



## tie Limited

**Notes of Meeting:** Infraco Contract  
**Bidder:** BBS  
**Date:** 29<sup>th</sup> June 2007  
**Venue:** Citypoint (Macadam Room)

In attendance: Scott McFadzen – BBS  
Herbert Fettig – BBS  
Stephen Wright – BBS  
Tom Murray – BBS  
Bob Dawson – tie  
Valerie Clementson – tie

CC: Geoff Gilbert  
Lesley McCourt

Item	Comments	Action
	<p><b>Review of notes of meeting held on 19<sup>th</sup> June</b></p> <p>Notes of previous meeting were agreed.</p> <p>Areas where BBS had undertaken to consider and adjust their position have generally been dealt with as “Post Meeting Notes” added to those notes.</p>	noted
	<p><b>Other issues</b></p> <p>BBS were reminded that their confirmation on bond wording was still awaited.</p> <p>BBS confirmed that they would be an unincorporated consortium with joint and several liability. Both Bilfinger Berger AG and Siemens AG would both provide parent company guarantees.</p>	BBS  noted
	<p><b>Qualifying Change of Law Definition</b></p> <p>This was previously marked up and tie had explained the reasons behind the drafting. BB is now content but Seimens needed to respond next week.</p>	BBS
	<p><b>Termination</b></p> <p>Loss of Profit – as last item</p>	BBS

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	Use of termination of Agreement rather than Employment – similar.	
	<p><b>Novation of the SDS Provider – Clause 11</b></p> <p>BBS accept the principle of novation but the inclusion of “at any time” in Clause 11.8 gave them concern regarding future liabilities if there are not managing.</p> <p>BBS now understood Clause 11.9 that <b>tie</b> may need to assign rather than novate.</p> <p>With regard to new Clause 11.10 BBS were merely trying to protect their position with regard to any variance on the provisional sum for remaining work and it was agreed that this would be reviewed at preferred bidder stage.</p> <p>BBS did say that they would like to understand SDS delivery programme and cost issues at the earliest opportunity.</p>	<p><b>tie</b></p> <p>noted</p> <p>noted</p>
	<p><b>Novation of the Tram Supplier – Clause 12</b></p> <p>BBS accept the principle of novation and completely agreed with the original wording of Clause 12.8.</p> <p>BBS now understood Clause 12.9 that <b>tie</b> may need to assign rather than novate.</p>	<p>noted</p>
	<p><b>Novation of the Tram Maintainer – Clause 13</b></p> <p>BBS accept the principle of novation but wanted to ensure that there was protection in Clause 13.9 if someone else was to manage them but Infraco still be responsible. Drafting to be considered.</p> <p>BBS now understood Clause 13.9 that <b>tie</b> may need to assign rather than novate.</p>	<p>BBS / TEL / <b>tie</b></p> <p>noted</p>
	<p><b>Liability Caps</b></p> <p>BBS asked <b>tie</b> if the percentage of the cap was in relation to the overall contract price including maintenance or just construction. <b>tie</b> advised that it would be construction but including tram supply. <b>tie</b> then asked BBS if this clarification would enable them to review their adjustment to the percentage and BBS agreed to review.</p>	<p>BBS</p>
	<p><b>Liquidated Damages – Clause 62</b></p> <p>BBS’s principal issues are values and what is in the TSA to be agreed with the preferred Tramco.</p> <p>BBS also raised the concept of a bonus as noted in their footnote. <b>tie</b> advised that this could not be accommodated as it could act as a perverse incentive to seek extensions of time to create a bonus situation. However there would be nothing to stop the two contracting parties considering this ‘further down the line’ when there is greater certainty of cost and programme. However this must be a <b>tie</b>’s discretion, which BBS acknowledged.</p>	<p>BBS</p> <p>noted</p>

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	<p><b>General Obligations – Clause 7</b></p> <p>BBS willing to accept reinstatement of Clause 7.9 subject to review of Definition of Background Information to exclude issues such as sufficiency of land required.</p> <p>BBS acknowledged that the prohibited materials in Clause 7.10 was different to hazardous materials and accepted in principle, although wished to check finally to ensure that they didn't need any adjustments.</p> <p>BBS agreed to Clause 7.15 being reinstated.</p>	<p>BBS / tie</p> <p>BBS</p> <p>BBS</p>
	***** Meeting closed at approximately 4.00pm *****	

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