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tie
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Attention: Ailsa McGregor

Dear Ailsa

tie Programme for MUDFA Implementation

SDS write to show concern that we are again being asked to consider a reprogramming exercise to re-align the deliverables for the utilities programme. SDS has previously made tie aware that any reprogramming must be with the direct input of each Statutory Utility Company such that we can identify the time period for review and acceptance/approval from them. The original basis which was allowed within the SDS design programme for Statutory Utility Company approval/acceptance was 20 working days. SDS now believes this timescale to be confirmed to tie by the Statutory Utility Companies as too short a period to respond. May we kindly request written confirmation from tie on this subject. SDS believes that the tie Utility Liaison Manager has issued the SDS programme previously to the Statutory Utility Companies and had zero adverse comments regarding the intended workload. We have recently been made aware (correspondence from John Low of tie 22/02/07) that certain SUC's are indicating that response to the SUC Submission Drawings delivered in December 2006 and January 2007 will not be available until Mid March 2007. We are now adding 40working days to the SDS programme for a Statutory Utility Companies acceptance period and will advise tie of this impact accordingly. SDS has no leverage with the Statutory Utility Companies to approve our Detailed Design submissions within the 20-day period included in the SDS design programme, which in any case does not reflect NRSWA practice.

SDS also express concern that the utilities team at tie appear to be attempting to develop an early programme of utility diversion works for MUDFA, for early implementation (in road), in complete denial of the consequence of utility apparatus diversion designs that both our parties are developing and delivering being out of sequence with the development of the finalised roads and OLE design on which it should be based. The original date advised by tie for the 1A Trial Trench being 19th March 2007. This was never within the SDS programme of work. SDS believes the date of 16th April 2007 is now the target and we are being asked to divert out of sequence resource to this task. We have verbal and email traffic of Phase 1B (SDS Sections 3A, 2B and 3C) being re-prioritised and SDS formally request immediate Change Order Instruction in accordance with Clause 15 of the Agreement between us, such that we may instruct our Design Team and Sub-consultants accordingly.

The utility diversion designs are presently based on the pre-Charette and pre DAP Preliminary Roads Designs which in turn is based on the Track Alignment released at that time. Due to the delay in tie/CEC determining their preferred Charette or DAP roads design solutions, tie's programme of utility diversion works has MUDFA executing works in the street before utility designers have an opportunity to undertake the necessary re-designs in level and location of the apparatus diversions, by incorporating the necessary changes to track alignment and road layout and level and OLE pole location that will flow once the Charette and DAP issues are resolved.



As SDS' submission follows submission in close order it will become increasingly unlikely that the under-resourced Statutory Utility Authority Companies will be able to meet that 20-day period.

This approach by tie will inevitably have the following consequences:

- (i) Delay to Statutory Utility Companies' approval of SDS' Detailed Design submissions.
- (ii) A very negative response from the Statutory Utility Companies when they then discover that they had been requested to formally approve or they have already approved SDS' apparatus diversion Detailed Designs submissions only for them to change later and require re-approval. This may well impact on their willingness to approve our subsequent Detailed Designs submissions or our AFC submissions.
- (iii) The potential for costly re-work by MUDFA in the event that apparatus that they had already diverted using SDS'AFC drawings referred to above, proves to be too shallow or in the incorrect location for the final Detailed Design alignment and road layout once issued.
- (iv) The potential for MUDFA to claim standing time from tie whilst SDS' updated designs are re-approved by the Statutory Utility Companies.
- (v) A programme mismatch between tie's programme for execution of MUDFA works and SDS' ability to deliver updated IFC drawings to MUDFA.

The above has been further highlighted recently as a result of tie's decision to revise the trial area for utility diversions. Details are provided below.

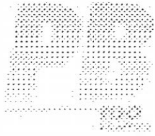
A tie requirement for SDS to engage in further out-of-sequence design work has occurred recently, in relation to the revised trial area. tie has requested SDS to carry out the necessary detailed design work to secure the SUC approvals for the trial within Section 1A.

This was notified to the SDS Utilities Design Team at a pre-meeting to the Technical Liaison Meeting, held on 17 January 2007. SDS expressed surprise to the announcement of the change in the utility diversion trial area. tie's response was that the decision had been made recently and was seen as a "good area to start", based on the assumption that it contained mainly telecommunications diversions. Minutes of the meeting exist and record the conversation and statements made. In actual fact, the scope of the diversions required in this area comprise not only telecommunications apparatus, but also power, gas, water supply, and sewers, along with several private utility supplies owned by Forth Ports.

Sections 3B and 6 utilities were issued to the SUCs on 22 December 2006, with Section 1A being issued on 12 January 2007. Since then SDS Utility Designers have been holding meetings with utility companies to assist in the approval process and to ensure that the SUCs progress their review in line with the delivery programme agreed with tie. At one such meeting, held recently at Telewest's office, tie expressed their desire for Section 1A to be given priority in order to accommodate the execution of the revised trial area. Site works for the execution of the trial area are required to commence on 19th March 2007. Consequential affects of such action are:

- SUC frustration in being required to re-prioritise sections with an under-resourced workforce in order to deliver Section 1A out of sequence with a previously agreed programme, and to a now unachievable deadline.
- SUC dis-engagement resulting from the above.
- SDS failing to deliver Sections 3B, 6, and 1A to contractually agreed delivery deadlines.

We note that the above request was made without the involvement of tie's SDS Manager and, as such, have been imposed without the opportunity for dialogue to take place to agree the contractual implications to the



SDS contract in terms of the change in scope, and the consequential cost, resource, and programme implications.

This change in scope highlights the points raised earlier in that:

- The alignment is changing (due to Forth Ports allowing a building to be constructed within LOI)
- The roads and tramstop layouts and locations of associated tram infrastructure will change as a consequence.
- SDS will be unable to complete a robust and comprehensive design within the time allowed for in the current programme.
- The design may not be approved by the SUCs
- The scope of works may change again following further development of the Infraco designs.

Our prime concern is that we are aware of the consequences due to the separation that exists between their project management of SDS' utilities design their project management of the rest of SDS' infrastructure design. More importantly, SDS holds the view that we cannot be held liable for consequential affects resulting from:

- MUDFA delay when SDS' designs are not approved within 30 days in the first instance by the under-resourced Statutory Utility Companies;
- MUDFA delay whilst SDS' designs updated and submitted for re-approval when the alignment, roads or OLE design has changed, whether within 20 days or not; and
- The construction costs of MUDFA re-work or their standing time when the diversion design changes during or post-construction.

Yours sincerely



Alan Dolan
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