
From: Reynolds, Steve
Sent: 06 March 2008 16:18
To: Jim McEwan
Cc: Steven Bell; Atkins, Chris; Chandler, Jason
Subject: RE: SDS Novation
Attachments: 17907319_3_UKMATTERS(SDS Novation Ag amended 210208 (clean))Rev1.doc

Dear Jim,

Thank you for your email and acknowledgement of the constructive dialogue of the last two weeks. However, as discussed at yesterday's meeting I believe there are significant issues surrounding scope and programme to completion of the novated SDS obligations which need to be addressed in addition to the two issues of PCG and Liquidated Damages to which you refer. In summary I believe that more work is required to complete the review of the key issues which were set out in my previous email of 29 February. The remaining issues can be summarised as follows:-

- 1 A change order to review the SDS Deliverables in comparison with the Employer's Requirements. We have yet to receive this and please note that we have also yet to receive a final version of the Requirements.
- 2 A change order to review the SDS Deliverables in comparison with the Infraco Proposal. We note that **tie** has yet to complete its evaluation of the Infraco proposals to the point where a definitive statement can be given on the scope and programme requirements for an agreed Civils Offer. This is required before any assessment of the options for alignment between the SDS Design and the BBS Offer can be undertaken.
- 3 A change order may also be required to define the changes to the SDS design for any agreed value engineering tasks identified in Schedule 4 of the Infraco Contract.
- 4 The Design Delivery Programme will need to be agreed between PB and BBS along with **tie**.
- 5 We have not yet received a full copy of the Infraco Contract including all the schedules.

In light of the above we would be grateful for your advice on when negotiations with BBS are likely to be complete.

On the subject of LDs, PB is prepared to consider an appropriate level of commercial pain for not achieving critical dates, however as discussed many times and based upon legal advice, we can only consider and agree once the full programme of works for PB to complete has been finalised.

As discussed yesterday, we have now carried out a further review of the draft Novation Agreement issued in Andrew Fitchie's email of 27 February. We enclose a tracked change version for your consideration.

We appreciate the need for continuing attention to the resolution of the remaining issues and will be pleased to work with **tie** to that end. Given the need to review this week's developments at senior level within PB I am now tasked with presenting the current position in a detailed review with my MD tomorrow, Friday. Hence I shall not be in Edinburgh tomorrow but I will be back at Citypoint with Chris Atkins on Monday next week.

Regards - Steve

From: Jim McEwan [mailto:Jim.McEwan@tie.ltd.uk]
Sent: 06 March 2008 13:00
To: Reynolds, Steve
Cc: Steven Bell
Subject: SDS Novation

Steve

Willie is proposing to send an email to Tom O'Neill today (text as attached) reflecting his concerns and seeking his assistance in ensuring the finalisation of the SDS novation. I've suggested that he hangs fire on

this and that I approach you with a view to understanding where you are in the confidence stakes on meeting the timescale of ensuring the agreement is signed by Tuesday. It has been made clear that the City of Edinburgh Council will not sanction the programme going ahead without this novation, if we do not achieve this by next week then there is a likelihood of a commissioned investigation by Transport Scotland to understand the continued viability of the scheme and the substantive reasons as to why we have been unable to bring this to contract close.

Whilst there are other issues which remain to be resolved, the SDS Novation is key amongst the outstanding matters and from my perspective, thanks to the constructive and co-operative dialogue of the last 2 weeks, the only remaining issues to be resolved in achieving said novation are PCG and Liquidated damages

I would be grateful if you would confirm today agreement with my synopsis here and give assurance that predicated on a reasonable position being taken by both sides on the outstanding 2 issues that you are 100% confident that we will achieve the novation by Tues 11th March 2008.

Kind regards

Jim

Tom

My team have held a series of meetings with your representatives over the last 2 weeks with a view to clarifying and resolving all of the residual issues which may have impeded the required and contracted novation of the SDS contract to BBS. My understanding is that all of the associated warranty issues have been resolved, a process for the resolution of any misalignment between the SDS design, the Employer requirements and the Infracore proposals has been agreed, which in turn should help align and assure any scope concerns and that the SDS Novation agreement has been drafted and reviewed/revised and is at or nearing its final form. Two primary issues remain to be resolved and these are the matter of Liquidated damages (cap and runrate) and the matter of a Parent Company Guarantee from SDS as requested by BBS. My team are meeting with Steve Reynolds tomorrow to hopefully clear these issues, and I would look for your support in ensuring that a reasonable position is reached on these.

Predicated on the satisfactory resolution of these two remaining items, your assurance is now required that the novation agreement will be signed and delivered by no later than Tuesday next, 11th March, from my perspective there are no apparent obstacles to this other than those outlined. The City of Edinburgh Council will not proceed with the Tram Programme in the absence of this contracted novation and it is imperative therefore that the target date is met, failure to meet this will have potentially damaging consequences to the Programme and such failure would be subject to the closest public scrutiny.

I would be grateful if you would review this matter urgently and give me your earliest response.

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Employers Requirements Warranty – Agreed Position

Infraco Proposal and SDS Design Alignment – Agreed Position

Warranties under Clause 4 of the Draft Novation Terms - Agreed

Liquidated Damages and Liquidated Damages Cap Level

- 5.1 **tie** to provide a copy of the latest Infraco Contract to SDS
- 5.2 **tie** to release the current draft of Schedule 4 to SDS. SDS to note that this does not represent the agreed position.
- 5.3 SDS are currently reviewing the BBS quality management system documentation provided.
- 5.4 BBS advised that their agreement to the above is subject to the speedy and satisfactory resolution of the Depot Equipment. If elements of the Depot Equipment are to be given to CAF then BBS will require the LDs position and design relationship with SDS to be revisited.
- 5.5 SDS and BBS to review the draft PCG provided by DLAP.
- 5.6 **tie** advised that space will continue to be offered free of charge to SDS post novation
- 5.7 BBS to provide a draft purchase order to SDS.
- 5.8 Construction support required by BBS from SDS to be finalised.

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