
From: Richard Jeffrey
Sent: 02 December 2010 13:06
To: Mandy Haeburn-Little
Subject: FW: confidential

For info

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From: Alastair Maclean [mailto:Alastair.Maclean@edinburgh.gov.uk]
Sent: 02 December 2010 11:53
To: Richard Jeffrey; Donald McGougan
Cc: Tom Aitchison
Subject: RE:

Many thanks - I agree entirely with your analysis of what is likely to happen tomorrow.

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From: Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]
Sent: 02 December 2010 11:39
To: Alastair Maclean; Donald McGougan
Cc: Tom Aitchison
Subject:

Alastair, Donald,

Assuming the planned meeting with BSC goes ahead tomorrow, I thought you might be interested in my thoughts in preparing for the meeting.

We do not know how open BSC will be with a note taker present, but we assume they will adopt the following approach;

- What might be BSC's objectives for the meeting?
 - They are rational, commercial organisations, so their principal objective is to maximise their commercial position.
 - To soften up CEC and convince CEC of the 'weakness' of CEC's position and the strength of BSC's position. Such an approach is to their advantage whatever course the contract takes, whether it is litigation, mediation to find a mutually agreed termination, or carrying on.
 - To present the consortium as united and to seek to create divisions within the different parts of the client
 - To seek to elicit any information on the likelihood and timing of any decision on Termination of the Infraco Contract or any other course of action that tie/CEC are considering including appetite for mediation.
- What tactics might they adopt, what arguments might they deploy?
 - That tie knew full well at the time of contract signature that this was not a fixed price contract
 - They were surprised at the council report that talked of 95% fixed price, they never believed the contract offered that level of price certainty
 - That tie have failed to understand or accept the basic principles of the contract, and that DRP findings support this (the most recent one earlier this week on landfill tax has been found in their favour)
 - In particular that tie have not accepted the responsibility for the cost of changes (BDDI-IFC) and management of the process of change (clause 80), again supported by DRP findings

- That the main causes of delays are all to the clients account, utilities, design changes, delays in agreeing design changes, delays in approving design
 - That their action in ceasing / abandoning works in October is only the consequence of their correct contract interpretation and not an attempt to pressurise tie/CEC
 - That tie have not kept CEC fully informed, either at the time of contract signature or subsequently.
- Given that we agreed that this meeting was for CEC to be in 'listening mode' I do not think it wise to get into any counter arguments, but if you want briefing again on any of them, please let me know.
 - I apologise for stating the obvious here, but regardless of your personal views on the strength of the contract, the way in which it has been administered, or the strength of our position, it is vital that you do not give any hint of accepting their version of events, to do so will simply strengthen their resolve whatever course of action is followed. They will be looking for signs of weakness and dissent. I would ask you not to rise to any of the bait that Walker will throw down.
 - It will be interesting to see their proposal on a way forward. With a note taker there it may be difficult for them to say anything other than they want to complete the tram, at least to a sensible mid-point. I do not believe that this is necessarily their jointly held and settled position. I do not believe the consortium has a settled position, but they may all know what they want for their own companies. Contractually and commercially it would be difficult and unwise for them to say what they really want at this stage in the process.
 - They will seek to impress upon you the need for any mediation to be directly with CEC, rather than tie.

Happy to discuss,

Regards

Richard

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