



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 5210

Date: 28 May 2010

Dear Sir,

**Edinburgh Tram Network
Infraco Contract**

Thank you for your letter dated 21 May 2010 – reference 25.1.201/KDR/5689. Your letter appears to be founded on the idea that what you claim to be an innovative approach (by us) to the terms of the Infraco Contract is unnecessary and that it is consequently something you cannot, or will not, agree to. However this does not explain why you were proposing a “supplemental” agreement or why you did not object to the Princes Street Agreement. Whilst it may be just an exercise in semantics, we would consider an innovative (a forward looking approach which produces something not done before) preferable to a supplemental (making up a deficiency) solution, especially as you purport to be complying with the terms of the Infraco Contract. It would be useful if you could explain why the “supplemental” approach is acceptable when the “innovative” approach isn’t.

With apologies for continuing with the semantic theme; “delinquency” means failure to carry out one’s duty and we believe that it describes the manner in which you have approached this project. Despite your protestations of innocence, we note that you are not prepared to answer our specific complaints, relying on placing the burden of proof on us to demonstrate your failures. This is in itself a repudiation of what is by its true meaning, an innovative contract. Clause 6 of the Infraco Contract places obligations on you which should, if observed by you, prevent the necessity for us to complain.

Paragraph 7 of your letter is an example of your failure in your duties pursuant to Clause 11. We do not understand what you mean by your position being well documented on the question of design. Please be specific: are you denying your core responsibility for the production of a competent, buildable and fully integrated design?

We do know that it is common ground between us that the performance by the SDS Provider under your management is not acceptable. We are able to refer to the recent meeting on 19 May 2010 with your Mr. Ed Kitzman in attendance, when the representatives of Parson Binkerhoff, and Mr. Kitzman, could not:

- give a date for delivery of IFC on the Gogar Station;
- confirm when they would deliver the flood report at the Airport; and

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- offer any sensible proposals for the design of On-street track-work.

Moreover, it was clear from that meeting, with Mr. Poulton from CEC present, that CEC assert that delays caused by you getting approval from them, are caused chiefly by the lack of a cogent and updated Design Programme. Neither Mr. Kitzman nor Parson Brinkerhoff were able to satisfy Mr. Poulton's assertions – although Mr. Kitzman did say he would investigate the matter. Parson Brinkerhoff offered lame mitigation, explaining that it was taking a long time for CEC to decide on the design of tram-stops.

All of the above is a clear indication of unsatisfactory performance by Infraco of its duties pursuant to Clauses 7.2, 11.3 and 11.4 which may arise in part by the SDS Provider's failure to perform in accordance with Clause 3 and paragraph 2.1 of Schedule 1 of the SDS Agreement.

You may have taken the SDS Provider to task over their "delinquency" and given them written instructions and warnings, including notice of intent to charge them for your losses. Such actions would clearly be required to deliver the Infraco Works with due expedition and you should therefore disclose them to us on request pursuant to Clause 104. Please disclose all such instructions, warning and notices within 5 business days.

Further example of failure to perform is shown by the attached seven schedules which record the "Design Evolution from Russell Road to Balgreen Road". It is clear from these schedules that IFC have been delivered too late to meet your Revision 1 Programme. There is also evidence of extensive and continuous updating of later delivery dates for IFC's, and extensive time has been taken to integrate the design (much is not yet integrated).

For the sake of further amplification of the performance of yourselves and the SDS Provider we would be grateful to hear Mr. Kitzman's views (being relatively new to the project) on whether in his opinion the design solution from Russell Road to Balgreen Road represents best value.

Clearly there has been a substantial break down in performance by Infraco Members and/or the SDS Provider. It is clear to us that whilst some may see that the Infraco Contract is not a typical design and build contract (without explanation of what one may be but under explanation by us that the Infraco Contract is an innovative contract) that you do not deny your obligations pursuant to Clause 11.

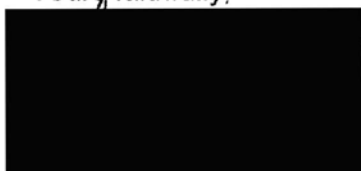
The seven schedules demonstrate a disjointed delivery of design solutions for which you are responsible for coordinating. In the hypothesis that the manner you interpret and apply Clause 80, Schedule Part 4 and Clause 34.1 is correct, your failure to manage the design causes further delay to reaching agreement on the terms of a **tie** Change Order. As your letter de facto recognises, each and every alleged change has to be considered on its merits; your habit of submitting incomplete Estimates renders any decision reached by an Adjudicator (which by the rules is subject to challenge) almost certain to be the subject of a reference by us to a higher authority. If for no other reason we will be seeking to recover any additional direct costs over and above best value arising from the design developed under your management.

Despite the delay in completing an integrated design you do not explain why you are not culpable for the delay. Consequently, you are not able to support your proposition that "it is beyond doubt that the predominant reason for delay (is utility diversions)". It would appear not

be the case. Rather than relying on the inappropriate concept of you not being "required to prove a negative" we would suggest that you concentrate on substantiating your entitlements to extension of time and loss and expense on the basis that you being late does not, of itself, entitle you to compensation.

We have seen fit to assist you in the past in the absence of a properly substantiated claim – but you appear to reject our offer of extension and loss and expense made by our letter dated 13 November 2009. We do not withdraw the extension – but we do withdraw the offer to pay loss and expense until such time that you properly substantiate that you have suffered loss for which you should be compensated. Moreover, fully explain your position on the absence of an integrated design over 2 years after contract award and what steps you have taken to mitigate delay and loss arising therefrom.

Yours faithfully,



Steven Bell

Project Director – Edinburgh Tram

Section 5A - BDDI - IFC Design Russell Road Bridge - Balgreen Rd - DO NOT SCHEDULE - inc Rev				Tram - 5A structures - Tony Rush exercis																																					
Activity ID	Activity Name	Original Duration	Start	Finish	Rev 1 Construction Finish	2008												2009												2010											
						May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct						
Total		633d	08-Apr-08 A	22-Sep-10																																					
Section 5A - BDDI - IFC Design Russell Road Bridge - Balgreen Rd - D																																									
SECTION 05 ROSEBURN JUNCTION TO GOGAR																																									
Opening Distance A (Alipon to Nairnside)																																									
05A Roseburn Junction (exc.) to Balgreen Road (inc.)																																									
Roseburn Junction (exc.) to Murrayfield Stadium (inc.)																																									
Russell Road Underbridge (S20)																																									
Rev 1 - BSC construction - S20																																									
A4530	Rev 1 - S20 structure	276d	24-Jun-08	26-Mar-09		Rev 1 - S20 structure																																			
Design																																									
SDS "for Construction" Design																																									
A1000	IFC - V26 - DD 14/01/08 - rec'd 04/02/08	0d		08-Apr-08	26-Mar-09	IFC - V26 - DD 14/01/08 - rec'd 04/02/08																																			
A4290	IFC - V31 - DD 25/04/08 - rec'd 25/04/08	0d	23-May-08*		26-Mar-09	IFC - V31 - DD 25/04/08 - rec'd 25/04/08																																			
A4300	IFC - V32 - DD 05/05/08 - rec'd 27/06/08	0d		23-May-08	26-Mar-09	IFC - V32 - DD 05/05/08 - rec'd 27/06/08																																			
A4310	IFC - V33 - DD 02/06/08 - rec'd 02/07/08	0d		23-May-08 A	26-Mar-09	IFC - V33 - DD 02/06/08 - rec'd 02/07/08																																			
Siemens Integrated Design Activities																																									
Direct Fix Trackform - DCR0125																																									
A4320	IFC - V45 - DD 05/05/09 - rec'd 19/05/09	0d		10-Sep-09		IFC - V45 - DD 05/05/09 - rec'd 19/05/09																																			
A4330	IFC - V46 - DD 01/06/09 - rec'd 17/06/09	0d		18-Sep-09		IFC - V46 - DD 01/06/09 - rec'd 17/06/09																																			
A4340	IFC - V47 - DD 29/06/09 - rec'd 16/07/09	0d		18-Sep-09		IFC - V47 - DD 29/06/09 - rec'd 16/07/09																																			
A4350	IFC - V48 - DD 03/08/09 - rec'd 14/08/09	0d		29-Oct-09		IFC - V48 - DD 03/08/09 - rec'd 14/08/09																																			
A4360	IFC - V49 - DD 24/08/09 - rec'd 10/09/09	0d		29-Oct-09		IFC - V49 - DD 24/08/09 - rec'd 10/09/09																																			
A4370	IFC - V50 - DD 21/09/09 - rec'd 12/10/09	0d		01-Dec-09		IFC - V50 - DD 21/09/09 - rec'd 12/10/09																																			
A4380	IFC - V51 - DD 02/11/09 - rec'd 24/11/09 - retracted by BSC	0d		11-Jan-10		IFC - V51 - DD 02/11/09 - rec'd 24/11/09 - retracted by BSC																																			
A4390	IFC - V51A - DD 02/11/09 - rec'd 25/01/10	0d		19-Jan-10		IFC - V51A - DD 02/11/09 - rec'd 25/01/10																																			
A4400	IFC - V55 - DD 15/02/10 - rec'd 01/03/10	0d		15-Jan-10 A		IFC - V55 - DD 15/02/10 - rec'd 01/03/10																																			
OLE Interface design																																									
A4430	IFC - V51 - DD 02/11/09 - rec'd 24/11/09 - retracted by BSC	0d		15-Jan-10		IFC - V51 - DD 02/11/09 - rec'd 24/11/09 - retracted by BSC																																			
A4440	IFC - V51A - DD 02/11/09 - rec'd 25/01/10	0d		20-Apr-10		IFC - V51A - DD 02/11/09 - rec'd 25/01/10																																			
A4450	IFC - V55 - DD 15/02/10 - rec'd 01/03/10	0d		26-Mar-10		IFC - V55 - DD 15/02/10 - rec'd 01/03/10																																			
A4460	IFC - V56 - DD 15/03/10 - rec'd 22/04/10	0d		26-Apr-10		IFC - V56 - DD 15/03/10 - rec'd 22/04/10																																			
A4470	IFC - V57 - DD 12/04/10 - rec'd 17/05/10	0d		25-May-10		IFC - V57 - DD 12/04/10 - rec'd 17/05/10																																			
Earthing & Bonding																																									
A4480	IFC - V51 - DD 02/11/09 - rec'd 24/11/09 - retracted by BSC	0d		15-Jan-10		IFC - V51 - DD 02/11/09 - rec'd 24/11/09 - retracted by BSC																																			
A4490	IFC - V51A - DD 02/11/09 - rec'd 25/01/10	0d		13-Apr-10		IFC - V51A - DD 02/11/09 - rec'd 25/01/10																																			
A4500	IFC - V55 - DD 15/02/10 - rec'd 01/03/10	0d		15-Mar-10		IFC - V55 - DD 15/02/10 - rec'd 01/03/10																																			
A4510	IFC - V56 - DD 15/03/10 - rec'd 22/04/10	0d		26-Apr-10		IFC - V56 - DD 15/03/10 - rec'd 22/04/10																																			
A4520	IFC - V57 - DD 12/04/10 - rec'd 17/05/10	0d		25-May-10		IFC - V57 - DD 12/04/10 - rec'd 17/05/10																																			
Russell Road Retaining Walls (W1) - W3																																									
Rev 1 - BSC construction - W1&W2																																									
A4540	Rev 1 - W3 & W4 structure	438d	19-Aug-08	30-Oct-09		Rev 1 - W3 & W4 structure																																			
Design																																									
SDS "for Construction" Design																																									
A1010	IFC - V26 - DD 14/01/08 - rec'd 04/02/08	0d		15-Apr-08	30-Oct-09	IFC - V26 - DD 14/01/08 - rec'd 04/02/08																																			
A1140	IFC - V31 - DD 25/04/08 - rec'd 25/04/08	0d	18-Jul-08*		30-Oct-09	IFC - V31 - DD 25/04/08 - rec'd 25/04/08																																			
A1260	IFC - V32 - DD 05/05/08 - rec'd 27/06/08	0d		18-Jul-08	30-Oct-09	IFC - V32 - DD 05/05/08 - rec'd 27/06/08																																			
A1380	IFC - V33 - DD 02/06/08 - rec'd 02/07/08	0d		18-Jul-08	30-Oct-09	IFC - V33 - DD 02/06/08 - rec'd 02/07/08																																			
A1500	IFC - V34 - DD 30/06/08 - rec'd 22/07/08	0d		18-Jul-08	30-Oct-09	IFC - V34 - DD 30/06/08 - rec'd 22/07/08																																			
A1620	IFC - V35 - DD 28/07/08 - rec'd 15/08/08	0d		18-Jul-08 A	30-Oct-09	IFC - V35 - DD 28/07/08 - rec'd 15/08/08																																			
Siemens Integrated Design Activities																																									
OLE Interface design																																									
A3480	IFC - V51A - DD 02/11/09 - rec'd 25/01/10 - not instructed	0d		05-May-10		IFC - V51A - DD 02/11/09 - rec'd 25/01/10 - not instructed																																			
A3610	IFC - V55 - DD 15/02/10 - rec'd 01/03/10 - not instructed	0d		25-Feb-10		IFC - V55 - DD 15/02/10 - rec'd 01/03/10 - not instructed																																			
A3950	IFC - V56 - DD 15/03/10 - rec'd 22/04/10	0d		30-Apr-10		IFC - V56 - DD 15/03/10 - rec'd 22/04/10																																			
A4160	IFC - V57 - DD 12/04/10 - rec'd 17/05/10	0d		20-May-10		IFC - V57 - DD 12/04/10 - rec'd 17/05/10																																			
Russell Road Retaining Walls (W2) - W4																																									
Rev 1 - BSC construction - W1&W2																																									
A4650	Rev 1 - W3 & W4 structure - NOT SEPERATED IN REV 1	438d	19-Aug-08	30-Oct-09		Rev 1 - W3 & W4 structure - NOT SEPERATED IN REV 1																																			
Design																																									
SDS "for Construction" Design																																									
A1020	IFC - V26 - DD 14/01/08 - rec'd 04/02/08	0d		15-Apr-08	30-Oct-09	IFC - V26 - DD 14/01/08 - rec'd 04/02/08																																			
A1150	IFC - V31 - DD 25/04/08 - rec'd 25/04/08	0d	18-Jul-08*		30-Oct-09	IFC - V31 - DD 25/04/08 - rec'd 25/04/08																																			

- Rev 1
- v31
- SDS IFC



Section 5A - Russell Road bridge to Balgreen Road Inclusive
Design Evolution from BDDI (v26) to IFC



