

Mr Steven Beattie
MUDFA Project Director
Carillion Utility Services
Western Harbour
Leith Docks
Edinburgh
EH6 6QF

Our Ref: DEL.MUDFA.12164.GB

Your Ref: CUS/tie/letter/TL/Projects/1726

Date: 17 December 2008

Dear Steven,

**EDINBURGH TRAM PROJECT - MUDFA
Extension of Time for Completion**

We confirm receipt of your letter, referenced above, received 8th December 2008 regarding the above and note your comments contained therein. We would however confirm that we do not consider the aforementioned to be notification of an entitlement for an Extension of Time, in accordance with the Agreement.

As stated in our letters reference DEL.MUDFA.12123 and DEL.MUDFA.12124 both dated 16th December 2008. Carillion (CUS) have failed to comply with the requirements of the Agreement. Accordingly, in accordance with Clause 38.5 of the Agreement, CUS are deemed to have irrevocably waived any entitlement to any extension of time.

Irrespective, the following comments are raised in respect of the content within your submitted correspondence.

In accordance with Clause 35 of the Agreement the Construction Programme any revisions are to be developed in accordance with Clause 35 and Schedule 1 of the Agreement. The CUS proposed revision 07.9 programme fails to comply with these requirements. As a result of the issues related to non-compliance with the requirements of Clause 35 tie have, in accordance with Clause 35.6.3, requested information and details to clarify and substantiate the CUS proposed revision 07.9 programme. The requested details and clarity required to satisfy tie's Representative as to the reasonableness of the CUS proposed revision 07.9 remain outstanding.

The CUS 'interim high level overview' submission attached to their letter is not in accordance with the requirements of Clause's 35, 37.3 and 38 and as such is unacceptable.

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As stated in our letters reference DEL.MUDFA.12123 and 12124 respectively, the contributing factors for the purported CUS delay have been neither agreed nor accepted.

In accordance with Clause 38.1, if CUS considered they were entitled to an extension of time, CUS should have within 10 business days of becoming aware of the circumstances, provided full and detailed particulars in justification of the period of extension claimed including, but not limited to;

- The cause of the delay
- The likely impact
- An estimate for the additional costs
- the mitigation measures adopted
- why the mitigation measures are unsuccessful
- any acceleration measures which the MUDFA Contractor could take to mitigate the effects of such delay and an estimate of the costs thereof.

To date, CUS have failed to provide any of the detailed particulars and justification required precluding tie from carrying out an assessment of the delay (if any).

The proposed assumptions/exclusions/caveats detailed within the CUS submission are, as confirmed previously, unacceptable.

- CUS have an obligation to take all reasonable steps to mitigate the effects of any delay to the progress of the MUDFA Works (reference Clause 2) which may include, but not limited to, weekend and overtime working. Failure by CUS to undertake all reasonable steps to mitigate the works may adversely affect any CUS entitlement for extension of time and any associated costs.
- The CUS submitted rates and prices include for connections, supply connections, thrust blocks, valves, testing and commissioning etc and as such are deemed included.
- Work Sites where Work Order Confirmations which have not been received prior to 1st January 2009 will not be evaluated on a cost plus basis, but in accordance with the Agreement, utilising the agreed rates and prices as appropriate.
- The number of Work Sites concurrently active is the responsibility of CUS who have an obligation to meet the Completion Date for the MUDFA Works in a safe manner taking cognisance of the applicable CDM regulations. The number of work sites concurrently active are not dependent upon the staff numbers. It is incumbent upon CUS to manage their work sites in a safe and competent manner throughout. Agreement on reimbursement of preliminaries shall not be considered as an implied, nor entitlement for, an extension of time.

- The level of labour required to meet the Completion Date for the MUDFA Works is the responsibility of CUS. We have no record of any staff/labour ratio clarification within the CUS tender and there is no such amendment or clarification within the Agreement. For the avoidance of doubt the labour required to meet the Completion Date for the MUDFA Works should be included in the Construction Programme and any amendment to same in accordance with Clause 35 and Clause 38 of the Agreement.
- Contrary to the CUS proposed position we confirm that all Work Sites are required to be incorporated within the Construction Programme, in accordance with Clause 35 and Schedule 1 of the Agreement. We confirm all Work Sites are to be programmed on the basis of the best available information at the time of production.


Furthermore, the CUS Construction Programme should be developed to ensure the interface and relationship with the commencement of the tramway construction works, by the Infracore Contractor, are clearly defined and identified, as required by the Agreement Clause 35, Schedule 1 Clause 2.7.19. Accordingly we await receipt of a CUS Construction Programme which is fully in accordance with Clause 35 and Schedule 1.

As stated previously, CUS have irrevocably waived any entitlement to any extension of time. Notwithstanding same we confirm, based upon the inadequate and insufficient information provided by CUS to date, we have been unable to assess or agree any extension of time.

In order to establish a baseline for the MUDFA Works to completion, in accordance with Clause 35.8 of the Agreement, we would advocate that CUS produce and provide a revised construction programme. The programme should include such modifications to the CUS Construction Programme as may be necessary to ensure completion of the MUDFA Works within the current timeframe for completion. The revised Construction Programme is to be fully in compliance with the requirements of Clause 35 and Schedule 1 of the Agreement and to be base dated 1st October 2008.

Should you wish to discuss or obtain further clarity on any of the matters referred to above, please contact the undersigned.

Yours sincerely,


Graeme Barclay
Construction Director - MUDFA

cc. Steven Bell, Dennis Murray, Jim McEwan, John Casserly, Thomas Caldwell,