
From: Dennis Murray
Sent: 25 April 2008 12:04
To: Geoff Gilbert
Subject: RE: Issues

Thanks Geoff

From: Geoff Gilbert
Sent: 25 April 2008 09:47
To: Dennis Murray
Cc: Steven Bell; andrew.fitchie@dlapiper.com; Susan Clark
Subject: RE: Issues

Dennis

1. Fluctuations should not be applied. This has never been raised before so is another late try on in my view. As you say the rates in the schedule are those tendered and are inclusive of fluctuations. We only have rates for civils so it should not be an issue for Siemens.

2. Have discussed this with Andrew who was going to speak to BBS lawyers on this. I put the point to Steve Reynolds and he said that it was BBS who were insisting that the claims are paid in full before novation. I think BBS just want clarity on settlement. It is not correct to say there is no mechanism for payment. The settlement agreement is part of the contract and as such payment could be made in the normal way through the Infracore contract. Another way would be to add it to the Collateral Warranty for tie to pay direct. Would rather not do this unless we have to as the settlement agreement formalises the inclusion of the DMP into the SDS Agreement (or at least the prior version). A strong no - at least until we get what we want on the inclusion of my latest drafting for 4.6 of the novation agreement.

Regards

Geoff

From: Dennis Murray
Sent: Fri 25/04/2008 08:29
To: Geoff Gilbert
Cc: Steven Bell
Subject: Issues

Geoff,

Two issues have arisen that I need to talk to you about.

- 1) BBS have now requested that they apply Contract Price Fluctuations to the Schedule of Rates that they submitted before to cover fluctuations on cost of tie changes. This is complete rubbish as far as I am concerned since we have a lump sum fixed price including the schedule of rates. I assume that our Tender Enquiry and any submissions were on the basis of fixed price.

Any comments?

- 2) SDS's position on the figure to be certified and paid at Novation date is that we have to agree and pay all claims (which in their view is payment claims not Claims with a capital C. They say that this is the intent of Clause 8 of the Novation agreement and that they do not have a mechanism going forward to be paid for changes that occurred pre Novation.

Any comments?

Could you please call me to discuss these points

Thanks

Dennis

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