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**From:** Fitzgerald, Sharon [Sharon.Fitzgerald@dlapiper.com]  
**Sent:** 08 January 2009 14:01  
**To:** John Casserly  
**Cc:** Dennis Murray; Graeme Barclay; Kilburn, Keith; Fitchie, Andrew  
**Subject:** RE: DLA View / Opinion  
**Attachments:** 22521048\_1\_UKMATTERS(Note on MUDFA issues - 8 January 2009).DOC

**Importance:** High

John

Further to our earlier call, please find attached a note prepared by myself and Keith which responds to the issues set out in your e-mail. We have highlighted issues in part 6 of our note which would be worth discussing in more detail.

As discussed, as part of your settlement with CUS, we recommend building in the assignation, performance bond, a pcg from Carillion and the EAL variation (commercial issues) as part of the deal.

Regards  
Sharon and Keith

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**From:** John Casserly [mailto:John.Casserly@tie.ltd.uk]  
**Sent:** 07 January 2009 14:25  
**To:** Fitzgerald, Sharon  
**Cc:** Dennis Murray; Graeme Barclay  
**Subject:** FW: DLA View / Opinion  
**Importance:** High

Sharon

Apologies I forgot to ask in the previous e-mail if you could also give us some indications of indicative time scale and potential associated costs to pursue recovery of any costs from CUS out with the Agreement such as common law recovery particularly in relation to the Gogar gasket issue which could be in the region of £3 to £4m and the potential success of this form of remedy in your past experience.

Thanks

John

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**From:** John Casserly  
**Sent:** 07 January 2009 14:03  
**To:** 'Fitzgerald, Sharon'  
**Cc:** Dennis Murray; Graeme Barclay  
**Subject:** DLA View / Opinion  
**Importance:** High

Sharon

As discussed earlier today we would like your contractual view/opinion on a couple of MUDFA issues as soon as possible to allow us to finalise a number of commercial issues at a meeting with Carillion (CUS) on Friday of this week. The issues are as follows:

1. BT Remedial Works – Carillion (CUS) have installed BT utility diversions throughout all the work sites, it became apparent that very few of the actual installed diversions are installed correctly/in accordance with the Agreement and such CUS have been undertaking remedial works to the installed diversions since circa August 2008. Please can you give us your view on the following:
  - Recovery of any additional costs *'incurred by tie due to the imposition of charges on BT from any third party'* Cl 3.18
  - Recovery of any consequential tie MUDFA costs for staff operational costs/overheads etc resultant from CUS delay related to remedials
  - Recovery of any consequential tie costs as a result of any delay/adverse impacts on the Infracore programme both in relation to MUDFA LD's and any other avenues open to tie both within the Agreement or at Common law
  - EOT in relation to Clause 38 for CUS in relation to works other than the BT remedials which may in themselves entitle CUS to EOT but taken in conjunction with the BT remedial works or any remedial works may or may not entitle CUS to EOT. On the basis that CUS will be paid for the physical works undertaken which are not related to any remedial works but entitlement to EOT is the issue.
2. BO Remedial/Replacement Works – Carillion (CUS) have backfilled a number of utility diversions, throughout all the work sites, with an acceptable alternative material which has subsequently been found to be inadequate and requires to be removed and replaced as remedial works. Please can you give us your view on the following:
  - Recovery of any consequential tie MUDFA costs for staff operational costs/overheads etc resultant from CUS delay related to remedial
  - Recovery of any consequential tie costs incurred by CEC / SUC's etc as a result of the remedial
  - Recovery of any consequential tie costs as a result of any delay/adverse impacts on the Infracore programme both in relation to MUDFA LD's and any other avenues open to tie both within the Agreement or at Common law
  - EOT in relation to Clause 38 for CUS in relation to works other the remedial which may in themselves entitle CUS to EOT but taken in conjunction with the B0 remedial works or any remedial works may or may not entitle CUS to EOT. On the basis that CUS will be paid for the physical works undertaken which are not related to any remedial works but entitlement to EOT is the issue.
3. Gogar Depot 800mm water main gaskets – CUS were issued a change in accordance with Clause 46 to install an 800mm water main diversion at the Gogar Depot. The Gogar Depot is on the critical path for the Tram Project to enable the tram vehicles to be housed and driver training etc to be carried out prior to the

tram entering into service and as such is the critical construction area within the works. The works are all undertaken in accordance with the Scottish Water specs etc. The required diversion were installed but failed a pressure test it has since been established and agreed by CUS that CUS have installed the wrong gaskets to the pipe joints which require the majority of the installed pipe line to be removed to allow the gaskets at the joints to be replaced with the correct gaskets. The resultant remedial works to rectify the gaskets have delayed the commencement of the Infraco works, impacted on the actual progress/method/efficiency etc of the Infraco Contractor for the limited amount of works actually available and has potentially delayed the construction of the Gogar Depot Tram base and the resultant operational commencement of the tram and the delay in revenue – all of which may amount to a significant additional cost to tie. Please can you give us your view on the following (based on two scenarios the first being the Infraco dates and critical completion date for the main to be complete being fully advised and identified by tie and incorporated into the MUDFA programme and the second being incorporation of the water main by CUS into the MUDFA programme for the completion of the water main by a given time but without/limited reference to any Infraco critical dates).

- Recovery of any consequential tie MUDFA costs for staff operational costs/overheads etc resultant from CUS delay related to remedial
  - Recovery of any consequential tie costs incurred by CEC / SUC's etc as a result of the remedial
  - Recovery of any consequential tie costs as a result of any delay/adverse impacts on the Infraco programme both in relation to MUDFA LD's and any other avenues open to tie both within the Agreement or at Common law
  - Recovery of any consequential loss of revenue as a result of the remedial related delay on the into service date of the tram both in relation to MUDFA LD's and any other avenues open to tie both within the Agreement or at Common Law. (Note: As discussed we and our independent loss adjusters are of the opinion that the loss of revenue and all the above associated with the gasket issue cannot be recovered through the OCIP insurance policy and this therefore should not be considered as an option)
  - EOT in relation to Clause 38 for CUS in relation to works other the remedial which may in themselves entitle CUS to EOT but taken in conjunction with the B0 remedial works or any remedial works may or may not entitle CUS to EOT. On the basis that CUS will be paid for the physical works undertaken which are not related to any remedial works but entitlement to EOT is the issue.
4. Long Stop Date – as discussed please confirm your view on who 'owns' the log stop period of time from completion of the works as originally envisaged within the Agreement which is approximately 12 weeks and how this may apply to delay/EOT for the following:
- Original scope of measured works (circa £11.5m) identified within the Schedule 4 BofQ
  - Original Provisional and Prime cost works (circa £17.5m) identified and included in the Agreement which we believe were anticipated by CUS and as such incorporated/allowed for within the original Schedule 8 Programme incorporated within the Agreement.
  - Changes to the original scope through Clause 46 instructions
  - Potential additional scope of works such as the D&B at the Airport

As discussed we have an internal tie meeting arranged for 3pm this afternoon to discuss the above issues and a provisional meeting arranged for circa 2pm tomorrow afternoon to finalise our view with Steve Bell prior to our meeting on Friday with CUS. As discussed please can you issue your comments by mid morning tomorrow at the latest to allow myself and Dennis to review and digest prior to meeting Steve Bell and is possible to have you available from 1pm tomorrow afternoon for a telephone discussion if required to clarify any of the points?

Thanks

John

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Commercial Manager - MUDFA

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