

NOTE OF MEETING

TIE - SDS

3.15 PM ON 4 OCTOBER 2007 AT CITY POINT, EDINBURGH

In attendance:

Stephen Bell, Tie
Fenella Mason, DLA Piper

1. UPDATE ON PROGRESS OF SETTLEMENT AGREEMENT

SB confirmed that the draft Settlement Agreement had been sent to Parsons Brinckerhoff (PB) last Monday. Mr Reynolds of PB and Geoff Gilbert (GG) of Tie discussed the matter yesterday, 3 October. PB have raised issues of milestones of certain deliverables, which SB is concerned about. However it is unlikely that there will be insurmountable difficulties in getting the Settlement Agreement concluded.

Willie Gallacher has travelled to the States today, 4 October, to meet the President of PB to ensure that PB understand the level of Tie's disappointment and to try and ensure commitment from PB to closing off the project. Tie are looking for PB to commit key people to Tie for completion of the job. These individuals are named in Schedule 8 to the Settlement Agreement. SB expects the Agreement to be tied up within the next few days.

The background is that PB have not delivered their design on time. This is costly to Tie. Tie wish to ensure that they can settle the costs of PB's failings against monies otherwise due to PB. Tie need to ensure that proper notification is made to PB as and when necessary.

2. MANAGEMENT OF SDS CONTRACT

The SDS Contract was not commercially managed at the outset of the contract. Tie wish to ensure that this does not happen again, hence the involvement of AF in the MUDFA Team and the overview that has been requested from DLA in relation to the final stages of the SDS Contract. The SDS contract is managed by a team of 18/19 project managers, QSs, engineers etc based in Leith. They are involved in getting information out of SDS and passing this to the MUDFA contractor. Both SDS and AMIS are working to updated programmes. AMIS are working to a programme Revision 5 which is currently being updated to Rev 6. There have been delays to the MUDFA Contract. The provision of input into preconstruction services by SDS to Amis via Tie should have taken place between October 2006 and March 2007. AMIS would then have been in a position to conclude on their resource/programme commitment. However there was politically caused delay at the end of 2006 through to June 2007. In addition SDS were late, the Utilities were late and the consolidated output was late.

Tie have accepted a lot of the delays to date and updated programmes have been produced. Tie are now only interested in looking at the position with PB delays from July 2007 going forwards. (The date of 18 August 2007 is used in the draft Settlement Agreement as that was the date on which GG discussed matters with SDS). Prior to July 2007 SDS could point to external events to explain delay: political delay and critical issues (i.e. areas where no decisions were received from Tie). Tie were aware of these from early 2007. However these

were cleared off and taken account of by the end of June 2007. Version 17 of the SDS Programme produced by PB is their first 'excuse free' programme. This was produced at the end of June 2007.

3. BACKGROUND TO PRODUCTION OF DELIVERABLES BY PB

In relation to certain utilities the utility does the design for example BT do their own design, but in relation to other utilities, SDS does the design for example SDS does the design for Scottish Water. However it was the contractual responsibility of SDS to get the utilities to deliver. They voluntarily assumed this obligation even although they have direct control over the utilities. The utilities feed in their design and SDS produces a composite design. They then put the design back out to the utilities for approval, the utilities approve it and then SDS issue full construction drawings.

4. THE WAY FORWARD

Tie wish to ensure that there is an easy path for a flow through of any claims received from AMIS to SDS. Tie are not looking to pass on their own cost or overheads simply claims received from AMIS. Revision 6 of the AMIS Programme is being discussed with them at present. This is being extended due to SDS delays.

In January 2008 PB will be novated to the infra-co contractor (except in relation to utilities' design). Tie wish to get the current dispute with PB tidied up before then. Accordingly matters require to be moved forward as quickly as possible.

ACTION

1. DLA to establish that there is an entitlement to timely delivery by PB and the basis against which that delivery is to be judged. As part of this exercise DLA are to confirm their view as to the likely robustness of the contractual provision requiring PB to be responsible for the obtaining of consents from the utilities.
2. Once the legal baseline has been established DLA are to look at the Settlement Agreement currently being discussed between PB and Tie. DLA are to advise on the extent to which PB could be tied down to a programme commitment in terms of the Settlement Agreement and whether this will resolve any perceived difficulties that may emerge in relation to Action Point 1 above. (This would involve reliance on Version 18 of the programme as the baseline).
3. DLA are then to look at the build-up of the 'Contract Tracker' for SDS and advise whether the programming and logging of delays against the programme is adequate and sufficiently detailed. At the same time DLA are to look at the format in which the AMIS claims are being received and ensure that it is possible to correlate any claims received under the AMIS Contract with delays occasioned by PB under the SDS Contract.
4. DLA Team are to meet with John Casserly and his team in week commencing 8 October in order to investigate the collation of evidence under Item 3 above to date.
5. DLA to provide on 8 October a synopsis of the actions required. Meeting with John Casserly to take place on 9/10 October. Estimate of fees for identified scope of work to be provided as soon as possible.