

Commercial Meeting

20 April 2007

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Summary of discussions

1 Current long list of historical claims/ change orders need solving equitably.

If the current list cannot be easily and quickly resolved because of the lack of clarity of the contract boundaries (and as differently interpreted by both SDS and tie), the following might be an appropriate course of action:

- Seek to group the unresolved claims into logical groups, based on the contract area on which the claim hangs, e.g. outside the LOD, outside the scope etc.
- Ask an independent expert to read the contract, then to provide an 'in principle' opinion on each of the groups of claims.
- To the extent possible, use the 'in principle' opinion to make quick and unambiguous decisions on the validity and quantum of each of the claims.

2 Future claims and change orders are undesirable

Over the remaining course of the contract, potentially a further 12+ months, it is possible that many further claims and change orders will be presented. The difficulty for both parties is that:

- It will create a major distraction away from the core activities of the project team and potentially cause tension and an unhealthy tit-for-tat ethos between key staff.
- The preparation and defence of commercial claims is costly and time consuming. It will divert useful senior technical and commercial resources, which would otherwise be far better employed finding design and programme solutions that result from the issue in the first place.
- It creates uncertainty for both sides in respect of the AFC, makes it difficult to plan resources and budget allocation.

3 Cooperative working is the only way our goals will be achieved

The five key goals of the projects require total commercial alignment, cooperation and flexibility between the parties. The five goals are:

- Ensuring that design outputs are able to be prioritised and flexed to meet the Advance Works and MUDFA programme.
- Ensuring that all Design Deliverables and Approvals etc are achieved on time.
- Value engineering of designs to ensure overall project achieves budget and DFBC objectives, whilst maintaining current risk balance.
- Providing responsive support to bidding process and ultimately getting the most competitive deal from Infracore and Tramco bidders.
- Ensuring novation and financial close is achieved on budget and programme.

These objectives are difficult to achieve in the context of SDS' fixed price contract where SDS are suffering and exposed to losses. It means that SDS is naturally driven to recover their commercial position through aggressive claims, changes and variations.

A zero claims commercial environment is therefore desirable for achieving these goals.

4 The goal should be to agree in advance, a single settlement for future claims and changes.

The majority of historical and potential future claims are time based compensations for SDS resources which can, to a degree, be anticipated over the remaining period of the contract. A commercial strategy that seeks to develop a fair and fixed price settlement reflecting the likely average outcome of all future claims and changes to the end of the contract. An approach might include:

- Using historical averages to develop an algorithm to derive a sum.
- Using an independent expert's opinion on the principles of the contract (as referred to in 1 above).
- SDS estimating the impact on critical resources costing and programme end dates.

5 Retaining an incentive to perform is important to tie and the Board

Any fixed settlement arrangement must include appropriate incentives to perform and to achieve the five objectives in 3 above.

- VE benefits might link SDS rewards to the level of savings achieved
- Time based incentives based on achievement of critical deliverables milestones will be important.
- The final novation milestone may also trigger a final payment sum

6 Strategy to close out current claims and move to a zero claims environment

The attached chart seeks to map out the process for completion of a settlement. This has been developed since the meeting.

7 Other business and actions summary

- SR to consider the approx quantum of third bullet in 4. above
- New review and self assurance process: D Crawley + others to visit Birmingham office on Wednesday 25th April. SR to confirm details directly.
- New dash board. First outputs to be prepared by 27th April. SR
- Critical issues metric for Andrew Holmes with and without admin close out. SR

Matthew Crosse
23 April 2007

SDS/tie Commercial Settlement – Discussion Development

Prolongation claims

