

Bilfinger Berger--Siemens-- CAF Consortium

Our ref: 25.1.201/KDR/3037

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08 July 2009

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**Strictly Private and Confidential
Without Prejudice**

For the attention of Steven Bell – Tram Project Director

Dear Sirs,

**Edinburgh Tram Network Infraco
Infraco Contract – BSC Mediation follow up**

We refer to the mediation that took place between 29 June 2009 and 3 July 2009 in your City Point offices which ended without any satisfactory resolution of the issues tabled therein. This was despite lengthy and constructive discussions during which we felt we had convinced you of the veracity of our entitlements. However, since you have been notified of our entitlements and the corresponding amounts we do not wish to repeat our position herein but simply use this opportunity to confirm our offer made to you on Thursday evening 2 July 2009 which we felt provided a platform for full and final resolution of these matters. This offer is made on a without prejudice basis. In view of the time constraints to which we all are subject this offer is valid for a period of thirty calendar days commencing from the date of this letter, following which it shall (unless previously withdrawn by us) and without further recourse to you, lapse and be of nil effect.

1. Extension of Time (EOT)

For EOT 1 Infraco will accept an amount of £ 5.8 million (subject to adjustment in accordance with the rates as subsequently agreed to with Siemens on Friday 3 July 2009).

For EOT 2 Infraco will accept an EOT of 12 months with commensurate reimbursement for associated time related costs.

For EOT 2 Infraco will accept an additional 4 months EOT but without any cost reimbursement for time related costs. Beyond the primary 12 months EOT (above) this serves to protect Infraco from exposure to LDs.

2. Base Date Design Information (BDDI) to Issued For Construction (IFC)

Infraco proposes that in lieu of any amounts for which, in the opinion of tie, Infraco is deemed to have included in its tender for design development, Infraco will apply a reduction (credit) to the value of each tie Change for the civil works element. The credit to tie would be calculated against the value of the original item which became subject to each tie Change and it is proposed that 2.5% of the value of the measurement of the BDDI will be credited back to tie. The tie change will then be calculated by the measurement of the value of the IFC drawings less the measurement of the value of the BDDI and adding the credit. This amount would apply both to future and past Changes on the civil works where BDDI to IFC is applicable.

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3. Value Engineering (VE) (Schedule Part 4, Appendices C and D).

Infraco proposes that tie credits to Infraco the sum of £ 7.8 million for those VE items which have been deducted from Infraco. This proposal is to ensure that there are no further disagreements on the VE items and that this will be a final settlement regardless of the status of the VE items.

4. On-Street Works Supplemental Agreement on Cost Reimbursable Basis

Infraco will execute the Bilfinger Berger scope of works for the On-Street works (generically defined as being from Haymarket through to Newhaven inclusive of bridges) on a cost reimbursable basis (including additional fixed percentages, 10% head office and overhead, 7.4% consortium preliminaries and 17.5% uplift [to be applied to the Bilfinger Berger Staff costs only]). Additional anticipated engineering costs and the like to be incurred by Siemens resulting from the proposed On-Street works agreement shall likewise be reimbursed to Siemens on an "as incurred" basis. We recommend that the Princess Street Supplemental Agreement (PSSA) should form the basis of this proposal although for commercial expedience and in view of the current difficulties administering the PSSA, the delineation between cost reimbursable and original works would be jettisoned in favour of a simpler cost reimbursable basis for all of the civil works. This principle was discussed between the parties during the mediation.

5. Misalignment

It has not been possible to accurately identify the number of items (including the cost and time impact) that will be affected by this issue which clearly precludes a commercial settlement. Therefore the position of Infraco is that all matters relating to misalignment remain the responsibility of tie.

Infraco believe that the position set out above represents a realistic and *bone fide* view of its entitlements under the Contract or at law and already takes account of *inter alia* substantial commercial discounts aimed at achieving closure on these matters

Notwithstanding the above, Infraco firmly believes that a key to resolution is for tie to abandon its passive behaviour in favour of an active decision making approach. This will create both real progress and reciprocally serve to stem any future delays/losses - not to do so will serve only to delay the project and create further loss and expense none of which is in the interests of either tie or Infraco.

Yours faithfully,


M Foerder
Project Director
Bilfinger Berger Siemens CAF Consortium

cc R. Walker (BB)
M. Flynn (Siemens)
A. Campos (CAF)
M. Berrozpe (Siemens)
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K. Russell (BB)
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