



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 6624

Your Ref: 25.1.201.EKI.7258

Date: 3rd November 2010

Dear Sirs,

Edinburgh Tram Project Infraco

We refer to your letter dated 29th October 2010 reference 25.1.201.EKI.7258.

At this point in time we do not reply to what you say in regard to the design of the retaining walls at Gogar Burn as this is the subject of a Remedial Termination Notice, issued on 12 October 2010, which has yet to be replied to by you.


Other than the four paragraphs which refer to Gogar Burn Retaining Walls on page two, your letter appears to seek to offer excuses for your behaviour, but it is not clear to whom you are addressing your explanations. We can say that it is clear that they do not accurately represent the facts or indeed recognise your obligations as the "contractor".

In section 3 you give the impression of holding CAF in very low esteem, as well as ignoring the fact that they are joint and severally bound under the Infraco Contract and that the provision of the trams is, obviously, an essential part of the Infraco Contract. You seek to pass the importance of their input off by giving an inaccurate picture of the way the meeting on the 11 October 2010 was instigated. It is little wonder that Dr. Keysberg and Mr. Jeffrey may have been at cross purposes when they spoke – it was Mr. Walker who requested the meeting on the pretext that the Infraco had some proposals to make which they would find constructive. No such proposal was made and indeed Mr. Flynn, at a private meeting with Mr. Jeffrey on the 25 October 2010, expressed surprise at being told that it was Mr. Walker who had asked for the meeting. The only credible explanation in this matter is that Mr. Campos was prevented from attending because of flight delays in Paris.

The inability of Infraco Members to coordinate their approach is repeated in your attempt in the final paragraph of section 3 to inject a misrepresentation into the record. The factual record shows that it was Infraco Members who instigated the idea of "divorce" and that your Mr. Reid articulated the options from your view point in his letter dated 5 March 2010. In view of the way you performed on Princes Street to produce just one kilometre of track to an unapproved design and containing defective work; it is little wonder that some may express a preference not to have the excruciating process repeated for the remaining six and half kilometres. His reasoning is clearly explained on page 3 of our letter dated 24 August 2010 (reference INF CORR 5856).

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Your letter clearly demonstrates that you fail to acknowledge your responsibility to manage the design and to take measures to progress the works with due expedition. Moreover, you also clearly fail to accept that it is your responsibility to act reasonably and make claims for additional payment. We do not withdraw from our contention that you engage in opportunistic claims and that the record supports this. You also either misrepresent or misunderstand Mr. Porter's decision on the "negative sum" we claimed in respect of Retaining Wall W16. His position on this is explained in the last paragraph of page 15 of his Decision – he did not consider the matter. We will be reverting to you on this matter in due course.

We deny that we have withheld payment to which the Infraco is entitled. It is a matter of fact that we have complied at all times with Clauses 66 and 67. It is for you to take steps to resolve any difference you may have with sums certified by us and value we place on changes. Indeed, the disputed matters of Preliminaries and the PSSA certificate of August 2010 are both currently subject of the Dispute Resolution Process between the parties to resolve such differences. You are obliged to take such measures which facilitate you progressing the works with due expedition. Your obligation is the antithesis of your current behaviour in suspending work because you disagree with us on your entitlement to payment for some INTCs.

We deny that any of our representatives have placed a price on "termination". Your assertion that Messrs. Rush and Molyneux have dealt with your Project Management may explain why you either misrepresent or misunderstand. Our said representatives have, by explicit agreement with Infraco Members, not dealt with your Project Management – they have dealt with Mr. Kitzman on the matter of Project Carlisle. In fact as Mr. Rush has had virtually no contact at any time with the Consortium's Project Management (merely two short meeting with Mr Foerder present earlier in the year and the attached email exchange with Mr Berrozpe) it is difficult not to interpret your assertion as being a fabrication.

All of tie's representatives have been consistent in articulating the essential requirements for any compromise under the guise of Project Carlisle. Despite that such an arrangement would include a one-off settlement of all the disputes between us, you persist in demanding that we agree to your proposal which neither settles all disputes nor complies with the essential requirements. Your position is unrealistic and we do confirm that the persistent and evasive approach, as in your first paragraph, does nothing to persuade us from seriously having to consider termination as being a realistic consequence of your actions.

In so far as campaign means, "to engage in an operation planned to achieve a certain goal" we admit, as should be expected of us, that our actions are not whimsical. Our goal is to establish price certainty for a viable tram network which is based on a design capable of obtaining the Independent Competent Persons approval in a certain and acceptable time. We do not demur from this and have no fear of being held to be irresponsible for seeking to achieve this. Conversely you appear to be "fighting" to retain the status quo of uncertainty of price, programme and design, on your terms.

We note that you confirm that Mr. Kitzman is no longer the spokesman for Infraco Members. In the absence of written denial by all Infraco Members by close of business on 5 November 2010, we will consider this to be their wish and proceed on the basis that the Infraco is no longer seeking to achieve a compromise with us.

Yours faithfully,



Steven Bell
Project Director - Edinburgh Tram

Enc:

Julie Thompson

From: Anthony Rush [rush_aj@██████████]
Sent: 02 November 2010 19:31
To: Steven Bell
Subject: FW: Trackform Workshop

Copies of Berrozpe emails

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

From: Anthony Rush [mailto:rush_aj@██████████]
Sent: 30 August 2010 08:24
To: 'Berrozpe, Miguel'
Cc: 'Susan Clark'; 'Steven Bell'
Subject: RE: Trackform Workshop

Miguel

Thank you for your email - I am of course pleased to accept that you meant me no offence.

My role in this project goes beyond Project Carlisle - put simply, I co-ordinate what I am proud to say is un-biased advice, from expert advisors, to tie on a range of subjects which include, but are not limited to, Project Carlisle and the construction of On-street trackwork.

The design of the On-street track troubles me at a personal level - it seems that everybody agrees with what my expert associates and I believe but you as designers are unable to make it happen. As a consequence you have constructed near on a kilometre of track in one of the most environmentally sensitive locations in the World which does not have approval and is unlikely to get approval from the Roads Authority. And, to add insult to injury, you have constructed it badly. In my book that calls for urgent and contrite action by you, which incidentally would also mitigate the LD's clock which is currently running against you at £440k/week on this subject.

As you say, we have never met - but from your email and what I am told about you I understand you to be a sensible person - I would urge you to use your common sense and get this matter sorted out sooner rather than later - it isn't going away - it has to be solved.

Kind regards

Anthony Rush

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

From: Berrozpe, Miguel [mailto:miguel.berrozpe@siemens.com]
Sent: 30 August 2010 02:01
To: Anthony Rush
Cc: 'Susan Clark'; 'Steven Bell'
Subject: RE: Trackform Workshop

Dear Mr Rush,

My sincere apologies if my e-mail below did offend or upset you. As I said in the same, I was just -as a personal courtesy- confirming to Susan of a cancellation of attendance, "as will have been notified to you by others"

(which had been done to yourself and to others, to my knowledge, by M.Flynn and by Ed Kitzmann). This is solely because Susan had invited me just a few days ago, after my previous confirmation to her that R.Kraemer, the only Siemens representative originally invited, was on vacation.

Since you and I haven't met yet - following tie's and Infraco's deliberate decision to separate the Infraco negotiation teams from the day-to-day execution teams, I understand that you may question in which capacity I was writing; please understand that I was solely writing as one of the invitees to the meeting, respectfully cancelling his attendance.

I have never contended that the onstreet track design is a Carlisle issue (and I fully agree with you that it isn't). My view below was solely that your initiative of having convoked the meeting in question was understood by the Siemens team to be "in the good faith of" Project Carlisle (for instance, the only Siemens participant originally invited was R.Kraemer, who has currently no other function than our Siemens coordinator for Project Carlisle). Since I was myself only informed indirectly of the organization of this meeting, I might have been wrong in this view; although I regularly hear from M.Flynn, R.Kraemer and others that you are leading such a discussion on possible alternative trackform designs onstreet to improve viability of the project, both in Project Carlisle scenarios and more generally (and please believe me, you have my full support in it).

The fact of the meeting having been convoked at DLA Piper in Glasgow was, in the context of the quite sensitive correspondence received just very shortly before the meeting (two remediable termination notices and one underperformance notice), perhaps misinterpreted by myself - and later clarified in Susan's e-mail as well as in yours.

In any case, I trust that the meeting/workshop/conversations that were postponed will be rescheduled very soon.

Again my sincere apologies, truly meant. As most -or all- the team of tie can hopefully confirm to you, my nature is not antagonistic, and I am deeply sorry if this is the impression that I have given to you.

This project has way too much antagonism and confrontation, and my only intention since the first day I arrived here has been, and will continue being (no matter how challenging the task), to convince those at war to make peace.

Miguel Berrozpe

Project Director, Siemens plc

Edinburgh Tramway Network

Mobile: +44 (0) [REDACTED]

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

From: Anthony Rush [mailto:rush_aj@[REDACTED]]

Sent: 11 August 2010 08:34

To: 'Susan Clark'; 'Steven Bell'

Cc: Berrozpe, Miguel

Subject: RE: Trackform Workshop

Susan,

Thank you for informing me of this.

As you rightly say the meeting was arranged in Glasgow - principally to enable me to fit it into my timetable for considering the consortiums' proposal.

Mr. Berrozpe persists with this myth that the on-street track design is a Carlisle issue - it isn't - in fact as I reminded Mr. Flynn yesterday evening the process was started at a meeting in past February before Carlisle was even thought of. In fact it was Mr. Flynn who after that meeting contacted me directly and the Carlisle idea emerged from that.

Mr. Berrozpe gives a very poor impression of the Infraco parties. Are we to believe that companies who advertise themselves as being world class are insufficiently resourced to do more than one task at a time?

Notwithstanding which tie have been asking for a remediation strategy for some time now. Despite promises from senior executives of both companies - none has emerged. Moreover, a sensible resolution at the workshop (with or without Infraco Parties being present) may well prove critical to an acceptable remediation strategy

Once again Mr. Berrozpe implies an attack on our "good faith" - and once again we should robustly refute it. For my part I will note it in so far as it implies that I have acted in bad faith.

In what capacity is Mr. Berozzpe writing? Mr Foerder is the Infraco Representative pursuant to the Infraco Contract and Mr. Kitzman is the Infrao Point of Contact for Carlisle. Unless we hear otherwise within 24 hours - by copy of this email - Infraco are put on notice that we rely upon Mr. Berozzpe's email as being formally issued under the Infraco Contract.

In the meantime I confirm that the workshop will take place whether Infraco parties attend or not.

Anthony Rush

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

From: Susan Clark [mailto:Susan.Clark@tie.ltd.uk]
Sent: 11 August 2010 07:42
To: Steven Bell; rush_aj@[REDACTED]
Subject: FW: Trackform Workshop

For info.

Susan

Susan Clark
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-----Original Message-----

From: Susan Clark
Sent: 10 August 2010 19:56
To: Berrozpe, Miguel
Subject: RE: Trackform Workshop

Miguel

Thank you for your e.mail. I'm disappointed that the workshop is not to be attended by BSC, especially since this is the 3rd time in a many weeks we have had to postpone. The venue is of no relevance at All. Some of the team are in Glasgow for other things tomorrow and it seemed sensible to hold the session there. DLA were able to give us a room instead of having to use a hotel.

Susan

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

From: Berrozpe, Miguel <miguel.berrozpe@siemens.com>
Sent: 10 August 2010 19:22
To: Susan Clark <Susan.Clark@tie.ltd.uk>; 'kevin.russell@civil.bilfinger.co.uk' <kevin.russell@civil.bilfinger.co.uk>;
Steven Bell <Steven.Bell@tie.ltd.uk>
Subject: FW: Trackform Workshop

Susan,

As will have been notified to you by others, in view of tie's recent termination notices (and precisely related, at least in part, to trackform issues onstreet), Infracore will at this point not attend to the requested trackwork workshop. We understood this was convoked as a "good faith" meeting, initiated by the Project Carlisle team(s), but now our highest priority is, understandably, to appropriately handle the termination notices.

The fact that tie had convoked the trackwork meeting in DLA Piper's offices (!!) is also surprising, at least.

Miguel Berrozpe (sent with Blackberry)
Project Director, Siemens plc
Edinburgh Tramway Network
Mobile +44 [REDACTED]

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