

FAO. Mr. Richard Jeffreys CEO tie Limited

Following the mediation there have been further discussions which have unfortunately not produced any real progress. With your indication that you may shortly formalize certain disputes we feel it is useful to once more clarify our position – in particular considering the presentation of your culpability analysis which was helpful in clarifying your position but ultimately demonstrated to us that your case is fatally flawed. When discussing this proposal with you we shall explain, giving examples, as to why we are both confident of our position *per se* and further consider that your analysis will not stand the test of scrutiny. Whilst we wish to avoid appearing to confront you with a “take it or leave it” proposal, inevitably the time has now come to set our minimum and final position. Clearly, if tie agree to this proposal and the heads of terms therein, there would then be a need to fully record the position in a supplemental agreement.

Clearly if this is unacceptable to you then we likewise see no option other than to go down the formal dispute route and we shall, if we so wish, do so without further reference to you irrespective of any dispute(s) you may wish to unilaterally declare in the meantime.

1. Extension of Time (EOT)

For EOT 1 Infraco will accept an amount of £ 2.45 million for the BB portion and £ 2.45 million for the Siemens portion.

For EOT 2 Infraco will accept an EOT of 10.5 months with commensurate reimbursement for associated time related costs.

For EOT 2 Infraco will accept an additional 1.5 months EOT but without any cost reimbursement for time related costs. Beyond the primary 10.5 months EOT (above) this serves to protect Infraco from exposure to LDs.

The above EOT is acceptable to Infraco subject to tie agreeing to Infraco undertaking acceleration measures which have to be discussed and finalized with tie given that various options exist. The cost of undertaking such measures would be in addition to the costs referred to above.

2. Base Date Design Information (BDDI) to Issued For Construction (IFC)

Infraco propose that in lieu of any amounts for which Infraco are deemed to have included in their tender for design development, Infraco shall apply a reduction (credit) to the value of a tie Change for the civil works element. The credit to tie would be calculated against the value of the original item which became subject to a tie Change and it is proposed that 4 % of the value of the measurement of the BDDI will be credited back to tie. The tie change will then be calculated (as has been the case to date) by the measurement of the value of the IFC drawings less the measurement of the value of the BDDI then taking account of the credit. This amount would apply both to future and past Changes on the civil works where BDDI to IFC is applicable.

Infraco undertakes to assist tie with the provision of information as to why the changes occurred but no such provision of information shall be construed as in any way affecting the agreed Estimates or the comparison between BDDI and IFC .

3. Value Engineering (VE) (Schedule Part 4, Appendices C and D).

Infraco propose that tie credit to Infraco the sum of £6.8 million for those VE items which were deducted from the Construction Works Price. This proposal is to ensure that there are no further disagreements on the VE items and that this will be a final settlement regardless of the status of the VE items.

4. On-Street Works Supplemental Agreement on Cost Reimbursable Basis

Infraco will execute the Bilfinger Berger scope of works for the On-Street works (generically defined as being from Haymarket through to Newhaven inclusive of bridges) on a cost reimbursable basis (including additional fixed percentages, 10% head office and overhead, 7.4% consortium preliminaries and 17.5% uplift [to be applied to the Bilfinger Berger Staff costs only]). Additional anticipated engineering costs and the like to be incurred by Siemens resulting from the proposed On-Street agreement shall likewise be reimbursed to Siemens on an "as incurred" basis. The Princess Street Supplemental Agreement (PSSA) would form the basis of this proposal although for commercial expedience and in view of the current difficulties administering the PSSA, the delineation between cost reimbursable and original works would be jettisoned in favour of a simpler cost reimbursable basis for all of the civil works.

To give tie assurance of all reasonable efforts to progress with the works Infraco shall:

Where the project is delayed by a period of more than 3 months (currently beyond the EOT II extension) Infraco will reduce it's 10% overhead incrementally by -½% per calendar month until 5% is reached at which time this amount shall remain applicable for the remainder of the duration of the On-Street works until completion. Clearly Infraco will suffer loss on any delay and consequently have an incentive to reduce delay to the project beyond those agreed extensions of time. Reciprocally if Infraco completes a month earlier than the agreed completion date then an incentive bonus will be payable in the sum of £ 1 million or pro-rate amount thereof where the period is less than one month.

5. Misalignment

It has not been possible to accurately identify the number of items (including the cost and time impact) that will be affected by this issue which clearly precludes a commercial settlement. Therefore the position of Infraco is that all matters relating to misalignment remain within the responsibility of tie as set out in Schedule Part 4 of the Contract.

6. Independent Quantity Surveyor (IQS)

Following a meeting between the tie and Infraco representatives on 29. July 2009 the outline remit for the IQS was agreed and will be finalized in the coming days. In the meantime the site

team will revisit the un-agreed changes with a view to trying to agree the open items. Where this is not possible then the open rates and quantities issues will be referred in Scot Schedule form to the IQS in accordance with the final remit.

This without prejudice proposal will remain "on the table" up and until close of business on 4. August 2009. If tie do not indicate agreement to the "heads of terms" set out in this proposal by that date then the proposal shall, be deemed to have been withdrawn by Infraco. Naturally if any matters set out above require clarification then naturally we are available to meet with you on a mutually acceptable date and time.

For the avoidance of doubt this letter does not contain an offer which is capable of acceptance but rather proposal heads of terms, which if accepted would require to be recorded in a supplemental agreement prior to having any contractual effect.