
From: Fitchie, Andrew
Sent: 16 April 2010 21:45
To: 'rush_aj@[REDACTED]'; 'richard.jeffrey@tie.ltd.uk'; 'david.mackay@[REDACTED]'
Subject: Re: Private call from Michael Flynn.

Tony

Thanks for copying me in. Will reflect on flight tomorrow and input where I can.

Flynn must have Siemens management backing to say this. If his conversation with you last week has any logic, my read is that he asked for and took responsibility on wendensday to play it one more time the way BB wants on Wednesday and now has some attitude to say to BB ' your way is leading to only one outcome".

Well done to you and Richard.

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From: Anthony Rush <rush_aj@[REDACTED]>
To: Fitchie, Andrew
Cc: david_mackay@[REDACTED]; david_mackay@[REDACTED]; Richard Jeffrey <Richard.Jeffrey@tie.ltd.uk>
Sent: Fri Apr 16 21:02:04 2010
Subject: Private call from Michael Flynn.

Michael Flynn rang me this evening expressing unhappiness with the outcome of Wednesday's meeting. Paraphrasing a 30 minute call whilst I was driving on the M8 (handsfree):

He thought it unfortunate that the meeting got off on a bad start by discussing Clause 80.

He appeared to think that we should have been more receptive to splitting the job other than saying "it was a possibility".

He suggested that if matters were leading towards termination why didn't we just end it now.

I explained that the Clause 65 approach to On-street works was important and that Clause 80 and Clause 34 were essential and that there would be no cost plus agreement (over my dead body was the phrase I used). I emphasised that we would not issue a Permit to Commence Works unless we had their agreement to take instructions and the design was finalised with a simple programme.

I said that if he was smart he must have realised that on Wednesday all they had needed to do was to go ahead with us on a without prejudice basis and ask us to consider a payment on account.

I made him aware that we knew about their lobbying efforts and that it had been said we were being difficult at the meeting. I made it clear that I didn't see our job as being easy on them and that I was more than happy to have what we were doing scrutinised. I also made it clear that we knew what the friction was between BB and Siemens and that BB Germany was dictating policy to BB UK.

I said that whilst ending it now may seem attractive it isn't that simple.

He raised payment for the PSSA and I advised him that I thought they shouldn't go there - £13 million and £8 million appeared outrageous - it would have to be scrutinised to establish how the cost had increased from the original £2.8 million.

I confirmed that we had thought about splitting the job into two halves as he suggested with separate completion dates and LD's. But it would not be on a cost plus basis and they had to accept the fact we can give them any instruction which didn't put them in breach of contract.

He mentioned that the last reduction in certificated value had for the first time affected Siemens. I (think but maybe not because I had just spoken to Richard about the same point) pointed out that they had never instigated DRP on certificates.

In the end he confirmed that he would be asking Siemens Germany to lean on BB Germany – he expected to buy a month's respite. (I suspect this dialogue has happened). He said that there had to be give and take on both sides. I said I realise that but there will only compromise and changes when BB have stopped their delinquent behaviour.

I said time was of the essence. Every time BB lobby attitudes get harder against BB and I said I had noticed a very much harder attitude from stakeholders on Wednesday (which was reflected by Richard and me) than had existed the week before. I said that I thought their lobbying just got peoples backs-up. Nobody will want to take responsibility and they don't appreciate being asked to.

He asked me if I would meet him on a one-to-one private basis next week to see whether together we could come up with an agenda for change. I confirmed that I would be happy to but I would like to have time to gauge my client's position – I didn't want to come up with something that wouldn't have a chance of success. Moreover, I had to see what damage Donald Anderson was doing - it may be that compromise becomes impossible.

Michael will come back to me with dates we can meet in London.

No doubt we can discuss on Monday. I will be in Citypoint at 930 – I have to leave at 1030 but I will be back after lunch

Tony