

Bob Dawson – Supplementary Note of Questions

Responses in blue

- In an email of 17 December 2007 to Trudi Craggs (TIE00898202), you noted that you had checked the latest draft of Clause 80 (TIE Changes) and it was blank. Why had it become necessary to check it at this point? I don't recall, from my e-mail it appears it was discussed at a meeting. Can you explain the contents of the paper from Geoff Gilbert which was attached to your email (TIE00898203)? Again, I don't recall but from my e-mail it appears that Geoff Gilbert had prepared the paper to enable DLA Piper to revise the draft. Beyond that, Geoff Gilbert would need to advise as it was his paper. As noted in my covering e-mail dated 7th January 2018, this was before the introduction of procurement portals and at that stage my e-mail address was the principal point of contact with the preferred bidder BBS. Thus, I only forwarded the paper. Had there been discussions with TIE as to the objectives that Clause 80 should achieve or concerns that arose in relation to it? There had been discussions originally as to the objectives of Clause 80. However, this relied on the design being prepared by Parsons Brinckerhoff / SDS being sufficiently advanced for the novation to be readily accepted. Concerns arose when the design was found to be insufficiently advanced and changes to Clause 80 were sought by BBS. As I have previously stated, I was **not** involved with the SDS Contract and the decision to Novate the Designer was established before I arrived. If so, who was involved in those discussions? It would have been TIE senior managers. Did Andrew Fitchie have a role? I was not involved in detail, so I can't be definite, but I would have expected him to have seen all contract amendments.
- It is apparent from the emails referred to below (which are a selection of the ones involving you at the relevant time) that you played a significant role in drafting Part 4 of the Schedule to the Infraco Contract ("SP4"). It may seem that way but that is not the case. I did prepare the template noted in Q5 below, but changes thereafter were largely by others and/or after I had left. I haven't done a detailed comparison, but the final version differs from that which I drafted. It appears that until your departure from TIE, you were a recipient of emails from BBS and their solicitors with revised drafts (e.g. CEC00592614) and were involved email discussions within the TIE side. As I noted in Q1 above, I was still used as a point of contact, although by that stage not exclusively, as I was due to be leaving. I may have been involved in some discussions within TIE but not all and I was certainly not responsible for Schedule 4. We understand that you left TIE at the end of March or early April 2008. Did you continue to work on SP4 until you left? I may have helped with some aspects of Schedule 4, but I don't recall. However, I did attend a 'close out' meeting in late February 2008 that was attended by most of the TIE Directors and at that stage the substantive element was still outstanding, so I could not have done much. Who else was involved in drafting SP4? As I recall, it was to be led by Dennis Murray as the Commercial Director with support from Eric Smith as they would need to fully understand and agree with the basis as they would be managing the contract post contract. Geoff Gilbert was very keen that they undertook this role as he did not want a 'not invented here' syndrome. There were four

Quantity Surveyors seconded in from TTS / Turner & Townsend to measure structures. What role was played by each person? I don't recall their names, let alone their roles and a lot would be after I left (see also Q8 below). Was there one person with overall responsibility of the Schedule and if so, who was it? As noted above, at the time I was there it was intended to be Dennis Murray. I can't comment as to whether that changed after I left.

3. You have previously said that you were not involved in discussions within TIE or with BSC as to which party would bear the risks arising from any development of, or changes to, the design in existence at that time (see answer to question 59(3)). The Wiesbaden Agreement had addressed that issue and the Inquiry has heard evidence that this was something to be addressed in SP4. Did you know of the intention/desire to transfer this risk when drafting SP4? I don't recall seeing the Wiesbaden Agreement at the time but question 59(3) of my previous statement was related to BBS's due diligence report, which was later. This would tend to suggest that the completeness of the design that was assumed by those responsible for design within TIE was behind what had been included at the time of the Wiesbaden Agreement. However, I wasn't involved in the design or the Wiesbaden Agreement.
4. What role was it intended that solicitors for each of the parties should play in drafting SP4? The solicitors' role was intended to be 'contractualizing' the language. DLA Piper seeking to protect TIE's position. Pinsent Masons seeking to protect BBS's position and perhaps maximize it!
5. **CEC01495585**, **CEC01447445** and **CEC01447446** are two emails and an attachment that is a draft of SP4. Was this the first draft? Who asked you to prepare it? Geoff Gilbert as noted in my e-mail. What were you told as to what it should contain/seek to do and what instructions were you given? As I recall, it was late on the Friday, so I had brief instructions to develop a template over the weekend. It should have been for others to do as I was not leading on Schedule 4, but I think I was around later than them and it was needed a short notice. It is apparent from the emails that you had seen the Wiesbaden Agreement (**CEC02085660**). I disagree, my e-mail dated Sunday 13th January 2008 states "I have incorporated the figures from the e-mail titled "Wiesbaden Deal" that you sent me..." I don't think I saw the whole agreement at that time. Additionally, I noted in that email, that I would need Geoff Gilbert's "input on a few things as I don't not know the background to and have made a few comments in red." This actually reinforces that I was not familiar with the Wiesbaden Agreement. Thus, my initial draft Schedule 4 is only a template, but I feel I flagged a number of uncertainties for resolution.

As an aside, **CEC01447445** is an e-mail from my personal e-mail that I sent due to a technical difficulty when working remotely. My e-mail address has not been fully redacted, please can this be corrected?

What relationship was there between it and SP4? As above, I don't recall seeing it but as noted in Q3 above, things seemed to unravel in respect of design following BBS's due diligence report, so that could explain any difference. Did you discuss the

Wiesbaden agreement with either Willie Gallagher or Matthew Crosse given that they had been present at the meeting in Wiesbaden? No, Willie Gallagher would not have discussed this with me. I don't recall discussing with Matthew Crosse as it is my recollection that he was less involved at that stage. If I did have any discussions it would only have been with Geoff Gilbert and / or Dennis Murray. Were there any pre-conditions or 'red lines' as to areas of the Wiesbaden Agreement that should be reproduced in SP4 and which could not be changed. I don't recall being involved in any such discussions.

6. Your email of 6 February 2008 to Andrew Fitchie (CEC00592614) indicates that there was to be a meeting with DLA to discuss the issue of pricing assumptions. What were you seeking to discuss in relation to them? It was not my meeting. Geoff Gilbert did mention TIE's frustration at lack of progress. Did you seek advice and, if so, what was it? I don't recall anything changing in the meeting that was held subsequently. This email attaches a draft of SP4 with Pricing Assumptions on which you have marked comments (CEC00592615). The draft containing the assumptions has been sent to you by Scott MacFadzen on 4 February (see the same email chain). This draft was the first inclusion of pricing assumptions. Had this been discussed with you in advance. I don't think so but can't be sure, more likely with others if it had been discussed. What purpose were the assumptions intended to have? It was my understanding that the pricing assumptions were to clarify the basis of BBS's pricing of certain items where the design was not sufficiently complete for BBS to price as fixed. Both my comments in blue and Tom Hickman's in pink highlighted significant concerns. All such uncertainties should have been considered carefully by those responsible to ensure the basis was realistic. For completeness, later that day you forwarded another draft with comments from Andy Steele (CEC01448355 and CEC01448356).
7. In relation to the draft with your annotations (CEC00592615), could you explain your concerns relating to the assumptions about design delivery programme (page 2 para (a)(i)), I don't recall specifically but 'negative float' means that the programme doesn't work! the inclusion of the word "materially" on page 2 I recall raising this as an issue due to the status of the design as it was inevitable that there would be changes. However small ones would not have the same impact as a material or fundamental change of scope and I was keen that BBS did not use this to 'talk up' the out-turn cost of the project and your amendment to Clause 1.1 on page 8? the wording stated "differ in any way" and thus not materially, hence my concern. What response did you receive to your comment on page 8 that all risk would come back to TIE? I don't recall, presumably the inquiry has checked my inbox?
8. The email that you sent to Richard Walker on 11 February 2008 to set up a meeting about SP4 (CEC01448511) indicates some of the TIE personnel involved in drafting SP4. What was the role of each? As noted in Q2 above, I had understood that Dennis Murray was leading as he had been appointed as the Commercial Director of TIE to take over from Geoff Gilbert whose contract was due to expire. Others were supporting Dennis, including Eric Smith and the four Quantity Surveyors seconded in from TSS / Turner & Townsend. I don't recall the precise detail of who was doing what. There were issues with structures, ground conditions, track, utilities and the Gogar Depot; i.e.

several areas, hence the secondment of additional Quantity Surveyors. Valerie Clementson was the Procurement Assistant that would have arranged rooms or dealt with administrative issues only. I don't think I attended a meeting the following day.

9. How was the TIE position in relation to the terms of SP4 determined? I suspect it would largely have been discussed at meetings between senior management. Did one person take the lead and, if so, who? As noted in Q2 above, at the time I was there it was intended to be Dennis Murray, but this may have changed. Were there internal meetings to review the various drafts? There was but I would only have attended some as my role was reduced in anticipation of my departure. The email from you to Dennis Murray of 3 March 2008 (CEC01450160) suggests that there was. If so, who attended and what matters were discussed? Attendees would have included Dennis Murray, Eric Smith, Geoff Gilbert, Jim McEwan, Steven Bell, Susan Clark, Alastair Richards, Andy Steel and others for TIE, plus Andrew Fitchie and / or Philip Hecht of DLA Piper. As noted in Q8 above, there were issues with structures, ground conditions, track, utilities and the Gogar Depot. There may have been other problem areas that I was not aware of at the time or arose subsequently. CEC01448861 is an email from you to Dennis Murray dated 14 February 2008 with notes that Geoff Gilbert made on a draft of Schedule 4. You indicate that you are incorporating his comments into a new draft. The draft with GG's notes marked on it is CEC01448862. In carrying out your task of incorporating his comments into a new draft, what did you understand by what he meant in relation to:

- The definition of Base Date Design Information (page 1)
- Paragraph (a) of the definition of Base Case Assumptions (page 2). In particular, what did you understand of the reference to design development. There was no general statement that the price included Normal Design Development despite the inclusion of this in the Wiesbaden Agreement (CEC02085660, clause 3.3, page 5).
- Paragraph (d) of the definition of Base Case Assumptions (page 3).
- Clause 1.1 (page 8)
- Clause 1.3 (page 9)

I don't recall what I understood at the time, it was 10 years ago. As noted in Q3 above I don't recall seeing the Wiesbaden Agreement at the time but question 59(3) of my previous statement was related to BBS's due diligence report, which was later. This would tend to suggest that the completeness of the design that was assumed by those responsible for design within TIE was behind what had been included at the time of the Wiesbaden Agreement. However, I wasn't involved in the design or the Wiesbaden Agreement.

10. By email dated 19 February 2008 (CEC00592621) you sent an email to Scott McFadzen and Michael Flynn with a new draft of SP4 (CEC00592622). Was this draft intended to reflect Geoff Gilbert's comments? The draft departs to a large extent from the BBS draft and returns to the form of the initial TIE draft. Why was this? BBS were seeking to soften things from the initial TIE draft and thus TIE sought to reinstate. I was not party to all discussion on the either within TIE or with BBS and / or Pinsent Masons. At page 5 the draft includes for the first time the wording that normal

development and completion of designs excludes changes of design principle. Why did you include this? I don't recall specifically but suggest it would have been included to clarify that a change to the design principle could be beyond normal development and completion of designs. I don't recall a contemporaneous example but would now suggest that if the design of a simple bridge needed slight amendment it would be design development but if the design didn't work and it needed to be a suspension bridge then that might be a change to design principle. Had you discussed it with anyone within TIE? I don't think this was my wording and would probably have been relayed to me by someone else. If so who? I don't recall who.

11. On 22 February 2008, Ian Laing of Pinsent Masons sent an email to you, Andrew Fitchie and Geoff Gilbert (CEC01449876) Noted but the e-mail was really to others and me for continuity as I was due to be leaving the following month with a further version of SP4 (CEC01449877). This deleted the insertions made by you of the word "materially" (page 6). What was your response to this? As noted in Q7, I recall raising this as an issue due to the status of the design as it was inevitable that there would be changes. However small ones would not have the same impact as a material or fundamental change of scope and I was keen that BBS did not use this to 'talk up' the out-turn cost of the project. By way of comment to Clause 2.4 (page 5), IL suggests a different approach to the pricing assumptions and, later, that approach was adopted. Did you discuss this approach within TIE? I don't think so but at that stage I was less involved than others. If so with who? I don't know, and I don't know how much later was this adopted.
12. CEC01450182 is an email dated 3 March 2008 from you to Geoff Gilbert and Ian Laing of Pinsent Masons with a new draft of SP4 (CEC01450183).
13. CEC01450544 is an email from you to Ian Laing and others dated 10 March 2008. In it, you set out wording you had "agreed". No, please re-read my wording, which was "I note below the wording agreed in the telephone conference with Geoff Gilbert and Dennis Murray." I did not agree the wording personally as I was not involved in the detail, particularly at that stage as I was due to be leaving. It appears that you had been reaching agreement with others within TIE. No, I was merely relaying that the wording had been agreed by others within TIE. I had previously flagged my concern in relation to the wording and copied the e-mail to Geoff Gilbert and Dennis Murray as they either made or were present at the agreement. Can you explain this email and the purpose of the amendments proposed to Clause 3? I don't know what circumstances had come to light that led to this amendment being accepted. Were you seeking the agreement of the consortium? I'm not sure now, it could be construed that I was seeking the agreement of the consortium or, looking at my earlier e-mail dated 6th March 2008 I may have been confirming their agreement if they had been party to the conference call. Unfortunately, it was nearly 10 years ago, and I don't recall which.
14. CEC01545414 is an email of 13 March from Suzanne Moir of Pinsent Masons with a further draft of SP4 (CEC01545415) said to reflect discussions the previous day. Her e-mail does not say who it was discussed with and I don't think I was involved in any

meeting on 12th March 2008. There are no changes to the pricing assumptions relating to design. Had there been discussion about these? Was the position agreed at this point?

15. **CEC01451012** is an email to you from Ian Laing dated 19 March 2008 attaching a new draft of SP4 (**CEC01451013**) said to reflect recent discussions. In the first pricing assumption, the statement that the price includes for any impact of normal design development is deleted. This inclusion had reflected the Wiesbaden agreement. Why was it removed? The e-mail may have been sent to me, but I was not part of the core TIE team involved at the time as I was due to be leaving at the end of the month and I did not attend the meeting. Did it reflect the discussions that had taken place? I can't comment as I wasn't involved in those discussions. All I can suggest is the difference in time between the Wiesbaden Agreement and BBS's due diligence report noted in Q3 above. There is then addition of wording as to the meaning of normal design development and what is included in the proviso after sub-clause 1.3 (page 7). What was the purpose of this. This amended drafting appears to create a circularity; (i) it is said that there shall be no change of design principle etc, (ii) it makes an exception for this for amendments arising from the normal development and completion of designs, *but* (iii) says that normal development and completion of designs excludes changes of design principle etc. This appears to have the effect that the exception as to normal development and completion of designs is irrelevant. Do you agree? Was this discussed? Why was it done?
16. It is clear from an email from Philip Hecht of DLA to you and others (**CEC01451053**) that the Pinsent Masons draft was discussed at a meeting the following day. I don't read it that way, the e-mail dated 20th March 2008 refers to a meeting that day. Also, the e-mail was really to others and me although I was due to be leaving the following week. This email includes a marked-up version showing what was agreed (**CEC01451054**). None of the matters discussed above are the subject of revisions. Were the proposed Pinsent Masons changes agreed at the meeting? I don't know, this was only a week before I was due to leave, so I was not deeply involved. What discussion had there been about them within TIE prior to the meeting. I would have expected so, but I don't recall being involved in any discussions. Philip Hecht's email was copied to Andrew Fitchie. What role was played by Andrew Fitchie and Philip Hecht, his assistant in relation to SP4? I don't know the detail of the roles that each played but their involvement was much greater than mine, even while I was still there. DLA Piper's appointment was on a timecharge basis, so their timesheets and fee accounts may shed so light on the extent of time and activities. I had been responsible for passing DLA Piper's fees previously, but this was transferred to someone else in anticipation of me leaving and I can't recall who.
17. On 26 March 2008, Ian Laing emailed you and others (**CEC01451185**) pointing out that the design delivery programme in the assumption was v26 but that the one that would be used in practice was v28. He notes that there is a possibility that there would be an immediate Notified Departure on execution of the contract and asks that you confirm that this is agreed and understood by TIE. What did you do in response to this? That was the Wednesday before I was due to leave on the Friday. I only received the e-mail as I had been acting as the point of contact for continuity, so I would have passed

on to others and I don't recall who, but I assume the Inquiry can check. With whom did you discuss it? I don't recall specifically, probably Geoff Gilbert but possibly others too. What likelihood did you consider that there was of a Notified Departure? As I have mentioned previously, I was not involved in the core TIE team at that stage as I was due to be leaving. I had sensed that things were not going well but I did not have the detailed knowledge to comment. However, given Ian Laing's e-mail, then a likelihood could not be ignored. What was the likely or possible financial exposure arising from this and how did you come to your view. I had not been involved in the financial evaluation of the Infraco tenders, nor involved in any subsequent pricing, so I did not have a view of the financial exposure. Nevertheless, I did query this as I had a concern that a significant cost increase could impact on the procurement process and warrant going back to the unsuccessful bidder. However, the amounts mentioned at the time were within a relatively small percentage margin of the tender and nowhere near the scale of the cost over-run that ultimately occurred. Were there other Pricing Assumptions in relation to which it was likely or possible that there would be a Notified Departure? Clearly every item that BBS requested to be a Pricing Assumption had the potential to constitute a Notified Departure and should have been something for TIE to have focused their efforts on ensuring those assumptions were realistic and promptly settled post contract. Had any work been carried out to price the effect of these assumptions? I don't recall but that would have been part of the reasoning behind appointing the Quantity Surveyors from TSS / Turner & Townsend. If so, by whom had it been carried out? I don't recall but I expect this was largely after I had left.

18. Jim McEwan was one of the recipients of Ian Laing's email and sent it on to Andrew Fitchie for advice. The email forwarding it and AF's response are found in **CEC01465933**. Did Jim McEwan discuss with you the need for advice? No, by Monday 31st March 2008 I had officially left (although I did end up going back for two days later in the week). As you will see, these later e-mails were not copied to me. In any event, Jim McEwan would not have discussed the matter with me. What was AF's role in providing advice generally about SP4? I wasn't closely involved with him at that stage, but he was heavily attending meetings with TIE senior management and BBS. What was the reaction in TIE to Andrew Fitchie's advice? I don't know, I was not party to that.