
From: Alan Coyle [Alan.Coyle@edinburgh.gov.uk]
Sent: 15 February 2012 10:59
To: Alan Coyle
Subject: FW: MUDFA

From: Houston, Anne on behalf of Nolan, Brandon[SMTP:BRANDON.NOLAN@MCGRIGORS.COM]
Sent: 15 February 2012 11:00:07
To: Alan Coyle
Cc: Alastair Maclean; Colin Smith; Carol Campbell; Williamson, Simona; Christie, David
Subject: RE: MUDFA
Auto forwarded by a Rule

Alan

I note that F&G are looking at a number of initial documents in relation to the QS part of the MUDFA settlement investigation.

With regard to the extent to which there may be any recourse against the MUDFA Contractor (or others) in relation to utilities, the starting point will be to identify the specific instances of complaint that might arise. In other words, what are the defects or issues with the utilities which are said to give rise to a problem? What are the consequences of those issues in terms of loss sustained, and so on?

Once that starting point has been established, the next step will be to ascertain whether the issues or defects could properly be said to fall within the responsibility of the MUDFA Contractor. That will involve:

- Ascertaining whether the issues or defects fall within the scope of the original MUDFA Agreement between tie and what was then Alfred McAlpine Infrastructure Services Limited (now part of Carillion); if the problem was not within their original workscope, no claim can lie against them in any event. Issues which may be of relevance here will include the extent to which the design of the Infracore Works was complete at the time that the MUDFA Agreement was entered into.
- Assuming that the matter does, in principle, lie within the MUDFA Contractor's responsibility, identifying the impact of the exit agreement that was entered into between tie and the MUDFA Contractor on 4 December 2009, and in terms of which uncompleted work was taken out of Carillion's scope. It is presumably that work which was then executed by Clancy Docwra and Farrans. It is described in the exit agreement as the Remaining MUDFA Works, and is listed out in an appendix to the exit agreement.
- Where work had been completed by the MUDFA Contractor prior to the exit agreement, then (subject to the comments below in relation to the settlement agreement and prescription), it will remain within the MUDFA Contractor's responsibility.
- Where work had not been completed by the MUDFA Contractor prior to the exit agreement, then clause 4 of that agreement provides that "the MUDFA Contractor is relieved of all its obligations under the MUDFA Agreement in relation to the carrying out and completion of the Remaining MUDFA Works and shall have no responsibility whatsoever in relation thereto."
- Where work was carried out by others, such as Clancy Docwra, or Farrans, a claim may lie against them. The contracts between tie and those other contractors will require to be located and considered. Where work was commenced by the MUDFA Contractor, and completed by others, the position in relation to liability may be a complex one.
- Assuming that, in terms of the original MUDFA Agreement and the exit agreement, the issues or defects complained of could be said to fall within the responsibility of the MUDFA Contractor, it may be the case that any claims have been compromised in terms of the settlement agreement entered into between tie and the MUDFA Contractor on 10 December 2010.
- Clause 4 of the settlement agreement provides that "tie hereby waive any and all claims of any nature whatsoever made by it or available to it against the MUDFA Contractor arising out of or in connection with the Revised MUDFA Agreement [i.e. the original agreement plus the exit agreement] (including without prejudice to the foregoing generality any claim for damages for breach of contract) and tie hereby undertakes to take no further action or proceedings whatsoever against the MUDFA Contractor in connection with any such claims."

- That waiver of claims is stated to be subject to the provisions of clause 5, in terms of which the settlement only applies to "claims in respect of any...defects [in the MUDFA Works] notified by tie to the MUDFA Contractor or known to tie prior to the date of this Agreement."
- In other words, it is likely that only claims in relation to latent defects (i.e. those claims not notified or known about prior to the date of settlement) can now be pursued against the MUDFA Contractor.
- The entitlement to pursue claims against the MUDFA Contractor in relation to latent defects will be subject to the usual rules of prescription. Given that the original MUDFA Agreement was entered into in October 2006, that issue is likely to be an important one. Each head of claim will require to be considered in order to identify when the cause of action could be said to have arisen.

Identifying the answers to the questions raised in the foregoing paragraphs is likely to involve a combination of legal, factual and forensic investigation.

Whilst the ongoing capture of electronic material being carried out by CY4OR may well yield some additional information, some issues may require additional input from those involved at tie: for example, the question of which defects were known to tie prior to the settlement agreement will be an important one to resolve. It may be appropriate to engage with someone such as Dennis Murray in this respect. Acutus were engaged by tie in connection with the disputes with Carillion, and they may be able to provide additional information.

In the first instance, it might be of assistance for us to have a meeting with CEC and Faithful & Gould in order to agree upon the most effective approach to the investigations that are to be carried out.

Kind regards

Brandon

From: Alan Coyle [mailto:Alan.Coyle@edinburgh.gov.uk]
Sent: 14 February 2012 15:44
To: Nolan, Brandon
Cc: Alastair Maclean; Colin Smith
Subject: MUDFA

Chaps,
 Colin and I met with F&G this morning to kick off the QS part of the MUDFA settlement investigation.

I have attached for information, the initial documents that will form the bundle to be sent to F&G. We've asked F&G to look at evidence from tie, the designer (as built drawings etc) and the commercial sign off process.

In addition we've asked that information in relation to Clancy Docwra (finished the Carillion scope) be taken into account in the investigation.

Regards,
 Alan

This email and files transmitted with it are confidential and are intended for the sole use of the individual or organisation to whom they are addressed.

If you have received this eMail in error please notify the sender immediately and delete it without using, copying, storing, forwarding or disclosing its contents to any other person.

The Council has endeavoured to scan this eMail message and attachments for computer viruses and will not be liable for any losses incurred by the recipient.

IMPORTANT NOTICE: The information in this e-mail is confidential and for use by the addressee(s) only. It may also be legally privileged. If you are not the intended recipient, please notify us immediately on +44 (0) 141 567 8400 and delete the message from your computer. You may not copy or forward the e-

mail, or use it or disclose its contents to any other person. We do not accept any liability or responsibility for: (1) changes made to this e-mail or any attachment after it was sent, or (2) viruses transmitted through this e-mail or any attachment.

McGrigors LLP is a limited liability partnership (registered in Scotland with registered number SO300918 and registered office at Princes Exchange, 1 Earl Grey Street, Edinburgh EH3 9AQ) and is regulated and recognised / authorised by both the Law Society of Scotland and the Solicitors Regulation Authority.

McGrigors Belfast LLP is a limited liability partnership (registered in Northern Ireland with registered number NILLP 116 and registered office Arnott House, 12-16 Bridge Street, Belfast BT1 1LS) and is regulated by the Law Society of Northern Ireland.

McGrigors LLP – QFC Branch is licensed by the Qatar Financial Centre Authority and has its principal place of business at PO Box 22758, Tornado Tower, West Bay, Doha, State of Qatar.

In any communication on behalf of McGrigors LLP and McGrigors Belfast LLP where we use the word "partner" we mean a person who is a member of the LLP or an employee of equivalent standing and qualifications.

A list of partners, both members and non members, is open to inspection at each of our offices.

VAT registration number: 890 4017 30

We use your personal information in accordance with our Privacy Notice (available on our website here: http://www.mcgrigors.com/privacy_notice.html)

For further information please visit: <http://www.mcgrigors.com>