

Agreement on BDDI (Drawings)

TIE LIMITED

POSITION PAPER

relating to

the agreement between **tie** Limited

and

Bilfinger Berger (UK) Limited / Siemens plc / Construcciones y Auxiliar de Ferrocarriles consortium

in connection with the works authorised by the

Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006

1. INTRODUCTION

- 1.1 This dispute arises over which drawings are deemed to form the Base Date Design Information

2. THE DISPUTE

- 2.1 Tie considers that all drawings available to and issued to the Infraco up to and including the 25 November 2007 form the Base Date Design Information
- 2.2 The Infraco considers that the drawings listed in the Infraco's Proposals Schedule Part 30 are the drawings forming the Base Date Design Information and further consider that the 21 'marked up' drawings have priority over all other drawings

3. TIE'S POSITION ON THE DISPUTE

- 3.1 Section 2.2 of Schedule Part 4 defines the Base Case Assumptions as:

'The "Base Case Assumptions" means the Base Date Design Information, the Base Tram Information, the Pricing Assumptions and the Specified Exclusions'

- 3.2 Section 2.3 of Schedule part 4 defines the Base Date Design Information as:

'The "Base Date Design Information" means the design information drawings issued to Infraco up to and including 25th November 2007 listed in Appendix H to this Schedule Part 4.'

- 3.3 Appendix H to Schedule Part 4 states Base Date Design Information as:

'All of the Drawings available to Infraco up to and including 25th November 2007'

- 3.4 Accordingly tie's position is that all drawings issued up to and available up to the 25 November 2007 are the drawings and information forming the Base Date Design Information.

- 3.5 Therefore Schedule Part 30 drawings do not restrict the definition of the Base Date Design Information and particularly that Schedule Part 30 drawings do not form part of the Base Date Design Information and therefore do not form part of the Base Case Assumptions.

4. REQUIRED OBJECTIVES OF REFERRAL OF THE DISPUTE TO THE INTERNAL RESOLUTION PROCEDURE

- 4.1 Agreement on what documents forms the Base Date Design Information (BDDI)

5. TIE'S FURTHER COMMENTS ON AND UNDERSTANDING OF INFRACO'S POSITION ON THE DISPUTE

- 5.1 Tie believes that the Infraco, wrongly considers that only the Schedule Part 30 and particular the 21 marked up drawings form the Base Date Design Information

6. LIST OF SUPPORTING DOCUMENTATION

- 6.1 Schedule Part 4 – page 3
- 6.2 Schedule Part 4 – Appendix H, page 53
- 6.3 Schedule Part 30 – Infraco Proposals – Civils App A

1.0 **GENERALLY**

- 1.1 The Infraco Construction Works Price is detailed in Appendix A to this Schedule Part 4.
- 1.2 The Construction Works Price is on a lump sum basis that is fixed until completion of the Infraco Works and not subject to variation except in accordance with the provisions of this Agreement.
- 1.3 This Part 4 of the Schedule sets out the various categories of items that may be subject to change, together with a mechanism for adjustment of the Contract Price including the Construction Works Price.
- 1.4 No provision within this Part 4 of the Schedule shall entitle the Infraco to more than one payment for any item or other entitlement under the Infraco Contract.
- 1.5 References to clause numbers in Part 4 of this Schedule are to clauses in the Infraco Contract unless otherwise stated.
- 1.6 All rates, lump sums and the like contained in this Schedule Part 4 are exclusive of Value Added Tax and are in Pounds Sterling.

2.0 **DEFINITIONS USED IN THIS SCHEDULE**

- 2.1 "**Archaeological Officer**" means the archaeological officer appointed by CEC from time to time.
- 2.2 The "**Base Case Assumptions**" means the Base Date Design Information, the Base Tram Information, the Pricing Assumptions and the Specified Exclusions.
- 2.3 The "**Base Date Design Information**" means the design information drawings issued to Infraco up to and including 25th November 2007 listed in Appendix H to this Schedule Part 4.
- 2.4 The "**Base Tram Information**" means the information contained in Tram Supplier's technical response in relation to the Employer's Requirements and in the Tram Supply Agreement (including, for the avoidance of doubt Schedule 23 of the Tram Supply Agreement (Tram Technical Information Data Version 11))
- 2.5 The "**Contract Price**" comprises capital expenditure and revenue expenditure as follows:

APPENDIX H

BASE DATE DESIGN INFORMATION

All of the Drawings available to Infracore up to and including 25th November 2007.

per Berger – Siemens Consortium

Edinburgh Train Network

Construction Support by SDS

Scope

- 1 Inspection and Monitoring of the Construction Works**
 - 1.1 Inspect and Monitor to satisfy SDS that Infraco are complying with the Project Quality Plan (PQP)
 - 1.2 Inspect and Monitor to satisfy SDS that Construction is being carried out in accordance with the Design and the Employers' Requirements
 - 1.3 Certify that Construction has been carried out in accordance with the Design and the Employers' Requirements (see Appendix A – Construction Certificate)
 - 1.4 Agree Inspection and Test Plans with Infraco
 - 1.5 Review Test and Inspection results where test results confirm Design assumptions.
- 2 Technical Queries (TQs)**
 - 2.1 Respond to Infraco Type 2 TQs i.e. those raised by the Construction Staff and issue of Designer's Clarifications (DCs) as appropriate
 - 2.2 Incorporate DC information in revised Drawings and other Design Information
- 3 Temporary Works and Method Statements**
 - 3.1 Review Infraco Temporary Works Design to confirm that it has no adverse effect on the Permanent Works
 - 3.2 Review Infraco Method Statements to confirm that their implementation will achieve Construction of the Permanent Works in accordance with the Design and that their requirements for Inspection and Test are incorporated therein
- 4 Sub-contractors, suppliers and sleeves Design**
 - 4.1 Check that Sub-contractors, Suppliers and Sleeve Design have no adverse effect on the Permanent Works and are as contracted with same
- 5 Quality Assistance**
 - 5.1 Raise Non-Conformance Reports, as required by Infraco PQP
 - 5.2 Agree corrective actions in respect of 4.1
 - 5.3 Sign off completed non-conformance
- 6 H&S File**
 - 6.1 Prepare Design information for inclusion in H&S File

Resources

The exact resource requirements and duration of time to carry out the above are to be agreed with the SDS and the SDS designer taking into account the design scope in the SDS Novation agreement and the obligations of the Infraco Contract

To be Agreed:

Personnel

To be Agreed as above

Office Space and Equipment

Office space requirements within the Main Infraco Project Office of Strettle Offices (to be agreed)

Site Vehicles

To be Agreed as above

Appendix A – Construction Certificate

