
From: Graham Nicol [Graham.Nicol@tie.ltd.uk]
Sent: 24 October 2005 17:36
To: Fitchie, Andrew
Cc: Susan Clark; tony.rose@uk.pwc.com
Subject: DLA Piper

Evening Andrew,

Following on from your paper "Procurement Working Group Paper Note on the Use of Standard Form and Bespoke Contracts Edinburgh Airport Rail Link", please find a summary of our initial comments which was created by our risk and tunnelling specialist. Please note that our specialist stressed that they felt they were not "sufficiently qualified" but would make specific observations which will be detailed below. We have summarised the comments about your concerned paper made by our specialist advisor.

1. Section 2 identifies certain fundamental issues which have not been resolved and so remain as unanswered questions
 - a. Complicating factor is that prioritisation of the "open" questions is not given
 - i. Such issues and answers could influence the Form of Contract to be adopted to meet the Project requirements and Stakeholders' aspirations, requirements and objectives.
 - ii. Section 6 should be implemented as a matter of priority
2. FIDIC Form is probably more appropriate than GC Works in relation to being carried out. The FIDIC EPC/Turnkey arrangement would be suitable (for the obvious benefits it provides) with a target cost approach (but without a GMP)
3. Risks should be allocated to the party better able to manage them. This is a fundamental concept of the Joint Code of Practice and is sought, in part, to be effected through the cascading of risk assessments/register which should identify and clarify ownership. This requires transparency in detailing what risks are associated with relevant parts of the project
4. The intended success of this project is based around the implementation of extremely detailed, focussed and in-depth 'Employer's Requirements' which were included in the Contract. The preparation of adequately and appropriately detailed 'Employer's Requirements' are fundamental in our specialists opinion to the success of the Design and Build, regardless of the Form of Contract.
 - a. Favour the target cost approach on the basis that it affords some form of 'integration' with the appointed Contractor (pain/gain approach). This is important to break down the 'us and them' approach so often seen on contracts and which, in our specialists experience, is a major factor as to why projects go wrong
5. The development of Particular Conditions should provide the mechanism for identifying any specific project related hazards arising from the Form of Contract which need to be catered for by either party to the Contract and included on the project risk register.
6. Adoption of the FIDIC EPC/Turnkey Form requires either directly or indirectly an 'Employer' organisation which is technically and fiscally competent to monitor and manage the 'Employer's Requirements'. This organisation is required to ensure (and hence assure Stakeholders) that the Project is being carried out strictly in accordance with the 'Employer's Requirements'.
 - a. From experience, the assembly and management of this organisation are not minor issues and must be addressed earlier rather than later. It is considered that the organisation involved directly with the preparation of the Contract documentation including the 'Employer's Requirements' and any 'Particular Requirements' in relation to a standard form of contract (eg FIDIC) is best suited for this role.

Heath Lambert also made a couple of comments on the paper. These generally stated that the insurance programme for the project would have to be changed to match what is required for the project. They also detailed that although they do not have any particular comments on either type of contract, there generally is a trend for larger projects to utilise bespoke forms.

More details of risk and insurance matters will follow in due course.

Also, Roger May and Terry Mellors are available for our meeting on risk matters for the procurement paper next Monday (31st of October).

I trust you find all of the above relevant and important, however if you do not please contact me to discuss any queries,

Kind Regards,

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