

PARSONS BRINCKERHOFF LIMITED

CLAIM FOR EXTENSION OF TIME
Delay to SDS Utilities Design.

Sector System-wide – Utilities

03 January 2007

INTRODUCTION

This report documents the claim for Extension of Time (22nd June 2007 to 12th January 2008) arising for eight different reasons which were not evident, expected or advised to the SDS Provider at Tender Negotiation Stage. The reasons are listed as follows'

1. The SDS Providers' utility design proposal was established on the basis of safe, conventional and proven methods of design. Conventional procedures, such that utility diversions and their protection schemes would be based on real time track-work and road alignments. Following appointment the SDS Provider was advised by **tie** that utilities design was required in advance of and so out of sequence with the associated alignment and roads design.
2. The utilities strategy formulated by **tie** was flawed and has been found not to be workable in its original form. The procurement path adopted by **tie** is such that the design is to be carried out by the SDS Provider and a MUDFA (Multi Utility Diversionary Framework Agreement) Contractor to take on board the construction of the majority of the utility diversions on behalf of each SUC. This is not as per the utilities procurement norm with Tram Projects in the past, whereby each Statutory Utility Company (SUC) prepare their own design (under normal NRSWA procedures) based on an alignment prepared by the SDS Provider. Each SUC having direct control and visibility of internal programme and commercial expectations to carry out the utilities design and a direct procurement regime under already existing utility framework agreements with contractors to move utilities efficiently and within a cost budget which would have been calculated and managed by themselves. It was believed by **tie** that the commercial issues could be negotiated efficiently with each SUC and that a rolling programme of works could be established without commercial issues being a stumbling block. This has not been the case. The flaw is that **tie** have entered into a contract with a MUDFA Contractor on a strategy that only allows the cost to be apparent after the services are designed by the SDS Provider has designed it. Tie has however entered into a contract with the SDS Provider to seek full approval and consent from each SUC prior to proceeding with construction. Hence it can be clearly seen that we have a circular argument or situation with the SUC's. The designer cannot get the consent or approval to the design unless the design is supported by a cost from the MUDFA Contractor. The MUDFA Contractor is not in a position to price the work until the design is in a "contracted work pack" with the relevant SUC accepted design status. (going round the circle again, the SDS cannot gain consent or approval until the work is priced by the MUDFA Contractor.....). This has now been recognised by **tie** and the MUDFA costs estimates are being provided in front of the work-streams, such that the commercial stalemate with the SUC's is broken and design work may be reviewed and accepted. Confirmation of relaxation of this commercial hold from the last utility company (Scottish Gas Networks) was provided in September 2007. The first sections of MUDFA Utility IFC submissions were issued to Tie with "hold points" on the drawings until this issue was resolved. The seeking of submission approval was delayed due to this issue and has resulted in additional submission material being provided by SDS.
3. With such a bold Procurement Strategy it is essential that **tie** have a utilities management procedure which would guarantee the "buy in" and performance of each SUC. This essentially would need SUC agreement to perform to the **tie** master programme in reviewing and accepting the design proposals from the SDS Provider in a timely fashion in order to support the MUDFA Contractor's construction

programme. This is not the case. The late issue by **tie** (and subsequent closing out and signature) of Agreements with each Statutory Utility Company has led to the delay in each SUC providing the required manpower input to maintain a review and acceptance programme which could have supported the original construction programme.

4. The late issue by **tie** of NRSWA C4 Notices to initiate SUC formal response has caused the delay to the SDS Provider. To confirm the existing utility equipment (size property and position) to support the diversionary design and to provide input into the requirements of the design **tie** must prepare NRSWA C4 Notices to each SUC. This confirms the commitment from **tie** to each SUC that costs for such design support would be paid for and that the relevant resources within the utility company may be procured by each SUC in good time to meet the **tie** master programme. At present NRSWA C4 notices are only issued for Phase 1A (without Phase 1B). It is the contractual responsibility of SDS to gain approvals for the entire Edinburgh Tram Network. Without SUC agreement, instruction and payment to the relevant SUC's for Phase 1B SDS design work this has not proved possible. The first design packages for Phase 1B were issued to the SUC's by the SDS Provider on 22nd December 2006 and to date no Phase 1B design package has been reviewed and/or returned to the SDS Provider from the SUC's as there is no instruction (by **tie**) or provision of finance for this review work, to the SUC's to provide C4 review/input. The reason for this delay to review the SDS design is the failure by **tie**, to award NRSWA C4 Notices for Phase 1B and the yet to be negotiated commercial agreements to be concluded on this matter between **tie** and the SUC's. It is understood that this situation is due to the budgetary constraint of ETN and the awaiting of the INFRACO conclusions to the overall INFRACO package pricing but this has held up SDS gaining the approvals of Utilities for Phase 1B and therefore the completion of the contract. This is a "frustration to the design" and could have been avoided by the correctly timed issue by **tie** of NRSWA C4 Notices and the timely completion of commercial agreements with the SUC's.
5. All Preliminary Design and the majority of the Detailed Design work for Utilities has awaited contractual Statutory C4 information input to be supplied such that a co-ordinated SDS utility design may be produced. The completion of this information is still awaited for sewer datum, line and level in certain geographical sections. The latest **tie** programme for this work is indicated to be end January 2008. (Sewer/Manhole surveys to Sections 5B and 2A). For this reason it has not been possible to complete the sewer/manhole designs in accordance with SDS Programme Version 17. The earliest design conclusion is based on sewer designs being completed two weeks after the last sewer survey information being received from **tie** plus an SUC review period of four weeks and an IFC production of two weeks taking the sewer/manhole design completion to end March 2008. On this basis the EOT Management period is from Programme Version 17 completion to end March 2008.
6. **Tie** has instructed the Statutory Utility Companies not to review the utility designs proposed by SDS (Issued in first quarter 2007). Instruction has been given by **tie** to SDS not to seek design approvals for this work. Clear instruction and confirmation of prioritisation of design sequence of workload is required from **tie** on this part of the SDS design programme. It is understood that there is no commercial arrangement in place (or procurement costs agreed between **tie** and the SUC's) to provide review and/or approval to the SDS designs, as proposed. (Please see item 4 above) The earliest design conclusion to this work is for the engagement of SDS with SUC's in first week February 2008 (following close out and IFC submission of Plates 32-38). Allowing a four week approval process by the SUC's and an IFC production of two

weeks the earliest design conclusion to Phase 1B is mid April 2008. On this basis the EOT Management period is from Programme Version 17 completion to mid April 2008.

7. There has been additional SDS design, input and resource time to conclude the utilities design work due to the inability to produce acceptable designs within the allocated LOD. (examples of this are Constitution Street and Gyle Shopping Centre). Clearly the limited LOD special allowances for utilities and infrastructure does not allow SDS, as the designer, to provide utility designs to SUC acceptable standards and NJUG compliance. The additional design interface work has extended the management period further than indicated in SDS Programme Version 17. To date 03/01/08 conclusion to an acceptable land negotiation with the Developer/Owner of Gyle Shopping Centre is a direct consequential delay to the Utility design for Section 5C.
8. As built drawings have not been issued to SDS to the agreed acceptable standard such that ongoing design development to adjacent geographical sections may be adequately co-ordinated. As built drawings have not been issued to SDS to the agreed acceptable standard for installation work carried out by tie/MUDFA under the RATS process. This has not allowed SDS to efficiently provide designs for areas where alignment changes and Change Instructions require utility designs to change or be confirmed as non-conflicts. Examples of this are Depot C&W cable duct shift and Section 5C, water main diversion to the 250mm main. To date 03/01/08 this information is still outstanding and is a direct consequential delay to the Utility design for Section 5C.

We would propose that the summary of Delays to Utilities Design, is as follows;

- (i) Direction of SDS resources by tie to prioritise MUDFA procurement documentation & support function
- (ii) Failure by tie to conclude Agreements with SUCs
- (iii) Failure by tie to engage with SUCs to gain their cooperation to proceed without issue of NRSWA statutory notices
- (iv) Failure by tie to persuade SUCs to mobilise their resources to respond to SDS design proposals due to (iii) above
- (v) Late and incomplete issue by tie of NRSWA C4 Notices to initiate SUC formal response to SDS design proposals
- (vi) Failure of SUCs to respond to SDS design proposals in programmed period due to their lack of resource and need due to (iv) & (v) above
- (vii) Failure of tie to engage with SUCs on procedural and statutory powers consequences of SUC's identification of need to divert apparatus in Constitution Street to outwith LoDs
- (viii) Failure of tie to recognise implications to utilities design development of Charette changes and delay until these resolved
- (ix) Direction of SUCs by tie to prioritise their response to Section 1 and de-prioritise their response to Section 3 SDS proposals thereby frustrating design approvals sought by SDS in accordance with SDS Design Programme

- (x) Direction of SDS resources by **tie** to prioritise preparation for Trial Area
- (xi) Failure by **tie** to conclude Section-by-Section commercial arrangements with SUCs in parallel to approval of SDS design proposals
- (xii) Failure by **tie** to provide the adequate As built information for RATS installed works and sectional As built information due to the late appointment/instruction to Survey Contractor.
- (xiii) Failure by **tie** to negotiate and issue C4 Notices and confirm financial agreements with each SUC specifically for Phase 1B.
- (xiv) Failure by **tie** to procure timely sewer/manhole C4 materials such that SDS could use this material to conclude each geographical sectional designs.