

MUDFA Review meeting

19 April 2012

**Faithful & Gould
Canning Exchange, Edinburgh**

In attendance:

Alan Coyle (CEC) ("AC")
Keith Curran (Faithful and Gould) ("KC")
Keith Willins (Faithful and Gould) ("KW")
Brandon Nolan (McGrigors LLP) ("BN")
David Christie (McGrigors LLP) ("DC")

Faithful & Gould's report and clarifications

- 1 KC introduced his report as a high level review based on the documentation reviewed, and information received from Turner & Townsend ("T&T") to date. A lot of information had been provided and the report endeavoured to split this into sections.
- 2 The key section identified by KC was the summary which is found at p. 33 onwards in the report. KC took the meeting through that section. This identified a number of pertinent provisions within the various MUDFA contracts and the following points arose for clarification.
 - 2.1 There may be an issue in relation to changes made to the SDS design by Infracore and how that was communicated to MUDFA.
 - 2.2 There was discussion around the various liability caps and limitation periods in the MUDFA contracts. It was clarified that in the original Carillion/AMIS contract, the limit was the greater of £3.5M or 7% of the final account value.
 - 2.3 The preliminary view was that 7% of the final account value was likely to be the appropriate level. The final contract value was said to be in the region of £60M. [*Post meeting note*: this would yield a liability cap in the region of £4.2M]
 - 2.4 It was clarified that a reference to a liability cap arising "for each occurrence" in the Clancy Dowcra contract was likely to mean the occurrence of each clash.

Further investigations

- 3 The report identified 5 instances of alleged defects within the utilities work. These were found at page 27 onwards. Further investigation into these issues was needed. The content of these further investigations was identified as follows:
 - 3.1 The nature of the "5 instances" ought to be clarified with T&T to identify whether they were identified as a result of their cost to rectify or impact on the project to rectify or because they were the most obvious breaches.

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- 3.2 The "top 5" in terms of cost impact should be identified.
- 3.3 The position in relation to each of the top 5 should then be investigated to identify:
 - (a) The contractor responsible for the work;
 - (b) The original workscope;
 - (c) The work actually carried out by the contractor – resulting in the present position;
 - (d) Whether anything was done by third parties at the time of the work being done which would impact on the contractor's responsibility (i.e. creating some form of waiver argument); and
 - (e) The extent of any corrective action.
- 3.4 The result of these investigations ought to be a pack of information supported by relevant drawings, photographs and other relevant records.
- 3.5 The legal analysis of the contractual obligations could then be applied to the results of this investigation.
- 3.6 Once this was done the prospects and level of possible recovery could be ascertained.

Actions

- 4 Faithful & Gould ("F&G") to identify an appropriate time to meet Stephen Lewcock of T&T to go through the position in detail. In advance of that meeting F&G would identify the relevant issues and information required in order to maximise the time available.
- 5 Richie Hailes was identified as the relevant person for the purposes of valuation of the relevant works.
- 6 F&G would then prepare a pack for the "top 5" setting out the information identified in paragraph 3 above for analysis.
- 7 It may be that a further 5 items could then be collated – and so on.
- 8 It may be that these "packs" could then be presented to the relevant contractor – with the appropriate supporting reports or notes - as a means of stimulating discussions towards a resolution. If for example, the total value of the claim was estimated to be far in excess of any liability cap, then discussions could focus on recovery at the level of the limit of liability.

Timescales

- 9 The F&G meeting with T&T was to be scheduled for the beginning of May with an updated report, taking into account the above, to be prepared for mid-May.

McGrigors LLP

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