
From: Marshall Poulton
Sent: 05 August 2009 09:01
To: Alan Coyle
Cc: Nick Smith; Gill Lindsay; Colin MacKenzie
Subject: RE: EDINBURGH TRAM: FCL MEETING 3 AUGUST

Hi Alan

I bumped into Gill this morning and I know she is arranging to get comments back to Tie. Likewise, I burned the midnight oil last night and I'll be getting my comments to Tie before the noon deadline, I'll copy you all in the reply.

Regards

Marshall

From: Alan Coyle
Sent: 05 August 2009 08:49
To: Gill Lindsay; Colin MacKenzie
Cc: Marshall Poulton; Nick Smith
Subject: RE: EDINBURGH TRAM: FCL MEETING 3 AUGUST

All

We have to ensure this is fed back to tie ASAP, has this already happened?

Regards

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Phone ([REDACTED])

From: Gill Lindsay
Sent: 04 August 2009 15:16
To: Colin MacKenzie
Cc: Alan Coyle; Marshall Poulton; Nick Smith
Subject: FW: EDINBURGH TRAM: FCL MEETING 3 AUGUST

From: Gill Lindsay
Sent: 04 August 2009 15:12
To: Colin MacKenzie
Cc: Alan Coyle; Marshall Poulton; Nick Smith
Subject: RE: EDINBURGH TRAM: FCL MEETING 3 AUGUST

Thanks Colin
Apol Marshall and Alan.

I have quickly considered the folders of papers and it is not immediately obvious that there is very high level clear corresp/document ie

Clear letter of recommendation from Tie and approvals to initiate, clear note of value
Clear letter from DLA confirming prospects of success high ie good or otherwise.

Clear risks issues if any

My advice is we build this into the process in standard form. Can you pl obtain. If Nick is back can he please consider attachments in more detail.

Many thanks
Gill

From: Colin MacKenzie
Sent: 04 August 2009 09:51
To: Gill Lindsay
Subject: EDINBURGH TRAM: FCL MEETING 3 AUGUST
Importance: High

Gill,

As requested I attended at the newly re-configured FCL meeting yesterday and tendered your apologies.

I suspect that nobody was there to prepare a minute or action sheet, so here is my summary of matters discussed and agreed.

It was reported that **tie** are receiving support from McGrigors with an independent overview of matters heading towards DRP.

Hilton Hotel Car Park

Action agreed; work to continue considering BSC paper, including their letter of 20 May 2009 to cross check with **tie** position paper. This item is not in itself of high value; possibly in the range £40,000 to £100,000. **tie** have selected this matter for DRP as "shoe-in "; an easy win for them, although they do recognise there is some more work to be done.

You are requested to provide comments on **tie's** paper via Alan Coyle to Dennis Murray by noon tomorrow, 5th August. A decision will then be taken once all comments are in as to whether the DRP is initiated this week or **tie/the** Council wait until next Monday's FCL to approve the submission and pull the trigger.

Extension of Time No. 1

tie value this at £1.8 million from the rates in Schedule Part iv. BSC argue that the value is around £6.8 million, without providing a justification. The case for DRP is almost ready to go, but **tie** are concerned the Adjudicator may just announce a value for the claim, without pronouncing on the principles. Apparently McGrigors see no flaws in **tie's** case. The aim is to initiate the Adjudication on Thursday 6th August, although as with Hilton above, next week would be fine. The emphasis is on getting the case correct as opposed to being quick off the mark. Richard Jeffrey advised that he has delegated authority from the board to initiate the claims, but he would be happy to have FCL approval and support. The fallback position is to leave matters until FCL on 10th August.

Once again, your comments on this paper are expected by noon tomorrow.

Design Changes BDDI - IFC

Full liability for **tie** could be in the region of £30 - £40 million. They will be circulating DRP papers on this matter later this week.

Phase 1B payment to BSC

In terms of the contract it is suggested that the £3.2 million is payable to BSC tomorrow. The board (TPB) is of the view that the money should be withheld. DLA advised that this is a payment due under contract and if it is not to be paid timorously then formal notice has to be given by **tie** to BSC before the due date. Andrew Fitchie was asked to draft a letter for **tie**. Apparently Steven Bell had written on the matter to BSC in July, but that letter was not to hand at FCL meeting yesterday. The terms of that letter would also be considered before any further correspondence with BSC.

The consensus was that **tie** should refuse to pay for the time being, but it was realised that ultimately payment would have to be made.

Breach of Contract by BSC

At your request I raised this question. The response received was that BSc were not seen at the moment to be in breach. **tie** will probably test them on Clause 80 (15), but it is expected that BSC would comply initially and then find a reason to stop work again.

Regards,

Colin MacKenzie
for Council Solicitor
City Chambers
Edinburgh

Tel: [REDACTED]