

**LEGALLY PRIVILEGED FOISA EXEMPT  
DISPUTE RESOLUTION PROCEDURE CASE 4: THE TRUE AND PROPER  
VALUATION OF THE CHANGE ORDER No.1  
COMMENTS BY McGRIGORS IN RELATION TO TIE's CASE**

**CONTEXT**

- 1 Reference is made to the Inventory of Documents and to the documents referred to therein.
- 2 The Dispute which tie intend to refer to the Internal Dispute Resolution Procedure is narrated in paragraph 2.1 of the Position Paper.

**ANALYSIS**

- 3 The true and proper valuation of tie Change Order will turn on a myriad of factual matters and the views of quantum experts as well as those specific matters set out in paragraphs 2.1.2 to 2.1.5 of the Position Paper. These paragraphs are considered in turn below:

**Paragraph 2.1.2**

To go beyond the schedules contained within the contract would require either an extra contractual approach to be taken or rectification. Further consideration would require to be given to Infraco's prospects in relation to rectification.

**Paragraph 2.1.3**

Clause 80.6 sets out the valuation "rules" the application of which will require input from quantum experts. However, it is clear that actual costs would be a final resort in terms of the valuation hierarchy.

We concur with DLA Piper's comments in relation to Siemens.

**Paragraph 2.1.4**

Again this will turn largely on the views of experts.

**Paragraph 2.1.5**

What import is contended for in relation to this question?

**CONCLUSION**

tie's current position is that the value of Change Order No. 1 is c.£1.8m, based on the information which has been produced thus far by Infraco. If the dispute proceeded to adjudication, it is almost certain that Infraco would seek to improve its position by adducing further information. That may well affect the proper consideration of the quantum of the valuation.

McGrigors LLP  
10 August 2009