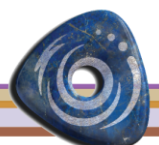


Remaining Issues for Discussion after AECO/BCC1 meeting 16/12/09

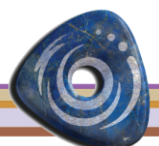
Conditions of Contract:

AE = AECO's (Alex's) comments

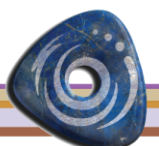
Clause	Description	Issue / Comment	Action by
1.1	Adjusted Fee definition	Subject to final agreement AE: Subject to final price negotiation but it signifies items of Cost such as Head office Expenses.	RR / AECO
	Affiliate definition	To be redrafted to reflect revised controlling interests AE : Affiliate" means in respect of any Person , any other Person, which directly or indirectly Controls , is Controlled by, or is under common Control with such Person" "Control" means , as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting shares by contract or otherwise" "Person " means any individual , corporation, joint stock company, limited liability company, partnership, joint venture, association, trust, incorporated organization, governmental authorities and/or legal entities, or any other entity	BCC1 - PJO
	Best International Practice definition	To be redrafted to more favourably reflect AECO's duty of care AE: this definition is to be proposed by the Employer. In as far as the Contractor is concerned the concept of "fir for the purpose intended "which has specific legal meaning under English law is enough.	BCC1 - PJO
	Contractor's Share (of savings)	Subject to final agreement AE: Contractor is not necessarily insisting on this issue. It is propose simply as an obvious incentive to exercise best efforts to keep the cost within the TC amount.	RR / AECO
	Employer's Share (of savings)	Subject to final agreement	RR / AECO
	Fee definition	Subject to final agreement	RR / AECO



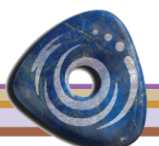
Clause	Description	Issue / Comment	Action by
	Interim Milestone (delivery of sales collateral, completion of fdns etc)	<p>New definition required for inclusion in Schedule 5 part 1 [Time for Completion] and Schedule 7 [LDs]</p> <p>AE: this item increases the exposure of the Contractor and should be dealt with caution. Subject to agreement on all other risk apportionment items the Contractor may accept the inclusion of such Milestones provided the Interim LDs will be recoverable in full in case the Contractor achieves any of the following Milestones and/or the Time of Completion for the particular Section.</p>	BCC1 - JR
	STC and TC definition	<p>Currently includes that Cost in excess of TC/STC shall be paid as Cost + Adjusted Fee. BCC1 agreement to this is subject to level of Fee/Adjusted Fee being substantially reduced</p> <p>AE: the Contractor is considering decreasing the percentage of the Fee on the understanding that the risk of the Project in terms of finance and risks not within the reasonable control of the Contractor will be assumed effectively by the Employer. When the above will be properly reflected in the draft contract the Contractor will assess the situation and in doing so it will take into consideration the STC and TC mechanism agreed.</p>	RR / AECO
1.11	Compliance with Laws	<p>Responsibility for obtaining Building Permits, which shall be clearly identified in Schedule 15 remains unresolved.</p> <p>AE: Contractor position on this matter is that the relevant risk must be assumed by the Employer.</p>	RR / AECO
2.5	Employer's Claims	<p>AECO has introduced need for Employer to seek Engineer's prior determination before deducting delay damages. This was not agreed by Employer.</p> <p>AE: The issue is one of principle and substance. LDs may affect significantly the Contractor's cash flow and in case they are imposed abusively the Contractor should be in an impossible financial position especially in view of the significantly reduced amount of the Advance Payment. Under the present uncertain circumstances the Contractor cannot accept to suffer simply on arbitrary decisions of the Employer.</p>	RR / AECO



Clause	Description	Issue / Comment	Action by
4.2	Performance Security	<p>AECO seeking increasing amount of 2% of Cost + Fee received from Employer, plus 2% of Cost + Fee forecasted to be paid in forthcoming year. BCC1 to review</p> <p>AE: Agreement on the Contractor's proposal is beneficial for both Parties in terms of Cost and is one of the most significant elements which would allow the Contractor to reduce the amount of the Fee.</p>	BCC1 - RR/PJO/JR
8.3	Programme	<p>The Employer's entitlement to rely upon the programme has to be on an agreed programme and not on one of the Contractor's unagreed revisions.</p> <p>AE: This is not acceptable by the Contractor and is not negotiable especially in view of the existence of Interim Milestones. In case the Employer insists on it the Contractor will not be able to accept the Interim Milestones concept.</p>	JR / AECO
11.10	Unfulfilled Obligations - period of compensation for defects	<p>AECO seeking 3 years in lieu of 10 years. BCC1 to review its commitments in DA and SPAs</p> <p>AE: Agreement on the Contractor's proposal is beneficial for both Parties in terms of Cost and is one of the elements which would allow the Contractor to reduce the amount of the Fee.</p>	BCC1 - JR
13.3	Variation procedure	<p>If Employer reduces TC in aggregate by more than 25% as a result of Variations, then AECO seeks compensation of 30% of the further deductions. Subject to final agreement.</p> <p>AE: This issue is theoretical. The high percentage operates as a simple deterrent for the Employer not to abuse its newly given ability to reduce the Contractor's scope of Works.</p>	RR / AECO
13.5	Adjustments in Changes for Legislation	<p>Revised wording required to eliminate references to Subordinated CE</p> <p>AE: Agreed</p>	AECO



Clause	Description	Issue / Comment	Action by
14.2	Advance Payment	Subject to final agreement AE: the Contractor cannot accept the amount of the Advance Payment to be lower than the one agreed by Addendum 7 and this only on condition that the Performance Bond and retention proposals of the Contractor will be accepted.	RR / AECO
14.3(c) and 14.9	Retention	Subject to final agreement	RR / AECO
14.6	Issue of IPCs	Subject to final agreement. AECO seeking 10 days in lieu of 28. AE: This is a result of the significantly reduced amount of Advance Payment	RR / AECO
14.7	Payment	Subject to final agreement. AECO seeking 30 days in lieu of 56. AE: This is a result of the significantly reduced amount of Advance Payment	RR / AECO
16.1	Contractor's entitlement to suspend	Subject to final agreement. AECO seeking 7 days notice in lieu of 14 (dependent on size of Advance) AE: This is a result of the significantly reduced amount of Advance Payment	RR / AECO
16.2	Contractor's entitlement to terminate	Subject to final agreement. AECO seeking 30 days notice in lieu of 100 (dependent on size of Advance)	RR / AECO

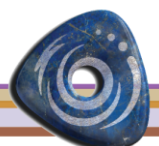


Schedules:

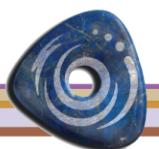
Schedule	Description	Issue / Comment	Action by
Sched 1	Contract Particulars	No action required	
Sched 2	Value of Target Cost (TC) and Sectional Target Costs (STCs)	Pending receipt by AECO of ERs and Employers VE conclusions. Hanscomb has commenced interrogation of draft TC. 1 st Report expected today	AECO / Hanscomb
Sched 3	Open Book Policy, Cost Management and Payment	Redraft is in discussion and following points remain: <ol style="list-style-type: none"> 1. Definition of Preliminaries: Help desk agreements (e.g. Millenium) introduced by AECO, but not yet agreed by BCC1. 2. Materials wastage %'s required 3. legal, auditors and other similar fees to be included in Fee or in Prelims? 	RR / AECO Hanscomb PJO / JR / AECO
Sched 4	Design Development and VE	Redraft has been commented upon by AECO, no further discussion has taken place	PM / AECO
Sched 5	Programme / Time for Completion	Draft not yet received from AECO. Interim Milestones proposed by Employer but not yet agreed with AECO	JR / PA / AECO
Sched 6	Employer's Agreements	No action required	
Sched 7	Liquidated Damages	Pending resolution of TC and Interim Milestones and Time for Completion	JR
Sched 8	Insurances	To be updated once TC is known	AD
Sched 9	Parent Co Guarantee	Subject to all other matters being agreed	JR / PJO / AECO
Sched 10	Retention Security		
Sched 11	Advance Payment Security		
Sched 12	Performance Security		
Sched 13	S/C Collateral Agreements	To be deleted	JR
Sched 15	List of Permits and Approvals	Redraft received from MH. To be forwarded to AECO for comment	JR
Sched 16	Cashflow	To be updated once TC and Programme are finalised	AECO
Sched 17	Key S/Cs	To be deleted?	JR

Employer's Requirements:

Section	Description	Issue / Comment	Action by
1.0 to 1.4	Master Plan / Location Drawings	A simple update required of 4 or 5 drawings	PM
1.5	ER Section Descriptions	Architectural descriptions are well under way, but pending conclusions of VE to be adopted by Employer. Infrastructure ER has been drafted but needs amending on MJL's return from leave on 26/12/09	PM MJL



Section	Description	Issue / Comment	Action by
1.6	Area Schedules	Will be updated after all other ER1.5 documents are finished	AECO
1.7	General Scope of Works	Being updated in alignment with Section 1.5	PM / MJL
1.8	Architectural Finishes Schedules	Being updated in alignment with Section 1.5	PM
1.9	Interdependency	Redrafted and to be sent to AECO for comment	PA
1.10	General Works Methods and Procedures	Yet to be updated	MJL / RJ / PA



Risks that no longer fall on the Contractor:

1. Best International Practice
2. Change of Law
3. Conditional Entitlements and the like
4. Failures by Authorities
5. S/C Collateral Agreements
6. Accuracy of data provided by Employer
7. Sufficiency of GMP/MSPs
8. Physical Conditions
9. Special or Temp ROWs required
10. Suitability of access routes
11. Errors in Employer's Requirements
12. Costs associated with DC, Water and Electrical reticulation, ICT Draka System, Gas network, Beach Beautification and Temp access road from Golf Hotel to Contractor's camp roundabout.
13. Changes in standards which are mandatory in Law
14. Cost of suspension caused by Govt
15. Value Engineering to access Contingency

Other Risks up for discussion:

1. Size of Performance Security
2. Liability period
3. Compensation for variations >25% of TC
4. Size of Advance Payment/Security
5. Level of Retention
6. Interim Payment period
7. Suspension & Termination periods
8. Legal fees forming part of Prelims or Fee?
9. Materials wastage levels

Benefits to the Employer:

1. Proceeds from sale of Contractor's Equipment
2. 21 days design review period (except for Anantara Hotel, Al Naman and Golf Villas)
3. AECO compliance with instructed Variations regardless of agreement of value
4. Up to 25% of value of TC can be omitted if ownership of omitted work transfers

