

Colin Smith

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Sent: 27 February 2011 15:57
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group.co.uk; dave.anderson@edinburgh.gov.uk; steven.bell@tie.ltd.uk; 'Jim Molyneux'
Subject: RE: Thoughts on Mediation - legally privileged - FOI(S)A exempt

Brandon,

I am putting together what would amount to my crib-notes for tomorrow's meeting. I can be contacted on a land-line ([REDACTED] extension 103) and will make myself available to be linked in by call from your end if required.

Phoenix 1800m

In reviewing the Infraco proposal with Jim we think that it is necessary to have in mind a number of factors:

1. The cost of Separation will be substantially more than forecast by tie in their "Deck chair" presentation. A prudent estimate places the potential cost as being between £765 million and £800 million. *Separation £1200m*
2. The Infraco are now in possession of sufficient information to give a fixed price in the manner an experienced design and build contractor would do.
3. The Infraco's spokesman for Project Carlisle agreed that even at that time the Infraco were able to evaluate a fixed price for the civil engineering works. But he could not vouch for Siemens work.
4. The offer sets out to de-risk the risks the Infraco have created by poor design management and the difficulties of integrating the Systems design with the Civil Engineering Design.
5. In normal circumstances it would require at least 4 weeks intensive work to review and report on the risks to the Client.
6. There are risks, some of them substantial, that the Clients would have to appraise and allow for.
7. Only £5 million of the increase of £15 m in Bilfinger Berger's Offer (Carlisle to Phoenix) arises from direct costs. All of that de facto arises from miscellaneous costs which are referred to as "Other Off-street works". The balance appears to relate to extended preliminaries.
8. The price can be reduced by £5 million for On-street works which we do not now require.
9. There is (again) no explanation of Siemens's price. There is a general increasing of price and some new heads including a new item of £3.129 of Finance Costs.
10. CAF have made substantial increases and introduced an additional 3.3m Euros for delay (other than storage) which in light of the fact that they have been working in isolation gives the impression that CAF are the most hostile Infraco Member.
11. SDS is the most detailed submission and changes little.
12. The price is capable of being reduced but it is the conditions and qualifications which are more so of the essence to an agreement (see below)

13. The Bilfinger Berger price is substantially greater than current market price and greater than they would be entitled to under the current terms of the Infraco Contract. The risk for the Clients is that by rejecting their offer increased costs of delay will accrue which may outweigh the difference between entitlement and what could be negotiated through Phoenix – this is a key consideration for the Clients.
14. The Siemens Price appears to include for £50 million of contribution to their divisions and Germany; £3 million of Finance Costs despite being paid £22.6 million in advance; and £3.656 million of risk allowance.
15. Siemens's original price amounts c £68 million compared with their Phoenix claim of £136.5 m (excluding changes) – that is double. Unlike Bilfinger Berger there is no Schedule Part 4 BBDI to IFC reasoning behind this change. Siemens work has changed little since tender which is confirmed by their claim only for £2.165 million of Changes. What has changed is the Euro/Sterling Exchange Rate and metal prices. There is an obvious increase to Siemens in the track work arising from detailed elements of work they did not allow for and for which they now seek to minimize their risk and recover their tender errors.
16. Siemens actual time related overheads will be relatively small – their price is effectively a retender.
17. There is already an independent competent person to satisfy – the Independent Competent Person - which requires the Infraco to issue Design Assurance Statements. It should be of the essence that they are obligated to do that and only be entitled to Changes which arise after the IFC's are approved and are not required to satisfy the ICP.
18. To properly consider their Phoenix Price before 8 March we would require:
 - More detailed explanation from both Siemens and CAF of the increases between the Contract Works Price and the Phoenix Price.
 - The original tender make-up notes for Bilfinger Berger and Siemens including the tender make up from BAM.
 - A Design Risk Assessment for the PPP Drawings (required by CDM) which identifies the risks in obtaining ICP agreement to operate the ETN.
 - A detailed schedule of materials and equipment referred to in item 30 on page 148 of the PPP.
 - Detailed explanation of mitigation measures adopted in their Phoenix Programme.
19. Exclusions/qualifications: [to follow]
20. There is nothing new in the Infraco "case" which should detract from the confidence in the 10 RTN's. Maybethe mediation and pending adjudication; will provide more information and the individual concerns we all have may be assuaged. Whatever, the final Underperformance Warning Notice has to be issued by the 9 August 2011.
21. The PPP is a "contractor's claim" and can be reduced but the conditions are of the essence to an agreement.

Tony