

CONDITIONS UNDER WHICH THE BBS CONSORTIUM RETAINS ITS POSITION AS PREFERRED BIDDER IN THE INFRACO PROCUREMENT TO ENABLE **tie** AND THE BBS CONSORTIUM TO PROCEED TO CONTRACT CLOSE

Condition One

tie shall pay the BBS Consortium an incentivisation bonus of £4,800,000, such sum to be paid as follows:

- £1,200,000 within 7 days of issue of Sectional Completion A
- £1,200,000 within 7 days of issue of Sectional Completion B
- £1,200,000 within 7 days of issue of Sectional Completion C
- £1,200,000 within 7 days of issue of Sectional Completion D

as detailed on the Contract Programme in Schedule Part 15.

Condition Two

If **tie** does not proceed with Phase 1b of the ETN Project or **tie** does proceed but BBS has proposed an estimate which **tie** has rejected unreasonably then:

- BBS Consortium shall be compensated for its work in the procurement period on Phase 1b by a payment of £3.2m (currently contained in the BBS Consortium price for Phase 1b)
- **tie** shall make a payment within 30 days of the Schedule Part 37 date (6 July 2009, unless the parties otherwise agree) against a valid VAT invoice.
- In the event that **tie** and BBS subsequently agree to recommence negotiations on a proposal (price, programme, scope and terms) for Phase 1b the £3.2m paid by **tie** to BBS will be discounted from the final price for Phase 1b.

Condition Three

The ETN Contract Suite and all associated documentation is closed out on the positions as detailed in column 3 on the attached summary table on all remaining matters and there is no further discussion on any matter except for housekeeping and sense checking. This includes:

1. BBS Consortium withdrawing all outstanding points on the SDS Novation Agreement which were raised in week commencing 28th April 2008 other than as agreed above as detailed in the summary table.
2. BBS Consortium accepts the position as amended in the summary table on Schedule Part 14 Review Procedure and the Design Management Plan and the Definition of Issued For Construction Drawings and the phased release of IFCs as allowed for in the Design Delivery Programme.

3. BBS Consortium delivering its collateral warranties at Contract Close and those of its subcontractors for tie and third parties on the terms required by **tie** in the InfraCo Contract.

Condition Four

When CAF joins the BBS Consortium and becomes party to the InfraCo Contract, this happens on the following terms:

- An indemnity as attached.
- Express agreed amendments to the two bonds provided by the BBS sureties to **tie**
- Amendments to the Siemens AG and Bilfinger Berger AG parent company guarantees to confirm no effect on scope, validity or duration of PCGs. Legal opinion to confirm this, all as agreed with Herbert Fettig on 9 May 2008.

Conditions Five and Condition Six

BBS agree to close down the Mobilisation and Advance Works Contract and waive the right to any entitlement to claim time relief or payment arising from events during the four months preceding award of the Infraco contract which would have been compensation events had the contract been in place at that time.

For the avoidance of doubt the requirement for IFC drawings and access to undertake the works post contract award as detailed on the contract programme shall not be affected by the above.

Condition Seven – Road Reconstruction

Costs arising in connection with BBS Pricing Assumption 12 in Schedule Part 4 are capped at £1.5m save for any prolongation costs arising from

- (i) SDS redesign of the roads or
- (ii) Reverting to the SDS roads design

with respect to BBS's Pricing Assumption 12 to the extent that such redesign causes delay to the Programme critical path.

Any prolongation entitlement to the BBS Consortium as a result of this Pricing Assumption 12 and related Programme Assumption 5 in Schedule Part 4 is limited to a maximum of eight weeks.

tie and CEC will support the re-design proposals that SDS develop to align their designs with the BBS Pricing Assumption 12.

Condition Eight – Early release of IFC information

BBS Consortium agree to accept the risk and any costs arising from changes relating to early release of IFC information, subject to a cap of £1.5m.

Condition Nine – Uninsured Third Party Economic and Consequential Loss

It is agreed that any amount due to **tie** within 7 days of the issue of the Reliability Certificate in accordance with Clause 77.8 and Schedule Part 43 of the InfraCo Contract is waived.

We agree to make the appropriate amendments to the Conditions of Contract to incorporate these agreements.

We hereby confirm on behalf of the BBS Consortium that there are no further outstanding financial, technical, commercial or legal issues connected to our offer and we are ready, willing and able to sign the ETN Contract Suite with proper corporate authority, as notified to all parties, on Tuesday 13 May 2008.

Signed:

For and on behalf of Siemens plc
With full authority

Signed:

For and on behalf of Bilfinger Berger UK Ltd
With full authority

Signed:

For and on Behalf of tie Ltd
With full authority

Edinburgh, 9 May 2008