
From: Cassels, Sandra
Sent: 03 December 2007 17:08
To: Fitchie, Andrew
Cc: Kilburn, Keith
Subject: Tie - SDS (310299/12)

Importance: High

Dear Andrew

My colleague Keith Kilburn met with John Casserly and Thomas Hickman earlier today in connection with the above. The purpose of the meeting was for Thomas to provide an explanation of programme methodology and provide a background to the programmes. There were, however, a number of issues which arose during that meeting and I thought it would be worthwhile highlighting those to you.

The strategy initially agreed with Tie was that DLA were to review the legal basis of three potential claims by Tie against SDS (dilapidation surveys, sewer surveys and trial holes). Each of these potential claims concerns an interpretation of the scope of services contained in the SDS Agreement and what services SDS were obliged to perform. Tie are of the opinion that SDS were obliged to carry out certain types of survey far greater in scope than SDS actually carried out, whereas SDS are of the opinion that they have fulfilled their obligations under the SDS Agreement. Whilst we can interpret the scope of services, in order to provide any concluded view, an independent expert would be required to provide an opinion as to the type, quantity and nature of surveys that an SDS designer in the circumstances here would carry out. It was also noted by John that the invitation to tender and SDS's offer was prescriptive in terms of the types of surveys to be carried out, but that the scope of services annexed to the SDS Agreement does not include that level of information. It would be helpful if we could discuss the background to the scope of services annexed to the SDS Agreement. I do not think it likely, due to delays in Tie providing information, that we will be able to provide a concluded view on the potential claims before the end of this year.

At the meeting John also proposed that a review be carried out of events which have given rise to delay. The period for review is to be July 2007 to December 2007, adopting the programme prepared in July 2007 as a baseline to measure that delay. The intention appears to be to identify delay events for which SDS are responsible and then to attempt to use that delay as a basis of claim. The programme methodology is far from clear and it is questionable how worthwhile this exercise will be given that we will have to assume that any particular event selected by Tie is critical and only individual events will be examined rather than considering the programme in the round and issues of concurrency. Tie are to collate correspondence relative to particular delaying events and this is to be passed to DLA in order that a view is given as to the weight of such evidence. I think it unlikely that Tie will be able to provide the factual information in time to allow a view to be reached before the end of the year.

At the meeting it was apparent that John was looking for any grounds with which to punish SDS for previous failings. John did not, however, appear to have a clear strategy as to how any potential claims are to be taken into account in light of the settlement agreement or imminent novation. Tie also do not appear to have taken into account the effect of the time bar in terms of clause 28.7 of the SDS Agreement, as a number of these claims appear to be historic.

Once you have had the opportunity to consider the above, it would be helpful if Keith and I could meet with you to discuss the way forward. It appears that Tie are unclear as to what matters should be the focus of attention and in the event that the timing of novation is of importance here, then I would have thought that if these claims were to be introduced it would only delay the conclusion of any novation or settlement agreement.

Kind regards

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