
From: LAING Ian [Ian.Laing@pinsentmasons.com]
Sent: 15 March 2008 20:42
To: Andrew.Fitchie@dlapiper.com; richard.walker@bilfinger.co.uk;
mgallagher@biggartbaillie.co.uk; flynn.michael@siemens.com;
herbert.fettig@siemens.com
Cc: Willie Gallagher; Graeme Bissett; Steven Bell; Geoff Gilbert; MOIR Suzanne
Subject: Re: Edinburgh Tram

Andrew

As you know, this is a legally complex area and confusion arises easily.

As matters stand, the BBS position is that BBS will not accept liability for uninsured third party losses. This exclusion from liability applies both to the Clause 77 indemnity and to losses arising from breach of contract. As uninsured third party losses could arise from negligence this position holds true in relation to negligence claims (although an analysis of the policy may provide comfort on this point and this exercise is, I understand, ongoing).

I appreciate the need for clarity at this point in time but you will also appreciate that BBS is working hard to understand whether they are able to move on this. That work is also ongoing and the position set out above must be seen in that context.

I note your view that this is a consortium issue. You will recall that I was clear in our discussion on Friday evening that the BB and Siemens position on this was and is consistent.

Whilst the timing of any report to CEC is of course a matter for you and tie, I had understood that BBS would be given time to undertake appropriate investigations. If BBS is able to soften its position it would be a great shame if CEC had been told something else. As you have seen Herbert's e-mail, you are aware that internal meetings on Monday are critical to the expression of BBS's final position on this and I hope that tie remain able to give us the necessary time.

Regards

Ian.

Ian Laing
Partner
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Sent from my Blackberry wireless device

----- Original Message -----

From: Fitchie, Andrew <Andrew.Fitchie@dlapiper.com>
To: LAING Ian; richard.walker@bilfinger.co.uk <richard.walker@bilfinger.co.uk>;
mgallagher@biggartbaillie.co.uk <mgallagher@biggartbaillie.co.uk>;
flynn.michael@siemens.com <flynn.michael@siemens.com>
Cc: willie.gallagher@tie.ltd.uk <willie.gallagher@tie.ltd.uk>; graeme.bissett@tie.ltd.uk
<graeme.bissett@tie.ltd.uk>; steven.bell@tie.ltd.uk <steven.bell@tie.ltd.uk>;
geoff.gilbert@tie.ltd.uk <geoff.gilbert@tie.ltd.uk>

Sent: Sat Mar 15 15:55:23 2008
Subject: Re: Edinburgh Tram

Ian
Martin

Following Richard's email to Willie earlier this afternoon, we are confused.

Richard's points focus on the exposure to consequential loss for BBS arising from simply executing the works in compliant fashion, and the fact that no counter indemnity from tie is sought by BBS. This was the subject of the earlier lengthy con call yesterday pm., but before your call telling Willie that no third party liability would be accepted by BBS at all, under any circumstances - this is consistent with Herbert's e mail this morning which I have also seen. So that I conclude that BB and S at this stage in the procurement have different requirements.

Put simply, my personal view is that this is a Consortium issue and should have been dealt with in the consortium agreement.

Please would you express today as soon as you are able on clear instructions, exactly what the Consortium's position is.

We are now investing time and effort (as no doubt BBS are) to analyse the issue so that an urgent report can be provided to tie and CEC first thing on Monday. This risks being less than fully informative because we have no clear statement, from both the BBS members.

Your assistance on this is very important indeed for all the obvious reasons which we discussed on the call last night.

Thanks for any action you are able to take today.

Kind regards

Andrew Fitchie
Partner
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F: +44 [REDACTED]

----- Original Message -----

From: LAING Ian <Ian.Laing@pinsentmasons.com>
To: Fitchie, Andrew; mgallagher@biggartbailloe.co.uk <mgallagher@biggartbailloe.co.uk>
Cc: willie.gallagher@tie.ltd.uk <willie.gallagher@tie.ltd.uk>; geoff.gilbert@tie.ltd.uk <geoff.gilbert@tie.ltd.uk>
Sent: Sat Mar 15 15:15:06 2008
Subject: Re: Edinburgh Tram

Thanks Andrew.

Regards

Ian.

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----- Original Message -----

From: Fitchie, Andrew <Andrew.Fitchie@dlapiper.com>
To: LAING Ian; mgallagher@biggartbailloe.co.uk <mgallagher@biggartbailloe.co.uk>
Cc: willie.gallagher@tie.ltd.uk <willie.gallagher@tie.ltd.uk>; geoff.gilbert@tie.ltd.uk <geoff.gilbert@tie.ltd.uk>
Sent: Sat Mar 15 15:12:07 2008
Subject: Fw: Edinburgh Tram

Ian

I have been instructed to forward a copy of this to you, following yesterday evening's call in which the BBS Consortium's entirely new position on this matter was explained by Richard Walker and yourself.

Thank you for making the call.

Martin- copy for your information
Kind regards
Andrew Fitchie
Partner
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----- Original Message -----

From: Willie Gallagher <Willie.Gallagher@tie.ltd.uk>
To: Graeme Bissett (external contact) <graeme.bissett@tie.ltd.uk> [REDACTED] Stewart McGarrity <Stewart.McGarrity@tie.ltd.uk>; Fitchie, Andrew; Geoff Gilbert <Geoff.Gilbert@tie.ltd.uk>; Matthew Crosse <Matthew.Crosse@tie.ltd.uk>
Sent: Sat Mar 15 12:10:56 2008
Subject: FW: Edinburgh Tram

Andrew,

Can you please copy this to Ian Lang, I do not have his contact details.

Willie

From: Willie Gallagher
Sent: 15 March 2008 12:10
To: Richard.Walker@bilfinger.co.uk; flynn.michael@siemens.com
Cc: 'Fitchie, Andrew'; Steven Bell
Subject: Edinburgh Tram

Richard,

We are deeply disappointed over the breakdown of our negotiations last night. Like you, we thought the deal was agreed on Price, Scope & Contracts.

We now this one remaining difficult issue to resolve - our requirement for indemnification by BBS on third party claims. Your proposal for no indemnification, regardless of breach of contract, negligence etc. is unacceptable to CEC. For the avoidance of doubt, I have had this confirmed by the CEC Solicitor last night after we spoke. We have no where to go on this point, the Public Sector cannot give a uncapped warranty on the issue in question

We are now working to an extremely tight timetable. To enable us to draw down the £20m funding from Transport Scotland, we need to conclude contracts by 31st March - this is a Monday. If we can place the PIN on Monday evening, this would enable us to hit the 28th March. Realistically, this is therefore the drop-dead date for processing.

Over the weekend, we are reviewing all our Insurance Details which have already been passed to BBS as part of our negotiations.

We plan to meet again on Monday at 10am. I am happy for this to be in Edinburgh or Germany if necessary. If we can conclude an agreement by lunch-time on Monday, I will have the necessary arrangements in place to enable me to sign-off and place the PIN.

Please give me a call at anytime. If you wish to meet tomorrow, Sunday, that will be fine.

Regards,

Willie

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