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**From:** Anthony Rush [rush\_aj@██████████]  
**Sent:** 29 August 2010 14:12  
**To:** Fitchie, Andrew  
**Cc:** david\_mackay@██████████; Richard Jeffrey; Jim Molyneux; Steven Bell  
**Subject:** Carlisle  
**Attachments:** fairvaluebalance.docx

FILE NOTE – MEETING HELD ON 29 AUGUST 2010 – BRIDGE OF WEIR

Ed Kitman for Infraco (BB)

Anthony Rush for tie  
James Molyneux for tie

This is not a verbatim report, but arranged in topics.

- 1 I opened the meeting with observing that I had obviously misjudged the meeting on Friday as I had thought Ed was giving Flynn and Walker a chance to say their piece. Ed confirmed that wasn't the case.
- 2 I produced the attached diagram to illustrate and explain the Proposal we had made and how we arrived at it.
- 3 Firstly Jim had arrived at what he thought was fair value for the scope explained in our proposal. We ran three other checks and had come up with similar answers.
- 4 We had been able to recast the BB element and had arrived at a figure which was £500k more than what it would be by taking account of the reduction Ed had indicated to the Chairman on Friday night. There was about £20 million of a difference between what Jim had come up with as "fair value" and the recast claim by BB (on an apples for apples basis). Ed didn't disagree with these numbers.
- 5 I said that we had appreciated BB's approach but couldn't say the same for Siemens. Ed agreed and went further by telling us that Siemens cannot even explain the original price – but they had promised him that they would come up with an explanation by next Friday.
- 6 I then explained that the diagram showed the thought process I had applied to Jim's fair value. I explained that the proposal was to replace Schedule Part 4 with the Deed of Variation. Schedule Part 4 has taken on such an emotive meaning that it was necessary to be seen to replace rather than revise.
- 7 The Proposal and Deed of Variation followed the framework Ed had agreed with us back in June. I admitted that it changed some of the risks – such as ground conditions and landfill tax – but this reflected the time which had elapsed and the fact that Darcy had confirmed that the design was complete on 29 July.
- 8 I then explained that I had to attempt to apply a balance of the negatives and the positives against Jim's fair value and that I had decided that I couldn't calculate a figure. It was therefore a commercial decision for the parties – hence my recommendation that each party nominates its "decision maker" and they meet to agree a price after Ed had agreed the framework with us.
- 9 I then referred to the red items in the bottom left – being the proposals they made on

Friday. All three would reduce the final price as they involved tie in more risk. I also explained that if Infraco wanted the contract to be terminated at Haymarket or St Andrews Square they must propose that – EU Law prevents us from doing so.

- 10 Ed explained that Siemens had taken a corporate decision in Berlin based on Flynn's reporting that they were only prepared under the Infraco Contract to build to Haymarket or St Andrews Square if BB were doing the civils. If BB weren't doing the civils they would do the E&M under a separate contract to supply the materials for somebody else to erect. We expressed surprise at this and explained that we would have to increase the costs for doing so.
- 11 We explained the background in full to our proposal for On-street works and frankly Ed didn't seem certain of what he was proposing. He raised insurances and guarantees for the interface on one hand and then on the other claimed it wouldn't be a problem if a third party installed the rails and erected the E&M work. (Evidently we can keep the equipment in a fridge for 10 years.) We proposed that I go to Berlin to meet the right person and to Mannheim to meet Enenkel so that they can have the benefit of the un-biased explanation tie have had. Ed confirmed that the Chairman had in effect commented on that on Friday.
- 12 Programme came up. I explained again that proposal suggested three months assistance and that in any case in arriving at a balanced view we had to take account of £22m of losses (as reflected by LD's) in opening a year late. We agreed that this was matter which could be left till the end.
- 13 We exchanged views on CAF, SDS, PSSA and agreed that these were issue we could iron out together.
- 14 We set a programme of ED meeting with us afternoon of Tuesday, Wednesday, Thursday and Friday next week in Glasgow to do a line by line debate/negotiation on the proposal with a view to the Chairman meeting the representative (s) of Infraco on Wednesday 8 August (subject to availability) to finalise the price. I refused an earlier time on the basis that the Chairman would need time to consider what may transpire from Siemens in the meantime.

#### Thoughts

- 1 I guess the fact he turned up tells us they are still in play – if he turns up on Tuesday it will tell us that we are definitely moving forward with BB – I have no idea where Siemens are and I don't think Ed does.
- 2 It would help if we could put pressure on Siemens – TS should be the right people to do so – can we trust them to do so – will Swinney get them to do so?

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