From: Anthony Rush [anthony@[redacted]
Sent: 01 March 2011 20:49
To: Richard Jeffrey; 'VRE - MobileMe'; Steven Bell; 'Nigel Robson'; 'Brandon Nolan'; 'Colin Smith'; donald.mcgougan@edinburgh.gov.uk; 'Dave Anderson'; alastair.maclean@edinburgh.gov.uk
Subject: RE: threshold items/litmus tests - Strictly confidential and foisa exempt - prepared in anticipation of litigation

I suspect that Nigel is looking for thresholds where individual proposals become acceptable to tie and how we test the residual risk left with tie.
Before doing so it would seem to me that we have to try and understand the strategy behind what is after all an opening offer. I was moved to comment on Thursday that almost by definition a proposal for mediation is intended to contain mistakes; otherwise there would be no need in mediating.

Can I share some thoughts with you to try and guide thinking about thresholds?

I am minded that the Infraco will have in their mind that Haymarket as a terminus is what tie want and three numbers:

1. They have been paid £178 million
2. That payment is included in £400 million spent by tie to date
3. CEC say that they are looking to increase funding to £600 million.

In simple terms they may assume that the balance outstanding would increase payment to them to £378 million.

But they will also assume that there will be savings to be had from trams; residual values of Siemens equipment and materials included in the PPP Price; elimination in on street works and that CEC may be prepared to increase its funding to £620 million. Grossing up potential for an available payment to them in excess of £400 million, but only if tie is eliminated and subsumed by CEC. They will also recognise that the cost of attrition through adjudication will reduce the cash available to them.

in my experience compromise has a habit of focusing on a totemic level and in this case it feels like £400m. They may have in mind less than £400 million, but how hard they press for it being the threshold over which they will not drop or whether it may be more will tell us the extent of negotiating room they have built in and the amount of risk they will take.

Using £400 million as a base and if we add tie's costs from "deck-chair" of £276.5 million, the combined cost before risk and savings would be £676.5 million – substantially in excess of CEC's threshold. But:

I don't have an electronic copy of GHP's paper on costs of Separation with me, but to explain:

On the page 7 Summary - delete Termination Costs and Infrastructure Airport to St Andrew Square and insert Infraco cost + 10% risk - £440 m and Infrastructure Haymarket to St Andrew Square - £22.9 m and the Total Cost would amount to £772 m including Jim's potential risk items.

I would be surprised if the Infraco hadn't thought this through – they can gather from the numbers above the area of costs to date for tie and will put a similar figure on procurement costs and will know how much it would cost us to re-procure.

The litmus tests for me are:

- How much are we prepared to pay for certainty?
- From a funding management point of view is Attrition better for us?

Tony

From: Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]
Sent: 01 March 2011 12:07
To: VRE - MobileMe; Steven Bell; Nigel Robson; Brandon Nolan; Colin Smith; Anthony Rush; donald.mcgougan@edinburgh.gov.uk; Dave Anderson; alastair.maclean@edinburgh.gov.uk
Subject: threshold items/litmus tests - Strictly confidential and foisa exempt - prepared in anticipation of litigation

Gents,

Nigel encouraged us to share our thoughts on this, so here goes, as a starter to get things moving.

Things we cannot agree to; (I think this needs to be kept high level, and a short list).

- The price:- We can see no justification for this level of price increase. The original Civils/System price was £240m for a depot and 18km, roughly £13m/km, the new price is £390m for a depot and 11km, roughly £35m/Km, nearly **3 times** as much.
- The fact that the price is based on a set of drawings, not on the employers requirements:- We need a price (fixed with a very few exceptions) for a tram operating to Haymarket, which meets the employers requirements, any risk associated with approval or completeness of the drawings is a BSC risk.
- The concept that any change to the drawings is a client change:- we need a definition of client change as **only** those things resulting from a client instructed change in ER's or a limited number of clearly defined client risks, e.g. fossils or antiquities. (please note that whilst our focus has been on the Civils, we must not create a situation where we open a door for Siemens)
- There is no 'time is of the essence' obligation on them
- The proposed changes in the structure of management of the project place far too much control with BSC. Partnership is OK, handing over control is not.
- Some of the changes to the maintenance agreement (Alastair Richards will supply) further detail
- Everything else is really a subset of point 2 above.

Any views?

Further reading of the small print here confirms for the team that the extent, and impact of the pricing exclusions is huge, and moves us further away from a fixed price than the current contract. There is also a sense that the document is disjointed, or disingenuous, the up- front words about the way forward are not matched with the detailed words later on. I fully accept that emotions and history may be getting in the way here, but the team say this feels just like the stage we were at when we were at preferred bidder, with the detail not matching the up-front statements.

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