



For The Attention of Martin Foerder  
Project Director  
Bilfinger Berger Siemens CAF Consortium  
9 Lochside Avenue  
Edinburgh Park  
Edinburgh EH12 9DJ

Our Ref: INF CORR 6396  
Your Ref: 25.1.201/MRH/6826

Date: 7<sup>th</sup> October 2010

Dear Sirs

**Edinburgh Tram Project – Infraco Contract**  
**Progress of the Infraco Works - INTCs 156, 424A, 424C, 424D, 424E and 211**

We acknowledge receipt of your letter dated 28 September 2010 (reference 25.1.201/MRH/6826).

In respect of the INTCs relevant for that letter and this response (156, 424A, 424C, 424D, 424E and 211), our position has been, and continues to be, that you have not demonstrated that the facts and circumstances amount to a Notified Departure. You have not, as alleged by you, given any detail of the facts and circumstances which differ from the Base Case Assumptions. As has been the subject of previous correspondence, and by your own admission, whether or not a Notified Departure has occurred is an objective test.

We have been, and continue to be, cognisant of the decisions of adjudicators in previous DRP proceedings. However, in order to assess the facts and circumstances alleged by you to be a Notified Departure, against the backdrop of the decisions from previous adjudicators (to the extent that they are relevant), you, acting reasonably, must provide us with information to demonstrate why you say the facts and circumstances amount to an alleged Notified Departure.

We acknowledge that you consider that carrying out the works which are subject of INTCs 156, 424A, 424C, 424D, 424E and 211 amount to Notified Departures.

We acknowledge receipt of the Estimates recently received from you in respect of INTCs 156, 424A, 424C, 424D, 424E and 211. As stated in our letters 6035, 6038, 6042, 6044, 6045 and 6046, all dated 15 September 2010, the Estimates are currently under review.

In these circumstances, the provisions of clause 80.20 apply. You are obliged to comply with our instructions to carry out the works. Clauses 80.15 and 80.16 are deemed to apply *mutatis mutandis* to the work carried out by you in complying with our instruction.

Please confirm, within 5 Business Days from the date of this letter, that you are complying with our instructions and carrying out the works which are the subject of INTCs 156, 424A, 424C, 424D, 424E and 211.

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We note that INTCs 156, 424A, 424C, 424D, 424E and 211 are included on the list enclosed with your letter dated 29 September 2010 (reference: 25.1.201/KDR/6860) in respect of your ceasing the works. Please advise how you will recover any time lost in completing the works as a result of your breach.

Once again, we remind you of clause 65 which gives effect to the definition of "Compensation Event" included in Schedule Part 1 of the Infraco Contract. This is not an automatic entitlement and you require to comply with the provisions of clause 65 in respect of any claim for a Compensation Event. You are not, and will not be, entitled to relief in respect of your default, breach or failure.

Yours faithfully



Steven Bell  
Project Director – Edinburgh Tram