Carillion – Immediate action

Carillion have today gone into liquidation after being unable to secure further funding to cover its debts estimated at £1.5bn. This move is likely to affect many ECA and BESA members in both the short and long term. As the situation develops, ECA and BESA have put together some initial advice to support Members during this uncertain time.

Liquidation, or winding up, is the process by which a company is brought to an end. When a company is liquidated its business is terminated, although it may need to be carried on temporarily as part of the winding-up process. The process involves ensuring the companies assets are realised and the proceeds are distributed to those entitled.

The current advice from The Official Receiver and its special managers PwC are telling Carillion subcontractors and staff to continue working as normal. PwC has set up a website here to advise the industry and “to ensure the continuity of public services while securing the best outcome for creditors.” The statement continues to confirm that all parties “will be paid for the work they do during the liquidations.” Whilst work undertaken by members during the liquidation is being guaranteed, this does not cover any work undertaken on contracts prior to today.

In a developing situation, the advice to ECA and BESA Members is as follows:

- Check your contract documents; Liquidation of either party usually brings the parties obligations to honour the terms of the agreement to an end.
- Review any Collateral Warranty agreements to see what rights and obligations are contained there-in.
- Re-run your company cash-flow forecast for the next 12 months, presuming all liabilities will have to be honoured without receipt of further upstream payments.
- Assess your working capital requirements in light of the above cash-flow and act to secure additional sources of finance.
- Review contract documents to see whether the Section 113 rights to withhold payment in light of an upstream insolvency are present, which could thwart any attempts to counter claims for payment of retention.
- Credit checks on existing customers and key suppliers should increase over the next six months. You need to ascertain whether their financial stability is under threat.
- Assure current customers and suppliers of the robustness of your business and your ability to weather any storm.
- Consider whether there are any cost saving opportunities in your business.
- Be alert to signs of financial distress on any other contracts and act to safeguard your exposure. See whether retention can be secured or whether payment guarantees can be provided or better terms offered as goods are delivered to site.
- Consider the retention of title position both up and down stream.
- Look to formalize any rights of set-off you may wish to impose. Ensure your pay-less notices are issued in accordance with either the Scheme for Construction Contracts or your bespoke contract terms.
- Look to your existing contracts and, if necessary, divert resources to ensure measurement and applications for variations, changes and disturbance of the regular flow of work are formally communicated and applied for.
- Cash is king – be alert to the opportunity for ‘deals’.