

Mandy Wilson

From: Fitchie, Andrew [Andrew.Fitchie@dlapiper.com]
Sent: 08 May 2008 08:52
To: Gill Lindsay; Willie Gallagher; Graeme Bissett
Subject: RE: Update

Legally privileged and FOISA Exempt

Gill

Thanks for the note. As matters evolve, I should be a better position than I am tonight to form a view on what you ask about. At the moment, I am endeavouring to support tie in actually nailing down the deal - which obviously plays back into some aspects of the detailed contract provisions and I need to focus that at present as well as managing the DLA Piper team who will be geared to work over this week end to service a close early next week. because the freeze on engagement there is still work to be done in making the document suite ready for execution. As we are , we have approximately 95% of the actual execution documents sitting complete but this last round will impact with domino effect.

I do not know what the final outcome is yet but you will have understood from my comments at the TPB this morning that this solution will not be free from risk of challenge or investigation. It was designed on an urgent basis within tie's letter yesterday to contain elements which would have a chance of demonstrating tangible value for money and risk re-balance, which could be attainable in the intense timeframe tie has to work within (there was a longer "shopping" list which I had prepared, but a commercial view was taken to be selective and not to risk presenting too complex a menu for BBS to object to).

The ability to ward off a challenge, if one were to eventuate, or stand ground in an investigation will rest on:

- what tie manages to wrestle from BBS in this last round and what BBS extracts

- what profile the final price for the project is given

- what appetite there would be for investing time and money to challenge tie and from whom

- what likelihood there is of a disgruntled individual or business launching a speculative complaint with the EU Commission

These are risk permutations, rather than legal points, but I shall cover these aspects in the report you ask for. The most relevant jurisprudence, in my view, is the EU Commission's investigation of the *London Underground* project the thrust of which I shared with Willie, Graeme, Steven, David Mackay when tie's plan of action and the written response was being formulated..

kind regards

Andrew Fitchie
Partner, Finance & Projects

08/05/2008

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From: Gill Lindsay [mailto:Gill.Lindsay@edinburgh.gov.uk]
Sent: 07 May 2008 19:27
To: Gill Lindsay; Willie Gallagher; Graeme Bissett; Fitchie, Andrew
Subject: RE: Update

Hi Andrew

Can you give DLA view at present on procurement issues please assuming the position concludes as anticipated today. I am keen to receive now as matters advance to either clear this or highlight this as an issue re risk and at what level and with what advice.

Letter states many issues equal and majors on price. How will DLA sign of in letter to Tie and CEC. We need to clear this as we go forward with Member approval, Report currently being drafted. Do you remain satisfied on defending a procurement challenge and on what basis?

Gill

From: Gill Lindsay
Sent: 06 May 2008 15:43
To: 'Willie Gallagher'; Graeme Bissett; 'Fitchie, Andrew'
Subject: RE: Update

Thanks Willie.

Looking forward I have just received a copy of the debrief letter including the Notice of Intention to Award given to Tramlines. This states that BBS were some 4/5% lower on price and a range of other info. Clear understanding is of price fixed as of 18 March. Is it possible to have a financial calculation done now with some possible outcomes to have some additional info re procurement. Appreciate entirely first issue is to get solution but it would be good to know how close we are reaching.

I would also appreciate Andrew's view as to whether and how price differential will impact on notifications ie will there be a requirement to advise Tramlines again and if so will there be a potential for a further cooling off period and how can any risk here be managed.

Gill

From: Willie Gallagher [mailto:Willie.Gallagher@tie.ltd.uk]
Sent: 06 May 2008 07:10
To: Dave Anderson; Donald McGougan; Gill Lindsay; Phil Wheeler
Cc: Steven Bell; david_mackay@tiscali.co.uk; Graeme Bissett (external contact)
Subject: Update

I met yesterday with BB in the tie Office. I was accompanied by Seven Bell & David MacKay.

BB reiterated their problem. It started at £17m, they propose actions which reduces it to the £12m discussed with me last week. It is claimed to be all down to the Supply Chain for not honouring prices given to the project at a previous time, Steel and Fuel were mentioned particularly. They acknowledge internal weaknesses and appeared genuinely sorry for causing the predicament.

We held the agreed line, no more money and even if there was, we have an EU Procurement problem with

08/05/2008

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TramLines.

At the end of the meeting, I had a one-to-one with Joachim Enenkel, their Board Director. He raised the possibility of a refund of £3.3m should 1(b) not proceed. This would leave circa £9m. I suggested to him that tie / Siemens / BB should all then take £3m each. This was not discounted and he plans to discuss this with Siemens today. I suspect that Siemens will see this as BB problem, and be reluctant to contribute £3m margin.

In summary, we have a visible £9m problem. The phase 1(b) is worth having, but we would require to provide a contingency for the sum and we need some clarification of it no reappearing again in he future 1(b) price.

I have an opportunity to meet with both Siemens & BB tomorrow in Munich. This unfortunately means that I will miss the Tram Project Board. If it would be possible to pull the Board forward to this afternoon, it would be extremely helpful. I will ask Julie to check all diaries.

Regards,

Willie

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