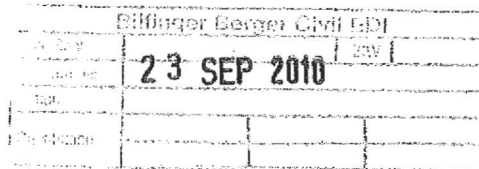


Our ref: 25.1.201/KDR/6803

23 September 2010

tie limited  
CityPoint  
65 Haymarket Terrace  
Edinburgh  
EH12 5HD



**Bilfinger Berger-Siemens- CAF Consortium**

BSC Consortium Office  
9 Lochside Avenue  
Edinburgh Park  
Edinburgh  
EH12 9DJ  
United Kingdom

Phone: +44 (0) 131 452 2800  
Fax: +44 (0) 131 452 2990

**For the attention of Steven Bell – Project Tram Director**

Dear Sirs

**Edinburgh Tram Network Infraco  
MUDFA Adjudication – Programme Revision 1A**

We refer to the Adjudication which took place in June and July 2010 before Mr Robert Howie QC in respect of delays occasioned to the Infraco Contract as a result of delays to preceding utility diversion works.

Mr Howie issued his Decision in that Adjudication on 16 July 2010 with reasons being provided on 28 July 2010. In terms of Clause 80.14 of the Infraco Contract, tie should have issued a tie Change Order reflecting the terms of Mr Howie's Decision within 28 Business Days of this determination. As tie did not issue a tie Change Order within this period but given that the Estimate which formed the subject matter of the adjudication relates to a Mandatory tie Change, tie is therefore deemed to have issued a tie Change Order.

Following this tie Change Order having been deemed to be issued, Infraco is required to update the Programme in accordance with Clause 60, to reflect the tie Change Order. We now attach a programme (which we have termed Programme Revision 1A) to reflect Mr Howie's decision.

Mr Howie determined that the Planned Completion Date for Section A was 2 November 2010. This is reflected in the attached revised programme. Please note however, that as a consequence of this, and in line with Mr Howie's decision, the Planned Sectional Completion Dates are amended as follows:

- A – 2 November 2010
- B – 30 November 2010
- C – 13 September 2011
- D – 11 March 2012

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25.1.201/KDR/6803

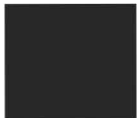
The extension of time to Section A results in resources being tied up on Section A for longer than programmed. This deprives other sections of the Infraco Works of resources which were otherwise programmed to be available to those sections. The consequence of this is that, maintaining the originally planned resource levels and implementing Mr Howie's decision as it should be implemented, the dates for Sections B, C and D move to the dates identified above. We consider this to be the 'consequential mechanics' of Mr Howie's decision (with reference to his subsequent Note of 9 August 2010).

To expand upon this, although Mr Howie only awarded an extension of time in relation to Section A, he also determined that Infraco is both bound and entitled to work to the Programme (Decision, page 8, para 4). The Programme contains resource levelling and this was much discussed in the adjudication and in Mr Howie's decision (in the context of the debate which took place on mitigation and acceleration). Mr Howie determined that to increase resource levels would be to accelerate and that this was not something which Infraco was obliged to do, absent an instruction so to do via clause 61. It flows from this that Infraco is entitled to work in the way programmed (in accordance with the Programme) which includes working with the resources that it has priced for. The consequence of this is that, if resources are tied up in Section A for longer than anticipated, they are not available for works in other sections of the site. Maintaining the planned resource levels, Planned Sectional Completions Dates B, C and D, are, by necessity, extended.

You will see from the revised programme that the dates for tram delivery and commissioning have been updated to reflect changes to the Planned Sectional Completion Dates for Sections A and B. The updated Agreed Tram Commissioning Dates will be advised under separate cover.

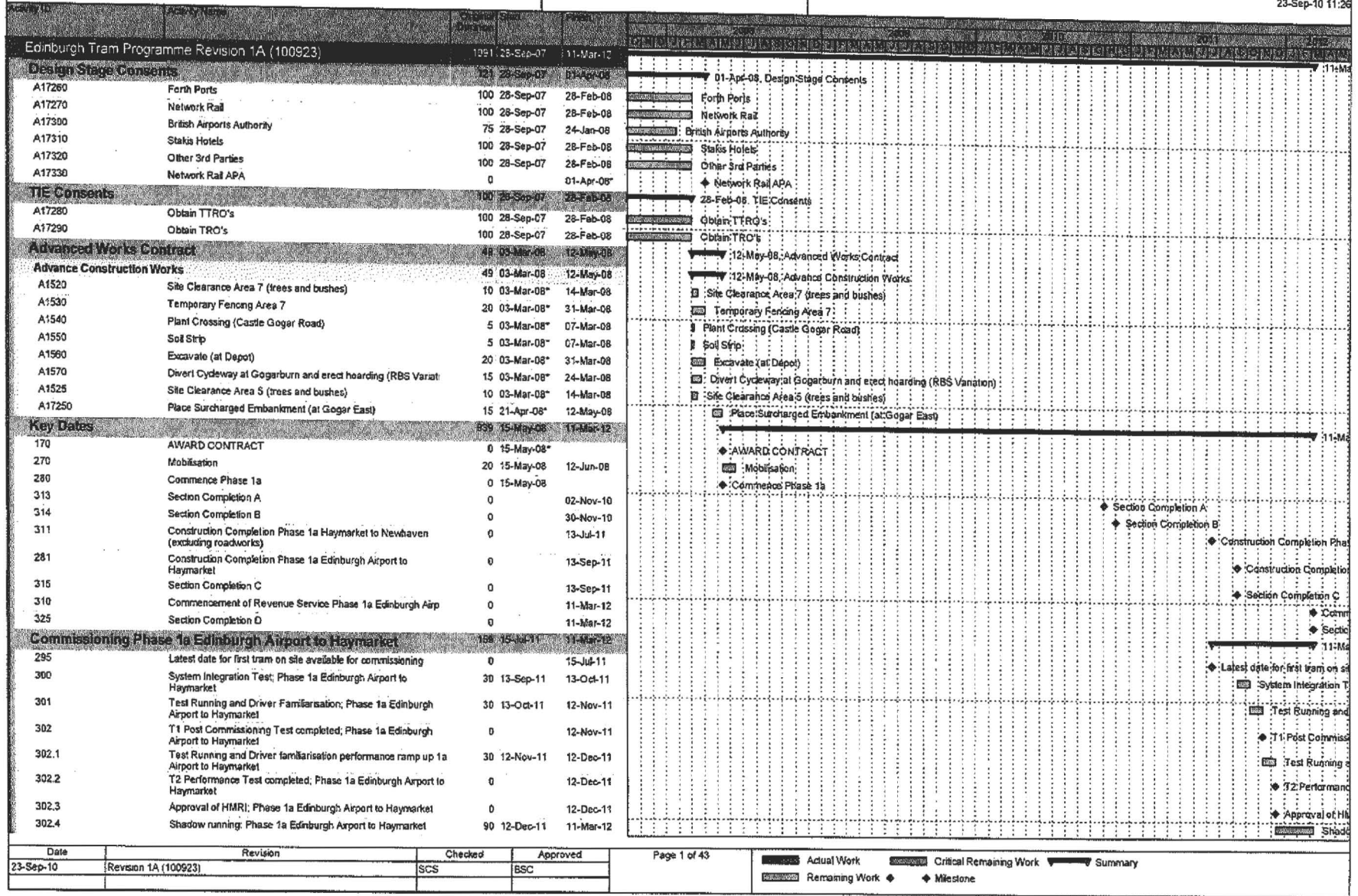
We submit the revised programme in accordance with Clause 60.3 of the Infraco Contract and we invite you to accept it in accordance with clause 60.4.1 of the Infraco Contract.

Yours faithfully,



**M Foerder**  
Project Director  
Bilfinger Berger Siemens CAF Consortium

cc: R. Walker  
M. Flynn  
A. Campos  
M. Berrozpe  
A. Urriza



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