
From: Fitzgerald, Sharon [Sharon.Fitzgerald@dlapiper.com]
Sent: 23 March 2007 16:50
To: Geoff Gilbert; Trudi Craggs; Martin Hutchinson
Cc: Susan Clark; Andrew.Fitchie@dlapiper.com
Subject: RE: Improvements to MUDFA Working Arrangements
Attachments: 13413688_1_UKMATTERS(Comments on GG MUDFA paper).DOC; FW: MUDFA - Report on Key Contractual Terms; FW: MUDFA - Lessons Learned

Importance: High

Geoff

Please find my comments to your paper and the AMIS Memorandum of Understanding in the attached document.

I suggest that the following activities need to be undertaken:

- review of what has and has not been achieved during Pre-Construction
- consideration of whether enough has been done to allow construction commencement in respect of any Work Order
- can the outstanding pre-construction activities be broken down and completed on a Work Order by Work Order basis ? If so, Clause 8 and the timescales therein, could be adjusted so that the Work Orders require more detailed input from the MUDFA Contractor prior to approval and commencement. There will be commercial ramification of doing this, but can this be offset against that which has been paid for but not achieved during Pre-Construction ?
- amendments to the pricing and incentivisation mechanism. Given that a design is not available, it is not clear to me how the existing pricing mechanism can be altered without triggering commercial and procurement risks - see my comments in the attached paper. Suggest that input is required from the TSS/SDS/TT team involved in the development of the bills and pricing schedules. Gary will be able to provide valuable input. Also, Allan Hill worked at Scottish Water where a target cost mechanism based on rates is employed. There were many ideas considered and rejected in the development of the contract and I suggest that much time could be saved by discussing the current issues with the team involved in the procurement. For example, the issue of the Prelims is mentioned several times in your paper - Gary will be able to explain the strategy behind the Prelims - particularly, given that it was always contemplated that the MUDFA Contractor would be instructed under individual Work Orders
- Programme between MUDFA and Infraco - what is the interrelationship? How close are the MUDFA completion/Infraco commencement dates on a sector by sector basis ?

You will note that I recommend that the proposed Memorandum or a variant of it should not be signed. What we need to do is to try and achieve minimal adjustments to the contract to reflect that the intended information and design was not available to the MUDFA Contractor and **tie** in order to complete the Pre-Construction Deliverables as originally anticipated.

My concern is that AMIS is seeking to achieve greater commercial advantage out of this situation than is reasonable. I recommend that those in the **tie** team need to be fully versed in terms of the MUDFA provisions - I have previously offered a teach-in on the contract and this offer still stands. Also, I suggest that the **tie** team need to consult with the technical TSS advisers involved in the procurement for input in relation to what was agreed with AMIS. I believe that none of the proposed attendees at **tie's** pre-meeting or the meeting with AMIS were involved in the tender process and contract negotiations. My concern is

that tie will not be able to counter assertions that information has changed from that on which AMIS based its pricing.

I have attached an e-mail which refers to liquidated damages - the position taken in the contract was that the figure of £50k per week based on a longstop date. This decision was taken in late September. Consequently, I am concerned that we are looking to change on this position so soon. You will note that I had suggested that we should consider a break down of the LDs.

Susan - you asked previously for a summary of the MUDFA contract conditions. I have attached an e-mail of a report which reflects the contract at ITN issue - not as executed. However, the principles are pretty much the same. Apologies - but I had forgotten that I had prepared this report for CEC. Let me know if you would like an update to this.

Please contact me to discuss further. I am here to provide support as required.

Regards
Sharon

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From: Geoff Gilbert [mailto:Geoff.Gilbert@tie.ltd.uk]
Sent: 22 March 2007 08:17
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Cc: Susan Clark
Subject: RE: Improvements to MUDFA Working Arrangements

Attachment this time!

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From: Geoff Gilbert
Sent: 22 March 2007 08:11
To: Trudi Craggs; Martin Hutchinson; Fitzgerald, Sharon
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Subject: Improvements to MUDFA Working Arrangements

Trudi/Martin/Sharon

Further to our discussions yesterday I enclose my notes setting out objectives, steps and actions to deal with this. A quick flick through AMIS draft proposals indicates a desire for wholesale change – which is in my view unnecessary.

I'm out of the office this morning but will be back pm. Call me on my mobile if you have any queries.

Regards

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