



FAO Mr Richard Walker  
Chairman of Infraco Consortium Board  
Bilfinger Berger Siemens CAF Consortium  
9 Lochside Avenue  
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Our Ref: INF CORR 5410

22 June 2010

Dear Sirs,

### **PROJECT CARLISLE EXPLANATION OF SCOPE**

You wrote on the 9 June 2010 (reference 25.1.201/Consort/5951) and various meetings and discussions have taken place since then which, in some ways served to register our respective positions. However, we are pleased to respond to a very constructive meeting with Mr. Kitzman on the 19 June 2010. We would like to thank Ed Kitzman for making himself available on Saturday to meet with Anthony Rush, Jim Molyneux and Blair Anderson (being authorised delegated representatives of tie Limited). We welcome Mr. Kitzman's involvement and look forward to you confirming him as your point of contact for Mr. Rush and the senior members of our Carlisle team.

The accord they debated and we outline here was agreed not to be legally binding. It is intended to express the essential issues on which the Guaranteed Maximum Price ("GMP") for Project Carlisle can be formulated. It should be regarded as a working understanding which may be subject to revision. In replying to your letter we set out that understanding. Please note that where there are words and expressions not used in the Infraco Contract, or not used in the same context of the Infraco Contract, those words and expressions should have their normal common meaning.

We are pleased to agree with Mr. Kitzman that the GMP is not intended to transfer all risks to Infraco and it is not a lump sum all inclusive proposal. We are inclined to the explanation that it is intended to put the parties back to where they would have been if the present circumstances had been known at the outset.

The various discussions over the past weeks show that the Scope and Programme are not yet fixed or agreed. We believe these need not be fully fixed before we start to develop the GMP. Mr. Kitzman used words to reflect this, "a 'menu' like approach seems to be a more appropriate mechanism to allow both Parties to make proposals for those portions of the Scope that cannot or have not yet been fully agreed". In item 2 of the Explanatory Notes below we explain our interpretation of this mechanism as being "Itemised Elements"

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We are content that this approach will allow the GMP to reflect Programme proposals agreed to by both Parties. Properly managed this approach should not make it difficult for Infraco or its Sub Contractors to arrive at the prices on which the GMP will be calculated. We understand this and that giving Mr. Molyneux early and open access to your sub-contractors and pricing is important.

We must however flag up that **tie** has to observe its obligations and duties in respect of obtaining "best value" for the public purse. We believe that the approach outlined here will allow both parties to optimise the Scope and Programme to arrive at a solution which is based on Best Value.

The GMP shall be subject to the "Potential Adjustments" listed below. The value of the adjustments will be determined at such time as they arise in accordance with a revised Clause 80. In addition to reflecting the reduced and revised scope, the GMP is to be the full and final settlement (plus Potential Adjustments) for the delivery of the existing Employer's Requirements and the Infraco for:

- the delivery of the Employer's Requirements and the Infraco Proposals in an integrated compliant design shown on integrated, approved and assured drawings issued for construction ("IFC") for the Edinburgh Tram Network Phase 1A (Airport to Newhaven); as well as completion of the SDS Provider's Scope of Works for Phase 1B (Roseburn Junction to Granton) which will be provided by Infraco before **tie** issue the "GMP **tie** Change Order" referred to below; and
- the construction, commissioning, integration and maintenance of:

1 Off-Street Works to the following Sections from Haymarket to Edinburgh Airport:

- a Section 02 – Haymarket to Roseburn Junction;
- b Section 05A – Roseburn Junction to Balgreen;
- c Section 05B – Balgreen to Edinburgh Park Central;
- d Section 05C – Edinburgh Park Central to Gogar Depot;
- e Section 06 – Gogar Depot;
- f Section 07 – Gogar Depot to Edinburgh Airport.

2 On-Street Works to the following Sections from Haymarket to Princes Street East:

- a Section 1D – Princes Street West to Haymarket;
- b Princes Street West to the Terminal Point [insert chainage].

- 3 Enabling Works in Phase 1A as follows and as more fully described in [insert reference to the tie schedule and drawings describing these works] :
- a from Newhaven Tramstop to Retaining Wall 1A – fill to bottom of track level;
  - b Lindsay Road Retaining Walls 1A, 1B, 1C and 1D – design and construction;
  - c Lindsay Road Link Road to Ocean Drive – removal of retaining wall and footpath, removal of trees and ground preparation, placing of earthworks fill and re-grading of profile.
- 4 Lindsay Road – lowering works.
- 5 Tower Place Bridge – works to be completed, including the track and the final roadway.
- NB No systems-related works required except at Tower Place Bridge, other than integration and assurance of design.

#### Explanatory Notes

1. The GMP shall include for works already carried out (including correcting any defective works to **tie**'s reasonable satisfaction) and shall be itemised by Infraco acting to identify for **tie** on an open-book basis the individual elements of the price make-up. New milestones will be defined to permit the balance of the difference between the GMP and the amount paid to date to be paid in a manner which is consistent with Infraco's progress.
2. "Itemised Element" means an individual element that is identified by either or both parties for discussion and agreement taking account of Best Value.
3. The above shall comprise the GMP Scope. GMP will include for payment of all taxes including Landfill Tax which may be payable on the surcharge to the Landfill Section. Infraco will be responsible for obtaining exemption from HMRC.
4. An Agreement reflected in the GMP **tie** Change Order on terms to be agreed but similar to those set-out in the attached draft Heads of Terms shall certify the parties' agreement to the GMP and its Potential Adjustments.
5. The Agreement shall also require Siemens plc, through the Infraco Contract, to construct, integrate, commission and maintain, on a GMP basis, the E&M works (including track) between the Terminal Point and a Temporary Terminus Point. Such Temporary Terminus Point is yet to be determined but will not be beyond York Place.
6. For the purposes of section 2.7.4 of the Employers Requirements, the required maximum journey times shall be as follows:
  - Airport to Haymarket - 22mins 45secs;
  - Airport to Terminus Point – [29mins 35secs]

- 6 The Agreement shall also require Siemens plc, through the Infraco Contract, to provide provisional prices to construct, integrate, commission and maintain the E&M Works (including track) from the Temporary Terminus Point to Newhaven in sections which coincide with the Electrical Sub-stations at Foot-of Walk; Ocean Terminal and Newhaven.
- 7 The GMP **tie** Change Order shall permit the interim payment for materials, at cost, which Infraco has had delivered to site for the Sections from Terminal Point to Newhaven provided Infraco provide proof of delivery and cost, and that such materials are insured.
- 8 Subject to Infraco providing irrevocable vesting of ownership in favour of **tie**, the GMP **tie** Change Order shall permit the interim payment for materials stored off-site which have been purchased prior to the 31 May 2010 at cost including a reasonable cost of storage, or for storing in a depot designated by **tie**.
- 9 The GMP will also include any costs incurred by CAF in storing trams at their works in Spain. It should be noted that on the hypothesis that it was a reasonable manner in dealing with storage costs the proposal that **tie** should pay a lump sum (£2 million) would raise a **potential non-permissible "State Aid" issue by tie using Government and Local Authority Funds to pay for construction of a storage facility in Spain. In the event payment for storage is an issue it should be dealt with as an Itemised Element and be based on reasonable additional cost, including a reasonable allowance for depreciation. We do note that we are minded that such cost would not be substantial.**
- 10 Each party shall bear its own legal and professional costs arising from settling and documenting Project Carlisle.

### **Completion Dates and Liquidated & Ascertained Damages**

Completion Dates and Liquidated & Ascertained Damages shall be revised. The attached Schedule sets out our proposal.

Liquidated & Ascertained Damages, by legal definition, have to be an estimate of true loss. As suggested by Mr. Kitzman any difference on Programme and subsequent proposed adjustments to Liquidated & Ascertained Damages can be dealt with as an Identified Element.

Sectional Completion Dates do not include the design work by the SDS Provider for Phase 1B – this shall be completed by the Completion of Section D. In the event that the SDS Provider fails to complete the said design **tie** will seek to deduct a reasonable sum from the GMP to enable them to have the design carried out by others.

### **Potential Adjustments to GMP**

Other than set out below there shall be no other payments or entitlements beyond GMP which relate to the agreed GMP scope. There shall be no Notified Departures; no Specific Exclusions and no Mandatory **tie** Changes.

Any item which may be considered by either party to give rise to a Potential Adjustment other than those listed below will be itemised as described in paragraph 2 above so that the parties may agree whether it remains as part of the GMP or becomes a Potential Adjustment.

- 1        Howsoever such changes may arise (unless as a result of an Infraco default, omission or error), any additional costs arising from changes instructed by **tie** after the assured integrated design IFC drawings have been issued and approved by the relevant Approval Bodies. The Infraco will be responsible for instigating and submitting a certified electronic record of such approved IFC drawings. Any cost or delay arising from errors, omission or ambiguity in the said IFC drawings shall be Infraco's responsibility. Any adjustments to the GMP shall be evaluated in accordance with Clause 80.6.2 to 80.6.4 inclusive. Such delays may also merit extension of time if the delayed activity is on the critical path at the time the delay occurs.
- 2        A Provisional sum for ceramic finishes at Roseburn Viaduct is to be included in the GMP and expended or deleted as instructed by **tie**.
- 3        Any loss and expense incurred by Infraco in the event that the completion of the sewer diversion at Structure 26 – South Gyle Access Bridge is delayed beyond 31 October 2010 Such delays may also merit extension of time if the delayed activity is on the critical path at the time the delay occurs.
- 4        Any **tie** Change Order relating to Gogar Interchange - at an agreed price.
- 5        Other than to Culvert No. 3, changes required as a result of flood modelling at the Airport provided that the report is issued by Infraco in good time to complete and approve assured integrated IFC drawings before the GMP **tie** Change Order is issued. Such adjustments will be evaluated in accordance with the principles of existing Clause 80.6.2 to 80.6.4 inclusive.
- 6        Any loss and expense incurred by Infraco in the event that Network Rail unreasonably delay in giving approvals, always provided that such delay could not have been reasonably foreseen, avoided or mitigated by Infraco. Such delays may also merit extension of time if the delayed activity is on the critical path at the time the delay occurs.
- 7        Any loss and expense incurred by Infraco arising from delay by Scottish Water to connect the Depot Water Supply by 19 July 2010, always provided that such delay could have been reasonably foreseen, avoided or mitigated by Infraco. Such delays may also merit extension of time if the delayed activity is on the critical path at the time the delay occurs.

- 8 Any loss and expense incurred by Infraco arising from the occurrence of Unforeseen Utilities, including those known at the time of this agreement but not known of at 13 May 2008, always provided that such delay could not have been reasonably foreseen, avoided or mitigated by Infraco. Such delays may also merit extension of time if the delayed activity is on the critical path at the time the delay occurs.
- 9 Any reasonable cost and loss and expense incurred by Infraco arising from the occurrence of Contaminated Land, including contaminated materials or plants, including those known at the time of this agreement but not known of at 13 May 2008, always provided that such cost delay could not have been reasonably foreseen, avoided or mitigated by Infraco. Such delays may also merit extension of time if the delayed activity is on the critical path at the time the delay occurs.

We trust that this deals with the matters in contention including putting context and explanation to those raised by Gordon Wakeford in his email to me on 21 June 2010. Furthermore, we look forward to you confirming to Mr. Molyneux that you are making rapid progress with the "pricing" exercise.

This letter is written entirely without prejudice to any of our contractual or rights in Law and cannot be produced or founded upon for any purpose outwith Project Carlisle.

Yours faithfully,  
for and on behalf of **tie** Limited



Richard Jeffrey  
Chief Executive

**COMPLETION DATES WITH EARLIEST AND LATEST SECTION DATES**

1 Section	2 Description	3 Partial Sectional or Section Completion Date	4 Liquidated Damages
<p><b>Partial Sectional Completion A1</b></p> <p>(See attached Sketch 1)</p>	<p>Depot to permit delivery of Tram to Road 4 - including track complete road 4, loop and stabling road(s) as shown by blue line. Workshop floor complete to allow delivery trucks access. Road 4 pit and road 4 roof access platform. Stabling area completed at the West end sufficient to berth at least 5 trams.</p>	<p><b>tie</b> assess the earliest date that Infraco could handover track road 4 as 1 Sept 2010 and the latest as 31 Oct 2010.</p> <p>Infraco propose additional storage at CAF's Factory</p> <p><b>tie</b> set a Partial Completion Date at <b>3 September 2010</b></p> <p>The benefit to Infraco in handing over works at the Depot will be a reduction of Liquidated Damages as described in column 4.</p>	<p>Liquidated Damages for Completion of Section A will be scaled down to correspond with the value of work handed over to <b>tie</b> by Infraco on or before the Date for Practical Sectional Completion.</p>
<p><b>Partial Sectional Completion A2</b></p> <p>(See attached Sketch 2)</p>	<p>Depot with 750VDC provided to Road 4 and Road 1 – including Substation equipment installed and commissioned; Wire run for road 4 and Road 1 installed including section insulators, isolation switches, earthing and bonding. The wire run for road 4 at the east end terminates as shown by the orange line, with track completed. The wire run for road 1 terminates at the scissors crossover beyond the access bridge and offering a secure and segregated opportunity to power the tram whilst the main workshop is being completed. OLE energised section shown by red line. Workshop dust free / floor sealed to the satisfaction of <b>tie</b>. Accommodation block</p>	<p><b>tie</b> assess the earliest date Infraco could handover the work described in column 1 as 1<sup>st</sup> Oct 2010 and the latest as 31st Dec 2010</p> <p><b>tie</b> set the Partial Completion Date as <b>1 October 2010</b></p> <p>The benefit to Infraco in handing over works at the Depot will be a reduction of Liquidated Damages as described in column 4.</p>	<p>Liquidated Damages for Completion of Section A will be scaled down to correspond with the value of work handed over to <b>tie</b> by Infraco on or before the Date for Practical Sectional Completion.</p>

	<p>completed and amenities commissioned and serviceable.</p> <p>A minimum of four Trams delivered to the Site as instructed by tie and assembled ready to commence their Delivery Tests.</p>		
<b>Section A</b>	<p>Depot, full stabling area and access to mainline for tram testing up to Gogarburn Tramstop – including track and OLE complete; road 3 &amp; 2 towards and under access bridge, Depot west exit/entrance road, mainline track between Gogarburn tramstop and access bridge, shown by blue and red lines. Temporary wire run on one mainline road installed including section insulators and temporary termination poles/bases as shown by red line and fed from the Depot Substation. All workshop equipment installed; including, but not limited to the wheel lathe, lifting plant, tram wash, Road/Rail vehicle and all roof access platforms.</p> <p>Infraco to ensure that all approvals and consents are in place to allow tram testing to be undertaken, including Network Rail, EAL, emergency services, ICP and SEPA.</p> <p>A minimum of four Trams at the Depot that have passed their Delivery Tests.</p>	<p>tie assess the earliest date Infraco could handover the work described in column 1 as 1<sup>st</sup> Nov 2010 and the latest as 31<sup>st</sup> Jan 2011</p> <p>tie set the Sectional Completion Date for Section A as <b>10 December 2010</b></p> <p>Infraco opine that attempting to achieve Partial Completion Dates may extend the date for completion of Section A. The effects should be explained as an itemised element as described by paragraph 2 of the Scope Explanation.</p>	£20,000/week



<p><b>Section B</b></p>	<p>Completion of all Infraco Works (including energisation) from Depot Access Bridge to the Airport, and a minimum of five Trams delivered to the Site and assembled with the first Tram to have completed the Tram Type Commissioning Test and remaining Trams to have completed the Tram Commissioning Routine Tests, such tests as described in the Employer's Requirements and the completion of all tests required by the Employers Requirements in relation to that Section including those System Acceptance Tests required to enable the Commencement of Driver Training and shadow running. Including but not limited to the commissioning of the fully equipped and functioning control room and the Ingliston Substation; the depot radio base station installed and functional.</p> <p>Infraco to ensure that all approvals and consents are in place to allow tram testing to be undertaken, including Network Rail, EAL, emergency services, ICP and SEPA.</p>	<p>tie's assessment of the earliest completion date for Section B is 28<sup>th</sup> Feb 2011. Based on their understanding of Infraco's worse case they asses the latest completion date as 31st May 2011.</p> <p>Based on the trade-off for reducing the commissioning time after Completion of Section C by three months, tie set the completion date at <b>29 March 2011</b></p>	<p>£141,000/week</p> <p>tie set this level of Liquidated damages as part of the trade-off referred to in Column 3 – however they do recognise that it may alter Infraco's risk profile. The effects should be explained as an itemised element as described by paragraph 2 of the Scope Explanation.</p>
<p><b>Partial Sectional Completion C1</b></p>	<p>Completion of all Infraco Works from Depot Access Bridge to the east end of Haymarket Tram stop platform and the spur at Roseburn Junction (including energisation) and the completion of all tests required by the Employer's Requirements, including those System Acceptance Tests that must be successfully completed prior to shadow running as provided for in the Employer's Requirements.</p> <p>Including but not limited to the commissioning of the substations at Bankhead Drive, Jenners Depository and the Haymarket Substation; sufficient radio base</p>	<p>tie are of the opinion that the earliest Infraco could complete the civil engineering works to to the partial section described in column 1 is 15 October 2011. Moreover, they rely on Mr, Walker's position that they could be completed by 31 December 2011 as being the latest.</p> <p>Achieving this partial completion gives Infraco an incentive by</p>	<p>Liquidated Damages for Completion of Section C will be scaled down to correspond with the value of work concerned that should have been handed over on or before the Date for Partial Sectional Completion.</p>

	<p>stations to allow coverage between the Airport and Haymarket tram stops.</p> <p>Infraco to ensure that all approvals and consents are in place to allow tram testing to be undertaken, including Network Rail, EAL, emergency services, ICP and SEPA. A minimum of sixteen trams to have been delivered to the Depot and passed their Routine Commissioning Tests.</p>	reducing liquidated damages.	
<b>Section C</b>	<p>Completion of all Infraco Works from Airport to the Terminal Point and the spur at Roseburn Junction (including energisation) and the completion of all tests required by the Employer's Requirements, including those System Acceptance Tests that must be successfully completed prior to shadow running as provided for in the Employer's Requirements.</p> <p>A minimum of twenty-one Trams to have been delivered to the Depot and passed their Routine Commissioning Tests.</p>	<p>Predicated on the latest date referred to in C1 above and allowing three months for Infraco to complete E&amp;M works to this section tie set the Section Completion Date at <b>3 March 2012</b>.</p> <p>In tie's opinion this date provides Infraco with float in completing the civil engineering work in C1 and in completing E&amp;M work thereafter.</p>	£141,000/week
<b>Section D</b>	<p>The completion of shadow running and the issue of a Network Certificate by tie in accordance with Clause 47.3 with any other commencement of revenue service approval obtained and the completion of all tests required by the Employer's Requirements, including those System Acceptance Tests that must be successfully completed to enable Service Commencement.</p> <p>A minimum of twenty-seven Trams to have been delivered to the Depot and passed their Routine Commissioning Tests.</p>	<p>In tie's opinion the truncated ETN could be open for revenue service by 30<sup>th</sup> April 2012. They note that Infraco are now proposing 30<sup>th</sup> Sept 2012</p> <p>They also note that Infraco have suggested that the Completion date tie set of <b>23 June 2012</b> could be achieved if Infraco were given incentive to do so.</p> <p>Infraco should explain what they</p>	£205,000/week

		mean in an itemised element as described by paragraph 2 of the Scope Explanation.	
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