
From: Stewart McGarrity
Sent: 24 April 2008 15:31
To: Willie Gallagher; Graeme Bissett; Steven Bell
Cc: Dennis Murray; Susan Clark
Subject: SDS - STRICTLY PRIVATE & CONFIDENTIAL
Attachments: SDS claim papers.pdf

PRIVATE & CONFIDENTIAL

Dear All,

Willie received the latter reproduced below from Donald McG requiring details of all past and proposed settlements with SDS. I pressed Alan Coyle (who I suspect drafted the letter) for the background to the request and he tells me it is because it was on the defined list of Information CEC officers had requested as preconditions for financial close. **If you don't want to read the stuff that follows – the action I'm going to take is to go speak to Donald personally about this and see what he wants to do re information to be provided to TIE on 12th May (which as discussed should at most be a one pager).**

There are two pieces here – the previously agreed commercial settlement of £2.5m (including c£1.5m 'claim' element) and the additional settlement being negotiated currently which as I believe currently stands at £450k (including c£200k understand it includes some £300k in respect of prolongation and a whole heap of changes which are not by their nature 'claims').

In respect of the previously agreed settlement of £2.5m, Elliot has dug out the paper trail through TPB Papers and Minutes and this is attached as follows:

Page 2 – Period 4 initial SDS claim paper

Page 7 – Attendees of Period 4 TPB (Minutes of P4 TPB contained in P5 report)

Page 11 – Discussion of initial SDS claim paper (point 5.0) (Minutes of P4 TPB contained in P5 report)

Page 15 – Period 5 SDS claim paper (approved)

Page 23 – Attendees of Period 5 TPB (Minutes of P5 TPB contained in P6 report)

Page 27 – Discussion of approved SDS claim paper (Point 3.8) (Minutes of P5 TPB contained in P6 report)

Page 32 – Comment from MC in Period 6 TPB relating to status of commercial settlement (point3.23) (Minutes of P6 TPB contained in P7 report)

*numbering related to the pdf document, not the numbers on the pages

I have the following observations about all of this:

1. The TPB paperwork is clear in providing detailed explanations of the settlement and getting proper authorisation from TPB to settle at £2.5m. Donald was present as a principal at the TPB on 5/9/07 when the TPB gave approval.
2. The TPB approval on 5/9/07 predates the Council meeting on 20/9/07 when the requirement to go back to TIE/full Council on claims was introduced. The current Claim being considered is below the £500k bar which requires ratification by the Council.
3. What we are actually doing re the original £2.5m differs from the details of the TPB approved in one key aspect – the paper approved by TPB anticipated we would settle £500k immediately (which we did) then provide an incentive to PB by paying the rest as final approved design is delivered (see para 4.2 of the 5/9/07 TPB paper). The negotiated SDS Novation agreement has us paying them full settlement of past and future claims prior to Novation (i.e. next week) even though the design is incomplete – part of the price of getting the novation done!
4. Dennis is drafting up a few paragraphs on justification for the current proposed settlement.

Stewart

Stewart McGarrity
Finance Director
tie Limited
Mobile: [REDACTED]

Letter DMcG to WG 18 April 08

Dear Willie

**EDINBURGH TRAM
SDS CLAIM SETTLEMENT**

As part of the Council's due diligence on the Tram Project, details had been requested from tie to provide a written report on previous claims by SDS.

The Council requires detail of the settlement with SDS, the cause of the claim and the costs of settlement. In addition the Council requires to know if there are any further competent claims expected from SDS.

Additionally the Tram Sub-Committee requires this detail for the meeting of the 12 May 2008 following the minute of the Council meeting on 20 September 2007, which approved "the proposed remit for the Tram Sub-Committee, a Sub-Committee of the Transport, Infrastructure and Environment Committee with the proviso that the Sub-Committee was empowered to take the final decision with respect to the settlement of any financial claims that might arise against tie/the Council, subject to ratification by the full Council for amounts in excess of £500,000".

I would therefore be obliged if your team could provide me with this detail.

Yours sincerely

*Donald McGougan
Director of Finance*