
From: Fitchie, Andrew [Andrew.Fitchie@dlapiper.com]
Sent: 31 March 2008 15:44
To: Jim McEwan; Steven Bell
Cc: Steven Bell; Geoff Gilbert; Hecht, Philip; Horsley, Chris; Graeme Bissett (external contact)
Subject: RE: Schedule 4

Jim

If the situation is that at this point SDS is unable to produce a design delivery programme which is reliable and static at V26 - and that is indeed the situation that SDS have articulated - and that this programme will need to be varied immediately post contract award, tie needs to endeavour to negotiate with BBS now the specifics of what is or is not to be permitted as a variation to the Infraco Contract and its master construction programme, otherwise the Notified Departure mechanism is too blunt and will permit BBS to include everything that they estimate is going to affect them to be priced and to be granted relief. That Estimate is bound to be all encompassing and conservative.

The only approach open to tie, in my opinion, is a factual one, not a contractual one (since the mechanism for Notified Departure puts the advantage with BBS by creating an automatic tie Change): to capture as many identified key changes that tie knows will be required and to attempt to fix them and agree their likely programme and/or cost impact with BBS prior to contract award, or at the least identify the reasonable range of programme and cost impacts. Tie can still monitor/evaluate what are the elements of this specific Notified Departure for which Infraco will assert claims for additional cost and time, but tie has no ability to prevent there being a tie Change, other than going to DRP.

The optimal response to Ian would then be to acknowledge that V26 will need to be varied to reflect v28 but that tie wishes to agree the principles and key facts around which the construction programme and any related financial impact will be assessed and calculated by BBS.

This is one where Steven and Geoff must, I feel, have a better sense of how factually to restrict BBS's ability to exploit this. After this review, we might be able to go about trying to structure acceptable controls in the Infraco Contract.

Kind regards

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

From: Jim McEwan [mailto:Jim.McEwan@tie.ltd.uk]
Sent: 31 March 2008 10:42
To: Fitchie, Andrew; Steven Bell
Subject: FW: Schedule 4

Andrew

Can you advise on a response to this please, what Ian is saying is factually correct albeit that we are working to minimise the impact and variance between critical path items. While we accept that the version change will be a notified departure we are concerned to ensure that there will be no gaming of this position by BBS, and that only where the change can be shown to materially change the Infraco programme critical path should we be liable for potential additional charges.

Jim

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

From: LAING Ian [mailto:Ian.Laing@pinsentmasons.com]

Sent: 31 March 2008 10:21

To: LAING Ian; Philip.Hecht@dlapiper.com; Steven Bell; Dennis Murray; Bob Dawson; OWENS Christopher; Scott.McFadzen@bilfinger.co.uk; Stewart McGarrity
Cc: Jim McEwan; Andrew.Fitchie@dlapiper.com; flynn.michael@siemens.com; Richard.Walker@bilfinger.co.uk; herbert.fettig@siemens.com; MOIR Suzanne; mgallaher@biggartbaillie.co.uk
Subject: RE: Schedule 4

Steven/Jim

Please can you let me have confirmation that the position on the Notified Departure in relation to the Design Delivery Programme is understood and agreed by tie.

Regards

Ian Laing
Partner
Pinsent Masons LLP

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

From: LAING Ian
Sent: 26 March 2008 16:23
To: 'Philip.Hecht@dlapiper.com'; 'Steven.Bell@tie.ltd.uk'; 'Dennis.Murray@tie.ltd.uk'; 'Bob.Dawson@tie.ltd.uk'; OWENS Christopher; 'Scott.McFadzen@bilfinger.co.uk'; 'Stewart.McGarrity@tie.ltd.uk'
Cc: 'Jim.McEwan@tie.ltd.uk'; 'Andrew.Fitchie@dlapiper.com'; 'flynn.michael@siemens.com'; 'Richard.Walker@bilfinger.co.uk'; 'herbert.fettig@siemens.com'; MOIR Suzanne; 'mgallaher@biggartbaillie.co.uk'
Subject: Re: Schedule 4

Stephen/Jim

As we discussed earlier today, the Design Delivery Programme that will be v28. The Pricing Assumption in Schedule 4 of the Infraco Contract assumes that the Design Delivery Programme will not change from v26. It follows that there is the possibility that there will be an immediate Notified Departure on contract execution. Given the unusual position that we are in, please can you confirm that this is understood and agreed by tie.

Many thanks

Ian.

Ian Laing
Partner
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Sent from my Blackberry wireless device

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

From: Hecht, Philip <Philip.Hecht@dlapiper.com>
To: LAING Ian; Steven Bell <Steven.Bell@tie.ltd.uk>; Dennis Murray <Dennis.Murray@tie.ltd.uk>; Bob Dawson <Bob.Dawson@tie.ltd.uk>; OWENS Christopher; Scott McFadzen <Scott.McFadzen@bilfinger.co.uk>; Stewart McGarrity <Stewart.McGarrity@tie.ltd.uk>
Cc: Jim McEwan <Jim.McEwan@tie.ltd.uk>; Fitchie, Andrew <Andrew.Fitchie@dlapiper.com>; flynn.michael@siemens.com <flynn.michael@siemens.com>; Richard Walker <Richard.Walker@bilfinger.co.uk>; herbert.fettig@siemens.com <herbert.fettig@siemens.com>; MOIR Suzanne; mgallagher@biggartbaillie.co.uk <mgallagher@biggartbaillie.co.uk>
Sent: Wed Mar 26 11:34:22 2008
Subject: RE: Schedule 4

Thank you Ian - I will action this.

Kind regards.

Phil

Philip Hecht
Solicitor
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From: LAING Ian [mailto:Ian.Laing@pinsentmasons.com]
Sent: 26 March 2008 11:26
To: Hecht, Philip; Steven Bell; Dennis Murray; Bob Dawson; OWENS Christopher; Scott McFadzen; Stewart McGarrity
Cc: Jim McEwan; Fitchie, Andrew; flynn.michael@siemens.com; Richard Walker; herbert.fettig@siemens.com; MOIR Suzanne; mgallagher@biggartbaillie.co.uk
Subject: RE: Schedule 4

ALL

Please find an updated version of Schedule 4 following the meeting yesterday. Happily this is nearing completion.

I have updated the version last issued by Phil. I do now have a copy of the hard copy version placed on the table yesterday but don't have time before going to the SDS meeting to update the amendments onto that version.

Phil, would it be possible for you to arrange this?

Appendix J (NR Immunisation to follow).

Regards
Ian Laing
Partner
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From: Hecht, Philip [mailto:Philip.Hecht@dlapiper.com]
Sent: 20 March 2008 17:42
To: Steven Bell; Dennis Murray; Bob Dawson; LAING Ian; OWENS Christopher; Scott McFadzen; Stewart McGarrity
Cc: Jim McEwan; Fitchie, Andrew; flynn.michael@siemens.com; Richard Walker; herbert.fettig@siemens.com
Subject: Schedule 4

All

Please find attached Schedule 4 as agreed today on screen. Please note the various actions on both sides, as footnoted, to bring this document to a close.

Thank you all for a productive session.

Kind regards.

Phil

<< 18356745_1_UKMATTERS(Schedule 4 - 20.3.08).DOC>>

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