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**From:** Anthony Rush [rush\_aj@[REDACTED]]  
**Sent:** 06 January 2010 13:07  
**To:** Richard Jeffrey; Steven Bell; david\_mackay@[REDACTED]; Graeme Bissett (external contact)  
**Subject:** RE: \*\*\*SPAM\*\*\* Topics for discussion with David Darcy  
COMMERCIALYCONFIDENTIAL AND FOISA EXPEMPT

Thanks Richard,

My thoughts of yesterday and our conversation apply. I am not entirely happy about point 3 below if it suits their aspirations. It would be difficult to deliver as well.

Just thinking about the statement "we only priced BDDI" – could this ever be right? What they priced was a fixed price lump sum for a finalised design, subject to certain specified pricing assumptions.

Tony

Telephone [REDACTED] Mobile [REDACTED]

Replies will also be received on my blackberry

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**From:** Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]  
**Sent:** 06 January 2010 12:53  
**To:** rush\_aj@[REDACTED]; Steven Bell; david\_mackay@[REDACTED]; Graeme Bissett (external contact)  
**Subject:** \*\*\*SPAM\*\*\* Topics for discussion with David Darcy COMMERCIALYCONFIDENTIAL AND FOISA EXPEMPT

All, your help in formulating the key messages for Michael Flynn was very helpful, can you now please comment on the same basis for the conversation with David Darcy, which may now be tonight. I have also included some responses to the issues I expect David to raise with me.

Key points for me to make

- The board and shareholders are increasingly frustrated at the lack of progress and the lack visible signs of an increase in progress and lack of certainty on cost and programme
- The board is concerned that BB's DNA is such that they are unlikely to change their approach through continued appeals to work in partnership
- We are disappointed at BB's response to list of things that we asked BB to do in return for the granting of the 6&9, so much so that the board has asked that I investigate withdrawing that offer. I personally feel that BB have achieved 6 out of 10, which is typical of the overall approach, to do just enough not to be in breach but to offer no discretionary effort, like having an errant employee who plays the system and does just enough not to get sacked, not acting in good faith
- The board has therefore endorsed, indeed encouraged a more robust approach to the administration of the contract, hence the Chairman's letter
- We are encouraged by the latest adjudication, especially the adjudicators reasoning as to how the contract is supposed to function, and are considering the next batch of disputes in the light of this.
- We are increasingly robust in our determination not to let BB undermine the basis of the contract, a fixed price, lump sum contract (albeit with scope for variation), we are gearing up for a war of attrition

- We are robust in our efforts not to let BB undermine the credibility of TIE's management through the constant criticism of TIE's approach to the administration of the contract, "Tie are dragging their feet on this, Tie are delaying that" etc
- We will be instigating more audits especially in relation to design, programme, supply chain and contractual processes as we believe the consortium has fundamental weaknesses in these areas
- I will try to ride two horses, the 'can we resolve this informally' one and the 'more contractually robust' one
- We are working hard to reach a new supplemental agreement but we also need to consider what happens if we are unable to reach a sensible agreement.
- I now believe that it is far from certain that BB will finish this job, more than a 50% chance of the project ending in litigation, I said this in Germany in September, nothing has convinced me to change this view
- DD promised in September that work would commence on the section from guided bus way to Edinburgh park Bridge, it has still not started
- DD said in November that BB would mobilise on street 'at risk' then said not without an OSSA, still holding to ransom
- We expect and are prepared for this to get much rougher, I have briefed the political parties to this effect and they remain supportive, it will not be good for any of us, but we see little alternative and are prepared
- We are considering and actively working on a number of scenarios as to how things might evolve, is it now time to discuss these?
  1. Can we, despite our failures to date, reach agreement on the fundamental principles going forward, BDDI-IFC, Programme, On-Street
  2. Grinding this project out through a more assertive approach to the management of the contract, and contemplating that this could eventually lead to litigation, but in any event will deliver only very slow progress
  3. Considering ways in which BB could cease its involvement in the project, a mature divorce (this was the subject our most recent discussion before Christmas)

#### Points he may make

- Adjudicators decisions support their view of schedule 4 – my response I have a different take, adjudicator supports our view on how the contract is supposed to work
- Chariman's letter is ill informed
  - Steven agreed to BB not starting until 3<sup>rd</sup> week of Jan earliest - not Steven's recollection, BB have said they will not start without OSSA
  - Accusations that BB allege TIE management do not keep the board informed are unfounded – E-mail from Martin, conversations between DD and RJ
- TIE are delaying decisions – BB are not proving sufficient or requested info in a timely manner
- TIE do not accept/understand the contract and are being obstinate in agreeing issues – we have different view of contract, we remain robust in this view
- Overall trying to paint a picture of a client who doesn't understand the contract, is failing to administer the contract, and is the root cause of the key issues – my response is that BB are looking to gouge every penny, unreasonable estimates, we only priced BDDI, holding the project to ransom etc

Any views?

R  
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Chief Executive

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