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DLA PIPER

FILE NOTE

CLIENT : TIE Limited (310299)
 MATTER : Infraco (15)
 DATE : 9 April [2010]
 REF & FILE NO : AF/CDV/310299/15/UKM/34720679.1

Meeting with: Geoff Gilbert, Howard McGarrity, Steven Bell, Andrew Fitchie, Jim McE, Dennis Murray (part) at CityPoint, 13h15

Break out from negotiations with BBS to discuss commercial proposition by BBS which involves tie agreeing to further price increases ⇒ approximately £9 million to be split between [♦], VE, NR immunisation phase 1B bid costs. Can tie close on this?

AF:

Advised that this represented a major procurement risk in the light of the very slim price differential at PB appointment in December. Also advised that Schedule Part 4 already contained numerous relief/compensation/ arguable risk allocation points for BB(S) - on civils work especially. Biased for Infraco. Risk of BB exploiting Schedule Part 4.

Recommended tie have highest authority if want to accede to this position and that BB were made aware plainly what their approach was doing in terms of risk and Best Value for tie.

- J McE stated last chance saloon to close project. Too many false dawns and political will could be wearing very thin. Asked Geoff's view ⇒
- GG not satisfied that commercial terms were [♦] - still movement in the contract provisions ⇒ Clause 80, Clause 65 indemnity and Clause 19. Recognised the [♦] to close but this would bring risk if tie not able to find clear and documented middle ground.
- SB - satisfied that engineering and pricing issues on scope were getting closer to finite position. Schedule Part 4 regulations were laborious and dominated by BB's lawyers. Every assumption being debated at length - very difficult since often BB or S not prepared for proper discussions.

AF - clear that Schedule Part 4 not negotiable. Had had one serious endeavour to shift Pinsents but the document was cemented into BB's approach from Wiesbaden Agreement.

- JME - comes a point where if contract is to be lended, tie will need to make a choice. Will always be risks but main risk would be [♦] and real - that the project is a "busted flush" and government cancels funding to recoup £500 million in one go.

Meeting broke up.

WG to be informed at late meeting of tie Exec. GG/ SB to consider JME view on time dynamics: What did it take to push BBS closer?

Action: Attend tie Exec. for further discussion/ instructions.