
From: Gill Lindsay
Sent: 22 October 2007 10:33
To: Rebecca Andrew
Subject: FW: Critical Issues emerging from OGC

Rebecca

I would like to raise and agree way forward at LAG tonight on legal issues to complete this. Can we provide this info to Tie and DLA this morning please to allow it to be considered. Are you happy if I liaise direct re the legal points.

I also think we should have Tie's response to technical comments before Thursday.

Gill

From: Gill Lindsay
Sent: 19 October 2007 12:35
To: Rebecca Andrew; Donald McGougan; Andrew Holmes
Cc: Alan Coyle; Jim Grieve; Duncan Fraser; Alan Squair; Colin MacKenzie
Subject: RE: Critical Issues emerging from OGC

Rebecca

Thank you for the feedback. Re Legal issues, my advice is we advise Tie and DLA that we accept the OGC comments and wish then added to all appropriate risk registers. We should also ask DLA for their immediate comments re the 2 contract issues. They may need more info re point 2 to fully understand the particular areas of concern. When added to risk register, Tie/DLA can advise how risks are to be quantified and mitigated and if they are managed at all by OCIP insurance and if Tie /DLA are aware of and accept OGC concerns.

Would you like us to immediately do this or would you prefer to do this directly. Just let me know.

Gill

From: Rebecca Andrew
Sent: 19 October 2007 12:19
To: Donald McGougan; Andrew Holmes; Gill Lindsay
Cc: Alan Coyle; Jim Grieve; Duncan Fraser; Alan Squair; Colin MacKenzie
Subject: FW: Critical Issues emerging from OGC

Donald/Andrew/Gill,

Following Wednesday's OGC presentation on their review of risks, the team brought two specific risks to our attention.

Firstly, they stressed the concerns already expressed in the report that they do not feel that **tie** have either the team or strategy in place to adequately manage the contract. This needs to be raised with **tie** as a matter of urgency as it is important that the team who will be managing the contract know it inside out. This is best done by involving them at the negotiation stage. The OGC team have given tie names of people appropriately skilled and experienced, although there may be others.

Secondly they raised concerns about the contract itself that have not previously been highlighted in either **tie**'s risk register or the risk matrices provided by DLA. The concerns about the contract are two-fold

- 1) it places obligations on **tie** to manage the Infraco – if **tie** fails to do this, they could be open to legitimate claims from Infraco. The paragraph they pointed us to concerned the requirement to tie to give permission for the covering up of works (but there are likely to be others).
- 2) The contract is a fairly standard contract, with all the detailed specification being in the Employers Requirements. The team have experience of judges making rulings based on what is said in a main contract, ignoring accompanying schedules. One of the panel quoted losing £40m in a similar situation.

While negotiations are still ongoing with the preferred bidder, these issues can be addressed, but only if we can convince **tie**/DLA to accept these criticisms and to act quickly. I would welcome and comments you have on how best to take this forward.

I have spoken to Duncan Fraser on this and he shares my concerns. His comments are more technical and I have included his response below.

Regards,

Rebecca

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From: Duncan Fraser
Sent: 19 October 2007 07:58
To: Rebecca Andrew
Subject: Critical Issues emerging from OGC

For me in the current environment there are three:-

1. Mudfa works are behind programme which has a direct impact both on the cost of these works and the potential time thus cost impact on Infraco- action for there to be enough drawing to enable planned works to be carried out with sufficient lead time.
2. The risk of change after financial close is very high as the approval programme up to financial close is essentially only for 1b, hence the critical design of 1a is only considered post financial close. This require to better align with the Infraco programme and also assure that 1a detailed design is fit for purpose before financial close.
3. The system for site management including control management requires further consideration including tie resources. This process must assure quality out comes and not depend upon Mudfa and Infraco complying with specification- note QA does not provide for this. Working methods require to be agreed in advance and then checked as part of a works schedule on site. Also works require to be tested. It is recommended that a performance based approach is taken so that the design assumptions match the construction ones. This can be achieved by appropriate testing regime by the contractor with random independent testing by tie. Note that currently the backfilling of trenches by AMIS is based on no testing other than material checks in the quarry every two weeks. Trials with testing on site have demonstrated that this is a hit and miss approach. hence the lesson learned must be for a revised approach so as to assure out comes - a controlled and managed risk