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**From:** Anthony Rush [rush\_aj@██████████]  
**Sent:** 02 December 2010 10:31  
**To:** Richard Jeffrey; Steven Bell; 'Brandon Nolan'; 'Nigel Robson'  
**Subject:** RE: CEC meeting with BSC

Richard

My suggested changes:

- What might be BSC's objectives for the meeting?
  - Their principal joint objective is to maximise their profit or minimise their loss.
  - To soften up CEC and convince CEC of the 'weakness' of tie's position and the strength of BSC's position. Such an approach is to their advantage whatever course the contract takes, whether it is litigation, mediation to find a mutually agreed termination, or carrying on.
  - To present the consortium as united and to seek to create divisions within the different parts of the client
- What tactics might they adopt, what arguments might they deploy?
  - That tie knew full well at the time of contract signature that this was not a fixed price contract
  - They were surprised at the council report that talked of 95% fixed price, they never believed the contract offered that level of price certainty
  - That tie have failed to understand or accept the basic principles of the contract, and that DRP findings support this (the most recent one earlier this week on landfill tax has been found in their favour)
  - In particular that tie have not accepted the responsibility for the cost of changes (BDDI-IFC) and management of the process of change (clause 80), again supported by DRP findings
  - That the main causes of delays are all to the clients account, utilities, design changes, delays in agreeing design changes, delays in approving design
  - That tie have not kept CEC fully informed, either at the time of contract signature or subsequently.

Being in "listening mode" you will not be advancing counter arguments, but I do recognise that you may have personal views on the terms of the contract, the way in which it has been administered, or the strength of our position. I would ask you to be careful not to rise to the bait that Wlaker has a habit of throwing down. They will be looking for signs of dissent between us on topics which I know you realise are mired in detail.

It will be interesting for us at tie to see their proposal on a way forward. It may be difficult for them to say anything other than they want to complete the tram, at least to a sensible mid-point. I do not believe that this is necessarily their settled and jointly held position.

You may also have in the back of your mind that they place a great deal of blame on CEC for the fact that they have as yet not completed the design

Tony

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**From:** Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]  
**Sent:** 02 December 2010 10:07  
**To:** Richard Jeffrey; Anthony Rush; Steven Bell; Brandon Nolan; 'Nigel Robson'  
**Subject:** RE: CEC meeting with BSC

I understand Donald McGougan and Alastair Maclean are meeting at 12.00 today to discuss tactics, so an early response would be appreciated to allow me to forward in time for their meeting.

Thanks

R

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**From:** Richard Jeffrey  
**Sent:** 02 December 2010 09:45  
**To:** Anthony Rush; Steven Bell; Brandon Nolan; 'Nigel Robson'  
**Subject:** CEC meeting with BSC

Weather permitting, tomorrow the Council is due to meet the Consortium.

Of course this may be cancelled because of the weather, but nevertheless I would like to brief CEC on our views prior to the meeting.

I would welcome your comments on my thoughts below.

DRAFT note to CEC

We do not know how open BSC will be with a note taker present, but we assume they will adopt the following approach;

- What might be BSC's objectives for the meeting?
  - Never forget that they are rational, commercial organisations, so their principal objective is to maximise their commercial position.
  - To soften up CEC and convince CEC of the 'weakness' of CEC's position and the strength of BSC's position. Such an approach is to their advantage whatever course the contract takes, whether it is litigation, mediation to find a mutually agreed termination, or carrying on.
  - To present the consortium as united and to seek to create divisions within the different parts of the client
- What tactics might they adopt, what arguments might they deploy?
  - That tie knew full well at the time of contract signature that this was not a fixed price contract
  - They were surprised at the council report that talked of 95% fixed price, they never believed the contract offered that level of price certainty
  - That tie have failed to understand or accept the basic principles of the contract, and that DRP findings support this (the most recent one earlier this week on landfill tax has been found in their favour)
  - In particular that tie have not accepted the responsibility for the cost of changes (BDDI-IFC) and management of the process of change (clause 80), again supported by DRP findings
  - That the main causes of delays are all to the clients account, utilities, design changes, delays in agreeing design changes, delays in approving design
  - That tie have not kept CEC fully informed, either at the time of contract signature or subsequently.
- I do not think it wise to get into any counter arguments, but if you want briefing again on any of them, please let me know.
- I apologise for stating the obvious here, but regardless of your personal views on the strength of the contract, the way in which it has been administered, or the strength of our position, it is vital that you do not give any hint of accepting their version of events, to do so will simply strengthen their resolve. They will be looking for signs of weakness.
- It will be interesting to see their proposal on a way forward. With a note taker there it will be difficult for them to say anything other than they want to complete the tram, at least to a sensible mid-point. I do not believe that this is necessarily their real position. I do not believe the consortium has a settled position, but they all know what they want for their own companies. Contractually and commercially it would be difficult and unwise for them to say what they really want at this stage in the process.

Regards

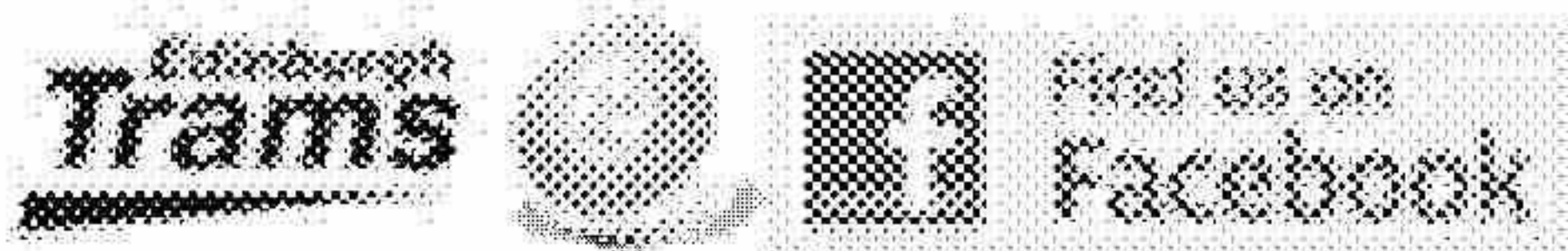
Richard

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