
From: Fitzgerald, Sharon
Sent: 18 January 2006 15:12
To: John Low - TSS; allan.hill@scottwilson.com; Allan Hill - TSS; David Ramsay; Richard Hookham - TSS; Salwan, Anita
Cc: Gary.Easton@turmtown.co.uk; Gerry.Henderson@tie.ltd.uk; ian.kendall@tie.ltd.uk
Subject: RE: Conflicts between legal and technical agreements

Importance: High

John

The concept of having a MUDFA Contractor is to introduce the concept of single point responsibility for the utility diversion works needed in respect of the Edinburgh Tram Project. This concept removes the risks associated with tie having to manage separate contracts with each of the affected utilities. The biggest of these risks is the late delivery of the utilities diversions and the impact of this late delivery on the infraco contractor carrying out the construction of the works. **tie** is seeking to select a MUDFA Contractor with the requisite technical and programme management experience to manage out the risks associated with these works. Having one contractor and its supply chain carrying out the works also has potential cost savings for tie.

The Agreements which **tie** has with NTL, Thus, Easynet, Scotland Gas Networks and Scottish Water permit **tie** to appoint a MUDFA Contractor to carry out all works associated with these utilities' apparatus (subject to any statutory or regulatory obligation which compels the Utility to carry out certain works itself and then only as MUDFA's sub-contractor) and, therefore, achieve the desired single point of contractual responsibility. The Agreement with BT is different in that BT will only permit the MUDFA Contractor to carry out civils works. **tie's** preference was that the MUDFA Contractor would do all of the BT works or would manage an approved sub-contractor to carry out the works - however, this was unacceptable to BT.

I think you are suggesting that the Agreements should be amended to reflect the discussions which you have had at a technical level. To move the NTL, Thus, Easynet, Scotland Gas Networks and Scottish Water Agreements to the BT position undermines the concept of single point responsibility which has been formally agreed in the contracts with these 5 utilities. Unlike BT, these 5 utilities agreed to the MUDFA Contractor carrying out all of the required works. I can, therefore, see no rationale in amending these Agreements to a position which is less favourable to tie.

A discussion to close out this issue is urgently required.

Sharon

PS In relation to your Scottish Power e-mail, have SP ruled out the specialist works being carried out under a sub-contract to the MUDFA Contractor. Having non-contractually linked parties working in the same excavation at the same time sounds problematic

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From: John Low - TSS [<mailto:John.Low@tie.ltd.uk>]

Sent: 18 January 2006 13:55

To: Fitzgerald, Sharon; allan.hill@scottwilson.com; David Ramsay; Richard Hookham - TSS; Salwan, Anita

Subject: Conflicts between legal and technical agreements

I have reviewed all five agreements currently in place.

Basically, they all have two relevant clauses that I can see:

1. They will not form part of MUDFA unless expressly agreed, and
2. They will either be a subcontractor to MUDFA or will instruct tie to procure the works on their behalf when in MUDFA, if there's a good reason tie/MUDFA can't do it anyway.

So the question that arises is, can point 1. be split up? In other words, can they say OK these elements of our works are in MUDFA (eg duct laying) but these other elements are out (eg cable drawing), or does it have to be all or nothing?

On the assumption that it is - or can be made to be - the former, there is clearly no conflict with whatever we agree at a technical level. If it currently stands as the latter then I suggest we get it changed to the former.

John.

John M Low
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