



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

Our Ref: INF CORR 2092

Date: 21 August 2009

Dear Martin,

**Edinburgh Tram Network Infraco
 Infraco Contract – Programme submissions and Agreement of Joint Analysis**

We confirm receipt of your letter of 13 August 2009 (Ref: 25.0.201/WIM/3277) in respect of the proposed Rev. 02 Programme submitted by BSC.

We welcome BSC's acknowledgement that in respect of extension of time, cause, effect and mitigation should all factor in the assessment. Also noted is your suggestion that mitigation and acceleration should be clearly delineated - indeed they are clearly separated in the Contract.

However, we do not agree that many of the mitigation measures we previously suggested result in additional costs and would therefore be classed as "acceleration".

We also note that your reply addresses only some of the matters raised in our letter of 13 August, apparently ignoring those where Infraco carries liability for delay. Clause 65.10 of the Infraco contract requires you to inform tie at the earliest opportunity of all such delays and their estimated effect upon the Programme. We have yet to receive any notification under this clause despite it being apparent that you are experiencing many delays, for which you carry liability. These are impacting on many sections of the Work Sites. We draw to your attention that where such delays arise, Clause 65.10 requires Infraco to undertake, at its own expense such, acceleration measures as are necessary to achieve the requirements of the Programme."

We note that the great majority of the delays you have notified relate to alleged Notified Departures and tie Changes. In respect of these matters, Clause 80.4 requires you to provide estimates of the impact on time and price. Clause 80.7 further requires you to demonstrate that the change will be implemented in the most cost effective manner. We have yet to receive evidence of this, as required by Clause 80.7. We are of the opinion that your approach to the implementation of change to date does not result in the most cost effective solutions, particularly when liquidated damages and prolongation costs are taken into account.

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Finally, we did agree at the meeting on 28th July 2009 that any revised Programme should take account of any mitigation and also agreed acceleration measures. We have consistently explained to you that the contractual route for seeking relief/extension of time under the Infraco contract is via Clauses 64, 65 and 80 of the Infraco Contract. Following agreement of any relief/extension of time then you should submit a revised Programme under Clause 60.

BSC has sought relief/extension of time on a global basis outwith the contractual mechanism and in doing so has submitted a proposed Rev.02 Programme, under Clause 60.3, which does not enable completion by the current Planned Service Commencement date. We acknowledge that it will be a complex task to assess every potential entitlement. This does not relieve BSC from its contractual requirements under clauses 64, 65 and 80.

We are of the opinion that the continued discussions about your entitlement based on the proposed Rev. 02 Programme are preventing agreement in accordance with the Contract. We therefore confirm that the proposed Rev. 02 Programme is rejected under Clause 60.4.2.

We acknowledge that it will be a complex task to assess every potential entitlement. This does not relieve BSC from its contractual requirements under clauses 64, 65 and 80.

Finally, we acknowledge that there is an urgent need to agree a construction programme for the purposes of planning ahead and reviewing current progress until a revised Programme is agreed. We would suggest that we work together to produce a 6 month look-ahead construction programme to incorporate all activities that can be progressed. We would suggest that to kick this off a meeting is held between our respective programme and construction teams. Please advise who should be involved from your organisation.

Yours sincerely,

A black rectangular redaction box covering the signature of Steven Bell.

Steven Bell
Project Director – Edinburgh Tram