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Sent: 07 December 2005 10:33
To: 'Gerry.Henderson@tie.ltd.uk'; 'David.Ramsay@tie.ltd.uk'
Cc: Fitchie, Andrew; 'ian.kendall@tie.ltd.uk'
Subject: MUDFA

Gerry/Dave

On Monday, you asked me to draft a short note to set out my thoughts on the implications of having two MUDFA Contractors rather than one. I have set out my thoughts below:

Procurement Issues

The OJEU Notice does not refer to the possibility of there being two contracts awarded, only one. To be compliant with the Regulations, we should have stated in the OJEU Notice that the intention was to award two contracts or that tie was seeking to award a framework contract with an opportunity for multiple contractors to participate in the MUDFA works. If tie proceeds to award two contracts, then there is a procurement risk to tie. Given the extensive market response to the OJEU Notice, the risk of procurement challenge may be low. However, a risk remains that a party might seek to challenge the award of two contracts on the basis that it may have bid if it had known that the contract was for a lower value and that the risks of delivery of the MUDFA works were to be shared with another contractor.

Contractual, Pricing and Interface Risks

Two contractors means:

- two contracts for tie to administer with resultant interface risk and higher associated costs
- two contractors dealing with each of the Utilities
- two contractors to interface with SDS
- two contractors interacting with CEC and other third parties
- two possible ways of doing everything
- two sets of overheads
- half the volume of works to be priced
- two sets of long lead time materials orders
- problem on how work is divided up particularly if the work is on the basis of wider areas and commissioning occurs across each MUDFA's works
- problems with delivery to Infraco - eg would there be 2 sets of LDs?
- if work awarded on performance, then issues around how such performance is measured
- how would contracts be set up initially and priced?
- two contractors occupied to the extent that they decide to not bid for infraco
- contractually, may be difficult to allocate responsibilities and attribute fault in the event of a dispute.

Advantages

Programme ? - limited advantage as the MUDFA works may be restricted to a max number of 4 areas in the city

Risk of Under-performance - risk as this has never been done before. But risk should be mitigated by reliance being placed on evaluation process and robust contract terms to ensure that an able MUDFA is selected on appropriate contract terms. If one MUDFA under-performs would the other pick up the slack?

Approved Contractors - this could be an interesting advantage. Preference would be for MUDFA rather than utility or its contractors to do any of the works. If MUDFA is not approved to do certain works, what if the other MUDFA could do it? However, thinking about this concept, takes us into the realms of having some sort of framework arrangement with potential procurement issues.

On balance, from a legal perspective, I believe that the risks outweigh the advantages of having 2 MUDFA contractors. If tie wishes to appoint 2 MUDFA contractors, then we need to review our procurement strategy and programme now.

Perhaps we should take the opportunity to close this matter out at our meeting at 3.30? There may be a few other risks/advantages which may not have been covered above.

Regards
Sharon

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