

SDS As- Built Drawings – Position Paper

Pursuant to Internal Dispute Resolution

29th August 2008

The Dispute

By letter to **tie** on 18th August'08, ref:ULE90130-SW-LET-01155, SDS dispute that they have a contractual responsibility for the provision of as-built drawings within the SDS Contract. The SDS Contract is a contract between **tie** and the SDS Provider, the Agreement of which was signed on 19th September 2005. They have invoked clauses 28.2 and 28.10.2 and in accordance with clause 36 have given notice of their intention to seek resolution of this matter by initiating the Internal Resolution Procedure.

Summary of tie's position

The SDS Providers obligations in respect of the provision of as-built drawings is clearly set out in the SDS Contract between **tie** and the SDS Provider.

In particular the following Clauses of the Agreement (extracts in italics) support **tie's** position.

Clause 1 – *Definitions and Interpretations*

'Deliverables' is defined as including inter alia '...designs, specifications, drawings (including as-built drawings), ...'

Clause 4.9 states *'The SDS Provider shall provide the Client with all Deliverablessuch Deliverables shall be provided to the Client, as soon as is reasonably practicable....'*

Clause 4.10 states *'In addition to the requirements of Clause 4.9, the SDS Provider shall provide to the Client, at no cost to the Client, five copies in hard copy form and one copy in an agreed soft copy form of the as-built drawings and any manuals prepared.'*

tie's position is that the above Clauses extracted from the SDS Contract are conclusive evidence that SDS have an unlimited and unequivocal duty to provide as-built drawings in relation to the overall scope of the SDS Scope of Services.

Commentary on SDS stated position

(with reference to SDS letter ULE90130-SW-LET-01155 dated 15th August 2008)

The SDS letter picks up a typographical error from **tie's** letter ref DEL.MUDFA.9881.GB whereby in the second sentence of that letter reference to 'Carillion' should read 'SDS'. The following text in the tie letter refers to the SDS terms and conditions and this makes it clear in the normal and proper reading of the letter that the reference should have been to SDS.

In support of their position SDS refer to the provisions of another Contract relating to the MUDFA Contract. The contract referred to post dates the SDS Agreement. The SDS comments and referenced extracts from another contract has no relevance in this dispute. What is relevant and pertinent to the dispute is the terms and conditions of the SDS Contract.

tie's position is based upon the terms and conditions of the SDS Contract between tie and the SDS Provider.

tie comment on other points raised using the nomenclature in the letter.

1. SDS reference to clauses 3.2.1 and 3.2.2, of Schedule One, Scope of Services, refers to *'The SDS Provider shall provide assistance to tie with the management of an advanced utilities diversion programme.'*

This is a General Technical Support clause and does not conflict with or dilute the overriding responsibility of SDS to provide the Deliverables defined in Clause 1. Reference to clause 2.1.1 of Schedule One, under Design and Technical Services, prescribes the design and technical services to be provided *'The SDS Provider shall undertake all design and produce the Deliverables necessary for the Edinburgh Tram Network to be procured, constructed, tested and commissioned.....to meet the requirements of the Master Project Programme, and then operated and maintained'*. The SDS reference to Clause 3.2.1 and 3.2.2 is therefore not relevant to this dispute.

2. The Construction (Design and Management) Regulations 2007 states that the Health and Safety File should contain information necessary to allow future construction work, maintenance , operations, etc to be carried out safely. In this respect it confirms that the Client, Designer, Principal Contractor, Contractors and CDM coordinators all have legal duties to supply the information necessary for compiling or updating the file. Relevant, coordinated recorded information to enable the production of as-built drawings has been provided by the MUDFA Contractor in compliance with the requirements of CDM.

3. The SDS Contract sets out the obligations of SDS in relation to the provision of as-built drawings and these provisions have not been altered or amended in any way.
4. This matter is addressed in point (1) above. The Scope of Services clearly does include the production of as-built drawings by reference to Clauses 1, 4.09 and 4.10 of the Agreement.

Conclusion

The SDS Contract between **tie** and the SDS Provider contains clear and unequivocal terms relating to the provision of as-built drawings by the SDS Provider. SDS are in breach of the Contract by not providing the as-built drawings and tie has employed others to complete at a cost to **tie**. tie has instructed SDS to provide the as-built drawings as required by the SDS Contract and SDS have refuted that they have the responsibility to complete and deliver the as-built drawings. Failure of SDS to comply with tie's requirements will result in further losses and or costs being incurred by **tie** for which **tie** will seek to recover from the SDS Provider.