
From: Stewart McGarrity
Sent: 06 March 2009 10:19
To: mike@mgheath.co.uk
Cc: Steven Bell; David Mackay
Subject: FW: Peer Review - TOR - URGENT

Mike,

See TORs for your current review below. Please do come back to me with any clarifications or omissions.

Stewart

Stewart McGarrity
Finance Director
tie Limited
Mobile [REDACTED]

Edinburgh Tram - tie Peer Review
Terms of Reference for Review on 5th March 2009
Mike Heath, Willie Gillan and Malcolm Hutchinson (plus Marshall Poulton as observer)

Background

During the period since early December 2008, tie has found itself in an escalating and increasingly entrenched series of disagreements with the BSC consortium on a range of contractual issues. This has arisen in parallel with a very late mobilisation and start on construction by BSC and has lately manifested in an impasse such that BSC (led by Bilfinger Berger) have clearly stated they will not work on sections of the project until tie accept their overarching contractual conditions and thereby allow them to recover very substantial additional direct costs, prolongation and delay and disruption they have forecast they will incur to complete the project. During the week ending 20th February the dispute culminated in a refusal BSC to start permanent works on Princes Street until matter under dispute in respect of Princes Street in particular, including the valuation of all changes, had been resolved.

After taking very robust legal advice and with clear and unambiguous support from the tie Board, the Tram Project Board and City of Edinburgh Council, tie has now commenced proceedings under the contractual Dispute Resolution Procedure with a view to, inter-alia, getting the permanent infrastructure works on Princes Street started as soon as possible.

The tie Chairman has asked the tie Peer Review team to provide an independent view on the circumstances leading to the current disputes, to test the decision to invoke the DRP procedure and to provide their expert input to the way forward including the referral of further matters to DRP as necessary.

Specific matters to report on

1. The correspondence and emails leading to the above circumstances
2. Decision to commence the DRP process on Princes St in the context of any alternatives course which may be available to tie
3. The strength of the case on the matters referred specifically to DRP in respect of Princes St
4. The strengths and weaknesses of the contractual change mechanism in the Infraco contract

5. The strategy to continue referring targeted matters to DRP which will give greater granularity and visibility to the contractual disputes, provide a further contractual mechanism under which Infracore is compelled to work without further damage to programme whilst at the same time seeking to establish a constructive framework and dialogue under which **tie** can engage with contractor
6. Any other matter the Peer Review team judge relevant to the above.