

Richard, the below text will be sent to you as a formal letter under the contract tomorrow. In the event that the final text of the letter tomorrow differs at all from this e-mail, then the formal letter should take precedence.

Regards

Richard

Dear Richard,

I write to confirm some opinion forming impressions given by you and Michael Flynn when you met Anthony Rush and me on the 14 April 2010. These impressions give meaning to Infraco's behaviour in the way they are performing, or not performing, their obligations under the Infraco Contract.

- Mr. Flynn attempted to excuse Infraco's on-going refusal to accept **tie**'s instructions on the basis that there is a £15 million difference between your application and **tie**'s certification.
- Mr. Flynn repeated an assertion that work would not be completed until January 2014 – an aspiration which cannot be objectively or realistically supported.
- It was explained by you that Infraco felt unfairly treated by the response **tie** gave to claims for compensation for work done in the early stages of the contract, especially in relation to Leith Walk. You stated that you felt you had given **tie** ample opportunity to agree your valuation of the work, and eventually, after warning our Mr Gallagher, you felt you had no choice but to “open the contract”.
- That you felt that you had been asked to “put your hand in the fire”, and that having had it burned, you would not be doing so again.
- You also said that you believe the instruction issued to you under the contract to proceed with the works is not a valid instruction, (this is consistent with your letter to CEC, but I stated that I believe that you have not said this in your latest contractual correspondence).
- You also explained that Infraco was aware that SDS was not designing with best value in mind and that Infraco did not consider they had any responsibility to see that they did, nor did Infrac have the means to ensure that they did.

Let us consider these issues in turn

Certification

In fact the difference amounts to £19,260,955.88. The major items of difference are:

Agreed overclaim by CAF

£3,852,913.74

Value Engineering not achieved	£1,970,000.00
Incentivisation not achieved	£1,200,000.00
Preliminaries not achieved	£1,469,885.51
Milestones not achieved	£1,078,959.82
Sub-total of items without any substantiation	£9,571,759.00
Alleged Infraco changes	£4,848,444.00
PSSA Costs	£4,832,376.00

As can be seen the facts show a different picture to the one of unreasonable behaviour by **tie** alleged by you.

It is also worthwhile to look in more detail at some of the individual numbers included in the list above.

Referring to the PSSA costs, despite frequent requests we have no visibility that the submitted Plant / Material invoices have been checked / referenced back against the agreed Daily Record Sheets for either McKenzie or Crummock's works, nor have you made any deduction to reflect the requirements for remedial / defective works. Moreover, you should also note that we consider that the costs you allege exceed what may be your entitlement to reasonable additional costs etc under Clause 3.2 of PSSA. In determining what may be reasonable we shall take account of your admission that the design may not reflect best value.

Programme

In our letter of 25th Feb 2009 we rejected your programme showing a completion date of Jan 2014, giving reasons for our rejection. At the time of our meeting on Wednesday you had not given any substantive response to our rejection. We remain of the view that Jan 2014 is both unrealistic and unreasonable.

We accept that you are entitled to compensation arising from delays to utility diversions and have proposed a process, using provisions of the Infraco Contract, to assess and calculate your entitlement to compensation, whereas you have not complied with your responsibility to present a reasoned and substantiated claim.

In order that we can reach a mutual agreement on your entitlement we suggest the following provisional dates for preliminary meetings:

- Programme discussion – 28 April 2010.
- Compensation Discussion – 10 May 2010.

Failure to progress the works

The third, fourth and fifth bullet points all relate to your failure to progress the works with due expedition, and whilst they may explain your view of the history of the project, they do not answer the fundamental issue which is why, when your failure to progress the works does not entitle you to additional payment and proceeding with the works does not prejudice your right to payment, you still choose not to act in accordance with the contract as a whole and progress the works?

Design

In light of your comments regarding best value design we intend to meet the SDS Provider ourselves to obtain their explanation of what you confirm.

In Conclusion

We regret that your attendance at the meeting last Wednesday only confirmed the impression of there being a contemptuous approach by you to your obligations.

Despite your approach we will:

- proceed with coming to a conclusion on extension of time and compensation arising from delayed utility diversions (with or without your cooperation);
- arrange to progress INTC's which do not touch on Pricing Assumption 1 (we will be writing to you shortly on this);
- submit for resolution a formulation of clear meaning for Schedule Part 4; and
- investigate to what extent the SDS Provider has failed to provide best value design solutions.

All of which is without prejudice to our rights to instruct you to carry out the works with due expedition and in the context of your obligations and duty of care. Moreover, we make it clear that we reserve our rights to take whatever action we deem appropriate to your on-going breaches of the Infraco Contract terms.

Yours sincerely

Richard Jeffrey
Chief Executive