

From: Anthony Rush [rush_aj[REDACTED]]
Sent: 28 October 2010 17:09
To: Fitchie, Andrew
Attachments: 3 DRPs as at 25 October 2010.pdf; designexpetbrief.doc; Ceassation of Work INTC's - Summary.xlsx

File Note – Meeting/Discussion Andrew Fitchie and Anthony Rush on 28 October 2010.

Agreed Next Steps for recommendation to tie

Infraco responses and claims	
1	Agreed that tie need to carefully scrutinise and coordinated responses and replies to INTC 536, BSC 52170 and BSC 52171.
2	Informed by John Mietizes that the tie work-team are considering concurrency in the response to INTC 536 but not the concurrent delay caused by late design of the trackwork.
3	Agreed that we recommend that AJR will draft the response under Clause 80.2 to BSC 52171 but that the tie work-team should consider a detailed response to 52170 and 52171 in rebutting INTC 536.

Experts' Reports (Scope Attached)	
4	Agreed with RBB and NR that they will work towards issuing a report on questions 1.6.1 to 1.6.9 inclusive together with application of question 1.6.10 to Trackwork (including Princes Street) by the end of November. The opinion of the other two locations to follow as soon as possible thereafter.
5	Agreed with RBB and NR that factual matrix is key and Susan Clark confirms that she understands the urgency of providing the requisite information. (Later I spoke to Nigel who agrees that he will visit Edinburgh to chase information if necessary).

249 Team	
6	<p>Mike Paterson reported that of the 99 INTC's the status is (approximately):</p> <ul style="list-style-type: none"> • 25% can be dismissed • 25% are being discussed • 30% are agreed ND's and have Estimates.(80.15 potential) • 20% relate to INTC's where tie dispute there is a departure. <p>Mike has sent the attached spread sheet which I haven't had time to review.</p>
7	Mike gauges that some 15% are included in the attached DRP Programme and that other than the 25% which can be dismissed could lead to DRP.
8	We agree that tie may prejudice their "case" if they do not pursue DRP resolution.

Termination		
9	Noted that Richard Keane gave the opinion at the last conference that Clause 77.11 limits Infraco's rights for compensation from termination to Clause 88 (for tie default) or Clause 90 (for Infraco default). Consequently in the hypothesis that Infraco were successful in asserting that termination amounted to a tie default Clause 88.8 would apply to their entitlement to compensation.	
10	Agreed that Clause 88.8 is open to some interpretation but our agreed view is that we would assert:	
	(Approximate based on July Certificate)	£ million
	Value	The value of construction milestones plus nett TCO values plus an allowance for work carried out but not reached milestone. Note where work has been carried out and not subject to a TCO ("goodwill" work) the base milestone allowance would apply.
	88.8.1	Preliminaries pro-rata [34/157x75]
	88.8.2	Materials
	88.8.3	Removal
	88.8.4	Other costs
	88.8.5	Loss of profit – agreed that the words are not explicit but is intended to exclude a right to profit on the balance of work not valued and apply only to 88.8.4 and 88.8.3.
Counsel		
11	Agreed that regular conference with Counsel will be required.	

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