
From: Stewart McGarrity
Sent: 22 February 2010 13:24
To: Geoff Gilbert ([REDACTED])
Subject: Information - Private & Confidential
Attachments: SchedulePart4-Pricing_final13.05.PDF; BBS Deal 201207.doc

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Geoff,

Attached is the text of the Weisbaden agreement as finally concluded on 20/12/07. The pdf of the actual signed document is 12mb so I won't send you that. The wording which has given us problems is at 3.3. To help your memory the sequence of events around the date was.....

The draft Weisbaden agreement on 19th Dec 07 read:

3.3 *Detailed designs – BBS included in their price for the construction cost risk in the development and completion of detailed designs being prepared by SDS, save for:-*

- a) *Any future changes to elements of the design intent for civils works that are substantially different compared to those forming the current scheme being designed by SDS, as typically represented by the drawings issued to BBS with the design information drop on 25th November 2007.*
 - b) *Items designated as provisional in the Appendix A4.*
 - c) *Excluded items, to the extent described in 3.4 below.*
- In respect of footways, full reuse of existing kerbs and flags and minimal reinstatement behind kerb lines is assumed. i.e. not wall to wall. Design must be delivered by the SDS in line with our construction delivery programme previously submitted.*

On 19/12 at 08:37 R Walker wrote to you:

.....Secondly, having consulted with my team and reviewed e mails and meeting minutes, our firm price including the additional £8m to fix the 'variable' sums noted in our tender is based on all the additional information which we received from SDS via the 4 No. CDs. The last of which was delivered to us on 25th. November 2007. We therefore insist that our contract be related to this.

On 19/12 at 11:43 you replied:

.....Regarding your second point Scott [McFadzen] has had a discussion with Matthew [Crosse]. Based on that discussion there would be no reason to change the current wording on design – which was acceptable to you yesterday. Scott I've left a message for you to contact me. We need to close this out now if we are to move forward and so that I can brief the Tram Board and CEC correctly.

[The TPB was on 19th December 2007.]

On 20/12 at 06:07 R Walker wrote to you:

We still have issues with accepting design risk. We have not priced this contract on a design and build basis always believing until very recently that design would be complete upon novation. With the exception of the items marked provisional which we have now fixed by way of the 8 million we cannot accept more drain [drain?] development other than minor tweaking around detail. Your current wording is too onerous. Trust we can find a solution.

On 20/12 you circulated the final Weisbaden agreement wherein the design development clause read:

3.3 The BBS price for civils works includes for any impact on construction cost arising from the normal development and completion of designs based on the design intent for the scheme as represented by the design information drawings issued to BBS up to and including the design information drop on 25th November 2007. The price excludes:-

- a) Items designated as provisional in the Appendix A4.
- b) Any material changes to the design resulting from the impact of the kinematic envelope of the CAF tram vehicle on the civils design.
- c) Excluded items, to the extent described in 3.4 below.

In respect of footways, full reuse of existing kerbs and flags and minimal reinstatement behind kerb lines is assumed. i.e. not wall to wall. Design must be delivered by the SDS in line with our construction delivery programme previously submitted.

For the avoidance of doubt normal development and completion of designs means the evolution of design through the stages of preliminary to construction stage and excludes changes of design principle, shape and form and outline specification

The genesis of the wording highlighted and what it was meant to mean is at the crux of the matter. I've also attached the final pricing schedule for your reference wherein the design development clause is subtly different again.

Fun, fun, fun!

Regards,
Stewart

Stewart McGarrity
Finance Director
tie Limited
Mobile [REDACTED]

From: Geoff Gilbert
Sent: 20 December 2007 14:07
To: Richard Walker; Wright, Stephen
Cc: Matthew Crosse; Steven Bell
Subject: BBS Deal 201207

Richard

Electronic copy of the agreement.

Regards

Geoff