

Note by Chairman for Core Participants
concerning closing submissions

Timetable

Evidence sessions have been arranged for the weeks commencing 12 and 19 March 2018 and it is anticipated that public evidence sessions will conclude on 22 March 2018. On that basis, Core Participants should prepare written submissions to be submitted in electronic form no later than 12 noon on Friday 27 April 2018, to the Secretary to the Inquiry (“the Secretary”) at the Inquiry Office, 1st Floor, Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG -

Email to: angela.worth@edinburghtraminquiry.org

Beltrami & Co, who represent more than one Core Participant with a similar interest, should prepare and submit a composite submission covering all of their clients. In the event that parts of the submission are only applicable to some of their clients, that should be made clear and the clients to whom those parts relate should be clearly identified.

At the same time as submitting their written submissions to the Secretary, Core Participants must send a copy of their submissions in electronic form to each of the solicitors acting for all other Core Participants. To assist Core Participants in this regard, the contact information held by the Inquiry for the solicitors acting for each Core Participant will be placed on the Haymarket database. In the case of the Core Participants represented by Beltrami & Co, intimation of one copy of each closing submission by other Core Participants shall be sufficient compliance with this requirement.

Following receipt of the submissions of other Core Participants, the legal representatives of any Core Participant may amend their original submission. Any such amendments must be completed in time for the final version of the written submission, to be received by the Secretary in electronic form no later than 12 noon on Friday 11 May 2018. If any Core Participant has no amendments to make to their original submission sent to the Secretary on or before 27 April, they should email the Secretary to that effect no later than 12 noon on Friday 11 May. The Secretary will arrange for the final version of each closing submission to be uploaded to the Haymarket database, making them available to all Core Participants in advance of the public hearing in relation to closing submissions.

The written submissions should be in the form specified below and should contain the detailed arguments on behalf of each Core Participant. Each Core Participant will be permitted one hour to make oral submissions which should be restricted to highlighting and elaborating upon particular points within the written submission. The

public hearing for closing submissions will commence at 9.30 am on Wednesday 23 May 2018 and will follow the undernoted order:

Wednesday 23 May

9.30 to 10.30 - Parsons Brinckerhoff

10.30 to 10.45 - Break

10.45 to 11.45 - Bilfinger Construction UK

11.45 to 12 noon - Break

12 noon to 13.00 – Siemens

13.00 to 14.00 - Lunch

14.00 to 15.00 - Scottish Ministers

15.00 to 15.15 - Break

15.15 to 16.15 - DLA Piper

Thursday 24 May

9.30 to 10.30 - Core Participants represented by Beltrami & Co

10.30 to 10.45 - Break

10.45 to 11.45 - City of Edinburgh Council

Form of written submissions

Written submissions should be typed in double spacing on A4 using Arial font 12 pt. Pages should be numbered.

They should be based upon the evidence, bearing in mind that the evidence includes documents, in whole or in part, which may not have been mentioned in oral testimony but are available to Core Participants.

Propositions or statements within written submissions should be justified by reference to written statements of witnesses, whether or not they have given evidence in person, other documents within Haymarket and transcripts of the oral testimony of witnesses. Any such reference shall include the document ID or the date of the transcript and shall specify the particular passages upon which reliance is placed, by providing the beginning and end of each passage together with the page numbers and lines of the relevant documents where the passages appear.

Where a Core Participant wishes me to prefer the evidence of one witness to that of another, or wishes to criticise a witness, the written submission should specify the

reasons supporting their view and should refer to particular passages in the written evidence as specified above.

Each written submission should provide a reasoned statement, vouched by their interpretation of the evidence and listing the passages of evidence as specified above, indicating what the Core Participant considers to have been the cause(s) for the delay, increase in cost and other failures of the project and who was responsible for, or contributed to, such delay, increase in cost and other failures.

Content of written submissions

The Inquiry is interested in the reasons for the views expressed in written submissions and these should be clearly stated.

The written submissions should address such issues within the Inquiry's terms of reference as Core Participants wish, having regard to their particular interest. Subject to that generality, Core Participants may wish to consider each of the following issues, and address them in so far as these are relevant to the Core Participant and not addressed already:

- Procurement strategy
 - What it was
 - When and how determined
 - Persons involved
 - Rationale
 - Suitability

- Governance and project management
 - Decision to use arm's length company
 - Bodies involved to 2009 and their roles and functions
 - Composition of boards of TIE, TEL and TPB
 - Changes to governance in 2007 and 2009
 - Role and governance of TIE after 2009
 - The effectiveness of the governance systems, the effectiveness of TIE as project managers and the reasons for any failures in relation to these matters
 - The adequacy of reporting

- Legal advice
 - Appointment of DLA
 - Role in relation to CEC

- Scottish General Election (May 2007) and decision of TS to change role
 - The Parliamentary vote
 - The decision to change the role of TS and the justification for that decision

- The changes made to the arrangements for involvement of TS and the effect that they had
- SDS
 - Award of design contract
 - Scope of services
 - Progress to December 2007, difficulties encountered, the reasons for these difficulties and remedial measures attempted
- MUDFA
 - Award of contract
 - Scope of services
 - Progress to December 2007, difficulties encountered, the reasons for these difficulties and remedial measures attempted
- INFRACO
 - ITT
 - Extension of time for tenders
 - Initial comments on tenders
 - Appointment of preferred bidder
- Involvement of Audit Scotland and OGC Gateway Reviews
- Events of December 2007
 - State of design and MUDFA works
 - State of negotiations with INFRACO preferred bidder
 - The intention to put the project to a CEC vote
 - Consideration of alternative options
 - The meeting in Wiesbaden
 - The written agreement concluded after the meeting in Wiesbaden
 - The FBC and the report to CEC –
 - Strategy
 - Identification of cost including risk and OB
 - Reporting of current position,
 - Risk and OB
 - The vote by CEC including matters on which reliance was apparently placed
- Events from January to May 2008
 - Reporting
 - Approval Committee – appointment, role and work
 - Demands for additional money
 - Design due diligence report
 - Misalignment of ERs, contractors proposals and SDS design

- SDS Novation
 - Demands for additional money and additional agreements – Rutland Sq Agreement, Kingdom Agreement, Citypoint Agreement etc
 - Concerns within CEC
 - Development of risk and OB
 - Contract negotiation
 - Development of SP4 and Clauses 65 & 80 in particular
 - Parties involved
 - Concerns identified
 - Checks on final version
- May 08 - Decision to enter into the INFRACO contract
 - Close reports to TIE/TPB/TEL/CEC including reporting on last minute price increase and legal advice
 - CEC reports
 - TIE meeting
 - The Approvals Committee
- Events after contract close (May to Dec 08)
 - Difficulties in progressing the Infraco works (and the reasons for these difficulties)
 - Notification of changes under the Infraco contract
- Princes Street dispute
 - Causes and scope
 - Attempts to resolve
 - Intervention by John Swinney MSP
 - Negotiations
 - Princes St Supplementary Agreement
- Events in 2009 following PSSA
 - Progress of MUDFA (including reasons for difficulties)
 - Progress of SDS (including reasons for difficulties)
 - Progress of INFRACO works (including reasons for difficulties)
 - Options considered by TIE
 - Further disputes – nature of the key disputes
 - Obtaining legal advice
 - Strategy adopted by TIE
 - DRP processes
 - Objectives
 - Selection of disputes
 - Advice
 - Removal of MUDFA contractor
- Events in 2010

- DRP in relation to design issues
 - Outcomes
 - Reporting outcomes
 - Responses
 - Further advice
 - Changes to tactics
 - Reporting to TPB/TS
 - Attempts to compel BSC to progress works
 - DRP
 - Outcome
 - Pitchfork
 - Project Carlisle
 - Project Termination
 - Legal advice
 - Cessation of works
 - Role of TS and Scottish Ministers
- Decision to seek mediation
 - Circumstances leading to CEC decision to seek mediation
- Mediation
 - Preparations including estimates prepared
 - Objectives
 - Events at Mar Hall
 - Options considered
 - Information available / examined
 - Offers / counter-offers made
 - The deal done
 - Role of TS and Scottish Ministers in discussions
 - Mov4
 - CEC resolutions and the Reports / Information on which they were based
 - Settlement Agreement / MoV5
 - Role of TS and Scottish Ministers in project in future
- Implementation post-Settlement Agreement
 - Changes in the governance and management of the project
 - How works were progressed after the settlement agreement (compared with before)
 - How works were undertaken in the on-street sections (compared with how the Princes Street works were undertaken)
- Costs incurred for various parts of the works

- The main reasons why the project incurred delays, cost more than originally budgeted and through reductions in scope delivered significantly less than projected.



Lord Hardie

15 March 2018