

## Joerg Schneppendahl Questions

### General introductory

1. By way of introduction.

(a) What were your qualifications and experience in major infrastructure projects, including tram and light rail systems, prior to your involvement with the Edinburgh Tram Project (ETP)?

In 2008 I had more than 15 years of experience at Siemens as project manager of national (Germany) and international Power Projects. More than ten years' experience as Manager (responsible for more than one Project) for so called "Turnkey Projects" on the Arabic peninsula, North Africa and Asia, mainly in the Power Area but also for Transportation projects.

Same contract structures and also issues of hidden Risks mainly in the civil work area like ETP.

(b) Can you please provide an up to date CV?

No!

(c) Between what dates did you have responsibilities in relation to the ETP? What were your main duties and responsibilities?

As former Siemens AG, Business Unit (BU) CEO I was also involved in the Edinburgh Tram Project beside many other projects, in the period from July 2008 to October 2012. The fact that the financial figures of UK and therefore of the ETP contributed to the overall financial figures of the BU and my relation to the decision-makers at Bilfinger & Berger in Germany explains my involvement.

The full responsibility for the Edinburgh Tram project was the whole time with Siemens PLC, UK, according to the Siemens Rules and Regulations.

My role can be understood best as consultant and interface to Siemens AG.

(d) How did your experience of the ETP compare with other projects you have worked on, both previously and subsequently?

The contract was by far too complex and mainly influenced by Lawyers. This resulted in many communication problems and also wrong interpretations of the contract especially in the first years and led to considerable problems.

(e) What were the main reasons for the failure to deliver the ETP in the time, within the budget, and to the extent originally projected?

The major reason was the different understanding how to deal with the hidden Risks. TIE had the understanding that all risks were covered according to contract by the BSC, also the hidden ones. Hidden risks were still not known at the submission of the offer and therefore couldn't be calculated. For example, TIE could not provide any information at the time of submission, where gas and water pipes, electric cables, etc. were installed. Not to mention artefacts.

## Disputes with TIE

2. Following contract close a major dispute arose between Transport Initiatives Edinburgh (TIE) and Bilfinger Siemens Consortium (BSC) in relation to the infrastructure contract. To the extent that you were involved in dealing with these issues, please explain the nature of your involvement and answer the following questions:

I was involved in meetings with the TIE Management and the Council of Edinburgh to explain the situation, which has led to the schedule delays and cost overruns and to propose how we together could improve the situation.

(a) What were the main difficulties that arose?

I have mentioned it under point 1.e.

(b) What problems did this cause for Siemens?

We faced schedule delays and due to the delays, we had serious cost overruns. Also, our subcontractors started the claim process.

(c) What discussions took place between Bilfinger Berger (BB) and Siemens to determine the strategy adopted by BSC in dealing with the dispute?

I know that many discussions between Bilfinger & Berger and Siemens at different levels were held. At the end, we had agreed on a common approach.

(d) What were Siemens' views on the strategy adopted by BSC? Did Siemens have any concerns?

Since the approach was developed together and from Bilfinger & Berger and Siemens commonly agreed at least I had the understanding that the involved persons from Siemens had no concerns.

## Mediation at Mar Hall

Between 8 and 12 March 2011 mediation talks took place at the Mar Hall Hotel near Glasgow. BSC produced a mediation statement (**BFB00053260**) and Richard Walker delivered an opening statement on behalf of BSC, the slides to which are enclosed (**BFB00053256**). Sue Bruce delivered an opening statement for CEC/TIE (**CEC02084575**). The mediation resulted in the signing of a document: "ETN Mediation – Without Prejudice – Mar Hall Agreed Key Points of Principle", by the parties on 10 March 2011 (**CEC02084685**). The principles were incorporated a Heads of Terms document (**CEC02084685**, page 2 onwards). This document was non-binding and subject to contract.

The Heads of Terms document set out a price of £362.5 million for the off-street works (i.e. from the Airport to Haymarket, with other ancillary works) with a target price of £39 million for the on-street works (i.e. from Haymarket to St Andrew Square).

(e) Were you at the mediation and if so, what was your role? Who else from Siemens was present?

Yes, I was at the mediation. I have described my role under point 1.c. From Siemens side the Project management and the Management from Siemens plc were present.

(f) What did BSC wish to achieve from the mediation? What did they see as the alternative to a negotiated agreement?

A dispute settlement with a positive outcome for all involved parties.

In the case we had not reached a dispute settlement, we were prepared to stop the project and take further legal actions.

**Points 3.c until 3.i: I can't answer from my memories.**

(g) Were you aware of the reaction from the representatives of TIE/CEC to the BSC Opening Statement and, if so, what was it?

(h) What was the reaction of the BSC representatives to the opening statement by CEC/TIE?

(i) What happened over the course of the mediation that week? In particular, what offers / counter offers were made or what discussion and agreement was there as to the principles that would determine the price to be paid for further works?

(j) How were each of the Key Points of Principle agreed? What earlier offers had been made in relation to these items and why were they not acceptable to BSC? (The Inquiry is particularly interested in how the prices were calculated and agreed (see paragraphs 1, 2, 4, 5 and 6 of the Key Points of Principle).)

(k) Why was it agreed that TIE/CEC would buy all of Siemens' materials and equipment for a line to Newhaven (paragraph 5 of the Key Points of Principle), and pay for an integrated design to Newhaven (paragraph 1)? Was this appropriate if the line was only to be built to St Andrew Square (paragraphs 1 and 2 of the Key Points of Principle)?

(l) To what extent did the agreement reached at and after Mar Hall compensate Siemens for claims which had accrued under the Infraco contract?

(m) What were the main areas of compromise offered by Siemens in reaching agreement?

(n) To what extent did you require to obtain approval for the agreement reached from others in Siemens?

Since the Project was under the full responsibility of Siemens plc, the top management of Siemens plc had to confirm the agreement.

(o) What were your views on the outcome of the mediation?

My personal view was that we all together had found a good solution for either party involved in the project, to lead the project to a successful completion.

However, I think that the participating employees of TIE were not satisfied with the outcome.

**I can contribute nothing to the following questions because I was not involved in the details.**

### **Proceeding to settlement**

3. Further discussions took place between the conclusion of the mediation in March 2011 and the signing of a full and final settlement agreement in September 2011.

(a) What was your involvement during this period?

(b) What were the main issues that required to be discussed and resolved during this period?

(c) How were these issues resolved?

4. An agreement, known as Minute of Variation 4, was signed on 20 May 2011 (**CEC01731817**). It provided for payment by TIE to BSC of a sum totalling £49m (clauses 6, 7 and 8).

(a) What was this payment for?

(b) Why was it paid prior to conclusion of the main settlement agreement (**BFB00005464**, dated 15 September 2011)?

5. On 15 September 2011 a full and final settlement agreement (Minute of Variation 5) (**BFB00005464**) was entered into between TIE, CEC and BSC.

(a) What were the main changes to the contract brought about by the settlement agreement?

(b) What were your views on the settlement agreement?

(c) What were the main areas of compromise offered by Siemens in reaching agreement?

### **Evaluation of the settlement**

6. The settlement agreement of September 2011 included a price of £47.3m for BBS's work in the on-street section. We understand Siemens' share of that price was £12.473m (see **SIE00000184**). A few months earlier, Siemens had proposed a price of £19.2m for these works (see **SIE00000396**, June 2011). A report obtained by CEC from Faithful and Gould between these dates (**CEC01727000**, 19 August 2011) commented on BBS's proposed price for the on-street works. It described Siemens' element of that price as "extremely high and not value for money" (paragraph 2.6) and the overall costs for those works as "grossly inflated" (paragraph 2.7). There is more detailed discussion of the on-street price in section 4.2 of the report (page 9 onwards).

(a) What is the explanation for the reduction in Siemens' price from £19.2m in June 2011 to £12.473m in September 2011?

(b) Does the reduction indicate that the comments by Faithful & Gould in their August report were well-founded and accepted by Siemens?

(b) If you do not agree with the views expressed by Faithful & Gould, please explain why you disagree.

7. Was the commercial outcome for Siemens at the end of the project better or worse than had been anticipated at financial close?

8. Are there any other comments you wish to make in respect of matters falling within the Inquiry's Terms of Reference that are not included in your answers to the above questions?