



Ref: CUS/tie/letter/TL/Projects/2085

17th April 2009

Mr. Graeme Barclay
tie MUDFA Utilities Construction Director
tie Limited.
Citypoint,
1st Floor,
65 Haymarket Terrace,
Edinburgh.
EH12 5HD

Dear Graeme,

Subject: MUDFA Carillion Utility Services (CUS) – Contract A150
Weekly Progress Reports

The following refers to the tie responses to our Weekly Reports, specifically your letters Ref:

- DEL.MUDFA.12123.JC.GB dated 16th December 2008;
- DEL.MUDFA.12124.JC.GB dated 16th December 2008;
- DEL.MUDFA.12403.TC.GB dated 22nd January 2009;
- DEL.MUDFA.12705.TC.GB dated 9th February 2009;
- DEL.MUDFA.12706.TC.GB dated 9th February 2009;
- DEL.MUDFA.12708.TC.GB dated 9th February 2009;
- DEL.MUDFA.13520.TC.GB dated 31st March 2009; and
- DEL.MUDFA.13523.TC.GB dated 31st March 2009.

Your letters contain incorrect references to agreements and discussions in weekly meetings and incorrect references to the Rev 7.9 programme, which you consider unagreed. They create the impression that our weekly correspondence receives little or no attention other than to trigger a formulaic response designed to dismiss our genuine efforts to comply with the contract and thus avoid the issues.

Despite this, discussions are currently in progress between Mr Steve Cocliff (CUS), Mr Steve Hudson (CUS), Mr Steven Bell (tie), Mr Jim McEwan (tie) and Mr Dennis Murray (tie). The outcome of these discussions and the adoption of a more appropriate method for recovery (e.g. the Cost Base Model currently being considered) will determine the evaluation principles, methodology, process, and ultimately the way forward for all future entitlement reports and requisite data.

Our specific responses to the issues raised your letters are included in the attachment.

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Yours sincerely,
For and on behalf of **Carillion Utility Services**



Steve Beattie
Director

Copies:

tie Project Team

Steven Bell
Dennis Murray
Jim McEwan

MUDFA Project Team

Steve Hudson
Mike Mann
Taryne Lowe

Attached/... Appendix (5 pages)

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CUS responses to *tie* paragraphs and bullet points included in their responses to weekly report letters.

Clause 35

Clause 35 includes the Pre-Construction Programme as well as the Construction Programme. The failings throughout the PCS Phase led to the inability of CUS to provide a programme as contemplated in PCS, this is a matter of contemporaneous correspondence including the settlement agreement up to and including September 2007. Unless *tie* acts unreasonably it cannot be expected that CUS are now to produce documentation including programmes to the level of detail contemplated in PCS where it has already been recognised and agreed by both parties to the contrary. In any event the PCS phase was accepted as finalised in accordance with the Pre-Construction Completion Certificate otherwise the CUS could not have commenced pursuant to clause 8.3

tie Bullet Point 1;

Clause 35 in the main is a procedural clause for various phases of the Agreement some of which must have extinguished. It is not a requirement to apply Clause 35.1 to 35.9 to each and every delay, disruption and dislocation event. The intention of Clause 35.1 to 35.9 is to set out the Programme requirements, detailing the protocol/parameters that would lead to the acceptance of the Contractors Programme and revisions thereto.

tie Bullet Point 2;

We comply with Clause 35.5 through regular updates for the Construction programme

tie Bullet Point 3;

This refers to the Pre-Construction Programme, which no longer applies.

tie Bullet Point 4;

CUS provide an updated Construction Programme in accordance with Schedule 1 Clause 3.1, this is a matter of contemporaneous correspondence including our most recent letter Ref; CUS/tie/letter/SM/Projects/2038 dated 6th April 2009. The monthly progress reports referred to in Clause 3.1 are required 3 business days before each monthly progress meeting - *tie* stopped the Monthly Progress meetings in December 2007. The Monthly Progress meetings were temporarily reinstated at our request in December 2008. At no other time was the CUS required to submit an updated programme.

Schedule 1 Clause 3.2 and 3.3 applies to the Anticipated Final Account, this is also a matter of contemporaneous correspondence including most recently letter Ref; CUS/tie/letter/TL/Projects/1557 dated 14th October 2008 for which we await your response. The last Anticipated Final Account was submitted to *tie* by email from Mr Taryne Lowe to Mr John Casserly on the 17th October 2008, although it was requested *tie* have still not confirmed that the content was in line with the discussions had at the time.

Schedule 1 Clause 3.4 involves the production of "Benchmarking, Risk Management and Value Engineering Estimates and Reports" to be *provided by the MUDFA contractor from time to time as required*. We have not received any specific requests from *tie* to provide further documentation in addition to that which has already been produced and provided by us.

tie Bullet Point 5;

CUS provide an updated Construction Programme in accordance with Schedule 1 Clause 3.1, this is a matter of contemporaneous correspondence including our most recent letter Ref; CUS/tie/letter/SM/Projects/2038 dated 6th April 2009.

Please advise when you can make yourselves available to clarify any confusion regarding the dependencies and logic contained within any programme.

tie Bullet Point 6;

Considering the extent of Change experienced to date (in excess of **2,702 items** which excludes re-measurable TQ's and TQ's raised in cost recoverable works such the Enabling works), predominantly due to inadequate design information provided by tie for utility diversions and traffic management. Clause 35 does not ask for the Construction programme to be revised for each Change as it is initiated and evolves and then try to identify the impact on a case by case basis. Instead we have produced Construction programmes revisions which incorporate the Changes incurred in the reporting period.

This method has been adopted since inception of the original Contract programme and with the various iterations thereafter, this has also been utilised and accepted by tie for all associated Extension of Time requests submitted and agreed to date.

tie Bullet Point 7;

tie receive a detailed report, substantiation and other supporting information at a minimum on a weekly basis from CUS. CUS was initially submitting Change items as and when they occurred on a daily basis under cover of a letter, but at tie's verbal request, and to reduce the amount of correspondence, it was agreed between the parties that the Change items would be incorporated into the weekly reports. CUS considers this in compliance with the contractual procedures please advise us if you do not and if so why you sought to change the original procedure?

Considering the above along with the other items detailed in the previous bullet points we believe we have complied with Clause 38.5.

Clause 38

tie Bullet Point 1;

CUS have identified all the dominant delays that entitle us to an extension of time in the weekly progress reports. Events where an associated Extension of Time needs to be assessed are detailed as such in the notes section of the individual Estimates or covering letters.

tie Bullet Point 2;

The content of each Estimate we believe is sufficient based on the supporting documentation provided to determine which of Clauses 38.1.1 through 38.1.14 apply.

tie Bullet Point 3;

See our response to Clause 35 bullet point 6 above.

tie Bullet Point 4;

CUS are consistently providing tie with notification/information on a weekly basis that is compliant with clause 38.1 given the requirements of the Agreement.

tie Bullet Point 5;

See our response to Clause 35 bullet points detailed above

Clause 39

We concur that tie have not been forthcoming with any specific instruction to accelerate the works. tie has however instructed work outside normal hours on various occasions in order to meet critical deadlines. We consider this to be acceleration.

Clause 46

Changes for the week are attached to the back of each and every weekly report with the appropriate substantiation. This includes and is not limited to an Estimate summary and/or CVI/Record Sheets countersigned by tie and/or photo's and/or marked up drawings where appropriate.

For the majority of Estimates submitted since the 1st October 08 until now tie has not responded or failed to provide particulars on what element of the Estimate it considers to be non-compliant.

Content of attachments

Consolidated Overview

If tie considers the content to be factually incorrect we would be happy to view your records of events to facilitate meaningful discussion and progress.

CUS/tie/letter/TL/Projects/1315 dated 5th August 2008 was particular to one labour only Subcontractor and we maintain that the hours were representative for the full weeks work. This has since been rectified (in August 2008) and is certainly not prevalent in the weekly report submissions which commenced in October 2008.

Key Issues Register

CUS have produced and continue to produce reports and registers to identify areas of concern and items that need to be considered and addressed in order to facilitate the successful Project Management of the MUDFA project. Contrary to your statement, the Key Issues Register is not discussed in weekly meetings, neither is there any agreement to produce a fully detailed matrix with tie.

Quantity Tracker

The document is based on Revision 7.9 of the Construction Programme which, contrary to your statement, is the accepted Programme in accordance with Clause 35.6 of the MUDFA Agreement. This has been confirmed through further correspondence including letter Ref; CUS/tie/letter/TL/Projects/1726 dated 8th December 2008 and your acceptance thereof with letter Ref; PD CORR 176 dated 24th March 2009.

For your comments regarding adherence to Clause 35 and Schedule 1 please refer to Clause 35 above.

Concerning your comments for items (1) to (6) and further to that included within Clause 35 and Clause 38 above; items (1) and (2) are frequently updated and items (3) through (6) are predominantly incorporated on an overall basis, it is not a specific requirement that these are detailed separately and considering that no staff have been allocated to this in the current agreed staff numbers, we will require additional resources should you now wish to change this.

Individual Work Site Schedules

These reports were developed, initiated and are maintained by CUS and are not a Contract requirement. Due to the high volume of Change, TQ's raised and impact of Traffic Management it is not practical to generate Work Site Schedules for each individual Work Site.

Side Entry Manholes Status Report

Despite your comments to the contrary, this is relevant as the Side Entry Manholes have been incorporated into the Construction Programme where possible. Quantities and durations have had to

be estimated in many cases due to the extent of outstanding design and detail which **tie** has not been able to provide and which is a **tie** obligation.

The progress of Side Entry Manholes and resources required for each week are agreed in advance of the works required for the following week. This procedure has been implemented to ensure **tie** verification of resources and durations for this Cost plus Overhead and Profit recoverable item.

Overview Matrices

Similar to previous comments if **tie** does not believe any CUS submitted content to be factually correct we would be happy to view your records of events to facilitate meaningful discussion and progress.

Contrary to your statement there has been no discussion in the weekly meetings regarding their acceptability, therefore if there are any areas of disagreement they have not been brought to our attention.

tie continue to be inactive in this process which has ultimately been to the detriment of the project as a whole.

Linear Diversions Metres ahead/behind Programme

This information is derived from the Quantity Tracker and Rev 7.9 Programme, which again, contrary to your statement has been accepted by **tie** - our comments in this respect have been included above.

The programme slippage in terms of planned versus actual diversions completed is further highlighted and confirmed/verified through a separate measure (i.e. actual measures submitted by CUS and certified by **tie** on a monthly basis) and detailed in the monthly entitlement schedule submitted to **tie**, usually the second Tuesday following the last Friday of the month.

For your comments regarding Clause 38 please refer to our Clause 38 response above.

Resource "Consolidated Overview"

This is a repetition from the Consolidated Overview section already responded to under the Consolidated Overview heading.

Critical Path

For your comments regarding Clause 35 please refer to our Clause 35 response above.

The Primavera software automatically calculates the Critical Path based on the relationships detailed within the activities. **tie** receive an updated cost loaded programme which is provided under cover of a letter on a four weekly basis with the appropriate CD attachment in XER format. In Mr Stephen Miller's (CUS) absence, Mr Taryne Lowe (CUS) sought confirmation from Mr John McAloon (**tie**) whether the programme he receives on a regular basis has a Critical Path detailed. Mr McAloon stated that he could neither confirm nor deny this since files are provided in three separate parts and that he required certain links from Mr Miller to join the files before this could be confirmed. The **tie** statements in this respect therefore appear to be incorrect and uncorroborated.

Considering the above along with the other detail already provided to **tie** in accordance with Clause 38.2 **tie** will have to consider all the circumstances and make an assessment of delay and inform CUS accordingly.

Mitigation Measures

Contrary to your assertions we wish to confirm that our submissions are not ad hoc. The reports/submissions are collated on a weekly basis with the relevant supporting documentation. Contrary to your statement the implementation and payment for mitigation measures should not be dependant on CUS complying with Clause 35, 38 and 39. We request further details regarding your reference to Clause 37.3 as well as Clause 35, 38 and 39 with specific examples of where ~~tie~~ considers that CUS is non-compliant; this should be considered along with the issues raised in the content of this letter.