



FAO Mr Martin Foerder
Bilfinger Berger – Siemens – CAF Consortium
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ

Our Ref: INF CORR 5992

Date: 7 September 2010

Dear Sirs

**INFRACO CONTRACT: UNDERPERFORMANCE WARNING NOTICE
CLAUSE 60 (PROGRAMME)**

Enclosed is an Underperformance Warning Notice in respect of Infraco Default under the Infraco Contract.

We look forward to receiving your rectification plan within 10 Business Days of the date of this Underperformance Warning Notice.

Yours faithfully,



Steven Bell
Project Director Edinburgh Trams

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UNDERPERFORMANCE WARNING NOTICE

CLAUSE 60 (PROGRAMME)

1. Material Breaches

- 1.1 The Infraco has committed a material breach of its obligations under:
- 1.1.1 Clause 60.2 of the Infraco Contract by not updating the Programme in accordance with the provisions of Schedule Part 2 (*Employer's Requirements*); and
 - 1.1.2 Clause 60.9 of the Infraco Contract by not taking all reasonable steps to mitigate the effects of any delay to the progress of the Infraco Works.
- 1.2 As a result of these breaches, the Infraco is not carrying out the Infraco Works to a meaningful or contractually compliant Programme. In breach of these provisions, and in breach of the Infraco's obligations under Clauses 6.1 and 7.2 of the Infraco Contract, the Infraco has failed to give **tie** any visibility of how the Infraco Works are progressing in accordance with the Programme (as defined in the Infraco Contract), any slippage or any mitigation measures to limit the over-run to the Programme. This denies **tie** the ability to exercise its rights under the Infraco Contract and denies **tie** the right to make a decision about instructing acceleration measures pursuant to Clause 61.2 of the Infraco Contract.
- 1.3 Individually and cumulatively, these breaches are material and continuing.

2. Nature of Material Breaches

- 2.1 For the duration of the Infraco Contract (since 14 May 2008), the Infraco has failed to comply with the provisions of the Infraco Contract by:
- 2.1.1 not updating the Programme in accordance with the requirements of Schedule Part 2 (*Employer's Requirements*); and
 - 2.1.2 not taking all reasonable steps to mitigate the effects of any delay to the progress of the Infraco Works by not applying measures to limit the over-run to the Programme and wrongly assuming that "Designated Work Area" means a full intermediate section of the Infraco Works.
- 2.2 **tie** has thereby been denied its contractual entitlement to consider whether it would be appropriate to issue instructions pursuant to Clause 61.2 of the Infraco Contract.
- 2.3 Repeatedly throughout the duration of the Infraco Contract to date, **tie** has corresponded with the Infraco on this matter and discussed this matter with the Infraco, in an attempt to uphold **tie's** contractual entitlements under Clauses 60.2 and 60.9 and Schedule 2 (*Employer's Requirements*) of the Infraco Contract. The Infraco has persisted in not complying with the terms of the Infraco Contract on this matter.
- 2.4 **tie** expressly instructed the Infraco in writing to properly update the Programme in accordance with the Infraco Contract, which includes allowing for mitigation measures, by the following letters:

Date	Reference
15 March 2010	Ref: INF.CORR. 4426
1 April 2010	Ref: INF.CORR 4648
20 May 2010	Ref: INF. CORR 5092

- 2.5 tie expressly required the Infraco in writing to comply with the Employer's Requirements, including inter alia Section 12, by the following letters:

Date	Reference
2 July 2010	INF. CORR 5449/MJ
16 July 2010	INF. CORR. 5632/MJ

- 2.6 As at the date of this Underperformance Warning Notice, the Infraco has not complied with tie's instructions pursuant to any of the letters mentioned in paragraphs 2.4 and 2.5 above. This is a material breach of the Infraco Contract.

3. Reminder

- 3.1 Pursuant to Clause 56.7 we are obliged to inform you of the implications of this Underperformance. Your attention is drawn to Clause 56.10 and to Infraco Default (g).

for and on behalf of tie Limited



Project Director

7 September 2010 Date