
From: Kilburn, Keith <Keith.Kilburn@dlapiper.com>
Sent: 19 November 2009 08:44
To: Stewart McGarrity
Subject: FW: tie - DLA Commentary on Adjudicator's Decision - Gogarburn Bridge and Carrick Knowe Bridge
Attachments: 27294104_1_UKMATTERS(Commentary on Adjudicator_s Decision - 18 November 2009).DOC

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From: Kilburn, Keith
Sent: 18 November 2009 17:06
To: 'Steven Bell'; 'Dennis Murray'; 'Susan.Clark@tie.ltd.uk'
Cc: 'Donny Mackinnon'; 'john@nicolsonandco.com'; Fitchie, Andrew; Jordan, Stuart
Subject: tie - DLA Commentary on Adjudicator's Decision - Gogarburn Bridge and Carrick Knowe Bridge

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Dear Steven / Susan / Dennis

As requested, please, find attached DLA's commentary on John Hunter's decisions as adjudicator in respect of the Gogarburn Bridge and Carrick Knowe Bridge Adjudications.

The attached commentary represents our combined view on each of the decisions. There is no substantive disagreement between any of us as to the Adjudicator's logic or reasoning.

We looked through the reply on case 5c and have not been able to do anything of substance to meet, head on, the mistakes we believe were made by Mr Hunter. We are in the odd position of having aimed our arguments at Infraco's stated position, indeed having had support for **tie's** position on that specific issue, but lost the awards for new reasons. On RRRW, looking at essentially the same argument with Infraco but a different adjudicator, we cannot see any benefit in deconstructing an argument which has not faced **tie** in that referral. It will be interesting to see whether Infraco decide that Mr Hunter's approach is better or at least more advantageous than the one they have put so far. If they do adopt it, we will have the opportunity to reply.

We would be happy to discuss the attached commentary, on its own or together with preparation in respect of Case 5c (the Response to the Referral Notice which is to be issued tomorrow), and in this regard Stuart is available until 1 o'clock tomorrow.

Kind regards


Keith

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