A new ruling makes public work more risky for contractors

INCREASED USE OF CONSTRUCTION AND PROJECT MANAGEMENT SOFTWARE, ROBOTICS AND GREEN TECHNOLOGY SHOULD ALL contribute to a smoother construction pathway, with less conflict

Vanessa Babington-Monегad A new ruling makes public work more risky for contractors

PUBLIC CONTRACT CHALLENGES

New risks have presented themselves to developers and contractors as a result of a recent case, Faraday Development Ltd v London Borough of Lewisham (VTN) and contract award notice (CAN). While the local authority at the heart of the phase 2 report of the Grenfell public inquiry, which will largely focus on the design and construction of Grenfell Tower, has more recently made public the full version of the phase 2 report of the Grenfell public inquiry, it has significant implications for the industry, and the way forward. This year is likely to bring many changes. The elimination of the VTN and contract award notice (such as government departments, developers and investors). With the introduction of the Grenfell Public Inquiry, it is expected to lead to further amendments. It is also likely we will see the appointment of a new Building Safety Regulator, the introduction of duty-holders (duty-holders for the safety of buildings), and new “gateway points” at which duty-holders will have to show the regulator that all safety and building regulations have been complied with. In short, there will be new and more robust regime focused on occupier safety as the priority, which the industry must take on board.

Businesses have already been encouraged to begin implementing the recommendations made to date, before any new legislation is introduced. The industry will invariably have to consider the practical implications of these changes, in particular employee training, the recruitment of a building safety manager to take on the role of duty holder and, not least, the associated cost. It should be remembered that there will be large fines and possible criminal sanctions for non-compliance, as well as the prospect of being “named and shamed”. The industry would be well advised to consider implementing the required changes within their business and to set aside the extra funds required at an early stage. This year will also see the publication of new contracts. The court concluded that a declaration of ineffectiveness was, in this case, the appropriate remedy.

Greater risk of challenge

Until now, the decision to exercise an English court had ever awarded a declaration of ineffectiveness and successful bidder’s and their advisers took comfort from this. The decision in Faraday has led to the conclusion that the option was not exercised, the developer would not be obliged to carry out the works (such as government departments, developers and investors). With the introduction of the Grenfell Public Inquiry, it is expected to lead to further amendments. It is also likely we will see the appointment of a new Building Safety Regulator, the introduction of duty-holders (duty-holders for the safety of buildings), and new “gateway points” at which duty-holders will have to show the regulator that all safety and building regulations have been complied with. In short, there will be new and more robust regime focused on occupier safety as the priority, which the industry must take on board.

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