
From: Fitzgerald, Sharon
Sent: 22 November 2006 16:49
To: 'Geoff Gilbert'
Cc: Fitchie, Andrew; 'Bob Dawson'
Subject: RE: Various
Attachments: RE: Memo on advice to tie on SDS; 10085318_1_UKMATTERS(Note - Key Contract Terms in DPOF - 20 June 2006).DOC; 7330675_1_UKMATTERS(Key Contracts Table 31 May 2006).DOC

Importance: High

Geoff

In response to your e-mail below:

1. Andrew and I ran through the options for terminating the SDS Contract with Bob when we met him the other week. The key termination rights can be summarised as:

- Termination for SDS Provider Default (Clause 19). The grounds of SDS Provider Default include breach of a material provision or requirement of the SDS Agreement, breach of confidentiality restrictions, incompetent Key Personnel, conduct detracting from the image and reputation of tie, a partner or director of the SDS Provider is expelled from relevant professional body, occurrence of an Insolvency Event, failure to resolve a conflict of interest and change in the legal status of the SDS Provider which is materially prejudicial. Termination is effective 30 days after service of a written notice.
- Termination, Abandonment or suspension of the Services by the Client (Clause 20) - no fault termination which is effective 60 days after the date of service of a written notice
- Persistent Breach (Clause 24) - right to terminate exists if breach of any of the contractual obligations is repeated and a Persistent Breach Notice and a Final Persistent Breach Notice have been served.

Other options would be to suspend or abandon part of the Services and/or issue a tie Change Order to vary the Services.

Payment following termination or suspension is dealt with under Clause 25. No compensation is payable on termination for any ground other than in terms of the payment for work done. Payment would be due in respect of work carried out by the SDS Provider in two circumstances - where already certified as due in an interim certificate and work-in-progress which has not yet been certified. In the latter circumstance, a procedure is set out for the valuation/certification of work-in-progress not yet certified. If such work-in-progress has not been properly carried out or is subject to a milestone/lumps sum cap, then it would not be valued as due. Demobilisation costs (not defined) associated with the termination which were reasonably and demonstrably incurred by the SDS Provider would be payable if termination occurred under Clause 20. Payment is due 30 days post expiry of the Agreement.

An indemnity is given by the SDS Provider to tie under the terms of Clause 27 in respect of negligence, breach of any provision, breach of any Law and any non-performance or delay in performance of the SDS Provider's obligations. In terms of recovering costs and losses from the SDS Provider, the advice in respect of this would be determined by the ground on which termination was sought and in establishing causation and the loss caused. In order to advise on this, we would suggest that our colleagues in dispute resolution would be best placed to carry out an analysis. Please advise if this is required at this stage. We previously sent a copy of advice sent by colleagues to tie and I have attached a further copy of this. You will note that

previously tie was considering the issue of a Persistent Breach Notice. There is a cap on liability of £10m (each and every claim) and Indirect Losses are not recoverable unless a third party claimed against tie. The procedures set out in the DRP would need to be followed (escalating internal resolution followed by mediation/adjudication/court as determined in accordance with Schedule 9.

2. Attached is the interlocking table which Alastair mentioned. Please note that this has not been updated to reflect the final version of the Infraco Contract and the Infrastructure Maintenance Agreement, and that some amendment is required (e.g. the contract term is different and there is still a reference to the CSA). Once your review is completed (or before), we would be happy to amend up the table.

The HoT document for DPOFA which Andrew mentioned is attached. I would not recommend this paper for external distribution as there is confidential information in the paper.

Please let me know if there is anything further which we can do to assist.

Regards
Sharon

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From: Geoff Gilbert [mailto:Geoff.Gilbert@tie.ltd.uk]
Sent: 21 November 2006 11:56
To: Fitchie, Andrew
Cc: Bob Dawson
Subject: Various

Andrew

A couple of points that you could perhaps help me with.

1. Could you advise the basis for terminating the SDS contract, including the remedies available to tie for recovering resulting costs and losses. Could you provide this advice before the end of this week.
2. We are as I think you are aware undertaking a review of all our contracts to understand the way they should and do interlock one with the other. I believe from a brief discussion with Alastair that you have a matrix which sets out how the way in which the various contracts are intended to align. It would assist me in my current exercise if you could send this to me. Once we have concluded this exercise I will review it with you before deciding next steps.

You were also going to dig the HoT document for DPOFA. Did you have any luck with this.

Please call me if you wish to discuss.

Regards

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