

Mr Steven Reynolds
Parsons Brinkerhoff
9 Lochside Avenue
Edinburgh Park
Edinburgh EH12 9DJ

Our Ref: INF CORR 6073

Date: 16 September 2010

Dear Sirs,

**Edinburgh Tram Project
Novation Agreement/Collateral Warranty - Scope**

We refer to our recent meeting to discuss the above and we confirm our understanding and position on the matter.

The scope of service to be provided by the SDS Provider under the various contractual arrangements is set out as follows:

1. The SDS Agreement dates 19 September 2005
Relevant extracts from the Conditions are:

Clause 3.1 "...the SDS Provider...agrees to perform the services..."

Clause 4.1 "The SDS Provider shall develop and finalise the Deliverables..."

Clause 1 Definitions "services". "...set out in Schedule 1 (Scope of Services)..."

"Deliverables" "means the Functional Requirements Specification, the Technical Specifications and the items listed in Appendix 3 to Schedule 1 (Scope of Services), and all other documents...drawings (including as built develop..."

Relevant extracts from Schedule 1 Scope of Services are:

1. General
 - 1.1. The SDS Provider shall:
 - 1.1.1. Perform all Design and Technical Services
 - 1.1.2. Give all general technical support described in Schedule 1
 - 1.1.3. "perform all management service described in Schedule

Direct dial: +44 (0) [REDACTED]
e-mail: steven.bell@tie.ltd.uk
web: www.tie.ltd.uk

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2. Design and Technical Services

- 2.1.1 “The SDS Provider shall undertake all design and produce the Deliverables necessary to enable the ETN to be procured, constructions, testing and commissioning and the operations and maintenance
- 2.1.4 “The SDS Provider shall ensure that the design covers all aspects of the ETN and the associated works...”

The scope of services therefore included for SDS to perform all Design and Technical Services, the definition of which is Clause 1 and means those services described in paragraph 2 of Schedule 1 (Scope of Services). This includes in 2.1.1 all the Deliverables. Deliverables included inter alia listed in Appendix 3 to Schedule 1.

Appendix 3 to Schedule 1 contains a series of spreadsheets setting out the value Deliverables for each function. Under the “Utilised” function the Deliverables include provision of detailed design for Utilities.

In addition to the Scope of Services paragraph 2 Design and Technical Services SDS are obliged to carry out General Technical Support at paragraph 3 and Management Services at paragraph 4 (ref 1.1.1 – 1.1.3 above).

General Technical Services included a section for Utilities at 3.2 and this allows for SDS to provide assurances to **tie** with the management of an advanced utilities diversion programme.

Furthermore these utilities functions Deliverables are individually priced out and included in Payment Milestones at Schedule 3.

It is clear from the above therefore that the Scope of Services for Utilities is as set out in Schedule 1 and it is not limited to a particular sub section of Schedule 1.

Novation Agreement dated 14th May 2008

Relevant extracts are:

- Clause 2.2 “SDS/**tie** shall enter into a separate agreement...and that scope of works if not novated under this agreement”.
- Clause 4.1 “The SDS Provider undertakes to continue to perform all of the duties and to discharge all of these obligations of the SDS Provider under the SDS Agreement...as if Infracore was and always has been a party to the SDS Agreement in place of **tie**.”

Schedule of Amendments – Appendix Part 1

Clause 30 – Schedule 1 – Scope of Services

Direct dial: +44 (0) [REDACTED]
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web: www.tie.ltd.uk

“Amend to include the services set out in Appendix Part 4”
“Delete paragraph 3.2.1”

Appendix Part 4

“Phase I is complete” (Requirements Definition)
“Phase II is complete” (Preliminary Design)
“Phase III is not complete. Phase III scope of works will be completed under the terms of the SDS Agreement” (Detailed Design)
“No work has yet been stated under Phase IV. The Phase IV scope of works will be completed under the terms of the SDS Agreement. (Construction Support).

In the Novation Agreement it is made clear that some services are part of a separate agreement (Collateral Warranty in this instance) and that the services in the SDS Agreement services shall be amended to include Appendix Part 4 and that 3.2.1 is deleted.

Appendix Part 4 is entirely clear in that Phases III and IV remain to be completed under the SDS Agreement. SDS should continue to perform all of the obligations of the SDS Provider under the SDS Agreement.

Collateral Warranty dated 14 May 2008

Certain services are to be carried out by SDS under this agreement to **tie**. This includes services under these schedules for different scopes and all refer to providing technical and specialist amities to **tie** with the management of the advanced utilities diversion programme.

Conclusion

It can be concluded from the above that:

- a) There is a broad obligation for SDS to design all of the works required to construct the ETN and to produce all of the stated deliverable under the SDS Agreement.
- b) This is an obligation under the Novation Agreement for SDS to complete stated Deliverables for Phase III (Detailed Design) and Phase IV (Construction Support).
- c) Certain services are to be provided directly to **tie** under the Collateral Warranty.

It is clear therefore that the works to be carried out under (b) and (c) above require to be categorised in full accordance with the contractual obligations.

Further meetings are required to reach agreement on the categorisation in order that the obligations are recognised in full and that any changes to those obligations are properly reimbursed under the terms of all of the agreements noted herein.

Yours faithfully,

Steven Bell
Project Director – Edinburgh Tram