From: Steven Bell
Sent: 25 April 2008 12:16
To: Susan Clark; Geoff Gilbert; Fitchie, Andrew; Damian Sharp
Subject: RE: Schedule 14

In my reading, the Method Statement Review is already drafted as in part B and referred to in part A.

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From: Susan Clark
Sent: 25 April 2008 09:02
To: Steven Bell; Geoff Gilbert; Fitchie, Andrew; Damian Sharp
Subject: RE: Schedule 14

All

I agree with Geoff's comments.

Looking at the schedule again, should we include the Method statement review policy in schedule Part 14?

Susan

Susan Clark

Deputy Project Director - Tram

.....

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From: Steven Bell
Sent: 25 April 2008 08:47
To: Susan Clark
Subject: FW: Schedule 14

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From: Geoff Gilbert
Sent: 24 April 2008 23:28
To: Fitchie, Andrew; Steven Bell
Cc: Damian Sharp; Dennis Murray
Subject: RE: Schedule 14

Andrew

Agreed. I am uncomfortable with these proposals. It looks to me to a rather disingenuous and cynical attempt to put more risk back to tie around incomplete designs. Namely:-

1. Removal of the process takes away the contractual obligation for submissions by SDS and Infraco to follow the process set out in the DMP with all the safeguards and time periods for review agreed with CEC.
2. It improves Infraco's entitlement to CEs under contract clause 19 where CEC reject prior approvals.
3. If you look at the amendments to the Review Procedure BBS propose that where its necessary to issue the SDS designs that are not fully design assured to meet the programme then tie instructs. Where the final design is different then it is a mandatory change i.e. tie take all the risk for the design being wrong potentially. This goes further than the pricing assumptions in respect of designs in schedule 4. It means that any differences whether due to prior approvers preference, design error or breach of SDS's design obligations.
4. tie cannot object to the design if it would result in a notified departure under Sch 4 - this is too blunt we need to be able to control the process to cost.
5. Where the design is issued early in this way it is deemed to be the IFC issue date and lets SDS off the hook for LDs and I'm sure from SDS perspective their bonus!

I do wonder who the real author of all this is. It looks too sloppy for Suzanne e.g. undefined capitalised terms.

These are the headlines, there is more to object to in the proposals. All in all I don't believe we should accept this. We have spent a lot of time getting the DMP right to overcome past problems, it is the process agreed with all parties including CEC and it is embedded within the SDS Agreement via the claim settlement agreement.

I agree with Andrew's tactic. But I really think that this change should be rejected point blank.

The position is I think that:-
1. This is a technical issue and not a legal one. BBS have had this document for some time and have previously stated that there were no major technical issues with it.
2. The Deliverables referred to in clause 10 are more than just the design deliverables - it must apply to method statements, programme, technical submisions etc which tie is entitled and must review. Indeed the BBS mark up of the review procedure expects that this is the case.
3. The DMP is an established and agreed process that has been put in place to ensure efficiency of review. The operation of various aspects of the contract require it and so it stays as it is. We will include the BBS requirements for parallel review etc.
4. The contention that the Consents programme is a substitute for the DMP is just plain wrong. The Consents programme is a schedule of dates not a process.
5. We are paying BBS and have selected them on the basis of their professed capability to control the design process and integrate it with their works to deliver the system.

Andrew - I would welcome your view on my interpretation. Happy to discuss.

Regards

Geoff

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: Thu 24/04/2008 18:24
To: Steven Bell; Geoff Gilbert
Cc: Damian Sharp
Subject: Schedule 14

Gents

I will provide comment on this proposal from BBS during the course of tomorrow. It is essentially not a legal issue so I find it peculiar that it is being driven by legal advice.

One point that it would be worth pointing out is that Clause 10 and Schedule 14 at bid submission and all the way through to PB appointment had virtually no mark up. Clause 10 was accepted wholesale (with one to permit relief if a Deliverable was not accepted where an Approval body was being unreasonable. This is fully covered n Clause 19.

Post PB the clause (but not the schedule itself) remained for months with "BBS to review" next to it. Nothing was ever put forward in the negotiations -Geoff? -with ample opportunity to do so.

One not too subtle but legitimate option, therefore, would be to await generally feed back on their review gauge the issues that are sticking and then to hard ball this one immediately. If it has taken them the best part of a year to get worried about this, it cannot be that critical.

Kind regards

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