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**From:** Alastair Richards - TEL  
**Sent:** 11 January 2008 09:28  
**To:** Geoff Gilbert  
**Cc:** Andrew.Fitchie@dlapiper.com; Sharon.Fitzgerald@dlapiper.com  
**Subject:** RE: Mandatory tie Changes

Geoff,

we faced this issue on the renegotiation of DPOFA and I think where we got to was reasonable for both sides. It might be worth Andrew talking to Sharon. I am just a bit worried that the 30 days puts a lot of pressure on tie, in the DPOFA solution I believe we found a way of providing protection for the Contractor whilst not backing tie into a corner. (Maybe selfish of me wanting only to have to remember one mechanism across the suite of contracts however).

Regards,

Alastair

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**From:** Geoff Gilbert  
**Sent:** Thu 1/10/2008 8:29 PM  
**To:** Tom.Murray@bilfinger.co.uk; Fettig, Herbert  
**Cc:** Scott.McFadzen@bilfinger.co.uk; Bob Dawson; Alastair Richards - TEL; Valerie Clementson  
**Subject:** Mandatory tie Changes

Tom/Herbert

During yesterday's discussion I outlined my concern that making certain contract outcomes automatic tie changes could result in tie not being able to intervene and instruct a better solution. You agreed with this provided that there is certainty of outcome in that some form of instruction must be issued to Infraco. I set this out in more detail as follows:-

The BBS concept for Mandatory **tie** Changes is that **tie** may not be able to be entitled to withdraw a **tie** Notice of Change and, if it fails to issue a **tie** Change Order within 30 days of agreeing to an Estimate, the **tie** Change Order will be deemed to have been issued. **tie** also has a limited period of time in which to submit the **tie** Notice of Change from when the circumstances giving rise to the change arose.

The philosophy behind this is that the Infraco should not be denied a **tie** Change where an event has occurred which had not been caused by the Infraco and, the result of which, action on the part of the Infraco is required, rather than being at the option of **tie**.

In respect of the following events that BBS have asked to be Mandatory **tie** Changes we propose:

- 9.11: removal/replacement of free issue fare collection equipment not caused by the Infraco – Don't believe that this should be a Mandatory Change. If tie don't issue the instruction then the change is not implemented, that should be at tie's discretion.;
- 10.9: the amendment of Deliverables to meet the needs of Approval Bodies where not reasonably foreseeable or inconsistent with the IPs – tie either issues and commits to an instruction for the proposed amendment to the Deliverable or issues such other instruction as may be required to enable approval to be obtained or which results in approval no longer being required. Mandatory change principle to apply to both.;
- 12.14/13.14: amendments to the Infraco contract resulting from a TS/TM rectification plan or termination plan – not convinced that this works. We agreed that amendments to the terms should not be a tie change. Applying the principle to 12.13 cuts across this. The tie change referred to in 12.12 should be a Mandatory Change;
- 22.4: where Infraco has notified of unexploded ordnance, unidentified utility apparatus or contaminated land – agreed as Mandatory Change;
- 34.3: a **tie** instruction which leads to the variation of the Infraco Works – We need to discuss this one;
- 76.24: a **tie** request for Additional Insurance - agreed as Mandatory Change; and
- 87.2: a suspension affecting part of the works where **tie** has not granted permission to proceed following a 6 month period and 20 day notice from the Infraco - agreed as Mandatory Change .

I would like to go through this tomorrow.

Regards

Geoff Gilbert - Project Commercial Director  
TRAM Project

**tie** Limited  
Citypoint  
65 Haymarket Terrace  
Edinburgh EH12 5HD

tel [REDACTED]  
mo [REDACTED]