
From: Richard Jeffrey
Sent: 02 December 2009 08:33
To: Steven Bell; Stewart McGarrity
Subject: FW: CONFIDENTIAL

Steven, Stewart, see attached from Graeme. I generally agree that Graeme's analysis is entirely possible. Please note degree of Graeme's frustration with DLA (and us) and the lack of certainty. I agree with his analysis that we cannot, for much longer, say to the council that we don't have certainty and still retain our credibility. Please also note that Graeme feels that this lack of progress is in part due to a lack of resource on our part!

We must address the DLA/legal issue without further delay, and start to get some certainty. I suspect that CEC will not agree to enter into a new supplementary agreement without such certainty.

I discussed this with both of you yesterday, and will discuss with David today, and then further discuss with you both.

R

From: Graeme Bissett [mailto:graeme.bissett@██████████]
Sent: 01 December 2009 20:09
To: Richard Jeffrey
Cc: david_mackay(██████████)
Subject: CONFIDENTIAL

Richard, reflecting on this and a couple of other conversations today, I think there is an end-game emerging.

There is gaming underway (BB's hardening of attitude after DRP5a/b, resistance to mobilize on-street without a cost-plus deal ; also lets watch the coincidence of BB's position and Siemens sudden desire to take-over, smells a bit pat). There is a further difficult period of turbulence ahead, but maybe there is a route to a more productive future.

I have not seen any DLA paper on contract strength, but I am not holding my breath. So here are some assumptions and some suggested next steps, with apologies for some repetition of discussions from earlier :

The assumptions are :

- Siemens want clarity on their position, they have incurred limited cost but are mobilized to some degree and at the mercy of other parties (BB, tie) on timing of work and profitability. Pressure is coming down from above to get this project sorted out or get out. (Evidence : what they say ; the reality of their contract position ; newly-won clarity on EOT costs in their favour)
- The Darcy light of hope is now flickering and the reactionary forces beneath and above him are flexing their muscles. BB want out, but will do so scraping every piece of tissue they can from the carcass. (Evidence : Corporate style and other projects ; stated policy of withdrawal from standalone civils work ; they took recently - EOT1 - and have not given - very limited physical mobilization despite promises ; the extent of dispute and tie's determined stance indicates they will have to fight hard and the result is not remotely certain, whereas if they ceased now they would avoid a period of intensive construction activity, with attendant cost / profit risk)

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- Tie must reach a degree of certainty about cost and programme to avoid serious credibility issues, a likelihood of being intensively investigated and potentially replaced (which will not remotely solve the contract problems) and potentially contract termination as politics and government funding dimensions hold sway.
- Put a different way, tie cannot continue to hold on for a sea-change in BB's attitude and argue that we are managing the public purse effectively.

There is benefit in moving quickly in key areas. The next steps might look like this :

1. Tie needs the building blocks for a decision-making process. An intensive effort is made to evaluate the cost and programme outturns based on what is currently known and allowing for the implications of DRPs 5a / b. To do so, it is essential that tie gets (1) a crystal clear paper from DLA that sets out all aspects of the contractual design change exposure across all aspects of the construction (civils and systems) coupled with (2) technical advice on what would constitute "normal design development and completion" in the context of this contract ; (3) QC advice ; (4) analysis of the cost implications of on-street SAs aligned to the Princes St deal and outturn ; (5) programme implications ; and (6) the best financial and programme risk analysis that can be prepared from current evidence in all areas. I suggested that SMCg might be best-placed to manage this start-to-finish in 1-2 weeks, with good resource.
2. With legal guidance on what can and can't be said, serious dialogue is entered into with Siemens to flush out their real willingness to take over civils (and the price). Result will dictate next steps, but if the reaction is actually lukewarm or untrustworthy, there is a need to accelerate a result with BB, but if positive it's a different negotiation.
3. Tie needs to create the backdrop to these discussions – the launches of and results from the next DRPs are critical, as are negotiated outcomes on non-DRP disputes and other signals of intent. The position adopted by tie on Princes St financial resolution and in establishing the on-street SAs also features in scene-setting.
4. The work at 1 is used to support a presentation or report on 17th December. The inevitable challenge is transparency v commercial confidence, but I do not think tie can credibly say nothing to Council officers and senior councillors on cost / programme after 5 months of formal resolution process and especially if authority to sign SAs is being requested. The work at 1 is the best tie can do and there remain serious uncertainties, but it needs doing. Some degree of confidentiality should still be capable of being retained.
5. Where possible without selling any jerseys, agreements are sought with BB to commence at least the smaller scale on-street works and to maintain what off-street work can be maintained.

I suppose a sub-text here is frustration at the pace of the game over the last few months, which is about resource and definitely not effort, and also about the unsatisfactorily piecemeal way in which tie's legal position has been addressed. Taken together, the steps above should at least provide a more informed and clear basis for the action needed early in the New Year.

As a related but separate question, can DLA address what if anything can be done to avoid tie having to pay for clearly unproductive BB management cost.

If a meeting would be useful, give me a ring.

Regards

Graeme

Graeme Bissett

m : +44 ([REDACTED]

From: Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]

Sent: 01 December 2009 16:55

To: david_mackay [REDACTED] Graeme Bissett (external contact); Steven Bell

Subject: BSC relationships

Just had an interesting meeting with Michael Flynn.

He says he detects a 'bad smell' coming from BB over their commitment to progress in the New Year, and wanted to check if I had detected anything similar.

He is going to say at the consortium board meeting tomorrow that unless BB can guarantee access to sites for Siemens sub-contractors in the New Year, Siemens will reopen discussions internally about de-mobilising again.

He was due to see David Darcy on Monday but BB cancelled the meeting, he doesn't know why

Co-incidence of timing?

If my intuition is right, we may need to dust off our 'strategic options'

Steven , I think you are seeing Martin tomorrow, it would be good to get your feel of where he is.

R

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