

CONDITIONS UNDER WHICH THE BBS CONSORTIUM RETAINS ITS POSITION AS PREFERRED BIDDER IN THE INFRACO PROCUREMENT TO ENABLE **tie** AND THE BBS CONSORTIUM TO PROCEED TO CONTRACT CLOSE

Condition One

tie shall pay the BBS Consortium an incentivisation bonus of £3 million, such sum to be paid as follows:

- £750,000 at the date of issue of Sectional Completion A
- £750,000 at the date of issue of Sectional Completion B
- £750,000 at the date of issue of Sectional Completion C
- £750,000 at the date of issue of Sectional Completion D]

Condition Two

If **tie** does not proceed with Phase 1b of the ETN Project or **tie** does proceed but BBS has proposed an estimate which **tie** has rejected unreasonably then:

- BBS Consortium shall be compensated for its work in the procurement period on Phase 1b by a payment of £3.2m (currently contained in the BBS Consortium price for Phase 1b)
- **tie** shall make a payment within 30 days of the Clause Part 37 date (6 July 2009, unless the parties otherwise agree) against a valid VAT invoice.
- In the event that **tie** and BBS subsequently agree to recommence negotiations on a proposal (price, programme, scope and terms) for Phase 1b the £3.2m paid by **tie** to BBS will be discounted from the final price.

Condition Three

The InfraCo Contract Suite and all associated documentation is closed out on **tie**'s preferred positions on all remaining open matters and there is no further discussion or negotiation on any core terms and conditions or schedules except for housekeeping and sense checking. This includes:

1. BBS Consortium withdrawing all outstanding points on the SDS Novation Agreement which were raised in week commencing 28th April 2008
2. BBS Consortium accepts **tie**'s preferred position on Schedule Part 14 Review Procedure and the Design Management Plan and the Definition of Issued For Construction Drawings and the phased release of IFCs as allowed for in the Design Delivery Programme
3. BBS Consortium delivering its collateral warranties at Contract Close and those of its subcontractors on the terms required by **tie**

Condition Four

When CAF joins the BBS Consortium and becomes party to the InfraCo Contract, this happens on the following terms:

- An indemnity to **tie** from BBS Consortium against any adverse impact of CAF joining/contracting direct with **tie**.
- Express acknowledgements provided by both BBS sureties to **tie**
- **tie's** preferred amendments to the Siemens AG and Bilfinger Berger AG parent company guarantees to confirm no effect on scope, validity or duration of PCGs. Legal opinion to confirm this.
- Appropriate revisions to the InfraCo Contract as stipulated by **tie**, acting reasonably, with all known items advised to BBS Consortium by 9 May 2008.

Conditions Five and Condition Six

BBS agree to close down the Mobilisation and Advance Works Contract and waive the right to any entitlement to claim time relief or payment arising from events during the four months preceding award of the Infraco contract which would have been compensation events had the contract been in place at that time.

For the avoidance of doubt the requirement for IFC drawings and access to undertake the works post contract award as detailed on the contract programme shall not be affected by the above.

Condition Seven – Road Reconstruction

Costs arising from BBS Pricing Assumption 12 are capped at £1.5m save for any prolongation costs arising from SDS redesign of the roads to meet BBS's Pricing Assumption to the extent that such redesign causes delay to the programme critical path.

tie and CEC will support the re design proposals that SDS develop to align their designs with the BBS Pricing Assumption 12.

We agree to these particular Conditions of Contract which shall form part of the InfraCo Contract and shall take precedence over its Terms and Conditions and all Parts of the Schedule in all cases.

We hereby confirm on behalf of the BBS Consortium that there are no further outstanding financial, technical, commercial or legal issues connected to our offer and we are ready, willing and able to sign the InfraCo Contract with proper corporate authority.

Signed:

For and on behalf of Siemens

Signed:

For and on behalf of Bilfinger Berger