

Dennis Murray

This Note is structured as follows:

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INTRODUCTION

1. Prior to joining TIE, and by way of overview:

What were your main qualifications and vocational experience?

I hold a Diploma in Quantity Surveying and I am a Chartered Surveyor qualifying in 1982 and becoming a Fellow of the Royal Institution of Chartered Surveyors (FRICS) in 1994. At the date of appointment I had over thirty years' experience in the construction industry mostly working for contractors both home and overseas on large civil engineering and building contracts from the position of quantity surveyor to Commercial Director.

What was your experience in major infrastructure projects, including tram and light rail systems, prior to your involvement with the Edinburgh Trams Project?

I had experience in pricing, commercial management and settling large infrastructure projects in the United Arab Emirates and generally large civil engineering projects in the UK mostly working for contractors.

What was your experience in utilities diversions, design and procurement matters?

I had been involved in utilities works associated with large infrastructure and building projects and been part of design and build teams dealing with procurement and design on major construction projects.

2. In respect of your employment with TIE:

What was your job title? What were your main duties and responsibilities?

I was appointed as Commercial Director and my primary role was to commercially manage the post contract construction works on the Infraco Contract. It was clear to me that a long and detailed procurement process had been undertaken by a large procurement team and that I would effectively take the result of that process to post contract management. In this connection it would relate to change management and reporting change.

To whom did you report and who reported to you?

I reported to Steven Bell, Project Director. I had a commercial resource some of which were incumbents from the procurement team but mostly a post contract resource which were imported after I arrived.

THE TRAM PROJECT - GENERAL

Procurement

In relation to the procurement strategy for the tram project:

What was your understanding of the main elements and objectives of the procurement strategy for the tram project?

When I arrived the procurement was in its final stages. My understanding was that terms were agreed, a contract close imminent and the outstanding matters included a period of engagement involving parties solicitors to allow final drafting to

be completed. I understood that this close out work followed on from a heads of terms type arrangement which had been struck in November/December 2007. I was not involved in nor part of the objectives and/or procurement strategy that had taken place in the months/years prior.

How important was it to obtain a fixed price for the Infraco contract?

I understood that a fixed price was agreed and like most construction contracts that would be important.

In the event, do you consider that the aims of the procurement strategy were met (and, if not, why not)?

I was not part of nor included in the procurement strategy therefore I could not form an opinion on whether the aims of the strategy was met.

Design

There were difficulties and delays in progressing and completing the design for the tram project. By way of overview:

What was your understanding of the main difficulties in carrying out the design work and the main reasons for these difficulties?

I do not know why the design was proving to be difficult. The designer had been working on the project for several years.

What steps were taken to address these difficulties?

It was decided that the remaining design should be novated to the contractor.

Were these steps successful (and, if not, why not)?

The design process continued to be difficult.

Utilities

There were difficulties and delays in progressing and completing the utilities diversion works. By way of overview:

What was your understanding of the main difficulties in carrying out the utilities works and the main reasons for these difficulties?

Utilities works were extremely difficult as you would expect when exposing underground services throughout a very old city centre. Unexpected services and other obstructions would be regular occurrences for which planning would be difficult and challenging. The multi-disciplined design approach proved more difficult than envisaged.

What steps were taken to address these difficulties?

Regular meetings were held with contractor and designer to find solutions to the regular problems encountered.

Were these steps successful (and, if not, why not)?

The multi-disciplined approach was always a difficulty.

EVENTS IN 2008 (January to May)

We understand that you joined TIE in early January 2008.

What were your first impressions of TIE and the tram project at that time?

There was a lot of interaction between the preferred bidder (BBS) the designer and TIE working to close out the procurement stage of the project. Several meetings would be conducted and run concurrently to resolve the final details required for the contract. Everyone was very busy.

Did you receive a briefing around that time (and, if so, from whom and what was discussed)?

My briefing was principally from Steven Bell although there was an incumbent Project Director at that time whom I understood was to step down after the procurement phase. I had understood that contract close was imminent and that I would be commercially responsible from the post contract commencement. My brief until contract close was to (a) listen in to meetings where appropriate to get up to speed with matters as quickly as practicable and (b) to administer valuations on advance works that was to be set up.

What was your understanding of the purpose and effect of the Wiesbaden Agreement, dated 20 December 2007 (CEC02085660)?

I was made aware of the Wiesbaden Agreement and I understood it to be a heads of terms type arrangement setting out the agreed principles of the key matters that would allow the contract to be drafted and concluded.

By e-mail dated 4 February 2008 Scott McFadzen, BSC, sent TIE a version of Schedule 4 of the Infracore contract which contained various Pricing Assumptions (CEC02084854).

By e-mail dated 5 February 2008 (CEC01448266) you circulated a draft of Schedule 4 that contained comments by yourself and Tom Hickman, Programme Manager, TIE (CEC01448267).

When did you first become aware of Schedule 4?

As I understood it Schedule 4 was developed from the Wiesbaden Agreement to set out the assumptions made by the contractor.

What was your understanding of the intended purpose and effect of the Schedule including, in particular, the Pricing Assumptions?

As I understood it the purpose of the Schedule would be to set out any pricing assumptions that if not met a change may occur.

Do you have any comments on Mr Dawson's comments, including, for example, his comment in relation to Notified Departures (CEC01448267, p8, para 1.1) that it "can't be just any departure or all risk will come back to tie"?

The pricing assumptions were agreed as stated in Schedule 4 and the detailed provisions set out in that document would determine whether a post contract change had occurred or not.

Parties entered into the Rutland Square Agreement on 7 February 2008 (CEC01284179).

The agreement noted a construction price of £222,062,426, subject to certain exclusions, provisional sums, assumptions and conditions.

What was your understanding of the need for and purpose of that agreement?

My knowledge of this is limited. It was agreed less than a month after I arrived on the project. I understood that the plan was to close by end January however as the contract drafting was being finalised and the anticipated close date had passed, consideration had to be made for the delay to contract start and to sweep up all matters discussed during contract negotiations.

What was your understanding of the extent to which the price in the agreement of £222,062,426 was fixed and firm (and the extent to which that price was subject to exclusions, provisional sums, assumptions and conditions)?

I was not involved in the detailed procurement period however I understand that the price was fixed at the stated amount in the agreement and it would always be subject to change if any of the base case assumptions resulted in Notified Departures

What was your understanding of clause 2 of that agreement (including clauses 2.1 and 2.2)?

I understood that the price would not change in respect of delivery to Employers Requirements version 3.1 and the SDS residual risk issue.

What was your understanding of the need for and purpose of the Schedule to this agreement (including, in particular, paragraph 2.5 of the Schedule)?

I understand it was simply to set out further relevant detail. My understanding of Paragraph 2.5 was that BBS would provide a detailed tender price build up to meet the agreed price.

Did the e-mails etc attached to the document form part of the agreement?

I do not know.

In relation to the document attached to the agreement (at p26) "SDS Novation – RODs", what was your understanding of (i) the purpose of that agreement and (ii) the words that "Design Growth: The design information which provided the basis for BSC's price will be a pricing assumption under Schedule 4. The risk of design 'creep' accordingly lies with tie"?

I do not recall this attachment or whether it formed part of the agreement. I do not know what the purpose of this document. I would assume (but not sure) that design creep would relate to matters of design where the normal development of the design was not followed resulting in design change which would be a Notified Departure.

By e-mail dated 11 February 2008 (CEC01508965) Geoff Gilbert attached a copy of a potential SDS incentivisation agreement (CEC01508966 and CEC01508967). What was your understanding of the need for, and purpose of, such an incentivisation agreement?

My understanding was that the design had been slow and that all were conscious of that therefore an incentive to deliver the design by certain dates was seen to be appropriate.

What were BSC's views on such an agreement?

I do not know what their views were however I understood that they were content with such arrangement.

In the event, and by way of overview, what was agreed in that regard?

My recollection is that a sum of money was agreed to be drawn down upon delivery of individual design packages.

An e-mail dated 11 February 2008 from Stewart McGarrity (CEC01423172) circulated a spread sheet (CEC01423173) giving a breakdown of the latest budget at financial close, and included a risk allowance of just over £30 million (compared to a risk allowance of almost £49 million in the Final Business Case).

By e-mail the same date (CEC01489953) Mark Hamill, TIE's Risk Manager, noted that the spread sheet contained information relating to the risk allowance that he was not aware of and attached a spread sheet containing a number of queries regarding potential new risks (CEC01489954).

He further noted, "my main concerns here are that (a) we are reducing the risk

allowance while the risk has not actually been transferred or closed and (b) the new risk allowance is not sufficient for the risks which tie will retain. I cannot overstate how anxious I am to ensure that the final QRA truly reflects the actual risk profile at financial close”.

What were your views on these matters?

I do not recall seeing this or having any input.

Who was responsible within TIE at that time for deciding whether the risk allowance was adequate?

I do not know but would expect the tie board and the risk manager.

What were your thoughts on Mr Hamill's comments and queries in the spread sheet attached to his e-mail?

I do not recollect seeing this. Risk assessment and management in relation to the project had been ongoing for several months/years before I arrived approx one month earlier.

What were your views on whether the final QRA truly reflected the actual risk profile at financial close?

I did not have detailed discussions on the QRA. Risk assessment and management in relation to the project had been ongoing for several months/years before I arrived.

On 18 February 2008 BBS produced a Design Due Diligence Summary Report, based on design information received by BBS by 14 December 2007 (CEC01449100). That document raised various concerns about design, including that “more than 40% of the detailed design information” had not been issued to BBS. Were you aware of that report at the time?

I may have seen the report however I had no detailed knowledge of the design status which had been progressing over several years/months before I arrived.

What were your views on the matters in the Executive Summary of the report? Did it cause you any concerns?

I was aware the design was not complete and that completion of the design would be the contractors responsibility after novation and contract close.

What discussion was there with within TIE, and with BSC, in relation to which party would bear the risks arising from any development of, or changes to, the design in existence at that time?

I do not recall being involved in any detailed discussion on that.

Were CEC sent a copy of the report? What discussion was there with CEC of how incomplete design would be dealt with in the Infracore price and in the risk allowance?

I have no recollection of any discussions or understanding of the knowledge or awareness of CEC at that time.

By e-mail dated 22 February 2008 (CEC01449876) Ian Laing, Pinsent Masons, circulated a revised draft of Schedule 4 (CEC01449877).

What were your views on that draft? What was your understanding of the risks the draft created for TIE? Did that cause you any concern?

Schedule 4 set out the pricing assumptions agreed at the point of contract. Several drafts were debated between tie and BBS.

By e-mail dated 28 February 2008 (CEC01546728) Graeme Bissett noted, in relation to budget, that "overall we believe that the existing £498m budget remains within reach if it is accepted that the balance between calculated cost and risk contingency will change and that some areas will be controlled post-Close rather than negotiated into the ground now".

What did you understand Mr Bissett to mean by that statement? What areas would require to be controlled post-Close and how would that be done? Did you understand that to carry any cost implications?

I do not know what was meant by Mr Bissett's statement. Post Close risks would be primarily inherent in the pricing assumptions should any of those assumptions prove not to be correct.

An e-mail dated 3 March 2008 from Geoff Gilbert (CEC01450122) attached an updated Draft Negotiations Paper (CEC01450123).

In relation to Schedule 4 Pricing it was noted (p4):

"1. Identification if item must be agreed at Contract Award or if it can be addressed by Change Control post award" [in response to which it was noted "Nothing can go to post award"].

"2. Range of cost exposure (whether pre or Post Contract award).

"3. Material Impact (if any) on Risk Transfer [in response to which it was noted "No difference with Preferred Bidder"].

It was further noted "Summary position is not yet clear. There is likely to be a significant push by BBS to either leave items very loose for future opportunities post contract award or seek a risk premium whilst still leaving opportunity for change".

In respect of "Precedence of Sch 4" it was noted "Get agreement that is subsidiary to terms, ERs and IPs".

What was your understanding of, and views on, these matters?

Negotiations were ongoing on final contract drafting. I had not been involved in any detail of the contract drafting and final procurement issues which had been ongoing for a considerable period of time.

Did TIE's position in relation to any of these matters change at any time (and, if so, when and why)?

Not that I was aware of.

What were your views on any change of position by TIE in relation to any of these matters?

I understood Tie's position to be that a price was agreed subject to some detailed pricing assumptions.

In an e-mail dated 10 March 2008 (CEC01450544) Bob Dawson noted the wording that had been agreed in relation to any change from the Base Case Assumptions being a Notified Departure which would be deemed to be a Mandatory Tie Change. Who within TIE agreed to that wording?

I do not recall who specifically would have agreed.

What was your understanding of the purpose and effect of that wording?

That if any of the detailed pricing assumptions was proved to be incorrect then a tie change would occur. I understood that both tie and BBS were proceeding on the basis the detailed assumptions would prove to be correct and that Notified Departures would be kept to a minimum.

Did that wording cause you any concern?

No answer provided

By e-mail dated 10 March 2008 Steven Bell noted that an agreement had been reached on 7 March (between Richard Walker, Michael Flynn, Mr Bell and Jim McEwan) that the contract price would be increased by £8.6 million to cover certain matters (CEC01463888).

Why had a price increase been sought?

I do not recall the specifics but the price increase would reflect the change to programme to consider the later start (increased preliminaries costs) and the Employers Requirements change from Version 3.1 to 3.5. I do not know what the specific changes were.

Why did TIE agree to a price increase?

I do not know other than to say that matters had moved on and it was clear that the start date would be later than planned and the ER's had evolved but I do not recall the details.

What matters did the price increase cover?

As noted in 2 and 3 above.

By e-mail dated 11 March 2008 (CEC01544518) Duncan Fraser, CEC, advised TIE that CEC required a statement confirming the elements of the SDS designs that are being re-designed by BBS, if any, the working assumption to date having been that all of the SDS designs were to be adopted by BBS.

In a reply, Graeme Bissett stated "the information you want is embedded in the

Infraco proposal ... As I think we discussed today, the liability would sit with BBS/SDS in relation to any redesign”.

What was your understanding of that matter?

I understood that Infraco would work with the designer to produce a final design that would minimise the need for any Notified Departures.

A progress report for a proposed meeting of the Tram Project Board on 12 March 2008 (CEC01246825) noted: “SDS submissions to CEC for their approvals are now timed such that, in some cases, construction is programmed to commence before approval has been completed” (p12) and “Design. The delivery of design to meet the construction schedules for various structures is causing concern and detailed reviews and discussions are underway with SDS, CEC and BBS to provide solutions” (p19).

What was your awareness of, and views on, these matters? Did they cause you any concerns? How were any such concerns addressed?

Designs had been slow however I understood that everyone including BBS were aware of the need to better output.

By e-mail dated 18 March 2008 (TIE00089353) Stewart McGarrity sent a spread sheet (TIE00089354) showing “the Infraco budget reconciliation from my master budget spread sheet updated for the final Schedule 4 jiggery-pokery on provisional sums as provided by Dennis”.

Do you have any comments on that spread sheet?

I do not have any comments

What is your understanding of what Mr McGarrity meant by his reference to “jiggery-pokery”?

I have no idea what was meant by that reference.

By letter dated 18 March 2008 (CEC01314423) Willie Gallagher informed BSC of TIE’s intention to conclude the process for the award of the Infraco contract to BBS “following successful close out of financial, commercial, legal and technical discussions, novation commitments and facilitated negotiations”.

By e-mail dated 19 March 2008 (CEC01464731) Mr Gallagher advised that TIE had issued the PIN the previous day advising that BSC had been selected to build the Edinburgh Tram System and that a contract required to be concluded by 28 March to facilitate the drawdown of funding from Transport Scotland before 31 March.

Did you consider that, by 18 March 2008, there had been “close out” of “financial, commercial, legal and technical discussions, novation commitments and facilitated negotiations”?

I was not aware nor involved in all of the processes that would lead to that position at that time.

In the event, why was the contract not concluded by 28 March (and why was it not concluded until 14/15 May 2008)?

I do not recollect why.

By e-mail dated 19 March 2008 (CEC01451012) Ian Laing, Pinsent Masons, circulated a revised draft of Schedule 4 (CEC01451013).

What were your views on that draft, including the risks it sought to impose on TIE? Did it cause you any concern?

My understanding is that it was an iterative process leading to final agreement.

By e-mail dated 20 March 2008 (TIE00141627) John Casserly, Commercial Manager, MUDFA, TIE responded to your request for a list of issues "re contras to SDS".

See also your e-mail dated 21 March 2008 to Jim McEwan (CEC01438791) in respect of SDS Claims.

It would be helpful if you could explain your request and Mr Casserly's response?

It was necessary for the novation agreement (to novate SDS to the contractor) that a final account was agreed for all of the works carried out directly by SDS to tie to the date of novation. tie therefore required to settle all outstanding commercial issues on the tie/SDS account. My request to Mr Casserly was to understand what matters had been discussed previously and to understand if any agreement had been reached on specific items. Mr Casserly provided some information in that regard. SDS through their account with tie had some historic outstanding commercial issues and claims which required to be closed. My email to Mr McEwan was to allow him to understand the process and status of the outstanding account items requiring resolution.

How was that matter ultimately resolved?

A final Account settlement was ultimately agreed and included in the novation agreement.

An internal TIE e-mail dated 26 March 2008 from Stewart McGarrity (CEC01422917) attached tables giving a breakdown of the Infraco contract price (CEC01422918 and CEC01422919).

Do you have any views on the analysis of the contract price as shown in these tables (including, in particular, the extent to which, if at all, allowance had been made for the risk of changes post financial close as a result of Notified Departures)?

I do not recall and I do not have any views on this document. It was a status of procurement and summary of price at that time.

On 26 March 2008, Ian Laing, Pinsent Masons, sent an e-mail to Steven Bell and Jim McEwan (CEC01465908) in which he stated:

"As we discussed earlier today, the Design Delivery Programme that will be v28. The Pricing Assumption in Schedule 4 of the Infraco Contract assumes that the Design Delivery Programme will not change from v26. It follows that there is the possibility that there will be an immediate Notified Departure on contract execution. Given the unusual position that we are in, please can you confirm that this is understood and agreed by tie".

In an e-mail dated 31 March 2008 in the same chain Andrew Fitchie stated that the only approach open to TIE was "to capture as many identified key changes that tie knows will be required and to attempt to fix them and agree their likely programme and/or cost impact with BBS prior to contract award, or at least identify the reasonable range of programme and cost impacts".

In a response to Mr Bell in the same chain Mr McEwan stated, "My view is that if we pursue Andrew's steer on this we will open up the whole can of worms on the Infraco contract cost overall, and that we have to take on the chin that the programme version is not consistent, get the deal signed and then fight the notified departure tooth and nail. I understand Andrew's point but if we are at all hopeful of getting this done by the 15th April (this year) we cannot take his suggested approach".

What were your views on the matters noted above?

I understood that the procurement process was intended to be complete in January. It was prolonged to May. The designs however were progressing and as such a point in time would require to be selected for contract purposes.

What do you understand Mr McEwan to mean by his reference to "the whole can of worms on the Infraco contract cost overall"?

I do not understand Mr McEwan's reference.

What do you understand Mr McEwan to mean by stating "we have to take on the chin that the programme version is not consistent, get the deal signed and then fight the notified departure tooth and nail"?

I understand that a line in the sand had to be reached on the design process and the previous ownership of tie and the ongoing novated ownership of BBS would be effective post contract from that line in the sand. I do not understand Mr McEwan's reference.

To what extent, if at all, were the above matters discussed with CEC?

I was not party to nor aware of discussions with CEC on this matter.

By e-mail dated 31 March 2008 (CEC01546703) Stewart McGarrity noted that a meeting had been arranged the next day to discuss Schedule 4 and attached a spread sheet (CEC01546704) showing how the BSC price had increased since the award of preferred bidder.

Do you have any comments on that spread sheet, including why the BSC price had increased?

I recall that this was to show how the price had changed since Wiesbaden. I have no comment on the spreadsheet.

Do you have any recollection whether a meeting took place on 1 April to discuss Schedule 4 and, if so, what was discussed?

I do not recall if such a meeting occurred.

By e-mail dated 31 March 2008 (CEC01493317), David Leslie, Development Management Manager, Planning, CEC, sent a letter to Willie Gallagher (CEC01493318) expressing certain concerns in relation to prior approvals.

On 3 April 2008 Duncan Fraser sent a letter to Willie Gallagher setting out similar concerns by CEC's Transport Department relating to Technical Approvals and Quality Control Issues [CEC01493639].

Were you aware of these letters and/or the concerns expressed in these letters?

I was not aware of these letters.

What discussion of these letters was there (i) within TIE and (ii) with CEC?

I do not know.

What, if anything, was done in response to these concerns?

I do not know.

An e-mail dated 2 April 2008 from Ian Laing (CEC01451381) attached the latest draft of schedule 4 for "discussion (and hopefully final resolution) tomorrow" (CEC01451382).

That draft of schedule 4 noted, in paragraph 3.2, that:

"The parties acknowledge that certain of these Pricing Assumptions may result in the notification of a Notified Departure immediately following execution of this Agreement. This arises as a consequence of the need to fix the Contract Price against a developing factual background. In order to fix the Contract Price at the date of this Agreement certain Pricing Assumptions represent factual statements that the parties acknowledge to represent facts and circumstances that are not consistent with the actual facts and circumstances that apply. For the avoidance of doubt, the commercial intention of the Parties is that in such circumstances the Notified Departure mechanism will apply".

What was your understanding of the need for, purpose and effect of the wording noted above?

My recollection is that during the procurement period and given the need to draw a line in the sand on design before novation that if the progression of the design caused one of the assumptions to be incorrect and trigger a Notified Departure then due to the ongoing nature of the design that fact would require to be recognised.

To what extent was that wording discussed (i) within TIE and (ii) with CEC?

I do not recall how the wording was agreed.

What Pricing Assumptions did you (and TIE) consider represented factual statements that were not consistent with the actual facts and circumstances that applied?

All of the pricing assumptions required to be tested on each of their merits or otherwise.

A Joint Meeting of the TPB and TEL Board took place on 9 April 2008 (CEC00079902).

The minutes noted (page 5, para 3.1) that Steven Bell presented the agreed plan and phasing for the next stages of the MUDFA works and confirmed that "despite an anticipated slippage of approximately five weeks, the alignment with the Infraco programme was maintained". Reasons for the delays in certain areas were: greater congested services than anticipated, SUC's issue of locating own assets; and AMIS resource level below the Rev 06 programme (para 3.2). Currently 30% of expected works were completed.

The Boards received updates on the progress in relation to the Infraco and Tramco negotiations on pricing, programme, scope and risk profile etc.

Under SDS Novation, it was noted (page 6, para 4.7), that "some details were outstanding and were being negotiated robustly".

In relation to Design Management after Close (page 7, para 10.2) it was noted that "from novation onwards, the contractual relationship with SDS moves to BBS. However, tie and CEC would continue to support and manage BBS in this regard".

What was your understanding of, and views on, these matters?

I was not party to or aware of these matters.

In an e-mail dated 11 April 2008 (CEC01451704) Richard Walker noted that he was as frustrated as you at the length of time and number of changes that had been introduced into the process "primarily, it would appear, through the introduction of an incomplete Design, a situation which was never contemplated even at the presentation made by your executive chairman to our senior management on 15th November 2007".

What were views on that suggestion?

This was in relation to the agreement of a draw down milestone payment schedule and not specifically to do with changes. I was frustrated with the time taken for BBS to submit a milestone schedule however Mr Walker made an excuse for late delivery of that information. Such excuse had nothing to do with the subject matter which was the submission of a milestone schedule.

An e-mail dated 11 April 2008 from Stewart McGarrity (CEC01466954) noted, in relation to milestone payments, the BBS requirement to stay "cash neutral".

It would be helpful if you could explain that matter including how it was resolved?

Milestone payments were being finalised and BBS were seeking to structure it such that they would not be cash negative. This is normal in this kind of negotiation. We ultimately agreed a milestone payment schedule in line with the structure I had proposed.

In an e-mail dated 16 April 2008 (TIE00017426), in response to a query from Andy Conway, Steven Bell stated that the logic behind the November 2007 design freeze was that it "allows for all normal design development at no extra cost".

See also an e-mail of the same date from Susan Clark (which was forwarded to Alan Coyle, CEC) (CEC01245274) which stated "BBS are contractually obliged to construct to the designs that SDS produce and get consented. We have been identifying significant changes as design has progressed to ensure that we have

made financial provision – e.g. Burnside Road. Normal design development is a BBS risk as described in Schedule 4 of the Infraco contract”.

What was your understanding of, and views on, these matters?

It was my understanding that the designs would be developed and completed by normal design development. My understanding was that normal design development was the risk of BBS under the contract but anything beyond normal design development would be a notified departure and additional to contract price.

Did you agree with what was said by Mr Bell and Ms Clark?

I did agree generally with what was said however the concept and meaning of normal design development would require to be tested on its merits.

In an internal Weekly Report dated 18 April 2008 (PBH00018333 at para 1.3), Steve Reynolds, Parsons Brinckerhoff, noted:

“Richard Walker indicated to me on Friday that he has concerns over the presentation of the Infraco Contract deal to Council. Some weeks ago I had expressed my concerns that the price on the table from BSC did not align with the programme contained in the offer. For example, the price assumes that value engineering savings will be made whereas the programme has no allowance for the design and approvals time which would be required. I had suggested that tie would have to be careful in the form of presentation so as not to mislead CEC. Richard is now expressing (to me) similar concerns and has suggested that he will take this up with tie separately. To a large extent the current position is one of BSC’s making where the offer is dependent upon a set of pricing assumptions which can be interpreted by the informed reader as a basis for price increase and programme prolongation. It may be that Richard is belatedly expressing worries which have more to do with his concern over working with tie as a client or may even be due to friction between Bilfinger Berger and Siemens. Whatever the reason I detect an air of uncertainty and last minute concern over whether BSC should be taking the job”.

What were your views on these matters?

I do not recollect having sight of this and cannot comment on the views.

Did anyone from BSC raise with you (or anyone else at TIE) any concerns in relation to TIE’s reporting of the Infraco contract or price to CEC?

Not that I can recall.

Did you, at any time, have any concerns in relation to TIE’s reporting of the Infraco contract and price to CEC?

I did not have full visibility of reporting to CEC therefore I cannot comment on this.

In an e-mail dated 24 April 2008 (CEC01293878) you advised Tom Dennis Murray, BSC, that his proposed mark up of Appendix G of Schedule 4 was “completely unacceptable”.

(See also, your follow up e-mail to Tom Murray dated 29 April 2008, CEC01294194).
What was the issue?

My primary objective at that time was to have a baseline and mechanism in the contract to value post contract change. In order to do this I wanted to insert as much tender pricing detail as possible. This would allow assessment of the cost of change to be benchmarked against tender allowances such that individual changes would be assessed against appropriate tender allowances. Tom Murray of BBS attempted to set out an arrangement whereby a global percentage was added to base cost to cover preliminaries etc whether that percentage was appropriate or not. He also wanted to apply price fluctuations to changes which I resisted. I pulled us back into the Schedule where an application of the relevant part of the Schedule would prevail. It was subsequently agreed as my request.

How was it resolved?

It was agreed as my request.

In an e-mail dated 25 April 2008 to Geoff Gilbert (CEC01293885) you noted (in point 1) that BBS had now requested that they apply Contract price Fluctuations to the Schedule of Rates they had previously submitted to cover fluctuation on cost of tie changes. You disagreed, as "we have a limp [sic] sum fixed price including the schedule of rates".

What did you mean by stating there was a "lump sum fixed price including the schedule of rates"?

As noted I wanted to have a robust Schedule of Rates from which to assess and value any post contract change. To do so I was making it clear that the Schedule of Rates agreed for post contract change would be derived from the contract price and fixed for the duration of the contract works and that there could be no inflationary increases applicable to the Schedule of Rates. I was simply checking with the Procurement Director that my position on this was correct and in line with any previous discussions.

To what extent, if at all, did any lump sum fixed price take account of the cost of any Notified Departures?

This point here was not in relation to the scope of price or the occurrence of Notified Departures it was to fix a Schedule of rates for work items which would be used to value any post contract change that occurred and to ensure that such rates were not subject to inflationary increases throughout the works.

An e-mail dated 25 April 2008 from Damian Sharp (TIE00359836) noted that further changes were coming TIE's way from SDS and asked that you speak to BSC to test if "no outstanding changes" really was a "die in a ditch" issue for them (presumably, in relation to their acceptance of SDS Novation).

What was your understanding of that matter?

At the point of the Novation of SDS to BSC the account for work carried out by SDS for tie required to be settled. There would be no more Infracore works carried out by SDS directly to tie. To achieve this essentially a final account had to be agreed with no outstanding changes.

Was "no outstanding changes" a "die in a ditch" matter for BSC in relation to SDS Novation and, if so, what difficulties did that create for TIE when dealing/negotiating with SDS (see e.g. your e-mail dated 13 May 2008 to Steve Reynolds, PB, CEC01295126, attaching a spread sheet showing the account status at novation, CEC01295127) ?

A tough negotiation was had to finalise the account with SDS at the point of novation.

By e-mail dated 28 April 2008 (CEC01312358) Graeme Bissett circulated to CEC an updated draft of the Close Report (CEC01312359) and other documents.

The updated draft Close Report noted that there had been an increase in the base cost of Infraco of £17.8m compared to the Final Business Case, which increase was as a result of "substantially achieving the level of risk transfer to the private sector anticipated by the procurement strategy" and that the increase of £17.8m approximated closely to "the allowance which was made in the FBC for procurement stage risks i.e. the increase in Base Costs which might have been expected to achieve the level of price certainty and risk transfer which has been achieved" (p4).

What was your understanding of, and views on, these matters?

I was not party to this information and have no comment.

Mr Bissett's e-mail of 28 April 2008 also attached a letter dated 28 April 2008 from DLA to CEC and TIE (CEC01312368), a DLA/TIE Risk Matrix as at 22 April 2008 (CEC01312367) and a Report on Infraco Contract Suite (CEC01312363).

The Report on Infraco Contract Suite noted, in relation to Price, that "A number of core pricing and programming assumptions have been agreed as the basis for the Contract Price. If these do not hold, Infraco is entitled to a price and programme variation known as "Notified Departure" (p4) and, in relation to Programme, that "Following contract signature, it is expected that BBS will seek a Notified Departure on Programme due to SDS delay in design production" (p4).

What was your understanding of, and views on, these matters?

I do not recollect having visibility of this however any Notified Departure if one occurred at all could result in a change.

What was your understanding around that time of the likely number and value of Notified Departures after Financial Close?

It was the intent that the Pricing Assumptions would be generally met therefore the occurrence of Notified Departures would be minimised. I had no finite number or value.

To what extent were these matters discussed with CEC?

I do not recollect having visibility of this.

By e-mail dated 30 April 2008 (CEC01274958) Willie Gallagher noted that Richard Walker had advised that Bilfinger required an additional £12 million to conclude the deal, despite a deal having been negotiated and agreed by all parties on 14 April.

The meeting of Council on 1 May 2008 was provided with a report dated 23 April 2008 by CEC's Chief Executive (CEC00906940) which noted that: the cost of the project was now £508m (comprising a base cost of £476m and a revised QRA of £32m), which increase was largely due to the firming up of provisional prices to fixed sums, currency fluctuations and the crystallisation of the risk transfer to the private sector as described in the Final Business Case; 95% of the combined Tramco and Infraco costs were fixed with the remainder being provisional sums which Tie had confirmed as adequate; and that "As a result of the overlapping period of design and construction a new risk area has emerged which has been the subject of extensive and difficult negotiation. TIE Ltd advise that the outcome is the best deal that is currently available to themselves and the Council. Both TIE Ltd and the Council have worked and will continue to work diligently to examine and reduce this risk in practical terms" (para 3.10).

What was your understanding of why BSC sought a further £12 million to conclude the deal?

I understood that BSC had an internal pre close discussion and a complete review of their price. That review resulted in a request for an increase in the contract price.

What problems did that cause?

Its time proximity to expected contract close caused consternation for tie.

What was your involvement in resolving that matter? Did TIE agree to pay the further sum sought and, if so, why?

As I recollect a much reduced amount was agreed but set against some risk transfer to BSC the details of which I cannot recall.

What were your views on the matters in the report to Council noted above?

I do not recollect having sight of this.

In his internal Weekly Report dated 2 May 2008 (PBH00018873) Steve Reynolds noted:

"Two observations are that:-

tie has sponsored a paper which was materially incorrect at the time when it was presented to CEC.

The price increase proposed by BSC would result in an overall price of £520m in comparison with the overall funding limit of £545m. This is without any allowance for costs to cover changes to scope and programme necessary to bring about alignment of the BSC Offer and the SDS Design".

What were your views on these matters?

I have no recollection of this or having sight of these documents.

Was the misalignment between the SDS design, the ERs and the Infraco proposals resolved before Infraco contract close (and, if so, when and how)?

I have no recollection of this.

We understand that Mr Gallagher met with Mr Enenkel, BSC, on 5 May 2008. By e-mail dated 5 May 2008 Mr Enenkel proposed that in the event that Phase 1b did not proceed TIE would pay BSC £3.3 million under the contract for Phase 1a (CEC01337607) (Mr Enenkel sent a clarification e-mail on 6 May 2008, CEC01274976).

Mr Gallagher wrote to Mr Enenkel on 6 May, listing a number of conditions on which BSC would retain its position as preferred bidder (CEC01284033).

Me Enenkel set out BSC's response in an e-mail dated 9 May 2008 (CEC01004870). In an e-mail dated 11 May 2008 (TIE00679422) Graeme Bissett set out his understanding of matters.

What was your awareness of, and views on, these discussions?

I was requested to provide a price analysis using tender information for certain items which I did where I could. I was not involved directly in the discussions. There appears to be two different issues here firstly the price for 1B not going ahead which I was not involved and secondly the general price increase which from memory was £9m which I had been asked for comment. I seem to remember that £4.8m was agreed but cannot remember the detail.

In his e-mail dated 7 May 2008 (CEC01275063) Mr Gallagher stated, "We cannot be seen to have signed contracts and then be doing nothing for a few months. There is nothing new here. Richard, Scott and the team put together the BB Construction Programme which is an integral part of the contract. If we ask you to move away from that unreasonably, then it is a tie notified departure from your pricing assumptions". What did you understand Mr Gallagher to mean by that?

I do not recall this and do not know what was meant.

What agreement was eventually reached in respect of the price increase?

My recollection is that agreement was reached on £3.3m in the event 1b did not proceed and that £4.8 m was agreed on price.

On 12 May 2008 (at 18.49 hours) Graeme Bissett circulated an e-mail to CEC (CEC01338846) attaching a final set of TIE's internal approval documents.

The Financial Close Process and Record of Recent Events dated 12 May 2008 (clean copy, CEC01338847; tracked changes, CEC01338848) noted that a response was received from BBS on 7 May 2008 which proposed a payment of £9m to BBS and "Further examination of the contract terms surrounding the design management process, which although unclear pointed to an extended design and consent programme with potentially material adverse consequences for the construction programme" (p4).

What was your understanding of that matter?

I do not recall this.

On 13 May 2008 parties signed the Kingdom agreement (WED00000023).

It would be helpful if you could explain your understanding of the need for, purpose

Me Enenkel
should be Mr
Richard Walker

and effect of that agreement?

I was not directly involved in this and I do not recall the need for this however my understanding is that this agreement was to capture the price increase of £4.8 million as 4 tranches of incentivisation and the arrangement for Phase 1b all of which were subject of previous discussion.

On 13 May 2008 the Council's Policy and Strategy Committee considered a report by the Council's Chief Executive (CEC01246115).

The report advised that the estimated capital cost for phase 1a was now £512.2 million. The report stated that "Offsetting the increase in cost is a range of negotiated improvements in favour of TIE and the Council in order to reduce the risk of programme delays and minimise exposure to additional cost pressures, as well as better contractual positions".

What are your views on the statement noted above?

My understanding was that tie had negotiated some betterment in lieu of the late additions to the price. I cannot remember the detail but it was captured in the Kingdom Agreement.

Do you agree with it? If so, what do you consider were the "improvements" and "better contractual positions" that reduced the risk of programme delays and minimised exposure to additional costs?

I cannot remember the details however there were things like a cap of liability to tie if certain pricing assumptions were not met particularly on roads.

Infraco contract close took place on 14 and 15 May 2008, as part of which a number of contracts were signed, including the Infraco contract (CEC00036952) and novation of the SDS contract to BSC.

By way of overview, what was your understanding of the following matters at contract close:

The extent to which detailed design was complete (and all necessary statutory approvals and consents had been obtained), the extent to which these matters were outstanding and when the detailed design was likely to be completed (and all approvals and consents obtained)?

Detailed design was progressing and I did not monitor or control the progress of design.

The extent to which utilities diversions were complete, the extent to which these works were outstanding and when these works were likely to be completed?

Utilities works were progressing and I did not monitor or control the progress of utilities.

The likely effect on the Infraco works and contract (and the cost of the tram project) if the outstanding design (and approvals and consents) and outstanding utilities diversion works were not completed within the anticipated timescale?

The effect on the Infraco Works would depend upon whether they triggered a Notified Departure under the Infraco Contract.

The provision made in the risk allowance for the above matters?

A risk allowance had been made against the likelihood of triggered Notified Departures.

To what extent did TIE discuss the above matters with CEC?

I do not recall having been involved in or copied in to discussions with CEC.

The pricing provisions of the Infraco contract were set out in Schedule 4 (USB00000032).

What was your understanding of the extent to which the Construction Works Price of £238,607,664 was a fixed price?

The price was a lump sum fixed price subject to the occurrence of any Notified Departures which if triggered would result in a change to the price.

What did you understand to be the main exclusions, provisional sums, assumptions and conditions?

The design required to be developed within the detailed or outline designs set out in the base drawings since the test was that Notified Departures would exist if the detailed design was outside of normal design development.

In what circumstances did you consider that the price was likely to change?

It was expected that some of the Notified Departures would be triggered.

In relation to the Value Engineering deductions shown in Appendix A of Schedule 4 of the Infraco contract (USB00000032):

What was your understanding of what would happen if the VE savings were not achieved?

Both parties had obligations to achieve subject to certain terms. The VE was a fixed reduction whereby BBS could only not implement if certain conditions at 5.3.1 - 4 were not met. If such terms were not met then the VE wouldn't be achieved however it was in everyone's contemplation that the conditions would be met. Of course there was a risk to tie if they were not as a result of the four conditions.

What were your views as to whether the VE savings were likely to be achieved?

As I understood it both parties expected that the VE would be achieved.

In the event, were these Value Engineering savings achieved (and, if not, why not)?

Some were and some not for various reasons. I cannot remember the details.

Schedule 4 of the Infraco contract (USB00000032) contained a number of Pricing Assumptions.

At the time of Infraco contract close:

What did you consider were the main Pricing Assumptions that were likely to change and result in Notified Departures and why?

Whilst the design should have where practicable followed the design intent there was a likelihood that some design changes would be experienced.

Approximately how many Notified Departures did you consider were likely to arise? (see e.g. a Note by Andrew Fitchie dated November 2008 which stated, at page 2, second last bullet point, that "both parties were aware at contract close that there would require to be changes in the early stages of the contract and this was reflected in the pricing mechanism", CEC00619255).

Notified Departures would trigger if certain pricing assumptions were not met. It was the understanding that they could be met but where not then a Notified Departure would occur.

What did you consider to be the likely total value of the Notified Departures?

That would be dependent on triggered Notified Departures and I cannot recollect what the value was likely to be.

To what extent were the above matters discussed with CEC?

I do not know what was discussed with CEC.

Pricing Assumption 3.4 of Schedule 4 (USB00000032) dealt with design development.

What was your understanding of the meaning of that Pricing Assumption, including which party bore the risk that development, or change, of design from the base date of 25 November 2007 would result in a Notified Departure?

The design was not complete and there would only be a Notified Departure if the design was not completed by normal design development. I understood that all were working on the basis that the design would be completed by normal design development.

Schedule 4 defined the "Base Date Design Information" as "the design information drawings issued to Infraco up to and including 25th November 2007 listed in Appendix H to this Schedule Part 4".

Appendix H of Schedule 4, however, did not list any drawings and, instead, simply stated that the BDDI was "All of the Drawings available to Infraco up to and including 25th November 2007".

Are you aware why Appendix H of Schedule 4 did not list the drawings comprising the BDDI?

I understood that an electronic dropbox was set up during the bid stages whereby all interested and authorised parties could access the drawings. By inserting a date an electronic record would be able to be ascertained to list all drawings to that date.

Did that cause any problems at a later stage (and, if so, what problems arose and how were they resolved)?

Accessing the drawings did cause problems due to administrative issues and these resulted in some time taken to ascertain the correct drawings

At Infraco contract close the SDS contract was novated from TIE to BSC.

What was your understanding in relation to who would be responsible for managing the design process after novation and for ensuring that all outstanding design (and all outstanding statutory approvals and consents) was completed/obtained on time?

What responsibility and powers, if any, did TIE retain after novation in relation to managing the design process and ensuring that all outstanding design (and all outstanding statutory approvals and consents) was completed/obtained on time?

The designer was to be novated to the contractor who would be responsible to manage the design process post novation.

Do you consider that any problems arose from the fact that (i) changes to, and completion of, design was primarily under the control of BSC (as a result of novation of the SDS contract to BSC) but (ii) changes to design, or delay in completing design, could give rise to a departure from one of the Pricing Assumptions in Schedule 4 of the Infraco contract and, therefore, give rise to a Notified Departure (leading to an increase in the cost of the project)?

From memory tie would have some responsibility with statutory approvals and third party consents.

Was any consideration given by TIE to that potential difficulty prior to SDS Novation?

I understood the intent to be that the design would be completed by the contractor having a novated designer on board and following the design intent at novation. Problems did arise from changes to design generated by the contractor/ novated designer post contract. I do not recall this point being discussed at contract close.

We understand that a mobilisation payment of £45.2 million was made by TIE to BSC.

It would be helpful if you could explain when the payment was made and the purpose of the payment?

My memory is that a mobilisation payment was factored into the Milestone Schedule and paid on that basis

What were your views on the payment?

I have no view on the payment other than it was a contractually agreed amount.

Are you aware of how the payment was accounted for in the final settlement between TIE/CEC and BSC?

I do not know how this was accounted for in the final settlement.

By e-mail dated 4 June 2008 (CEC01288688), as part of a "lessons learned" exercise, you set out certain things that had not been done well. It would be helpful if you could explain your comments in that e-mail?

I had only been involved in the very late stages of the procurement period and generally only to look forward to post contract work therefore I was not able to speak for the procurement process. The 5 best things that I noted in my time during this period principally concerned the teams resolve over the difficult nature of the negotiations. When I arrived in early January '08 it was anticipated that following Wiesbaden agreement the contract close would have occurred by end January '08. It was May before it was concluded. It appeared to me that the weaknesses concerned the lack of ability to negotiate given that before i had joined we were in a single source bidder arrangement making negotiation difficult and more time consuming that it should have been post Wiesbaden. That in turn led to our resources dealing with several price increases and demands and less focus on the day to day issues during that time.

2008 (June to December)

Following the completion of the procurement of the Infraco contract:
Did your job title and role change in any way?

No I had always been employed for post contract duties.

Following contract close, a major dispute arose between TIE and BSC in relation to the interpretation and application of the Infraco contract and Schedule 4. By way of overview:

When, and how, did you first become aware of the dispute?

I do not recall an immediate or single action however BSC had been introducing several INTC's,

What was your understanding of the main matters in dispute and the main reasons for the dispute?

All of the early matters were commercial issues over the existence of Notified Departures and moreover the price being claimed for them through BSC Estimates.

In total, approximately 738 INTCs were notified by BSC between Infraco contract close and Mar Hall in March 2011. By way of overview:

Were you surprised by the number of INTCs?

Yes.

What do you consider were the main INTCs in terms of value and importance?

There were no individual issues in respect of value and importance but over 700 which caused a strain on the commercial department and all Estimates were much higher in value than ultimately agreed.

The Tram Project Board met on 4 June 2008 (USB00000005 at page 5). The

minutes noted (page 7) that the Board were appraised of current MUDFA progress “including the close out programmes, the current two week impact on the Infraco critical path and Revision 7 of the programme” (slides presented to the meeting, CEC01312258 at page 6, noted that Revision 7 of the Programme was being finalised to enable any impact to be mitigated).

David Mackay raised a concern over the “ongoing issue of Carillion resource and supervision”. Willie Gallagher explained that “both tie and Carillion had underestimated the complexity of managing so many worksites” and that areas that affect the Infraco critical path were being prioritised (page 7).

What was your understanding of these matters?

Carillion had resourcing issues and imported large labour gangs from afar. The work quality seemed to be suffering.

What problems had been experienced in managing and undertaking the MUDFA works?

As 1 above.

What was your expectation at that time in relation to whether the utilities diversion works would be completed before the Infraco works?

My recollection is that works were being prioritised such as to minimise the effect on Infraco.

E-mails between Steven Bell and Steve Hudson of Carillion in June 2008 noted discussions in relation to a MUDFA Rev 07 Programme (CEC01346377).

An e-mail dated 30 June 2008 from Keith Gourlay, Carillion, noted certain MUDFA Commercial Issues/Concerns (CEC01291405).

An e-mail dated 6 July 2008 from Steve Hudson (CEC01342171) noted “Overall I maintain my view that MUDFA continues to operate under a lastminute.com ethos”.

Were the price and programme for the Infraco works based on MUDFA Rev 06 and, if so, why, given that the need for a revised MUDFA Programme (i.e. MUDFA Rev 07) must, presumably, have been in contemplation prior to Infraco contract close?

I cannot recall. I was not the programme manager and did not have a detailed knowledge of individual programmes. MUDFA was being managed by a Project Director and Commercial Manager who would be involved in the detail.

What were your views on Carillion’s concerns noted in the above e-mails?

Concerns like this are often raised during construction contracts and I do not remember these comments.

In an e-mail dated 23 June 2008 (CEC01290403) you set out certain scenarios in relation to TIE Changes that TIE either faced or were about to face.

It would be helpful if you could explain the different scenarios and the problems they created?

It was around that time that certain issues were developing. My concerns were

Steve Hudson
should be
Keith Gourlay

that BSC were submitting numerous INTC's most of which included unrealistic Estimates which were resulting in delays to the works since BSC would not commence works until agreement to Estimates was reached. If we paid demonstrable costs pending resolution of occurrence of an INTC and it was subsequently proved not to be then how would we recover the costs paid to that date. These questions were to explore with DLA the intended mechanism of Change given the approach taken by Infraco.

To what extent do you consider that these scenarios and problems could, and should, have been anticipated before Infraco contract close?

Perhaps, however the extent and frequency to which Infraco were submitting INTC's and the late provision of Estimates mostly proven to be unrealistic Estimates were proving to be hugely problematic and a great strain on the commercial team and consequently the progress of the works. I was looking for some advice as to how to deal with this.

The Tram Project Board met on 2 July 2008.

The minutes (CEC01237111) noted "MUDFA progress is improving, but is still not as good as the project team would like. Critical areas include the Foot of the Walk, Haymarket and St Andrews Square" (para 2.5).

In relation to Programme, it was noted that a number of significant project milestones were behind programme "but were either not critical to the end date of the project or critical elements are being prioritised and non-critical elements delayed" (para 2.10).

It was also noted that "The close out plan for aligning Infraco Proposals with the SDS design (particularly roads and OLE) is being finalised and SB will report to the next TPB on the associated programme and costs" (page 7, para 2.14).

It was noted, "SB summarised that the primary risk register is currently light on Infraco specific risks and that a thorough review is already underway dealing with specific risks ,especially mitigation plans" (page 8, para 6.1).

What was your understanding of, and views on, the matters noted above?

I do not recall having sight of the minutes and did not have a view.

What was your understanding of the "Infraco specific risks" the risk register was light on and why?

I had no understanding of this.

In July 2008 a Peer Review (led by Malcolm Hutchison) was carried out (CEC01327777).

The report noted, under MUDFA Lessons Learned, that "The fact that the completion date remains uncertain (works 60% complete) will have an increasing impact on the Infraco works".

The report noted, under Contract Issues, "It is unclear to the review team where risk lies for design development. BBS and tie in interview considered risk lay with the other party".

What were your views on these matters?

My view was as noted previously i.e. that my understanding was that normal design

development was the risk of BSC and anything beyond that could be a Notified Departure.

When (and how) did you first become aware that there was a dispute between TIE and BSC in relation to where the risk lay for design development?

It did not become clear at any particular point in time it built up through interpretation of INTC's being claimed.

A dispute arose with SDS in relation to whether SDS were responsible for providing "as built" drawings (see, for example, a TIE Position Paper on that issue dated 29 August 2008, CEC01128583).

What was your understanding of, and views on, that dispute?

My recollection is that SDS refused to provide as built's however it seemed to me that as built's would be part of their scope.

How was it resolved?

I cannot recall how it was resolved.

Did that issue cause or contribute to any delay in carrying out the MUDFA or Infraco works (see e.g. the email dated 15 January 2009 from Alan Dolan, SDS, noting concerns about the "as built" information provided to SDS ,CEC01119549)?

I do not believe that it caused a delay.

By e-mail dated 17 September 2008 (CEC01130811) Colin Brady, BSC, sent a proposal for amending the Infraco contract to facilitate urgent changes, where time was critical, to prevent delay to construction operations in progress (CEC01130812) (revised versions were discussed see e.g. DLA00001329 and CEC01125115). Further correspondence took place. Matters had not been resolved by January 2009 (see e.g. Michael Flynn, Siemens, e-mail dated 16 January 2009, CEC01119821).

What was the need for and purpose of that proposal?

It was becoming clear that BSC were raising INTC's for matters which were minor but urgent for delivery on time therefore it was discussed that BSC would come up with a proposal to progress the works whilst the normal administration of change or no change and the Estimates were agreed.

Was an amendment to the change mechanism in the contract and/or a protocol agreed (and, if not, why not)?

A protocol was developed between tie and BSC which was verbally agreed however my recollection was that BSC ultimately decided not to operate it.

We understand that clause 80.13 of the Infraco contract (CEC00036952) (which appears to have given rise to problems) was inserted at the insistence of TIE/DLA (see Andrew Fitchie's e-mail in that regard dated 3 March 2010, CEC00619254).

16 January
2009 should be
26 January 2009

Why did TIE wish that clause inserted? What were your views at the time?

I do not recall why.

The Tram Project Board met on 24 September 2008.

The minutes (CEC01210242 at page 5) noted that there were issues around management direction and control from Carillion but significant improvement following an internal audit. Slippage on the MUDFA programme from Rev 06 to Rev 07 was currently 4 months (page 6).

Slides for the meeting (CEC01155850) noted, under MUDFA, that "Overall, programme is now predicting an end date of March 2009 with potential impacts on INFRACO particularly if BT overlaps are difficult to address" (page 4).

Problems were noted with Design and Consents (page 8).

Factors contributing to programme slippage included Design Change V26-V31, Mobilisation and Delivery Infraco, Design/Progress/Change V31-35 and MUDFA potential overlaps/conflicts (page 10).

What was your understanding of, and views on, these matters?

I did not attend the Project Board meetings and cannot recall the details discussed however it is fair to say that programme slippage was occurring but the factors were being discussed.

We understand that in late September 2008 BSC submitted an application for payment in relation to various claims for Notified Departures.

What did these claims relate to?

BSC would submit monthly applications as required. As is normal the contractor would make application for changes that it considers had occurred and these were detailed in individual INTC's.

What discussion was there within TIE (and between whom) of these applications for payment? What were your views?

All applications for payment would be reviewed by the commercial resource. A change management team was in place to review individual INTC's.

What was TIE's response?

Responses would be offered on each individual INTC based on their merits.

We understand that BSC submitted a further (or repeated?) application for payment in October 2008.

We understand that Richard Walker made a presentation to Mr Gallagher around this time with photographs and drawings showing the problems encountered by BSC with the utility works and access to the site (WED00000025).

Do you remember what that application related to, what discussion took place within TIE (and between whom) and what was TIE's response?

As above. BSC submitted monthly applications for payment. Each monthly application was reviewed by the commercial team at tie.

Were you present at Mr Walker's presentation and, if so, do you remember the purpose and content of the presentation and TIE's response?

I do not recall being present.

By letter dated 13 October 2008 (DLA00001671) Mr Walker suggested a structured approach to progressing matters.

Mr Gallagher replied by letter dated 14 October (DLA00001672). In his letter Mr Gallagher stated, "We ... feel it will be important to recognise that normal design development from the base date design was provided for in the price agreed at contract close".

An e-mail dated 15 October 2008 from Michael Flynn, Siemens (DLA00002768) noted that following a telecom the previous evening there would be three parallel streams of activity, namely (1) establish the programme position in terms of delay and progress at discrete intervals ,(2) agree an emergency instruction process and (3) set up a task force to unblock approvals, access problems and encumbrances etc.

What was your involvement, if any, in these discussions?

I was not involved directly in discussions but I expect I was involved in point 2 only.

What were your views on the proposed solution set out in Mr Flynn's e-mail?

Mr Flynn was trying to be helpful and his suggestions seemed sensible to me.

Did that proposal work (and, if not, why not)?

I do not recall as to the success or otherwise of each of the proposals except to say that I do not believe the emergency instruction process was ultimately agreed.

An e-mail dated 22 October 2008 from Christie Graham, Carillion (CEC01140099) listed the major items "which are currently detrimentally impacting or likely to detrimentally impact the MUDFA completion programme" including Traffic Management constraints, incomplete design and unforeseen and congested utilities etc.

The latest review of progress against programme gave a forecast end date of November 2009.

What were your views on these matters?

I do not recall this.

In an e-mail dated 18 November 2008, Damian Sharp, TIE, noted that "the lack of an agreed commercial position with BSC has been holding up completion of various alterations to the designs submitted for Prior Approval" (CEC01125370).

Why was the dispute between TIE and BSC holding up the completion of design by SDS and the obtaining of outstanding approvals and consents?

That may have been an opinion but I do not understand why.

The Tram Project Board met on 17 December 2008. The minutes (CEC00988028), under MUDFA, again noted that "Carillion performance was slower than anticipated" (para 2.11).

In relation to Infraco, it was noted that there were ongoing discussions with BSC, collectively there had been insufficient progress but a proposal had been agreed to give BSC comfort in areas where they perceived they were exposed. There were noted to be "access issues" at Haymarket and Leith but there were no impediments to work at the depot and airport (para 2.15).

What was your understanding of, and views on, these matters?

I was not at this meeting however options were being considered to progress the MUDFA works ahead of Infraco.

What were the "access issues" at Haymarket and Leith?

I do not recall the detail.

EVENTS IN 2009

By letter dated 23 January 2009 (CEC01182823), BSC intimated a Compensation Event to TIE on the basis of the failure of SDS to achieve the release of Issued for Construction Drawings (IFC) by the dates identified in the programme in relation to section 1A, Lindsay Road Retaining Wall.

BSC intimated a number of other Compensation Events to TIE in respect of other alleged failures to achieve the release of IFCs by the dates identified in the programme.

What was your understanding of the following matters:

Why were SDS unable to achieve the release of these IFC Drawings by the dates identified in the programme?

I was not involved in the detailed design and I cannot recall the detail as to why SDS were unable to release IFC packages on time.

Why did BSC consider that that gave rise to a Compensation Event? What were your views?

I do not know. Presumably they believed that a Notified Departure had occurred.

Given the SDS novation to BSC, (i) why were BSC not able to take steps to ensure that SDS released these drawings on time and (ii) why was that failure not at BSC's cost (rather than at TIE's cost)?

In my understanding BSC ought to have progressed the design and to have released drawings on time. I believe that was the position taken by tie at that time.

In an e-mail dated 30 January 2009 (CEC01212649) Andrew Fitchie expressed the view that the BDDI to IFC issue was "not, fundamentally, a legal issue".

To what extent, if at all, did that reflect Mr Fitchie's views when Schedule 4 was negotiated and agreed?

I cannot answer that. I do not know what Mr Fitchie's views were.

What were your views?

Matters of commercial and contract interpretation usually involve both technical and commercial input and contract/ legal input.

In an e-mail dated 8 February 2009 (CEC00941273) Steve Hudson, Carillion, noted that at a meeting in November the previous year “there was an acceptance that the project had not been managed and administered in accordance with the contract provisions. We explained that the circumstances of the contract had changed to such an extent that we felt that [it] was imperative to explore alternative ways of working within the contract if it was to be delivered within the agreed timescale. We concluded that there were currently two options for how we progressed from here; either strict contract compliance or a more pragmatic approach that better reflected the realities and challenges facing both parties and met the collective desire to expedite completion on the contract. Tie stated preference for the latter ...”.
It would be helpful if you could explain what was being discussed in that e-mail?

Carillion were attempting to alter the commercial terms of the contract to a cost reimbursement but tie were resisting that. Tie however were going to review that option.

An e-mail dated 9 February 2009 from Andrew Fitchie (CEC01120435) raised the possibility of TIE serving a formal default notice on BSC.

What were your views on that suggestion? Did you consider that there were good grounds for serving such a notice at that time (and, if so, what were those grounds)?

I was deeply involved in the commercial appraisal of INTC's at that time and I do not recall having a view at that time.

In the event remedial default notices were not served until late 2010. Do you know why a default notice was not served in 2009?

I do not remember.

The Tram Project Board met on 11 February 2009.

The minutes (CEC00988034 at page 5) noted that the MUDFA work was now 65% complete (page 7, para 2.32).

Slides for a joint meeting of the TPB and the TIE Board on that date (CEC00988036) noted, under Project Delivery, Infraco Progress, that there was disappointing progress with ongoing issues with delayed appointment and mobilisation of package/sub-contractors, design slippage and design changes, incomplete/delayed utility diversions, submission of estimate and agreement of change order and consortium integrated programme (page 4).

Another slide, Project Delivery, Infraco Issues Resolution, noted that there was a “significant risk of a major dispute with Infraco”, which was drawn from a number of issues, including: BSC's refusal to progress works which may be affected by a change which has not been subject to issue of an agreed TIE Change Order; BSC's failure to provide timely and/or competent estimates to allow a change to be assessed and if appropriate a Change Order to be agreed and issued and specific areas of disagreement e.g. responsibility for changes in design from BDDI to IFC

(page 4).

What was your awareness of, and views on, these matters at that time?

I did not attend this but the risks noted were real at that time.

A dispute arose in relation to the Princes Street works due to start in February 2009. After discussions and correspondence over a number of weeks, an internal TIE e-mail dated 20 March 2009 noted that David Mackay and Dr Keysberg had that morning agreed the principles of an agreed amendment to the measurement and payment regime for Princes Street (CEC01009977).

The dispute was resolved by parties entering into the Princes Street Agreement (CEC00302099) (we understand that an initial draft of the agreement was agreed on 20 March 2009, to allow work to commence on 23 March, and that the final version of the agreement was signed on 30 May 2009).

When (and how) were you first aware that there was a dispute in relation to the works at Princes Street?

I do not recall when I became aware but it was through correspondence over several weeks.

When (and how) were CEC first advised of that dispute or potential dispute?

I do not know.

What was your understanding of the basis, and underlying cause(s), of the Princes Street dispute?

That there were many obstructions and issues on the Princes Street section of works and BSC considered that many would result in Notified Departures. My recollection is that BSC did not think that the works could be carried out without interruption and were not prepared to carry out the Princes Street works until an arrangement was in place to protect them.

What was your understanding of why BSC refused to start work on Princes Street?

As 3 above.

How, and when, was the dispute resolved? What was your involvement in resolving the Princes Street dispute?

An agreement was reached to omit the price for the relevant section of the Princes Street works and for BSC instead to be reimbursed on an actual cost basis. I was involved in the negotiation of the price omission and the assessment of actual cost.

Why was it agreed that BSC would carry out the Princes Works at demonstrable cost (plus overhead and profit percentages etc)?

For the reasons stated above.

Did you consider that that was likely to result in the cost of the Princes Street works being greater than the sum allowed for these works in the Infraco price?

It was possible that would be the case.

In an e-mail dated 19 February 2009 (CEC00942183) you set out your views in relation to the Preliminaries element of works carried out on a cost reimbursement basis.

It would be helpful if you could explain the matters discussed in your e-mail?

BSC had requested that they simply apply a series of percentages to actual cost to cover preliminaries. My difficulty with that was that the concept was not correct in that the percentages taken from Schedule 4 were time related and BSC wished them to be applied to value. It was conceptually wrong. My recommendation was as stated i.e. that the preliminaries items should have been recorded as actual resources and compared with the resources in Schedule 4 with a reconciliation at the end of the process.

Were the matters in your e-mail restricted to the Princes Street dispute or were they of more general application?

BSC wished it to be applied more globally.

How was the issue resolved? What were your views on the outcome?

I recall that the principles were debated in a mediation process between TIE and BSC and that a percentage based solution was achieved albeit on a different basis and at a reduced percentage from that claimed by BSC. This allowed works to progress without further delay.

A joint meeting of the Tram Project Board and TIE Board took place on 11 March 2009 (the minutes are CEC00888781 at page 6).

A paper by Stewart McGarrity, "Infraco Options Analysis" (CEC00933931) noted (at page 3) that the budget of £545 million was likely to be exceeded in the event of any of the following, namely: significant further delays to construction; re-procurement of the civil works; if TIE did not prevail in their contractual position with regard to Infraco responsibility for design evolution or the consortium's failure to commence work where dynamic management of the programme would have allowed; or in the event that a cost plus basis was agreed to settle the contractual disputes and programme.

The paper suggested that a "safety valve" of £30 million was required.

The scope options included truncation of the Phase 1a scope i.e. delivering a shorter tram line.

Slides for the meeting noted (CEC00933351 at page 8) the same issues as previously noted in relation to Infraco Progress but that works were ongoing at Gogarburn, Edinburgh Park Viaduct, Carrick Knowe Viaduct, Verity House access road, Princes Street and Leith Walk.

When did you first consider (i) that it was unlikely that Phase 1a would be built within the budget of £545 million and (ii) that truncation of the tram line may be necessary? When were these matters first reported to the Tram Project Board and to CEC?

I do not recall at what time but it would have been around the time of the paper.

What works were ongoing at the locations noted above?

I do not know the details other than the noted locations.

Was there any reason why work was being carried out at these locations rather than at other locations?

I do not recall.

By e-mail dated 7 April 2009 (CEC00900404) Colin Mackenzie briefed his colleagues at CEC on what had been discussed at a meeting on 3 April between CEC and TIE that you had attended.

Mr Mackenzie noted (under "Action by tie") that Stewart McGarrity had described a "tipping point" in the contractual relationship, which may be reached around the end of June 2009, and which would arrive once all BSC sub-contractors were on board, MUDFA was finished and all designs had reached IFC status, as after that point it was not really in BSC's interest to be difficult in the contract execution.

Mr Mackenzie's e-mail also noted that trust required to be rebuilt both between TIE and BSC but also between TIE and CEC, Mr Mackenzie having noted that "It is very clear that the Council (particularly the TMO) was not in receipt of full disclosure from tie in the latter part of 2008 and early 2009. The Chief Executive should not have had to write formally to his counterpart in tie requiring the provision of crucial information post declaration of the Princes Street dispute".

Mr Mackenzie and his colleague, Nick Smith, drafted a report after the meeting, "Analysis re DRP" (CEC00900405). The report noted (page 2, lines 5-7) that the reality appeared to be that the Pricing Assumptions in Schedule 4 were "based on the hope that the parties would agree commercially".

What were your views on whether a "tipping point" was likely to be reached and when that was likely to happen?

I had no views on that.

How confident were you at that time that MUDFA would be finished and all IFC designs would be available by the end of June 2009?

I was not the programme manager. That was the current estimate and I had no better information.

What are your views on what was said by Mr Mackenzie in relation to CEC not having been in receipt of full disclosure from TIE in the latter part of 2008 and early 2009?

I was not party to communications therefore I do not have a view on that.

What are your views on the suggestion in the report noted above that the Pricing Assumptions in Schedule 4 were "based on the hope that the parties would agree commercially"? To what extent, if at all, did that represent the view of TIE and their

advisors at the time?

That was an opinion but I do not think it was the view of tie.

By letter dated 30 April 2009 (CEC00322635) Steven Bell sent BSC revision 8 of the MUDFA Programme.

That resulted in an INTC from BSC, who asserted that "tie's failure to procure the completion of the Utility Works in accordance with the Infracore programme, as evidenced by the MUDFA Programme Revision 8, constituted a Notified Departure. This Notified Departure, based on, inter alia, the current facts and circumstances differing from Pricing Assumptions 24, is a deemed Mandatory tie Change" (per BSC's letter dated 4 September 2009, DLA00001723).

Do you have any comments on that? Do you agree, for example, that, in principle, a revision to the MUDFA programme resulted in a Notified Departure and a Mandatory TIE Change?

In principle it may well have been interpreted as being so.

Similarly, did, in principle, any change to the design programme result in a Notified Departure and a Mandatory TIE Change?

My recollection is that it would only be a Notified Departure if the design programme changed as a result of a tie intervention and not as the normal development of the design.

An informal mediation took place between TIE and BSC between 29 June 2009 and 3 July 2009.

(see, for example, the position papers produced by TIE on the following topics for the mediation: Value Engineering (CEC00951731), On Street Supplemental Agreements (CEC00951732), Off Street Issues: RRRW, Gogarburn Bridge, Carrickknowe Bridge and Depot (CEC00951733), Misalignments between Infracore Proposals and SDS Design (CEC00951734), Hilton Hotel car park (CEC00951735), Evaluation of Change (CEC00951736), Evaluation of EOT (tie Change No 1) (CEC00951737), Earthworks Outline (CEC00951738) and Agreement on BDD1 (Drawings) (CEC00951740).

It would be helpful if you could explain who was present at the mediation, the matters discussed and the outcome?

There were several representatives present from tie, BSC and legal representatives and the mediation was split into separate discussions on each of the position paper items. Some progress was achieved on selected matters where items were agreed but no agreement was reached in the main principle items.

What was your involvement?

I was involved in discussion on several of the position paper items in presenting the tie case and listening to responses.

By e-mail dated 2 July 2009 (CEC00766380) Stewart McGarrity circulated a draft Estimate Range Sheet (CEC00766381) which showed how the (undrawn) Risk Allowance had increased from £19.7 million when the budget was approved (at

Infraco contract close) to £112.3 million on a worst case scenario (and which was subject to a number of exclusions including, for example, future INTCs and Tie Changes).

By way of overview:

Did you agree with the general break down of the risk allowance at that time (including, for example, that the largest sums in the risk allowance were in respect of "Delay-EOT2 and future" and "Design (incl BDDI to IFC)"?)

I cannot recall the detail however there was clearly a risk in respect of delay and designs that may be deemed outside of normal design development.

Were the figures in these draft documents (or similar figures) reported to the Tram Project Board and CEC around that time (and, if not, why not)?

I do not know.

Why had the risk allowance (and the total estimated cost of the project) increased so dramatically?

It was clear that there were disputed matters and an assessment of risk would be updated to reflect that.

To what extent do you consider that that increase (or the risk of such an increase) could have been foreseen prior to Infraco contract close?

The risk at that time would be based on known events and discussions at that time which were likely to be different to knowledge at the time of the award.

By e-mail dated 31 July 2009 (TIE00031088) Martin Foerder sent Richard Jeffrey BSC's "Final Settlement Proposal" (TIE00031089).

We understand that discussions then continued in the second half of 2009, in particular, in relation to the on-street works.

We further understand, for example, that parties met on 6 October 2009, and thereafter, to explore the possibility of using the Princes Street Supplementary Agreement as the basis of a wider On-Street Supplementary Agreement

What was your involvement in, and views on, these discussions?

BSC wanted to have the whole of the onstreet works to be on an actual cost basis as Princes Street however ties view was that the remaining on street works were not subject to the type and frequency of obstructions and physical issues encountered at Princes Street therefore there was no requirement to change. I had been involved in commercial discussions on this.

What were your views on the proposal to undertake the on-street works on a demonstrable costs (costs plus) basis? To what extent do you consider that that proposal was consistent with the procurement strategy set out in the Final Business Case?

As noted above I did not think that it was necessary to do so and that the remaining on street works should not be reimbursed on a cost plus basis.

The Tram Project Board met on 26 August 2009.

The minutes (CEC00848256, pages 6 and 7) provided an Overview of Current Progress with the Infracore and Utilities works.

In relation to utilities, Steven Bell provided a summary of the increased scope over and above the tendered utilities quantities (i.e. 46,575 metres and 295 chambers compared to an anticipated 27,188 metres and 190 chambers), it being noted that "Most of these scope increases can be attributed to a combination of inaccurate utilities records, unknown apparatus, congestion/obstacles and resulting re-design and alternative routeing". While there were value for money benefits arising from the increased scope, these would be tempered by programme impacts.

Carillion were at 96% completion (although challenging areas remained to be completed at Haymarket and York Place/Broughton). Farrans were undertaking the utilities diversion works to programme at the airport and were expected to be completed by the end of November 2009. Tenders for the section 1a (Newhaven Road to the Foot of the Walk) utilities were under review and a recommendation to award would be made in mid-September.

The minutes (page 8) set out that the matters that had been chosen for the formal Dispute Resolution procedure were as follows, namely:

Tranche 1 (Extension of Time 1 and Hilton Hotel car park)

Tranche 2 (BDDI Gogarburn Bridge and BDDI Carrick Knowe Bridge)

Tranche 3 (BDDI Russell Road Bridge, BDDI Earthworks in Section 7/Gogar to the Airport and Value Engineering)

Tranche 4 (to be notified, but encompassed Extension of Time 2 and SDS)

Tranche 5 (Edinburgh Park valuation, had been agreed at £50k without the need for DRP, against a claim of £450k).

What were your views on these matters?

I did not attend the Project Board meetings. Regarding the matters to go to DRP these were selected to progress the works in these areas. BSC were not progressing the works until an Estimate was agreed for changes. BSC's estimates were excessive and required detailed scrutiny. This took time however the DRP process once triggered obliged BSC to progress the works. Tranche 5 was interesting in that the original BSC Estimate was circa £1m and agreement of the Estimate was agreed at £50K.

Why were the items noted above chosen for the Dispute Resolution Procedure?

As 1 above.

An adjudication decision was issued on 13 October 2009 by Robert Howie QC in relation to the Hilton Hotel car park works (WED00000026, page 10)

Adjudication decisions were issued on 16 November 2009 by Mr Hunter in respect of the Gogarburn Bridge (CEC00479432) and Carrick Knowe Bridge (CEC00479431).

On 4 January 2010 Mr Wilson issued his adjudication decision in relation to the Russell Road Retaining Wall Two (CEC00034842).

To what extent, if at all, were these adjudications intended to establish principles of wider application, or provide guidance, in relation to the other matters in dispute?

My recollection is that the intent was two fold (1) to progress the works whilst attempting to agree Estimates and (2) testing the principles of design development.

What were your views on these adjudication decisions, including the extent to which they favoured TIE or BSC (both in relation to whether a change had occurred and in relation to the value of that change)?

Mr Howie's decision was a matter of contract interpretation that was favourable to tie. Mr Hunter's decision was a commercial one regarding the valuation of change as was Mr Wilson's. Although both considered that change had occurred both decided that the value of change was significantly less than the BSC estimates. In relation to principles Mr Hunter and Mr Wilson's view did not entirely concur.

Did these decisions give you any pause for thought as to whether TIE's strategy, including its understanding of the contract, was correct?

The decisions were opposed in their contract interpretation Mr Hunter ignoring the Employers Requirements entirely in favour of BDDI and Mr Wilson saying that the BDDI had to be considered with the Employers Requirements a position which was adopted by tie. These opposed decisions did not assist in confirming understanding. In addition the BSC Estimates were proved to be excessive particularly in Mr Wilson case. In respect of adjudication referrals tie in all cases proceeded after having full discussions and receiving technical advice from external consultants introduced for the DRP process. In some cases expert witnesses and legal advice from both DLA and latterly McGrigors who were brought in to give further opinion.

The Tram Project Board met on 18 November 2009.

The minutes (CEC00416111, page 7) noted that the Board approved the issue by TIE of a Change Order for a settlement of Extension of Time (EOT) 1 of £3.524 million (being 7.6 weeks EOT for the impacts of SDS programme v26 to v31).

It was also noted (page 7) that the Board approved the interim award of 9 months relief and 6 months costs in relation to the Programme to Complete (see also, for example, in that regard (i) paper by Susan Clark on Programme Agreement & EOT, CEC00752774, and (ii) your letter dated 13 November 2009 to Martin Foerder, DLA00001717).

There was reference to setting up a sub-committee with delegated authority to enter into an On Street Supplemental Agreement (OSSA), on a demonstrable costs basis (page 7).

Slides for the meeting (CEC00835831) gave an update on Infraco progress (page 8) and Utilities progress (page 16).

It would be helpful if you could explain, in general terms, what EOT 1 was for and why it was settled for that amount?

The effect of the SDS programme amendment was assessed as 7.6 weeks and BSC had prepared an Estimate in excess of £7m. Tie had considered this to be excessive and it was not accepted. From memory ties estimate was circa £2.8m. Following a mediation process it was agreed at £3.5m.

To what extent had provision been made for that in the risk allowance at Infraco contract close?

There was a provision but I cannot recall how this figured in it.

It would be helpful if you also explain what the reference to an interim award of 9 months relief and 6 months costs related to?

Tie had determined that BSC were entitled to an extension of time of 9 months which would provide them relief from damages however only 6 months of costs were determined as entitlement.

Was TIE's intention at that stage to enter into an OSSA, on a demonstrable costs basis for the remainder of the on-street works? What were your views on that?

BSC had been pushing for an OSSA and whilst tie were open to exploring solutions it was not in my opinion the correct thing to do since it introduced cost uncertainty and likely growth in contract price.

There was a joint meeting of the Tram Project Board and TIE Board on 16 December 2009.

The minutes (CEC00473005) noted (page 6, para 2.1) that agreement had yet to be reached with BSC in relation to a set of On Street Supplemental Agreements for the remaining works from Haymarket to Newhaven and that BSC had indicated that they were not prepared to commence works without these.

It was further noted that "The Board approved the necessary additional and robust steps to be taken in the short term to target and enforce the full range of commercial mechanisms available within the Contract".

Do you have any comments on these matters?

As noted BSC were pushing hard for such agreement however tie resisted as it did not consider it either necessary or commercially viable.

What was the commercial strategy discussed and agreed at this meeting?

I was not at the meeting and I cannot recall.

EVENTS IN 2010

By e-mail dated 4 January 2010 (CEC00584281) Richard Jeffrey forwarded the recommendations of a Peer Review carried out in December 2009 (CEC00584282). What were your views on the recommendations (including, for example, the comment (top of p2) that "In any event Tie will need to take back a lot of the 'risk' it thought it had transferred")?

I do not recall the detail but it was becoming clear that a different strategy needed to be pursued since attempts thus far were not proving to be successful. Different opinions on the DRP process and results were not totally effective and it had been determined that risks were perhaps going to be greater than first [perceived].

Were the results of the Peer Review shared with CEC?

I do not know.

By letter dated 19 February 2010 (CEC00574090) Steven Bell advised BSC of the findings of TIE's review of the Estimates provided by BSC in relation to the INTCs.

What was the purpose of that review?
 What were your views on BSC's Estimates?

Not answered.

By letter dated 19 February 2010 Martin Foerder sent TIE a detailed offer for a Supplemental Agreement covering the remainder of the On Street Works (the letter and offer are both CEC02084034).

By letter dated 26 February 2010 (CEC00368373), Richard Jeffrey rejected BSC's offer for a Supplemental Agreement covering the remainder of the On Street Works. A meeting took place on 2 March 2010 between TIE (Richard Jeffrey and Stewart McGarrity) and BSC (Richard Walker, Mr Flynn and Mr Campos) (notes were taken by Torquil Murray, CEC00574841).

Mr Walker replied to Mr Jeffrey by letter dated 3 March (TIE00086932) and sent another letter (for your attention) of the same date (CEC00655822).

What was your involvement in, and views on, these matters?

I had been involved in the commercial debate over the viability of a Supplemental Agreement and I was not in agreement with it.

CEC00655822
 letter from M
 Foerder FAO
 Steven Bell

By letter dated 1 March 2010 (CEC00578328) Martin Foerder noted that TIE had sent 312 letters in the month of February 2010 alone.

What was TIE's strategy at that time? Why were so many letters sent?

My recollection was that tie had received a large volume of correspondence and that most of the referred to letter were responses to those. I also recall that BSC had remained commercially focussed and that quality and performance were perhaps requiring to be addressed.

Was that indicative of a change in approach by TIE around that time?

I do not recall but do not think so.

By e-mail dated 2 March 2010 (TIE00089669) you sent Stewart McGarrity spread sheets showing the estimated costs of different Project Pitchfork options (TIE00089670 and TIE00089671).

(See also Mr McGarrity's e-mail dated 26 April 2010, CEC00316561, attaching an updated spread sheet, CEC00316562).

What was your involvement around that time in estimating the cost of the different options open to TIE? Who else was involved in that exercise?

I had been instructed by the board to estimate the different options that were being discussed and I did so. My direct reports (the commercial team) provided all of the supporting information.

It would be helpful if, by way of overview, you could explain the different options shown in these spread sheets, and the cost of these options?

These are detailed exercises that were carried out at that time and my recollection on the detail is a bit vague. I recall the spreadsheets were provided to me by others and me and my team were instructed to populate the commercial figures as best we

could.. The spreadsheets were for various options from 1B termination and cancellation cost; 2A would be a reprocure of civils with tie managing the civils; to 3A and 3B which was carrying on with an OSSA agreement to carrying on without

What were your views around that time on the best option realistically open to TIE? Did your views in that regard change at any time (and, if so, when and why)?

My recollection was that we had no confidence in delivery on the present route and something had to change. A reprocurement of civils may have been the preferred option by my team.

The Tram Project Board met on 10 March 2010.

The minutes (CEC00420346) noted (para 2.1) that Richard Jeffrey provided an update and explained the targeted work undertaken in a number of areas, namely, Performance Audits, Design, Programme, On Street Works, Contractual Mechanisms, Relationships and Behaviours, Financial Context and the Way Forward.

After discussion of the strategic options the Board approved a strategy that included the following (see also TIE's Project Pitchfork Report dated 12 March 2010, BFB00053258):

Continue to pursue TIE's rights under the existing contract with vigour and seek acceptable resolution of the main disputes in accordance with the agreed plan.

Actively address affordability and incremental options, including operational and financial viability.

Reach a resolution on the key matters with BSC.

Confirm a new way of working with BSC which mitigates against further dispute risk.

What is your understanding of the strategy approved by the Board at this meeting?

To continue to apply the contract as we and our legal and technical advisors understood it and to try to reach resolution on all matters with BSC.

In what way did it differ from any previous strategy (see also, for example, (i) Richard Jeffrey's e-mail dated 13 January 2010 on Project Pitchfork, CEC00586608, and (ii) Tony Rush's notes on the "commercial thrust" for Project Pitchfork, including that it should be "commercially aggressive", CEC00655099)?

I do not recall the strategy being different from my perspective.

What were your views on the new strategy?

I do not recall the strategy being different from my perspective.

On 23 March 2010 McGrigors, Solicitors, provided a Report for TIE Limited on Certain Contractual Issues Concerning Edinburgh Tram project (CEC00591754).

Why had McGrigors been instructed? What were your views, in general, on McGrigors' report?

McGrigors were introduced sometime earlier to provide legal opinion through the various matters that had been referred to DRP. The DRP process included technical and commercial advice from consultants and legal advice from DLA and further

BFB00053258
should be
CEC00142766

advice from McGrigors prior to DRP processes being implemented by tie. McGrigors provided ongoing legal support to tie.

To what extent did you consider that it provided support for TIE's understanding of the contract and strategy for resolving the dispute?

I consider that the report set out the issues clearly and that it provides some support to the position adopted by tie for the issues of contract difficulty. The issues were to what extent did design change from an engineering perspective beyond normal design development.

An e-mail dated 26 April 2010 by Stewart McGarrity (CEC00332138) attached a spread sheet (CEC00332139) and noted that, on the face of it, the Airport to Haymarket could be delivered within £545 million, the Airport to York Place might be delivered for £545 million to £570 million (depending very much on the programme and the nature of the commercial settlement with BSC) and that the Airport to the Foot of the Walk might be delivered for £600 million to £630 million (again, very much dependent on the programme).

What were your views on these figures, and options, around that time?

I was consulted for some detail and supporting figures but I was not involved in formulating the options.

Were these figures discussed with CEC?

I do not know.

By e-mail dated 2 May 2010 (CEC00348327) Stewart McGarrity noted certain concerns in relation to the reporting of the utilities final costs (following an email dated 13 April from Gregor Roberts, in the same chain, attaching a spread sheet setting out the utilities costs, CEC00348328).

It would be helpful if you could explain, by way of over view, what the spread sheet showed?

I cannot access the spreadsheet from the access information provided.

It would be helpful if you could give an indication, even in very general terms, of the extent to which the increased cost of the utilities work was due to (i) diverting additional and unexpected utilities and (ii) other factors including e.g. the delay in Parliamentary approval, problems with IFC designs (i.e. delay and quality), stakeholder requirements and traffic management issues.

I cannot recall any thoughts on this.

By e-mail dated 3 May 2010 (TIE00089466) attached a draft of a report to Council on 27 May 2010 having marked up his comments (TIE00089467) [the password to open the report is "edinburgh").

What was your understanding of, and views on, the three concerns noted in Mr McGarrity's e-mail?

I cannot recall this and I have no view on it.

By e-mail dated 4 May 2010 (TIE00682917) Steven Bell attached a table (TIE00682918) setting out the betterment sums forecast (£9,683,300) and the amounts agreed but not yet received (2,333,500).

How (including by whom and when) had the forecast betterment sums been arrived at?

The tie tram at MUDFA had been involved in assessment of betterment. Betterment is the allowances paid by the various utilities whose assets had been the subject of betterment through the works.

In general, were the forecast betterment sums received (and, if not, why not)?

I cannot remember.

A letter dated 21 May 2010 by Martin Foerder (CEC00328161) noted (at numbered paragraphs 2 and 3) that TIE had proposed that "after the issue of this instruction Infraco proceeds on a demonstrable cost basis for all Notified Departures" and that "your offer to reimburse our reasonable costs on a 'without prejudice basis' in respect of the On-street works is somewhat unsatisfactory".

What proposals or offers were made by TIE in that regard? What was BSC's response?

I cannot remember the details however I believe that tie offered to reimburse all reasonable costs. BSC did not find this satisfactory.

Further adjudication decisions were issued (1) on 18 May 2010 (by Mr Hunter, re Tower Bridge) (CEC00373726) and (CEC00325885), (2) on 24 May 2010 (by TG Coutts QC, re Section 7A-Track Drainage) (TIE00231893) and (3) on 4 June and 16 July 2010 (by R Howie QC, re Delays Resulting from Incomplete MUDFA Works) (CEC00375600) and (CEC00310163).

What were your views at the time on the outcome of these adjudications (both in respect of whether a change had occurred and in respect of the value of any such change)?

Mr Hunter decided that there was a saving to tie on the basis of his view that all revisions to BDDI were Notified Departures and that BSC's estimate was wrong. On valuation BSC's claim was not valid and in fact a reduction in the price was determined. 2 Mr Coutts QC considered that both parties arguments had merits and a split decision was made on valuation. 3 Mr Howie QC decided that BSC were not entitled to substantial delay claims that it had progressed saying it hadn't proved its case.

In June 2010, Robert Burt and John Hughes, Acutus, produced a draft Report on investigations into delays incurred to certain elements of the Infraco works (CEC00443401 and CEC00443402)).

Did you see that report at the time? Did you play any part in the preparation of that report (e.g. by providing information to the authors)? Was a final report ever produced (and, if not, why not)?

The report was prepared for the programme team. I do not recall inputting but I may have. I will have seen the report but do not recall its detail. I do not recall if a final report was issued.

It would be helpful if you could provide your views on the matters discussed in the Executive Summary (pages 4-5)?

The report provided an opinion to say that there was culpable delay on both parties for various reasons.

By letter dated 4 June 2010 (CEC00298078) Anthony Rush, TIE, wrote to Nick Flew, Managing Director, PB (Europe), advising that the design was still incomplete, including the on-street track.

By letter 5 August 2010 (CEC00337893) DLA wrote to PB expressing concern "over the programme and cost implications of the unusually high volume of design changes or alleged design changes that are still appearing and causing claims related to design development".

What was your understanding of, and views on, the matters in these letters?

I do not recall being involved or having visibility of these correspondences however the design was constantly changing and was not being produced timeously.

By letter dated 29 July 2010 (TIE00885457) Martin Foerder sent BSC's "Project Carlisle 1" proposal (CEC00183919) to TIE.

Under the proposal BSC offered to complete the line from the Airport to the east end of Princes Street for a Guaranteed Maximum Price of £433,290,156 and 5,829,805 euros (less the amounts previously paid), subject to a shortened list of Pricing Assumptions.

BSC's proposal was rejected by TIE by letter dated 24 August 2010 (CEC00221164), in which TIE responded with a counter-proposal of a construction works price (to BSC) for a line from the Airport to Waverley Bridge of £216,492,216, £45,893,997 to CAF, the amount to SDS to be determined and a sum of just under £4,922,418 in respect of Infraco maintenance mobilisation, Tram maintenance mobilisation and Infraco spare parts (see also e.g. draft slides explaining the counter offer, CEC00041965).

Which party instigated the Project Carlisle proposal and why?

I do not know - I was not involved in its concept.

To what extent were you involved in the Project Carlisle proposals and discussions?

Only insofar as I was asked to provide supporting pricing information when requested to do so.

What were your views, in general, on the Project Carlisle 1 proposal and why it did not resolve the dispute?

I do not know as I had not been involved in discussions. It appeared to be an attempt to get a Guaranteed Maximum Price which would relieve the project of

disputes and result in a way forward. I do not believe the parties could agree terms especially the price.

On 7 August 2010 Lord Dervaird issued his adjudication decision in relation to the Murrayfield Underpass Structure including, in particular, whether, under clause 80.13 of the Infraco contract, TIE were entitled to instruct BSC to carry out Notified Departures without a price having been agreed in advance (BFB00053462).

What were your views on the outcome of that adjudication decision (including the extent to which the decision favoured TIE or BSC)?

BSC raised adjudication proceedings to demonstrate that it did not require to carry out works that it considered to be Notified Departures without prior agreement of price. The adjudicator agreed with that proposition.

E-mails dated 20 and 21 August 2010 (TIE00683317) indicate difficulties or differences between the TIE team and Tony Rush's Project Carlisle team.

Were there any such difficulties or differences? If so, what were they? Were they resolved?

There was no issue - it was a minor misunderstanding of the makeup of some rates and prices. I believe it was resolved by proper dialogue.

By letter dated 11 September 2010 (TIE00667410), BSC submitted its "Project Carlisle 2" proposal to TIE, in which BSC offered to complete the line from the Airport to Haymarket for a Guaranteed Maximum Price of £405,531,217 plus 5,829,805 euros, subject to the previously suggested shortened list of Pricing Assumptions.

By letter dated 24 September 2010 (CEC00129943), TIE rejected BSC's proposal.

Mr Foerder responded by letter dated 1 October 2010 (CEC00086171).

What were your views in general on the Project Carlisle 2 proposal and why it did not resolve the dispute?

I had not been directly involved however my recollection was that we could not agree a fair price and consequently it wasn't agreed.

Between 9 August and 12 October 2010 TIE served ten Remediable Termination Notices (RTNs) and three Underperformance Warning Notices (UWNs) on BSC.

The RTNs and BSC's responses are found at (CEC02084518) to (CEC02084529).

The UWNs are (CEC00378695), (CEC00167342) and (CEC00164758).

In response, BSC both denied that the RTNs constituted valid notices and, in some cases, also produced Rectification Plans.

In general, what were your views on TIE's RTNs and UWNs?

I was not involved in the RTN's and UWN's and had no view.

In general, what was BSC's response?

BSC denied them.

Were any of these RTNs or UWNs taken further by TIE and, if not, why not?

<p>I do not think they were but I do not know why.</p>	
<p>On 22 September 2010 Mr Porter issued his adjudication decision in relation to the Depot Access Bridge S32 (BFB00053391). What were your views on that adjudication decision (both in relation to whether there had been a change and in relation to the value of any such change)?</p> <p>Mr Porters decision was that there was a change but he disagreed with BSC's Estimate and valued it significantly less.</p>	
<p>By letter dated 29 September 2010 (TIE00409574) Martin Foerder advised TIE that BSC were no longer prepared to carry out "goodwill" works (i.e. works which were the subject of 94 outstanding INTCs listed with the letter, in respect of which no TIE Change Order or an agreed Estimate existed, and which BSC considered that they were not required to carry out under the contract). What works had been carried out by BSC after Infraco contract close on a "goodwill" basis?</p> <p>I do not recall the detail but I understand the works were as attached to the letter.</p> <p>Why did you understand BSC to have decided to stop carrying out "goodwill" works?</p> <p>I do not remember.</p> <p>What was the effect of that decision on the tram project?</p> <p>It continued a period of disagreement.</p>	
<p>By e-mail dated 25 October 2010 (CEC00798043) you set out your views on the issue of Consortium Preliminaries. It would be helpful if, by way of overview, you could explain parties' respective positions on that issue and how the issue was resolved?</p> <p>BSC had been making application for Consortium Preliminaries relative to time but not related to progress. Progress was behind time therefore tie considered that an adjustment required to be made for prelims recovery to be commensurate with progress (prelims were being paid for Changes separately). BSC considered that they were entitled to be paid for Consortium Preliminaries irrespective of progress. Counsel opinion was sought and received. This matter went to DRP and the decision was issued around the time of Mar Hall. My understanding of the decision was that it supported ties position.</p>	<p>25 October 2010 should be 25 October 2009</p>
<p>By e-mail dated 12 November 2010 (CEC00113758) Gregor Roberts circulated a note (CEC00113762) and spread sheet (CEC00113763) setting out the estimated costs for the different options. How and by whom were these estimates arrived at? What part, if any, did you play?</p> <p>There was a mediation process underway at that time relating to the application of Consortium Preliminaries and Escalation.</p>	

What were your views on these estimates and the different options?

Answer not provided.

On or about 26 November 2010 Lord Dervaird issued his adjudication decision in relation to Landfill Tax (BFB00053475).

What were your views on the outcome of that adjudication (including whether it favoured TIE or BSC)?

The decision was in favour of BSC but tie did not agree.

An e-mail dated 9 December 2010 from Gregor Roberts set out a number of issues that required to be attended to (TIE00697469) (see also e.g. Mr Roberts' e-mail dated 16 December 2010, TIE00108822, with attachments, TIE00108823 and TIE00108824).

What was the purpose of Mr Roberts' e-mail of 9 December?

No answer provided.

What was your involvement in these matters?

No answer provided.

EVENTS IN 2011

By e-mail dated 11 February 2011 (TIE00109152) Gregor Roberts noted that you had mentioned that some figures had been received from Cyril Sweett which would verify that TIE's figures were "prudent".

What was Cyril Sweett's involvement?

There was a significant difference between BSC and tie in the valuation of the off street works to completion. The figures for off street works completion were going to be an issue going forward so tie decided to have the figures independently checked. Five QS firms were interviewed and one of them, Cyrill Sweett was selected to do this piece of work i.e. to independently value the off street works to completion. This exercise was carried out completely independently from tie and the outcome was a range of figures that were close to the tie calculations and much lower than BSC's proposals. I assume that is why I considered tie's figure to be prudent.

Cyril Sweett were employed to carry out an independent cost check for the off street works from Airport to Haymarket.

What were their views?

Their independent cost report was in line with the tie estimate.

On 24 February 2011 BSC provided its "Project Phoenix Proposal" to complete the line from the Airport to Haymarket for a total price of £449,166,366, subject to a shortened list of Pricing Assumptions (BFB00053258).

What was your involvement in considering that proposal?

My recollection was that I was asked to review the commercial proposals i.e. the cost build up spreadsheets. My view was that the tie commercial team could not concur with the BSC cost breakdowns provided particularly in the off street works price which the commercial team had assessed and such assessment was supported by an independent check by QS firm Cyrill Sweett.

What were your views on the proposal?

As 1 above.

Mediation talks took place at Mar Hall between 8 and 12 March 2011. TIE prepared a mediation statement (BFB00053300) as did BSC (CEC01927734).

Sue Bruce delivered an opening statement on behalf of CEC (CEC02084575) and Richard Walker delivered an opening statement on behalf of BSC (TIE00670846).

We understand that a statement "ETN Mediation – Without Prejudice – Mar Hall Agreed Key Points of Principle" was signed by the parties on 10 March 2011 (the principles of which were then incorporated into a Heads of Terms document (CEC02084685).

Which organisations were represented at the mediation? Who were the lead individuals for each party? Were you present and, if so, what was your role?

The mediation was attended by many people including the Mediator, tie and its legal representatives; CEC; Bilfinger Berger; Siemens; CAF and each of their many legal representatives. Apart from the opening statements which were made in a grand hall with everyone present the Mediation then splintered off to several different parts. I was not involved in all of the activities going on. CEC/TIE were led by Sue Bruce and CEC's advisor Colin Smith. From the Consortium there were parts lead by Bilfinger (Richard Walker) Siemens (Michael Flynn) and CAF.

What discussion and negotiation took place that week? Was there, for example, a series of offers and counter-offers?

The week was fragmented into different subject matters with these being discussed in different rooms. My involvement was to provide figures and information to the lead players when requested to do so in relation to discrete matters being discussed. It was only on the penultimate day that I remember offers/counter offers were being made.

To what extent, if at all, did TIE/CEC and BSC's positions change over the course of the mediation?

In my understanding although I was not present at all of the discussions and especially not at the principles discussions was that Positions had not changed significantly.

What was the outcome of the mediation i.e. what were the main matters agreed? Were the Heads of Terms noted above agreed at the mediation or in the following weeks or months?

Heads of Terms and a Price was discussed on the last day. The Heads of Terms

were brief and were intended to be fleshed out over the coming weeks to result in a settlement agreement.

What were your views on the outcome of the mediation?

It served its purpose which was to bring an end to the long running disputes.

What did parties envisage would happen after the mediation to give effect to what had been agreed, and within what timescale?

An immediate works package was set up to remobilise and a settlement agreement was being reviewed by both parties following the Heads of Terms discussed at Mar Hall.

In April 2011 Cyril Sweett produced an Initial Due Diligence report (TIE00096741). What was the purpose of that report?

Cyril Sweett were requested to carry out an independent commercial review.

What were the main conclusions? What were your views?

The main conclusions as I recall were that the review did not broadly differ from the commercial reviews being carried out by the tie commercial team at that time.

In May 2011 Cyril Sweett produced an Extension of Time Commercial report (TIE00097227). What was the purpose of that report?

Cyril Sweett were requested to provide an independent review of the costs associated with extension of time based upon a split of culpability from a report by delay analysts Acutus.

What were the main conclusions? What were your views?

The main conclusions as I recall were that the review did not broadly differ from the commercial reviews being carried out by the tie commercial team at that time.

On 29 June 2011 McGrigors produced a "Report on Certain Issues Concerning Edinburgh Tram Project – Options to York Place" (USB00000384).

What was your understanding of the purpose of that report?

My understanding is that McGrigors were advising tie/CEC on their options going forward in the event that a settlement agreement was not entered into.

What were your views on its main conclusions?

I was not directly involved at that time - I recall that CEC had taken over the project management role following Mar Hall.

On 30 June 2011 the Council were advised of the options for the tram project in a report by the Director of City Development (CEC02044271).

It was recommended that the Council complete the line from the Airport to St Andrew Square/York Place, at an estimated cost of between £725m and £773m, depending on the risk allowance.

Atkins produced a short "Independent Review" report to "validate the processes and procedures carried out in the McGrigors reports ... and to give a sense check on the figures taken forward to the Budget Analysis spread sheet produced by [CEC]" (CEC02085600) (see also, Atkins' final report on the "Edinburgh Tram – Business Case Audit" produced in July 2011, (CEC01914308).

Did you see any of these reports and, if so, what were your views?

I do not recall seeing these reports.

In an e-mail dated 1 July 2011 (TIE00416390) you stated that the on-street price submitted by Siemens was "grossly excessive".

In an e-mail dated 8 July 2011 sought to explain why Siemens sought to add £14 million to the target On Street price agreed at Mar Hall (TIE00688781).

See also Vic Emery's e-mail dated 22 July 2011 (TIE00688914), Steven Bell's e-mail dated 5 August 2011 (TIE00101021), Axel Eickhorn's e-mail dated 8 August 2011 (TIE00358454) and a TIE report (TIE00691426).

What was the issue with the price submitted by Siemens?

I had a meeting with Siemens to agree the on street price. Siemens had a submission that did not reconcile with the tender price and that was made clear to them through various questions. I had built up a price based on contract information but Siemens price was considerably higher without justification. Siemens had requested a price for install of on street of £20m. There was only a part of the on street works outstanding and when compared to tender allowances the Siemens price could not be reconciled.

How was the matter resolved?

This was discussed at a meeting with Bilfinger, Siemens, CEC and the remaining tie and Siemens did not justify their price. I was no longer involved after that and I do not know how it was resolved.

What were your views?

My views were that I was asked for an opinion on the Siemens on street price proposal at that time and I did not believe it to be justified.

On 25 August 2011 the Council were given a further update by way of a report by the Director of City Development (TRS00011725).

The report noted that Faithful and Gould had worked with Council officers in validating the base budget for the proposed works..

There was a requirement for funding of up to £776m for a line from St Andrew Square/York Place (comprising a base budget allowance of £742m plus a provision for risk and contingency of £34m).

Additional funding of £231 was required, which would require to be met from Prudential borrowing, at an estimated annual revenue charge of £15.3m over 30 years (which, applying a discount rate, resulted in a present day value of the

additional borrowing of £291m).

At the Council meeting, members voted in favour of an amendment that a line should be built from the Airport to Haymarket.

The Faithful and Gould report dated 19 August, on the Post Settlement Agreement Budget, is CEC02083979.

Again, did you see these reports and, if so, what were your views?

I do not recall seeing this report however I do recall meeting with Faithfull and Gould to provide some information as requested. I do note from the F&G report that they concurred with many of my commercial views at the time.

On 2 September 2011 parties entered into a Second Memorandum of Understanding to extend the timescale for entering into a settlement agreement until 14 September 2011 (TIE00899947).

What were your views on that agreement?

I was not privy to many high level documents at this time rather I was providing historical pricing information. I do not recall seeing this.

In an e-mail dated 13 September 2011 you set out your views on a number of high level issues (TIE00689900).

What was the purpose of that e-mail?

CEC had appointed Turner and Townsend to project manage going forward and my email provided a commentary (using my historical pricing knowledge) to T&T/CEC of my views on the proposed Schedules of Rates.

What was the outcome of these issues?

I do not recall. My involvement of the high level issues were limited at that time.

What were your views?

My views were as noted in my email.

A full and final Settlement Agreement was entered into on 15 September 2011 (BFB00005464).

What were your views on the settlement agreement?

I do not think I was provided with a copy of that however the agreement set out the way forward to complete the works and to eliminate any previous disputes.

By e-mail dated 24 October 2011 (TIE00692048) Steven Bell forwarded a note you had prepared regarding SDS fees uplift (TIE00692049).

It would be helpful if you could explain that issue?

I cannot recall all of the background to this but in general terms SDS were requesting 17.5% uplift to cover preliminaries. This had not been paid during the currency of the works however the definitions inserted into the MOV 2 provided an entitlement to claim this.

What were your views on what had been agreed?

My views were as per my note in that the MOV 2 provided entitlement for SDS to claim an uplift of 17.5% on changes.

For completeness, when and why did you leave TIE?

I was (along with all other tie staff) offered voluntary redundancy around August/September 2011 following the appointment of Turner and Townsend project management and cost management and the continuing role of Colin Smith as CEC advisor. I accepted voluntary redundancy however I was retained for project knowledge until December 2011 when I left the project.

PROJECT MANAGEMENT, GOVERNANCE AND CONTRACTORS

In relation to project management:

Which body or organisation do you consider was ultimately responsible for ensuring that the contracts and works were properly managed, including managing the interface between the different contracts and works?

All concerned.

Did you have any concerns at any stage in relation to TIE's management of the tram project or the performance of any of TIE's senior personnel or Board members?

I can only comment on the post contract phase and I would say that everyone at tie put in a lot of effort to allow the performance of the works.

Did you have any concerns at any stage in relation to TIE's reporting to CEC (or others)?

I did not have enough visibility of that to comment. I was not involved in all communications.

In relation to CEC:

How were important matters relating to the tram project reported by TIE to CEC (including by whom and to whom)?

I did not have enough visibility of that to comment. I was not involved in all communications.

How were the views and requirements of CEC fed back to TIE?

I did not have enough visibility of that to comment.

Did you have any concerns at any stage in relation to the performance of senior CEC officials or councillors?

No.

In relation to the Tram Project Board (TPB):

How were important matters relating to the tram project reported by TIE to the TPB

(including by whom and to whom)?

I did not have enough visibility of that to comment.

How were the views and requirements of the TPB fed back to TIE?

I did not have enough visibility of that to comment.

Did you have any concerns at any stage in relation to the performance of the TPB or any members of the TPB?

No

In relation to TEL:

How were important matters relating to the tram project reported by TIE to TEL (including by whom and to whom)?

I did not have enough visibility of that to comment.

How were the views and requirements of TEL fed back to TIE?

I did not have enough visibility of that to comment.

Did you have any concerns at any stage in relation to the performance of TEL or any members of TEL?

No.

In relation to the Scottish Government (SG) and Transport Scotland (TS):

How were important matters relating to the tram project reported by TIE to SG/TS (including by whom and to whom)?

I did not have enough visibility of that to comment.

How were the views and requirements of SG/TS fed back to TIE?

I did not have enough visibility of that to comment.

Did you have any concerns at any stage in relation to the performance of SG/TS or any ministers or senior officials?

No.

What are your views, with the benefit of hindsight, on the decision taken around July 2007 that TS should play a lesser role in the governance of the project?

My view is that it would not have made a difference.

In relation to the inter-action between the different bodies and organisations involved in the project management and governance of the tram project:

How were important matters relating to the tram project reported between these different bodies and how, and by whom, were decisions taken in relation to these matters?

I did not have enough visibility of that to comment.

What were your views in relation to the governance arrangements for the tram project including, in particular, the effectiveness of the governance arrangements?

I did not have enough visibility of that to comment.

Did you have any concerns at any stage in relation to the governance arrangements?

No.

Which body or organisation do you consider was ultimately responsible for ensuring that the tram project was delivered on time and within budget?

All concerned.

In relation to the main contractors involved in the tram project:
What were your views on the performance of each of the main contractors?

My view is that the Bilfinger Berger's focus was on commercial issues and performance became of secondary importance, Siemens followed the commercial lead set by Bilfinger but performed when required and CAF were very professional and competent in all of my dealings with them.

To the extent you had concerns in relation to any of the main contractors, what did TIE do to try and address these concerns? Were these steps successful (and, if not, why not)?

In my view tie tried to accommodate the contractors to the best of its ability but were often backed into a corner commercially.

Final Thoughts

By way of final thoughts:

How did your experience of the Edinburgh Trams Project compare with other projects you have worked on (both previously and subsequently)?

The project was extremely difficult and the most difficult of my career. The project was very stressful for me and many others and came with far too much acrimony and too many disagreements which were never satisfactorily resolved.

Do you have any views on what were the main reasons for the failure to deliver the project in the time, within the budget and to the extent projected?

There were too many reasons to summarise however design control and timeous completion of the design would be a key factor.


Do you have any comments, with the benefit of hindsight, on how these failures might have been avoided?

It is too complex to comment summarily on this.

Are there any final comments you would like to make that fall within the Inquiry's Terms of Reference and which have not already been covered in your answers to the above questions?

No.

I confirm that the facts to which I attest in the answers contained within this document, consisting of this and the preceding 54 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

WITNESS 

DATE 14 April 2017

Post script

Page 40 "Not Answered"

This is answered in my note to you

"BSC's Estimates were usually excessive and not proven either by subsequent agreement or determination by adjudicators to be realistic. BSC's view was that all they had to do was to provide an Estimate (not necessarily a completed one) and it was for the to assess the value and reach agreement. This placed the in a difficult position since its options were often either to accept an Estimate that it could not support or take it to DRP both in order to progress the works."

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answers

Mr Roberts email was to request my assistance with the calculation of various options being considered by an board in advance of mediation

I provided information on the options as requested

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.**

Additional Questions For Mr Dennis Murray (Reference Letter 31 August 2017)

Question	Response
1. Did Andrew Fitchie inform you in October 2007 that he had been told by Bilfinger Berger (BB) that the works would cost £80m more than the tender sum?	I was not employed by tie until January 2008 so I would not have been around at that time. (October 2007). I was not part of the procurement team which had been in place for many months beforehand.
2. Did Andrew Fitchie report to you that BB were not willing to enter into a fixed price deal?	I was not part of the procurement team and not employed by tie until January 2008. I do not recall this being said.
3. Did Andrew Fitchie report to you that he had doubts about the sub-contracting chain BB said they had in place?	I was not employed by tie until January 2008 and I do not recall this being said.
4. In what context were you told of these matters?	I do not recall receiving information or reports on the matters noted.
5. What did you do with the information and with whom did you discuss it?	I do not recall receiving information or reports on the matters noted nor any discussions surrounding them.
6. What difference did it make to the decisions as procurement of INFRACO?	I was not part of the procurement decision making – BBS were the preferred bidder and the only contractor involved when I commenced in 2008.
7. Was it discussed in the context of reporting to CEC and, if so, what decisions were taken in relation to it?	I do not recall being involved in discussions or reports to CEC in relation to the matters noted.
8. Did Andrew Fitchie report to you on 6 February 2008 (or any other date) that Pricing Assumption 1 in Part 4 of the Schedule was fixed and could not be negotiated and that it would be difficult to claw anything back?	I commenced employment on the project in January 2008. I do not recall having a report concerning the limited negotiation of Pricing Assumption No 1 however I was given to understand that it was borne out of a procurement meeting with BBS prior to my involvement on the project in 2008.
9. By email dated 22 April 2008, you sent a copy of Part 4 of the	My principal involvement in Schedule Part 4 was to agree and insert technical and pricing schedules of rates for both BB and S

<p>Schedule of the Draft Infraco contract to Andrew Fitchie and Stewart McGarrity (CEC01374219). What did you expect each of them to do with it?</p>	<p>which would be used to value post contract changes if and when they occurred. I was going to be directly involved in the valuation of any post contract Changes therefore my main objective was to have a reference to agreed tender rates within the Contract which would be competitive rather than to price any post contract changes from first principles. During the early part of 2008 I worked with BB and S to ensure that we captured the rates and prices within the Contract through Schedule Part 4. I was also involved with the procurement team in discussing and agreeing some of the technical aspects of the Pricing Assumptions in parallel with the rates and prices for post contract Changes. My email referenced CEC01374219 provided the latest agreed pricing schedules for finalisation and inclusion in the completed Schedule Part 4.</p>
<p>10. Did Andrew Fitchie recommend at any time that the award of the INFRACO contract should be delayed?</p>	<p>I do not recall this.</p>
<p>11. If so, when and why did he make his recommendation and what was the response to it?</p>	<p>I do not know.</p>
<p>12. Were you involved in amendment to Clause 80 of the Infraco contract (TIE Changes) in the weeks before close?</p> <p>13. Why were changes required and how did they come about?</p>	<p>I was not involved in the drafting of core contract clauses.</p> <p>Several meetings took place between tie and its lawyers and BB/S/CAF and SDS together with their respective lawyers to evolve and close out contract drafting in parallel with the many schedules that would form part of the contract.</p>
<p>14. What was the effect of the changes?</p>	<p>Any changes would be to incorporate an evolution of the discussions at that time to align with the schedules and other parts of the overall contract drafting.</p>
<p>15. What role did Andrew Fitchie play in drafting the changes and advising upon them?</p>	<p>DLA Piper were tie's advising lawyers and they completed the contract drafting alongside the lawyers acting for each of the consortium of contractors and designers. Tie assisted with and provided technical and pricing input where appropriate.</p>
<p>16. Did you tell Andrew Fitchie that</p>	<p>I do not specifically recall telling Andrew</p>

<p>your BBS counterpart in Edinburgh had said that the contractors advised them not to mobilise but to apply resources to building up claims?</p>	<p>Fitchie this and I do not recall my BBS counterpart stating this however it was apparent in the early stages that there was an emphasis on the mobilisation of commercial resources rather than construction resources.</p>
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DENNIS MURRAY: ADDITIONAL QUESTIONS 16 NOVEMBER 2017

Background

1. When you arrived on the project (Jan 2008) you said in your Q&A that you understood the procurement phase to be in its final stages with contract close imminent.
 - How did you know the procurement phase was in final stage?
I recall that this was advised to me at interview stage in November 2007 and further advised when I joined tie in January 2008. My role was explained to be a post contract commercial management role.
 - When did you think the contract would be concluded?
When I joined tie in early January 2008 I recall that I was advised that the plan was to conclude procurement and have contract close by end January 2008.
 - If your role was to take on post contract signature you must have known when that was expected?
At interview I was advised contract close was imminent and when I joined I was advised contract close was anticipated by end January 2008.
 - Were you recruited to replace someone who was leaving? If so, who was that and what had his or her role been?
I was not recruited to replace someone who was leaving I was recruited for a new role of post contract Commercial Management under the title of Commercial Director.
2. You said in your Q&A that you understood that a fixed price had been agreed for the INFRACO works: explain how you knew that?
I expect I was advised of that when I joined in January
3. Who recruited you to the project?
I was interviewed by Steven Bell and the then HR Director Colin McLaughlin in November 2007. It was made clear that I would be the post contract commercial lead reporting to Steven Bell who would become the post contract Project Director.

- What was your job description? (Please provide a copy if you still have this)
My job title was Commercial Director. (I cannot find my terms but I recall they were very brief and generic)

- You were not brought in as a procurement manager and therefore did this aspect become part of your remit? If so explain the handover?
Procurement did not become part of my remit. There was a procurement team in place led by the Procurement Director and Procurement Manager.

4. Were you told what was expected of you when you took the position?

I was advised that I would be responsible to support Steven Bell the Project Director in all post contract commercial management matters in relation to upcoming Infracore contract. That would involve amongst other things, management of post contract change, agreement of monthly valuations and milestone payments and commercial reports for monthly progress meetings.

- Did that change?
That role did not change.
- Were you expected to take on the procurement when Geoff Gilbert left or was that given to Jim McEwan?
I was not expected to take on the procurement role. The procurement team demobilised and Geoff Gilbert left around late April I assume when the procurement was considered to be complete. As I recall he returned on an ad hoc basis to deal with any outstanding procurement matters after he left.

5. Bob Dawson was the Procurement Manager (Aug 2006 – March 2008). What did you understand was his role in the project?

Bob Dawson worked hand in hand with and under the direction of Geoff Gilbert supporting Geoff in all procurement matters. In terms of the project I understood Geoff to be Bob's line manager. Geoff and Bob had a team of commercial people working directly with them, some of whom were retained for post contract duties.

- Do you know why he left before contract closed?
I do not know why he left when he did but I assume it was with the agreement of his line manager Geoff Gilbert.
- Did you take on his work?

I did not take on his work.

6. Were you and Geoff Gilbert working together?

I did not spend much time with Geoff during the procurement close out. I had difficulty getting face to face with Geoff as he always seemed to be really busy at his desk or at meetings. Geoff worked alongside DLA Piper and the executive team to close out the procurement and finalise contract close. When I joined in early January'2008 Steven Bell asked me to sit in at certain meetings which would enable me to gain some early knowledge of the project. There were numerous meetings ongoing on a daily basis and I did attend some meetings with Geoff and some with Steven or others when I was invited to do so.

- If so who was doing what?

Initially I was in listening mode at meetings however during the period to Contract close. I did become involved in collecting pricing data and populating certain commercial schedules for inclusion in the Appendices to Schedule Part 4 and Schedule Part 5. The Appendices in SP4 contained the Contract Sum Breakdown, the Schedule of Rates and other pricing data. The work I was involved in related to agreement and conclusion of the Milestone Payment Schedule (eventually included in SP5), the insertion and inclusion of a Contract sum analysis, detailed schedule of rates and preliminaries breakdown for Bilfinger Berger Civils works, and a Contract Sum Analysis for Siemens works. Whilst this information was not essential in relation to procurement of the Infracore contract I did this to ensure that I would have sufficient tender pricing information included in the contract documents for use when my post contract commercial management role would commence.

- When Geoff Gilbert left did you assume the role that he had been performing in all aspects? If not, who did take over Geoff Gilbert's role?

I did not assume Geoff Gilbert's role in any way. I assume Geoff left when he and the executive team considered that the procurement function was complete. Geoff did return to handle some discrete matters after he left.

Schedule Part 4

7. Bob Dawson indicated that although he prepared the initial template of Part 4 of the Schedule to the INFRACO contract (Pricing) ("SP4") you were the one involved in negotiations. Is this your understanding?

The negotiations referred to by Bob Dawson presumably relate to my involvement in agreeing pricing data with BBS and creating Appendices to include them. Certain data was inserted into the contract documents to provide a contract mechanism for the agreement of (a) monthly interim valuations (via Milestone Payment Schedule in Schedule Part 5) and (b) valuation of changes (Schedules of rates in schedule part 4). I became involved in the finalisation of the necessary data that required to be inserted into Schedule Part 4 to make the post contract processes work such as the Milestone Payment Schedules, the schedule of rates, preliminaries breakdowns and contract sum analyses. I became involved in this since it would be to the post contact commercial teams advantage to have agreed fully populated pricing information taken from tender information to be included within the contract documents for use if changes occurred post contract. Such changes would be then priced against a fully populated schedule of rates and sum breakdown rather than being subjective.

- Did you take over this role from Bob Dawson?

I did not take over any of Bob Dawson's procurement manager role.

8. On 6 February 2008 Bob Dawson sent you an email with an attachment consisting of the then current draft of SP4 with comments from Andy Steel, TSS (CEC01448355).

- What did you do with it?

I do not recall doing anything with it. I assume I was copied in for information only.

- Other than this, did you have any advice from engineers as to what was proposed?

Not that I can remember

- What action did you taken in relation to the comments made by Mr Steele?

None that I remember

9. Geoff Gilbert says that you were involved in some of the negotiations for and drafting of SP4. Please tell us about them.

My involvement was as noted in Q7 above. I was not involved in drafting. I did collect and agree the data for inclusion in the Milestone Payment Schedules and schedules of rates.

- How did you support Geoff Gilbert in respect of the preparation of SP4?

My involvement was as noted in Q7 above.

10. Who briefed you on where matters stood with SP4?

I do not recall having any briefing other than being copied into certain emails and attending certain meetings.

- What was your goal or objective in these negotiations?

My objective was as detailed in Q7 above which was to ensure that post contract there was a workable set of information agreed and included in Schedule Part 4 that would enable the administration of the monthly valuations process and the change process with as little subjectivity as possible.

11. What stage had the draft reached when you arrived?

I do not think that I was copied to drafts until February and at that time it required data to be inserted to allow its post contract operation such as schedules of rates and summary of previously agreed prices. I assisted in that process.

- Were you given a copy of the agreement referred to as the Wiesbaden agreement which concluded in December 2007?

I was given a copy of it but I cannot remember when.

- Were the essential terms of SP4 fixed or were they still fluid?

I understood that the essential terms of SP4 were fixed however details such as some of the technical Pricing Assumptions were still being developed. And of course the schedules of rates were not complete at that time. Appendices were added to allow inclusion of relevant data and pricing information for use in change management.

- What role (if any) had legal advisers played and was it intended that they would play in the remainder of the negotiations?

As far as I remember the legal advisers worked hand in hand with Geoff Gilbert during the procurement process. I recall that a DLA Piper representative was usually present at the meetings I attended.

- What legal advice did you receive throughout the period up to close?

I do not recall receiving any specific legal advice however I would have provided drafts of the agreed Milestone Payment Schedules and schedules of rates that I suggested should be included in the SP4 (eventually included in SP4 Appendices) to legals prior to finalisation with BBS.

12. On 14 February 2008, Bob Dawson sent you a copy of SP4 with comments from Geoff Gilbert. Why? What did you do with it?

I was being copied into things for information at that time. I do not think I did anything with it at that stage.

Contract Terms

13. The Base Date Design Information is defined in para 2.3 of SP4 as being: “the design information drawings issued to Infracore up to and including 25th November 2007 listed in Appendix H”

Andrew Fitchie says that this wording was specifically given to him by you as the only practical way to deal with the complete absence of any agreed physical record of what design drawings the Infracore proposals had been based upon. Is this correct?

I do not specifically recall this but I expect Andrew would have discussed this with me as it may affect post contract change. The issue was that a set of drawings required to be inserted into the contract. The concern was that there was no definitive drawings list included in the contract documentation. It was suggested and agreed that we include a set of drawings in SP4 and that list would be included in Appendix H. It was intended that the full list (and copies of all drawings) would be provided by BBS however they never did and my recollection was that this was changed to be described as those drawings in the electronic database at the date noted.

Close Report

14. An email from Graeme Bissett of 12 May 2008 (CEC01338846) has attachments which make up a suite of documents reporting on contract close. The process of

preparing these started with another email from Graeme Bissett of 15 January 2008 (TIE00020436). That email was copied to you as one of the people to be involved in preparing the documents.

- What was your involvement in drafting these documents?

I was not involved in drafting close documents. The email from Graeme Bissett was dated 15 January'08. The note reflected the imminent close (targeted for 25th January) and need to have documents drafted by 18th January. I expect I was copied into this for information only since I only arrived on the project one week earlier than Graeme's email.

- Were you content with the statements made in this suite of documents?

I expect that I had a very general read through but I had fairly limited project knowledge and the reports would have been produced too soon after my start date for me to make meaningful comment.

Lessons Learned

15. Graeme Bissett asked the individuals involved in procurement for their views to assist him in putting together a lessons learned paper as they were all absorbed in the process. Your response is in CEC01288688. Please explain / comment on this?

In terms of the best things my view at that time was that in the time I had been there I had witnessed a lot of effort being spent on the Novation of SDS to Infracore and this process had been difficult but it was ultimately concluded. Secondly BBS had requested some price increases which had set the deadlines and team spirit back a little however that was overcome by negotiation and agreement.

In terms of the weaknesses I noted at that time that the procurement process had got into a single source preferred bidder stage too early which resulted in difficulties in the later stages of price negotiation. I also noted that the Novation was a complex matter and the two parties had been difficult to manage during the process. I had also noted an observation that there were many lawyers involved in the process and that had prolonged matters.

Activities under the contract

16. Andrew Fitchie of DLA states that you had said to him that your BBS counterpart at Edinburgh Park, Colin Brady, had told you off the record that Bilfinger Berger Germany was monitoring all contractual exchanges and were under instructions not to mobilise but to invest in building claims based upon the state of SDS design and the chronic MUDFA delay. Can you comment on this?

I do not recall the specific conversation but if Andrew remembers that then I would not disagree. I do recall the slow start to construction and the position that BBS were taking to change management. Tie were very concerned at the slow mobilisation and conversations were occurring at that time over this matter.

17. The Princes Street Supplemental Agreement (PSSA) concluded in 2009 made provision for payment to be made on the basis of “demonstrable cost”.

- What work was done by you to assess this before the agreement was concluded?

A lot of work was carried out on this in a short period of time prior to implementation. Numerous meetings were held to assess the scope of the works and in particular the price of the works for the relevant Princes Street section. I recall an exercise to work out the price of the Princes Street section using the Contract Price and an estimation of change value to incorporate the unknown underground obstructions. This was played against an anticipated cost on a “demonstrable cost” basis. In theory the price for both should have been similar but we had difficulty in agreeing the original Contract Price element with BBS. Regarding demonstrable cost I had spent some time with BBS commercial team in reaching agreement of a schedule of labour and plant resource costs which were ultimately included in the PSSA. This agreed schedule would be the basis of the demonstrable cost for the resources spent computed against allocated time on site. We therefore had a controlled commercial basis for calculating the demonstrable cost. The agreement was to omit the measured works included in the Contract Sum for the relevant section of Princes Street and replace that with the demonstrable cost calculated by applying recorded resources at site to the agreed demonstrable costs scheduled in the PSSA. Tie would have a site presence to allow checking of daily resources.

- What work did you do in relation to claims for payment under the PSSA?

BBS applied for a monthly valuation for PSSA works as it was required to do. The tie commercial team had considerable difficulty in analysing and reaching agreement of amounts due partly to the way the daily site resources were being presented and partly that the amounts to be deducted for relevant contract works were still subject to disagreement. Regarding site resource cost claims my recollection was that tie had disallowed costs where they were not properly signed off at site and this was disputed. The valuation of this work claimed by Infraco was therefore not being accepted by tie at the amounts claimed by Infraco and the differences increased month on month. A dispute occurred on the valuation of this work which was heading for adjudication. As far as I can recall the disputed valuation (which from memory was over £2m) remained unresolved until Mar Hall mediation.

- Did it result in an increase in costs to TIE? If so, to what extent?

My recollection is that if agreement was reached on the contract works to be deducted and that the disallowed costs were ultimately agreed as tie's assessments then any increased cost would have been not that significant. However the costs were disagreed. The value of this work c £2m was in dispute at the time of Mar Hall.

18. Can you explain the 15 points referred to in your email to Richard Walker on 28 November 2009 (DLA00002487) and the discussion that preceded it?

Discussions on this commenced around September/October '08 when it was becoming clear that the position being adopted by BBS in relation to change was proving to be difficult to achieve the progress of the works. General discussions had taken place on the change mechanism implementation and in particular the time taken to (a) get Estimates from BBS and (b) allow tie sufficient time to assess. As I recall it BBS and in particular Richard Walker was concerned that BBS would be progressing works at risk therefore we met to consider a workable solution to progress what were called priority works. Several meetings were held with Richard Walker to arrive at a workable solution and I believe he and I achieved that in draft terms and that my email of 28 November'08 reflects where we got to subject to a legal check. My recollection is that Richard undertook to discuss this with Infraco and revert. I do not believe that happened and the impetus gained on this was lost.

19. Did you have discussions with Richard Walker as to an amendment to the change mechanism in the contract?

Yes See Q18 above

- When and what was agreed?

I recall that Richard Walker and I had come to a general agreement to a workable process (subject to legal drafting) more or less as outlined in my email of 28 November'08 but that was never formalised...

- Why did this not come to anything?

I do not recall specifically why but I do not believe that tie were in disagreement to this at least in principle.

My recollection is that Infraco did not wish to progress it any further but I have no evidence of this.

Seeking further agreement

20. What was your involvement in assessing the offers made by the BSC consortium as part of the Carlisle process or making offers as part of that process?

I was not directly involved in the strategy or concept of Project Carlisle. I believe this was an initiative discussed between Tony Rush and Infraco. Tony had worked with Infraco to develop a GMP. I was not engaged with the process however I recall I was asked to carry out some detailed QS exercises to allow assessment of the offers from a tie viewpoint. It was difficult to carry out any QS assessment on offers since the proposals were not based on known and agreed project data or original contract pricing plus additional works as claimed through change process rather it was based upon the additional cost of their supply chain. Tie had calculated the valuation of works to date and works to complete and assessing the value of changes. Basically any offer made by Infraco was based on its estimate of final cost plus risk (= GMP) and the tie QS team was provided with no evidence of cost. In any event the tie QS team had always carried out exercises on a bottom up basis that was to use the contract price and apply a measure and value to all notified changes using agreed contract rates. This would result in a true reflection of entitlement rather than a reprice based on cost.

- If you were not involved in the assessment or making of offers, what was your role in providing information to permit such assessment / making of offers?

See note in bullet point above

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- What was your role in relation to the 'Deckchair' analysis?

My role was to provide figures to finance in relation to estimated construction costs for options that were being considered for inclusion in the overall summary (the so called "Deckchair"). This included costs to date and costs to go.

21. What was it, why was it prepared and how was it prepared? Were the Project Carlisle discussions seen, in essence, as a re-pricing exercise by Siemens (see CEC00032056)?

Project Carlisle was an initiative to attempt to reach a settlement to end the then current differences. Whilst the tie QS team was not directly involved in any discussions or negotiations with Infracore leading up to without prejudice offers, the offers from Infracore were based upon a repricing of the works to arrive at a GMP. That is to say the offers were cost to complete based (using GMP amounts from their supply chain plus prelims plus risk) rather than contract sum based. Siemens had included estimated final costs in Project Carlisle offers without reference to contract price. This was not able to be reconciled with the approach taken by the tie QS team which was entitlement based on contract sum plus change. The change value used by tie incorporated all notified changes by Infracore at the date of assessments.

22. Stewart McGarrity says he sent you an email on 22 February 2010, *"really as an aide memoir to myself and a dump in one email and attachments of everything I know or have about BB and S pricing make-up"* (CEC00555847).

- Why was he emailing you about pricing at this stage of the works?
I do not recall why Stuart was inquiring about pricing at that time.

Mar Hall

23. In relation to Project Carlisle and the run up to the Mar Hall mediation, a spreadsheet known as the 'deckchair' spreadsheet was circulated (TIE00355077, TIE00355078). It set out cost estimates for various scenarios for the project. Can

you explain your understanding of the purpose of the spreadsheet, the source of the numbers presented in it and your role and that of your team in preparing it?

Finance compiled the deckchair spreadsheet and my involvement in this would have been to provide estimates for the construction costs of the various options that were being discussed. The purpose of the spreadsheet was as I understand it to set out various possible outcomes prepared by finance project wide and input from me would be would concentrate on construction costs however other project costs including non-construction costs were included in the deckchair. For example, in the deckchair, the figures up to the BSC line representing the BSC Infraco build to Haymarket was most probably informed by the QS views set out in the paper headed Infraco Entitlement. The QS view in that paper ranges from £321m (Report table PP1A) to £356m (Report table PP1B). These figures when averaged = £339m and are similar to the Deckchair figure of £341.3m on the Total BSC line.

- What degree of confidence did you have in those figures, and why?

The Infraco Entitlement paper was the tie QS assessment of the ranges of Infraco entitlement on a "bottom up" basis that is working up from the Contract Sum plus changes. That was done by assessment and inclusion of both the tie version (ref table PP1A) and Infraco version (ref table PP1B) of change values and an allowance for project delay. A degree of confidence in the tie assessments was introduced when tie instructed Quantity Surveyors Cyril Sweett to carry out an independent view of the cost of Off Street works to Haymarket by completing a full measure and value analysis based on the then IFC drawings. (construction issue drawings). The result was that Cyril Sweett arrived at a total value for this section not dissimilar to the tie assessment. In addition extension of time entitlement was informed using a delay analysis report by Acutus.

Siemens price was always difficult to be confident about due to their approach to pricing and the apparent disregard for the original price.

Non calculable amounts such as risk allowances would be subjective and by nature uncertain.

Other options contained contain significant subjective risk allowances which would be by their nature uncertain.

- To the extent that there were significant uncertainties, can you explain what they were?

Uncertainties on the off street works were reduced due to the design drawings (IFC) being well advanced at that time and the QS exercises having been carried out. On Street works remained uncertain however if the route was truncated to the east end of Princes Street and a large proportion of Princes Street was completed then risk lay in the short section from Haymarket to Princes Street and beyond Waverley. Risk allowances are always subjective and uncertain.

- How did these figures relate to those in your “Infraco entitlement” document (TIE00106500_0015)?

All of the tie assessments for construction costs were informed by the entitlement exercises carried out and summarised in that document. See response 23 above

24. The version of that spreadsheet circulated on 5 March 2011 (TIE00355078) estimated the cost of separating from the BSC consortium and re-procuring the project from another contractor at £645m to £698m, for a line to St Andrew Square. We understand that immediately before, or at, the Mar Hall mediation, a lengthy discussion took place over that estimate, the outcome of which was that that estimate was increased by £150m. The effect, as we understand it, was to make it a more expensive option than a revised deal with BSC based on Project Phoenix.

- What is your knowledge of that discussion?

Leading up to Mar Hall there were numerous discussions regarding prices for various options. The tie commercial team had been working on the Infraco settlement figures. Tony Rush had been separately pursuing settlement of commercial issues directly with Infraco using the Infraco Project Phoenix offer as a basis for discussion. The tie team had provided information to Tony Rush and also to Colin Smith, who had newly been introduced as a CEC advisor, based upon its Infraco entitlement exercises. The tie commercial team was not involved directly in discussions with Infraco in relation to Project Carlisle or Project Phoenix or directly with any commercial negotiations and discussions that CEC were having at that time but had been involved in producing valuation estimates and providing other information on an ad hoc basis. The tie commercial team was not involved in high level

discussions/negotiations which by now involved CEC. I do not recall the tie team's figures being analysed by Tony Rush or Colin Smith since they were concentrating on attempting settlement on the basis of Infraco's Project Phoenix offer. Terminate and reprocare was always going to be a difficult and subjective view with many variables and unknowns so difficult to assess. My involvement was to address the tie QS view of construction costs to termination and reprocare which would involve assessment of the Total estimated BSC costs to termination and the new procurement costs. Whilst I do not remember any specific discussion there were discussions over the various options being proposed. I do not recall a figure of £150m being discussed however this is likely to be made up of significant risk allowances added to the calculated figures when CEC advisors were considering and overviewing the final figures. The final allowances were hugely subjective and I don't think that I concurred with them at that time.

- What part did you, or members of your team play in it?

The tie QS team carried out extensive exercises to assess Infraco Entitlement and this would have included in parallel consideration of the construction costs to termination and estimated reprocare costs being considered as an option. The tie QS team provided its view on construction costs when required to do so to assist in populating deckchair figures. As noted above there were discussions on prices for various options but allowances that were made for risks and unknowns were a judgement call.

- Did you agree that the increase was appropriate, and (whether you consider it appropriate or inappropriate) can you explain why?

I do not recall detailed discussion on the increases noted amounting to £150m other than to say that the CEC advisor disagreed with the previously tie assessment figures presented in the deckchair. I do not know how amounts totalling £150m were calculated however the QS view did not include a review of all the other costs and the variable elements therefore not involved in the make up of variable elements or other project costs. I would remain content with the QS assessed element of the costs. By reference to the CEC report provided now to me it would seem that CEC had considered the tie figures to be somehow inadequate and I do recollect some discussion on this at the time however my team were content with the construction

cost estimates. It might have been CEC's view at that time but all of the noted factors and assessed to be an additional £150m are speculative and highly subjective. I did not concur with the magnitude of the subjective risk items and I would have said so at that time.

- Do you consider that proper and adequate consideration was given by those negotiating at the mediation for CEC/tie to the option of separating and re-procuring? It may be helpful to consider (WED00000134), from page 234, especially paragraphs 7.4 and 7.6.

Discussions were held and tie's views were offered but CEC advisor disagreed with the tie assumptions and added significant amounts for risk items. Given that the matters discussed were variable and subjective there is no clear right or wrong answer to some risk items, however the amounts that were added were for risk items which some were speculative and all were not able to be evaluated by calculation.

25. One outcome from the Mar Hall mediation was an agreement on the price of £362.5m for completion of the off street works and settlement of all claims which had accrued under the Infraco contract.

- Did you agree that was an appropriate price which represented good value and if so what is the basis for your answer?.

Infraco's Project Phoenix price was £449m. The Mar Hall agreed price of £362.5 excluded CAF which was £65m in Project Phoenix making a total of £ 427.5 including CAF. This compares with Project Phoenix £449m which also included CAF. As far as the tie QS's were concerned its calculated price was set out in the Infraco Entitlement paper which on a range of low £321m (ref table PP1A) to high £355 (ref table PP1B). tie's average of these ranges would be c £338m including CAF which compared to £427.5 Mar Hall agreement = difference of c£90m. The difference was the price for civils works off street and the Siemens price.

The tie QS calculations included in Infraco Entitlement were based upon the Contract Price plus the tie estimate of all changes (low) and Contract Price plus the Infraco priced changes (high). These figures were checked against an independent QS (Cyril

Sweett) exercise in respect of off street civils works and prolongation prelims which also used the Acutus delay report for delay information.

In addition the Siemens price was calculated using Siemens contract price breakdown plus changes.

Basically tie had calculated on a bottom up approach using the contract price baseline and Infraco used a final cost based approach.

Beyond the calculated price, consideration would require to be given to a settlement agreement to progress matters and this usually occurs in a negotiated/mediated settlement. The final figure was, in my opinion, higher than I thought based on my calculated positions.

- Were you consulted in the run up to that price being agreed and did you endorse it?
During Mediation I was involved in providing information and explanation of my calculations to the principals mostly based upon the QS calculated figures compiled during the lead up to Mediation. Mediation involved some detailed discussions and separate high level principals discussions. I was not involved in the principals discussions arriving at the deal. In accordance with my calculated commercial position my opinion was that the settlement price was too high. This opinion was most probably because I had spent the week at Mediation discussing and explaining my calculated positions on value of works as per the Infraco entitlement papers. In the situation at Mediation it was always going to be necessary to consider a compromise to allow the project to move on and that compromise figure in addition to the calculated figure was always going to be subjective and not one that could be said to be right or wrong.
- What calculations or estimates had been made to establish that that price was an appropriate one to pay?
I do not know of any calculations or estimates that form the basis of the agreed price. It was an offer that was agreed.
- Do you consider that there was an adequate basis for agreeing to pay this amount of public money and (whether your answer is yes or no) can you explain why?
The tie QS team had calculated an entitlement using project facts and contract information. Infraco had proposed a settlement via Project Phoenix which was their estimated cost plus. Both exercises were carried out on an entirely different basis

and were not able to be reconciled from a quantum viewpoint albeit that I remain convinced that the QS team adopted the correct methodology to arrive at a calculated entitlement amount from an audit point of view. It was clear that if there was going to be some success at Mediation and for the project to move on that some compromise was going to have to be reached on figures. The question is one of whether the compromised figure extra over the calculated figure was the right compromise and that I believe is a subjective view and one that people will have different views on. My opinion at the time was that the figure agreed was high.

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- What were the views of other tie officers to the contrary?

I understood that the other tie officers were of a similar view to me.

- What is your understanding of the basis on which those views were overridden?

I had presented many calculations and cost exercises for all to interrogate and analyse however others including the CEC advisor had different views and a different opinion on outturn figures.

26. The off street works price of £362.5m represented a very substantial increase in the price from the Construction Works Price in the Infraco contract – more than £150m higher, and for a shorter line.

- Do you agree that this implies acceptance by CEC that BSC's claims in respect of design change and delay were substantially well-founded? Was that the basis on which you made assessments of sums that would be paid to BSC?

No. In my opinion and whether that is right or wrong, by the time we got to Mar Hall the disagreements over design change, the magnitude of design change and delay responsibility were set aside to consider the best outcome for the project stakeholders and the city. The Mediation agreement ended the differences and allowed the works to proceed to completion. This was a key objective of CEC at the Mediation.

27. In June 2011, CEC produced a spreadsheet setting out updated estimates of different scenarios for the project (CEC02085613). The estimates on this spreadsheet for the cost of separating and re-procuring were between £1.032bn and £1.144bn. That

appears to be approximately £0.5bn higher than the estimates in the deckchair spreadsheet from March 2011 (TIE00355078).

- Were you involved in preparation of the June cost estimates?

By June 2011 I was not involved in these reports. I believe that CEC and its advisors prepared these estimates. I do not think I was ever copied into these.

- Did you consider them at the time?

No I do not think so.

- Even if you were not involved at the time, can you comment on the estimates, based on the knowledge you had from his involvement in preparing estimates at an earlier stage?

The figures are set out in a different way from the previous tie finance produced deckchair making cross analysis difficult. There are some significant line item amounts included for amongst other things Primary Risk (£106m), Bad project risk (£40m), Inflation Risk (£25m) Specified and Exclusion Risk (£77.5m). These added risks totalling almost £250m are not explained or supported and they seem extraordinarily high allowances in my opinion. In addition there is an £80m risk for BSC settlement premium. Whilst these allowances are highly subjective I do not agree with the magnitude of risk that CEC has attached to these items. That may partly explain the allowances made to arrive at £150m additional cost of Terminate and reprocur as noted in Q 24 above.

- In particular, do you consider them to be reasonable?

There is no breakdown provided but no I do not consider them reasonable.

28. Can you explain the contents of your email for Alan Coyle dated 8 July 2011 included within the email chain TIE00688781?

Siemens had submitted a Target Sum for on street works at £20m. My estimate was £4.5m. I met with Siemens to discuss. Siemens did not differ greatly from my estimate however through further discussion it became clear that we were not comparing like for like and the difference some £14m was to cover extended prelim type resources from the proposed end date of Sept 13 to the then current programme date of May'14. I queried this since it seemed to me that whatever price deal was achieved at Mar Hall i.e. the asking price of £140m to agreed price of

£126m (a reduction of £14m) would become ineffective. I had numerous discussions with Axel Eickhorn on this but I could not reconcile nor accept the figures proposed.

- Was there an agreement or understanding that the reduction in the price agreed at Mar Hall would be recouped later?

None that I was aware of.

29. Please explain the report you prepared (TIE00691425 and TIE00691426) which was attached to your email to Vic Emery of 15 August 2011 (TIE00691424).

The report was to set out my analysis of the price submissions made by Infraco in relation to the On Street Works. It was an internal report for tie. My recollection is that following Mar Hall a Target Price for the On street works was to be agreed. The tie QS team carried out an assessment of the Infraco price submissions. This was set out in three sections starting with the BBUK element. The concerns raised on this are summarised in the bullet points at the start of the report. Firstly whilst I do not believe my team had seen any sub contract quotes at that time it was noted that tenders were received from 5 sub contractors for civils works. BBUK opted not to include the most commercially beneficial quote (as would be normally expected, all things being equal) but instead put in their own price which resulted in their proposal being almost £3m higher than if it used the lowest tender. (see table - lowest bid = £17,911 ; BBUK proposal = £20,779. In my view at that time this was not an approach that provided best value since BBUK ignored the market price and inserted their own. In addition BBUK had requested tenderers to adopt worst case scenarios via pricing assumptions in their bids and it is assumed that they did. No such pricing assumptions were included in the BBUK proposal meaning that tenderers had priced a worst case scenario but BBUK in their proposal had not. This could have resulted in post contract change to tie's account if BBUK proposal was accepted. In other words it could have resulted in a base line cost plus changes which would be a client risk. I had assessed that risk at £4m. Other sub contract prices were required for example Logistics and Traffic Management however budgets only were offered at that time. Tie's view was that these packages would be significantly lower than the budgets proposed by reference to cost incurred earlier in the project on Princes Street.

Prelims were considered and essentially if the works were to be carried out by BBUK directly there would be £10m of prelims to carry out £20m direct works and this was considered to be high. In summary the BBUK price of £33m was considered to be high and tie had issues with the agreement of that for the reasons in the report of c£11m.(see conclusion of section 1 of the report).

Siemens price of £20m was assessed. This was considered high mainly in relation to Preliminaries which tie had assessed and discussed were partly included in the settled Off Street price. The difficulty with any assessment of Siemens price was that they approached it on a top down basis i.e. work up a GMP using estimated cost whereas tie had always approached price from a bottom up viewpoint using known and agreed tender price information as a baseline where appropriate. The issues relating to this were included in a series of questions in my email to Axel Eickhorn on 1 July'11. We never did get resolution to the queries raised however Siemens did reduce their price from £20m to £14m.

30. The Inquiry has heard evidence from Scott McFadzen that he discussed the Infracore contract with you both before and after it was signed.

Is that correct?

- I had known Scott as a former colleague for many years and it would have been normal for us to have informal discussions so yes. However, I think that Scott refers to discussing the project rather than the contract i.e. the works to be carried out rather than the contract terms. I do not recall discussing contract terms however I do recall talking about the schedules of rates and how preliminaries were to be paid for changes.
- If correct please explain the nature of the discussions pre contract signature and the nature of discussions post contract signature

I have noted the discussions pre contract above. Post Contract I recall that we may have had discussions on the early Estimates for changes but again not on the interpretation of the contract terms.

31. The Inquiry has heard evidence that you would hold discussions with David Gough or his predecessor at Bilfinger Berger UK, regarding monthly valuations.

- Is that correct?
- It is usual practice for a meeting between the Employer commercial team and the Contractor commercial team during the interim valuation process. Tom Murray was the BB commercial lead at the commencement of the contract and through the Advanced Works and Mobilisation Contract. I would have met Tom to agree the interim valuations at that time. Later on in the project David Gough became the BB commercial lead and he would discuss the monthly application for payment with me or (as was usually the case) with one of my team.
- Please explain the nature of those discussions
Discussions would be in two main parts (1) to agree the achieved Milestones in the relevant period since BBS were paid on an achieved monthly Milestone basis as set out in the Milestone Schedule in SP5 and (2) to agree the value of changes for works carried out in the period. Those together would form the interim valuation and result in payment to be made monthly. This is entirely normal practice.
- We understand that discussions were held with Bilfinger Berger UK regarding the £2.5m claim in relation to Leith Walk. Please explain
I do not remember this claim.