
From: Jenkins, Mike
Sent: 27 July 2007 06:07
To: Reynolds, Steve
Cc: Hutchison, David; Dolan, Alan; Chandler, Jason
Subject: RE: SDS Commercial Issues Resolution

Steve,

Not a surprising initial response from tie when viewed in the context of where we have been over the last two years.

Here is my brief reaction to your notes:

Charettes

Clearly tie see these as catalysts for variations to the base scheme and have paid us something for those variations which is a crucial point. The estimates and subsequent sums they have paid us have always excluded costs associated with the co-located team in Edinburgh. We have always stated that they have incurred costs in these variations (which are the development of new base schemes which is work out with our contract) but to get some payment their costs were not included in the payments. The project team can provide some further comments and evidence to support this.

Project Management

To counter tie's comments in this area it is worth referring tie to the numerous meetings and discussions which were held between Ian Kendall and either Dave Hutchison and/or myself from September 2005 through to Ian's departure in May 2006 and subsequent discussions with his successors. During many of these meetings we discussed management and coordination issues which were preventing us from performing.

With specific reference to the VE and technology review issues, it is worth noting what I discussed our grave concerns about these with Willie Gallagher and Michael Howell (the then Chairman of tie) at a dinner on the 7th June 2006. I also emphasised that we were not the client and that where client decisions were needed then we would advise and recommend but were not in a position to make those decisions. They both agreed that their team was responsible for making client decisions. (again and important plank of our argument).

I followed that up with a 4 page letter outlining some of the areas where both tie and ourselves needed to work together to improve the overall performance of the project.

In that letter I specifically referred to both the lack of clarity from the client on their high level requirements had severely limited our ability to complete the Requirements Definition Phase and undertake activities such as Technology Reviews and Value Engineering exercises as we were unable to establish the assessment criteria for effective option selection. In that letter I suggested a way forward which would have addressed these issues and put in place a solid foundation upon which the design could be progressed with the aim of providing a cost effective solution. In a discussion shortly after that, Michael Howell acknowledged the letter but did not formally respond. When Dave Hutchison and I raised this with Willie Gallagher at a meeting on 9th August 2006, he said he had not received the letter. A further copy was emailed to him on the following day by Dave Hutchison. We still have had no response to this letter.

In undertaking all our work we have been able to progress our efforts so far before needing to get the Clients direction. On VE we use a 5 stage process:

Phase 1, **INFORMATION - IDENTIFY** .

Phase 2, **SPECULATION - GENERATE IDEAS**

Phase 3, **EVALUATE IDEAS**

Phase 4, **DEVELOP RECOMMENDATIONS**

Phase 5, **PRESENTATIONS**

The first 2 phases are quite straight forward but when you get to phase 3 you must assess the options based upon some assessment criteria. In the first 9 months of the project there were various members of the client's team who pushed hard for certain things indicating that these were the most important criteria to be considered when assessing options. An example of this was speed of construction, which was pushed very heavily in the heavily congested built up areas of Edinburgh. However we were never able to get a suite of consistent assessment criteria which considered other key criteria such as Maintenance Costs/ Capex cost/reliability/aesthetics/etc. Therefore we were able to assess options but were unable to effectively

recommend; in the case of track form if cost was the overriding driver then you might lean toward a traditional construction method, whereas if speed of construction was the issue (as it had been stated at many meetings in early 2006) then a precast slab solution might be the resulting recommendation.

Tie's Counter Claim

The reference to the single date of 28 February is interesting. I don't have my files with me but I thought that the EoT claim for late contract award and extension of Requirements Definition Phase from 8 to 13 weeks, which are both included in the contract, took most of the milestones past 28 Feb. These EoTs are cast iron and they can't reject them if they want to remain credible.

The reference to SDS Action Plan dated 15th March needs to be put in context. When we were awarded the contract in September, we expected a swift and coherent transfer of information from tie to ourselves along with their attendance at some structured meetings to allow us to get up to speed and achieve the Requirements Definition Phase milestones. The issues surrounding this data transfer and subsequent clarification meetings was well recognized by tie and was one of the primary reasons tie offered during the tender negotiations to extend this phase of work from 8 to 13 weeks in exchange for £100k reduction in price (an offer that we did accept). In December I met with Ian Kendall informed him that the way in which data was being transferred and the lack of clarity about its status was delaying and disrupting our progress. He agreed to look at it. On 19th January, we again met to discuss the status of the project. This was an open and straight talking meeting where both parties agreed that there were issues on both sides that needed to be addressed. Dave Hutchison recorded the actions which we needed to address in the attached document.



tie meeting 19 Jan
06.doc

Further notes about tie's performance are in my diary and Dave can provide some of this as well. However the big thing here is that we did have an open and up front dialogue where we didn't hide our internal issues but shared with the client that we recognised our issues and were addressing them. This helped build a degree of confidence that after a very slow start on both sides, we were at least addressing our issues. You will see from the 15 March Action plan that most of the actions had been addressed and that they are limited to:-

- Getting a robust programme in place (delayed previously by tie's planner imposing numerous tie "requirements" on the programme which made it useless - covered in the 19 January meeting)
- Spend profile (linked to programme)
- QA (focussed on how we were getting access to undertake site investigations)
- Management (focus on improving flow of information and dialogue between tie and PB + escalation procedure to get client decisions.)
- TRO/TTROs
- Surveys progress
- Utilities design progress
- Structures and Roads resources (PB had already addressed this by ensuring Halcrow had resources or by taking work away from Halcrow and putting in house)

The scope of the actions shows that this is not a total collapse of management but in many cases such as Structures and Roads it is a proactive management by PB.

Can't believe the comment on Poor Risk Management. Dave and Jason can elaborate, but I am unaware of it being raised by tie or others as a big issue at any meeting I have attended. I am aware that they wanted quantified assessments at times when we didn't find appropriate but that is all I know.

NEXT STEPS

Comments about the:

- Requirements Definition phase surprise me. This phase was due to be completed by 23rd December 2005 and I know that we were still being given fresh information and new requirements well into December. My guess is that because we haven't made any claim associated with the pre-June 2006 delays, they assume they don't have a case to answer. If they become aware of the real picture, particularly prior to March 2006 then they probably won't want to go there as they will realise how much they are implicated. But let us see. Dave, Alan and Jes should be able to give a much better view of this.
- Track form, Preliminary Design, VE Report, Risk Mgt - all covered previously
- Surveys - This has been a real issue but my view is that with the exception of Geotech this is a PB problem only. Geotech is required for Infracore but I am unaware of how we have delayed them.

Hope this helps. Without my diary and notebooks it is a bit difficult.

Regards,

Mike

From: Reynolds, Steve
Sent: Friday, 27 July 2007 2:13 AM
To: Jenkins, Mike; Hutchison, David; Chandler, Jason; Dolan, Alan; Dorrington, Kim (Edinburgh Tram)
Cc: Ayres, Greg
Subject: SDS Commercial Issues Resolution

Mike, David, Jason, Alan, Kim,

The Introductory Meeting on commercial resolution with tie took place yesterday. The agenda covered a number of items, with actions arising in relation to the claims submitted by PB for additional costs due to the provision of additional management and supervision services for the period 03 July 2006 through 22 June 2007. The meeting was conducted as an exploratory session, with a key objective from my point of view to understand precisely where tie is positioned with regard to the claims.

The following summarises the key points of the tie response

Tie Response

- tie confirmed the amount claimed as the sum of the claim dated 09 April plus the supplementary claim dated 28 June - a sum total of £2.857m.

On the substance of the submissions:-

- Tie sees merit in the claim arising from delays in reviewing the preliminary design
- Tie sees merit in the claim arising from the impact of the Critical Issues

tie's view with regard to Charrettes is that:-

- PB has already been paid for the impact of the Charrettes up to November 2006. The sum of £600k paid cleared all issues arising from the Charrettes to that date.
- With reference to the Structures Charrettes all matters arising subsequent to November 2006 have been (or are to be) addressed through the Critical Issues initiatives

With reference to the claim for additional services relating to Consents:-

- Tie sees no merit in this claim arguing that PB has a contractual obligation to secure Consents and that whilst that may be an onerous obligation that is the contract requirement.

With reference to the claim arising from tie's failure to provide programme management consistent with the responsibility to manage the maser programme:-

- Tie sees little merit in this argument. I developed the conversation along the lines off the disruption caused to PB due to lack of co-ordinated management by tie of the various strands of the project (MUDFA, SDS, Procurement etc), and suggested that as a direct consequence of this PB had become involved in providing Delivery Partner services in addition to those contracted for detailed design. Tie's response to this was that PB had been employed as a "World-leading Infrastructure Design Company" (cf PB Bid Documents), and that tie had every right to expect more innovative input from PB. tie developed the argument to cover Value Engineering and tabled the Value Engineering Report submitted to tie on 23 August 2006. tie suggested this report had been weaker than it should have been and used the specific example of PB's failure at that point to push harder on the subject of depot levels: a topic that has since been subject to extensive investigation and is at the cornerstone of tie's current VE initiative. tie added to his argument by again referring to the PB Bid Document with the reference to the need for control of costs and management of affordability issues.

Turning to tie's counter argument:-

- Tie's view is that the Preliminary Design submitted on 30 June 2006 should have been submitted under the requirements of the contract on 28 February 2006. tie is adamant that the PD was late, therefore, by some four months. I referred tie to the supporting appendix contained within the claim but tie is refusing to budge and we have some further work to do here. Tie's view is that whilst we may have felt we had agreement to a slipped PD submission date no agreement existed under contract.
- tie also suggested that the PD had been incomplete, an allegation which can be discounted by reference to the TSS (Scott Wilson) "Preliminary Design Review Report" submitted by TSS to tie on 06 December 2006.
- On the basis of late delivery of the PD tie developed the argument that tie had incurred substantial additional costs. Tie backed up this position with reference to late delivery of the Requirements Definition Report which tie suggested was due 30 November 2005 plus an agreed extension of three weeks. tie stated that the Report was finally submitted on 20 December 2005 and on review was found to be incomplete - "inadequate" in tie's terms. tie went on to say that the 80% complete Report was not received until 30 April 2006 and that the Trackform definition was delayed further until December 2006, the rumour being that we had been unable to deliver the Trackform Requirements as part of the Report due to lack of resources.
- tie tabled in support of the assertion of poor performance through the Requirements Definition and Preliminary design phases a letter sent to tie by PB dated 15 March 2006 and entitled "SDS Action Plan" This letter outlined an action plan which referred amongst other things to "Strengthening the PB Management Team" tie's clear inference was that this letter together with the delayed delivery dates amounted to proof of the tie case.

tie went on to table two other areas of PB /SDS poor performance, namely:-

- late provision of Survey information with Ground Investigation data particularly poor, to the extent that tie has been unable to transfer ground risk to the Infracore contractor.
- Poor performance on project risk management, a duty allocated to PB but which has not been delivered effectively in tie's view.

Next Steps

Tie has asked me to review the claim submissions with a view to revising the amount claimed in light of the above.

Clearly we have some work to do to review the key points as outlined above and I aim to have a response drafted by close of business next Wednesday. Hence, please could you review each of the key points and advise your views to me:-

- Late submission of the Requirements Definition Report
- Poor quality of the Requirements Definition Report
- The specific assertion on Trackform Requirements
- Late submission of the Preliminary Design
- Poor quality of the Value Engineering Report
- Poor execution of the Project Risk Management function

- Poor execution of Surveys

In closing, it's worth pointing out that the meeting was held in a professional and constructive atmosphere and some significant progress has been made. Tie has declared an intent to arrive at a mutually acceptable sum for settlement. However, it's important we set the record straight where tie has been wrongly advised so that we can optimise our position ahead of any final settlement. I won't get many chances to do this - tie is proposing final settlement during w/c 20 August - so one more push to make sure we have all views assembled is clearly important.

Thanks - Steve

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