

Test User

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To: [REDACTED]
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[REDACTED]

I have got very long discussions with Z. about all the matters you mentioned in your E-mail. Firstly, Z. is under a great pressure exercised on him by his management, the Ferphos's and the Holding about the question of Exclusivity. However, he is favorable to find a solution which is convenient for Getax and protects him as well. (We need him inside)

Regarding the current negotiation :
Somiphos aims 60 \$/TM for 250 K from August to December 2009.
Getax aims 50 \$/TM for the 250 K from August to March 2009.

Agreement can be reached at 55 \$.
The problem is the schedule!
Somiphos doesn't accept the program giving e argument that 2010 is an other period and prices could change and in fact they need to sale now. They are not selling and are missing the Plan for 2009.

The Price of 55 \$/TM is 10 \$ under the offer they made to Indagro and Transfert.
Meka is lifting at 70 \$/TM for the Phillippines!

At 55 \$/TM Getax can have a competitive advantage in the Indian market. Others can not pass.

Concerning the Schedule, I suggest to propose to split it into two sub-contracts : X quantity to lift in 2009 and X quantity to lift in 2010.
The idea is to separate the possible claims.

Or, to accept Schedule Until December 2009 but to act like this if you will not be able to lift :
. before every shipment you send your Quality Agent to control the product in the Port.(as it is usually off specifications, "MgO..." you can refuse to take it) Or, to fix higher demurrage rate than usual that makes a conflict and long discussion in order to delay shipment by the fault of the buyer.

I suggested to Z. Vessel by Vessel basis at a price between 55 and 60 \$ until end 2009. He can be favorable to this and try to convince his management.
But, be advised that we can ensure every time it is needed the best Price to Getax.

NB: Others are negotiating vessels to schedule!

We can discuss about all this.

Concerning the Exclusivity :
The decision is not from Somiphos neither FERPHOS. It is coming from the Holding Board and the Ministry of Energy and Mining.
Nobody defended the position.

They had reproached to FERPHOS and SOMIPHOS to give a big market like India to 2 clients which are not lifting (they said you locked the market) The former management tried to defend giving the argument that Getax opened the Indian Market at his cost, efforts and lobbying.

They were all under bad influence and they didn't want to understand.

I said to them :

- “. Getax has an Exclusivity not only the Indian market. The Territory covered is more important.
- . The Exclusivity had been granted to Getax when the international market was very slow. (good point for Getax) . Getax agreeing to sign a contract for a long term and big quantity from Ferphos which can be considered as good act of co-operation in a bad conjuncture.
- . The costs, the technical works, the lobbying done in India is very important and were determinant to enter Algerian Rock Phosphate in this market.
- . Getax is one of the best quality clients of FERPHOS (Quantity, Payment at time, no incidents....) Etc....”

They said :

“Getax is not lifting when we are in need to sale. We can't wait. Other are able to sale Rock on the same market.”

I said : “Nobody succeeded to sale in India.

There is a big confusion. Buyer in India don't want to enter into litigious relationships because of the statues of the Trader! “

My opinion is :

The Decision to open the Market is beyond FERPHOS or SOMIPHOS borders.
It has to be resolved with the Holding Board and the Ministry.

The Contract you have is good.

The clause of Exclusivity is very clear.

The argument they are giving that Getax is not lifting can be dismissed because there is no mention of it in the contract.

SOMIPHOS is making infringement to the contract.

My advise :

. Make a Newspaper advertisement (Notice to all Rock Phosphate users) in India informing that the Indian Market of Rock Phosphate is under an Exclusivity Contract granted to Getax.....”

. INFORM (not complaint) the Minister of Energy and Mining of this Clause in a letter we prepare in which we shall highlight the history of the relationship with FERPHOS and how Getax is one of the best quality clients.

The confusion and the damage to the image and the names of Getax and FERPHOS shall be mentioned.

The unreliability in the Algerian Rock and its promoters too shall be emphasized on.

Getax is overall a Partner of FERPHOS and SONATRACH in the FERTILIZER Project.

. Write an other letter to the Holding and the same to FERPHOS/SOMIPHOS complaining of the current situation and inviting them firmly to cease it.

Mention that Getax can go Legal(International arbitration) if there is no reaction in a number of days.

I foresee:

The Minister will react. He will ask FERPHOS to make him a Report. (I can control the drafting of this Report)

I think he will ask FERPHOS to respect the contractual clauses!

The Holding Board will resist. They will try to reject and give wrong arguments (as they are not honest)

FERPHOS don't like legal procedures. They will react positively.

I think with the Exclusivity or not the best guarantee is to ensure the BEST PRICE, the preferential treatment for the programming (schedule) of vessels in the Port, quick payment of claims....

This we could ensure.

All for your advise.
Ready for the next steps.

Please comment.

Amara Cha