

SUBJECT TO CONTRACT

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**GUARANTEED MAXIMUM PRICE
SCOPE OF WORKS**

1. The Guaranteed Maximum Price ("GMP") for the execution of the GMP Scope of Works is set out in Appendix II and is based on the following:
 - 1.1 The Infraco carrying out and completing the GMP Scope of Works (as defined below), to the approved, assured, integrated and compliant design, represented by the GMP IFC Drawings and in accordance with the Infraco Contract (as amended).
 - 1.2 "GMP IFC Drawings" shall mean the existing set of IFC drawings that represent the fully approved, assured, integrated and compliant design in accordance with the Infraco Contract and any other drawings which represent fully approved, assured, integrated and compliant design in accordance with the Infraco Contract and which the Infraco is obliged to deliver and use in order to carry out and complete the GMP Scope of Works.
 - 1.3 To the extent that the GMP IFC Drawings do not fully detail the scope of the Infraco Works (other than that which may be expressly instructed in writing by the after *[insert date of agreement of the GMP]*) the GMP Scope of Works will be deemed to have included for all non-detailed or missing works or related services and deliverables.
 - 1.4 In the event that the GMP IFC Drawings contain any ambiguity or discrepancy, the GMP will be deemed to have included for correcting or removing any such ambiguity or discrepancy.
 - 1.5 The GMP Scope of Works shall include all Infraco Works required and arising from any actual or potential Permitted Variation, the Change or Infraco Notice of the Change issued by the or the Infraco as at the date of this the Change Order.
 - 1.6 Other than changes expressly instructed by the, the costs of designing, carrying out, testing, commissioning and maintaining the GMP Scope of Works shall be at the sole risk of the Infraco.
 - 1.7 Unless the context requires otherwise, the definitions and rules in respect of interpretation contained in Schedule Part 1 (*Definitions and Interpretation*) of the Infraco Contract apply to this GMP Scope of Works.
2. It is agreed, without qualification, that the GMP is to include for all Infraco Works and Deliverables in respect of the following scope of works ("GMP Scope of Works"):
 - 2.1 The GMP Scope of Works shall comprise: all those Infraco Works necessary to deliver, as a fully functional commissioned tram system open for a public revenue generating public service and achieving the requisite run times in accordance with the Employer's Requirements and the Infraco Contract (both as amended), all those elements of the Edinburgh Tram Network set out below:

3. **ST ANDREW'S SQUARE TO AIRPORT (including Enabling Works)**
- 3.1 All Infraco Works for the following sections from St Andrew's Square (chainage 121150 and in respect of overhead line, chainage 120804) to Edinburgh Airport (chainage 712580):
- 3.1.1 St Andrew's Square (chainage 121150 and in respect of overhead line, chainage 120804 (temporary works may be required)) to Waverley Bridge (chainage 121380) (excluding the Omitted Civil Engineering Works described in Appendix A);
 - 3.1.2 Waverley Bridge (chainage 121380) to Lothian Road (chainage 130380 and in respect of overhead line, chainage 130663) (including those on-street Infraco Works carried out under the Supplemental Agreement in relation to Princes Street between tie and the Infraco, dated 29 May 2009);
 - 3.1.3 Lothian Road (chainage 130380 and in respect of overhead line, chainage 130663) to Haymarket (chainage 131247 and in respect of overhead line, chainage 131232) (excluding the Omitted Civil Engineering Works described in Appendix A);
 - 3.1.4 Haymarket Corridor (chainages 200000 to 200814 and in respect of overhead line, commences at chainage 131232);
 - 3.1.5 Roseburn Junction to Balgreen (chainages 510000 to 511477);
 - 3.1.6 Balgreen to Edinburgh Park Central (chainages 520000 to 524555);
 - 3.1.7 Edinburgh Park Central to Gogar (chainages 530000 to 531898);
 - 3.1.8 Gogar Depot;
 - 3.1.9 Gogar to Edinburgh Airport (chainages 710000 to 712580).
- 3.2 The design, construction and installation of a temporary Systems Point at St Andrew's Square (which shall mean the permanent tramstop and a point facilitating systems control, including necessary crossover, associated control systems, power transformation and distribution facilities to energise and de-energise the system and all associated overhead line infrastructure and parking for immobile Trams), excluding the Omitted Civil Engineering Works described in Appendix A.
- 3.3 In the event that tie is satisfied that it is not possible to establish a temporary Systems Point at St Andrew's Square pursuant to paragraph 3.2 above, the Infraco shall be required to design, construct and install an alternative Systems Point at a suitable location which enables the operation of the Edinburgh Tram Network to St Andrew's Square with identical run-time capability, and any works which are additional to the works described in paragraph 3.2 above will be instructed by tie as a tie Change necessary for the satisfactory completion of the Infraco Works which will be valued in accordance with Clause 80 (as revised).
- 3.4 All enabling works as follows and as shown in the sketches included in Appendix B:
- 3.4.1 from Newhaven Tramstop (at chainage 100000) to Retaining Wall 1A (at chainage 100170) – fill to bottom of track level;
 - 3.4.2 Lindsay Road Retaining Walls 1A, 1B, 1C and 1D (at chainages 1A 100170 - 100400; 1B 100230 - 100270; 1C 100390 - 100415; and 1D 100470 - 100490) – approved, assured, integrated and compliant design and construction;

- 3.4.3 Lindsay Road Link Road to Ocean Drive (chainage 100350 to chainage 100800) – removal of retaining wall and footpath, removal of trees and ground preparation, placing of earthworks fill and re-grading of profile;
 - 3.4.4 Lindsay Road (chainages 0 to 550) – lowering works; and
 - 3.4.5 Tower Place Bridge (at chainage 101430 - 101510) – works to be completed, including the track and the final roadway.
- 3.5 The completed, approved, assured, integrated and compliant Design for the Edinburgh Tram Network Phases 1a and 1b, to include certification thereof by each Infraco Member, the SDS Provider and any Infraco Party or SDS Provider Party involved in the production or development of Design or the Infraco's Design.

APPENDIX A

OMITTED CIVIL ENGINEERING WORKS

Omitted Civil Engineering Works shall comprise:

1. site clearance - removal and temporary storage off site of any street furniture such as bus shelters, bus trackers, CCTV installations, waste bins and decommissioning of telephone boxes and other permanent or temporary fixtures on the street;
2. temporary traffic management: installation, maintenance and demobilisation, including necessary lining and signage works;
3. planing road carriageways to appropriate depths and/or excavating down to design formation level of both carriageway and trackform (including associated spoil treatment, storage, reuse and disposal);
4. taking out kerbs and kerb logs;
5. dealing with any obstructions/soft spots/utilities/voids;
6. constructing track drainage, including connecting into and reinstating as required existing gullies and carriageway drainage;
7. installing cable duct banks;
8. excavating and constructing OLE pole foundations;
9. constructing up to formation of trackform slab in preparation for track installation by the Infraco;
10. civil engineering works to tramstops, up to and including platform level, including all necessary ducting and finishes, but not including tramstop furniture;
11. civil engineering works associated with tramstop equipment and the construction of the sub-station buildings and any associated civil engineering works;
12. re-laying kerbs to required design line and level;
13. reinstating/renewing paving;
14. installing all foundations and ducts for new traffic signalling at junctions/pedestrian crossings;
15. either overlaying wearing course to carriageway or alternatively building up full road construction and required surfacing layers to wearing course; constructing central reservations as required; constructing setted carriageway as required.
16. re-installing street furniture as required, including bus shelters, bus trackers, CCTV installations, waste bins, telephone boxes etc;
17. completing landscaping/street scaping works as required by the Employer's Requirements, Consents and relevant Third Party Agreements; and
18. all associated stakeholder and third party management and liaison functions in relation to these items.

**APPENDIX B
ENABLING WORKS SKETCHES**

APPENDIX V

[TRAVELLING DRAFT] SCHEDULE OF AMENDMENTS

The Parties agree that, with immediate effect, the following amendments are made to the Infraco Contract for the purposes of the GMP Scope of Works and the GMP Change Order:

1. Delete Clause 4.3.

2. Delete Clause 10.18.

3. Insert new Clause 16.36A:

"The Infraco shall be responsible for all costs in connection with PICOPS / COSS / Possession Protection Staff as Network Rail possession support when undertaking works adjacent or over the railway, where they relate to the Possessions required for the Infraco Works."

4. In Clause 16.73, delete the final sentence.

5. Insert new Clause 16.74:

"For the purposes of this Clause 16.74 the following definitions shall apply:

16.74.1 *"Infraco's Immunisation Strategy" shall mean the defined set of processes documented in the Infraco's NR EMC Strategy Plan approved by Network Rail on [insert date]; and*

16.74.2 *"NR Immunisation" shall mean, in so far as indicated in the Infraco's Immunisation Strategy as intended to be carried out on the Network, works to mitigate the potential effects to the Railway of electromagnetic interference due to effects of coupled energy or stray current from the operation of the Edinburgh Tram Network traction system.*

The Infraco shall procure the delivery of the NR Immunisation. The Infraco or the Infraco's sub-contractors shall carry out all the works and supply all equipment for the NR Immunisation in accordance with the Infraco's Immunisation Strategy."

6. In Clause 17.16, delete "Mandatory" (tie Change).

7. Delete Clause 18.17A.3.

8. Delete Clause 18.17C.

9. Clause 20.9 - delete reference to *"which shall be a Mandatory tie Change and the provisions of Clause 80 (tie Changes) shall apply"*.

10. Clause 20.10 - delete final sentence and replace with *"For the purposes of this Clause 20.10, tie shall issue a tie Change in respect of such removal."*

11. Clause 22 - delete references to unidentified utilities apparatus, adverse physical conditions, ground conditions, artificial obstructions and/or land which is contaminated.

- 16. Delete Clause 61.8.
- 17. Delete Clause 65.12.
- 18. Delete Clause 65.13.
- 19. Delete Clauses 79.1.2; 79.17 and 79.1.8.

20. **Clause 80 (tie Change)**

- 20.1 Delete Clause 80.2 and replace with the following:

"A tie Notice of Change shall set out the proposed tie Change in sufficient detail to enable the Infraco to give tie an Estimate in accordance with Clause 80.3 below."

- 20.2 Delete Clause 80.3.

- 20.3 Clause 80.4 will become Clause 80.3. Delete the opening paragraph of (new) Clause 80.3 and replace with the following:

"Within 18 Business Days after having received a tie Notice of Change (or such longer period as may be agreed by tie (acting reasonably)), the Infraco shall deliver to tie an Estimate ("Estimate") which must include the opinion of the Infraco (acting reasonably) in all cases regarding:..."

- 20.4 Clauses 80.4.1 to 80.4.10 (new Clauses 80.3.1 to 80.3.10) shall remain unamended, with the exception of the following:

- 20.4.1 in Clause 80.4.2 (new Clause 80.3.2), the words "(operation and maintenance)" shall be added between the words "performance" and "of the Edinburgh Tram Network"; and

- 20.4.2 in Clause 80.4.10 (new Clause 80.3.10), the reference to "this Clause 80" shall be deleted and replaced with "Clause 80.7".

- 20.5 Insert new Clause 80.4:

"In the event that the Infraco is unable to give the Estimate in whole or part the Infraco shall tie within 18 Business Days after having received a tie Notice of Change (or such longer period as may be agreed by tie (acting reasonably)) giving clear written reasons why the Infraco is unable to do so and stating when the Estimate will be provided to tie."

- 20.6 Delete Clause 80.6 and replace with the following:

"[As soon as reasonably practicable] after tie receives the Estimate, the Parties shall discuss and agree the Estimate. From such discussions, tie may modify the tie Notice of Change and the Infraco shall update the Estimate accordingly. Upon agreement of the Estimate (if not already issued pursuant to Clause 80.11), tie shall issue a tie Change Order and the Infraco shall proceed diligently and expediently with the carrying out and completion of the Infraco Works and revised scope required by the tie Change Order."

- 20.7 Delete Clause 80.7 and replace with the following:
- "The valuation of any tie Change made in compliance with this Clause 80 (tie Changes) shall be carried out by tie as follows:*
- 80.7.1 by measurement and/or valuation [at fair rates and prices]; and*
- 80.7.2 if the value of the tie Change cannot properly be ascertained by measurement and/or valuation, the reasonable additional costs of the resources and labour employed thereon including a reasonable allowance for overheads and profit."*
- 20.8 Delete Clauses 80.9 and Clause 80.10.
- 20.9 Clause 80.11 will become Clause 80.9. In (new) Clause 80.9 delete references to "SDS Contract" and replace with "SDS Agreement".
- 20.10 Clause 80.12 will become Clause 80.10. In (new) Clause 80.10.3.5, delete the words "to be performed after completion of Section D;"
- 20.11 Delete Clauses 80.13 to 80.18 (inclusive).
- 20.12 Insert new Clause 80.11 :
- "tie may issue a tie Change Order at any time to the Infraco and such tie Change Order shall be issued pursuant to Clause 34.1. In the event that tie so instructs the Infraco prior to the issue of a tie Change Order (for the avoidance of doubt, including at the time of issuance of the tie Notice of Change), Infraco shall commence work in respect of the tie Change and the Infraco will be entitled to payment of the Infraco's demonstrable costs valued in accordance with Clause [80.7] on an interim basis for all work carried out by the Infraco in compliance with the tie Change Order."*
- 20.13 Insert new Clause 80.12:
- "Where a tie Change Order instructs an amendment to the terms and conditions of this Agreement, the Parties shall enter into any document to make such amendment within thirty Business Days following the issue of the tie Change Order."*
- 20.14 Clause 80.19 shall become Clause 80.13.
- 20.15 Delete Clauses 80.20 and 80.21.
- 20.16 Clauses 80.22 and 80.23 shall become Clauses 80.14 and 80.15 respectively.
- 20.17 Delete Clause 80.24.
- 20.18 Insert new Clause that tie Changes can only be instructed by tie where it is necessary in tie's opinion for the satisfactory completion of the Infraco Works.
- 20.19 Insert new Clause that amendments to the design before it is an Assured Design will not be a tie Change, including where the Infraco needs to amend the design to obtain any Consent.
21. Delete Clause 81 (*Infraco Changes*).

22. In Clause 82.5, delete reference to "Clause 80.12" and insert "Clause 80.10".
23. In Clause 83.5, delete reference to "Clause 80.12" and insert "Clause 80.10".
24. Clause 84.4.4 - delete the word "Mandatory" (tie Change).
25. Clause 84.11 - delete the word "Mandatory" (tie Change).
26. Clause 87.1 - insert at the beginning of the first sentence the words: "Subject to Clause 86A".
27. Insert new Clause 86A:

"tie shall be entitled to instruct part or all of those GMP Scope of Works comprising Part B of the GMP Scope of Works at any time within five years following the date of issue of the Sectional Completion Certificate for Section D in respect of Part A of the GMP Scope of Works."
28. Clause 87.2 - delete the word "Mandatory" (tie Change).
29. Limb (g) in the definition of "Compensation Event" in Schedule Part 1 shall be amended.
30. Delete limbs (t), (u) and (x) in the definition of "Compensation Event" in Schedule Part 1 and mark "Not Used".
31. Insert new limbs to definition of Compensation Event to reflect tie Change Order.
32. Delete the definition of "Mandatory tie Change" and all references to Mandatory tie Change in the Infraco Contract.
33. Delete the definition of "Notified Departure" and all references to Notified Departure in the Infraco Contract.
34. In the definition of "Permitted Variation", delete the words "a Mandatory tie Change" and "a Notified Departure".
35. In the definition of "Planned Sectional Completion Date", the dates will be deleted and amended as follows:
 - (a) Section A (Depot) - 2 November 2010
 - (b) Section B (Test Track) - 1 April 2011
 - (c) Section C (Testing and Commissioning) - 17 January 2011
 - (d) Section D - 6 June 2012.
36. Delete Schedule Part 4 (Pricing).
37. Delete Schedule Part 5 (Milestone Payments) and replace with [the Milestones contained in the GMP Pricing Schedule.]
38. Delete Schedule Part 15 (Programme).

*Carlisle Travelling Draft
Strictly Confidential and
FOISA Exempt*

Draft



Our ref: 25.1.201/KDR/6790

Bilfinger Berger-Siemens-CAF Consortium

22 September 2010

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| | | |
|----------------------------|-------------|-----------------------|
| Bilfinger Berger Civil EDI | | BSC Consortium Office |
| Date Sent | 22 SEP 2010 | 9 Lochside Avenue |
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| Distribution | | EH12 9DJ |
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For the attention of Steven Bell – Tram Project Director

Dear Sirs,

WITHOUT PREJUDICE

**Edinburgh Tram Network Infraco
Infraco Contract: Contract Issues**

The recent behaviour of tie in how Project Carlisle is being approached and the aggressive campaign of Notices being served on Infraco, is symptomatic of the misery that has persisted throughout this Project.

Infraco has, from the beginning of the Project, been hindered in many ways in its ability to efficiently progress the works. This has manifested itself in the lengthy delays from tie's failure to divert utilities in time and from the huge amount of change that has occurred so far. tie's refusal to properly administer the Infraco Contract and to not recognise tie's obligation in respect of changes, has made the Infraco Contract unworkable. Nearly all the Disputes (13 of 15) raised under the Contract, to determine points of principle, have been adjudicated in Infraco's favour; yet tie still, obdurately, refuses to acknowledge these and refuses then to apply the principles across similar issues. Clearly, from the Adjudication Decisions, Infraco has no obligation to carry out changed works in advance of an agreed estimate; yet tie persists with non-agreement and prevarication.

Coming to Project Carlisle, we note that the two Project Carlisle Proposals are currently on the table; tie's revised Proposal (tie letter 5990 dated 7 September 2010) and Infraco's Revised Proposal (Infraco letter 6682 dated 11 September 2010) provide a detailed breakdown of the gap of circa one hundred and fifty million Pounds. Given the terms of these Proposals, it is extremely misleading to suggest that the gap is not supported by the Project Carlisle negotiations.

In relation to the funding issue, tie representatives have informed us on a number of occasions, and specifically twice last week that Infraco's Project Carlisle price would have to be reduced by between fifty million and one hundred million pounds to stay within the Project's affordability limit. In this context Infraco's "fixation" with funding on a fair value basis must be difficult for tie to address; but tie will appreciate that we are unable to agree to anything other than a price which represents a fair value basis for the works included within the Project Carlisle scope. Infraco will not provide funding for any affordability gap on the Project. We are not contractually obliged to do so under the existing Infraco Contract and will not agree to revised terms which place us under an obligation to provide such funding. Whilst we still seek to reach agreement on Project Carlisle with tie, this apparent lack of funding suggests that it will not be possible to reach such an agreement.

It also clearly suggests that tie and CEC do not have sufficient funds to fulfil tie's obligations under the existing Infraco Contract. This suggestion is corroborated by tie's failure to certify and pay amounts due in respect of Preliminaries (after paying them for nearly two years without question) and works carried out under the PSSA.

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tie has also failed to pay amounts due in respect of work being done on a "goodwill basis", which we find particularly galling given the circumstances under which the work has been undertaken by Infraco.

As established by Lord Dervaird's decision on the Murrayfield Underpass, Infraco is not required to carry out works which are the subject of an INTC in advance of a tie Change Order or an agreed Estimate. Across the Project, Infraco has carried out such works on a "goodwill basis" in an effort to minimise the disruption to the Project caused by tie's failure to administer the change mechanism and crystallize Infraco's entitlements under Schedule Part 4. However, such works have been carried out in all cases without prejudice to Infraco's contractual entitlements.

We are clearly not obliged, nor are we willing, to fund the Project by performing works on a "goodwill basis" in the absence of an agreed Estimate or tie Change Order or by agreeing to a price for delivery of Project Carlisle which represents anything other than a fair value basis. Therefore, in accordance with the Contract we will cease all works which we are not obliged to perform under the Infraco Contract. We will write to you separately in this regard. This action is to mitigate both Parties' exposure in respect of such works in circumstances where there would appear to be a substantial funding gap for the Project.

With further regard to the current status of Project Carlisle, feedback from our side, on the way the protracted negotiations are proceeding is that tie has completely ignored both our initial Proposal (sent under cover of Infraco letter 6338, dated 29 July 2010) and our Revised Proposal (sent under cover of Infraco letter 6682, dated 11 September 2010). A campaign of issuing Remediable Termination Notices and Underperformance Warning Notices has been pursued by tie in parallel to the Project Carlisle negotiations to place pressure (we assume) on Infraco to agree to tie's terms.

This is clearly contrary to the declared willingness of both Parties to work together with goodwill and collaboration to find a resolution to the serious issues facing the Project. We believe tie is preparing for the failure of Project Carlisle and we will protect our contractual rights accordingly.

In conclusion, as matters stand we do not believe an agreement on Project Carlisle is likely. The affordability gap, tie's persistence and focus on its own revised proposal and complete disregard for Infraco's Proposals, together with the aggressive campaign of Remediable Termination Notices and Underperformance Warning Notices has put paid to almost any prospect of agreement. Nevertheless, we are open to continuing, but tie must understand that, for the scope, programme and terms and conditions in our Revised Proposal, we will not compromise further on our offered price. It is imperative that we reach a conclusion to Project Carlisle so that the current and future situations are clarified for all concerned.

We propose that our respective Senior Directors (G Wakeford, D Darcy and D Mackay) meet at the earliest convenience to facilitate this.

Yours faithfully,


M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: D. Darcy
G. Wakeford
R. Walker
M. Flynn
A. Campos
M Berrozpe
A. Urriza

Privileged and confidential – prepared in contemplation of mediation
FOISA exempt

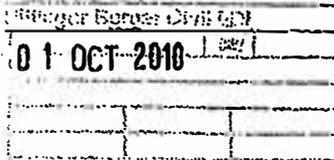


Our ref: 25.1.201/EKI/6861

Bilfinger Berger-Siemens- CAF
Consortium

1 October 2010

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For the attention of Steven Bell – Tram Project Director

Dear Sirs,

WITHOUT PREJUDICE

**Edinburgh Tram Network Infraco
Infraco Contract: Project Carlisle – Revised Proposals**

We are in receipt of your letter referenced INF CORR 6275 dated 24 September 2010. We also refer to other correspondence between ourselves as follows:

- Infraco letter reference 25.1.201/EKI/6338 dated 29 July 2010 – Guaranteed Maximum Price Proposal
- tie letter reference INF CORR 5990 dated 7 September 2010 – Proposal for Discussions and Finalisation
- Infraco letter reference 25.1.201/EKI/6682 dated 11 September 2010 – Revised Infraco Full and Final Proposal
- Infraco letter reference 25.1.201/KDR/6790 dated 22 September 2010 – Contract Issues

In our letter, INF CORR 6682, we made it clear that there are differences between the Parties with regard to the Scope, Programme and Price to find closure and agreement of Project Carlisle. In tie's letter, INF CORR 9275, you state that you reject any explicit or implicit allegations contained within our letter and that you would not respond to it. Clearly, the parties are at loggerheads. For your use, we have attached a tabular summary of the respective amounts and the gap between us; including some footnotes.

Nevertheless, we have had verbal indications of amounts from tie's representative that are greater than what tie is formally presenting in its Proposal. The amounts verbally indicated would serve to partially close the gap between us; however the difference between the stated positions appears to be irreconcilable, without substantial further increases in tie's Proposal.

As you are well aware, our pricing for Project Carlisle is on the basis of the circumstances now, and in accordance with existing subcontracts competitively awarded at the time. Our price accordingly is arrived at from a sensible, detailed build-up of such costs; with a level of overhead and profit applied that is competitive in the market place.

To date, we have not had any breakdown of tie's amounts (refer to enclosed table), and have the impression that tie's amounts could be driven from the bottom line upwards; not from a detailed, analytical exercise based on realistic costs for the situation. Accordingly, it has not been possible to understand how tie is assessing the costs to allow a comparison of the differences to see if there is still a possibility to find ways to reach an agreement.

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Until such time that the formally proposes increased amounts, we feel that Project Carlisle will most likely fail. As detailed in our letter reference 25.1.2011/KDR/6790 dated 22 September 2010, it is imperative to quickly clarify the situation and our proposal to meet, remains.

Yours faithfully,



M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: D. Darcy
G. Wakeford
R. Walker
M. Flynn
A. Campos
M Berrozpe
A. Urriza



| Attachment to Infraco letter dated 1 October 2010 reference 25.1.201/EKI/6861 | | | |
|---|--------------|------------------|--------------|
| Project Carlisle : Amounts | | | |
| Infraco Understanding of Differences | | | |
| | tie position | BSC position | Difference |
| Bilfinger Berger | | | |
| Subs | 102 | 127.2 | 25.2 |
| Enab | 6.5 | 0 | -6.5 |
| Prelims | 21.5 | 0 | -21.5 |
| Indirect | 0 | 41.2 | 41.2 |
| Risk | 0 | 5 | 5 |
| P St | 0 (1) | 12.8 | 12.8 |
| Exclusions | 0 | 8.05 (2) | 8.05 |
| SDS | 0 | 0 | 0 |
| OH | 0 | 14.7 | 14.7 |
| Margin | 7.7 | 6.35 | -1.35 |
| Sub Total | 137.7 | 215.3 (3) | 77.6 |
| Siemens | | | |
| Aprt to Haym | 68.7 | 0 | -68.7 |
| Haymy to Loth | 3.4 | 0 | -3.4 |
| Loth to Wav | 3.8 | 0 | -3.8 |
| Et Al | 2.9 | 0 | -2.9 |
| Sys Wide | | 0 | 0 |
| Haym to St A Sq | 7 | 0 | -7 |
| PM | | 13.35 | 13.35 |
| Eng | | 3 | 3 |
| Trackwork | | 43.5 | 43.5 |
| Depot | | 2 | 2 |
| Electrification | | 6 | 6 |
| Infrastructure | | 3.2 | 3.2 |
| Ins, Bond, Guar | | 1.7 | 1.7 |
| Control & Info | | 5.1 | 5.1 |
| Comm | | 5 | 5 |
| Elec, Auto, Depot Eq | | 29.7 | 29.7 |
| Change Orders | | 5.1 | 5.1 |
| Carlisle | | 0.95 | 0.95 |
| Sub Total | 85.8 | 118.6 | 32.8 |
| CAF *** | 45.9 | 60.6 | 14.7 |
| SDS *** | 0 | 15.8 | 15.8 |
| Sub Total | 45.9 | 76.4 | 30.5 |
| Project Carlisle Totals | 269.4 | 410.3 | 140.9 |
| (1) tie has an interim valuation of 9.4, this is now subject to DRP under the Infraco Contract | | | |
| (2) Transferred risk from tie to Infraco | | | |
| (3) 215.3 becomes 193.4; if P St and Exclusions are separately dealt with, but as a precondition to Project Carlisle Agreement | | | |

Privileged and confidential – prepared in contemplation of mediation
FOISA exempt



FAO Mr Ed Kitzman
Bilfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh Park
Edinburgh EH12 9DJ

Our Ref: INF CORR 6370/RJ

6th October 2010

By email and by hand delivery

Dear Sirs

We refer to your letter dated 1 October 2010 (reference: 25.1.201/EK/6861) and its attachment.

Considering the attachment first. It does not represent the relevant differences between our fair valuation, arrived at in the manner explained in our letter dated 24th August 2010 (INF CORR 5858) and what you claim. In particular:

Payment to CAF – alleged difference £14.7 million – we have held discussions with CAF which confirm that there is no reason to assume that we will not reach an agreement with them.

Payment to SDS – alleged difference £15.8 million – our position is that any payment to SDS cannot be established until the full facts surrounding their performance are known. As previously advised we are in the process of appointing a senior construction lawyer and leading engineer to carry out an investigation.

Payment for PSSA – alleged difference £12.8 million – our position is that payment for PSSA cannot be determined until the full facts surrounding the works on Princes Street are established. Indeed you have put this matter into the Dispute Resolution Procedure and the matter is proceeding in that manner.

Contaminated Land – risk value £8.05 million – we have proposed a mechanism whereby you will be recompensed on an as built basis.

Removing these items above from the totals suggests that the difference we are addressing is £57.5 million for Bilfinger Berger and £32.8 million for Siemens – total £90 million. In addition we note that the Bilfinger Berger number includes £9m of margin added in by you.

In relation to the other points raise in your letter, we do not admit that any authorised representative engaged in Project Carlisle have put forward any "verbal indications" of amounts we would be prepared to compromise on. We note that your Mr. Kitzman has been given an indication that if the terms and essential requirements of our proposal are met we were prepared to compromise on price.

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We also confirm that we have had indications that substantial reductions in your price may be realised during final negotiations from Mr. Kitzman and that Mr. Darcy and Mr. Wakeford have given similar assurances in principle. We are therefore assuming that compromise can be reached.

We also confirm that our latest proposal (with the exception of price) was the product of detailed discussion with Mr. Kitzman and he expressed satisfaction to Mr. Rush and Mr. Molyneux that we had dealt with your requirements relating to limiting the Scope and modifying the Contract Terms with regard to Programme Reporting, the Change mechanism, and the deletion of the majority of Schedule Part 4.

We have repeatedly proposed that a meeting takes place once we have agreement on Terms and Scope which reflect the essential requirements we have previously discussed with you. As such, we propose that the necessary representatives meet as soon as practicable to begin direct discussion and negotiation on the remaining differences in Scope and Terms to facilitate a final negotiation on price.

We are therefore disappointed that the meeting with you yesterday (5/10/10) to establish the protocol for such meeting didn't take place. In anticipation that it will help the process along we set out below a broad outline of what how discussions might be taken forward.

- 1 A meeting should take place between Friday 8th October and Monday 11th October 2010.
- 2 Representation for Infracore should be:
 - David Darcy – Bilfinger Berger
 - Gordon Wakeford – Siemens
 - Jesus Esnaola – CAF
 - ED Kitzman – Carlisle Representative
- 3 Representation for tie should be:
 - Richard Jeffrey – tie
 - Anthony Rush – tie
 - James Molyneux – Carlisle Representative
- 4 CAF's presence is essential because:
 - They are joint and severally bound and need to be a party to any agreement.
 - They have an essential financial interest.
 - They are key to proposing a solution to the number of trams.
 - They wish to be re-novated back to tie.
 - They may play a key role in completing the system to Newhaven which may enable Siemens to be a supplier.
- 5 Both parties reserve their rights to continue to act as they see fit under the contract.

- 6 Other than price, issues which the two teams will have to address:
- 6.1 Princes Street and On-street track design
 - 6.2 SDS
 - 6.3 Completion Dates
 - 6.4 Linking any compromise payment to performance and behaviour
 - 6.5 Agreement on how to work together in the future.

I am of course happy to speak, but suggest that, if you wish to discuss this matter in more detail, in the first instance you contact Mr Rush.

Please note that this letter supersedes my email of 18:13 last night (5/10/10).

Yours faithfully



Richard Jeffrey
Chief Executive

cc: David Darcy, Bilfinger
Gordon Wakeford, Siemens
Jesus Esnaola, CAF

BILFINC

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FOISA exempt



**Bilfinger Berger - Siemens - CAF
Consortium**

Our ref: 25.1.201RJV/6929
Your ref: INF CORR 6370/RJ

BSC Consortium Office:
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ
United Kingdom

8 October 2010

| | |
|------------------|-------------|
| Bilfinger Berger | |
| Date Sent | 08 OCT 2010 |
| To: Name | |
| Reason | |
| Distribution | |

tie limited
CityPoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

Phone: [REDACTED]
Fax: +44(0)131 452 2990

For the attention of Richard Jeffrey

Dear Sirs,

Without Prejudice
Edinburgh Tram Network
Infraco Contract – Project Carlisle

We refer to your letter INF CORR 6370/RJ dated 6th October 2010.

Firstly we would reiterate our desire to reach a satisfactory conclusion going forward with Project Carlisle.

It cannot be however, on the basis of circumstances in your letter. We would be willing to accept the re-
Novation of CAF back to tie. Other suggestions put forward are not acceptable. We will not put to one
side the significant issues of the SDS, Princes Street and Preliminaries, as we must avoid creating a
short-term solution which defers critical issues into the future that will create difficulty later. It is our
objective to achieve a sustainable solution for all stakeholders therefore, it is suggested that you withdraw
your letter and table an inclusive, meaningful and responsible proposal to make any future meeting
regarding Project Carlisle productive.

Our differences remain in excess of One Hundred and Thirty Million Pounds, for the section of work
between the airport and Haymarket, and it would be inappropriate for the parties to make any agreement
which does not formally nail down the detailed scope and agreed programme.

As you will appreciate this letter is issued without prejudice to our rights under the contract.

Yours faithfully,



Martin Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: E Kitzman, M Flynn, A Campos, R Walker

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FOISA exempt



FAO Mr Ed Kizman
Eiffinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh Park
Edinburgh EH12 9DU

Our Ref: INF CORR 6433/R.J

12th October 2010

By email and by hand delivery.

Dear Sirs

Project Carlisle

We were surprised to receive the letter dated 8 October 2010 (reference 25.1.201/RJW/6929) from the Consortium's Project Director who is also the Infracore Representative in response to our letter (INF CORR 6370/R.J) dated 6 October 2010).

The contents of your letter appear completely at odds with the letter it purports to reply to. We would expect that you had informed your colleagues that you agreed that our letter fairly reflected the compromise terms you had reached with our representatives. Our letter was also written with the expectation that CAF/BSC would be making proposals to facilitate CAF's wish to be re-novated to tie. We believe in light of the above and the conversations you have had with our representatives, our letter (6370 referred to above) and constitute a meaningful and responsible proposal and we would expect a substantive response along similar lines.

We are pleased to see that Infracore still "desire to reach a satisfactory conclusion going forward with Project Carlisle". We look forward to you continuing with your meaningful participation by you responding more fully to our latest proposal, recognising the essential requirements that Project Carlisle is predicated on. You of course know on which matters we are able to consider flexibility (SDS, Princes Street and CAF) and the difficulties which may arise in attempting further compromise on the essential requirements.

The reference to Preliminaries is confusing as this is not part of the Project Carlisle brief.

We take it that you are aware of the meeting which took place today at Mr. Walker's instigation

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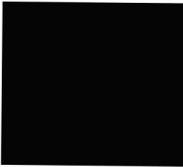
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We look forward to you coming forward with some positive thought through proposals which address all of the circumstances and pressures which you have discussed with our representatives. Please contact Mr. Molyneux to arrange a meeting to present your proposals in the week beginning 25 October 2010.

Yours faithfully



Richard Jeffrey
Chief Executive

cc: David Daroy, Bilfinger
Gordon Wakeford, Siemens
Jesus Esnaola, CAF

BILFING

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FOISA exempt

CAF

Our ref: 25.1.201/EKI/7058
Your ref: INF CORR 6433/RJ

Bilfinger Berger-Siemens- CAF
Consortium

BSC Consortium Office
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ
United Kingdom

14 October 2010

| EDINBURGH TRAM PROJECT | |
|------------------------|-------------|
| Date | 14 OCT 2010 |
| Time | |
| Location | |
| Project Name | |

Phone: [REDACTED]
Fax: +44 (0) 131 452 2690

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CityPoint
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For the attention of Steven Bell – Tram Project Director

Dear Sirs,

Edinburgh Tram Network Infraco
Infraco Contract – Project Carlisle

We are in receipt of your letter dated 12 October 2010 (INF CORR 6433/RJ) from tie's Chief Executive addressed to our Mr Ed Nitzman regarding Project Carlisle.

Unfortunately, based upon the recent discussions you have had with Messrs. Walker and Flynn, we see no point in meeting yet again to discuss anything and everything but the fundamental difference between the Parties, that being the difference in scope, programme, T&Cs and price. Additionally, we find it astonishing that you extend an offer to resolve the differences between the Parties within hours of delivering yet another Remediable Termination Notice and Underperformance Warning Notice on issues that you know are not material.

We do not intend to further discuss Project Carlisle under the apparent condition precedent determined by tie that Infraco must donate £45 Million to the Project or face termination. We have demonstrated our flexibility with regard to scope, programme and to a large degree we have presented you with an open book cost development reflecting today's cost to complete the Project to Haymarket. Your insistence that Infraco donate to the cost of the Project to help make up for your perceived budgetary shortfall is unacceptable.

Contrary to your statement, we find nothing that tie has provided in recent weeks anything close to "meaningful and reasonable". It is with the greatest frustration that we are compelled to conclude that no further negotiations in the so called "Project Carlisle" initiative are meaningful. As such, unless tie come forward with a worthwhile proposition, please consider this letter as notice that Infraco shall not participate further in meaningless negotiations or discussions in connection with Project Carlisle, and that the Parties notify their respective stakeholders accordingly.

We remaincont.

Cont.

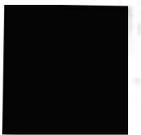
We remain at your full disposition for a continuing dialogue in accordance with Clause 6 of the Infraco Contract, in order to seek alternatives to the impasse that exists between the Parties.

Yours faithfully,



M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: David Darcy
Gordon Wakeford
Jesus Esnaola
Richard Walker
Michael Flynn
Antonio Campos





For The Attention of Martin Foerder
Project Director
Billfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh
EH12 9DJ

Our Ref: INF CORR 6515/SB

Date: 19th October 2010

Dear Sirs,

Edinburgh Tram Network - Infraco

We refer to the Infraco's letter dated 14 October 2010 (reference 25.1.201/EKI/7058) which is designated by you as being in the matter of Project Carlisle. In recognition of the terms of that letter and our comments below we seek written confirmation from each of the three Infraco Members that they have withdrawn from the initiative referred to as Project Carlisle. If they intend to seek a compromise through that route we require confirmation that Mr. Kitzman is still the spokesperson for all Infraco Members.

We regret to have to say that your letter displays an opportunistic attitude towards the Contract terms and that it contradicts what you assert elsewhere. The assertions made by you rely on contrived and imaginary scenarios and show a careless attitude towards your own failures.

1. The last sentence of the third paragraph is without meaning or foundation. We deny that any tie representative has explicitly or implicitly asserted that any dealings with the Infraco have been, or are, with the intention of asking, seeking, or insisting that the Infraco donates to tie's cost of the project.

Project Carlisle is a without prejudice initiative, entered into willingly by both parties, which would de facto settle all claims for additional payment and extension of time the Infraco may have. The essential purpose of Project Carlisle is to create cost certainty. Such purpose does not arise from "budgetary shortfall". It is inter alia to enable tie and its stakeholders to budget for the delivery of the Project Vision.

We do agree that tie was afforded a certain amount of "open-book" access to Billfinger Berger's sub-contract prices. However, the record shows that despite the efforts of Mr. Kitzman, the Infraco Members have not provided any further substantiated explanation of their various offers. To the contrary, as we confirmed in our letter dated 6 October 2010 (reference INF. CORR. 6370), the Infraco's representatives have indicated reductions in your offered costs.

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- 2 In the same paragraph you refer to an "apparent condition precedent that Infraco must donate £45 million to the Project or face termination".

We take it that your reference to an "apparent condition precedent" is looking for us to confirm it – we do not. It is your behaviour that causes us to issue Remediable Termination and Under Performance Warning Notices. You are entitled to decide how you propose to rectify your breaches of contract. You may consider that entering into a compromise agreement, which may be Project Carlisle, may be adequate rectification. It is for the Infraco to propose and for tie to respond.

Your comments are at odds with your claim that adjudication results, which have substantially (in excess of 50%) reduced your Estimates under Clause 80.4.10, are a victory for the Infraco. The public (in whose interest we act) will not see those results as requiring you to donate towards tie's costs – we rather believe that they will see them as putting right the Infraco members' opportunistic claims. Such behaviour by Infraco Members could not be credibly claimed to be in accordance with Clause 6, or for that matter, Clause 118.

We make no apology for issuing Remediable Termination Notices and Underperformance Warning Notices. The one your letter refers to adequately demonstrates why they are necessary – at this very late stage in the project you are still unable to deliver IFC drawings for the retaining walls which are required to terminate the ETN at the Airport. These works are totally unaffected by utility diversions and in the absence of any cogent explanation from you we believe to be completely caused by your failure to manage the design.

- 3 We agree that any proposal to compromise has to be meaningful (that is have a significant purpose) for it to be acceptable. Whilst you may not like the purposes and significance of the terms and scope of Project Carlisle, you cannot truthfully deny that they have not been explained to you, or that our representatives have, at all levels, been consistent in articulating them.

They are also consistent with our responsibilities, duties and functions. In seeking to meet them tie has acted in accordance with Clause 6. Moreover, any alternative you may propose will have to meet the purposes and significant responsibilities tie holds to its stakeholders and in Law without requiring either party to breach the terms of Clause 6.

In contrast the counter proposals you made on 11th September and 1st October 2010 do not address or recognise the purpose and essential requirements for compromise, whether it is called Project Carlisle or something else. At Mr Walker's request, under explanation that all three Infraco Members had a constructive proposal to make, a meeting was arranged between all three Infraco Members and our Mr Jeffrey on 11th October 2010. In the event only representatives of Bilfinger Berger and Siemens attended. They had no constructive proposal to make and without a representative from CAF present there was no prospect of taking further the ideas which emerged from a meeting with them on 30th September 2010.

However, Mr Jeffrey was able to make it clear that we are concerned that the Infraco is unable to deliver an integrated design. Mr Walker and Mr Flynn were asked to report back on this. The retention of your obligation to manage the delivery of the Design is one of the essential requirements of any compromise.

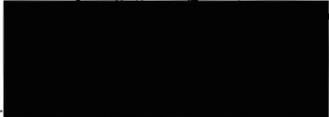
There is no foundation for you to say that the essential requirements are unreasonable.

On the contrary you give no reasoned explanation why the Infraco Members should insist that the Infraco Works are truncated at Haymarket. This being in any case physically impossible because of the work (albeit defective) you have carried out on Princes Street. As you are aware, to incorporate it into a working tram system requires a cross-over in St Andrew Square or York Place.

4. We note that you remain at our "full disposition (sic) for a continuing dialogue in accordance with Clause 6 of the Infraco Contract, in order to seek alternatives to the impasse which exists between the parties".

You do not specify what you refer to as an "impasse". The only matter we can see as having reached a position where you can say that no progress can be made is Project Carlisle. We do not agree that given Infraco Members act in accordance with principles of Clause 6 progress cannot be made to that initiative. But whatever you may propose, the terms of the Infraco Contract will have to take their course until there is an agreement to the contrary.

Yours faithfully



Steven Bell
Project Director – Edinburgh Tram

There have been no opportunistic claims from Infracore. tie has put forth several attempts to substantially reduce payment to Infracore during the Adjudication process, most recently arguing for a £4.8Mio credit from Infracore with regard to the Depot Access Bridge. It would be correct for tie to state that Infracore did not recover its requested amount. However, the reduced award, £1.2Mio versus the £1.8Mio requested, does not take into account pre-Adjudication agreements and settlements. When correctly presented, this Adjudication outcome is a shortfall in expectation and recovery for Infracore of £600k, and for tie of £6Mio.

The scale of expectation at Adjudication clearly demonstrates it is tie that has sought to take advantage of the Dispute Resolution Process. tie has attempted to uphold spurious financial positions in respect of a number of Adjudications, albeit to differing scales; whereas Infracore differences between initial estimates and revised amounts put to Adjudication have been adjusted based on updated / new information. Other reductions are due to pre-adjudication settlements and agreements, and straight forward commercial compromise by Infracore to achieve settlement.

To illustrate the differences in perspective between the Parties on design management, you could not have selected a better issue than the retaining walls at Edinburgh Airport. Perhaps the writer has done this without first looking into the details of the history on this. tie must know very well that this section of the route has been subject to considerable change in scope and requirements since the time of the original SDS preliminary design submitted in June 2006, driven by a combination of the demise of EARL, signing of side agreements with third parties, final determination of the Limits Of Deviation (LoD), and changes in requirements from tie and TEL. Whilst lengthy, we will set out for your ease of reference, what transpired.

Up to the point of Novation of the SDS Agreement into the Infracore Contract, May 2008, SDS was not required to secure approval from BAA for the SDS design. This responsibility rested with City of Edinburgh Council (CEC). At the point of Novation, new requirements were added for SDS to secure BAA approval, in spite of the fact that SDS had already issued the design for this portion of work, including culvert number 3, the tram stop at the airport, and the retaining walls utilizing the flood modelling prepared for EARL, which included the requirement for additional flood compensatory storage on New Ingliston Limited (NIL) lands. The conclusion of the modelling work undertaken was that the impact of the introduction of the Edinburgh Tram Network could be mitigated via the introduction of a weir in culvert number 3. As a result of this, tie reduced the LoD in advance of the signing of the NIL Agreement on 9 November 2005. Subsequently, the EARL project was cancelled.

After the point of Novation of the SDS Agreement, change orders were issued by tie for a kiosk and canopy to be introduced at the tram terminus at the airport on BAA lands, outwith the LoD. This resulted in a realignment of the retaining wall, introducing a protrusion (outwith the LoD) into the Gogarburn and reducing the overall channel width of the burn, and thus impacting on the flood characteristics and overall capacity of the Gogarburn. The requirement for SDS to accept responsibility for the hydrological modelling for the Gogarburn Retaining Walls and its associated flood plains was instructed by tie on 29 January 2009 (INF CORR 656). This included design of the kiosk, hydrological analysis, consultation with SEPA, and consultation with BAA.

Additionally, SDS received other change orders to the Gogarburn retaining walls, i.e. on 13 January 2009 for changes to the finish (INF CORR 583), and on 8 February 2009 for amendments to the west side near the BAA CCRC scheme for drainage and slope tie-in (INF CORR 465). Issues associated with these changes, and others, have held up (and are still holding up) the Prior Approval/Planning Permission for the area, and subsequently the final IFC of the end of the Gogarburn Retaining walls, which are outwith the LoD.

It is clear that the development of the SDS design to a satisfactory conclusion and issue of IFC drawings has been frustrated by long drawn out, on-going changes in tie requirements, additional third party approvals and tie delays in instructing the changes associated with the ongoing developments in the area. In saying that you have no cogent explanation on this shows that you have either not recognised the effects of your actions in this matter, or you are being disingenuous.

3. Without specific reference to what Section of Clause 6 you are referring to, we are limited in our response. However, with regard to your comments regarding "a constructive proposal" being brought to tie by our Mr. Walker we were expecting, on the contrary, to listen to what tie had to constructively propose. The record should indicate that the meeting was preceded by several conversations and telephone calls between Messrs Jeffrey and Walker, and was solely arranged to discuss mutually agreed termination. Prior to the meeting, it was clearly put forth by Mr. Walker that Infraco was expecting to be paid to mutually terminate the Project, but instead tie presented that substantial monies, possibly up to £50Mio would be needed to flow from Infraco to tie to recompense tie. This was in spite of our Dr. Keysberg clearly advising Mr. Jeffrey, in a telephone call just prior to the meeting, that Mr. Walker was empowered to speak on behalf of Infraco in this regard, and stating that there would be no donation to the Project by Infraco.

We hardly see how CAF's attendance at the meeting to receive such a demand would have been beneficial. To clarify, CAF has not expressed any desire to "further the ideas which emerged" during the meeting of 30 September 2010, specifically their interest in completing the Infraco Work beyond Haymarket.

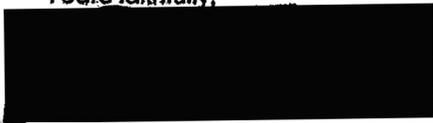
Furthermore, to correct the record, it is tie that first suggested that Bilfinger Berger terminate its work at Haymarket under Project Carlisle, not Infraco, due to CEC's desire "not to have Bilfinger Berger in Edinburgh Streets".

4. The "impasse" we refer to is Infraco will not agree to reduce its price, tie's non-payment of Preliminaries to which Infraco is entitled, tie's non-payment of £3Mio for the demonstrable costs on Princes Street to which Infraco is entitled, tie's non-payment of other parts of agreed changes or Clause 80.15 instructed works to which Infraco is entitled, tie's constant threat to Infraco of termination and tie's general failure to act in a fair and reasonable manner in administering the Contract. Clearly tie has difficulty accepting the entitlements arising for Infraco therefrom.

Each month tie continues to prevaricate and to not accept our Project Carlisle Proposal, the cost of the Project increases, making the gap between available funding and the cost to complete even greater, further complicating negotiations, and further delaying an eventual operating tram service in Edinburgh. This is contrary to your frequent reference to your protecting the public purse and your Best Value obligations. In this regard, it is our opinion that tie is failing to fulfil obligations to the City of Edinburgh.

Notwithstanding the above, we believe a meaningful and responsible proposal from tie shall include agreement to the comprehensive Scope and Programme as we have put forth in both of our Proposals, agreement with the Infraco pricing (to be amended in relation to a revised programme), and a responsible means to address the scope of work beyond Haymarket and materials and trams procured specifically for the Project.

Yours faithfully,


M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: David Darcy
Gordon Wakeford
Jesus Esnaola
Richard Walker
Michael Flynn
Antonio Campos



not to have the excruciating process repeated for the remaining six and half kilometres. tie's reasoning is clearly explained on page 3 of our letter dated 24 August 2010 (reference INF. CORR 5856).

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For the attention of Martin Foerder - Project Director
Bilfinger Berger - Siemens - CAF Consortium
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ

Our Ref: INF CORR 5856

Your Ref: 25.1.201.EKI.7258

Date: 3rd November 2010

Dear Sirs,

Edinburgh Tram Project Infraco

We refer to your letter dated 29th October 2010 reference 25.1.201.EKI.7258.

At this point in time we do not reply to what you say in regard to the design of the retaining walls at Gogar Burn as this is the subject of a Remedial Termination Notice, issued on 12 October 2010, which has yet to be replied to by you.

Other than the four paragraphs which refer to Gogar Burn Retaining Walls on page two, your letter appears to seek to offer excuses for your behaviour, but it is not clear to whom you are addressing your explanations. We can say that it is clear that they do not accurately represent the facts or indeed recognise your obligations as the "contractor".

In section 3 you give the impression of holding CAF in very low esteem, as well as ignoring the fact that they are joint and severally bound under the Infraco Contract and that the provision of the trams is, obviously, an essential part of the Infraco Contract. You seek to pass the importance of their input off by giving an inaccurate picture of the way the meeting on the 11 October 2010 was instigated. It is little wonder that Dr. Keysberg and Mr. Jeffrey may have been at cross purposes when they spoke – it was Mr. Walker who requested the meeting on the pretext that the Infraco had some proposals to make which he would find constructive. No such proposal was made and indeed Mr. Flynn, at a private meeting with Mr. Jeffrey on the 25 October 2010, expressed surprise at being told that it was Mr. Walker who had asked for the meeting. The only credible explanation in this matter is that Mr. Campos was prevented from attending because of flight delays in Paris.

The inability of Infraco Members to coordinate their approach is repeated in your attempt in the final paragraph of section 3 to inject a misrepresentation into the record. The factual record shows that it was Infraco Members who instigated the idea of "divorce" and that your Mr. Reid articulated the options from your view point in his letter dated 5 March 2010. In view of the way you performed on Princes Street to produce just one kilometre of track to an unapproved design and containing defective work; it is little wonder that some may express a preference not to have the excruciating process repeated for the remaining six and half kilometres. His reasoning is clearly explained on page 3 of our letter dated 24 August 2010 (reference INF CORR 5856).

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Your letter clearly demonstrates that you fail to acknowledge your responsibility to manage the design and to take measures to progress the works with due expedition. Moreover, you also clearly fail to accept that it is your responsibility to act reasonably and make claims for additional payment. We do not withdraw from our contention that you engage in opportunistic claims and that the record supports this. You also either misrepresent or misunderstand Mr. Porter's decision on the "negative sum" we claimed in respect of Retaining Wall W16. His position on this is explained in the last paragraph of page 15 of his Decision – he did not consider the matter. We will be reverting to you on this matter in due course.

We deny that we have withheld payment to which the Infraco is entitled. It is a matter of fact that we have complied at all times with Clauses 66 and 67. It is for you to take steps to resolve any difference you may have with sums certified by us and value we place on changes. Indeed, the disputed matters of Preliminaries and the PSSA certificate of August 2010 are both currently subject of the Dispute Resolution Process between the parties to resolve such differences. You are obliged to take such measures which facilitate you progressing the works with due expedition. Your obligation is the antithesis of your current behaviour in suspending work because you disagree with us on your entitlement to payment for some INTCs.

We deny that any of our representatives have placed a price on "termination". Your assertion that Messrs. Rush and Molyneux have dealt with your Project Management may explain why you either misrepresent or misunderstand. Our said representatives have, by explicit agreement with Infraco Members, not dealt with your Project Management – they have dealt with Mr. Kitzman on the matter of Project Carlisle. In fact as Mr. Rush has had virtually no contact at any time with the Consortium's Project Management (merely two short meeting with Mr Foerder present earlier in the year and the attached email exchange with Mr Berrozpe) it is difficult not to interpret your assertion as being a fabrication.

All of tie's representatives have been consistent in articulating the essential requirements for any compromise under the guise of Project Carlisle. Despite that such an arrangement would include a one-off settlement of all the disputes between us, you persist in demanding that we agree to your proposal which neither settles all disputes nor complies with the essential requirements. Your position is unrealistic and we do confirm that the persistent and evasive approach, as in your first paragraph, does nothing to persuade us from seriously having to consider termination as being a realistic consequence of your actions.

In so far as campaign means, "to engage in an operation planned to achieve a certain goal" we admit, as should be expected of us, that our actions are not whimsical. Our goal is to establish price certainty for a viable tram network which is based on a design capable of obtaining the Independent Competent Persons approval in a certain and acceptable time. We do not demur from this and have no fear of being held to be irresponsible for seeking to achieve this. Conversely you appear to be "fighting" to retain the status quo of uncertainty of price, programme and design, on your terms.

We note that you confirm that Mr. Kitzman is no longer the spokesman for Infracore Members. In the absence of written denial by all Infracore Members by close of business on 5 November 2010, we will consider this to be their wish and proceed on the basis that the Infracore is no longer seeking to achieve a compromise with us.

Yours faithfully,



Steven Bell
Project Director - Edinburgh Tram

Enc: