
From: Martin Foerder - BB Civil UK
Sent: 03 March 2011 14:57
To: CN=Daniel Haeussermann/OU=bilfingerberger/O=LNN/C=DE@BUB
Cc: Kevin Russell - BB Civil UK; FORSTER Louise
Subject: Re: AW: Fw: Payment of Preliminaries - Adjudication

Daniel,

remember a tie default only exists if tie is not paying certified amounts for longer than 30 days (?). So far Prelims are not certified.

We intend to issue a letter to tie referring to our payment application from yesterday and attaching copies of the Schedule 5 Milestone Payment Schedule identifying the amounts claimed based on the Adjudication Decision and the Clarification provided by Lord Dervaird as reasonable supporting documents, requesting certification of all outstanding Prelims amount back to March 2010.

Regards,

Martin Foerder
Project Director

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Registered in England and Wales
Company No: 2418086

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From: Daniel Haeussermann/bilfingerberger/LNN/DE@BUB
To: Martin Foerder/Project Management/Civil/Bberger@Bilfinger Berger UK, "Kevin Russell" <Kevin.Russell@civil.bilfinger.co.uk>
Date: 03/03/2011 14:38
Subject: AW: Fw: Payment of Preliminaries - Adjudication

Lousie, Martin and Kevin,

Having made also this point in principle we should bear in mind that the prelims-non-payment could help us to create a tie Default for termination. So whatever we will submit now following the strange ideas of the Adjudicator we have to act tactically. If we eg could manage to fulfill his requirements but tie hesitates to pay this route could lead down the road to tie Default. Let's discuss in a small round next week how we could manage this.

Best Regards

Daniel Haeussermann

----- Originalnachricht -----

Von: Martin Foerder

Gesendet: 03.03.2011 14:12 GMT

An: Daniel Haeussermann

Betreff: Fw: Payment of Preliminaries - Adjudication

FYI

Regards,

Martin Foerder
Project Director

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----- Forwarded by Martin Foerder/Project Management/Civil/Bberger on 03/03/2011 14:13 -----

From: "FORSTER Louise" <Louise.Forster@pinsentmasons.com>
To: <martin.foerder@civil.bilfinger.co.uk>, <Kevin.Russell@civil.bilfinger.co.uk>
Date: 03/03/2011 08:19
Subject: Fw: Payment of Preliminaries - Adjudication

This is mainly helpful. We can discuss this morning.

Louise

Louise Forster
Legal Director
Pinsent Masons LLP

DDI +[REDACTED]
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Sent from my Blackberry wireless device

From: jane murray <murraydervaird@talk21.com>
To: FORSTER Louise; Kilburn, Keith <Keith.Kilburn@dlapiper.com>
Sent: Wed Mar 02 23:05:54 2011
Subject: Payment of Preliminaries - Adjudication

I have been asked on behalf of Infraco to clarify two issues in respect of this Adjudication.

1. The reference to Schedule Part 4 in line 1 of paragraph 3 of the Adjudication is a misprint for Part 9 for which I apologise.
2. I have been also asked to clarify what is involved in Clause 67.4 of the Infraco Contract by the reference to "(together with reasonable supporting documentation establishing the basis of such sums being claimed)". As I have determined that Preliminaries are a time based cost, it appears to me that the documents required to establish the basis of sums being claimed under Clause 67.4 will be those necessary to establish the particular period or periods for which the sums are claimed, together with those which determine the rate or rates payable in relation to the period or periods. Those rates will it appears to me generally be found by reference to the appropriate part or parts of Schedule 5 together with any adjustments or variations made thereto. It is possible that consideration may also have to be given to the items referred to as Preliminaries in Schedule Part 4 page 39 headed Method Related Charges (some of which are described as fixed, and others as Time Related), but no issue was raised before me in respect of those items.

Lord Dervaird.

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