CCC Interrogatory #38

Interrogatory

Reference: Exhibit D2/T2/S10/ p. 91.

In October 2016, CanAtom issued Project Change Notice ("PCN") 67. This PCN sought a cost increase of $37.4M for engineering redesign and delays to procurement and construction arising primarily from the changes to the building's steel superstructure and the ground level (elevation 100 m) slab atop the seismic dike. This notice was OPG's first indication of the magnitude of the additional cost claim, despite frequent reports from CanAtom on the status of the project.

In addition to the funds requested by PCN 67, by December 2016, CanAtom had issued several other smaller PCNs, which together totaled about $7.5M. Thus, by the end of 2016 CanAtom was claiming some $45M in additional costs.

A series of meetings occurred early in 2017 to better understand the basis for CanAtom's cost claims and to explore ways to jointly mitigate them. Through commercial discussions between the parties, OPG accepted responsibility for about $7.5M for claims related to scope or estimation issues, leaving some $37.5M in dispute. This sum related primarily to redesign of the steel superstructure and seismic dike top slab.

OPG refused to accept the costs of the redesign. OPG's position was that it had agreed to the redesign based on the CanAtom's confirmation that it would not adversely impact the project's cost and schedule and, in any event, the engineering and project management costs claimed were excessive. As noted previously, OPG also took the position that since this design change occurred before finalizing the SOW underpinning the PO with CanAtom for the project, all costs related to the design change were already included in the negotiated PO amount.

a) Please quantify how much of the $37.5M redesign costs that OPG refused to accept were ultimately paid for by OPG and included in the D20 Storage Costs put forward for approval. Please explain the rationale for any such costs put forward for approval.

Response

a) Total costs associated with the redesign work were approximately $34M. These costs were included in the $172M paid to CanAtom according to the terms of the

ESMSA for the work it had completed on the D2O Storage Project before April 21, 2017 and are included within the total project cost of $510M.

OPG's payment to CanAtom for the work it had completed on the project prior to April 21, 2017 formed a part of the settlement reached between the parties in June 2017. Therefore, OPG received consideration in return for making this payment that reduced the total project cost. OPG retained the performance fee of approximately $10M associated with CanAtom's pre-April 21, 2017 work. As explained in Ex. D2-2-10, pp. 95-97, OPG also negotiated a target price/maximum price contract to complete the D2O Storage Project where the target price of $80M was approximately $20M less than the external estimate to complete the project. In addition, OPG negotiated a $20M discount to be applied to the final price (see Ex. D2-2-10, p. 97, Chart 4). The maximum price was effective in capping OPG's costs to complete the D2O Storage Project. CanAtom ultimately exceeded the contract maximum price, which resulted in CanAtom incurring $77M in cost to complete the project that OPG did not pay.