
From: Fitzgerald, Sharon
Sent: 27 October 2005 21:16
Subject: FW: Duty of Care SDS and Transdev

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From: Ian Kendall [mailto:Ian.Kendall@tie.ltd.uk]
Sent: 24 June 2005 17:07
To: Fitchie, Andrew; Willie Fraser
Cc: Gerry Henderson; Fitzgerald, Sharon
Subject: RE: Duty of Care SDS and Transdev

Hold off Transdev. Nothing new will be negotiated with them.

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 24 June 2005 16:38
To: Willie Fraser; Ian Kendall
Cc: Gerry Henderson; Fitzgerald, Sharon
Subject: RE: Duty of Care SDS and Transdev

Short answer is I would not recommend sending this to Transdev at the moment. tie will not get Transdev to sign up to this in this form. It contains a statement for the benefit of CEC which Transdev will see as a move to expand their liability - ie negligence beyond scope of contract.

Please hold off at present until we think about this. Is there a time issue here?

kind regards

From: Willie Fraser [mailto:Willie.Fraser@tie.ltd.uk]
Sent: 24 June 2005 16:33
To: Fitchie, Andrew; Ian Kendall
Cc: Gerry Henderson; Fitzgerald, Sharon
Subject: RE: Duty of Care SDS and Transdev

Andrew,

See attached draft Transdev letter which I have just put to Sharon for her input, re her comments yesterday. IS this OK?

Willie

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 24 June 2005 16:30

To: Ian Kendall
Cc: Willie Fraser; Gerry Henderson; Fitzgerald, Sharon
Subject: Duty of Care SDS and Transdev

Ian

I understand one of the prime movers behind the play to secure direct duties of care owed to CEC is to allow CEC to stand back from the front line and rely upon professional expertise. However, I am reflecting if, in these two cases, there would be unintended and potentially confusing legal by-products:

- SDS: As Sharon mentioned in her e mail yesterday, SDS will be in contract with Infracore eventually and, at that point, it is not possible for SDS to owe an advisory duty of care to CEC (or **tie** for that matter) since it will be a subcontractor to Infracore. Therefore, the DoC owed to CEC -if this is accepted - would need to cut off at novation and any residual right would lie in the collateral warranty **tie** takes off SDS. Given the role of TSS -ie supervision of SDS in its design/service integration facilitation function - and the easier situation as regards TSS in an ongoing advisory capacity, I would recommend that **tie** consider whether an SDS duty of care to CEC may be a 'belt and braces' too far. Even during phase one of SDS as **tie's** consultant, how would a duty of care owed to CEC planning or roads operate when in fact SDS's job is to secure a consent which is the best interests of the tram project, not necessarily CEC roads?
- Transdev: Transdev will undoubtedly put the letter to their lawyers and the short term reaction is likely to be that under DPOFA, Transdev was never asked to be on contractual risk for design or scheme definition input at present, unless they expressly agree that their proposal to alter technical aspects of the scheme has financial liability attached to it. Consequently, any approach should be crafted to take account of this.

Without creating a job for ourselves, we need to look at this succinctly and advise, so that **tie** can explain the position to CEC if required.. Could you let me know and put a hold on action at present.

Kind regards

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