



CONFIDENTIAL

Mr Joachim Enenkel
Bilfinger Berger AG
Civil
Gustav-Nachtigal-Strasse 3
65189 Wiesbaden
Germany

Our Ref: WG/IPT

6th May 2008

Dear Joachim,

Edinburgh Tram Project

I write following our meetings on 5th May 2008. Thank you for travelling to Edinburgh with Axel Metzger. As I have pointed out, your last minute demand for an additional £12 million remains entirely out of keeping with your responsibility as tie's preferred bidder and with the rules of the ETN Procurement by which BBS are bound. It also demonstrates a disturbing disregard for your Consortium's duty to support tie in our procurement responsibilities regarding transparency and public accountability.

The fact that you have now told us that your underlying number (following your review in Wiesbaden early last week, three days before planned contract signature) is £17 million compounds tie's misgivings about the competence of your project team. There is still no coherent written explanation from your Consortium. I cannot entertain further piece-meal correspondence about a subject as fundamentally important as your committed contract price.

We have made repeated attempts to reach a final commercial agreement with you, and on each occasion you have subsequently introduced new terms. Trust in the Consortium's desire and ability to close the contracts on acceptable terms is very low.

In order to stabilise the ETN Procurement, and deal with the BBS Consortium's action in a transparent way, I see my authority to move forward with the BBS Consortium only as I have laid out in the attached paper. I am left with no option but to stipulate the precise terms on which tie will complete, with no further negotiation. The financial allowances in Conditions 1 and 2 are a final measure of goodwill by tie, which we are under no compulsion to offer. In making the proposal, tie must receive value for money. Accordingly the full set of Conditions 1-7 are a package are not separable and are integral to the InfraCo Contract itself.

delivering transport projects

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If this is acceptable to the BBS Consortium, please let me know within 24 hours by returning the document to me signed by Stefan Hofsäss and yourself as authorised signatories.

We must now work to achieve a Contract Close targeted on 14th May 2008.

Please let me know immediately by email, if this is not acceptable. If this is the case, the BBS Consortium is likely to be formally de-selected from its preferred bidder status and **tie** will reserve all its rights in relation to the jeopardy and disruption to the two Edinburgh Tram procurements caused by Bilfinger Berger Siemen's ill-considered action.

I look forward to your response.

Yours sincerely



Willie Gallagher
Executive Chairman

Cc: Stefan Hofsäss

CONDITIONS UNDER WHICH THE BBS CONSORTIUM RETAINS ITS POSITION AS PREFERRED BIDDER IN THE INFRACO PROCUREMENT TO ENABLE **tie** AND THE BBS CONSORTIUM PROCEED TO CONTRACT CLOSE

Condition One

If **tie** does not proceed with Phase 1b of the ETN Project or **tie** does proceed but BBS has proposed an estimate which **tie** has rejected unreasonably then:

- BBS Consortium shall be compensated for its work in the procurement period on Phase 1b by a payment of £3.2 million (currently contained in the BBS Consortium price for Phase 1b)
- **tie** shall make such payment within 30 days of the issue of the Reliability Certificate in respect of Phase 1a against a valid VAT invoice

Condition Two

tie shall pay the BBS Consortium an incentivisation bonus of £3 million, such sum to be paid as follows:

- £500,000 at date of the first critical milestone completion date achieved by BBS Consortium
- £2,500,000 at the date of issue of the Reliability Certificate

Condition Three

The InfraCo Contract Suite and all associated documentation is closed out on **tie's** preferred positions on all remaining open matters and there is no further discussion or negotiation on any core terms and conditions or schedules except for housekeeping and sense checking. This includes:

- (1) BBS Consortium withdrawing all points on the SDS Novation Agreement which were raised in week commencing 28th April 2008;
- (2) BBS Consortium accepts **tie's** preferred position on Schedule Part 14 Review Procedure, and the Design Management Plan and definition of Issued for Construction Drawings and the phased release of IFCs as allowed for in the Design Delivery Programme;
- (3) BBS Consortium delivering its collateral warranties and those of its subcontractors at Contract Close on the terms required by **tie**.

Condition Four

When CAF joins the BBS Consortium and becomes party to the InfraCo Contract, this happens on the terms already stipulated by **tie** to Siemens on 29th April 2008 namely:

- full indemnity to **tie** from BBS Consortium against any adverse impact of CAF joining/contracting direct with **tie**
- express acknowledgements provided by both BBS sureties to **tie**

- **tie's** preferred amendments to the Siemens AG and Bilfinger Berger AG parent company guarantees to confirm no effect on scope, validity or duration of PCGs. Legal options to confirm this
- appropriate revisions to the InfraCo Contract as stipulated by **tie**, acting reasonably

Condition Five

BBS Consortium expressly gives up any entitlement to claim time relief or payment of additional costs with regard to the Mobilisation and Advance Works Agreement and the transition to works under the InfraCo Contract to ensure a clear position at commencement of the InfraCo works.

Condition Six

BBS Consortium expressly agrees to absorb the first four months of prolongation or delay costs associated with contractual Compensation Events.

Condition Seven

BBS Consortium expressly agrees that its price in respect of roads reinstatement (as regards entitlement following Notified Departures) is capped at £1 million.

We agree to these particular Conditions of Contract which shall form part of the InfraCo Contract and shall take precedence over its Terms and Conditions and all Parts of the Schedule in all cases.

We hereby confirm on behalf of the BBS Consortium that there are no further outstanding financial, technical, commercial or legal issues connected to our offer and we are ready, willing and able to sign the InfraCo Contract with proper corporate authority.

Signed:

For and on behalf of Siemens

Signed:

For and on behalf of Bilfinger Berger