
From: Reynolds, Steve
Sent: 07 March 2008 09:18
To: Ayres, Greg
Cc: Glenn, Stuart; Atkins, Chris
Subject: RE: SDS Novation

I will as you say bring you up-to-date with all the issues at our meeting this morning. The central point from my point of view is that **tie** has yet to conclude its negotiations with BBS including agreement on the scope of work and programme for what is actually going to be constructed. In the absence of any agreement on contract scope and programme and consequently no analysis of misalignment between the SDS Design and a final BBS Offer there is no prospect of signature of any Agreement. at this stage.

Steve

From: Ayres, Greg
Sent: 07 March 2008 09:00
To: Reynolds, Steve; Atkins, Chris
Cc: Glenn, Stuart
Subject: RE: SDS Novation

Steve

See you at 9am. Contrary to Mr Gallagher's assertion, PB is not an impediment to progressing the BBS contract through signature of novation .

Both the PCG and LD issues are impediments of tie's own (and recent) making, caused by their undisciplined and protracted procurement processes. Subject to you taking me through the latest details of the novation this morning, we respond that we are prepared to sign the version we reviewed on Tuesday, with no PCG, no acceptance of LD's without addressing the "each and every" limit in the contract as signed, full payment of our claim and work completed to date, and an agreed payment schedule for the VE and reconciliation of design re the SOW/employers requirements differences between BBS "as bid" , RFP and PB design approved by tie.

Additionally, from today's meeting, we need to produce a one page briefing for Stuart ahead of our meeting with Willie.

Regards

Greg

From: Reynolds, Steve
Sent: 06 March 2008 13:20
To: Ayres, Greg; Atkins, Chris
Subject: FW: SDS Novation

This just in

Steve

From: Jim McEwan [mailto:Jim.McEwan@tie.ltd.uk]
Sent: 06 March 2008 13:00
To: Reynolds, Steve
Cc: Steven Bell
Subject: SDS Novation

Steve

Willie is proposing to send an email to Tom O'Neill today (text as attached) reflecting his concerns and seeking his assistance in ensuring the finalisation of the SDS novation. I've suggested that he hangs fire on this and that I approach you with a view to understanding where you are in the confidence stakes on meeting the timescale of ensuring the agreement is signed by Tuesday. It has been made clear that the City of Edinburgh Council will not sanction the programme going ahead without this novation, if we do not achieve this by next week then there is a likelihood of a commissioned investigation by Transport Scotland to understand the continued viability of the scheme and the substantive reasons as to why we have been unable to bring this to contract close.

Whilst there are other issues which remain to be resolved, the SDS Novation is key amongst the outstanding matters and from my perspective, thanks to the constructive and co-operative dialogue of the last 2 weeks, the only remaining issues to be resolved in achieving said novation are PCG and Liquidated damages

I would be grateful if you would confirm today agreement with my synopsis here and give assurance that predicated on a reasonable position being taken by both sides on the outstanding 2 issues that you are 100% confident that we will achieve the novation by Tues 11th March 2008.

Kind regards

Jim

Tom

My team have held a series of meetings with your representatives over the last 2 weeks with a view to clarifying and resolving all of the residual issues which may have impeded the required and contracted novation of the SDS contract to BBS. My understanding is that all of the associated warranty issues have been resolved, a process for the resolution of any misalignment between the SDS design, the Employer requirements and the Infracore proposals has been agreed, which in turn should help align and assure any scope concerns and that the SDS Novation agreement has been drafted and reviewed/ revised and is at or nearing its final form. Two primary issues remain to be resolved and these are the matter of Liquidated damages (cap and runrate) and the matter of a Parent Company Guarantee from SDS as requested by BBS. My team are meeting with Steve Reynolds tomorrow to hopefully clear these issues, and I would look for your support in ensuring that a reasonable position is reached on these.

Predicated on the satisfactory resolution of these two remaining items, your assurance is now required that the novation agreement will be signed and delivered by no later than Tuesday next, 11th March, from my perspective there are no apparent obstacles to this other than those outlined. The City of Edinburgh Council will not proceed with the Tram Programme in the absence of this contracted novation and it is imperative therefore that the target date is met, failure to meet this will have potentially damaging consequences to the Programme and such failure would be subject to the closest public scrutiny.

I would be grateful if you would review this matter urgently and give me your earliest response.

w

Employers Requirements Warranty – Agreed Position

Infraco Proposal and SDS Design Alignment – Agreed Position

Warranties under Clause 4 of the Draft Novation Terms - Agreed

Liquidated Damages and Liquidated Damages Cap Level

- 5.1 tie to provide a copy of the latest Infraco Contract to SDS
- 5.2 tie to release the current draft of Schedule 4 to SDS. SDS to note that this does not represent the agreed position.
- 5.3 SDS are currently reviewing the BBS quality management system documentation provided.
- 5.4 BBS advised that their agreement to the above is subject to the speedy and satisfactory resolution of the Depot Equipment. If elements of the Depot Equipment are to be given to CAF then BBS will require the LDs position and design relationship with SDS to be revisited.
- 5.5 SDS and BBS to review the draft PCG provided by DLAP.
- 5.6 tie advised that space will continue to be offered free of charge to SDS post novation
- 5.7 BBS to provide a draft purchase order to SDS.
- 5.8 Construction support required by BBS from SDS to be finalised.

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