

Sent: Fri, 31 Jul 2015 14:27:05 -0400
From: edover@lowerchurchillproject.ca
To: kenmcclintock@lowerchurchillproject.ca
Cc: John Mulcahy <"cn=john mulcahy/o=nlhydro@nlhydro">, "ken.mcclintock@lowerchurchillproject.ca" <ken.mcclintock@lowerchurchillproject.ca>
Subject: Re: CH0009 articles - rev 28 July 2015

CIMFP Exhibit P-02855

Page 1

This is a business decision so Aidan is okay.

Ed Over

Sr. Advisor-Commercial Strategies

PROJECT DELIVERY TEAM

Lower Churchill Project

t. 416-252-5315 Ext. 53675

e. EdOver@lowerchurchillproject.ca

w. muskratfalls.nalcorenergy.com

Ken McClintock---07/31/2015 12:42:58 PM---From: Ken McClintock/NLHydro To: Ed Over/LCP/NLHydro@nlhydro,

From: Ken McClintock/NLHydro

To: Ed Over/LCP/NLHydro@nlhydro,

Cc: "ken.mcclintock@lowerchurchillproject.ca" <ken.mcclintock@lowerchurchillproject.ca>, John Mulcahy/NLHydro@nlhydro

Date: 07/31/2015 12:42 PM

Subject: Re: CH0009 articles - rev 28 July 2015

Ed / John

Personally I think this is OK. If we say they must ensure pass down of our requirements then that is what we want.

John what do you think?

Ed is Aidan OK with the change?

Cheers. Ken

Ken McClintock

Sent from my iPhone

On Jul 31, 2015, at 12:15 PM, Ed Over <EdOver@lowerchurchillproject.ca> wrote:

Morning Gentlemen,

This bidder is now suggesting a threshold of \$2M for our approval of \$2M (they started at \$5M). We would normally like the opportunity to review the critical subs? I can't recall having a threshold of \$2M on any other package. Seems a little

high?

Any suggestions?

Ed Over

Sr. Advisor-Commercial Strategies

PROJECT DELIVERY TEAM

Lower Churchill Project

t. 416-252-5315 Ext. 53675

e. EdOver@lowerchurchillproject.ca

w. muskratfalls.nalcorenergy.com

----- Forwarded by Ed Over/LCP/NLHydro on 07/31/2015 10:24 AM -----

From: Leonard Knox <LKnox@hjoc.com>

To: "EdOver@lowerchurchillproject.ca" <EdOver@lowerchurchillproject.ca>,

Cc: "aidan.meade@mcinnescooper.com" <aidan.meade@mcinnescooper.com>, "ken.mcclintock@lowerchurchillproject.ca"

<ken.mcclintock@lowerchurchillproject.ca>, Nolan Jenkins <NJenkins@hjoc.com>

Date: 07/31/2015 10:08 AM

Subject: Re: CH0009 articles - rev 28 July 2015

Ed

Majors are above 2 m. We see 4

- concrete supply
- rebar
- drill and blast
- foundation prep and gallery drilling

Len

Sent from my iPhone

On Jul 31, 2015, at 10:57 AM, "EdOver@lowerchurchillproject.ca" <EdOver@lowerchurchillproject.ca> wrote:

Len,

Thanks. How many of your subcontracts are above \$2M?

Ed Over

Sr. Advisor-Commercial Strategies

PROJECT DELIVERY TEAM

Lower Churchill Project

t. 416-252-5315 Ext. 53675

e. EdOver@lowerchurchillproject.ca

w. muskratfalls.nalcorenergy.com

From: Leonard Knox <LKnox@hjoc.com>

To: "EdOver@lowerchurchillproject.ca" <EdOver@lowerchurchillproject.ca>,

Date: 07/31/2015 09:24 AM

Subject: Re: CH0009 articles - rev 28 July 2015

Ed

We concur.

I think the only open point was the value on the subcontractor clause. We suggest 2 million. Would that be acceptable?

Len

Sent from my iPhone

On Jul 31, 2015, at 10:46 AM, "EdOver@lowerchurchillproject.ca" <EdOver@lowerchurchillproject.ca> wrote:

Len,

We have reviewed your concern about the Company's liability upon assignment with the team. We will amend Article 34 to address the concern.

With the exception of the Company's liability upon assignment, it is our understanding that the latest draft of the Articles has been accepted by your team.

Please confirm.

Thanks,

Ed

Ed Over

Sr. Advisor-Commercial Strategies

PROJECT DELIVERY TEAM

Lower Churchill Project

t. 416-252-5315 Ext. 53675

e. EdOver@lowerchurchillproject.ca

w. muskratfalls.nalcorenergy.com

From: Leonard Knox <LKnox@hjoc.com>

To: "'EdOver@lowerchurchillproject.ca'" <EdOver@lowerchurchillproject.ca>,

Cc: Nolan Jenkins <NJenkins@hjoc.com>

Date: 07/29/2015 12:08 PM

Subject: RE: CH0009 articles - rev 28 July 2015

Ed

Acknowledge receipt and we will be reviewing today and will make every effort to get back to you before end of day tomorrow.

Thanks

Len

From: EdOver@lowerchurchillproject.ca [<mailto:EdOver@lowerchurchillproject.ca>]
Sent: Tuesday, July 28, 2015 7:52 PM
To: Leonard Knox; Nolan Jenkins
Cc: aidan.meade@mcinnescooper.com; ken.mcclintock@lowerchurchillproject.ca
Subject: CH0009 articles - rev 28 July 2015

Len,

Attached is a "tracked changes" copy of the Articles that shows changes from our July 21st version. See below our responses to your proposed changes to certain Articles.

Thanks,
Ed

Ed Over
Sr. Advisor-Commercial Strategies
PROJECT DELIVERY TEAM
Lower Churchill Project
t. 416-252-5315 Ext. 53675
e. EdOver@lowerchurchillproject.ca
w. muskratfalls.nalcoreenergy.com

From: Leonard Knox <LKnox@hjoc.com>
To: "'EdOver@lowerchurchillproject.ca'" <EdOver@lowerchurchillproject.ca>,
Cc: Daniel Sterescu <Daniel.Sterescu@bird.ca>, Alex Liszka <ALiszka@Dragados-Canada.com>, Jim Brennan <jbrennan@hjoc.com>, "Jose Daniel Botero" <JBotero@Dragados-Canada.com>
Date: 07/24/2015 03:41 PM
Subject: RE: CH0009 articles - rev 21 July 2015

Ed;

Please see below our response to the revised articles as detailed in your email dated Jul 23, 2015.

Section 6.4

- CJV proposes \$5million.

MFC – Too high. CJV to reconsider.

Section 12.16

- CJV proposes there will be no holdback in exchange for a retention bond, in a form agreeable to the Company, acting reasonably, and at the Company's cost. Based on a 2017 completion date as per the original schedule we estimate the cost of the retention bond to be \$425,000.

MFC – one holdback release bond for 10% of the Contract Price to be in place from the Effective Date.

Section 13.10

- CVJ proposed change: "...in all cases for materials and products for installation into the completed Work **supplied by Contractor** and Contractor Items..." We believe this accords with what was agreed on our call last Friday.

MFC – Agreed.

Section 15.11(c)

-CJV proposed addition at the end "**but excluding environmental damage permitted by the Company's environmental assessment obligations**".

Section 21.12

- CJV proposed change: "... Article 21.12 shall not apply to: (a) any payment in respect of a third party Claim (other than for failure to transmit power ~~and lender penalties~~ or Claims arising out of financing agreements) for which ...". CJV does not have visibility on the finance agreements and cannot limit potential exposure only to penalties.

MFC – Acceptable if add the underlined words "... Claims by Lenders arising ..."

Section 24.17

- CJV proposed change: "... (iii) Approve a Payment Certificate within five (5) Business Days following receipt of a Payment Certificate that has been recommended for Approval by Engineer, ~~unless a lien or other encumbrance has been registered or served following Engineer's recommendation;~~" Please see Company rights under sections 12.17(e) and 12.18(a).

MFC – Not acceptable. If a lien is registered then payments will stop whether or not a Payment Certificate has been approved.

Section 26.1:

- Correction: "shall in no event exceed the sum of ~~one hundred~~ fifty per cent (50%) of the Contract Price..."

MFC – Agreed.

Section 29:

- Definition of Force Majeure (section 29.1)

- CJV's insurance advisor does not agree with the interpretation that "accidental loss of Work" would include defective work; the Progressive Homes decision involved the interpretation of an insurance contract not a construction contract; a contractor could not argue that their own defective work was an accident; CJV proposes the following language:

- "**(c) damage or destruction of all or any part of the Work not due to the fault of Contractor or any Subcontractor**"

- Sections 29.4 to 29.7 – proposed changes as follows:

"29.4 Subject to Articles 29.2(a) 29.2(b) and 29.9~~8~~, where either Party claims Force Majeure and is entitled to rely upon the provisions of Article 29.2, then no compensation shall be payable to Contractor during the period that the Force Majeure occurrence continues to prevent performance by Company either Party."

29.5 If Contractor is prevented from or delayed in performing any of its obligations as a result of an event of Force Majeure for a cumulative period of more than one hundred twenty (120) days or a consecutive period of more than sixty (60) days during the Term, Company shall have the right thereafter to immediately terminate this Agreement upon giving Notice thereof to Contractor ~~and Company shall have no further liability whatsoever to Contractor (except payment for Work performed prior to such termination)~~.

29.6 If Company is prevented from or delayed in performing any of its obligations as a result of Force Majeure for a consecutive period of more than one hundred twenty (120) days during the Term, Contractor shall have the right thereafter to immediately terminate this Agreement upon giving Notice thereof to Company ~~and Company shall have no further liability whatsoever to Contractor (except payment for Work performed prior to such termination)~~.

29.7 ~~Subject to Articles 29.2(a) 29.2(b) and 29.9, a Force Majeure occurrence shall in no circumstances entitle Contractor to an increase in the Contract Price.~~ Contractor shall be entitled to a reasonable extension of time for the Milestone(s) affected in order to recover from the Force Majeure."

CJV is of the view that 29.8 as the relevant cross section reference in 29.4; section 29.9 results in deletions in 29.5 and 29.6 and the deletion in 29.7 is covered in 29.4.

MFC- Changes to 29.4 are agreed. Changes to 29.4, 29.5 and 29.7 are not accepted.

Section 34.1:

- 34.1 – CJV maintains its position that the Company cannot be released from liability upon assignment to an assignee not assuming the liability. However, we understand Company sensitivity regarding amendments to section 34.1, to that end we propose two alternatives:

ALTERNATIVE 1: Amend Article 33.9 as follows:

"33.9 This Agreement shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and permitted assignees. **Notwithstanding any release or discharge of the Company upon assignment, if an assignee of the Company is not bound by all past and any future obligations of the Company under this Agreement, the Company will remain liable for such obligations.**"

ALTERNATIVE 2: Add the following new Article 30.5 as follows:

“30.5 Notwithstanding any release or discharge of the Company upon assignment, the Company shall remain liable for Claims of the Contractor where the Contractor has given formal notice of the Claims either by Notice of Dispute or Payment Certificate unless the assignee has assumed in writing the liability (or potential liability) of the Company for such Claims.”

MFC – Both approaches are not acceptable as they are just another way of saying what we have already rejected.

We look forward to continuing to work co-operatively with you to conclude all open matters. We desire terms that work for us both which limit the risk for both parties, hence providing best value for the client.

Best regards,

Len

From: Leonard Knox
Sent: Friday, July 24, 2015 2:05 PM
To: Leonard Knox
Subject: Fwd: CH0009 articles - rev 21 July 2015

Sent from my iPhone

Begin forwarded message:

From: <EdOver@lowerchurchillproject.ca>
Date: July 23, 2015 at 7:07:51 PM NDT
To: <LKnox@hjoc.com>, Nolan Jenkins <NJenkins@hjoc.com>
Cc: <ken.mcclintock@lowerchurchillproject.ca>, <JohnMulcahy@lowerchurchillproject.ca>, <aidan.meade@mcinnescooper.com>
Subject: CH0009 articles - rev 21 July 2015

Len,

Please find attached a mark-up against your last version. Aidan has included a few notes .

The following is a summary of open items awaiting your reply.

6.4(b) – provide us with a dollar amount for the threshold at which subcontracts must be approved.

12.16 – propose an earlier mechanics’ lien holdback approach. If there is a change into the way we handle mechanics’ lien holdback there will need to be a corresponding revision to 25.3 and 25.10.

15.11 and 15.14 – consider no change to 15.11(c) in exchange for our acceptance of revisions to 15.14.

21.4 – consider the addition of “by a third party” in this Article.

29.1(c) – review with your insurance advisor concerning any accidental loss of the work.

34.1 – consider your position with respect to the wording you want added with regard to assignments to lenders. We cannot accept your proposed wording.

Ed Over

Sr. Advisor-Commercial Strategies

PROJECT DELIVERY TEAM

Lower Churchill Project

t. 416-252-5315 Ext. 53675

e. EdOver@lowerchurchillproject.ca

This e-mail maybe privileged and/or confidential, and the sender does not waive any related rights to obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Ce courrier électronique est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent. Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite. Si vous recevez ce courrier électronique par erreur, veuillez m'en aviser immédiatement, par retour de courrier électronique ou par un autre moyen.

This e-mail maybe privileged and/or confidential, and the sender does not waive any related rights to obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Ce courrier électronique est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent. Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite. Si vous recevez ce courrier électronique par erreur, veuillez m'en aviser immédiatement, par retour de courrier électronique ou par un autre moyen.

Notice This communication, including any attachments, is confidential and may be protected by solicitor/client privilege. It is intended only for the person or persons to whom it is addressed. If you have received this e-mail in error, please notify the sender by e-mail or telephone at McInnes Cooper's expense. **Avis** Les informations contenues dans ce courriel, y compris toute(s) pice(s) jointe(s), sont confidentielles et peuvent faire l'objet d'un privilège avocat-client. Les informations sont dirigées au(x) destinataire(s) seulement. Si vous avez reçu ce courriel par erreur, veuillez en aviser l'expéditeur par courriel ou par téléphone, aux frais de McInnes Cooper.

This e-mail maybe privileged and/or confidential, and the sender does not waive any related rights to obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Ce courrier électronique est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent. Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite. Si vous recevez ce courrier électronique par erreur, veuillez m'en aviser immédiatement, par retour de courrier électronique ou par un autre moyen.

This e-mail maybe privileged and/or confidential, and the sender does not waive any related rights to obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Ce courrier électronique est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent. Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite. Si vous recevez ce courrier électronique par erreur, veuillez m'en aviser immédiatement, par retour de courrier électronique ou par un autre moyen.

This e-mail maybe privileged and/or confidential, and the sender does not waive any related rights to obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Ce courrier électronique est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent. Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite. Si vous recevez ce courrier électronique par erreur, veuillez m'en aviser immédiatement, par retour de courrier électronique ou par un autre moyen.