CCC Interrogatory #36

Interrogatory

Reference: Exhibit D2/T2/S 10/ p. 69

In September 2014, OPG convened a series of meetings with B&M as a final attempt to reach a firm agreement on cost and schedule for the D2O Storage Project. OPG had concluded that unless B&M assumed greater risk for the cost of the completed project, there could be no cost certainty. B&M and its Tier 1 subcontractors were willing to set a target price for completion and reduce their recovery of the performance fee under the ESMSA if the target price was exceeded. However, they were unwilling to assume any financial responsibility for cost overruns if the project's cost exceeded the target price.

. . .

Negotiations with B&M continued into October. B&M offered the additional concession of eliminating the performance fee in the event the target price was exceeded, but remained unwilling to accept any responsibility for increases in the target price itself. OPG continued to reject this approach.

a) Please provide the target price under the B&M ESMSA that B&M was willing to accept in relation to their performance fee but were unwilling to accept responsibility for in the event there were increases in the target price.

Response

a) The question misapprehends the evidence. Since OPG and B&M were unable to agree on the structure of the contract to complete the project, they never reached the point of negotiating a target price. OPG sought a structure whereby B&M would bear some financial responsibility (beyond the performance fee under the ESMSA) if the project exceeded the negotiated target price at completion. B&M was willing to put the ESMSA performance fee at risk if the target price was exceeded, but was unwilling to bear any financial risk for project execution beyond the performance fee. As OPG was unwilling to move forward unless B&M assumed some financial risk for completing the project at the target price and B&M was unwilling to accept additional financial risk, the parties never reached the point of negotiating on a target price that B&M was willing to accept. B&M's final estimate of the cost to complete the EPC contract, $286.6M, is shown in the last line of Chart 3 (Ex. D2-2-10, p. 66).