

Witness Name: Michael Flynn
Statement No: First
Dated:

THE EDINBURGH TRAM INQUIRY

Witness Statement of Michael Flynn

I, Michael Flynn, will say as follows:-

Background

1. I am a former employee of Siemens Plc ("Siemens") and I am currently employed as a Programme Director, at Network Rail.
2. I have approximately 29 years of project, programme and business management experience within the rail and energy sectors having worked for a number of international engineering companies during my time such as Bombardier, Alstom, Mitsubishi and Siemens, Transport for London and Network Rail. I have a bachelor's degree and an MBA and I am a member of the Association of Project Managers as well as the Institute of Electrical Technical Engineers.
3. I have spent most of my time in railways, Mainline, Metros, plus approximately 10 years working on light rail contracts similar to (if not larger than) the Edinburgh tram contract (the "Contract"), for instance the Ampang line in Kuala Lumpur, the Kelena Jaya Line, the Docklands Light Railway in London and the Metrolink in Manchester.
4. I joined Siemens in the summer of 2003 and left in the summer of 2011, during which time I held a number of senior positions, including the title of Director of Major Projects during the time of the Contract.

5. I got involved in the Contract during the bid phase around April 2007, when Siemens was in the process of tendering to deliver the Contract (which was being let by a subsidiary of the City of Edinburgh Council ("CEC"), tie Limited ("tie")) as part of a consortium with Bilfinger Berger (UK) Limited ("Bilfinger"). This consortium was known as the BBS Consortium during the tender phase but then became the BSC Consortium once the Spanish tram maker, Construcciones y Auxiliar de Ferrocarriles ("CAF") was novated into the Consortium Agreement (the "Consortium").
6. My team, together with our German colleagues, was responsible for the preparation and administration of the bid. The bid for the Contract was one element of my responsibilities, however due to the issues that arose, the Contract consumed a lot more of my time than I would have ordinarily have expected.
7. Siemens had a team comprising approximately 20/30 people, split across the UK and Germany, tasked with preparing its bid for the Contract. Typically, Siemens would structure its bid such as this so as to split the tender between two main elements: a commercial element; and a technical delivery element. In respect of the Contract, Herbert Fettig managed the commercial / financial side of the bid and Steve Wright managed the technical aspect of the bid. During the bid phase, I reported to Christian Roth (of Siemens).
8. Following acceptance of the Consortium's bid, I remained involved with administration of negotiations to finalise the terms of Contract and following its execution in May 2008, to help ensure that Siemens' interests and obligations under the Contract were being complied with.
9. Later on, after the bid phase, I also became a member of the Consortium steering board which comprised senior figures from Siemens, Bilfinger and CAF.
10. Ordinarily, I would have expected that once Siemens had won a bid, my role would be limited to regular dialogue with the project director (typically via a regular telephone conversation) and a meeting one day every month with the Contract team to check on performance. However, given the issues that

arose with the Contract, I had more involvement than usual in its delivery. My role was still limited to general overseeing and I would not be aware of the level of specifics that the technical teams or commercial teams on the ground would have.

11. Siemens' contract delivery teams would be more than capable to simply get on and do the job unencumbered (subject to appropriate governance). Everyone on the contract delivery team in this case had significant experience of carrying out contracts such as this, and I would say that the knowledge and experience of Siemens' team, and reach-back into the global organisation exceeded that of tie's experience.
12. Given the passage of time, I am unable to recall the specifics of the division of responsibility between Siemens and Bilfinger for the delivery of services under the Contract. However, generally speaking, Bilfinger was responsible for the civil and building works, whereas Siemens was responsible for providing track, electrification, signalling and control systems. I understand that distinction between roles reflected the core businesses and expertise of each of the entities.
13. I have set out in the following paragraphs an overview of the general matters encountered by Siemens on the Contract during my time, in terms of the scope, utility diversion works and third party consents.

Design work

14. I understand that in or around 2005, Parsons Brinkerhoff Limited ("PB") was procured by tie under a Systems Design Services agreement (the "SDS Agreement") to produce the basic concept of the design for the project.
15. The design information provided by tie before completion of the Contract was however at best immature; therefore the Consortium had to provide tie with a proposed approach for the Contract that was appropriate to and commensurate with the state of scope and design included in the Invitation To Tender ("ITT") at that time.

16. Typically, for comparable build contracts, the client would provide a complete design for the whole scheme against which bidders could bid, but that was not the case in this Contract, as the design and scope information provided during the bid phase was immature.
17. Principally the issues experienced with the design and scope of the Contract impacted upon the civil and building works (which were part of Bilfinger's scope), with some impact on Siemens work. However, there were instances where the delays caused to completion of the civil and building works had a consequent impact on Siemens' work – as Siemens' work generally speaking could not commence until Bilfinger's civil works had been completed.
18. The issues presented by the immature status of the scope and design in the ITT were compounded by the fact that tie wished to fix the price for the Contract. This was incongruous with the approach of commercial organisations such as Siemens, who wish to limit their liabilities and risk in situations where scope, schedule and interfaces are volatile, as in the case of the Contract. Typically, when a client does not know the specifics of what they wish to build they would normally take a different approach to pricing, for instance they would either look to price using a Target or Emerging cost approach. A Target cost approach is where the parties aim for a Target price and agree an incentive arrangement around scope, schedule and cost that acknowledges the immaturity of scope/design. An Emerging cost approach is where the scope/design is immature, and the client contracts on what is basically a cost-plus basis. I do not know why tie took a fixed cost approach to the Contract, given the immaturity of the design during the contract negotiation stage.
19. A further issue that arose is that tie also changed their requirements for the Contract from those issued in the ITT (the requirements later became enshrined in the Contract as the "Employer Requirements"). This resulted in additional changes being required to the proposal put forward by the Consortium in its bid, as the proposals for technical delivery, schedule and costs had to be reconsidered and updated after bid submission in light of tie's

changes, where necessary. This caused difficulties as the parties were trying to negotiate a contract based on a backdrop of a changing scope.

Utility diversion works

20. The utility diversion works were works to divert the utility lines which were present in the "track box" (the area where the tram track and its foundations would be constructed). Although before my time, I understand that these works had been contracted to Alfred McAlpine Infrastructure Services Limited, later Carillion plc) by tie pursuant to a Multi-Utilities Diversion Framework Agreement ("MUDFA") on or around October 2006 (and became known as the "MUDFA Works"), and later Clancy Docwra undertook the utility diversions.
21. As I recall, tie were meant to have all utility diversion works completed ahead the Contract being executed. This was not achieved and, in fact, the MUDFA Works still had not been completed by the time I left Siemens in the summer of 2011. The delay to completion of the utility diversions was problematic since Bilfinger would usually require utilities to be diverted in order to allow it to commence its civil works, these delays to Bilfinger's works had a consequential impact to Siemens' schedule and cost.
22. In addition to the delays in completing the utility diversion works, I understand that there were also issues with the accuracy of the utility diversion works, which further impacted on Bilfinger's ability to commence its works under the Contract. Anecdotally, in the event that Bilfinger received confirmation that there were no utilities requiring diversion less than 1 metre beneath the surface of the ground, Bilfinger would have proceeded to use heavy machinery to undertake excavations of the surface of the site. However, it sometimes transpired that utilities were at a shallower depth than communicated by tie, which would mean that the machinery initially used by Bilfinger would have been inappropriate, and that hand digging was required. This would obviously have a consequential impact on the planned schedule to the relevant works.

23. I don't recall Siemens being made aware of these issues with the utility diversion works at the time of submitting its bid. The Consortium was informed by tie that such works would be completed before the Contract was executed.

Third party consents

24. I recall some issues (but not the specifics) that arose during delivery of the Contract, in relation to consents necessary for the advancement of the Contract. For example, if a consent had not been obtained then Bilfinger may have been unable to start works, or Siemens may not have been able to attach overhead electrical lines. Such delays would inevitably have an impact on the overall schedule and cost.
25. I cannot recall specifically who had responsibility for obtaining third party consents - whether that belonged to the Consortium or tie; however the delay in obtaining necessary third party consents was a continuing issue, and one that was not resolved even on my departure from Siemens in the summer of 2011.
26. As I recall, the issue of consents was discussed during the Mar Hall mediation, and following the Mar Hall mediation, the CEC took an active role in the process to obtain consents.
27. The rest of my statement below sets out my experience whilst working with the team on the Contract for Siemens. My statement sets out my best attempt to respond to the 126-page question and answer form provided to me by the Edinburgh Tram Inquiry in light of the time constraints imposed on me by the Inquiry and given the historical nature of the events in question.

Tender phase and preferred bidder

28. Even during the early stages of the Contract procurement process, the Consortium encountered difficulties with tie. We found that invariably, tie's approach to the bid process was less than ideal. For example, given the

immaturity of elements of the ITT suite Siemens put together its bid response setting out what it was willing to build, according to an acceptable cost and time schedule, against a suite of terms and conditions it felt was appropriate (as is customary in tender processes for similar construction contracts). tie however kept changing the "goal posts" (essentially altering what it was asking for in terms of the technical delivery or the terms which it required in the final Contract).

29. By and large, when tie made such alterations, this had consequent impact on Siemens' proposed price or programme for delivery, which consequently caused further work for Siemens and in particular, my team. Usually, a client knows its requirements for a contract before it goes out to tender. tie's changing requirements after ITT release (and later bid submission) in this case however meant that the transaction time was much slower than for other comparable contracts that I have worked on.
30. I was not aware of tie's internal strategy for the procurement of the Contract, as this pre-dated my involvement with the matter.
31. Generally speaking, when the parties met during the contract negotiation phase, those discussions would be attended by the Consortium (representatives from both Siemens and Bilfinger across all disciplines) and from tie. Typically in attendance on behalf of the Consortium at such meetings would be myself and/or Herbert Fettig, Steve Wright, Roland Bruckmann, Robert Kraemer and Marco Mera - our lawyer (depending on the issue being considered) on behalf of Siemens and Richard Walker Scott McFazden and Tom Murray on behalf of the Consortium. tie would invariably have different people in attendance at such meetings.
32. The Consortium entered into an agreement for its selection for appointment as the Preferred Bidder in relation to the Contract on 22 October 2007 (the "Preferred Bidder Agreement") (CEC00569119). Whilst I have reviewed the Preferred Bidder Agreement for the purpose of my statement, I do not recall any specifics about the document, save that it would have been used to record that the Consortium was the selected bidder for the Contract. With

regard to the "Value Engineering" works referred to in the Preferred Bidder Agreement, these were items which were included for tie's benefit which essentially presented options/opportunities to the client for a noted spectrum of cost with the aim that in certain situations there may be a way of performing those elements in a different way, with the intention that such works could reduce the costs of certain aspects of the Contract.

33. Ultimately, my view in relation to Value Engineering work items is that the parties' agreement on such items was crystallised in Schedule Part 4 of the Contract. Therefore, to a large extent, I consider the information regarding value engineering works leading up to this time to be immaterial. I would imagine that the vast majority of Value Engineering items would relate to Bilfinger's remit of the Contract.
34. I note the reference in the Preferred Bidder Agreement to the novation of the SDS Agreement and the due diligence to be conducted in relation to that design. The proposed novation of the SDS Agreement to the Consortium meant that responsibility for liabilities and risk arising from the SDS Agreement would vest in the Consortium, as opposed to tie. Due diligence into the design prepared pursuant to the SDS Agreement was therefore required in light of that potential risk. As is usual in such situations, commercial entities such as Siemens and Bilfinger would not blindly accept novation of a contract and new liabilities/risks without undertaking an evaluation/assessment. From memory, I believe that Siemens took the view that most of the issues arising from SDS Agreement novation principally impacted upon Bilfinger in the first instance, which meant that Bilfinger took the lead on this matter.
35. I have been asked whether I considered it appropriate for the Consortium to have been appointed as the preferred bidder in October 2007, notwithstanding the continuing range of finalisation issues still in play at the time. My view is that these are decisions for the client to make, and it is not for me to express a view on whether the client's decision was appropriate. I am not in a position to comment on what impact the appointment of the Consortium as preferred bidder had at the time on tie's negotiating leverage,

although one must assume that tie was happy with its negotiation position, given that it entered into the Preferred Bidder Agreement.

36. Following the execution of the Preferred Bidder Agreement, focus very much turned on the negotiations for the final terms of the Contract. I recall the negotiations were extensive as tie were requiring a price to be fixed, notwithstanding that the Contract scope was not finalised and there were a number of outstanding items such as consents and the utility diversion works. The majority of the negotiations were therefore tie focused on attempts to fix a price against a list of price assumptions and exclusions, to cater for unforeseen risk with the emerging scope, interface issues and schedule.
37. I recall there being a great deal of legal input from both parties' legal advisors on the negotiations of the Contract terms from the bid phase right up until contract closure. tie was represented by DLA Piper (UK) LLP ("DLA") throughout the process, who were in my mind always visibly supporting tie. The Consortium was represented by Pinsent Masons LLP ("Pinsent Masons"), who were supported by Biggart Baille. I do not recall ever being involved in a contract which required as many lawyers as this Contract.
38. Notwithstanding the fact that the negotiations were lengthy and extensive and involved a considerable amount of legal input, my view was that the matters subject to those negotiations were based on relatively simple concepts, which I would expect someone with basic construction experience to understand.
39. During the negotiations, as the parties were experiencing difficulties with fixing a price against a backdrop of changing scope, the parties chose to fix the design baseline/reference point in November 2007. This became known as the Base Date Design Information. It is typical for the parties working on infrastructure contracts to try and agree a baseline according to information available and known to the parties at that time by which the parties can fix the terms of a contract and in particular, the price. This has the effect of automatically excluding information and changes introduced after the relevant date. The price would also be subject to certain assumptions and

exclusions. Such changes (arising in respect of the Contract) would therefore result in the Consortium's entitlement to additional costs and additional time to complete the intended works, and my understanding is that this resulted in the introduction of Schedule Part 4 to the Contract in or around December 2007. It is not the case that the Schedule Part 4 to the Contract "appeared over-night" shortly before Contract close, as has been alleged. It was in my mind the subject of extensive discussions between the parties and their legal teams and arose primarily due to tie's desire to fix the price of the works.

40. The purpose of Schedule Part 4 in my mind was to provide the mechanism by which the Consortium would be able to recover additional costs and time based on: (1) changes to the design occurring since being fixed by the Base Date Design Information in November 2007; (2) deviations from the pricing assumptions; and (3) having to undertake excluded works.
41. Typically, I would expect that where a client is in a situation where a change mechanism system is in play (which is not unusual in infrastructure contracts such as these), they would make an appropriate risk provision. I am not aware of how tie sought to provide for the potential risk arising in relation to the agreed change mechanism system and the associated potential increase in costs and time.
42. As a result of these contract negotiations, I am aware from the Inquiry that in or around December 2007 Siemens was able to provide a price of £87.3 million for the phase 1a works, as defined in our bid. Given the passage of time, I cannot recall the specifics of this.

Wiesbaden

43. Following on from this, in December 2007, a meeting took place between senior members of tie, Siemens and Bilfinger in Wiesbaden, Germany. As I understand, the purpose of the meeting was to expedite the finalisation of the Contract, which had been delayed by the negotiations on the change mechanism, the pricing assumptions, value engineering items and the excluded works. I recall tie had requested the parties to meet, and that

occurred in Wiesbaden, and I understand that request arose as tie was under pressure from the CEC to conclude the Contract around this time.

44. I don't recall the full list of attendees at the meeting, but present on behalf of the Consortium were myself, Mr Brookman, Mr Hoffsess, Richard Walker and Mr Ennikel (and there may have been others). In attendance at the meeting on behalf of tie were Willie Gallagher and Matthew Cross.
45. As I recall, the majority of time spent at the Wiesbaden meeting was focussed on discussing Value Engineering items. Arising from the discussions, the parties discussed and prepared a hand-drawn list of items, clarifications, qualifications, etc. which, were subsequently transposed into an agreement signed on 20 December 2007 (the "Wiesbaden Agreement") (CEC02085660).
46. Unfortunately, due to the passage of time, I am unable to recall with any specificity the events that took place during this particular day which led to the conclusion of the Wiesbaden Agreement, although I do recall that whilst the discussions between the parties was at times direct, there did not appear to be any animosity. In particular, I am unable to recall any details on the development of the £218.3 million price referred to in the Wiesbaden Agreement from the £218.5 million price stated at clause 4.3.1 of the Preferred Bidder Agreement.
47. Even though the purpose of the Wiesbaden Agreement was to finalise the list of Value Engineering items to draw a close to the parties' discussions in that respect, somewhat frustratingly, tie still continued to change its mind on the specification for the Contract, which altered the relevance of what was previously agreed at Wiesbaden. Generally speaking, tie's revisions of its specification and contract terms from our bid consumed a great deal of time and resources. Proposed changes would require the input of technical, commercial and legal specialists from both Bilfinger and Siemens and meant the scope of the Contract proposed and the cost and programme delivery time would need to be reconsidered in detail.

48. In an e-mail dated 18 December 2007 (CEC00547721) from Richard Walker to Geoff Gilbert, Mr Walker states, "*we cannot allow known delay by SDS prior to Novation to become the cause of our programme slippage or cost overrun.*" It is clear that this meant that the Consortium was unable to accept the risk of the programme slipping as a result of delays under the SDS Agreement in finalising the design. I note that the same email states that "*we have not included any overrun of Prelims*". "*Prelims*" (being Preliminaries) are also known as "standing army costs", which are costs associated with retaining a workforce on or near the site of works (incorporating things such as the costs associated with hiring base location for the workforce). I would anticipate that the "*overrun of Prelims*" refers to the fact that any delays in the Contract, due to changes and utility diversion works, would create programme delivery slippage and accordingly, more money being spent on "standing army costs" (known in engineering circles as "Prolongation Costs").
49. I have seen correspondence referred to by the Edinburgh Tram Inquiry (CEC00547738) regarding the CEC's "buy in". As far as I am concerned, this was a matter for tie and not Siemens. It appeared to me that tie reported into and met with the CEC on a regular basis. Whilst I was not sighted on what was being reported to the CEC by tie, I had the impression that governance arrangements were in place to monitor tie, as the team seemed to be regularly reporting to boards, with non-executive directors, etc.

Advanced works contract to Contract close

50. Following the execution of Wiesbaden Agreement, a mobilisation and advance works contract was entered into in late December 2007, between the Consortium and tie (the "Advanced Works Contract"). I do not specifically recall what the Advanced Works Contract as I took a step back from the Contract around this time.
51. I took a step back from the Contract as I had hoped that following the Wiesbaden Agreement and the Advance Works Agreement, the parties would be able to move through to contract close smoothly, particularly given the capabilities of the team that we had in place. Siemens had a very

competent team in place – consisting of people like Mr Brookman, Mr Kraemer, Alfred Brandenburger, Mr Wright and Mr Norton, etc. who were able to get on with things well.

52. However, this did not last long and I was asked to provide increased support to the team from around February 2008, when it became apparent that there were still issues between the parties that required my assistance in order for the parties to finalise and execute the Contract.
53. I was surprised that I was required to provide a large amount of my time to the Contract after February 2008. Reaching the Wiesbaden Agreement was not without its difficulties, and was supposed to provide the parties with the certainty required to expedite contract closure. Unfortunately, notwithstanding the Wiesbaden Agreement, tie continued to change the scope and terms from what was in our bid for the Infracore works. It seemed to be the case that there were changes made to the scope and terms by tie, but no appreciation for the consequences of those changes (essentially increased costs, risks and scheduling time).
54. In order to try to bring some focus to the issues that remained to be resolved, the Consortium wrote to tie in a letter dated 18 January 2008 which listed a number of the outstanding items which required resolution (CEC01432556). Each of the matters listed were important – the letter notes that the list of issues was not exhaustive, which therefore indicates that other issues (by inference less important issues) were not included in the list. I recall that further discussion took place between tie and the Consortium in respect of the list of outstanding issues following this letter.
55. I believe that the parties' discussions on the outstanding items resulted in an agreement being entered into on or around 7 February 2008 known as the "Rutland Square Agreement" (CEC01284179). Given the passage of time, I cannot recall much of the specifics in relation to this agreement; however I do recall that there was an approximate £3.8 million increase in Siemens' price, which I believe reflected changes that had been made by tie to the scope and

conditions from our bid submission for the Contract after the conclusion of the Wiesbaden Agreement.

56. Following this, I am aware that in around February 2008 the parties negotiated an "SDS incentivisation agreement". The formulation of this agreement was principally a matter between Bilfinger and tie. I am not able to provide any further information in relation to this agreement.
57. Likewise I understand from the Inquiry that on 18 February 2008 Bilfinger produced a Design Due Diligence Summary report. I do not recall this document and cannot provide any information in relation to it.
58. I understand that toward the end of February 2008, tie expressed disappointment with the rate at which the novation of the SDS Agreement was progressing. Again, I cannot provide any information in relation to this, as this was mainly a matter of concern for Bilfinger as the contractor who would be taking the novation of the SDS Agreement making PB its sub-contractor.
59. I am aware from the Inquiry's questions of an internal report dated 29 February 2008 (PBH0003584) from PB which refers to comments apparently made by Richard Walker regarding Bilfinger's strategy to retain flexibility pre-contract and secure substantial variations post-contract. I am not in a position to confirm what Bilfinger's strategy was, as this is a matter for them; however, I would say that by this point in time there was tremendous frustration between tie and Bilfinger, and any comments made by either party then should be taken in that context. From Siemens' perspective, we made sure that the Contract resulted in our costs and margins being covered. It was important to Siemens that every contract that it entered into, including this one, was able to stand on its own two-feet at the point of bid submission and contract signing, as you would expect from a commercial organisation.
60. I understand from the Inquiry that on around 7 March 2008, a further agreement was reached between the parties that the Contract price would be increased by £8.6 million to cover "certain matters". I believe that this

PBH0003584
should be
PBH00035854

payment was to be made to Bilfinger, and therefore do not think that I had much involvement in reaching this agreement.

61. I also understand from the Inquiry that shortly prior to Contract close, on 23 April 2008 there was a report to the CEC which informed CEC that negotiations had *“resulted in 95% of the combined Tramco and Infraco costs being fixed with the remainder being provisional sums.”* I would say that it is difficult to estimate what percentage of costs were fixed at this point in time, since in order to do this it would need to be known what 100% of the total costs would amount to – which could not be known given the number of price assumptions, qualifications, provisional sums and exclusions at the time.
62. I have also been made aware that around this time, in April 2008, Richard Walker had advised tie that Bilfinger required an additional £12 million in respect of its works under the Contract. It seems unlikely that I was involved in these discussions given it appears to have been a matter between Bilfinger and tie, and I do not recall anything on this point.
63. In May 2008, the parties signed the “Kingdom Agreement”. Having reviewed the agreement, the bulk, if not all of its terms principally related to Bilfinger's works but I do not recall any specifics around this agreement given the passage of time.

Contract close

64. Between 14/15 May 2008, the Contract was finalised and executed by the Consortium and tie. The Contract contained a number of schedules, and one of the most important in my mind was Schedule Part 4.
65. Schedule Part 4 provided for a Construction Works Price for the Contract of £238,607,664 which included in it; Value Engineering items, exclusions, clarifications and provisional sums. By way of background, “provisional sums” would be used where the client makes a request, but is not sure as to the necessary specifics of what this request comprises. This lack of certainty on the detail of what is required makes it difficult for a contractor to provide fixity of price or scheduling in relation to such matters. Given this, Siemens

therefore provided an estimate in relation to pricing and scheduling in respect of provisional sums. However, this was only ever an estimate and therefore the actual costs of such works were liable to change, the risk of which was placed on tie. I believe that most of the provisional sums in Schedule Part 4 to the Contract related to Bilfinger's works. This is also true of the Value Engineering items in Schedule Part 4.

66. Schedule Part 4 seems to be to be fairly clear in that a component of the price was fixed based on the Base Date Design Information and certain price exclusions and assumptions. Where changes to the Base Date Design Information were any more than "normal design development" (being a small percentage deviation from the design as fixed), that would entitle the Consortium to a price increase and additional time for Contract delivery. I believe this point was tested and clarified in one or more of the Adjudications. The same applied for any deviations from any price assumptions and where the Consortium would be required to complete works which were subject to the excluded items list.
67. Schedule Part 4 to the Contract provided that where the deviations referred to above occurred, this would result in a notified departure from the overall price and programme delivery. A notice of change would be raised which would contain the Consortium's assessment of the impact of the change on the price in terms of cost and the additional time required, where those could be evaluated.
68. Siemens had an "Estimating Team" who were based in both Edinburgh and Berlin, who would work alongside its commercial team to prepare estimates for such notice of changes.
69. I understand from the Inquiry that 700 Infracore Notices of tie Change (INTCs) were served by the Consortium between Contract close in May 2008 and the Mar Hall mediation in March 2011. Typically, where the level of change notices is so substantial – as in this case – the cumulative effect is significant, and burdensome. For instance, not only would any deviations from scope or pricing assumptions (or having to carry out excluded works)

impact on the Construction Works price and the programme delivery, which would need to be assessed, each notice of change would have to be assessed in light of all the other notice of changes as well, which was a significantly time consuming task. Typically, the cumulative impact of change is greater than the sum of the individual components.

70. In order to minimise the issues presented by this, Siemens expanded its change team responsible for dealing with the numerous change notices. As I recall, Bilfinger were mainly affected by the majority of change notices; however, Siemens was still concerned with the consequential effect such notices may have on its remit. Notwithstanding Siemens' use of a change team, I would comment that the sheer level of change notices, the interaction between changes, as well as the lack of agreement over some of the change notices, impacted on the efficient delivery of the Contract.
71. Further, tie's approach to the INTCs caused further issues in that it failed to agree the majority of INTCs in terms of acknowledging they were changes in the first instance, and also costs and time. I know that where a notified departure (triggering the change mechanism under the Infracore Contract) did arise, tie would do their best to resist the process enshrined within the Infracore Contract. As I recall, the Consortium was entitled to payments covering its time, costs and overheads incurred in connection with a notified departure; however, tie tried to justify that it was not a change, or would try to utilise a contract mechanism that was not appropriate to a Schedule 4 change.
72. It was my observation/opinion that tie did not realise that they were responsible for the Project as a whole, it seemed that they felt all elements of the Project were in the Contract, and I wondered if they could see the "bigger picture" for the Project, the realisation of benefits, and other activities one would expect a client to focus on. In relation to the Contract: tie did not seem to consider the benefits and value associated with Contract costs, but instead only focussed on the costs themselves, which ultimately led to an inefficient delivery from the early days of the contract whilst INTCs were being negotiated and agreed. This of course was compounded by issues such as

the utility diversion works not being complete which meant the Consortium were unable to start works when indicated under the Contract.

73. Finally, I recall clause 60 of the Contract also required the Consortium to update the programme, and made provision for agreement of the programme with tie. I do not believe that there was much agreement between tie and the Consortium in respect of programme variations as a result of INTCs.

The Princes Street dispute and the “On-Street” Works

74. In February 2009, I recall a dispute arose between the Consortium and tie in relation to works on Princes Street. I don't recall the details, but my recollection is that a number of INTCs had been raised in respect of the Princes Street works which had not been agreed with tie. Under the Contract, the Consortium was not permitted to start such works in absence of an agreed estimate for such INTCs, unless the dispute had been referred by tie to the dispute resolution procedure under the Contract.
75. At the time, I considered this to be an issue for Bilfinger to deal with, as I believe the bulk of the dispute concerned utility diversions impacting on Bilfinger's ability to commence and complete its works. Siemens could not commence the majority of its works until Bilfinger's works on a section had completed. I may have been involved in discussions between the Consortium and tie regarding the dispute, albeit that I do not believe that the issues at the centre of the Princes Street dispute involved Siemens.
76. All parties concerned were keen to progress the works on Princes Street as the lack of activity was receiving a lot of criticism in the local press, given that Princes Street is a premier street in Edinburgh and therefore the road closures to allow works to commence were causing traffic congestion. That being said, it was not the only location affected by such problems. Due to restrictions under the Contract, the Consortium was unable to express its position to the media. Whilst I am not certain, I presume that tie were trying to use the perceived pressure exerted by the media as a form of leverage to have the Consortium accept risks it was not willing to yield, to undertake works without additional costs and price and time being agreed as per the

conditions of the Contract. Those media tactics were inappropriate, and ultimately pointed to a weakness in tie to administer the contract.

77. Accordingly, in March 2009 Siemens produced a "Framework Concept" (TRS00016833) which was to be used as a means of trying to unlock the Princes Street dispute. I cannot recall the specific details, given that the events took place so long ago, but I do recall that the Framework Concept represents one of several attempts by Siemens to try to approach the issue from a different perspective in order to expedite the works. We had in mind that the continuing issues with the Contract could develop into potential liabilities and litigation for Siemens, which we were keen to avoid. For example, if Bilfinger's INTC was not ultimately agreed and did not result in an extension of time of the programme, this would mean the programme delivery would be late in the section affected by the INTCs which would result in claims for liquidated damages being payable by both Siemens and Bilfinger and Prolongation Costs being incurred which we would have to waste time seeking to recover from tie. This of course caused Siemens concerns given the number of INTCs that were being raised over multiple sections of the proposed tram line under the Contract.
78. Furthermore, the direction of travel was such that good and useful people at Siemens were being tied up in unprofitable activity, rather than being able to carry out the works. Again, this was something that Siemens wanted to avoid. Generally speaking, Bilfinger was responsive to any attempt to move forwards, although tie did not always embrace new initiatives.
79. I understand that the Princes Street dispute was resolved by way of the Princes Street Supplementary Agreement ("PSSA"), entered into in around May 2009. I do not recall the chronology surrounding formulation of the PSSA, albeit that I believe that the PSSA marked an attempt by the Consortium to show willing and flexibility to tie, and that in spite of all the issues in play, it was willing to move forwards. Ultimately, I believe the PSSA had limited success.

80. I am informed by the Inquiry that there were negotiations between tie and the Consortium over an On Street Supplemental Agreement ("OSSA"), under which the principles of the PSSA would be applied to other on street works. I do not recall the OSSA in any detail, although I believe that this agreement arose since it was felt that if the PSSA made steps to resolve the utility and other issues on Princes Street, there was hope that this potential solution could be applied to the other on-street works.
81. As I understand it, there were arguments between tie and Bilfinger regarding the justification, records and sums that Bilfinger was requesting payment for under the PSSA, which therefore meant that payment was not being made by tie in response to the claims submitted by Bilfinger for actual work that was completed. Generally speaking, matters such as this would reach the Consortium Board, on which I sat, but Siemens' engagement in issues such as these varied according to how much they affected Siemens.
82. On 3 June 2009, the Consortium and tie entered into a Minute of Variation ("MoV2") of the Contract (BFB00053622). Again, given the passage of time, I do not recall specific details around this document. I believe that MoV2 was a means by which the parties attempted to clarify the application of one element of Schedule Part 4 to the Contract, with particular regard to the approach to "prelims". I suspect that the approach to the payment of preliminaries featured heavily in the Princes Street dispute, and this MoV2 was most likely an acknowledgment of that, and an attempt to move forward.
83. On the basis that the Contract had been prolonged by approximately 18 months, it was inevitable that Siemens would anticipate additional Prolongation Costs after MoV2 had been concluded.
84. I do recall that an informal mediation took place between tie and the Consortium around the end of June 2009, leading into the beginning of July 2009. I believe the parties decided to attempt mediation at this point, as they wanted to try to approach resolution of the issues at hand in order to unlock the disputes that had arisen on the INTCs and ensure the future success of the Contract.

85. I do not believe that the mediation resolved any of the issues being discussed.
86. I understand that shortly after the mediation, tie decided not to proceed with phase 1b of the Contract, which resulted in a payment to the Consortium of £3.2 million pursuant to Schedule Part 37 of the Contract, a sum tie agreed to when signing the contract. I do not recall whether tie paid this sum under protest; however, my view is that this payment was clearly the subject of contractual agreement between the parties, therefore meaning tie had an obligation to make this payment. I therefore consider whether tie paid this sum under protest to be irrelevant.
87. In October 2009 a draft Siemens Project report was produced (SIE00000251), most likely by the team in Edinburgh, as part of their local Siemens monthly reporting cycle. This document was not a corporate report and would have been for internal use only. I understand that the Inquiry is interested in my view on the following certain sections of the report, to which I respond as follows:
- 87.1 *“a large uncertainty about completion date” and “several programmes (with different purposes/contexts) are being handled simultaneously”.* This was correct – there was no agreement with regard to the Contract programme, which was frequently changing, and issues such as the utility diversion works had a material impact on the certainty of any completion date;
- 87.2 *“possible risk mitigation strategies, including earlier start of technical lots, acceleration, staged opening of the line, “selective takeover of BB scope”.* Siemens would regularly take a step back from the Contract and consider all of its risk mitigation options, following a process of “blue-sky-thinking”. This process of “blue-sky-thinking” is common, and part of Siemens’ process of trying to resolve issues on contracts such as these. From memory, I do not know whether the contract permitted staged opening; however this simply notes Siemens’ rough thinking in relation to an issue. As to the *“selective takeover of BB scope”*, Siemens had civil engineering capabilities, and there were some instances where Siemens could conduct certain civil works on

behalf of Bilfinger. For instance, it was agreed that one of Siemens' sub-contractors would undertake concreting works on the guided busway section of the tram-route, in place of Bilfinger. This was not due to concerns with Bilfinger's performance, and it is common practice generally between Consortium partners to review scope and sequencing. The guided busway where Siemens undertook concreting works on behalf of Bilfinger was a particular section of the Contract route, with a distance of approximately 1 kilometre. That section of track already had a concrete guideway in place, so there was no need for the base surface to be dug up by Bilfinger, therefore this section of the route was not impacted by the need to consider utility diversions, which allowed Siemens' to undertake its works;

- 87.3 *"Main issues by lots, including design, BAM subcontract 'wrongly wired', and delays with civils works". I believe this related to the fact BAM were sub-contracted by Siemens to assist with the performance of the Contract works, and were instead waiting in Edinburgh at a cost to Siemens, pending resolution of various issues permitting commencement of their works;*
- 87.4 *"dispute over the financial part of EoT 1; noting that if the principles of Siemens' entitlement to estimated actual cost were not agreed, the matter was to be referred to Court to avoid setting a negative precedent." I have no comment in relation to this;*
- 87.5 *"MUDFA v8 EoT dispute. The strategy was said to be "To prove entitlement for the delay caused by the MUDFA works as "dominant delay", and unequivocally the responsibility of TIE. The idea is to split up the overall delay into different packages by main causes, weakening possible concurrent delay arguments, and securing relief in a staged approach." I have no comments in relation to this; and*
- 87.6 *"[Siemens' strategy was] to act as observer, but to ensure that no agreement reached, adversely affects Siemens' position. ... Also, carefully watch if BB's claim strategy was "proven wrong" and BB would ultimately have inflicted damage to the Consortium, mainly as concurrent delay. Initiate "preventive defensive strategy" towards BB, in case later needed." It should be borne in*

mind, that for many of the individuals who most likely contributed to the production of this report, English is not their first language. Whilst they speak excellent English, sometimes their written English can be unclear – which I think is the case with regard to Siemens acting as an “observer”. Generally speaking Consortium partners are jointly and severally liable to their client; however, it is usually the case that the Consortium partners will have the benefit of cross indemnities – which means that, in this case, Siemens was indemnified by Bilfinger in respect of losses Siemens may suffer through being held jointly and severally liable for Bilfinger’s failure to meet its obligations (and vice versa). Notwithstanding these cross indemnities, Siemens wished to monitor the progress of Bilfinger’s claims – as any delay arising in respect of the resolution of such claims had an indirect impact on the completion of Siemens’ works. Generally speaking, Siemens had to monitor its cash-flow on the Contract but ultimately, it has a duty to its shareholders and jobs such as the Contract all add up to potentially have an impact on Siemens’ bottom-line.

88. I have also been referred to minutes of a Siemens bi-weekly team briefing, held on 8 February 2010 (SIE00000217), and specifically items 14 and 16 therein. Noting the reference to work to be undertaken, I believe this may relate to the guided busway works where Siemens undertook some works on behalf of Bilfinger Berger (explained above). As is customary with Consortium partners, Siemens wanted to conduct works and help expedite the Contract where it was able to; however there were not many areas on the Contract where works could be started on time, due to one issue or another.
89. I understand that around the time of this meeting in February 2010, Bilfinger and PB entered into a minute of agreement. I am not able to provide any information in relation to this, given that Siemens was not a party to the agreement, although I imagine this agreement was entered into due to continuing issues with the state of the ever-changing scope/INTCs/etc. of the Contract.
90. I understand that there is an allegation that throughout 2010 the Consortium adopted a more “formal, contractual approach” to the Contract, and I have been asked

to provide my comment on this. I am not in a position to second guess or explain the basis for tie's behaviour. That being said, had any notable shift have taken place in tie's behaviour, this would have been discussed at Consortium board level, but I cannot recall any such discussions due to the time that has elapsed since.

91. On this point however, I understand from the Inquiry that on 8 March 2010, Richard Walker wrote to various CEC officials and a councillor, expressing his concerns about the Contract and tie's approach. He also raised concerns about the accuracy of tie's reporting on the Contract. I know that in response to this, tie's/CEC's legal representatives wrote to Mr Walker to warn him that he would be personally sued if he wrote directly to the CEC again in this way. I cannot recall why Mr Walker wrote this letter, as this is a question for him; however, presumably, he had become increasingly frustrated with tie and could not see a constructive way forward through discourse with tie, and endeavoured to try to escalate the issue.
92. I believe that Mr Walker would have approached the CEC in its capacity as the ultimate shareholder of tie. It was the CEC's taxpayer's money that was funding the Contract and presumably it was felt that the CEC would have an interest in the efficient use of such monies. I think this would have been one of the last attempts to seek resolution of the issues between the parties before formal dispute resolution mechanisms were called upon. I think the manner in which Mr Walker's correspondence was dealt with by tie and the CEC is illustrative of the environment that Consortium was operating in at that point in time. Other organisations may have seen Mr. Walker's letter in the context of 'whistleblowing', and would have taken a different approach.
93. Following this, by letter to Martin Foerder dated 19 March 2010 (CEC00405690), Steven Bell of tie instructed the Consortium to carry out a range of works subject to not-agreed INTCs, based on clause 80.13 of the Contract. It is likely that Siemens, as part of the Consortium, was aware of this instruction at the time. Against the backdrop described in the paragraph above, the Consortium was cautious of tie's intentions, and so we would have been careful as to how such correspondence was dealt with. It was

clear from the Contract that the Consortium were not permitted to commence works subject to INTCs, without an agreement in place as to the submitted estimate. Whilst I cannot recall, I think that the Consortium would have received advice from the commercial and the legal team in relation to this request. This request resulted in an adjudication in which the Consortium's approach was validated, such that it was not required to carry out works in absence of an agreed estimate unless that estimate had been referred to the dispute resolution procedure in the Contract.

94. The adjudication on the carrying out of works in absence of an agreed estimate was one of many adjudications under the Contract. Whilst I would have been updated in respect of their outcome, generally speaking I was not involved as these were dealt with by the commercial team on the ground in Edinburgh. I am therefore unable to provide further detail in relation the adjudications, but I suspect the majority of them concerned the application of the notified departures procedure. I consider that such adjudications are a good test of the parties' understanding of the application of the Contract, and I believe that the large majority of the decisions were found in the Consortium's favour. I do not believe that tie changed its approach following the adjudications, and in fact I recall that on some occasions tie failed to expeditiously follow adjudication decisions.
95. In or around 2010, tie instructed Consortium audits to be carried out pursuant to clause 104 of the Contract. I have no specific recollection of these audits, but was most likely aware that they were being undertaken at the time. The Consortium had nothing to hide, and I understand that tie had a contractual entitlement to conduct such audits. I am not clear why tie sought to conduct such audits: they may have been carried out for legitimate reasons or simply to frustrate the Consortium.

Project Carlisle

96. Project Carlisle 1 was the name given by the parties to one of the settlement attempts to find a way forward through the areas in dispute. Discussions in relation to Project Carlisle were undertaken with tie and their representatives.

The proposal was therefore not developed in isolation from tie and was a joint initiative between the Consortium and tie.

97. I do not recall particularly what the proposal in relation to Project Carlisle related to, although it quite possibly concerned the Off-Street works. The figures and financial analysis surrounding the Siemens proposal were developed by Siemens' commercial team, and I am not able to provide any further information in relation to this.
98. I was involved in a bicycle accident during the summer of 2010 and spent some time away from work around this time in order to recover. I was therefore around at the start of Project Carlisle, but not throughout. I am therefore not able to comment on why Project Carlisle was unsuccessful, but I imagine the breakdown arose due to arguments surrounding: cost, scope, scheduling or risk (or all four), as was typically the case. From recollection, I believe that tie were trying to introduce a "guaranteed maximum price", which was not acceptable to the Consortium, since, at that stage of the Contract, this entailed the Consortium potentially absorbing all sorts of risks which were then unquantifiable. For context, large issues – such as the delay in completing the utility diversion works, ground conditions, etc. were still active around this time.
99. I understand from the Inquiry that Siemens' element of the price proposed under Project Carlisle 1 was £126,901,621, and that this represented an increase in price from the Contract. I am unable to explain in detail what caused any price increase; however, this increase possibly represented the costs of delay and disruption experienced by Siemens and therefore encapsulated, at least in part, its Prolongation, extended warranty and re-phasing costs which of course were not envisaged or sustained when agreeing the final price for the Contract at the time of contract close. The change in figures would have been developed and provided by Siemens' Estimating team. There would have been a dialogue with tie around the financial basis behind the price.

100. I understand from the Inquiry that following Project Carlisle 1, tie served ten remediable termination notices and three underperformance warning notices, the first of which was served on 9 August 2010 and continued to be served until around 12 October 2010. In my view, I think it likely that tie submitted these notices to try and make the Consortium's life difficult, in an attempt to coerce us into an agreement similar to Project Carlisle 1 but based on tie's terms. We would have taken legal advice upon receipt of such notices but I do not recall there being any concerns from a Siemens perspective that Siemens had a significant risk of liability in respect of the matters referred to therein not least since Siemens had a strong team and had assurance in respect of the adjudication decisions supporting the Consortium's interpretation of the Contract.
101. Upon receipt of these termination notices, I am aware from a document entitled "Project Carlisle: Project Termination Limit" dated 11 August 2010 (SIE00000110) that Siemens started to contemplate its liability if the Contract was terminated. I do not know whether this thinking was shared with tie, although I would doubt that it was on the basis this simply represented one of a variety of options that Siemens was hypothetically examining.
102. Following service of the first of these termination notices, the Consortium and tie began discussing a further settlement proposal known as Project Carlisle 2 on or around September 2010. I am unable to remember the details surrounding Project Carlisle 2, and so cannot provide any further information in relation to this.
103. I understand from the Inquiry that by way of a letter dated 29 September 2010, Martin Foerder of Bilfinger advised tie that the Consortium was no longer prepared to carry out "goodwill works". I do not recall any detail regarding "goodwill works", but I believe that they were used to try to encourage some form of collaboration with tie. I believe that Bilfinger agreed to carry out certain works to show good faith, whilst the Project Carlisle discussions were ongoing. I do not know the basis of why these works were ceased, although I suspect it may have involved the issue of a number of

disputes between tie and the Consortium being referred to adjudication around this time.

Project Phoenix

104. After Project Carlisle 2 failed, for reasons I cannot recall, I believe a further settlement proposal was discussed between tie and the Consortium on or around 24 February 2011, known as "Project Phoenix". Whilst I would have returned to work following my bicycle incident by this time, I cannot recall Phoenix and cannot provide any information in relation to it. I cannot comment on the basis of the proposals or prices. On a general note, where revised pricing is provided to the client – as in this case – Siemens would need to seek the input of its sub-contractors, as their pricing information would form part of Siemens' submissions. Siemens' sub-contractors would therefore have been involved, to some degree, in the development of the Project Phoenix proposal.

105. The Inquiry has directed me to emails which I sent in or around March 2011 referring to "Phoenix Lite" (SIE00000098), but I cannot recall the details of this proposal and how it differed from the others that had been tabled previously. As a vague recollection, I believe Phoenix Lite considered how much tram line could be built with tie's available funding. I do not recall receiving any such similar innovative proposals from tie throughout this whole process and it was my recollection that conversely, tie largely presented obstructions and difficulties in achieving a resolution. I am not aware of the extent to which the proposals in relation to "Phoenix Lite" influenced the Mar Hall mediation or subsequent settlement agreement since I had left Siemens before the said settlement agreement was drawn up.

Mar Hall Mediation – March 2011

106. Senior representatives from Siemens, Bilfinger, tie and the CEC attended Mar Hall in Edinburgh in March 2011. The mediation lasted for approximately three days and consisted of joint discussions between the parties and the mediator, as well as individual discussions between each party and the mediator.

107. My understanding is that the parties agreed to attend the mediation as the Consortium in desperation at trying to resolve the disputes with tie interacted with the Scottish Government. I believe there may have been some dialogue between the Scottish Government and Sue Bruce (then newly appointed Chief Executive of the CEC) which in-turn began a dialogue between the parties, from which mediation followed.
108. Following this, the Consortium met with Sue Bruce, as well as the then newly appointed chairman of tie – Vic Emery. Both of these individuals brought a new and helpful dynamic to the relationship between the parties, which was encouraging. Their approach marked a fundamental change from their predecessors. I do not recall the specifics of how mediation was agreed, but it was from this new dynamic that mediation came about.
109. Both the Consortium and tie undertook preparation ahead of the mediation, and both delivered opening statements at the outset of the mediation. Both sides presented the desired outcome they were looking for. In the Consortium's case, we explained that we did not see resolution as foreseeable under the current circumstances with tie, and that we wanted a substantive means of resolving the problems at hand – rather than something temporary and superficial.
110. I believe that the Consortium sought for the CEC to act as client, as opposed to tie – as the Consortium had no confidence that tie was able to deliver the Contract. The Consortium also wanted recognition that the present situation was not tenable and that responsibility for a host of issues, for instance the delays in the utility diversion works which still had not been completed, should rest with tie. I also believe that there was a desire to try to resolve specific disputes in existence at the time– which largely related to the On-Street Works and delays. I believe that the principal issues impacting upon the Contract by this time were tie's inability to deal with the INTCs issued under the Contract and the ongoing delays in respect of the utility diversion works. I do not recall what tie said that they wanted to achieve from the mediation.

111. I do not recall how the ultimate settlement figure was reached, and how this may or may not have incorporated figures from Project Phoenix. That said, Siemens tried to be as flexible and as accommodating as possible. Whilst approaching the mediation in the spirit of compromise, Siemens would not agree to a settlement that resulted in a loss-making situation in respect of the Project. Siemens had costed each of its estimates, which had been drawn up by specialist and designated teams, and could therefore back-up its position. Furthermore, Siemens was given confidence in its interpretation of the Contract through the adjudication decisions that had been found in the Consortium's favour.
112. Siemens was satisfied that the outcome of the mediation presented a sustainable way to allow the Contract to be taken forward, without undermining the position of its shareholders. Given that tie also later signed the settlement agreement arising from the mediation, I would also conclude that they were satisfied with the outcome of the mediation too.
113. I would assume that all parties made some contribution to the agreement reached at the mediation, through some form of compromise. I consider that this was made possible in no small way due to the fundamental shift in the approach of the CEC and tie, brought in by their new leadership.
114. I have been referred to a report prepared by Faithful and Gould (CEC01727000) which comments that Bilfinger and Siemens were in a strong negotiating position, and had submitted grossly inflated prices for the on-street works for the costs agreed upon for these works at the mediation. I have considered the report in the last week, and wonder if it was shared with the Consortium at the time, and what was said in response. Looking at the report over the last week, I am disappointed with its quality and content, and it falls short of what I would have expected from a professional firm.
115. I left Siemens in the summer of 2011, and cannot comment on the state of the relationship between the parties following this time, or any of the matters in relation to the Contract arising thereafter.

Allegations

116. I have been made aware of certain allegations against the Consortium, I comment (now almost 10 years after the event) in respect of these allegations as follows:
- 116.1 *BSC failed to mobilise timeously (with reference to documents DLA00001673, DLA00001672):* Siemens had a team of people mobilised early on. Steve Wright, Roland Bruckmann, Herbert Fettig, Jo Frenz and Alfred Brandenburger mobilised people before signature of the Contract in order to support the contract negotiations. I would say that Siemens' mobilisation was appropriate for the level required by the Contract;
- 116.2 *BSC refused to start work involving a change until an estimate had been agreed:* I would question that if it felt that this amounted to a breach of the Contract, in what manner did it act upon this in keeping with the dispute resolution methods permitted under the contract?;
- 116.3 *BSC refused to work in a section if utility diversion works had not been completed there:* I believe that the Contract clearly provides that the Consortium should not start works in a section if utility diversion works are outstanding;
- 116.4 *BSC delayed in carrying out the off-street works:* this is a vague allegation, with no specificity. In the absence of further detail, I would defer back to Contract with regard to the manner in which the Consortium was entitled to act;
- 116.5 *BSC failed in its duty to take all reasonable steps to mitigate delay to the Infracore works, and in relation to acceleration of those works:* It would be useful to understand on what basis this is alleged – having in mind the provisions of Contract. Furthermore, whilst I have not read the Contract in some time, I would be interested to know on what basis the Consortium was obligated to provide accelerated works – as this, from memory, went beyond the requirements of the contract;
- 116.6 *BSC failed to properly manage and progress the design process after SDS novation:* I believe this is a matter that Bilfinger is best placed to respond to;

- 116.7 *BSC intimated an unreasonably high number of INTCs*: I note that there are no parameters to this allegation; indeed it would be useful to know what tie considered to be a “high” number of INTCS, and its rationale for that judgment, in light of the contractual provisions of Schedule Part 4 of the Contract that both parties agreed to;
- 116.8 *BSC delayed in providing Estimates*: I would imagine there is a record of this somewhere.
- 116.9 *When Estimates were provided, they were lacking in specification and/or failed to demonstrate how Infracore would minimise any increase in costs and ensure that the change would be implemented in the most cost effective manner etc. (per clause 80.7 of the Infracore contract, CEC00036952)*: Responding to this level of detail is something the Consortium site team would be best placed to deal with; and
- 116.10 *The amounts in the Estimates were often excessive*: This is a matter for Siemens’ Estimate Team to respond to, presumably there is a quantitative basis to support this allegation.

Closing comments

117. As I mentioned, I left Siemens in the summer of 2011 to undertake some work overseas, and had no involvement with the Contract since then.
118. My parting comment to the Inquiry however would be that Lord Browne’s report entitled: “*Getting a grip: how to improve major project execution and control in government*”, published in 2013, provides an examination of the best means of delivering large projects following an assessment of many infrastructure projects. His findings are based on common themes identified as affecting such projects. The Inquiry may find it interesting to examine how the findings contained in his report, compare to the manner in which tie and the CEC administered the Project.

I believe that the facts stated in this witness statement are true.

Signed



Full Name: Michael Flynn

Dated: 26 September 2017