
From: Richard Jeffrey
Sent: 10 December 2010 13:09
To: AJRush; Mandy Haeburn-Little
Subject: FW: JD meeting with BSC

For info.

I will discuss with Jenny Monday am

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From: Richard Jeffrey
Sent: 10 December 2010 12:49
To: 'Jenny Dawe'
Cc: Tom Aitchison
Subject: RE: JD meeting with BSC

Additional notes,

- Whilst I have up to this point advocated listening only, it is important that being passive is not interpreted by them as accepting their view of the world, indeed I am coming to the view that some assertiveness may be well placed
- If Jenny is not used to dealing with Germans, it may be worth getting a briefing from someone who is. The culture is very direct, and they understand directness in return, they do not always pick up on some of the British understatement. Just to be clear, Keysberg is very charming, and Schnependahl is very quiet, so I do not mean they are rude or aggressive.
- It will greatly strengthen our position if Jenny shows strong solidarity with tie.
- Any arguments about the contract, however valid, do not excuse BSC's behaviour (e.g. design –the 'secret' agreement between BB and SDS; lack of progress or 'holding to ransom' - Keysberg actually said this). BB have said from the beginning 'this contract will never get a tram built', they have made no effort to try to make it work. Here BB and Siemens are different.
- They may talk about trust, integrity and honour. You might ask, as demonstration of their good faith and trustworthiness, that they give you a copy of the secret agreement between BB and SDS, which they have admitted exists, and Siemens are very keen to point out that it was only signed by BB. This would be a very aggressive step and is a point of real difference between BB and Siemens! You might also ask about the ongoing press briefings by Donald Anderson which are now little short of a smear campaign (which Richard Walker claims he is not sanctioning but does not deny, indeed he tells me that he thinks Donald Anderson might now be conducting his own campaign, but Walker is afraid to rein DA in as he 'does not want to make an enemy of him')
- They may talk of pre-contract agreements, we have investigated this and so far found no evidence, do they have any evidence to support this? otherwise it starts to look like defamation.
- They have often tried to personalise issues, in particular they don't like David Mackay, Tony Rush or Steven Bell (or me I suspect), this is unfair and misses the point. It is also true that their team have not always acted consistently, I suspect because they do not have a commonly held view on matters.
- Any suggestion that they have been delayed by tie/CEC (e.g. design approvals, utilities etc) is only half the story, and is seeking to cover up their own deficiencies. They may raise tram stops and Murrayfield underpass, both of which are their current 'cause celebre', but we suspect not as black and white as they claim. You may ask if the design has been delayed at all by lack of co-ordination or information flow within/between the consortium members
- Any suggestion by them that their behaviour is driven by concerns that they will not be paid what they are due is disingenuous, they have a cast iron guarantee from CEC
- Tie has been flexible in agreeing the on-street agreement for Princes Street (on which BSC have badly let us down) and offering to amend the contract to achieve project Carlisle

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- Key elements of any 'deal' going forward must be a completed approved design (which they claim they have submitted but the correspondence trail is clear, they have not submitted anything capable of being approved), and price certainty.
- CEC welcomes the move towards mediation, but remains resolute in its support of tie and its administration of the contract

Regards

Richard

From: Jenny Dawe [mailto:Jenny.Dawe@edinburgh.gov.uk]
Sent: 10 December 2010 08:42
To: Richard Jeffrey
Subject: RE:

Thanks Richard, much appreciated.

From: Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]
Sent: 10 December 2010 08:36
To: Jenny Dawe
Subject: FW:

Andy, copy of the briefing note provided by me to Donald/Alastair for their meeting with BSC. Nothing has really changed here. I will also forward the latest correspondence on mediation.

From: Richard Jeffrey
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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