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**From:** Fitchie, Andrew <Andrew.Fitchie@dlapiper.com>  
**Sent:** 19 February 2009 23:18  
**To:** Steven Bell; David Mackay; Dennis Murray; Stewart McGarrity; Frank McFadden; Jordan, Stuart; Kilburn, Keith; Graeme Bissett  
**Subject:** Re: Princes Street Works - Strictly Private and Confidential- Legally Privileged

Steven

I have read this more carefully now and been able to speak, as mentioned, to Stuart briefly.

It is imperfect but nevertheless very positive outcome for tie in facing down BSC.. We are not overly impressed by the quality of this late reply but very pleased that there is nothing more- save what will now be doubtless cobbled together for their alleged later communication (see below)..

Our recommendations are:

1. First question: is this BSC speaking?

Tie definitely does require the BSC representative to come to the 10am meeting and BSC need to be reminded that is an obligation (see Clause 6.3.3). If BSC are more than one for the meeting, we suggest that Steven has a wing man. Tie has commenced formal DRP (the outline positions are in the note you and I went over - to this should be added, to be clear, dispute over method of valuation of Princes St change). tie does not accept their assertions about no obligation to proceed, the tie instructions being not in accordance with the contract, works being at tie's risk or how BSC may still be saying they expect to have their estimate valued.

I note you have now re confirmed promptly that tie requires them at 10am.

2. There is a decision here of course whether to allow BSC on site Saturday on the basis that they seem to assert that they will be operating despite no valid instructions. This is, bluntly, is none sense and they must know it. Notwithstanding their claims about payment and risk (we are not sure what is meant- they are either on site or they are not), they will be progressing the contracted scope of the Infraco Works and the terms of the contract will apply to them unless and until they prove that they do not.

3. There is no explanation of what is meant by "events and circumstances", no explanation about why tie's instructions are not valid and there is, very visibly, still no correspondence from BSC, other than Sheehan's e-mail, to give any further context - until, perhaps, they explain themselves more plausible in this further letter. The original e-mail asserted that they were not obliged contractually to go onto Princes Street because there was an problem with non-exclusive access to site and no agreed estimate. Is the first point dropped or not? This new note asserts just that tie's instructions are invalid. It is another piece of evidence that BSC's preference is to find reasons, if they can, not to work except when they can assert claims.

4. We remain of the view that there is very little merit in any legals meeting to "shadow box" on matters of contract interpretation urgently or at all. If tie sees an advantage in us engaging, clearly we will do so. But BSC has shown themselves either incapable or unwilling to commit their new commercial wish list and expectations to writing. Probably because it is not a consortium view. We do not therefore see why tie should commit any time and money to preparing and having legal meetings which serve BSC more than tie. If BSC wish to send tie a paper setting out their views on the contract, tie would be able to consider such a paper along with, but not before, the Sheehan follow-up letter. In the meantime, tie's legal focus will begin in earnest on the launched DRP (and forensic on Infraco breaches in the background) if BSC do not withdraw their assertions. As to BSC- it may well be that from tie' s perspective that their efforts need to focus on programme recovery, production of estimates and works execution and not on briefing lawyers to score points in a vacuum.

Valuation: Sheehan accepts that the change will be valued under 80.16- that is demonstrable costs, using 80.6. My view is that this would using 80.6.1 and 2, in particular. This does not in my own view, equate to all of what Sheehan says in his 18th email and certainly not with tie accepting "risks". Any time implications will be evaluated by tie under Clause 80, not just awarded if there is delay in abstract. Subject to Dennis's view and Stuart's input, the basis of valuation needs to be clarified to find out if there is still a dispute. There is one about obligation to proceed and tie instructions and tie want these resolved or expressly withdrawn by BSC.

Kind regards

Andrew Fitchie

Partner  
DLA Piper Scotland LLP  
T: [REDACTED]  
M: [REDACTED]  
F: [REDACTED]

----- Original Message -----

From: Steven Bell <Steven.Bell@tie.ltd.uk>  
To: Fitchie, Andrew; David Mackay <david\_mackay@tiscali.co.uk>; Dennis Murray <Dennis.Murray@tie.ltd.uk>; Stewart McGarrity <Stewart.McGarrity@tie.ltd.uk>; Frank McFadden <Frank.McFadden@tie.ltd.uk>  
Sent: Thu Feb 19 20:55:54 2009  
Subject: FW: Princes Street Works - Strictly Private and Confidential

For Your information. I will call David & Andrew to discuss.

Steven Bell  
Edinburgh Tram Project Director

tie Ltd  
Citypoint  
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Edinburgh  
EH12 5BD

T: [REDACTED]  
F: [REDACTED]  
M: [REDACTED]  
e mail: steven.bell@tie.ltd.uk

Sent from my mobile handset

-----Original Message-----

From: Robert Sheehan <Robert.Sheehan@bilfinger.de>  
Sent: 19 February 2009 20:25  
To: Steven Bell <Steven.Bell@tie.ltd.uk>; Julie Smith <Julie.Smith@tie.ltd.uk>  
Cc: acampos@caf.es <acampos@caf.es>; Michael.flynn@siemens.com <Michael.flynn@siemens.com>  
Subject: Princes Street Works - Strictly Private and Confidential

Dear Sirs,

Infraco Contract – Instruction to Commence Works in Princes Street

We refer to your letter dated 19th February 2009 (ref. PD CORR 147).

For the sake of expedience we shall only address the salient matters and shall, at a later date, respond to the other points raised in the above letter in full.

Initially as stated in our e-mail dated 18th February 2009 under the current events and circumstances we do not consider ourselves obliged to accept your instruction which is not in accordance with the contract, however on a good will basis we agree to commence works in Princes Street given the apparent importance of this area to you.

However our understanding of your above referenced letter is that the mechanism for reimbursement shall be in accordance with Clause 80.15 and Clause 80.16, demonstrable costs. This we believe reflects our understanding of the meeting which took place in your Edinburgh offices on Tuesday evening on 17th February 2009 and our subsequent email dated 18th February 2009 ie reimbursement on the basis of demonstrable costs.

Turning to your proposed meeting, our representatives remain at your disposal for a meeting as suggested by you on 20th February 2009 at 10 am, should you still consider it necessary.

Finally, the correspondence and meetings during this week highlight to us the urgent need to resolve the outstanding principle issues on the parties interpretation of the contract. Therefore we consider it essential that the meeting between our respective legal representatives take place as soon as possible so as to avoid ongoing disputes throughout the currency of the project with the inevitable impact upon progress.

Mit freundlichen Grüßen / best regards / bien cordialement

Robert Sheehan

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Bilfinger Berger Ingenieurbau GmbH

Geschäftsführer: Joachim Enenkel, Vorsitzender  
Axel Bock, Matti Jäkel, Dr. Jochen Keysberg  
Handelsregister: Amtsgericht Wiesbaden, HRB 23348  
Sitz der Gesellschaft: Wiesbaden

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Steven Bell  
<Steven.Bell@tie.  
ltd.uk>

An

Robert Sheehan  
02/19/2009 08:42 <Robert.Sheehan@bilfinger.de>  
PM Kopic

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"acampos@caf.es" <acampos@caf.es>,  
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Thema

RE: Correspondance from David  
Mackay - Strictly Private and  
Confidential

Robert

Regrettably the deadline identified in David Mackay's letter, 12 noon today, and the subsequent discussion with Michael Flynn which allowed additional time until 13.40 today, has passed without written response from BSC confirming that you will mobilise as planned on 21 February 2009. David confirmed that in a telephone call with Michael Flynn at 13.45.

Consequently, in light of the clear urgency and importance of the confirmation requested of BSC, and the continued lack of any written response (or even indication of when such a response might be received), we consider this is further evidence of BSC's intention not to commence Infracore works as planned in Princes Street.

Yours sincerely

Steven Bell  
Edinburgh Tram Project Director

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-----Original Message-----

From: Robert Sheehan [<mailto:Robert.Sheehan@bilfinger.de>]  
Sent: 19 February 2009 13:39  
To: Julie Smith; Steven Bell  
Cc: Michael.flynn@siemens.com; acampos@caf.es  
Subject: Correspondance from David Mackay - Strictly Private and Confidential

Dear Ms Smith,

We have received your letter and will respond in due course - however due to the necessity of discussing the matter within the consortium we trust we have your understanding that we shall require a reasonable time prior to reverting to you both on the matter of Princes Street and your proposal for a meeting tomorrow.

Mit freundlichen Grüßen / best regards / bien cordialement

Robert Sheehan

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Bilfinger Berger Ingenieurbau GmbH

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Jochen Keysberg  
Handelsregister: Amtsgericht Wiesbaden, HRB 23348 Sitz der Gesellschaft:  
Wiesbaden

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Julie Smith  
<Julie.Smith@tie.  
ltd.uk> An  
"Robert.Sheehan@bilfinger.de"  
02/19/2009 11:15 <Robert.Sheehan@bilfinger.de>  
AM Kopie

Thema  
Correspondance from David Mackay -  
Strictly Private and Confidential

Dear Mr Sheehan,

Please find attached correspondence from David MacKay. Please can you  
confirm receipt.

Your sincerely,

Julie Smith

Julie Smith  
PA to Susan Clark - Edinburgh Tram Deputy Project Director PA to Steven  
Bell - Edinburgh Tram Project Director

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For more information please go to - [www.edinburghtrams.com](http://www.edinburghtrams.com) [www.tie.ltd.uk](http://www.tie.ltd.uk)

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(See attached file: PD CORR 147.pdf)

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