

Bilfinger Berger-Siemens- CAF
Consortium

Our ref: 25.1.201/MRH/3879

BSC Consortium Office
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ
United Kingdom

23 October 2009

tie limited
CityPoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

| Bilfinger Berger Civil-EDI | |
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| Date Sent | 25 OCT 2009 PM |
| File Number | |
| Action | |
| Distribution | |

Phone: + [REDACTED]

For the attention of Steven Bell, Tram Project Director

Dear Sirs,

**Edinburgh Tram Network Infraco
Compensation Events**

We refer to your many letters issued in response to our notifications of Compensation Events raised during the currency of the Contract requesting that we provide the notices, estimates and details required under Clause 65.2 of the Infraco Contract.

We have provided, under cover of our letter dated 06 August 2009, reference 25.1.201/WIM/3230, an Estimate in respect of Infraco Notification of tie Change number 429, namely the delay and disruption arising from incomplete MUDFA Works as a consequence of the issue by tie to Infraco of the MUDFA programme revision 8. Though tie acknowledge that a Notified Departure has occurred, a dispute has arisen concerning the quantum of Infraco's entitlement to extensions of time to the Planned Sectional Completion Dates arising from the delays detailed in the MUDFA programme, and the matter has been referred to the contractual Dispute Resolution Procedure.

It is our belief that the full details required by the contract to be provided by Infraco in respect of extension of time entitlement, relief from obligations, details of costs and losses and possible mitigation measures adopted in connection with the myriad of Compensation Events notified to date cannot be ascertained until the resolution of the dispute concerning INTC 429. This is because the dominant cause of delay on the project is the delayed MUDFA Works. We are certain tie will understand that to perform any analysis against the Revision 1 Programme in respect of these secondary forms of delay would not produce any meaningful or reliable information upon which an extension of time could be agreed. It would be a categorical waste of resources for all parties.

Once agreement is reached or a third party decision is declared in respect of INTC 429, we will be in a position to update the Programme. Thereafter the impact of the remaining Compensation Events and INTCs can be assessed against the revised baseline allowing us to ascertain the individual and cumulative impacts.

For the reasons described above we are, at present, unable to provide full details of the extension of time and relief required and/or any costs claimed including:

our estimate of the likely effect of such delay upon the Programme (if any) or the adverse effects on the performance of its obligations under this Agreement;

details of the costs or losses which are not Indirect Losses;


mitigation measures adopted and why unsuccessful; and

any acceleration or other measures which we could take to mitigate the effects of such delay or non-performance and, where applicable, an estimate of the costs thereof;

We do, however, undertake to provide any further interim written particulars as set out in Clause 65.2.2(b) reasonably requested by tie until such time as the analysis of these secondary delay forms would be meaningful, whereupon we shall as soon as reasonably practicable, submit to tie the items referred to in Clause 65.2.2.

We trust that tie appreciates that we are using reasonable endeavours to perform our obligations under this Agreement and would welcome any constructive suggestions in this regard.

Yours faithfully


M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc: M Berrozpe
A Urizza
K Russell
W Meller
S Sharp



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 4143

Date: 19th February 2010

Dear Martin,

**COMPENSATION EVENTS
CLAIMS FOR ENTITLEMENT PURSUANT TO CLAUSE 65.2**

We refer to previous correspondence in relation to Compensation Events and your stated position which is a refusal or inability to provide contractually compliant information to meet your obligations under Clause 65 of the Infraco Contract. You have made a global assertion that this inability is due to the unresolved EOT claim flowing from INTC 429 (issued to us on 6 August 2009) in relation to the incomplete MUDFA Works.

It is our firm view that the reason for your inability to comply with your contractual obligations does not lie in INTC 429, nor the frequency of occurrence of Compensation Events, but rather in your decision not to respect the proper operation of the Contract and compounding consequences of your unwillingness to produce any timely assessment relating to individual facts and circumstances.

There are numerous cases of notifications in which you have not complied with Clause 65 and have given no meaningful indication as to when details will be received which do satisfy the requirements of Clause 65.

As an example, which is representative, we refer to the letters of 26 January 2009 (25.1.201/MRH/1386), 23 February 2009 (25.1.201/MRH/1708) and 16 March 2009 (25.1.201/MRH/1935).

It is not credible that your reason for failing to provide full details of the claim is that these cannot be ascertained until the resolution of the dispute concerning INTC 429. This has been your attitude towards the vast majority of Compensation Events from the debut of the Infraco Contract and has not simply changed following the submission of INTC 429 in August 2009.

We acknowledge that the quantum of INTC 429 is subject of Dispute Resolution Procedure, but it has not been determined that the dominant cause of delay on the Project is the delayed MUDFA Works or that this has any bearing on the continued proper operation of the Infraco Contract.

delivering transport projects

tie limited

Citypoint 65 Haymarket Terrace Edinburgh EH12 5HD
tel: +44() fax +44(0) web www.edinburghtrams.com
Registered in Scotland No: 230949 at City Chambers, High Street, Edinburgh EH1 1YJ

Direct dial: +44 ()
e-mail: steven.bell@tie.ltd.uk
web: www.tie.ltd.uk

In any case, it is not contractually correct for you to assert that INTC 429 produces a situation in which you are excused on an ongoing blanket basis from any obligation to provide compliant meaningful estimates of the likely effect of delay upon the Programme and adverse effects on performance of your obligations; details of your costs and losses (excluding Indirect Losses); mitigation measures adopted and, if unsuccessful, the reasons why; and any acceleration or other measures which you could take to mitigate effects of delay or non-performance and associated cost estimates.

You ought to be able to consider these matters (as a properly qualified and competent contractor ought to be able to) for some, if not all, of the specific alleged Compensation Events. For example, it is reasonable for us to expect to receive an indication from you how long a particular piece of unexpected work might take to carry out and what the cost of that work would be and any particular/additional materials or services which would be required. It is reasonable for us to expect you to make suggestions for approaches to deal with the alleged Compensation Event, in particular any mitigating measures which you might consider (bearing in mind our overarching project partnering and best value rights and obligations). It is reasonable for us to expect you to make some effort to satisfy these requirements. This information is identifiable, within your knowledge and control and independent of the Programme or the actual start date for the works in question. There is therefore no excuse for you not to provide us with a sensible level of transparency regarding the alleged Compensation Events which you are claiming, as required under the Infraco Contract.

In any case, Clause 65.2 includes the possibility (in defined circumstances), where you are not able to provide full details of the claim at the initial notification stage, for you to submit instead: *"a statement to that effect with reasons, together with interim particulars of the items referred to at Clause 65.2.2 insofar as such items are available..."* and further interim particulars until such time that the full details are available. This is not qualified by requiring any particular instruction or direction from us. This is a straight obligation in the Infraco Contract. Not to be providing us with some level of interim (and updated) information is also a breach of contract, contrary to Good Industry Practice and detrimental to our statutory obligations in terms of best value, in particular under the Local Government (Scotland) Act 1973. It gives us absolutely no comfort or visibility that you are doing anything to mitigate any cost and delay to the Project arising from any alleged Compensation Event. In addition, it is detrimental to the validity of your own Compensation Event claim, which requires you to comply timeously with the information requirements in Clause 65.2, otherwise you will not be entitled to relief for the time during which you delay, in this case by your choice, in complying with these requirements.

In addition to and independent of the specific details of the claim which are required by Clause 65.2.2, you are obliged under Clause 65.3 to demonstrate to our reasonable satisfaction that:

- you could not reasonably have avoided the occurrence of the Compensation Event or consequences;
- the Compensation Event is the direct cause of the delay, inability to perform and/or the additional costs subject of the claim; and
- you are using reasonable endeavours to otherwise perform your obligations under the Infraco Contract.

We are not satisfied that you have demonstrated this for the majority of the Compensation Events claimed. We do not consider that this requirement for demonstration is contingent upon any other factor. INTC 429 can have no effect on your obligations under this provision.

The provisions on Compensation Events are designed to allow for transparency, notice and visibility of potential claims which arise and to allow us to accurately and fairly assess any time and/or cost entitlement for you flowing from that claim, while you otherwise progress the Infraco Works. These provisions are not designed to allow you to put a veil over contractual compliance due to other events which are happening in the course of the Project.

You are under a contractual duty to continue to carry on the Infraco Works despite Compensation Events and to do so using reasonable endeavours to maximise productivity by reference to Good Industry Practice and with due expedition and in a timely and efficient manner without delay.

The stance you have adopted on the provision of contractually deliverable information under Clause 65.2 puts you in breach of contract and this Infraco Default is persistent. We expressly reserve all our rights to recover our losses and liabilities incurred because of this ongoing breach and we will account for delay and cost caused by your breach when evaluating any proper substantial claim which you submit.

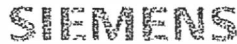
Please report to us how you propose to remedy this breach within 10 Business Days of this letter.

Yours sincerely,

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

Steven Bell
Project Director – Edinburgh Tram

CE 138



Bilfinger Berger-Siemens- CAF Consortium

Our ref: 25.1.201/MRH/1147

BSC Consortium Office
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ
United Kingdom

12 December 2008

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| Bilfinger Berger Civil-EDI | |
| Date Sent | 12 DEC 2008 |
| File Number | |
| Action | |
| Distribution | |

Phone: [REDACTED]

tie limited
CityPoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

For the attention of Steven Bell – Tram Project Director

Dear Sirs,

**Edinburgh Tram Network Infraco
Notification of a Compensation Event
Incomplete MUDFA Works Section 1B – Manderston Street**

We are aware that a Compensation Event has caused or is likely to cause delay, has adversely affected or will adversely affect the performance of our obligations, and has caused or will cause us to incur additional costs:

We give to tie a notice of a claim for an extension of time and/or costs and relief from performance of our obligations.

Full details of the nature of the Compensation Event are the additional temporary works to Section 1B necessitated by the incomplete MUDFA Works at Manderston Street as set out in INTC 238 issued under cover of our letter dated 12 December 2008, reference 25.1.201/GC/956, which will require to be fully assessed in relation to programme & associated preliminary costs if applicable. The nature of these additional works may have an impact on the Programme, our construction methodology and sequencing of our works.

The works have still to be fully described, estimated & confirmed by issue of a tie Change Order.

For the reasons described above we are unable to provide full details of the extension of time and relief required and/or any costs claimed including:

our estimate of the likely effect of such delay upon the Programme (if any) or the adverse effects on the performance of its obligations under this Agreement;

details of the costs or losses which are not Indirect Losses;

mitigation measures adopted and why unsuccessful; and

any acceleration or other measures which we could take to mitigate the effects of such delay or non-performance and, where applicable, an estimate of the costs thereof;

In accordance with Clause 65.2.2 of the Infraco Contract, this Compensation Event has a continuing effect and we are unable to determine whether the effect of the Compensation Event will actually cause

us not to be able to comply with our obligations under this Agreement, such that it is not practicable for us to submit full details in accordance with this Clause 65.2.

We have submitted to ~~tie~~ a statement to that effect with reasons, together with interim written particulars of the items referred to at Clause 65.2.2 insofar as such items are available (including details of the likely consequences of the Compensation Event on our ability to comply with our obligations under this Agreement and an estimate of the likelihood and likely extent of the delay or non-performance and the costs incurred).

We undertake to provide further interim written particulars as set out in Clause 65.2.2(a) until the actual delay caused and costs incurred or non-performance are ascertainable, whereupon we shall as soon as reasonably practicable, submit to ~~tie~~ the items referred to in Clause 65.2.2.

We confirm that that:

subject to Clause 65.12, we and the Infraco Parties could not reasonably have avoided such occurrence or consequences by steps which we might reasonably be expected to have taken;

the Compensation Event is the direct cause of the delay, inability to perform and/or the additional costs; and

We are using reasonable endeavours to perform our obligations under this Agreement.

We request your response to this notification in accordance with Clause 65.2A1 of the Infraco Contract

Yours faithfully,



C H B Brady
Project Director
Bilfinger Berger Siemens CAF Consortium

Our ref: 25.1.201/GC/986

20 November 2008

tie limited
CityPoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

Bilfinger Berger-Siemens- CAF
Consortium

BSC Consortium Office
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ
United Kingdom

Phone: [REDACTED]

For the attention of Steven Bell – Tram Project Director

Dear Sirs,

**Edinburgh Tram Network Infraco
Infraco Contract – Infraco Notification of tie Change (INTC) No. 241
Section 5 – MUDFA Works at Bankhead Drive**

The MUDFA Contractor has commenced works within the Infraco site on Bankhead Drive. Infraco have removed all Traffic Management in the area and are currently unable to undertake any works until all the works MUDFA works are completed. We hereby notify you that this is a Compensation Event in accordance with Clause 65 of the Infraco Contract.

The extent of the delay is entirely dependant on the MUDFA Contractor completing the works, therefore we are currently unable to submit full details in accordance with Clause 65.2.

Yours faithfully,

[REDACTED]
C H B Brady
Project Director
Bilfinger Berger Siemens CAF Consortium

CE 139

Our ref: 25.1.201/MRH/1149

| Bilfinger Berger - Siemens - CAF Consortium | |
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| Date Sent | 20 Dec 2008 |
| File Number | |
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Bilfinger Berger-Siemens- CAF Consortium

BSI Consortium Office
9 Leithside Avenue
Edinburgh Park
Edinburgh
EH2 9DJ
United Kingdom

12 December 2008

tie limited
CityPoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

Phone: [REDACTED]

For the attention of Steven Bell – Tram Project Director

Dear Sirs,

**Edinburgh Tram Network Infraco
Notification of a Compensation Event
Section 5 – MUDFA Works at Bankhead Drive**

We are aware that a Compensation Event has caused or is likely to cause delay, has adversely affected or will adversely affect the performance of our obligations, and has caused or will cause us to incur additional costs:

We give to **tie** a notice of a claim for an extension of time and/or costs and relief from performance of our obligations.

Full details of the nature of the Compensation Event are the incomplete MUDFA Works at Bankhead Drive as set out in (NTC 241) issued under cover of our letter dated 20 November 2008, reference 25.1.201/GC/986, which will require to be fully assessed in relation to programme & associated preliminary costs if applicable. The nature of these additional works may have an impact on the Programme, our construction methodology and sequencing of our works.

The works have still to be fully described, estimated & confirmed by issue of a **tie** Change Order.

For the reasons described above we are unable to provide full details of the extension of time and relief required and/or any costs claimed including:

our estimate of the likely effect of such delay upon the Programme (if any) or the adverse effects on the performance of its obligations under this Agreement;

details of the costs or losses which are not Indirect Losses;

mitigation measures adopted and why unsuccessful; and

any acceleration or other measures which we could take to mitigate the effects of such delay or non-performance and, where applicable, an estimate of the costs thereof;

In accordance with Clause 65.2.2 of the Infraco Contract, this Compensation Event has a continuing effect and we are unable to determine whether the effect of the Compensation Event will actually cause us not to be able to comply with our obligations under this Agreement, such that it is not practicable for us to submit full details in accordance with this Clause 65.2

In accordance with Clause 65.2.2 of the Infraco Contract, this Compensation Event has a continuing effect and we are unable to determine whether the effect of the Compensation Event will actually cause us not to be able to comply with our obligations under this Agreement, such that it is not practicable for us to submit full details in accordance with this Clause 65.2.

We have submitted to ~~tie~~ a statement to that effect with reasons, together with interim written particulars of the items referred to at Clause 65.2.2 insofar as such items are available (including details of the likely consequences of the Compensation Event on our ability to comply with our obligations under this Agreement and an estimate of the likelihood and likely extent of the delay or non-performance and the costs incurred).

We undertake to provide further interim written particulars as set out in Clause 65.2.2(a) until the actual delay caused and costs incurred or non-performance are ascertainable, whereupon we shall as soon as reasonably practicable, submit to ~~tie~~ the items referred to in Clause 65.2.2.

We confirm that that:

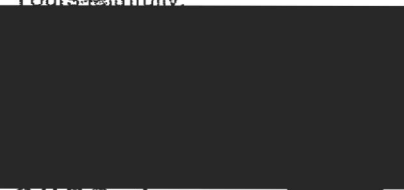
subject to Clause 65.12, we and the Infraco Parties could not reasonably have avoided such occurrence or consequences by steps which we might reasonably be expected to have taken;

the Compensation Event is the direct cause of the delay, inability to perform and/or the additional costs; and

We are using reasonable endeavours to perform our obligations under this Agreement.

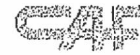
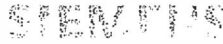
We request your response to this notification in accordance with Clause 65.2A1 of the Infraco Contract

Yours faithfully,



CHB Brady
Project Director
Bilfinger Berger Siemens CAF Consortium

CE 203



Bilfinger Berger-Siemens-CAF Consortium

Our ref: 25.1.201/IL/1270

BSC Consortium Office
9 Lochside Avenue
Edinburgh Park
Edinburgh
EH12 9DJ
United Kingdom

12 January 2009

tie limited
CityPoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

Phone: [REDACTED]

For the attention of Steven Bell – Tram Project Director

Dear Sirs,

**Edinburgh Tram Network Infraco
Notification of a Compensation Event
Delay by MUDFA in completing works to divert utilities; Section 2A: Haymarket Station Viaduct & Access to Verity House.**

We are aware that a Compensation Event has caused or is likely to cause delay, has adversely affected or will adversely affect the performance of our obligations, and has caused or will cause us to incur additional costs:

We give to tie a notice of a claim for an extension of time and/or costs and relief from performance of our obligations.

Full details of the nature of the Compensation Event are that diversion works in the area around the viaduct, existing access road & location of new access road are incomplete, the 11kVA diversion ref 2A/SP/01 has been altered incorrectly & remedial action is required, all of which will require to be fully assessed in relation to programme & associated preliminary costs if applicable once the MUDFA works are completed. This is delaying completion of the viaduct as indicated on marked up drawing ref ULE90130-02-BRG-00007/7 [enclosed]. The nature of these delays & any additional works may have an impact on the Programme, our construction methodology and sequencing of our works.

The works have still to be fully described, estimated & confirmed by issue of a tie Change Order.

For the reasons described above we are unable to provide full details of the extension of time and relief required and/or any costs claimed including:

- our estimate of the likely effect of such delay upon the Programme (if any) or the adverse effects on the performance of its obligations under this Agreement;
- details of the costs or losses which are not Indirect Losses;
- mitigation measures adopted and why unsuccessful; and
- any acceleration or other measures which we could take to mitigate the effects of such delay or non-performance and, where applicable, an estimate of the costs thereof;

We have submitted to ~~tie~~ a statement to that effect with reasons, together with interim written particulars of the items referred to at Clause 65.2.2 insofar as such items are available (including details of the likely consequences of the Compensation Event on our ability to comply with our obligations under this Agreement and an estimate of the likelihood and likely extent of the delay or non-performance and the costs incurred).

We undertake to provide further interim written particulars as set out in Clause 65.2.2(a) until the actual delay caused and costs incurred or non-performance are ascertainable, whereupon we shall as soon as reasonably practicable, submit to ~~tie~~ the items referred to in Clause 65.2.2.

We confirm that that:

subject to Clause 65.12, we and the Infraco Parties could not reasonably have avoided such occurrence or consequences by steps which we might reasonably be expected to have taken;

the Compensation Event is the direct cause of the delay, inability to perform and/or the additional costs; and

We are using reasonable endeavours to perform our obligations under this Agreement.

We request your response to this notification in accordance with Clause 65.2A1 of the Infraco Contract

Yours faithfully,



C H B Brady
Project Director
Bilfinger Berger Siemens CAF Consortium