

Anthony Rush

From: Anthony Rush [rush_ [REDACTED]]
Sent: 14 March 2011 11:06
To: Brandon Nolan (Brandon.Nolan@mcgrigors.com); Nigel Robson (robson.nigel [REDACTED])
Subject: File Note

Nigel/Brandon,

Not a fully detailed file Note but I think records the relevant details.

Kind regards.

Tony

FILE NOTE – ETN Mediation

- Transport for Scotland was represented by Ainsley McLaughlin
- CEC were represented throughout by:

Sue Bruce	CEO
Donald McGougan	Director of Finance
Alastair McLean	Director of Legal
Dave Anderson	Director of Development
Bob McCafferty	Director of Roads
Alan Coyle	Financial Accountant

- For tie:

Vic Emery	Chairman
Richard Jeffrey	CEO
Steven Bell	Project Director
Dennis Murray	Commercial Director

- Advisor team:

Colin Smith	HG-Group
Brandon Nolan	Partner McGrigors
Drysdale Graham	Partner McGrigors
Nigel Robson	
Anthony Rush	

- At all times Sue Bruce and Vic Emery took the lead with the Mediator and the Infraco. In most cases Ainsley McLughlin also attended meeting between Principals.
- In general there was a “top-team” of Sue Bruce, Ainsley McLaughlin, Vic Emery and CEC Directors with the Advisor Team.
- Richard Jeffrey was in the main “frozen out” of the decision making process by the Principals, but at all times was given a chance to comment and object (which he did).
- Steven Bell and Dennis Murray were directly involved in all matters.

Monday 7 March 2011
<p>A meeting of the CEC and tie teams along with advisors took place at Mar Hall.</p> <p>Most of the day was taken up with discussions on the comparison of potential costs of agreed termination or Project Phoenix. Richard Jeffrey tabled an updated version of the "deck-chair" paper.</p> <p>The discussions were inconclusive other than there was an understanding that the "trigger point" for rejecting a Project Phoenix Offer was in the region of £740 million for all costs.</p>
Tuesday 8 March 2011
<p>The Mediation commenced at circa 9.30 with opening speeches from Sue Bruce and Richard Walker. Dr Keysberg gave a short introduction to Walker's speech and asserted that he knew little about the project.</p> <p>Later in the day we were afforded the opportunity to interrogate the priced submission.</p>
Wednesday 9 March
<p>The day was taken up with us interrogating the Infraco on the Exclusions and Clarifications and later by explaining our counter offer. This was based on a spreadsheet prepared by AJR having considered the explanations given by the Infraco and SB's pricing of the risk of Exclusions, Clarifications and delay and additional extension of time.</p> <p>In the evening the Infraco reverted with a revised offer which was in effect a small reduction on the PPP.</p> <p>There had also been discussions between Principals on funding and proof of funding was a condition precedent of the revised offer.</p> <p>It emerged that CEC were in need of making progress which avoided political damage at this time. A response was discussed which gave CEC absolute price certainty and being subject to funding did not commit them to the deal.</p> <p>AMCL was satisfied with this arrangement and had spoken earlier to the Cabinet Secretary. He wished any new agreement to be consistent with normal D&B principles.</p> <p>The revised price was confirmed by AC as producing an all up cost within the trigger point discussed on Monday.</p> <p>The offer was agreed in principle between Principals.</p>
Thursday 10 March
<p>Principals signed bullet point terms for development into non-binding Heads of Terms.</p> <p>The Infraco Principals left at this point</p>
Friday & Saturday 11 and 12 March.
<p>The Infraco produced draft Heads of Terms which were at odds with the "bullet points" but final agreement was reached on Saturday.</p>
General

At all times any advice given or opinions expressed by the Advisor Team were verified by Transport for Scotland, CEC and tie.

Conclusion

The Advisor Team is now functus officio although McGrigors and Colin Smith retain separate briefs to advise CEC and tie in the implementation of the framework established by the non-binding heads of terms.

The following press release was agreed between the Principals:

City of Edinburgh Council, tie, Transport Scotland and the consortium members have had a very constructive engagement and have established a mutual understanding of the key issues that have been impeding the progress of the Edinburgh Tram project.

The parties are working together to firm up the framework for our future working arrangements and the successful delivery of the project.

There will be no further comment whilst this work is underway.

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