

Ref: CUS/tie/letter/TL/Projects/

27th January 2009

Mr. Graeme Barclay
tie MUDFA Utilities Construction Director
tie Limited.
Citypoint,
1st Floor,
65 Haymarket Terrace,
Edinburgh.
EH12 5HD

Dear Graeme,

Subject: MUDFA Carillion Utility Services (CUS) – Contract A150
Weekly Progress Reports

Thank you for your letters Ref;

- DEL.MUDFA.12123.JC.GB, dated 16th December 2008;
- DEL.MUDFA.12124.JC.GB, dated 16th December 2008; and
- DEL.MUDFA.12403.TC.GB, dated 22nd January 2009.

Our response is as follows:-

Clause 35

Clause 35 includes the Pre-Construction Programme as well as the Construction Programme. The failings throughout the PCS Phase led to the inability of CUS to provide a programme as contemplated in PCS, this is a matter of contemporaneous correspondence including the settlement agreement up to and including September 2007. Unless **tie** acts unreasonably it cannot be expected that CUS are now to produce documentation including programmes to the level of detail contemplated in PCS where it has already been recognised and agreed by both parties that this would not be possible.

tie Bullet Point 1;

Contrary to your assertions it is not a requirement to apply Clause 35.1 to 35.9 to each and every delay, disruption and dislocation event. The intention of Clause 35.1 to 35.9 is to set out the Programme requirements, detailing the protocol/parameters that would lead to the acceptance of the Contractors Programme and revisions thereto.

tie Bullet Point 2;

We comply with Clauses 35.4 and 35.5 through regular updates for the Construction programme

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tie Bullet Point 3;

This refers to the Pre-Construction Programme, which no longer applies.

tie Bullet Point 4;

CUS provide an updated Construction Programme in accordance with Schedule 1 Clause 3.1, this is a matter of contemporaneous correspondence including our most recent letter Ref; CUS/tie/letter/SM/Projects/1807 dated 26th January 2009. The monthly progress reports referred to in Clause 3.1 are required 3 business days before each monthly progress meeting - **tie** stopped the Monthly Progress meetings in December 2007. The Monthly Progress meetings were reinstated at our request in December 2008.

Schedule 1 Clause 3.2 and 3.3 applies to the Anticipated Final Account, this is also a matter of contemporaneous correspondence including most recently letter Ref; CUS/tie/letter/TL/Projects/1557 dated 14th October 2008 for which we await your response. The last Anticipated Final Account was submitted to **tie** by email from Mr Taryne Lowe to Mr John Casserly on the 17th October 2008, although it was requested **tie** have still not confirmed that the content was in line with the discussions had at the time.

Schedule 1 Clause 3.4 involves the production of "Benchmarking, Risk Management and Value Engineering Estimates and Reports" to be *provided by the MUDFA contractor from time to time as required*. We have not received any specific requests from **tie** to provide further documentation in addition to that which has already been produced and provided by us.

tie Bullet Point 5;

CUS provide an updated Construction Programme in accordance with Schedule 1 Clause 3.1, this is a matter of contemporaneous correspondence including our most recent letter Ref; CUS/tie/letter/SM/Projects/1807 dated 26th January 2009.

If there is any confusion regarding the dependencies and logic contained within any programme provided by us then a simple request to attend a meeting to agree the way forward would benefit all concerned.

tie Bullet Point 6;

Considering the extent of Change experienced to date (in excess of **2,046 items** which excludes re-measurable TQ's and TQ's raised in cost recoverable works such the Enabling works), predominantly due to inadequate **tie** utility diversions and traffic management design and process, it is not practicable to try and produce a revised Construction programme which takes cognisance of each Change as it is initiated and evolves and then try to identify the impact on a case by case basis.

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Instead we have produced Construction programmes revisions which incorporate the Changes on a global basis (i.e. not detailed separately).

This method has been adopted since inception of the original Contract programme and with the various iterations thereafter, this has also been utilised and accepted by **tie** for all associated Extension of Time requests submitted and agreed to date. Should **tie** now require each Change to be separately detailed in the Construction Programme with all associated micro and macro interdependencies and impacts separately assessed then we will require a corresponding written instruction confirming the same.

Furthermore, considering that we have no staff allocated to this in the current agreed staff numbers, this will require additional resources. Please confirm your requirements in this respect.

tie Bullet Point 7;

tie receive a detailed report, substantiation and other supporting information at a minimum on a weekly basis from CUS. CUS was initially submitting Change items as and when they occurred on a daily basis under cover of a letter, but at **tie's** request, and to reduce the amount of correspondence, it was agreed between the parties that the Change items would be incorporated into the weekly reports.

Considering the above along with the other items detailed in the previous bullet points we believe we have complied with Clause 38.5 as well as could reasonably be expected. We await your specific instructions should an alternative method or procedure be preferred.

Clause 38

tie Bullet Point 1;

Where applicable the majority of events where an associated Extension of Time needs to be assessed are detailed as such in the notes section of the individual Estimates or covering letters. The remaining global type events or global impact from individual Change events are predominantly highlighted in the weekly progress report.

tie Bullet Point 2;

Although not specifically referenced in each Estimate or associated global impact analysis/report we believe there is sufficient content within the supporting documentation provided to determine which of Clauses 38.1.1 through 38.1.14 apply.

tie Bullet Point 3;

See our response to Clause 35 bullet point 6 above.

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tie Bullet Point 4;

Where practicable and when considering our other responses detailed bullet points above, we believe we have complied with this provision for the majority of individual Change items submitted to date as well as could be reasonably expected.

tie Bullet Point 5;

See our response to Clause 35 bullet points detailed above

Clause 39

We concur that **tie** have not been forthcoming with any specific instruction to accelerate the works. **tie** has however instructed work outside normal hours on various occasions in order to meet critical deadlines. We consider this to be acceleration.

Furthermore in recognition of various programme delays outwith our control CUS has on occasion produced proposals to **tie** for accelerating the works. To date **tie** has not responded to or acknowledged any of these, for example 10 hour working shifts during the week and the use of foam concrete.

Clause 46

Changes for the week that can be estimated are attached to the back of each and every weekly report with the appropriate substantiation. This includes and is not limited to an Estimate summary and/or CVI/Record Sheets countersigned by **tie** and/or photo's and/or marked up drawings where appropriate.

For a large proportion of Estimates submitted to date **tie** has either failed to respond or failed to provide particulars on what portion of the Estimate it considers to be non-compliant. If you wish to continue in this manner, we will not be in the position to jointly improve either the quality of the Estimates or the number of unagreed change items.

Content of attachments

Consolidated Overview

If **tie** does not believe the content to be factually correct we would be happy to view your records of events to facilitate meaningful discussion and progress.

CUS/tie/letter/TL/Projects/1315 dated 5th August 2008 was particular to one labour only Subcontractor and we maintain that the hours were representative for the full weeks work. This has since been rectified (in August 2008) and is certainly not prevalent in the weekly report submissions which commenced in October 2008.

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Key Issues Register

CUS have produced and continue to produce reports and registers to identify areas of concern and items that need to be considered and addressed in order to facilitate the successful Project Management of the MUDFA project. The content has rarely been questioned in weekly meetings, and when it has, the Register has been amended to reflect an agreed position. If there are any remaining areas of disagreement they have not been brought to our attention.

Quantity Tracker

The document is based on Revision 7.9 of the Construction Programme which is the accepted Programme in accordance with Clause 35.6 of the MUDFA Agreement. This has been confirmed through further correspondence including letter Ref; CUS/tie/letter/TL/Projects/1726 dated 8th December 2008.

For your comments regarding adherence to Clause 35 and Schedule 1 please refer to Clause 35 above.

Concerning your comments for items (1) to (6) and further to that included within Clause 35 and Clause 38 above; items (1) and (2) are frequently updated and items (3) through (6) are predominantly incorporated on a global basis, it is not a specific requirement that these are detailed separately and considering that no staff have been allocated to this in the current agreed staff numbers, we will require additional resources should you wish to change this.

Individual Work Site Schedules

These reports were developed, initiated and are maintained by CUS and are not a Contract requirement. Due to the high volume of Change, TQ's raised and impact of Traffic Management it is not always possible to generate Work Site Schedules for each individual Work Site. Should **tie** require these for each individual Work Site on a frequent basis we request a **tie** limited Change Order and assurance from you that additional staff can be added to the current agreed list.

Side Entry Manholes Status Report

Despite your comments to the contrary, this is relevant as the Side Entry Manholes have been incorporated into the Construction Programme where possible. Quantities and durations have had to be estimated in many cases due to the extent of outstanding design and detail which **tie** has not been able to provide and which is a **tie** obligation.

The progress of Side Entry Manholes and resources required for each week are agreed in advance of the works required for the following week. This procedure has been implemented to ensure **tie** verification of resources and durations for this Cost plus Overhead and Profit recoverable item.

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Overview Matrices

Similar to previous comments if **tie** does not believe any CUS submitted content to be factually correct we would be happy to view your records of events to facilitate meaningful discussion and progress.

Contrary to your statement there has been no discussion in the weekly meetings regarding their acceptability, therefore if there are any areas of disagreement they have not been brought to our attention.

tie continue to be inactive in this process which has ultimately been to the detriment of the project as a whole.

Linear Diversions Metres ahead/behind Programme

This information is derived from the Quantity Tracker, our comments in this respect have been included above.

The programme slippage in terms of planned versus actual diversions completed is further highlighted and confirmed/verified through a separate measure (i.e. actual measures submitted by CUS and certified by **tie** on a monthly basis) and detailed in the monthly entitlement schedule submitted to **tie**, usually the second Tuesday following the last Friday of the month.

For your comments regarding Clause 38 please refer to our Clause 38 response above.

Resource "Consolidated Overview"

This is a repetition from the Consolidated Overview section already responded to under the Consolidated Overview heading.

Critical Path

For your comments regarding Clause 35 please refer to our Clause 35 response above.

The Primavera software automatically calculates the Critical Path based on the relationships detailed within the activities. **tie** receive an updated cost loaded programme which is provided under cover of a letter on a four weekly basis with the appropriate CD attachment in XER format. In Mr Stephen Miller's (CUS) absence, Mr Taryne Lowe (CUS) sought confirmation from Mr John McAloon (**tie**) whether the programme he receives on a regular basis has a Critical Path detailed. Mr McAloon stated that he could neither confirm nor deny this since files are provided in three separate parts and that he required certain links from Mr Miller to join the files before this could be confirmed. The **tie** statements in this respect therefore seem to be incorrect and uncorroborated.

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Considering the above along with the other detail already provided to **tie** we look forward to receiving your fully substantiated and detailed assessment for the delays suffered by CUS in accordance with Clause 38.2.

Mitigation Measures

Contrary to your assertions we wish to confirm that our submissions are not ad hoc. The reports/submissions are collated on a weekly basis with the relevant supporting documentation. Contrary to your statement the implementation and payment for mitigation measures should not be dependant on CUS complying with Clause 35, 38 and 39. We request further details regarding your reference to Clause 37.3 as well as Clause 35, 38 and 39 with specific examples of where **tie** considers that CUS is non-compliant; this should be considered along with the issues raised in the content of this letter.

Conclusion and Way Forward

Discussions are currently in progress between Mr Steve Hudson (CUS) and Mr Dennis Murray (tie). The outcome of these discussions will determine the evaluation principles, methodology, process and ultimately the way forward for all future entitlement reports and requisite data.

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~~Closing paragraph to be considered when the Settlement is signed and the principles agreed (or not) for future recovery of costs~~

~~Steve B to confirm agreement that tie refer to in penultimate paragraph, also a suitable response?~~

Yours sincerely,
For and on behalf of **Carillion Utility Services**

Steve Beattie
MUDFA Carillion Project Director

Copies:-
tie Project Team
John Casserly

MUDFA Project Team
Steve Hudson
Mike Mann

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Taryne Lowe

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