Master Service Agreements

This is an important issue which was highlighted to all of ITIC's members at the beginning of this year via an e-mail circular. If you did not receive a copy and would like to subscribe to our mailing list, please email ITIC.News@Thomasmiller.com

Often when companies are in a long term relationship and there are several projects to be completed the client will suggest a Master Service Agreement ("MSA") be agreed. The MSA will usually provide general terms under which your contractual relationship will operate. You may then have separate negotiations/agreements for any individual projects with that client. If there is any clash between the two agreements, it is usual for the MSA to take precedence unless specifically agreed otherwise.

There has been an incident reported to ITIC where a US subsidiary of a UK company (the Contractor) signed a Master Service Agreement with a US based client (the Client) which bound the whole Contractor company including all their "subsidiary and affiliated companies". This meant that all offices world wide, including the UK head office and all subsidiary and affiliated companies of the Contractor were bound by the terms agreed in the Master Service Agreement. The most important of these terms were provisions for US jurisdiction, unlimited liability and that the terms of the MSA would take precedence over any subsequent verbal or written work orders.

The specific claim involved an overseas affiliated company of the Contractor entering into a specific transaction with the Client. The overseas affiliate had no knowledge of the Master Services Agreement and provided a quotation which, they thought, was subject to their own standard trading conditions. These trading conditions limited their liability to USD 1 million and provided that any dispute would be subject to English law.

However, when a dispute arose, the MSA's existence was revealed when the overseas affiliate suddenly found themselves named as a defendant in US proceedings, in which the Client was claiming more than USD 45 million. This was a shock to the overseas affiliate as they had never seen the MSA and did not know it existed at all. In fact, the MSA had come into existence before this particular overseas affiliate had even been incorporated. Furthermore, the US subsidiary who actually signed the MSA were also surprised to be named in the claim, as this was the first they knew about the job that was undertaken for the Client by the overseas affiliate. The final claim was settled for far less than the claimed amount, but for a sum well in excess of the USD 1 million limit of liability the company had originally thought was in place.

There are two points that you must consider when dealing with Master Service Agreements:

1. If you are asked to sign an MSA you must always:

    (a) read it carefully and fully understand which companies in your group you are potentially binding; and
    (b) remember that such an agreement does not have to be signed by the parent company or head office in order for it to be binding on all your offices, subsidiaries and affiliated companies. You must always be aware that you may be binding your entire organisation to the contract when signing an MSA. Your client will probably be unfamiliar with your

organisation's corporate structure and will be entitled to rely on the apparent authority of the office or company that has signed the agreement.

2. Once you have signed such an agreement it is imperative that all those bound by it are notified and made aware of its terms so that they can act accordingly.