
From: Richard Jeffrey
Sent: 19 November 2009 12:51
To: Steven Bell; David Mackay; Stewart McGarrity; Graeme Bissett (external contact); Nolan, Brandon; Dennis Murray; Alastair Richards; Fitchie, Andrew; Jordan, Stuart
Cc: Julie Thompson; Kilburn, Keith; john@nicolsonandco.com; Donny Mackinnon
Subject: RE: tie - DLA Commentary on Adjudicator's Decision - Gogarburn Bridge and Carrick Knowe Bridge

All, I am not a lawyer, so forgive my reading of the attached, but I have the following comment.

DLA's report points out where they feel the adjudicator has got things wrong. What I would like to see, in addition, is someone construct an argument, using the contract, to defend the adjudicator's position. On the assumption that the adjudicator is neither stupid nor biased, he must have followed some reasoning to reach his conclusion. Could someone please put together the 'case in defence of the adjudicator'. I think it is important that we understand this as any challenge to the adjudicator will almost certainly produce such a defence, and forewarned is better than not!

I have discussed with Dennis and Keith the need for a (or three, ours, theirs and the adjudicator's) flowcharts showing the critical decision points along the route.

Thanks

Regards

Richard

From: Steven Bell
Sent: 19 November 2009 09:25
To: Richard Jeffrey; David Mackay; Stewart McGarrity; Graeme Bissett (external contact); Nolan, Brandon; Dennis Murray; Alastair Richards; Fitchie, Andrew; Jordan, Stuart
Cc: Julie Thompson; Kilburn, Keith; john@nicolsonandco.com; Donny Mackinnon
Subject: FW: tie - DLA Commentary on Adjudicator's Decision - Gogarburn Bridge and Carrick Knowe Bridge

Strictly Private and Confidential: Prepared for the purposes of DRP and legal proceedings

Gentlemen,

Please find attached analysis of the adjudicator's decisions provided by DLA yesterday evening which also incorporates input from John Nicolson and Donny Mackinnon. For ease of reference I have also attached the original e copy of the adjudicator's decisions. Dennis is undertaking a review today and will forward any additional comments. We intend to discuss this at the challenge session on Monday at 11am with the purpose of agreeing the best next steps to progress the BDDI – IFC issue.

Please do not hesitate to raise any issues or points of clarification with Dennis, myself or the DLA team in the interim.

Richard summarised matters as follows in his email:

“All, please can we think about how we present on Monday at the DRP session.

- We need to have a crisp analysis of the adjudicator's decision, both from DLA and separately from McGrigors, and understand what areas of our argument the adjudicator was not convinced by, and what areas of BSC's argument he was convinced by.
- We need to avoid any sense of complacency or denial

- We need to explain all our options, especially considering what we will do if we lose the next adjudication (please think about this in advance)
 - Would now be a good time to get Richard Keane involved?
 - Should we launch the other BDDI to IFC DRPs now?
 - Should we appeal the decision?
 - Should we seek to re-engage with BSC?
 - etc
- We need an estimate (or range) of the impact on the final cost and programme if we concede the principle that the risk associated with design completion is largely ours
- We need to agree tactics and governance of future tactical steps on Monday”

I will be forwarding the DLA note to Marshall as TMO later this morning and suggesting that we discuss the way forward at the FCL on Tuesday 27 November.

With regard to our response on Russell Road Retaining Wall 4, Dennis and I will be reviewing our final draft at lunchtime today and if there are any further points to be made following our Monday review, we can include them in our final submission on 3 December.

Regards

Steven

Steven Bell
Edinburgh Tram Project Director

tie Limited
Citypoint
65 Haymarket Terrace
Edinburgh EH12 5HD

Tel: +44 (0) 131 [REDACTED]
Fax: +44 (0) 131 [REDACTED]

Email: steven.bell@tie.ltd.uk

For more information on the Edinburgh Tram Project, visit www.edinburghtrams.com

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

FOISA Exempt and Legally Privileged

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

<< 27294104_1_UKMATTERS(Commentary on Adjudicator_s Decision - 18 November 2009).DOC>>

Keith Kilburn

Solicitor

Engineering & Construction

DLA Piper Scotland LLP

T: + 44 (0)141 [REDACTED]

F: + 44 (0)141 [REDACTED]

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