
From: Steven Bell
Sent: 13 January 2010 15:49
To: Richard Jeffrey; Anthony Rush; Dennis Murray
Subject: RE: chronology of the evolution of the OSSA STRICTLY CONFIDENTIAL AND FOISA EXEMPT

Richard

Mark up below

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From: Richard Jeffrey
Sent: 13 January 2010 14:34
To: Steven Bell; Anthony Rush; Dennis Murray
Subject: chronology of the evolution of the OSSA STRICTLY CONFIDENTIAL AND FOISA EXEMPT

WORKING DRAFT FOR COMMENT. THE BIT FROM 2/11 to PRESENT IS STILL A BIT THIN

The subject first came up in a meeting I had with the consortium (Walker / Flynn / Campos?) on 3/6/09, where Richard Walker asked if we were happy, in principle with the operation of the PSSA (Princes street Supplemental agreement) and if this would be an acceptable basis for progressing the remainder of the on-street works. I said that we would prefer that the original contract was used, but that in the interests of progressing the project I was prepared to consider the extension of the PSSA into the OSSA.

My notes made in preparation for the meeting show that I was planning to say "you have made no secret of the fact that you do not like the structure of this contract and would prefer to switch to a cost plus approach. I have no intention of setting aside this contract and switching to a different approach and even if I did such a move would not be possible given the nature of what has been approved by SG/CEC..... That being said I am concerned that the breakdown in the relationship between our two organisations is hindering the sensible progress of the project" It is my recollection that in response to this 'speech' RW suggested extending the PSSA into the OSSA.

At this time the planned start date for Leith Walk and Haymarket was 1st August according to my notes.

I am also checking but I think this was my first meeting with the consortium, and I recall it was quite bad tempered, (there is a follow up exchange of correspondence which reflects this)

I then met with Dr Keysberg (BB) and Dr Schnependahl (Siemens) in my office on 22/6/09. At. We agreed at this meeting, given the wide range of issues that were in dispute between us, that an intense period of mediation was required to see if all the issues could be resolved. We discussed what issues should be put to mediation including

(inter alia) the issue of the OSSA. I intimated that I was agreeable to extending the PSSA into the OSSA but that I would not contemplate a 'renegotiation'.

The mediation then took place from 29 June – 6 July.

Following the (unsuccessful) mediation I then met again with Drs K and S. Dr K was clearly frustrated at the lack of agreement reached during the mediation and said at this meeting (and I wrote these down)

"this is a great contract for us, it allows us to hold the client to ransom"

"We ~~behave~~ believe you (tie) have behaved dishonourably in this contract, you knew very well what the parties intended when the contract was signed"

"You can only choose to agree with us or to litigate"

Following this embarked on the strategy of launching DRPs (there will be a clear record of when this all happened (Board approval for the approach 8 July and 29 July; initial items into dispute from 11 August 2009)), and there were ongoing discussions with Walker and Flynn on several of the issues that had been discussed at mediation, including Shandwick Place. (I have records from meetings on 28/7, 11/8) I became concerned that BSC were saying to Frank McFadden that they would not be starting on Shandwick Place without an OSSA and in the end this prompted Steven to write his letter on 31/7, which starts a correspondence trail.

My next recollection of discussing this directly with BSC was in my first meeting with David Darcy 6/10 in the UK (I had previously met DD in Germany on 18/9) where we held a session in the Novotel to discuss all of the outstanding issues with the OSSA, notably costs, programme and risk. This session had R Walker and M Foerder of BB and S Bell and F McFadden of tie in attendance. It mapped out an outline way forward to try and achieve an acceptable OSSA and also discussed their need for acknowledgement of relief and EOT related to delays already incurred and the responsibility of tie, most notably from MUDFA. By this time, BSC had already launched a DRP back in August related to MUDFA Rev 8 delays.

There was a further meeting with David on the OSSA (and other issues including EOT) in my office on 19/10 where David informed me that they were planning to start work on Shandwick place on 4/1/10, and he said to David Mackay earlier that day they would be mobilising to get started in Jan. I reported to the Board and stakeholders that I thought we might have achieve a 'breakthrough'.

EOT1 mediation was successfully agreed on 23 October 2009 after 2 days of intensive mediation.

I then had a further conversation on 25/10? Sunday where I suggested we were looking for changes in BSC behaviour as assign of things moving forward, and again a further conversation on 2/11.

My e-mail of 9/12 and file note of 11/12 then pick up the trail.

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