

Dennis Murray – Additional Questions

1) **TIE00106500**. Can you please explain this document in as much detail as possible:

- How the figures were produced
- What they were produced for
- What judgments were made by you to determine BSC entitlement
- Whether you were told by someone else to make assumptions and, if so, who told you and what the assumptions were?
- Did any person follow this up with you after you had provided the figures?

2) **CEC01288309** is an email sending the first claims of Notified Departures or INTCs to TIE. They include claims in respect of the Gogarburn Bridge and Russell Road Retaining Wall.

- Did you or anyone else expect that claim would be made in respect of these structures?
- What was the *initial* response to these within TIE?

3) What involvement, if any, did you have in preparation of the response to BSC (**CEC01311410**)?

- In particular, were you involved in the decision to accept in principle that they were Notified Departures?
- When, why and by whom was the decision taken that this should no longer be accepted by TIE?
- What was *your* view on this issue?

Responses by Dennis Murray to additional questions in inquiry email dated 28 September 2017.

1. Document TIE00106500_0015.

- **See below extended note relating to how figures were produced**
- **See below extended note relating to what they were produced for**
- **Judgements were made using documents set out below and the knowledge gained from in house team and external consultants as appropriate**
- **Assumptions would all be made by the commercial team with the exception of the extensions of time which would have been based on advice from planners and advisors.**
- **I had discussed the findings with my line manager and others in the tie team.**

Extended Note re Document TIE00106500_0015

The document entitled "Infraco Entitlement" was a document prepared by the tie commercial team to ascertain the amounts that tie considered that Infraco would be entitled to to complete the works from Airport to Haymarket (the Offstreet works). Project Phoenix was a concept that I understood to be initiated by Tony Rush in dialogue with Infraco to attempt to understand the differences in the commercial positions between tie and Infraco and to assist in the negotiation of an agreed settlement. I was not involved in the concept or the decision on the extent of the truncated route to Haymarket however the commercial team was instructed to assess the entitlement that may be due to Infraco should the Infraco works extend to Haymarket only. The tie team workings are captured in the "Infraco Entitlement" document. The document contains a series of calculated spreadsheet amounts together with a narrative to explain the logic adopted. The works to Haymarket were essentially the "Off Street Works". The disputes had mainly concerned the scope of the works or the quantity of work required additional to the contract works price. Infraco had raised multiple requests for changes to the contract works price for the Off street works and the liability for many were disputed – some on a valuation basis and some on entitlement. Tie proceeded to value the BB Civil Engineering works (Off street works) in this exercise by pricing out each and every change notified (and changes not yet notified) as if it were a tie liability. The design was to all intents and purposes complete when this exercise was carried out and it was assumed that all potential changes were notified by Infraco at the time. In other words if there were no issues of liability the value of the works could be ascertained by pricing all notified changes and making assumptions on any changes yet to be notified. Tie assessed the value of work using the contract sum analysis as a baseline and reference point (reference Document 1 which was a breakdown of the Contract Sum) and priced all changes using contract rates taken from Schedule Part 4. Tie proceeded to value (The BB Civil Engineering Works) on two bases (a) the value of the works to include all notified Infraco changes using **tie's** estimate of the changes (reference Report PP1A) and (b) the value of the works to include all notified Infraco changes using **Infraco's** estimate of the changes (reference Report PP1B). These were effectively using the same scope but differences in the pricing.

Infraco had produced a draft Project Phoenix offer. That offer was not based upon the contract mechanism for the valuation of changes rather it was stated as a Guaranteed Maximum Price (GMP) Proposal based upon its estimated final cost to Haymarket; adding its supply chain Risks and GMP's and its own Risks and GMP allowances. This cost based assessment was significantly at odds with the value based assessment of changes. Due to the significant differential between the tie value approach and the Infraco GMP assessed cost recovery approach, tie instructed a firm of external Quantity Surveyors (Cyril Sweett were selected from 5 interviewed) to value the off street works. Tie instructed this exercise independently of its own workings and the logic was to have the off street works quantified and priced by a suitably experienced firm based upon the Issued for Construction drawings valid at the point of the exercise. A full Bill of Quantities was prepared by Cyril Sweett for the Off Street Works and the full scope of works identified in the IFC Drawings was quantified by Cyril Sweett and included in a full Bill of Quantities. The BoQ was then priced on two bases (a) using the contract rates for change as set out in Schedule Part 4 (exercise carried out by **tie** quantity surveyors) and (b) using contemporaneous market rates that Cyril Sweett would consider appropriate rates for the works at that time (independent exercise quantified and priced by **Cyril Sweett**). This would provide a comprehensive review of the value of the works properly measured and valued complete with an independent check by a professional quantity surveying firm and provide a solid platform for negotiations with Infraco on commercial settlement. The three positions for the Civil Engineering construction Works price on a measure and value basis are included in Report no PP2 i.e

Tie value by assessing changes priced at Schedule Part 4 rates (in 000's)	£85,565
Price using Cyril Sweett BOQ and Schedule Part 4 (in 000's)	£83,228
Price by Cyril Sweett using BOQ and market rates (in 000's)	£80,152

This compared to an Infraco cost based GMP price of £133,467 taken from Infraco's Project Phoenix draft offer.

In addition Preliminaries were reviewed. Three Extensions of Time were claimed of which two were settled. The analysis of commercial entitlement was carried out again using the Contract Sum Analysis (Document 1) as a baseline and evaluating the third Extension of Time (EOT3) using the Contract data and the principles driven from EOT 1 and EOT 2 which had been agreed previously. The parameters of delay entitlement were taken from a range from 38 weeks to 66 weeks which had been advised to the commercial team. This provided calculated EOT figures which are set out in Document No 6. The lower figure was carried to spreadsheet PP1A and the higher figure to PP1B.

Regarding the Siemens price tie again proceeded to use the known price elements derived from the Contract Sum Analysis (Document 1) plus changes. Document 1 provides an analysis of the Construction Works price taken from Schedule Part 4. The Siemens prices are inserted into PP1A and PP1B accordingly.

Report PP4 is an exercise to reconcile the figures reported in the financials (the Deckchair) against the Infraco Entitlement figures included in PP1A.

Preliminaries were assessed using the Preliminaries section in Schedule Part 4 and applying appropriate percentages to contract preliminaries and adding extension of time assessments gain using amounts taken from Document 1.

2. CEC01288309

- **Not particularly since there were no specific pricing assumptions relating to these Structures.**
- **A Mobilisation and Advance Works Contract (MAWC) was in place to carry out works prior to contract execution. These "instructions" were issued during the MAWC to progress works that would be included in the Infraco contract when executed and I understood these INTC's were to confirm such instructions in respect of the Infraco Contract. The INTC's were notices only and did not provide detail from which to carry out a proper analysis of whether a change had occurred or not and what might have caused a change. Details were provided much later via Estimates.**

3. CEC01311410

- **I would have discussed with Steven Bell at the time. As noted the INTC's did not include any detail from which to be clear on whether a change had occurred or not so a preliminary view based upon the limited information would be taken.**
- **I don't recall any decision to change any thinking. In respect of Russell Road Retaining Wall the lack of any real information in the notice (Infraco stated that there were no IFC drawings and no finalised workscope) would have made it difficult to assess any change. It may have been considered that change could have occurred but that decision would be given fuller consideration upon receipt of required details (such as drawings). I would think that when details were received later a better informed decision would be made on occurrence of change or not.**
- **My view at that time was that change would depend upon whether a Notified Departure had occurred and since there were no specific Pricing Assumptions change would depend upon whether the design to IFC stage was a design that had gone beyond normal design development from an engineering perspective.**