



For the attention of Martin Foerder  
Project Director  
Bilfinger Berger Siemens CAF Consortium  
9 Lochside Park  
EDINBURGH EH12 9DJ

Our Ref: INF CORR  
5464/RB

Date: 30<sup>th</sup> June 10

Dear Sir,

**Edinburgh Tram Network – Infraco  
Information & Audit Access – Management of Design**

We write to express our concern with BSC's lack of co-operation and engagement with the Clause 104 Information & Audit Access process on the Management of Design, initially notified to you on 6<sup>th</sup> May 2010.

Our main concerns are:-

1. On three occasions ~~tie~~ we have requested the facilities detailed within Clause 10.4 of the Infraco Contract be made available to them. The three occasions being:
  - Verbal request at the audit meeting of 14<sup>th</sup> June 2010.
  - E-Mail request from our Bob Bell to your Stefan Rotthaus on 17<sup>th</sup> June 2010 at 14.31.
  - E-Mail request from our Bob Bell to your Stefan Rotthaus on 24<sup>th</sup> June 2010 at 14.41.

To date, no response has been received from BSC to our repeated and reasonable request.

2. At the audit meeting on 25<sup>th</sup> May 2010 Bilfinger Berger's (not Infraco's) legal representative advised ~~tie~~ that any information requested by ~~tie~~ with respect to Compensation Events would not be provided as this would be provided in due course in accordance with Clause 65.1.  
~~tie~~ disagreed with this position in two respects:

- Pinsent Masons are acting on behalf of Bilfinger Berger, not Infraco. ~~tie~~ requested confirmation of Infraco's contractual position in writing on this matter, and,

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- BSC's obligation under Clause 104 is to provide information as may be reasonably requested. We consider their request to be reasonable.

BSC agreed to revert with Infracore's contractual position as requested by us.

To date, 5 weeks after our request, BSC have not provided any information as requested on Compensation Events and Infracore have not confirmed their contractual position in this respect.

3. We have requested any and all correspondence, documents, Instructions, e-mails etc that relate to an SDS "commitment to assist BSC in securing the changes in respect of change from BDDI to IFC drawings". (BSC Design Management Review meeting minutes of 1<sup>st</sup> July 2009 refers).

BSC have advised that this commitment was first made in a meeting convened by BSC on 2<sup>nd</sup> June 2009, and that no minutes of that meeting exist. BSC have advised that no correspondence exists on this matter other than e-mails provided under transmittal 4303. Despite repeated requests BSC have not confirmed whether any other documents exist on this matter.

We have requested all of the ATRs/Instructions/timesheets associated with delivery of this commitment. Despite the referenced minutes stating that BSC will "maintain current basis of staff ATR or use of Construction Support (not ECS) resource", BSC have advised that they do not think there are any as this should be library support under the SDS contract but that they will carry out further checks.

We note that no outcome of these checks has been communicated to us. This is an unsatisfactory and inadequate response.

We have requested copies of the handwritten notes of each of the attendees from this meeting. We are advised that no BSC notes are available. To date no notes from SDS have been provided.

4. In relation to Paragraph 5 of the meeting BSC Design Management Review Meeting held on 1 July 2009, we requested all the Minutes of Meetings held on the "SDS commercial issues" referred to within this minute.

BSC advised that this meeting did not take place because BSC had requested a meeting with us in July 2009 prior to their discussions with SDS, but that we had not responded to this request.

In the absence of the specific minutes requested, we requested minutes of all BSC / SDS meetings, which includes commercial matters (emphasis added for clarity).

BSC responded stating, "There are no minutes of meetings relating to the commercial issue".

BSC's response is unsatisfactory and inadequate. Please provide the information as requested.

5. Despite being issued with an audit scope detailing the criteria to be audited, BSC have at no stage provided any information without ~~the~~ having to provide very explicit detail of the type of information required or the specific document sought, e.g. ~~the~~ have had to ask for a search of correspondence and minutes of meetings within your electronic document control system against specific key words as opposed to BSC providing ~~the~~ with relevant documents, records or other information falling within the audit scope.
6. At our meeting of 7<sup>th</sup> June 2010 a number of documents were identified to BSC to provide to ~~the~~. Three weeks have now passed and this documentation remains outstanding. The outstanding documentation is listed on the attached spreadsheet which includes additional information requirements following your submission under transmittal number 4629.
7. At our meeting of 14<sup>th</sup> June 2010, ~~the~~ sought confirmation that no amended or additional agreement had been entered into between Infracore and SDS, and/or between any of the Infracore parties and any of the SDS providers.

Following the meeting an exchange of e-mails took place on this topic as BSC disagreed with ~~the~~'s record of the question asked at the meeting. ~~the~~ issued the following by e-mail (B. Bell to B. Ochoa, 14 June 2010 at 16.36) to ensure clarity:-  
"..... for the avoidance of doubt, please confirm by 12 noon tomorrow that no amended or additional agreement has been entered into between Infracore and SDS, and/or between any of the Infracore parties and any of the SDS providers".

No response was received and a follow up e-mail (B Bell to S Rotthaus, 16 June 2010 at 15.39) sought a response by close of business that evening. Again, no response was received.

This matter was raised at the weekly General Issues meeting on 21 June and 28 June 2010 and you have advised that you are considering your response.

~~the~~ believe their request for information on this matter to be a reasonable request under the Infracore Contract and that Infracore are acting unreasonably in delaying their response to this request.

8. As a result of a document search, BSC provided minutes from a Design Management Review meeting held on 17 June 2009. At our meeting of 14 June 2010, ~~the~~ requested a copy on the instruction from BSC to SDS referred to in relation to completion of the design (item 2.2 of the above minutes).

A response was issued on 16 June 2010 by e-mail (S Rotthaus to B Bell, at 15:25), stating "provided under transmittal no 4308". Numerous documents were provided under this transmittal but ~~tie~~ have been unable to trace such an instruction. ~~tie~~ again requested this information by e-mail (B Bell – S Rotthaus, 17 June 2010 at 14:31). BSC responded by e-mail (S Rotthaus – B Bell, 24 June 2010 at 0827) that the instruction was contained with BSC letter referenced 25.1.201/CBr/2707. ~~tie~~ have complained that this response (e-mail B Bell - S Rotthaus, 24 June 2010 at 14:23) is unsatisfactory. The minute of the meeting referred to clearly states "BSC will instruct SDS to complete the design ....." (emphasis added for clarity).

The letter referred to by BSC as the instruction pre-dates this meeting (28 May 2009), and specifically states in its second paragraph "we do not believe you are entitled to further instruction".

To date the copy of the instruction requested by ~~tie~~ remains outstanding.

#### Audit Completion

The remainder of this audit will commence on Monday 5<sup>th</sup> July 2010. Given the lack of engagement and co-operation to date, ~~tie~~ anticipate the audit will require your continual engagement during the following periods.

- Monday 5<sup>th</sup> July to Thursday 8<sup>th</sup> July 2010 inclusive.
- Monday 12<sup>th</sup> July to Thursday 15<sup>th</sup> July 2010 inclusive.

To improve the flow of information, ~~tie~~ will utilise the facilities previously requested and in accordance with Clause 10.4 of the Infraco Contract. Please ensure that these are made available from 12.00 Noon on Friday 2<sup>nd</sup> July 2010. Additionally, access may be required to your Document Control room and the relevant files of the BSC design management team, including the respective commercial team.

Clearly, if the information flow is improved upon, both parties will benefit from a faster conclusion to this matter. Please contact Bob Bell should you require any further information.

Yours faithfully,

  
Steven Bell  
Project Director – Edinburgh Tram

Attachment

	Additional Information Required	Description of issue	Document in which reference was made (if any)
1	Copy of BSC - SDS TQ 3186 including SDS response	Missing PGM (Point Gathering Machine) data information - Survey Data issued to SDS via email to Alan Dolan	Minutes of Infraco - SDS meeting - Survey Data - 2008-07-01
2	Copy of BSC - SDS TQ 3187 including SDS response	Missing PGM data information - Survey Data issued to SDS via email to Alan Dolan	Minutes of Infraco - SDS meeting - Survey Data - 2008-07-01
3	Copies of all letters, emails and minutes of meetings between BSC and SDS that led to the incorporation of the OGL redesign in Section 7 into the SDS Programme	Inaccurate survey data required redesign in Section 7 and re-issue of 4 IFC packages	N/A
4	E-mail from BSC to Alan Dolan dated 25/6/08 re problems with topographical survey data	Email re problems with the topographical survey	Minutes of Infraco - SDS meeting - Survey Data - 2008-07-01
5	PMG survey in Spreadsheet format & report re PGM installation	PMG survey in Spreadsheet format & report re PGM installation	Minutes of Infraco - SDS meeting - Survey Data - 2008-07-01
6	Copy of 25.1.201/5N/3924	Slippage within SDS programme - V47-V50	25.1.201.SN.4136
7	Confirmation of when change control flowchart was provided to SDS	SDS requested change control flowchart from BSC inc roles of tie and Siemens	Minutes of Design Management Review meeting 8/4/2009
8	Copy of any email sent by BSC in response to SDS email on completion of design	BSC to respond to SDS email, setting out position on this issue - point 2.5 - Completion of Incomplete Design	Minutes of Design Management Review meeting 20/5/2009
9	Copy of any SDS response to 25.1.201/CBr/2707	SDS indicated in meeting that they were to respond to letter 2707	Minutes of Design Management Review meeting 4/6/2009
10	When did the commercial claims issues meeting referred to take place?	Separate meeting to be arranged to discuss commercial claims issues (Mfo/Kru/HNo - Sre/JCh) - point 6.4	Minutes of Design Management Review meeting 4/6/2009
11	Who attended any commercial claims issues meeting?	Separate meeting to be arranged to discuss commercial claims issues (Mfo/Kru/HNo - Sre/JCh) - point 6.4	Minutes of Design Management Review meeting 4/6/2009
12	Copy of minutes of any commercial claims meeting between SDS and BSC and of any follow up meetings	Separate meeting to be arranged to discuss commercial claims issues (Mfo/Kru/HNo - Sre/JCh) - point 6.4	Minutes of Design Management Review meeting 4/6/2009
13	Copies of any records kept by Infraco of meetings / phone calls / letters / workshops between July 2008 and April 2009 referred to in BSC letter 53616	BSC remind SDS since middle of 08 during numerous occasions (meetings, phone calls, workshops & letters) to provide records of changes for all provided drawings	ETN (BSC) SDS = T & ABC#053616_iss1_revA (28/09/09)
14	Copy of letter ETN (BSC) SDS = T & ABC#053416 (05/06/09)	ETN (BSC) SDS = T & ABC#053416_iss1_revA (05/06/09)	ETN (BSC) SDS = T & ABC#053616_iss1_revA (28/09/09)
15	Copy of latest version of reasons for design changes BDDI - IFC register	Reasons for design changes BDDI-IFC register	email from Baltazar Ochoa on 01/06/09 18:03
16	Any emails or correspondence between Jason Chandler / Alan Dolan & Kevin Russell & Colin Brady re design changes BDDI - IFC	Email Exchange / any correspondence between Jason Chandler / Alan Dolan / Kevin Russell & Colin Brady	email from Baltazar Ochoa on 01/06/09 18:03
17	Minutes of meeting on 2/6/2009 to discuss BDDI - IFC issues	Meeting on 02/06/09	Mentioned in email from Baltazar Ochoa on 10/06/09 14:48
18	What discussions took place between Jason Chandler/ Kevin Russell to resolve commercial issues?	Commercial issues between BSC and SDS	Mentioned in email from Scott Ney on 26/05/09 17:24
19	Copies of any Minutes of Meetings between Jason Chandler/ Kevin Russell to resolve commercial issues	Commercial issues between BSC and SDS	Mentioned in email from Scott Ney on 26/05/09 17:24
20	Copies of any letters or emails between Jason Chandler/ Kevin Russell to resolve commercial issues	Commercial issues between BSC and SDS	Mentioned in email from Scott Ney on 26/05/09 17:24
21	Copies of BSC letters 3233 & 3234 and any SDS response	Gogar Landfill	Design Management review meeting- 12/08/09 point 5.4
22	Copy of BSC letter 3155 and any SDS response	Trackform, Ground Improvement Slab	Design Management review meeting- 12/08/09 point 8.1
23	Any analysis produced by Infraco or any Infraco party of forecast design completion v construction programme	Drawing completion to be linked to Construction priority	Design Management review meeting- 26/08/09 point 1.2
24	Copy of register(s) covering RFIs from BSC to SDS and vice versa	SDS agreed to establish an RFI systematic for all RFI from BSC to SDS and vice versa	Design Management review meeting- 26/08/09 point 1.2
25	Copy of ICF register	Changes arising from ICFs	Design Management review meeting- 23/09/09 point 3
26	Any minutes from the meeting referred to on Change Instructions arising from ICFs and from any subsequent meetings on this subject	Meeting to be held w/c 28/09/09 re Change instructions arising from ICFs	Design Management review meeting- 23/09/09 point 3

27	Copy of BSC letter 3795 (15/10/09) & any SDS response	Tower Place Bridge	Design Management review meeting- 21/10/09 point 6.1
28	Copies of BSC letters referred to in relation to non-achievement of agreed targets and any responses from SDS	Assurance & Hazard close out	Design Management review meeting- 21/10/09 point 1
29	Minutes of meeting in Manchester referred to	Assurance & Hazard close out	Design Management review meeting- 21/10/09 point 1
30	Copy of BSC letter of 19/10/09 referred to	Assurance & Hazard close out	Design Management review meeting- 21/10/09 point 1
31	Copies of minutes of weekly Civils Design Completion Management Process meetings	Civils Design Completion Management Process meetings	Design Management review meeting- 04/11/09 point General