
From: Anthony Rush [rush_aj@[REDACTED]]
Sent: 05 February 2010 21:28
To: Fitchie, Andrew; 'Nolan, Brandon'
Cc: 'Richard Jeffrey'; 'Graeme Bissett (external contact)'; david_mackay@[REDACTED]
'Stewart McGarrity'; 'Steven Bell'
Subject: RE:
Attachments: res402.1.doc; 20100204092837327.pdf

Andrew,

I attach my final draft having reduced the number of references to "absurd". (Also enclosed the BSC letter it seeks to answer)

Of course all points are important but I would like to draw reference to point 3. (I hear on the grapevine that BSC are in the process of appointing a high-flying programming expert). Foerder admitted that they were de facto using the programme to establish extension of time and I have covered that in point 2. But what they are really after is loss and expense.

My major task over the weekend is to draft a letter on programme issues.

I am giving thought to explaining to BSC that in the absence of further extension and if they persist with asserting they will not complete before October 2013 we will have to reduce the milestone payment for preliminaries by £12 million.

This will be hugely provocative and will create a reaction. They may exercise DRP and/or accelerate the huge loss and expense claim which is likely to come.

I have attempted to obtain information on when Rev 0 and Rev 1 showed utility diversions to be complete – I have just looked at what I have been given and it makes no sense to me (completion in December 2008).

It is not safe to just dot on the delay to diversions to the original completion date for commissioning of Rev 0 – 16 July 2011 and Rev 16 Sep 2011 as BSC have a contractual and legal obligation to mitigate delays. Moreover whilst they may be entitled to extension of time culpability elsewhere may mitigate any entitlement to loss and expense.

Their misuse of Clause 80 and failure to manage SDS may be examples of their culpability. The design is now 19 months behind the Rev 1 programme.

It will be essential that we can reliably show when BSC could finish On-street works taking account of our current forecasts for utility diversions. I would ask Richard and Steven to make certain that Acutus are producing a programme which will stand-up in front of an adjudicator.

Removing BB (UK) from On-street works would reduce our exposure to loss and expense. I am convinced that we have to introduce the idea at the forthcoming high level Clause 6.2 meeting

Can I suggest that all get their minds around this risk and our response please?

Tony

Telephone 0 [REDACTED] Mobile 0 [REDACTED]

Replies will also be received on my blackberry

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From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 05 February 2010 18:04
To: Anthony Rush; Steven Bell

Cc: Richard Jeffrey
Subject:

Legally privileged and FOISAexempt

Gents


Sorry for the late hour on Friday. I may have missed an update on the current version of the response proposed by Tony to the Richard Walker letter.

Based on our discussion of the draft on screen at noon today , my remaining observations were around the use of absurd. I understand the thrust but I think that choice of words around ' clear inconsistency with the scheme of the contract and its normal operation' and " not reflecting sensible interpretation of the contract" might serve as well and allow an escalation to absurd when this letter provokes response.

Also, "absurd" has not been Steven's lexicon, if Steven is the author - but this is really a stagecraft point.

kind regards

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