

Edinburgh Trams Project

Review of Commercial Matters prior to and arising from Application for Payment Valuation No. 58

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PURPOSE OF THIS PAPER

In carrying out this review papers have been extracted from the project file and ingathered, these form part of the scope of information utilised in coming to an opinion of the action required.

The foregoing referred to are as noted below:

- Extract of Independent Certifier's Opinion regarding Rev 3A/Rev 4 Programme, December 2012 – pages 1 and 2
- Extract of Baseline Project Instruction embracing output from Cost Engineering Workshop, January 2012 - Item 4, pages 6 to 8
- Paper prepared by Infraco regarding Off Street Works Utilities dated 16th May 2012 – pages 1 to 5, Appendices A to M
- Paper prepared by Turner & Townsend in response to Infraco May 2012 Off Street Utilities paper (undated) – comprising two pages
- Meeting agenda prepared by Turner & Townsend dated 11th July 2012
- Minute from meeting held on 11th July 2012, issued by Turner & Townsend on 18th July 2012
- Infraco's revisions to minute of meeting held on 11th July 2012, dated 20th July 2012
- Update of Summary of Additional costs for Various Utilities Issues Off Street, dated 31st July 2012
- LOD Encroachment PMC 093 Briefing Note dated 17th July 2012
- T&T response dated 7th August 2012 to LOD encroachment, pages 1 to 5

INTRODUCTION

Both Turner & Townsend ("T&T") and Bilfinger Berger/Siemens ("Infracore") have agreed that guidance on the matters being discussed should be given.

I shall provide guidance on the points raised utilising the order provided in the minute of the meeting held on 11th July 2012

MATTERS UNDER REVIEW

1.0 Application for Payment No. 58

1.1 Infraco assessed milestones erroneously

Action: Infraco agreed corrective action with T&T

1.2 Further information was to be exchanged regarding the On Street Works Estimate

Action: Both parties agreed the On Street Works Estimate on 16th July 2012

1.3 Changes to the valuation leading up to the Certifier's meeting were to be tracked by the author of the change

Action: Agreed by Infraco/T&T

1.4 Variance of £498.71

Action: T&T to adjust certificate

2.0 RBS Tram Stop

2.1 Infraco and T&T exchanged information, opening position subsequently changed.

Action: T&T agreed that the issue requires a TCO

3.0 Preliminaries/OHP Mark Up on Scope Omissions and Negative Changes

3.1 I have compared the original draft of the minute as prepared by T&T, together with the adjustments made by Infraco. It is noted that the minutes are not adopted by the parties.

3.2 My opinion of that presented to me is that on the matter of de-scoping or omission of work, the nett value should be further adjusted by 10%.

3.3 On the question of additions, Schedule 45 mark ups apply.

4.0 Edinburgh Gateway

4.1 Design Costs are agreed. In my opinion allocation should be within a new estimate for PMC 14.

5.0 ScotRail Depot

- 5.1 In my opinion no work should be undertaken on hearsay regarding previous discussions. Recommended Action: T&T to ask that ScotRail evidence any agreement by the project client or their agent to that which they now refer.

6.0 Gogar Castle Access Road

- 6.1 Justification of the need for friction surfacing is to be given prior to any instruction being given or work carried out.

7.0 Off Street Utilities

In reviewing the papers on this matter, there are key issues that have influenced my opinion.

One of the thrusts of the mediation outcome was for Infraco to take the Off Street utilities risk and CEC to take on the On Street utilities risks. To date, that is what has been enacted by the parties, notwithstanding the correspondence around Scotland Gas Networks ("SGN").

I therefore consider that this topic is a one issue only, i.e. Scotland Gas Networks, and that the other Off Street utilities items are part of the risk calculation that would form part of the Off Street "lump sum" price.

Given the involvement of Infraco and known correspondence referred to in the Infraco submission, I have considered that knowledge of the general issue of SGN would be known to Infraco.

Most telling is the detailed correspondence between tie and SGN, taken together with the clear requests over the period from May to August 2011 made by Infraco at CEC control meetings to meet and discuss the works with SGN. For whatever reason, these meetings were not enacted by tie. In retrospect this action could be seen at best as slipshod or, at worst, in bad faith. This action in my view has compromised "the agreement" on risk allocation and due allowance with regard to the SGN works.

7.0 Off Street Utilities cont'd

It is my opinion that the final SGN cost should be ascertained by T&T, Infraco and CEC, together with ascertaining whatever allowance can be shown by Infraco as the risk sum against the SGN item allowed for at mediation. This risk sum should then be set against the final cost of the SGN works. Costs should then be recovered either way based on the outcome balance. This joint exercise should be carried out on an open book basis with the Independent Certifier present.

8.0 Rev 3A to Rev 4

This matter, having already been reviewed in some detail, should be re-visited, taking into account prevailing concerns between Infraco and T&T.

A revised TNC with values and wording in line with the accepted Certifier's opinion of December 2011 in relation to Rev 3A to Rev 4 should be issued.

9.0 Rev 4 to Rev 4c – Cost Engineering

It is my view that the parties involved in the present discussions have a well recorded version of events and agreements reached in connection with the Baseline Project Instructions of January 2012, viz Cost Engineering schedule and Cost Engineering minutes.

Since the joint meeting on 11th July 2012 between Infraco, T&T and CEC, CEC held a workshop on 1st August 2012 with Bob McCafferty, Ed Foster, Alan Coyle, Colin Smith, Julian Weatherley, Gary Easton, Richie Hales and Mike MacKenzie in attendance. This topic was discussed and a recommendation was made by the client for T&T to instigate worked examples to illustrate the effect of the 22 week time bank.

It is my opinion that T&T require to issue a tie Change Order to recognise the effect and value of the 22 week time bank initiative.

10.0 Other Items

10.1 St Andrew Square

Possible Disruption Costs: I request that a disruption protocol be agreed to capture a process that may be utilised in the event that this matter of disruption costs presents itself. Any protocol agreed should recognise the Schedule Part 45 obligations.

10.2 LOD Encroachment

(Post meeting the Parties requested that this item be included in this paper)

In my opinion the Tram Act requirement is clear on what the Contractor must work within. Design would follow that obligation. Change would require a TNC.

T&T require to issue a TNC and TCO for works associated with PMC 093 and for re-design at W18 respectively.