
From: Stewart McGarrity
Sent: 24 February 2010 13:01
To: Nolan, Brandon; Fitchie, Andrew
Subject: FW: Pitchfork (Private & Confidential) – Design Development history
Attachments: FW: BBS Deal 191207A; FW: BBS Deal 191207; FW: BBS Deal 201207; FW: BBS Deal 191207; FW: BBS Deal 191207A; FW: ETN

First follow up to the Geoff Gilbert conference call.

The version of the Weisbaden agreement Geoff was reading from was that attached to his email to Walker (and others) named **BBS Deal 201207** with the Word document attached of the same name. You have that email attached to my message of 17th Feb. .

The version I looked at for comparison of the 3.3 wording on design development was that attached to Geoff's email to Walker named **BBS Deal 191207** again with the Word document attached with the same name. Again you have that email attached to my message of 17th Feb.

I was focussed on the design development wording and didn't pick up on any other differences between the two documents including any changes to the numbering of clauses.

I'll compile the Full Monty of emails around the Weisbaden agreement that are in Geoff and Matthew Crosse's mailboxes and sent for your examination.

Stewart

Stewart McGarrity
Finance Director
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From: Stewart McGarrity
Sent: 17 February 2010 10:55
To: Tony Rush (rush_aj@cqm.co.uk); 'Nolan, Brandon'; 'Fitchie, Andrew'; Richard Jeffrey
Cc: 'Graeme Bissett'; Steven Bell; Susan Clark; Dennis Murray
Subject: Pitchfork (Private & Confidential) – Design Development history

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Pitchfork (Private & Confidential) – Design Development History

All,

Further to my emails of last week, and to help jog Geoff Gilbert's memory when he is interviewed, I've had Geoff's email archive restored and have dug out some relevant emails around the 19th and 20th Dec 2007. My personal and professional leaning in these matters has become to assume there are monsters under the bed at all times (and that everything Richard Walker ever wrote or did was 100% focussed on making his position better and ours worse) so I won't pass judgement on what might have happened here. Only Geoff and maybe Matthew Crosse can vouch for where the final design development wording came from (us or them), what the commercial intent was and if that was in any way different to what was discussed over the table at Weisbaden, when we agreed to part with an additional £8m, or reflected in the draft agreement the previous day.

In a nutshell.....

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The draft Weisbaden agreement was discussed at the TPB on 19th Dec 07. At that point the civils design development clause read:

3.3 Detailed designs – BBS included in their price for the construction cost risk in the development and completion of detailed designs being prepared by SDS, save for:-

- a) Any future changes to elements of the design intent for civils works that are substantially different compared to those forming the current scheme being designed by SDS, as typically represented by the drawings issued to BBS with the design information drop on 25th November 2007.
- b) Items designated as provisional in the Appendix A4.
- c) Excluded items, to the extent described in 3.4 below.

In respect of footways, full reuse of existing kerbs and flags and minimal reinstatement behind kerb lines is assumed. i.e. not wall to wall. Design must be delivered by the SDS in line with our construction delivery programme previously submitted.

On 19/12 at 08:37 R Walker wrote:

.....Secondly, having consulted with my team and reviewed e mails and meeting minutes, our firm price including the additional £8m to fix the 'variable' sums noted in our tender is based on all the additional information which we received from SDS via the 4 No. CDs. The last of which was delivered to us on 25th. November 2007. We therefore insist that our contract be related to this.

On 19/12 at 11:43 Geoff replied:

.....Regarding your second point Scott [McFadzen] has had a discussion with Matthew [Crosse]. Based on that discussion there would be no reason to change the current wording on design – which was acceptable to you yesterday. Scott I've left a message for you to contact me. We need to close this out now if we are to move forward and so that I can brief the Tram Board and CEC correctly.

On 20/12 at 06:07 R Walker wrote:

We still have issues with accepting design risk. We have not priced this contract on a design and build basis always believing until very recently that design would be complete upon novation. With the exception of the items marked provisional which we have now fixed by way of the 8 million we cannot accept more drain [drain?] development other than minor tweaking around detail. Your current wording is too onerous. Trust we can find a solution.

On 20/12 Geoff circulated the final Weisbaden agreement wherein the design development clause read:

3.3 The BBS price for civils works includes for any impact on construction cost arising from the normal development and completion of designs based on the design intent for the scheme as represented by the design information drawings issued to BBS up to and including the design information drop on 25th November 2007. The price excludes:-

- a) Items designated as provisional in the Appendix A4.
- b) Any material changes to the design resulting from the impact of the kinematic envelope of the CAF tram vehicle on the civils design.
- c) Excluded items, to the extent described in 3.4 below.

In respect of footways, full reuse of existing kerbs and flags and minimal reinstatement behind kerb lines is assumed. i.e. not wall to wall. Design must be delivered by the SDS in line with our construction delivery programme previously submitted.

For the avoidance of doubt normal development and completion of designs means the evolution of design through the stages of preliminary to construction stage and excludes changes of design principle, shape and form and outline specification

I can't yet find any documents where the effectiveness of the design development risk transfer was challenged or questioned by anybody as it was translated into Schedule Pt 4 – certainly not by me!

Regards,
Stewart

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