

Mr Steve Beattie
MUDFA Project Director
Carillion Utility Services
Western Harbour
Leith Docks
Edinburgh
EH6 6QF

Our Ref: DEL.MUDFA.12124.JC.GB

Date: 16 December 2008

Dear Steve

**EDINBURGH TRAM PROJECT - MUDFA
Weekly Progress Reports**

We write in response to your letters referenced below and comment as follows:

CUS/tie/Projects/1533 dated 6th October 2008 and
CUS/tie/Projects/1593 dated 20th October 2008

We draw your attention to Clause 38.5 which states "*The MUDFA contractor shall not be entitled and shall be deemed to have irrevocably waived any entitlement to any extension of time unless the MUDFA contractor has within 10 business days of becoming aware of the circumstances or occurrences which have caused or likely to cause delay to the MUDFA Contractor in the performance of the MUDFA Works notified tie in writing and submitted to tie the detailed particulars in accordance with Clause 38.1.*" You have failed to comply with the requirements of Clause 38.1 within the required period and as such are deemed to have irrevocably waived any entitlement to any extension of time.

Notwithstanding the above we make the following comments on the detail contained within your submitted correspondence.

Contrary to your 'intention' the above submitted reports fail to capture all the issues which have and may continue to impact on the performance of the MUDFA Works and does not take full cognisance of any CUS originated/related issues. We do not consider that your submitted reports satisfy or are in accordance with Clause's 35, 38, 39 and 46 of the MUDFA Agreement for the following, but not limited to, reasons:

delivering transport projects

tie limited

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Registered in Scotland No: 230949 at City Chambers, High Street, Edinburgh EH1 1YJ

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Clause 35

- CUS have not identified which of the sub clauses 35.1 to 35.9 CUS consider apply to each and every event.
- CUS have neither attached nor provided updated Programmes as required by Clause 35.4 and 35.5.
- CUS have not updated the programme in accordance with Schedule 1 Clause 2.7 and 2.8 therefore failing to identify and demonstrate the cause and effects of each and every relevant event, the prerequisite links, any revised programme logic, the relationships between activities and events and any programme dependencies.
- CUS have not provided updated Construction Programmes or monthly progress reports in accordance with Schedule 1 Clause 3.1, 3.2, 3.3 and 3.4.
- CUS have consistently failed to identify the dependencies and logic of any Construction Programme, and have failed to submit detailed programme updates requesting acceptance from **tie** of such change to Programme logic, dependency and sequence.
- CUS have consistently failed to follow any planned sequences of work and have failed to submit detailed programme updates requesting acceptance from **tie** of any resultant change to Programme logic, dependency and sequence.
- Failure by CUS to provide the required information within the required time periods is prejudicial to **tie** and affects the ability of **tie** to assess any submissions made by CUS. The failure has also adversely affected the ability of **tie** to investigate the issues/events concurrently and therefore denied the opportunity to take appropriate actions in accordance with the Agreement. As stated above failure to comply with the requirements of Clause 38.5 has resulted in CUS irrevocably waiving any entitlement to an extension of time.

Clause 38

- CUS have failed to identify and provide details for each and every event that they consider may result in an entitlement to apply for an Extension of Time.
- CUS have failed to identify which of sub clauses 38.1.1 to 38.1.14 they consider applicable to each and every event being claimed.
- CUS have failed to notify **tie** with in the specified time period of "*10 business days of becoming aware of the circumstances or occurrences which have caused or are likely to cause any delay*".
- CUS have failed, in conjunction with the above, to submit full and detailed particulars in justification for each and every event that "*shall include*"
 - (a) The cause of the delay - this should be fully detailed and identified as an event entitling the MUDFA Contractor to an extension of time in accordance with clause 38.1.1 to 38.1.14;
 - (b) The MUDFA contractors estimate of the likely effect of such delay upon the Programme;
 - (c) Mitigation measures adopted and why unsuccessful;
 - (d) The estimated additional cost that shall be incurred;

- (e) Any acceleration measures which the MUDFA Contractor could take to mitigate the effects of such delay and estimate the costs thereof.
- Programmes provided by CUS are not in a form compliant with Clause 35 and Schedule 1 of the Agreement. This negates any ability to assess and provide the full and detailed particulars and justification for each of the events and precluded **tie** the ability to confirm compliance with the provision of the above function i.e. no recognisable or established critical path, logic or dependencies.

Until **tie** receives a submission for each and every relevant occurrence that is in full compliance with the requirements of the above we are unable to fulfil the function of assessment. As stated above failure to comply with the requirements of Clause 38.5 has resulted in CUS irrevocably waiving any entitlement to an extension of time.

Clause 39

Contrary to your statements we fail to see how your submissions satisfy the requirements of Clause 39. This clause primarily provides **tie** with the ability to instruct the acceleration of the works in respect of the Date for Completion. No instruction to accelerate the works in accordance with Clause 39 has been issued.

Clause 46

Contrary to your statements we fail to see how your submissions satisfy the requirements of Clause 46. We confirm that should CUS consider any item, issue or event to be a Change in accordance with Clause 46 then the requirements and procedure of Clause 46 should be adhered to. The requisite details and substantiation are to be provided for each and every event and not in a summary overview report. The prescribed requirements within Clause 46 are to be applied and adhered to in every instance, unless agreed to the contrary by **tie**. Any variance from the requirements of Clause 46 unless agreed by **tie** may adversely affect the ability of **tie** to value and assess in accordance with the Agreement.

Regarding the actual content and attachments provided within your submissions we confirm the following:

Consolidated Overview

We consider, as discussed during the weekly progress meetings, the content to be Carillion observations and perceptions which are neither agreed nor accepted as a complete, factual and substantiated summary for any events. We cite your letter ref CUS/**tie**/letter/TL/Projects/1315 dated 5th August 2008 that states the weekly sheets presented by CUS are not representative of the actual hours worked on site but representative of the subcontract arrangements which CUS has in place with their subcontractors. In light of the above and other ambiguities within the CUS recorded information **tie** are unable to accept the submitted information as a fully detailed particular with regard to progress as CUS have presented it.

Key Issues Register

We consider, as discussed during the weekly progress meetings, the content to be Carillion observations and opinions which are neither agreed nor accepted by tie as either complete or factual. As agreed during the weekly progress meetings a fully detailed matrix should be produced in conjunction with tie and consensus achieved as to ownership of each action.

Quantity Tracker

This document has no relevance as it is based upon a CUS programme that has not been accepted and does not meet the requirements of Clause 35 and Schedule 1 of the Agreement and cannot therefore be used as a measure of progress against a planned baseline. We would however concur that the quantity tracker may be utilised as a statement of the actual works carried out to a point in time. However the document should satisfy the requirements of Clause 35 and 38 insofar as also tracking, but not limited to, the following:

1. Diversions that are no longer required,
2. Update of the forecast actual quantity of work to be completed.
3. Works that are affected by remedial works being undertaken by CUS.
4. Works that are affected due to test failures and non acceptance by SUC's.
5. Works that have not commenced due to resource related issues in addition to items 3 and 4 above.
6. Works that have been affected by weather.

Please note the above should be included and reported upon by CUS as a matter of course in accordance with the MUDFA Agreement and are a contract requirement.

Individual Work Site Schedules.

These should be included for all areas in order to achieve and demonstrate a balanced report.

Side Entry Manholes Status report.

This will only become relevant once CUS has submitted an acceptable programme in accordance with the requirements of Clause 35 and Schedule 1 which takes into account all issues which may affect the works, against which the proposed reports and progress can be measured and compared.

Overview Matrix

The submitted matrices are unacceptable and as stated previously during the weekly progress meetings have not been agreed. As agreed during the weekly progress meetings a fully detailed matrix should be produced in conjunction with tie and consensus achieved as to ownership of each action.

Linear Diversion Meters Ahead/Behind Programme.

This document has no relevance as it is based upon a CUS programme that has not been accepted and does not meet the requirements of Clause 35 and Schedule 1 of the Agreement and cannot therefore be used as a measure of progress against a planned baseline. In addition CUS have not submitted the appropriate and required notices in accordance with the MUDFA Agreement specifically Clause 38 to justify any entitlement to any extension of time.

We reiterate our previous comments above; failure to comply with the requirements of Clause 38.5 has resulted in CUS irrevocably waiving any entitlement to an extension of time.

Resource "Consolidated Overview",

In the absence of the information and details required to comply with the requirements of Clause 35 and Schedule 1 of the Agreement we are unable to comment upon this submission. As stated previously we refer you to your letter ref CUS/tie/letter/TL/Projects/1315 dated 5th August 2008 which states the weekly sheets presented by CUS are not representative of the actual hours worked on site but representative of the subcontract arrangements which CUS has in place with their subcontractors.

Critical Path,

As stated above we reiterate the CUS programmes have not been accepted and do not meet the requirements of Clause 35 and Schedule 1 of the Agreement and cannot therefore be used as a measure of progress against a planned baseline. There is not a critical path within the CUS proposed Programme and as such we are unable to comment upon the actual performance and any potential impact on either the programme or critical path. We are therefore unable to accept your proposed substantial completion date of the 30th November 2009. We also confirm that the Longstop Date will not be extended based on the CUS submission.

Mitigation Measures.

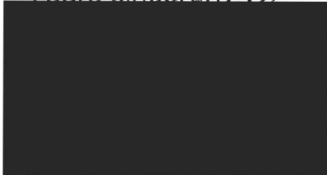
We refer to the requirements of Clauses 35, 37.3, 38 and 39 and confirm in accordance with same that CUS are required to submit full detailed particulars for each and every event; ad hoc global submissions are unacceptable. For the avoidance of doubt we confirm tie will only consider certification and payment of costs incurred by CUS in respect of mitigation measures if the requirements of Clause 35, 37.3, 38 and 39 have been fully complied with.

In light of the above we are unable to conclude that the CUS submissions satisfy the requirement of the Agreement and the Clauses CUS have cited. We confirm, based upon the information provided by CUS that we are unable to assess, agree or accept the level of change, delay and disruption purported by CUS in the submissions provided.

We confirm as agreed previously that CUS have undertaken to provide fully detailed and resourced level 4 programme for all the works and individual level 4 work section programmes including the dependencies, logic, critical path etc in accordance with the requirements of Clause 35 and Schedule 1 of Agreement. These programmes, in association with the progress reports and full detailed particulars for each and every event, as required by the Agreement, would be utilised to assess, understand and agree progress as the works proceed on a weekly basis. Unfortunately to date CUS have failed to provide the information and details required. As a result the planned weekly progress reviews have not achieved their objective. If we are to establish the true extent, if any, of change, delay and disruption to the MUDFA works and any subsequent mitigation or acceleration measures it is imperative that the information required from CUS is provided in accordance with the requirements of the Agreement. This ideally should be prior to the weekly progress meetings for review, discussion and agreement at same.

Should you wish to discuss any aspect of the above, please do not hesitate to contact us. Alternatively, and to avoid protracted correspondence between the parties, we propose your submissions, the above and any associated programme and consequential cost impacts are discussed during the progress meeting scheduled for Wednesday 17th December 2008.

Yours sincerely,



Graeme Barclay
Construction Director – MUDFA

cc: Steven Bell; Dennis Murray; John Casserly; Jim Mcewan