

Notes of Meeting

Meeting: Mid Bid Meeting

Bilfinger Berger Siemens [BBS] Bidder:

Contract: Infraco

Telford Room, Verity House 8th November 2006 Venue:

Date:

Present:	Bob Dawson – tie (Procurement Manager), Gary Easton – TSS (Project Manger), Val Clementson – tie (Procurement Support), Richard Walker – BB (Managing Director), Gary Dalton – BB (Commercial Director), Scott McFadzen – BBS (Project Director), Roland Halliday – BB (Chief Estimator), Tim Hunter – Siemens (General / Project Manager), Nicola Jordan –
	Siemens (Internal Legal Advisor)

Item	Minute	Action
1.	Key Issues	
1.1	BBS stated that they didn't like the wording of the on demand bond over such a long period and would like to further review the 'step down' of the amount. BBS to make proposals.	BBS
1.2	 Retention BBS requested tie explain what they envisaged and BBS agree to provide proposals, including a retention bond. BBS queried when the Certificate of Commencement will be issued? BBS will look at their cash flow model and get back to tie. BBS (RW) suggested a small working party to address. 	BBS/tie
1.3	 Building Fixing Agreements BBS have a high level of concern regarding the risk. This is compounded by being dependant on a third party. BBS (SMcF) reminded that they had flagged this issue earlier in the year. BBS feel tie should carry risk as it should be in a stronger position to negotiate with CEC and to push SDS to obtain consents. BBS also commented that they don't believe CEC will give contingent consent on the 'poles' option. BBS stated that if it stays in the contract as drafted they would qualify. 	

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	tie acknowledged BBS's concerns and agreed to consider what might be able to be done to resolve the issue.	tie
1.4	 Caps on Liability BBS commented that they wanted a cap liability (at the moment it is unlimited) but had not formed a view on the level. tie asked BBS to make proposal. 	BBS
1.5	 BBS had asked tie how they came to the figures and tie explained that they had been calculated on an overall basis and then allocated over the Sections. BBS had a concern that the damages were not capped (it was noted that Tramco is). BBS's concern was compounded by the prospect of events that they consider to be outside of their control e.g. If planning permission took a year. BBS commented that they would be content with the level of LDs only if capped and consents issues resolved to their satisfaction. 	tie/BBS
1.6	 Agreement with operator (Transdev) tie advised that they had requested a "sanitized" copy of the operator contract from DLA Piper and hoped to be able to release in the next few days. BBS concerns include Tram Maintenance covering crash damage and vandalism. It was felt that an insurance cover would be needed. 	tie
1.7	Payment arrangements BBS wanted the 28 days to relate to the whole process and not just following submission of their invoice to tie.	BBS/tie
1.8	 Bid Timetable BBS have real concerns with the provision of all information by the 9th Jan 2007 deadline. In particular they felt that they would get little response from suppliers over Christmas period. BBS asked what tie needs for the 9th January. tie to look at the questions and decide which are really important for 9th Jan. Complexity of Pricing Schedule is taking quite a bit of understanding. BBS asked the possibility of them having until 15th January but tie commented on the need to report by 19th and thus thought unable to consider this but would review. 	tie

ltem	Minute	Action
2.0	Legal Submissions	
	(given the ongoing nature of discussions, the following notes are brief)	
2.1	Clause 3	
	BBS were not happy that Infraco do not also have the right to walk	
	away but tie commented that they could not have that and would	
	more likely waive or agree a later date, that was in already.	
	Clause 4	
	 4.1 – If "acting reasonably" can go in, BBS will be satisfied. 	
	 4.4 – Employers' Requirements – BBS feel that errors in the ERs 	
	can not be their risk, but would accept Infraco Proposal.	
	4.5 – BBS queried if actually needed. tie suggested that BBS tweak	
	wording where they're concerned.	BBS
	Clause 5	
	BBS thought that this clause been superseded elsewhere in the	
	contract. tie will have a look and re-phrase.	tie
	contract. He will have a look and to philade.	
	Clause 7	
	BBS asked tie if PB had signed "Fitness for Purpose" in its contract.	tie
	• 7.3.2 – BBS to change wording?	BBS
	 7.13 – "greatest economy" to be reworded. 	tie
	• 7.19 – Agreed	
	Clause 9	
	 9.1 – Infraco never have title in the Trams, inconsistency between 	
	the two documents	
	 9.3 – Agreed, unless materials are off site. 	
	 9.4 – No. this needs to stay in as standard contracts. Siemens to 	
	check their bulk contracts.	BBS
	9.7 – Wording to be tweaked.	
	Clause 10	
	10.13 – Reword giving more than 3 days	
	10.16 – Not really an issue – BBS will reword	
	Clause 11	
	• 11.4 – reword?	
	• 11.6 – reword?	
	11.7 – BBS will have another look at this.	BBS
	• 11.8 – Review.	
	• 11.9 – Needs clarifying.	
	Clause 14	
	 Clause 14 BBS yet to read document as only recently issued. 	
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	 Clause 15 RDA procedure was in 2nd drop of ITN. 	
	 Clause 16 Does agreement allow delegation? APA not yet finalised – Gary Easton to see if this can be sent out in draft as it stands. 	tie
	 Clause 17 All will be clearer once they see Transdev Agreement – to be confirmed. 17.25 – Over telephone OK but not "free of charge" if they have to send someone to site etc. BBS to reword. Last bullet point – accepted unless there is step in. 	BBS
	Clause 18 ■ Schedule 13 – BBS will read and if need be, revert to tie.	
	 Clause 19 BBS were under impression consents would be in place and not an Infraco risk. This is tie's position but further consideration may be needed. 	BBS/tie
	 Clause 26 26.1 – How do BBS price it? Needs to be reworded as may not. 26.7 – Wording can be re-jigged to remove "inefficiency" and add misconduct etc. 26.11.2 – OK 	
	Clause 28 • 28.2 – OK • 28.3, 28.4 & 28.5 – need for key members of supply chain but not all.	
	<u>Clause 29</u> • 29.2 - OK	
	Clause 34 • 34.2 – Objective criteria to be considered.	
	Clause 41 BBS to consider some objective criteria.	
	Clause 44 BBS to consider in more detain in relation to their programme.	

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	 Clause 70 BBS said that they would be offering their standard Parent Company Guarantees and tie commented that they need to see what they are and for BBS to give visibility of price. Collateral Warranties – as noted plus BAA. Any others to be Clause 70.6 with different timescales that are not CPs. 	tie
3.0	• tie believe that Bob Dawson's e-mail and attachments dated 27 th October should address BBS's concerns, particularly as there had been no adverse comment thereon. BBS to review and revert so that these can be formalized.	BBS
4.0	 Letter of comfort from CEC Further discussion needed but neither BBS nor tie thought there to be a major problem. 	
5.0	 BBS commented that the sequence of SDS's design was not helping BBS price but tie explained some of the background. In particular there is currently no drainage showing on drawings. Aside from the pricing issue, this did not help BBS programme. BBS will give us a Tender Query on drainage and tie will endeavour to assist, possibly with provisional sums for certain locations. BBS requested a make up to the pricing schedules and tie agreed to get back to BBS. 	BBS/tie
6.0	 Tramco and Tram Maintenance BBS asked if any of the Tramco bidders had raised any issues regarding a lack of willingness to work with Infraco competitors. tie commented that they had not noted this in the tenders but was seeing Tramco bidders over the next week or so. However all Tramco bidders had previously confirmed that they such issues. tie commented that Infraco tenderers had previously made a similar confirmation and Siemens reaffirmed that they were willing to work with other competitors, albeit that they would apply to a discount if awarded both. tie commented that this might be better expressed in the Tramco negotiation. 	
7.0	Infrastructure Maintenance Contract BBS commented that they had not really digested the IMA yet and tie understood and agreed to respond to any queries.	

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8.0	 Tender Documents BBS commented that they and some issues with the numbering system of the drawings. Also had queries on the Employer's Requirements 	
	Agreed to raise tender Query	BBS
9.0	BBS requested clarification on land acquisition and agreed to Submit as a Tender Query.	tie