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7th August 2007

tie Limited
CityPoint, 1st Floor
65 Haymarket Terrace
Edinburgh
EH12 5HD

Attention: Geoff Gilbert

Dear Geoff

Resolution of SDS Commercial Issues

Without Prejudice

Thank you for arranging to meet with PB on Wednesday 25 July to discuss the commercial issues on the PB SDS Contract. We note that the meeting was held 'without prejudice' and addressed the following agenda proposed by tie:-

- 1) The "Protocol" for completion of the programme
- 2) Changes
- 3) Grounds for settlement of the PB Claim for Additional Services.

Item 3 addressed, amongst other topics:-

- * tie's view of the merits of the claim.
- * The need for PB to take into consideration a claimed adverse impact on programme due to alleged SDS failures.
- * Conditions which may be attached to any proposed settlement.

Enclosed with this covering letter is an attachment which has been structured to provide a record of the discussions held at the meeting on 25 July and to set out our understanding of tie's current position. The attachment covers the following topics:-

- 1) The Protocol.
- 2) Historic Changes.
- 3) The Claim for Additional Services.
- 4) A Review of the tie Response to the Heads of Claim.
- 5) A Review of the Counter Arguments tabled by tie at the 25 July 2007 Meeting.

We note tie's offer of two further meetings during the week commencing 13 August 2007 to be convened for the purpose of arriving at a final settlement of the outstanding commercial issues on the SDS Contract.



We thank you for this offer of timely resolution and confirm our acceptance of your invitation to attend on Thursday 16 August and Friday 17 August 2007.

Yours sincerely



Steve C Reynolds
Parsons Brinckerhoff

Encl.

cc. Grant Smallhorn
Greg Ayres

1 Protocol

tie has requested that PB sign the Programme Protocol. We confirm that we will now reconsider our position and respond formally before the next meeting which is scheduled for 16 August 2007.

2 Changes

We note *tie*'s proposal to include the remaining changes from the "Historic" Register in this exercise to secure a commercial settlement. The Historic Register contains the set of change requests which has been subject to detailed investigation at meetings between *tie*'s Geoff Gilbert and PB's John McNicholls.

We accept *tie*'s proposal to include the remaining Historic changes within the remit of this exercise to reach a commercial settlement.

3 Claim for Additional Services

3.1 Quantum

We note the confirmation at the meeting of the sum of £2,858,517 claimed by PB for additional services arising from changes and delay. The sum claimed is made up as follows:-

Claim for Additional Services for the Period from 03 July 2006 to 09 April 2007	Claim dated 31 May 2007	£2,248,517
Claim for Additional Services for the Period from 09 April 2007 to 22 July 2007	Claim dated 28 July 2007	£610,000

We note *tie*'s confirmation that the mechanism used to identify and quantify time incurred against Change and Delay events is acceptable.

3.2 Heads of Claim

The document submitted on 31 May 2007 presented the following Heads of Claim:-

1. Delay in Contract Start Date
2. Increased duration of the Requirements Definition Phase
3. *tie*'s failure to accept and review the Preliminary Design in a timely manner
4. Changes due to Charrettes with CEC/*tie* and TEL
5. Changes due to new *tie* or CEC agreements with Third Parties
6. Changes due to Third Party Developers' emerging designs
7. Changes due to new *tie* or CEC requirements
8. Changes due to *tie*'s EARL Project and interface with BAA
9. Unreasonable with-holding of Consents
10. *tie* delays to SDS Utilities Design
11. *tie*'s failure to update the Master Programme

4 Review of the *tie* Response to the Heads of Claim

4.1 Overview

We note that

- *tie* sees merit in the claim arising from delays in reviewing the Preliminary Design.
- *tie* sees merit in the claim arising from the impact of the Critical Issues.

We note that *tie* considers items 5, 6, 7, and 8 from the list above to be grouped under the general heading of Critical Issues.

4.2 Changes due to Charrettes with CEC/*tie* and TEL

We note and summarise our understanding of *tie*'s response:-

- PB has already been paid for the impact of the Charrettes up to November 2006. The sum of £600k paid cleared all issues arising from the Charrettes to that date.
- With reference to the Structures Charrettes all matters arising from November 2006 onwards have been addressed – or are still to be addressed - through the Critical Issues initiative.

We have reviewed our position and are able to respond as follows:-

- *PB confirms that the £600k payment referred to above covered all additional costs arising from the five Charrettes conducted for St Andrew's Square, Princes Street, Leith Walk, Picardy Place, and Foot of the Walk between 03 July 2007 and 11 October 2007. 11 October 2007 was the date of the Changes Meeting at which agreement on the sum of £600k was reached.*
- *PB accepts that all Structures Charrette issues from November 2006 onwards have been dealt with through the Critical Issues initiative, (and we note *tie*'s recognition of merit in this part of the claim)*

4.3 Unreasonable With-holding of Consents

We note and summarise our understanding of *tie*'s response:-

- *tie* sees no merit in this claim for additional services relating to Consents arguing that PB has a contractual obligation to secure Consents and that whilst that may be a an onerous obligation that is the contract requirement.

4.4 *tie*'s failure to manage the Master Programme

We note and summarise our understanding of *tie*'s response:-

- *tie* sees little merit in this claim. On the specific point that PB has been required to deliver services which could be viewed as those normally provided under a

Delivery Partner Contract rather than a Design Contract, *tie* believes that, having engaged PB as by a "World-leading Infrastructure Design Company", nothing that has been delivered in this area exceeds agreed contract obligations.

We have reviewed our position and are able to respond as follows:-

- *PB acknowledges tie's reasonable expectations with regard to the types of services to be provided by PB under the SDS Contract. PB remains of the opinion, however, that tie's inability to maintain and communicate the project master schedule to all interested parties and to articulate a coordinated procurement strategy from the formative stages of the project onwards served to frustrate SDS's attempts to move quickly through the consents processes. The lack of alignment on key dates between the SDS and MUDFA Contracts, to give a specific example, has resulted in significant disruption to PB as presented in the Claim.*

5 Review of Counter Arguments tabled by *tie* at the 25 July 2007 Meeting

5.1 Late delivery and inadequate content of the Requirements Definition Document

We note and summarise our understanding of *tie*'s declared position:-

- *tie* views the contractual date for submission of the Requirements Definition Documentation as 21 December 2005, based on a contracted date of 30 November 2006 plus three weeks extension. The Documentation was submitted on or about 20 December 2005 but, on review, *tie* maintains it was found to be inadequate. *tie* is of the opinion that an approximately 80% complete set of documentation was not submitted until 30 April 2006. Trackform Requirements were not delivered until December 2006, and *tie* believes this part of the Requirements Definition was not delivered earlier due to lack of resources within PB.

We have reviewed our position and are able to respond as follows:-

- *With reference to our letter dated 29 June 2005 entitled "SDS Tender Clarifications", a compromise was agreed in response to tie's request for the Requirements Definition Documentation to be delivered within eight weeks of award of contract. A thirteen week delivery period was agreed and for this relaxation PB offered a £100,000 reduction in Contract Price. With a contract award date of 19 September 2005 this agreement translated into a date of 19 December 2005 for delivery of the Requirements Definition Documentation. Note that this mechanism based on a pre-contract award agreement is different from that presented by tie at our meeting on 25 July.*
- *The Requirements Documentation comprised 48 separate documents of which 46 were delivered on 19 December 2005. The OLE Requirements Specification was delivered on 23 December 2005 and the final document, the Tramstop Equipments Specification was delivered on 06 January 2006.*
- *With reference to the adequacy of the Requirements, our records clearly show that fresh information was still being provided by tie well into December 2005.*

Despite the late provision of information the Documentation was delivered substantially on time and provided the necessary frame of reference for continuing assessment of Requirements. On the specific topic of Trackform Requirements this was dealt with through a process of "Technology Review" and this process intentionally spanned the Requirements Definition and Preliminary Design Phases.

- *In light of this clarification PB requests that tie reconsiders its position on the Requirements Definition Documentation.*

5.2 Late delivery of the Preliminary Design

We note and summarise our understanding of *tie*'s declared position:-

- The Preliminary Design submitted on 30 June 2006 should have been submitted under the requirements of the Contract on 28 February 2006. *tie*'s conclusion is that the Preliminary Design was late, therefore, by some four months.

We note *tie*'s tabling of a letter sent to *tie* by Mike Jenkins of PB dated 15 March 2006 and entitled "SDS Action Plan". We note the assertion that *tie*'s case is strengthened because this letter outlined an action plan which referred amongst other things to "Strengthening the PB Management Team".

We have reviewed our position and are able to respond as follows:-

- *The tender submitted by PB, under cover of our letter dated 13 May 2005, included a Bid Programme, (for Lines One & Two), which assumed a start date of 01 July 2005. The milestones for delivery of the Requirements Definition Documentation and the Preliminary Design were proposed to be 30 November 2005 and 28 February 2006 respectively. In the event the SDS Contract was awarded on 19 September 2005, a delay of 81 days in comparison with the proposed 01 July date. As described above, as a result of the pre-contract agreement the milestone for delivery of the Requirements Definition Documentation was set at 19 December 2005, a 19 day extension in comparison with the bid programme and significantly less than the 82 days delay incurred against contract award.*
- *The PB Bid Programme was constructed on the basis of a staged approach to production of the Requirements Definition Documentation and the Preliminary Design. The first Requirements Definition package was due to be completed on 30 August 2005, 61 days after assumed contract award, and the last package was due on 30 November 2005, 153 days after assumed contract award. With these dates, and with a Preliminary Design submission date of 28 February 2006 the total duration of the Preliminary Design was effectively proposed to be 182 days. This methodology was carried through into the SDS Contract by virtue of the fact that the Contract Programme bound into the agreement at Schedule 4 was the PB Bid Programme. We also table in support of this position a letter received from tie on 05 December 2005 with a reference to the contract duration for the execution of the Preliminary Design.*
- *On the basis of a revised date of 19 December 2005 for the completion of all of the Requirements Definition packages and using a Preliminary Design duration of 182 days, the Preliminary Design should logically have been submitted on 19*

June 2006. Given the detailed nature of the pre-contract clarifications and the consequent alignment of the views of both parties on the inherent complexity of the SDS Contract, tie could not reasonably have expected to receive a complete Preliminary Design as early as 28 February 2006.

- *The Preliminary Design was actually submitted on 30 June 2006. We understand that the date of 30 June 2006 was the result of an agreement with tie which had been devised to synchronise Preliminary Design submission with the wider aims of the tie procurement strategy. The procurement strategy was subject to detailed review throughout the early part of 2006 and we understand the critical driver in this respect was an Infraco-related procurement milestone at the end of July 2006.*
- *In summary, whilst we agree with the dates quoted by tie as they relate to the production of Requirements Definition Documentation we do not accept that the Preliminary Design should still have been submitted on 28 February 2006.*
- *We do acknowledge that the accompanying Contract Schedule One, "Scope of Services", retained the reference to 28 February 2006 as the completion date for Preliminary Design. However, the retention of this date from the original draft contract documentation was a mistake. Moreover, it conflicts with the spirit of the pre-contract discussions on programme milestones.*
- *We do not believe that the 30 June 2006 submission date impacted upon tie's overall programme targets given the revision of tie's procurement strategy during this period of time.*

5.3 Late provision of survey information and ground investigation data

We note and summarise our understanding of *tie*'s declared position:-

- Survey Information has been provided late and the provision of Ground Investigation data has been particularly poor, to the extent that *tie* has been unable to transfer ground risk to the Infraco contractor.

We have reviewed our position and are able to respond as follows:-

- *For the purposes of this settlement dialogue, PB acknowledges that there may be merit in the tie counter argument. However, PB is not presently in a position to assess tie's position concerning transfer of ground risk.*

5.4 Inadequate performance on project risk management

We note and summarise our understanding of *tie*'s declared position:-

- Performance on project risk management has been poor. This is a duty which was allocated to PB but which has not been delivered effectively in *tie*'s view.
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We have reviewed our position and are able to respond as follows:-

- *For the purposes of this settlement dialogue, PB acknowledges that there may be some merit in the tie counter argument. However, it is clear that incomplete control of the Master Programme by tie has also impacted adversely on the effective implementation of the risk management processes defined by the Contract.*

5.5 Inadequate application of the Value Engineering Report prepared by PB and submitted to tie on 23 August 2006

We note and summarise our understanding of *tie*'s declared position:-

- PB prepared a Value Engineering Report and submitted the document to *tie* on 23 August 2006. *tie*'s view is that this report had been weaker than it should have been. *tie* is of the opinion that PB failed to push harder on the subject of depot levels: a topic that has since been subject to extensive investigation and is the cornerstone of *tie*'s current VE initiative.

We have reviewed our position and are able to respond as follows:-

- *In undertaking all our work we have been able to progress our efforts so far before needing to get the Clients direction. On VE we use a 5 stage process:*
 - a. *Phase 1. "Information" – Identify topics.*
 - b. *Phase 2. "Speculation" – Generate ideas.*
 - c. *Phase 3. "Evaluation" – Evaluate ideas.*
 - d. *Phase 4. "Recommendation" – Develop recommendations.*
 - e. *Phase 5. "Presentation" – Present the findings.*
- *The first 2 phases are relatively straightforward but Phase 3 requires that the options be reviewed against objective assessment criteria. In the first 9 months of the project individual members of the Client's team pushed hard for conflicting priorities, indicating that these were the most important criteria to be considered when assessing options. An example of this was speed of construction, which was pushed very aggressively by some for the heavily congested built-up areas of Edinburgh. However PB was never able to secure a suite of consistent assessment criteria which considered other key issues such as Maintenance Costs, Capex Cost, Reliability, Aesthetics, etc. Hence, whilst PB was able successfully to identify key opportunities and assess options we were not in a position to be able to make balanced recommendations. Using the specific example of Trackform, if cost were the overriding driver then a traditional construction method may be favoured, whereas if speed of construction were more important, (as had been stated at many meetings in early 2006), then a precast slab solution might be the resulting recommendation.*
- *In light of this clarification PB requests that tie reconsiders its position on the VE Report.*