

Bilfinger Berger – Siemens
Consortium

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Phone: 

22 April 2008

tie Limited
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For the attention of Willie Gallagher

Dear Willie,

I refer to our meeting on the evening of 17th April 2008 in which you advised of the change to the CEC signing authorisation procedure, and our subsequent telephone call today.

We are becoming increasingly concerned with final negotiations of the Infraco Contract and Schedules, in particular, the acknowledged misalignment between the SDS design and the Infraco Proposals (price & programme). Notwithstanding your stated intent to resolve these issues by way of an all party workshop immediately following contract signature we firmly believe that these issues should be brought to a satisfactory conclusion before the award of a contract. We are also concerned that in addition to the foregoing, there are further delays to the Design Programme and MUDFA Works, and indications that the Advance Works being undertaken at Haymarket Depot by Scotrail may also be delayed. It is clear from this that substantial additional costs and prolongation of the Construction Programme will result. Whilst there are processes in the Contract to value and assess these, we are extremely uncomfortable with these circumstances which will, undoubtedly, strain contractual relationships at an early stage in the Project.

In addition, we are concerned that, while tie and BBS understand the processes and risk allocation as it is largely agreed, we understand that DLA Piper have briefed CEC and they appreciate the detail of the Contract that they are about to authorise you to sign with us, which we believe will require CEC to fund substantial increases in the construction works price and prolongation to the construction programme after contract award.

With respect, I request you advise CEC of these matters and in particular affirm their understanding of the requirement under the contract for additional funds to be made available to Infraco as a result of the alignment and notified departure processes, including for example the effect of pricing assumption 4 which means there will be an immediate requirement for a notified departure due to the misalignment between the Infraco and SDS design delivery programmes.

You will appreciate that the purpose behind this letter is to ensure that all parties are clear and that there is no misunderstanding or misrepresentation. The BBS Companies have, as do we, an excellent C corporate reputation with Business Values which demand that we behave, ethically, professionally and with integrity and, for these reasons, I am obliged to send you this letter.

In addition to the confirmation requested above, we need to discuss these matters over the next few days. I will contact you to make arrangements in early course.

Yours sincerely

Richard Walker
Bilfinger Berger Siemens Consortium

Michael Flynn
Bilfinger Berger Siemens Consortium