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**From:** Middleton DF (David)  
**Sent:** 13 October 2009 16:33  
**To:** Reeve W (Bill); McLaughlin AC (Ainslie)  
**Cc:** Morrissey J (Jerry)  
**Subject:** RE: Meeting with Bilfinger Berger \_ Tram

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I gather Stewart is to meet Bilfinger soon. He should be made aware of this perspective.

David

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**From:** Reeve W (Bill)  
**Sent:** 17 September 2009 08:21  
**To:** Middleton DF (David); McLaughlin AC (Ainslie)  
**Cc:** Morrissey J (Jerry)  
**Subject:** Re: Meeting with Bilfinger Berger \_ Tram

The Bilfinger account is consistent in core facts with what we know, e.g. 400 claims.

What also is likely to be the case is that Bilfinger underbid for the contract, in part being hit badly by currency fluctuations: i.e. they bid in sterling, but some of their input costs are in euros.

On the face of it, £545m + £70m doesn't get to £800. This highlights the delay costs. So the quicker this is fixed, the better.

The striking truth is neither party can afford to concede some of the principles underpinning the 400 disputes. Both, therefore, are playing for high stakes in the disputes, including the allocation of delay costs.

I agree that we need to see the results of the first few disputes to see where the balance of truth really lies.

Regards,

Bill Reeve

Director, Rail Delivery  
Transport Scotland

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**From:** Middleton DF (David)  
**To:** McLaughlin AC (Ainslie); Reeve W (Bill)  
**Cc:** Morrissey J (Jerry)  
**Sent:** Mon Sep 14 17:45:39 2009  
**Subject:** Re: Meeting with Bilfinger Berger \_ Tram

I suspect our Ministers would want the benefit of this perspective. Let's reflect on that after Thursday.

David

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**From:** McLaughlin AC (Ainslie)  
**To:** Middleton DF (David); Reeve W (Bill)  
**Cc:** Morrissey J (Jerry)  
**Sent:** Mon Sep 14 17:36:23 2009  
**Subject:** Meeting with Bilfinger Berger \_ Tram

David/Bill

Jerry and I met Richard Walker and Scott McFadyen today, ostensibly to talk about M80, FRC and their interest in other contracts. Interestingly they had picked up the fact that it was over a year since GARL had been advertised in the OJEU and were speculating that we might have to re-advertise. They indicated they would bid this time round. So they appear to be interested in a long term business in Scotland.

The bulk of the meeting was taken up with their side of the story on Edinburgh Tram. It will come as no surprise to you that this is not a happy story. I explained that we were not familiar with the contract and we therefore had no view on the rights and wrongs of the current disputes. In summary, and in no particular order here are some of the issues that Richard outlined to us:

- There are currently over 400 separate disputes still to be resolved on the contract. They have only just appointed a QC to hear the first tranche of disputes which have been referred to Disputes Resolution Procedure
- Bilfinger scathing of the experience of tie personnel involved in handling the contract who in their opinion have no background in managing a major civils project leading to delays and lack of clear decisions. They say tie are not operating the contract.
- The value of disputed work is put by Bilfinger at around £70m excluding time delays. Site overheads are running at around £1.2m per month. At present work on the ground is effectively at a halt apart from Princes Street, the bridge at Edinburgh Park and a small amount of work at Gogar.
- The MUDFA works are running up to 2 years late. Bilfinger state that the contract was let before the design, ground conditions and key quantities established and that tie signed up to a contract where these were conditional.
- Although Bilfinger have been paid upfront establishment costs, progress with the civils work is only around 8% more than a year after the contract. There are knock on effects on the Siemens work as a result.
- Bilfinger feel that if their claims are upheld the cost of the contract is likely to rise to around £700m but they are still not out of the woods yet. They believe that there are still a considerable amount of uncertainties associated with work still to start in Leith. Their view is that in order to get progress the contract has to go to cost plus on the on street works with the possibility of a negotiated lump sum for the off street works
- They feel the only practical way forward is for TS to take over the project or for TS personnel to be seconded to tie to help oversee the work

My view is that the contract has now completely broken down and that both parties efforts and resources are now being concentrated on contractual disputes. Bilfinger say they want to get on and finish the contract but in my view that is only going to happen if they are paid for the additional work they are being asked to do and effectively much of the current contract is set aside. That is going to see the final bill rise to at least £700m and at best the project delivered for 2013. If there are some quick decisions coming out of the dispute resolution then we may get a feel for where the burden of responsibility for contract failure lies to date. That might be the point for us to become involved if Ministers decided that was necessary.

Happy to discuss. Incidentally, I have been asked by the Minister to arrange for him to meet senior representatives of Bilfinger to discuss progress on M80.

Ainslie