



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

Our Ref: INF CORR 1957

Date: 4 August 2009

Dear Martin,

**Edinburgh Tram Network Infraco
Phase 1b - Payment claimed under Clause 85 and Schedule Part 37 of the Infraco
Agreement**

We refer to your invoice in the amount of £3,200,000 +VAT (BBUK-ETN02] dated 1st July 2009 and advise you although we will be making payment of the invoice tomorrow (5th August 2009) we will be doing so with reservation of our further consideration of the matters referred to below and any other matters we consider relevant to the validity of the payment. Pending that consideration, tie's rights to reclaim this payment are full reserved

Schedule Part 37 required that Infraco produce a Phase 1B Proposal which includes, inter-alia, a proposed fixed price for Phase 1b. The following points are made with reference to the submission you made dated 19th December 2008:

1. Your proposed fixed price for Phase 1B of £134.043m was almost three times the Phase 1B Bid Price of £49.700m.
2. The meaning and intent of the Infraco Contract is that tie was to be able, at the time of entering into the Contract, to rely on the Phase 1B Bid Price as an offered and committed price subject only to changed and new information, on which Infraco was required to undertake due diligence under paragraph 2 of Schedule Part 37.
3. tie has not been satisfied that your proposed fixed price for Phase 1b has been justified by the due diligence exercise.
4. If in fact the Phase 1B Bid Price was not a price for which Infraco would undertake Phase 1B, subject only to the due diligence above, then it would stand as a misrepresentation at the point of contract.

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5. For the foregoing reasons **tie** is not satisfied that it has been presented with a competent Phase 1B Proposal pursuant to Schedule Part 37. Consequently **tie's** main commercial purpose underlying the agreement regarding the payment for your preparatory work at tender stage on Phase 1b has been negated.
6. Your proposed fixed price for Phase 1B may lead to the conclusion that the procurement law justification for the deferred inclusion in the contract price of a payment to BSC in respect of pre contract award work on Phase 1b has been eroded. **tie** is taking further advice on the alignment of this payment with **tie's** duty to safeguard best value and its duty to comply with applicable procurement law.

We look forward to hearing your view on the matters outlined above.

Yours sincerely,



fw
Steven Bell
Project Director – Edinburgh Tram