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**From:** Evidence  
**Sent:** 14 August 2017 15:16  
**To:** Nigel Robson  
**Subject:** RE: Edinburgh Tram Inquiry  
**Attachments:** Application-form-for-travel-and-subsistence-expenses.docx

Dear Mr Robson

We would be grateful if you can supply the material relating to the Mar Hall mediation.

If you complete the attached document and attach a receipt, we can reimburse any postage costs involved in supplying the documents.

Kind regards

Edinburgh Tram Inquiry  
1st Floor  
Waverley Gate  
Edinburgh  
EH1 3EG

Tel: 0131 [REDACTED]

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**From:** Nigel Robson [mailto:[REDACTED]]  
**Sent:** 04 August 2017 10:20  
**To:** Peffers AM (Ann)  
**Cc:** Evidence  
**Subject:** Re: Edinburgh Tram Inquiry

Dear Sir,

I refer to your email Notice dated 31<sup>st</sup> July.

I was retained early in October 2010 as an independent Consultant, with a legal background, in particular in mediation and dispute resolution including international projects, to advise Transport Initiatives Edinburgh Limited ('tie') and subsequently City of Edinburgh Council ('CEC') upon mediation, specifically the process, procedures, strategy and tactics. I had no input on figures or engineering costs. I attended several meetings at tie's offices, and the mediation itself at Mar Hall Hotel outside of Glasgow between 8<sup>th</sup> and 11<sup>th</sup> March 2011. After that date I had no further involvement.

The Notice requires me to provide "any document .. which shows or tends to show on what basis the price of £362.5m ..was agreed...including documents produced in advance and in contemplation of that mediation, produced during that mediation and documents produced after such mediation; all between 1 December 2010 and 31 March 2011."

I respond below as helpfully as I can:

1 Virtually all of my work was based upon hard copy papers. Generally I was supplied with paper copies of contractual documents, numerous Claim documents from Infraco, (the contracting consortium), and a

variety of papers relating to Project Carlisle and Phoenix. The Phoenix and Carlisle papers were, in summary terms, proposals for negotiation/settlement, and formed the background of the costs figures for the mediation. Phoenix formed the basis for achieving the settlement during the mediation.

2 When my involvement commenced the project was at a standstill, the design was not complete, and there were a series of outstanding Adjudications underway, and in the pipeline. There was no actual project completion date, and the parties were effectively at loggerheads. The preparatory, and indeed developed breakdowns and analysis of costs incorporated into the Phoenix and Carlisle proposals were even at that stage very well advanced. Obviously I had no background or expertise in engineering costs/costings, and thus had no input into these figures. To the best of my recollection the figures were produced and analysed by Steven Bell, and the Projects Team at tie, Tony Rush, and in the weeks leading up to and during the mediation, Colin Smith on behalf of CEC. There were additional Quantity Surveyors and Engineering Consultants involved but I have no recollection of their identity or specific involvement after this length of time as I did not have direct contact with them. My recollection and sense, which after this length of time is not that precise, is that there had been a lot of preparatory work and discussion in arriving at figures.

3 Some time after the Mediation I had the hard copy documentation shredded and disposed of. I cannot place a date on this but it was probably around three years ago. Since receipt of the email Notice I have carried out a search in my home, and in particular have gone through my papers archived at that time and have found a handful of papers relating to this project, wrongly mixed in with personal papers. Most of the papers refer to Infraco Claims in Adjudication, and fall outside of your Notice. Some do go to, or touch upon, the mediation. None of them are original documents produced by me, and will be 'common' to all the tie/CEC/ Scottish Government team. I am sure that you will already have copies of them. If you require sight of them, I assume you will re-imburse the cost of postage. Please let me know?

4 As for electronic data you will understand that there was a considerable amount of email traffic, but very little of it will have related to the make up of the settlement figure. As stated in paras 2 and 3 the figures came from the paper copies of the Carlisle and Phoenix documents, which formed the basis of my working documents, and I do not recall receiving those in electronic format. In terms of the scope of your Notice, I am very unlikely to have any electronically stored data which was not generated by those directly involved in the pricing and costing and which will therefore already be available to you from other sources. As a private individual I do not have the computer skills or programmes to extract any relevant emails or copy documents without the carrying out of an individual manual check by me. This would take an inordinate amount of time, and would be very unreasonable, particularly in the timescale proposed by you, and with my pre-existing commitments. I cannot recall making any oral/written/email contribution to the pricing of the £362.5m settlement since that was beyond my role, and so I do not think that any useful purpose would be served by my undertaking such an exercise. Please confirm that you do not require this?

5 During the course of the 3 day mediation there were a series of detailed discussions between the parties to the dispute upon the scope and definition of works, and consequent pricing. I did not attend those meetings, and only received reports back from others. I have no recollection of the detail, and I do not have any surviving working papers or notebooks.

6 After the finish of the mediation on 11<sup>th</sup> March, my role was concluded, and I had no further involvement in the subsequent discussions, negotiations or agreements.

When speaking to Mr Duffy I did comment that at the root of this dispute and cost/time overruns were the contract terms themselves. Obviously, experience shows that any major engineering project lasting in excess of 2 years, where the operations are taking place in a city, will be vulnerable to claims and disputes. But in this case that contextual background was exacerbated because tie, and indeed CEC, had understood that they had a largely fixed price Design and Build contract. But the contracting consortium had introduced into the contract, during the course of pre-contract negotiations, what was known as Schedule 4. The impact of this Schedule was to shift fundamentally the balance of risk and liability under the contract to tie's disadvantage.

I look forward to hearing from you in relation to my questions at 3 and 4 above. As I mentioned to Mr Duffy, I have up and coming pre-existing commitments. These will mean that I will only have very limited internet and telephone access.

Yours faithfully,

Nigel Robson

On Monday, July 31, 2017 4:40 PM, "[Ann.Peffer@edinburghtraminquiry.org](mailto:Ann.Peffer@edinburghtraminquiry.org)" <[Ann.Peffer@edinburghtraminquiry.org](mailto:Ann.Peffer@edinburghtraminquiry.org)> wrote:

Good afternoon

Please see the attached letter from Edinburgh Tram Inquiry.

Regards

Edinburgh Tram Inquiry  
1st Floor  
Waverley Gate  
Edinburgh  
EH1 3EG

Tel: 0131 [REDACTED]

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Dh' fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh' fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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