

Proposal to closedown Major Utilities Diversion Framework Agreement (Mudfa) Programme

Executive Summary

It is proposed that the responsibility for completing the remaining works at Haymarket and Broughton St post the Christmas Embargo is transferred to Clancy Docwra ~~for an anticipated~~ a targeted cost of ~~circa £9601.440k~~, and thereby closedown the MUDFA programme. Carillion are in agreement with this proposal and this will signal the end of their involvement in these works, excepting such remedial works and defect rectification as they required to perform.

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The MUDFA programme contractor Alfred McAlpine & Sons (subsequently acquired by Carillion) was appointed on 4th October 2006.

MUDFA works have been ongoing since May 2007. The programme has been fraught with

- unforeseen complexity which has served to increase scope substantially
- the quality of the works carried out by the main contractor, Carillion, requiring a much greater level of remediation and revisit than should have been expected from an experienced practitioner.

Relationships with Carillion have been difficult, largely because, since inheriting the Programme by their acquisition of Alfred McAlpine they have sought to undermine the validity of the Contract pricing mechanism, a price based on value of measured works achieved. They have constantly argued for a switch to a Time and Material rate (Cost Plus arrangement) and have understandably been unsuccessful in persuading tie to accept that. Carillion have inherited a contract structure where McAlpine's have hired subcontractors on a T&M (labour only hourly rate) basis and who have a negative incentive in finishing the job quickly, against their own contract being based on measured works, a difficult position but not one of tie's making.

To compensate for this Carillion's focus on exhorting more money from the contract has been substantial and they have been pursuing an aggressive path on Delay & Disruption claims, with claims totalling ~~circa £1.5m-1.4m~~ to date. Tie has had these claims independently reviewed and the independent opinion advises that there is substance only to between £1.5m and £2m of the claim.

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The remaining works on the Programme under Mudfa essentially involve Sections 1C 05 01 and 1D 01 01, Broughton St and residual works at Haymarket. Progress on these works has in part been hampered by complexity but also by a general lethargy from the Contractor, their management focus being primarily on Commercial claims and their general lack of control resulting in a week on week recasting of dates for delivery, without embarrassment. The determined timeframes for completing even simple works is consistently greater than would be expected from an experienced contractor. **There is now no confidence in any date put forward by Carillion for completing works and they are currently showing April 2010 as targeted completion date but have given a caveat that this is a challenging timescale.** For these reasons tie has already transferred works from Carillion at the Edinburgh airport and Section 1A, the latter of these requiring a full EU procurement process.

While it is recognised that the current Contract has safeguards for the Programme stakeholders, and it will be important to assure that these are maintained (see Appendix I), there is now a substantial economic case for transferring these remaining works. Each week of the Tram Programme prolongation is estimated to cost up to £750k, ignoring lost revenue for any delay to Open for Revenue Service day. In addition substantial Prelims costs from Carillion are incurred, currently running at £60k per week.

The appointment of Clancy Docwra will be based on an NEC type 'C' contract and will comprise a target gain/pain share of circa £960k1.4m. The average completion rate per metre is anticipated to will

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be higher at £500.00 vs £420.00 from Carillion but the conviction is that there will be a genuine appetite to complete said works in the targeted timeframe and the safeguard is that there will be a target cost and gain for achievement and pain for non-achievement.

The level of works in this task do not exceed the EU limit (5 million euros) and for that reason it is proposed to appoint Clancy Docwra on the basis of their submission for 1A.

It is recommended that tie is allowed to pursue the transference by 28 November of responsibility of these works to Clancy Docwra for economic benefit estimated at circa £260240k and resultant reduction/control of the Programme timeframe with the corresponding reduction in the Tram programme prolongation at £750k per week and the removal of potential future claims/contractual issues emanating from Carillion.

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1 Background

1.1 History

The MUDFA programme was established in 2007 to undertake the diversion of all in the ground utilities which occupied the proposed Tram track route, and to ensure that all such utilities, where practicable, were re-laid outwith the Dynamic Kinetic Environment (DKE) of the Tram.

An EU Public Directive procurement process was carried out and the Alfred McAlpine & Sons company (AMIS) was duly selected and appointed on 4th October 2006.

The framework agreement established a schedule of rates and the mechanism contracted required Work Orders to be generated by tie for each section undertaken:-

1A 03 00	Trial Site at Casino Square
1A 01 01	Duke Street to Tower Street
1A 01 02	
1A 02 01	Victoria Bridge to Rennie's Isle Bridge
1A 03 01	Rennie's Isle Bridge to Tower Street
1B 01 01	McDonald Road to Balfour Street
1B 02 01	Balfour Street to Duke Street Junction
RAT 1B 01	Jane Street
1C-01-01	The Mound
1C-01-02	The Mound to Castle Street
1C-02-01	The Mound to South St Andrews Street
1C-03-02	St Andrews Square
1C-04-01	McDonald Road to Broughton Street
1C-05-01	Broughton Street
RAT 1C 01	St Andrews Square (BT)
1D-01-01	Haymarket to Manor Place
1D-04-01	Shandwick Place to Manor Place (Lothian Road)
1D-05-02	Castle Street East to Castle Street West
2A-01-01	Haymarket Yards
5A-08-02	Roseburn Street to Russell Road
5B-01-01	Broomhouse Road to Edinburgh Park Tram Stop
5C-01-01	Edinburgh Park Tram Stop to Gogarburn Tram Stop
6A-01-01	Gogar
7A-02-01	Gogarburn to Ingliston Park & Ride
7B-01-01	Edinburgh Airport

The scope of the job as at 4th October 2006 was estimated at :

Original Tender Quantities – 27,188 metres of diversions and 267No chambers

The determined MUDFA Contract valuebudget for the programme was set at £39,347,582.55, (Note the actual approved budget for the MUDFA Works at Contract date was £69.7m – AMIS Works)

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budget £45.9m(including contingency allowance of £6.5m, Utilities Budget £11.7m, Risk Allowance £12.1m) Jim I am not sure that referring to the original budget is helpful as the total includes items which are not part of CUS scope (utilities) therefore John is not comparing like with like.

Works were initially delayed by 2 months while a Scottish Government review on the project was undertaken, and commenced in earnest in May 2007

Carillion Plc subsequently acquired AMIS and formally advised tie on 27th February 2008.

2 MUDFA Progress since 2007

2.1 Scope and Timeframe Increase

The scope of the required works increased substantially over the last 2 years, and as at the date of this report now stands at:-

Current Quantities (including all works transferred) 48,371 metres of diversions and 360No chambers.

There are a number of reasons as to why scope has increased and progress on completion of the works has been delayed but principle amongst these is the increase in the encountered complexity to that which was expected by AMIS(Carillion) our experienced practitioner and the quality and productivity of Carillion's works.

The factors which contributed to the complexity include:

- Inaccuracy in the utility records. There is not a single section where the utility records of what was in the ground matched what was found. It's estimated that the utility records were no more than approximately 40 % accurate. This inaccuracy incurred substantial abortive works and a heavy investigative overhead, with an estimated 480 No trial holes completed across the job, and the requirement to extend diversion metrage by 21,183m and build 93 No chambers more than expected. Water and Gas supplies in particular have been problematic, and this is perhaps not surprising given that pipes dated back to 1829 have been discovered, still operational.
- Uncharted structures. In all approximately 23 No structures, excluding cellars, and a significant number of obstructions have been encountered, these ranging from 17th Century Cellars in Princes St. to WWII bomb shelters in Lothian Rd and Grosvenor terrace and human remains in Constitution St. This again required again-substantial investigative work to prove a new route and incurred increases in diversion lengths and abortive works.
- Tram Track realignment. A realignment of the proposed Tram track route at Haymarket necessitated by a Road Safety audit post completion of the Issued For Construction drawings resulted in already completed diversions requiring to be moved again and substantial increase in utilities, notably a significant gas main, included in required scope. This was further compounded by the discovery of bedrock requiring hand-digging in new route. Overall its estimated that this realignment has added 9 months to the job of completing Haymarket.
- Congestion. Designs for new utility locations have been plagued by the accuracy of the utility data and in the course of carrying out the works highly complex and congested utility situations have been unearthed, requiring redesign, lengthening routes and again substantial investigative works.

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- Traffic Management. Edinburgh’s capacity to cope with the substantial road works has been tested to the limit but has also served to limit the available workspace and area for the contractor to operate in, this has necessitated a piecemeal approach to certain areas and created a substantial overhead in Traffic Management switching and phasing (which can only be executed at the weekend).

All of these factors have served to lengthen the diversions and the time required to complete, in addition, they have combined to generate approximately 2,000 Technical Queries from the Contractor requiring direction from tie, each of these technical queries is a case study in its own right and requires investigation and report.

It is important to note that tie has already allowed and approved changes amounting to circa £152.74m in the Contract price in recognition of these difficulties. Jim this figure is not in line with the most recent PD review “agreed and finalised change £15.7M”.

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2.2 Contractor Quality

The problems experienced and scope increases have served to delay progress on the Programme, it should also be recognised however that there have been equally significant concerns and issues arising with the quality of works carried out, which have also contributed to these delays. The level of revisit and remediation work required has been at a much higher level than would have been expected from an experienced practitioner eg. The total metreage required on BT ducting is 111,596 metres, the total metreage requiring remedy following completion of the works is approximately 29,000 metres to date, this in large measure being attributable to a flawed reinstatement methodology. This remediation and revisit has served to increase the Traffic management requirements to a considerable degree and also engendered a difficult relationship with, in particular, local traders affected, leading in turn to ‘good grace’ embargo periods involving suspension of works and abortive works with temporary reinstatement.

Carillion recognise that there have been qualitative issues and to that end the Contractor Programme is now being led by its 3rd programme director, there has been improvement in quality since September 2008, however there has also been substantial increase in bureaucracy and contractor focus on exhorting more money from the contract. Tie’s view is that the quality of management from Carillion has been below the required standard since Programme commencement and has had made frequent representations in this regard. There is no confidence in any dates put forward by Carillion for completion of works.

3 Commercial

3.1 Contract

It is Carillion’s view that the original contract was flawed and did not anticipate the level of complexity involved, and while that may be true in part it’s also the case that AMIS represented their abilities as consistent with a contractor with long tooth experience in these matters, specifically in Edinburgh, and tie had every reason to expect the supplier to pro-actively lead the programme, rather than the situation which has evolved where tie are expected to lead and the contractor is subservient.

3.2 Contract Mechanism.

Relationships with Carillion have been difficult, largely because, since inheriting the Programme by their acquisition of Alfred McAlpine they have sought to undermine the validity of the Contract. The contract works on a principle of payment from a schedule of rates for the measure of works completed. Carillion argue that the position is unfair and no-one could have expected the complexity

encountered and they have constantly argued for a switch to a Time and Material (Cost Plus) basis. They have understandably been unsuccessful in persuading tie to accept that. Carillion have inherited a contract structure where McAlpine's have hired subcontractors on a T&M (labour only hourly) basis and who have a negative incentive in finishing the job quickly, against their own contract being based on measured works, a difficult position but not one of tie's making

Tie has refused to move the Contract to a T&M (Cost Plus) basis and is of the view that it was reasonable to expect that an experienced practitioner in these undertakings would have included such complexity in their rates. At the same time tie has accepted/greed that unforeseeableen obstructions can be regarded as valid changes resulting in additional cost.

4 Proposed Transfer of works from Carillion

4.1 Scope of Works to be transferred

It is proposed that the responsibility for completing the remaining works at Haymarket and Broughton St post the Christmas Embargo is transferred to Clancy Docwra for an anticipated at a targeted cost of circa £960k, Carillion are in agreement with this proposal and this will signal the end of their involvement in these works, excepting such remedial works and defect rectification as they are required to perform.

The remaining works on the Programme under Mudfa essentially involve Sections 1C 05 01 and 1D 01 01, Broughton St and residual works at Haymarket. Progress on these works has in part been hampered by complexity but also by a general lethargy from the Contractor, their management focus being primarily on Commercial claims and their general lack of control resulting in a week on week recasting of dates for delivery, without embarrassment. The determined timeframes for completing even simple works is consistently greater than would be expected from an experienced contractor. **There is now no confidence in any date put forward by Carillion for completing works and they are currently showing April 2010 as targeted completion date but have given a caveat that this is a challenging timescale.** For these reasons tie has already transferred works from Carillion at the Edinburgh airport and Section 1A, the latter of these requiring a full EU procurement process.

4.2 Economic Case

While it is recognised that the current Contract has safeguards for the Programme stakeholders, and it will be important to assure that these are maintained (see Appendix I), there is now a substantial economic case for transferring these remaining works. Each week of the Tram Programme prolongation is estimated to cost up to £750k, ignoring lost revenue for any delay to Open for Revenue Service day. In addition substantial Prelims costs from Carillion are incurred, currently running at £60k per week.

4.3 Appointment of new contractor

The appointment of Clancy Docwra will be based on an NEC type 'C' contract and will comprise a target gain/pain share of circa £9601.4km. The average completion rate per metre is anticipated to will be higher at £500.00 vs £420.00 from Carillion but the conviction is that there will be a genuine appetite to complete said works in the targeted timeframe and the safeguard is that there will be a target cost and gain for achievement and pain for non-achievement.

The level of works in this task do not exceed the EU limit (5 million euros) and for that reason it is proposed to appoint Clancy Docwra on the basis of their submission for 1A.

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5. Recommendation

It is recommended that tie is allowed to pursue the transference by 28 November of responsibility of these works to Clancy Docwra for economic benefit estimated at circa £260knnn and resultant reduction/~~control of~~ the Programme timeframe with the corresponding reduction in the Tram programme prolongation at £750k per week and the removal of potential future claims/contractual issues emanating from Carillion.

Appendix 1 Required contractual assurance prior to completing transfer of works.

A potential target date for effecting this arrangement is 28th November 2009. A thorough review of the MUDFA and ancillary agreements will be required to ensure that the contractual obligations on both parties for completion will be met prior to transfer.

tie's strong preference will be for any agreed exit by Carillion to encompass as comprehensive a settlement as possible of all, technical, commercial and financial matters relating to Carillion's performance of MUDFA to date.

tie considers it prudent to set out the basic and essential conditions and regards the following as prerequisites to any agreement to an exit by Carillion at 28th November 2009 (the parties would carry their own costs of formalising the arrangements in legal documentation):

- all reasonable support from Carillion for tie's immediate action in appointing a replacement contractor
- comprehensive agreement on handover arrangements to include testing, inspections and requisite surveys, Carillion's programmed completion commitment on identified defects and snagging;
- production to an agreed timetable of all "as built" drawings for completed MUDFA Works and the collation of all IFC/AFC drawings and supporting information for incomplete or partially completed MUDFA Works;
- all contractual and statutory obligations of Carillion regarding MUDFA Works completed (or commenced but unfinished) by the agreed exit date to remain in full force and effect e.g. (but not exhaustive):
 - five two year defects liability period running from { } 28 November 2009
 - twelve year latent defects liability running from { };
 - contractual indemnity;
 - contractual liability cap (calculated on value of completed works) – (Would this not remain the same as Clause 84 ie shall be limited to the greater of £3,500,000 or 7% of the Final Account: Yes clause remains the same
 - provision of a retention bond in the form set out in MUDFA Part B (Retention Bond) of Schedule 7 (Bonds) which has been issued by a surety approved in advance by tie for an amount of £1,500,000 (Clause 4.2 of MUDFA)
 - IPR provisions;
 - retention of records;
- the provision (by 28th November 2009) of collateral warranties by Carillion to all named stakeholders, affected third parties and affected utilities;
- the underwriting of the defects liability period by "on demand" bond issued by a bank/bondsman or by retention: Jim this requirement is likely to be withdrawn in negotiations
- the full and final settlement of all Carillion's claims and a final MUDFA Works account [within [◆]] by exit date: Unlikely to be in agreement
- secondment of transition period staff at agreed fixed rates;
- reinstatement works (temporary and permanent) to be agreed;
- Carillion demobilisation and any subcontract breakage to be cost neutral for tie

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- technical requirements for the smooth transition to be agreed between the Carillion and Tie programme team, this to include site audit, testing review, documentation and inventory management.

~~In the event that any of these requirements are unpalatable to Carillion then tie would regard the proposal for early exit as unachievable~~