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From: Steven Bell
Sent: Thur 01/05/2008 7:36:01 PM
Subject: tie Requirements
010508 negotiation.doc

As part of the preparation for Monday, I have distilled the thoughts from the team. The attached document is the thorough listing and I want to think through the best "Top 10" for discussion and agreement tomorrow morning.

(constructive) Comments welcome

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Control Number : Fathom-01-00104359
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There are 3 main groupings of tie Wants

1. Contract
2. Risk / liability
3. Commercial / Financial

1. Contract		
1	General requirement to close at tie's final draft subject to DLA finalisation by Saturday. SB/AF/DM reviewed tie positions 01/05/08.	
2	All subcontractor Collateral Warranties negotiated properly and fully by BBS. No commentary / non acceptance is permissible..	
3	BBS collateral warranties delivered by BBS to NR, EAL, CEC, TEL and other parties under Clause 28	
4	BBS withdraws all points on SDS Novation Agreement (schedule 23) other than housekeeping.	
5	BBS accept tie position on Schedule 14 and DMP as proposed by tie.	
6	All remaining points on Infraco contract not covered on PM/BB/DLAP conference call on 30/04/08 closed as per tie position released on 27/04/08.	
7	CAF joins consortium on tie's terms, including indemnity, PCG adjustment and any other adjustments to InfraCo contract.	
8	EAL Works schedule 44 as set out by tie.	
9	Bonds to reflect full calculated % value of Construction Works Price	
10	All outstanding information to be provided by BBS in tie agreed form	

2. Prioritised Re-Set of Risk/Liability Balance	
1	BBS take all risk of cost/ delays/ claims on quality of SDS design. Compromise: they take first £20m on each and every claim arising from design deficiency. BBS
2	BBS take first £10,000 of delay cost (above and in addition to SDS LADS) resulting from SDS failure on every IFA up to cap of £1.5m so that tie are protected up to £2.5m. BB
3	Risk "pot" (TPA uninsured Eco loss) tie takes £1.5m at date of RC + interest on £3m from Effectives Date to RC date. BBS
4	No SDS "mark up" at all BBS
5	NR Liability Caps: £40,000 → £60,000 (16.72. 16.73) £500,000 → £750,000 £750,000 → £1,000,000 S
6	QCL Threshold: £150,000 → £400,000 (84.41) BBS
7	Liability Caps <ul style="list-style-type: none"> • Overall cap 20% → 30% • Third party claims arising from latent defects £9m → £15m • Liability cap during Maintenance period £3.5m → £6m • BBS
8	No benchmarking (Post Reliability Certificate) at all S
9	Phase 1(b) – committed rates/prices BBS

3. Commercial / Financial		
1	Agree Schedule 4 as tie Draft (Appendix G as tie currently drafted). Explicitly no contract indexation adjustment.	
2	Milestone schedule: utilise BB version and BBS accept mechanism proposed for certification of milestones.	
3	Construction Support Proposal as agreed by tie	
4	Programme Assumptions submitted as required by tie email on 30/04/08.	
5	Confirmation of no claims at Contract award.	
6	Value Engineering guarantee of min ~£8m irrespective of qualifications.	
7	Provide "discounted" first 3 months of any Compensation Event at no cost to tie (like rent free period?)	
8	Payment of any increase biased 20% satisfactory mobilisation on first 3 months and 80% Sectional Completion D? Ratchet incentivisation to system opening and number / value of Compensation events?	
9	Consider Cap on Consents Delay	
10	Ground conditions / contaminated land (£3.5m in QRA)	
11	Road Reinstatement (Cap at £2m cost of notified departure?)	

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