
From: Richard Jeffrey
Sent: 22 June 2009 19:27
To: David Mackay; Graeme Bissett; Stewart McGarrity; Steven Bell; Alastair Richards - TEL; Mandy Haeburn-Little; Jim McEwan
Cc: Julie Smith; Julie Thompson
Subject: update on meetings with BB and Siemens

Today I met Dr. Keysberg and Dr. Schnependahl over lunch and then Richard Walker and Michael Flynn this pm.

We agreed the following;

There are many areas of the contract where we have fundamental disagreements over the nature of the risk transfer. We have tried through the PMP to reach pragmatic agreements on each of these issues but have so far failed to reach any agreements.

We have agreed to set aside the next two weeks to try to resolve all the main issues through a non binding mediated approach. Steven will lead from our side and anyone who is required to help must make themselves available, if you think you can't be available to help, please speak to me.

We have set a deadline of 6th July to reach agreement on all the issues.

If we are unable to reach agreements my view is that we should put all these issues into formal contractual dispute as soon as possible, and I said this to Walker/Flynn. I also said that once in formal dispute we will activate clause 80.15, and the consortium would then have to decide if it wished to carry out the works under this clause, if it chose not to we would consider this a material breach of the contract, so the next 10 days are really last chance saloon for everyone.

The issues to put into mediation are:

1) Programme issues

- Sources of delay
- Length of delay
- Liabilities for delay
- Mitigation of delays
- Costs of delays (if time permits)

2) Contractual principles

- Precedence of schedule 4
- Executing change under schedule 4
- BDDI to IFC (including top 10 worked examples)
 - design changes
 - delays due to process for agreeing estimates
 - Design due diligence
- BDDI definition
- Misalignment of Siemens/SDS designs
- Earthworks outline

3) Quantities and numbers (those areas where we have agreement on all principles but not the final price)

- EOT1

4) Other specific issues

- Hilton Car Park

If you think there are any issues we have missed please let me know, there is still time to add them in. The plan is to block out Friday this week, all of next week and Monday 6th. We will get in two mediators and run issues 1 and 2 in parallel.

In addition we agreed to work up new supplemental agreements relating to the on-street works but we would not sign these until we know the outcome of the mediation.

Happy to give more flavour on the phone/in person to anyone who wants it.

R

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