

LIMA ELECTIO Mediation Problem

'Trusting Ties'

General Information ::

1. The Federal Office of Rail and Road Transport (**FORT**) is a state-owned entity responsible for managing and delivering infrastructure for public roads and rail throughout the mountainous country of Norria.
2. Capitol Constructions Ltd. (**CC**) is an international construction and engineering company with specialist expertise in designing and Constructing Bridges over difficult terrain.
3. Following a tender process, CC entered into a contract with FORT to design and build a road bridge over the main gorge of the Hoffel River on 1 May 2022 (The Contract). The bridge is important to the economy of Norria as it connects its capital city and port to the industrial and farming regions that lie across the mountains to the north of the city.
4. An existing road bridge that crosses the river slightly upstream is coming to the end of its design life and will be decommissioned once the new bridge is placed into service. The new bridge is designed to be larger, allowing traffic to move more efficiently. The design brief also noted the potential for a railway bridge to be incorporated at some stage in the future.
5. The Contract is for a sum of \$200 million (Norrian Dollars). The work start date is 1st June 2022. The date for completion of the work is 1st March 2023. A Liquidated Damages clause in the Contract requires the CC to pay FORT \$150,000 (Norrian Dollars) per day for each day that the completion of the works is delayed, up to a maximum amount of \$13.5 million (Norrian Dollars). The date for completion must be extended if the works are delayed for reasons for which FORT is responsible. These reasons include delays in the provision of access to the site, but do not include delays due to matters within CC's control.
6. A lavish ceremony has been arranged for the opening of the new bridge on 1st April 2023. The bridge is to be opened by and named after the Empress of Norria. Her Imperial Majesty is a figurehead in the country and holds no power within the government, but she is politically influential.
7. A contract term required CC to utilize local labour in its overall workforce. This was advantageous to FORT as it enabled its workforce to be employed and develop local construction skills. The local workforce is less skilled and required more training and supervision than the personnel CC would normally have used on such a project. However, CC said during tender negotiations that it had built into its work program a long time period for the construction to allow for this.
8. The contract got off to a rocky start. Access to the site was not provided to CC by FORT until 1st August 2022 (two months after the date of access was required to be provided under the terms of the Contract).
9. The design was finished well within time and construction commenced as soon access was given. However, the rate of progress envisaged under the original program, which, but for



the access-related delays, would have resulted in the completion of the works by 1st March 2023, has not been achieved. This is because the workforce engaged by CC was barely achieving a 1.8% rate of progress per week, well below the 3.0% rate of progress assumed in its program.

10. It is now 1st November 2022, and the works are running months behind schedule. CC has made a claim under the Contract for *'the payment of additional amounts due to delay and disruption to the works caused by events of delay, including the late provision of access to the site that is beyond the control of CC'*. In its notice of claim, it says it is entitled to an amount of \$10 million (Norrian Dollars) and an extension of 6 months to the date for completion.
11. FORT has rejected the claim and said the delayed access only had a minor impact on the works and that it does not otherwise understand the basis for the claim. It notices under the Contract that CC is not proceeding with the works with due diligence and that, if it does not remedy the situation, FORT may engage another contractor to finish the works and hold CC liable for the additional costs of doing so.
12. CC has requested mediation of the dispute. CC's Regional Director Jerry Richmond and is representing CC at the mediation. FORT is represented by the CEO of the Federal Office of Rail and Road Transport (**FORT**), Evan Tennison.

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