstances that are not consistent with the actual facts and circumstances that apply. For the avoidance of doubt, the commercial intention of the Parties is that in such circumstances the Notified Departure mechanism will apply.

3.3 Specified Exclusions from the Construction Works Price are:

- a) Utilities diversions (including both the diversion of Utilities and the diversion of any other utilities) and protective works associated with utilities save for the Defined Provisional Sums for those utilities diversions that are to be undertaken by Infraco.
- b) Work in connection with the St Andrew Square public realm project beyond the tram works. For the avoidance of doubt Tramstops, trackform, track bed, OHLE, road surface refurbishing, associated systems and link works together with any other work shown on the Base Case Design Information are included.
- c) Ground conditions that require works that could not be reasonably foreseen by an experienced civil engineering contractor based on the ground conditions reports provided to BBS on 20th and 27th of November and 6th December 2007. Additionally the Constructions Works Price does not include for dealing with replacement of any materials below the earthworks outline or below ground obstructions/voids, soft material or any contaminated materials.
- d) Bernard Street public realm project as information provided to Infraco on 28th November 2007.

3.3.1 In the event that the Infraco is required to carry out any of the Specified Exclusions, this shall be a Notified Departure.

3.4 Pricing Assumptions are:

- 1 The Design prepared by the SDS Provider will not (other than amendments arising from the normal development and completion of designs):
 - 1.1 in terms of design principle, shape, form and/or specification be amended from the drawings forming the Base Date Design Information (except in respect of Value Engineering identified in Appendices C or D to this Schedule Part 4);
 - 1.2 be amended from the scope shown on the Base Date Design Information and Infraco Proposals as a consequence of any Third Party Agreement (except in connection with changes in respect of Provisional Sums identified in Appendix B); and

Contract Price and/or Programme in respect of which **tie** will be deemed to have issued a **tie** Notice of Change on the date that such Notified Departure is notified by either Party to the other. For the avoidance of doubt **tie** shall pay to the Infraco, to the extent not taken into account in the Estimate provided pursuant to Clause 80.24.1, any additional loss and expense incurred by the Infraco as a consequence of the delay between the notification of the Notified Departure and the actual date (not the deemed date) that **tie** issues a **tie** Change Order, such payment to be made by **tie** following evaluation, agreement or determination of such additional loss and expense pursuant to Clause 65 (Compensation Events) as if the delay was itself a Compensation Event.

3.6 Earthworks Outline in this Schedule Part 4 means:

3.6.1 the finished earthworks levels and dimensions (prior to topsoiling) for the construction, where specified, of

- (a) carriageway, hard shoulder, hard strip, footway, paved area, central reserve, verge, side slope;
- (b) underside of (i) trackslab, (ii) grasstrack concrete, and (iii) ballast;
- (c) sub-base;
- (d) fill on sub-base material, base and capping;
- (e) contiguous filter material, lightweight aggregate infill;
- (f) surface water channels;
- (g) landscape areas, environmental bunds.

In all cases of filter drains, except narrow filter drains, the Earthworks Outline shall be the top of the filter material.

3.6.2 Where capping or stabilisation to form capping is required by the design in cutting or embankment, the Earthworks Outline shall be as defined in paragraph 3.6.1 i.e. as the top of capping.

3.6.3 Where an embankment is required by the design to be surcharged, the Earthworks Outline shall be defined as in paragraph 3.6.1 and exclude the surcharge.

3.6.4 Where permanent storage or stockpiling of topsoil is required, the Earthworks Outline shall be as defined in paragraph 3.6.1 and exclude stored topsoil.

3.6.5 Where the ground has been subjected to the treatment in respect of ground improvement, mine workings, swallow holes and the like, for the purpose of the definition of Earthworks Outline the existing ground level shall be the level obtained on completion of any such treatment of the areas affected.

Sub-soil Level is defined as the level of the ground after the removal of topsoil.

Surcharge is defined as material placed for the purpose of loading for the periods specified in the design.

4.0 PROVISIONAL SUMS

4.1 Provisional Sums have been allowed for items listed in Appendix B.