



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 5765

Date: 9th August 2010

By fax and personal delivery

Dear Sirs,

**INFRACO CONTRACT
UNDERPERFORMANCE WARNING NOTICE CLAUSE 56.7**

Please find enclosed an Underperformance Warning Notice issued in accordance with Clause 56.7.1 of the Infraco Contract.

Yours faithfully,

Steven Bell
Project Director – Edinburgh Trams

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UNDER PERFORMANCE WARNING NOTICE CLAUSE 56.7

INFRACO DEFAULT (a): DEFECTS ON PRINCES STREET

1. The Breaches giving rise to this Notice

1.1 The Infraco has committed a material breach of its obligations under:

Clause 7.2 of the Infraco Contract by failing to ensure that, in carrying out and completing the Infraco Works, the Infraco exercises a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent professional contractor experienced in carrying out works and services of a similar nature to the Infraco Works in connection with projects of a similar scope and complexity.

Clause 26.1 of the Infraco Contract to provide all necessary superintendence during the completion of the Infraco Works and that such superintendence is given by sufficient persons having adequately knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe construction of the Infraco Works.

Clause 34.2 of the Infraco Contract by failing to ensure that the materials provided and the mode, manner and speed of construction of the Infraco Works are in accordance with the Infraco Contract.

Clause 7.5.2 by failing to minimise disruption to the City of Edinburgh.

These breaches are material and continuing.

2. The matters evidencing Material Breaches

2.1 The Infraco carried out Infraco Works on Princes Street during March 2009 to November 2009.

2.2 The Infraco has installed seriously defective works on Princes Street and has failed to remedy this. There are significant faults in the works which (i) pose an appreciable physical health and safety hazard; (ii) are capable of creating further hazards; and (iii) will severely reduce the life of the pavement. There are failings in the areas which are constructed of granite setts. The Infraco has not provided adequately qualified superintendence of the Infraco Works which would have prevented the installation of defective works on Princes Street. tie's assessment, on the basis of inspections carried out to date, is that poor workmanship; an ill-advised choice of materials; inappropriate design; and the Infraco's lack of supervision on Site may have all been contributed to these defects.

2.3 The nature of the seriously defective works on Princes Street includes:

2.3.1 At a considerable number of locations on Princes Street, the bituminous bound pavement materials have cracked and broken apparently from a lack of support. It is surmised that this is (in whole or in part) caused by poor compaction in and around the rail flange.

2.3.2 There are many locations where there is a significant step down from the top of the rail and wearing surface, causing a potential hazard.

- 2.3.3 The regularity and application of the joint sealant is unsatisfactory.
 - 2.3.4 The workmanship on the granite setts is of an inadequate standard.
 - 2.3.5 The pavement has a life expectancy of months before maintenance is required.
 - 2.3.6 The Infraco has laid road surfacing which is not technically compatible with the track form installation in Princes Street and is already showing obvious dilapidation.
- 2.4 The Infraco's letter (ref: 25.1.201/BDo/5937) of 9 June 2010 admitted that the works carried out to Section 1C/D (i.e. on Princes Street) are not in accordance with the Infraco Contract. The Infraco responded to this letter on 18 June 2010 (ref: INF CORR 5400) with instructions on this matter. As at the date of this Under Performance Warning Notice, the Infraco has neither responded to this letter, nor taken any steps to facilitate or commence the necessary rectification works.

REMINDER

Pursuant to Clause 56.7 we are obliged to inform you of the implications of this Underperformance Warning Notice: your attention is drawn to Clause 56.10 and to Infraco Default (g).

for and on behalf of the Limited



Tram Project Director

2/8/10.....Date