

## THE EDINBURGH TRAM INQUIRY

### Witness Statement of Willie Gallagher

Statement Taken by Drew Fox on 3 and 4 February 2016.

My full name is William Gallagher. My contact details are known to the Inquiry.

*Statement:*

### GENERAL

1. I have provided a copy of my CV to the Inquiry by way of background setting out my career to date.
2. I joined the Transport Edinburgh Limited (TEL) board in a Non-Executive role in 2006. When I arrived Michael Howell was the Chief Executive of Transport Initiative Edinburgh (TIE). He was also a member of the City & Guilds board. The TIE Chief Executive role was a 100% hands on role. He was offered a role with City & Guilds and accepted it. As a consequence he decided to resign.
3. The intention was then to recruit a permanent Chief Executive. However, because of the emerging political tensions about TIE it was felt that it would be difficult to recruit someone. Because of this, the intention changed to putting in place someone temporarily until the political and electoral tensions had died away. I was asked at this point by City of Edinburgh Council (CEC) to become the Executive Chairman of TIE. I was appointed in May / June 2006 as the Executive Chairman of TIE.
4. At the time of my appointment, a lot of things had already been put in place. The System Design Services (SDS) contract had been let. The procurement strategy had already commenced. The MUFDA contract had been awarded. Some of the

key appointments, in particular in terms of the Tram Project Director, had already been put in place.

5. The first challenge for me was that the whole Board wanted to leave. It was a concern that the whole Board wanted to leave. When I looked at the organisation that was required to deliver the project, it was insufficient as I felt there were gaps that had to be filled as certain expertise and experience was missing. The former Chief Executive Chairman, Michael Howell had resigned. There was no senior HR person for recruitment with heavyweight experience of engineering. There was no Chief Engineer. There was a Project Director for the tram project but TIE was a multifunctional organisation. There was a lack of commercial expertise. It was a small organisation that was being asked to do a lot.
6. I thought we then built a good organisation. I felt we built a confident and positive relationship with the stakeholders and politicians of all parties. Although the SNP government had different views about the project, I felt, on a personal level, that the relationship was good.
7. Though the governance was complex, we worked well with it. That was because there was a group of people at a senior level who we had strong solid relationships with. I think the governance was always going to be complex. There were issues about it being simplified but, at any moment in time, you could understand where and why it was. At the time I came in, the role of TIE was not just about the Edinburgh Tram Project (ETP). The role of TEL was just starting out. TIE were the sponsors for the ETP but TIE were also the sponsors for the Edinburgh Air Rail Link Project (EARL) and the Stirling-Alloa-Kincardine Line. They also had smaller side projects under way. TIE was a much bigger organisation than just the ETP. I think, had I stayed post 2008, we would have looked to rationalise the governance because we would have moved on to a different stage.
8. I felt we drove the procurement process as hard as we could. We negotiated as ferociously as we could on behalf of the stakeholders. When I look back we

worked really hard to get the best deal for the taxpayers and the people of Edinburgh.

9. I feel we also dealt very well with the government position of being openly hostile to the project. It was a difficult one for me to understand how a government could invest £500 million of taxpayers' money and then say openly that they didn't believe in the project. I thought that we coped with that position as well as we could. The situation was unique to this project.
10. I'm asked whether there were any people who were obstructive to the project. No, I don't think there were any people in particular who were obstructive to the project. The Cabinet Secretary, Stewart Stevenson, was the Minister I liaised with. Stewart and I got on well. My meetings with John Swinney went well and were always cordial. I never felt, when dealing with individuals, that there was anything personal in it. It was just that the SNP had decided, from a political point of view, that they were against the project. I met with the SNP group in CEC and the Chair of the SNP group, Steve Cardownie, in one to ones. I updated the SNP about the project in exactly the same way as I did with Labour, the Liberal Democrats and the Greens.
11. I think we were very reactive to what was going on post-election. When the SNP government came in and won the election they immediately asked for Audit Scotland to come in and look at the two projects (the ETP and EARL). I remember I was meant to be going on holiday to China at the time. I decided to cancel the holiday. I decided that there was no way I could be on holiday whilst the audit was being undertaken. After the audit was done we were really pleased to hear that Audit Scotland thought that the ETP was a well-run project.
12. We had a particular challenge at the time of the audit. That was the on street MUDFA works. I can't remember whether we had been asked to pause the works but we did pause the works. We did this because we thought it would be bizarre to be out on the streets spending taxpayers' money and it transpiring that the government had decided that they weren't going to go ahead with the project. If we hadn't have paused the works, and the government had decided the tram

project wasn't going to go ahead, then all carrying on would have done was increase the write off. It would also have inflamed the position with the citizens of Edinburgh. I felt that if the MUDFA works had continued during the audit then there may have been confrontations between the Edinburgh citizens and the workers. I felt that that wasn't an acceptable potential situation to be in. Pausing the works did cause us a problem later on in the programme as it did lose us three or four months which, of course, had a cost.

13. I'm asked what the particular problems with the project as a whole were. SDS, the design of the project, being always behind was a particular challenge for us. The hostility from the general public to the street works was a real challenge. The lack of real competition for INFRACO was a problem. The procurement strategy was designed to create real competition for the contracts. There was real competition for the trams, I think there was good competition for the utilities but for INFRACO there wasn't. There were only two consortiums which came forward. The ability to achieve the contract close was tied wholly to the structure of the procurement strategy and the contracts. As we got closer to the close, and the intent to novate the design approached, it became apparent that Parsons Brinckerhoff (PB) didn't want to do it. Neither did Bilfinger Berger Siemens (BBS). BBS didn't want to take on that responsibility. However, the structure of the bid and the procurement contracts meant that that was the way it had to be.
14. When I arrived as Executive Chairman I did not anticipate the problems that would lie with the procurement strategy which had already been agreed. We worked hard to remedy that and try and drive it through.

## **PEOPLE AND TEAM**

15. One of the first challenges I faced was that I had to replace the board. The board size at that stage was very small. I think there were only two or three members. Ewan Brown was very helpful. He had done his stint. From my experience of being on boards there is a cycle and eventually people just want to move on. I felt we could strengthen the board so we brought onto the board Neil Scales who was the Chief Executive of Mersey Tram, Peter Strachan who

was a director with Network Rail, and Kenneth Hogg who I'd worked with during my time with the Strategic Rail Authority and was at that time working with the Scottish Government. I thought that the appointment of Kenneth Hogg was good because it gave us a connection with Scottish Government. We brought onto the board Brian Cox who had a senior role with Stagecoach and was also on the board with Lothian Buses. I thought that was good in terms of connections for public transport. David Mackay was brought on board, he was the Chairman of TEL and had attended the board meetings of TIE. Kenneth Hogg then became the Chair of the audit committee. Brian Cox then became Chairman of the remuneration committee. We put in place proper structures.

16. I felt at the time that the expansion of the board had to be done and perhaps should have been done two years earlier. If it had been done earlier then they would have been there to have more of an influence on what was happening. When we took control of the organisation the procurement strategy, the tendering process, had already started. There were commitments made. Hindsight's a wonderful thing but if you were ever going to do this again then you should get heavy hitter firepower in place as early as possible. It would only have been a good thing had they done that.
17. A lot of my time then was spent strengthening the board. Although Michael Howell had left, in essence, I saw the Tram Project Board (TPB) director and EARL director as mini Chief Executives. This was because the structure of the organisation was such that they had all of the resources beneath them to deliver their projects. There were very little shared resources within TIE. I think that it could only have been a good thing to have had a single command and control focus with all the resources. . As time went on I started to rationalise everything tram underneath the Tram Project Director.
18. It did complicate matters that the other projects were on-going at the same time. If EARL had gone ahead it would have been of a similar size and complexity as the ETP.

19. I think by the time the board had been put in place and got comfortable the ETP was really all that was left. EARL was very much at an earlier stage.
20. I realised SDS was behind when I started but no one was waving red flags at that time saying this was disastrous. The feeling was that it was behind but there were remedies. MUDFA hadn't started so there was nothing really going on.
21. I'm asked about the relationships on the TIE board before I arrived. I didn't really know the guys so I can't comment.
22. One of the last duties Michael Howell had was to let Ian Kendall go. I think I was on the board of TEL at the time of all of this. TIE then had to recruit a new Tram Project Director and that's where Andie Harper came from. I did work alongside Andie and he was a very capable guy. He worked well with us. I think his initial contract was for six months but his partner lived down in Merseyside and she wasn't prepared to move up to Scotland..
23. I was Executive Chairman of TIE but Andie reported to the Tram Project board. . The way I worked was that I would meet with Andie for a one to one maybe for an hour once a week and then as required. Andie was the guy driving the project. My job was governance, talking to councillors, talking to politicians and dealing with the things that were out there at the time e.g. funding and Transport Scotland (TS). There was no duplication between my role and the Tram Project Director's role. The Tram Project Director ran the project.
24. Andie then left and it was difficult to get a replacement. You cannot overestimate how difficult it was to get in good quality people who wanted to be involved with a public sector project such as this. We then came across Matthew Crosse. He ran his own company called Strategic Lines. I remember we interviewed Matthew and we got him on board just before Christmas in 2006. Matthew's real focus and expertise was in procurement and negotiations. He was very good at it. He had worked with Geoff Gilbert before and he brought him in as part of his procurement team. I think he also brought in David Crawley

who had worked before at Tramlines. Geoff and Matthew drove the procurement process. Matthew worked with the project for six to nine months. During that time we recruited Steven Bell. Matthew was a contractor. He would not become an employee of TIE under any circumstances. Steven Bell had joined us from one of the rail companies as Chief Engineer. The original intention for Steven was that he would look across all of the various TIE projects but as time went on it became only one project. Steven was extremely high calibre with a lot of good construction experience. He was from a commercial background. I came to the conclusion that Matthew's skillset was in negotiation. He didn't have a track record with building. Steven's skillset was in building as well as negotiation and he had a lot of personal credibility with the stakeholders. We all mutually agreed that Steven would eventually become the Tram Project Director and Matthew would stay involved up until the negotiations with the contract were concluded. At that point Steven would take on the role of Tram Project Director and then deliver it.

25. Steven then went out and recruited some guys to work with him. One of the key guys who worked with him was Frank McFadyen. Frank became the Infrastructure Director. The guys who Steven appointed were guys who had experience in infrastructure and had built railways across the UK. They were all really strong hitting guys. So we strengthened up that area of TIE.
26. We did have a recruitment plan in place. The board identified where we felt we needed to be strengthened. We brought in a recruitment specialist in Colin Maclaughlan. He had been working with Bovis construction. He had been recommended to me by the Scottish Managing Director of Bovis. It was actually a challenge to get Colin on board as his salary demands were such that it concerned CEC. CEC could not understand why we were paying so much for an HR Director. I could understand their concerns. They were concerned that an HR Director was being appointed on a six figure salary. They couldn't understand why we couldn't just appoint someone for £40,000. They didn't understand the sort of guys that we were going for. We lost out on a lot of people because all we could offer was the challenge of the project, a first class salary, no fringe benefits and, at that time, a final salary pension scheme. These

guys weren't interested in being an employee of CEC long term. They were project people so the incentive pension system wasn't an attractive thing for them. We had to base it all on a basic salary and bonuses. We needed someone (a recruitment specialist) who could structure how that performance management incentive piece would work. There was no just handing out bonuses to people. It was target driven. Classic objective setting reviews. The remuneration committee oversaw all that and made recommendations back to the board based on the evidence which was submitted. I wasn't the one who oversaw the bonuses or anything like that. All of that was very tightly managed by the remuneration committee.

27. The way we put together the board was what I felt was best practice. People will say that David Mackay and I worked very closely together. David had a huge amount of experience and I would use him as a sounding board for a lot of issues. . It was helpful having been on the Strategic Rail Authority's board and having been on other boards as I had seen examples of both good and bad governance. I felt the best thing you could do was put together the best people you could, put in place the best governance and control systems you could and modify them to suit the circumstances you were in. We had to put in place the best possible people we could find.
  
28. Tom Aitchison and the other officials at CEC at the highest level were all very supportive. We had councillors on our board at TIE. I know that caused a lot of concern for people as they would say "*what are the councillors doing on the board of TIE, surely they don't have the experience to be able to add value?*" In some instances that was the case but in other instances they did add an awful lot of value. I know when you look at the board meetings there are certain agenda items which you would be very interested in and there will be other agenda items you will be less interested in because you don't feel you can contribute. On balance I thought that I didn't have any difficulty with the councillors being on the board. I felt it made sure that CEC were fully informed about what was going on. This was obviously very important. They were bound by their role on the TIE board in terms of not leaking things to the press and stuff like that.

29. The other person who I think was key to the project was Susan Clark. She was the Deputy Tram Project Director. Susan had been working with EARL. I felt that her skillset was better suited to the ETP. I was conscious that Andie Harper was a contractor and could leave and I wanted to put an employee of TIE underneath Andie to give us some degree of continuity.
30. Matthew Crosse moved on because we didn't need both him and Steven Bell, they were both senior guys. If circumstances had been different I would have been happy to work with Matthew because I felt we worked really well together. Matthew's wife was living down in London and this was a factor. I felt we needed people who were settled close to Edinburgh, or at least the Scotland area, to be able to do this work.
31. My management style and the type of person I am is fairly straight forward. I'll say what I think at the time. Now I am not saying that I think that all of the time I am right but sometimes when I am angry I will just say I am angry. There would be a reason why I would be angry and we would sort it out and move on. I think if you look at some of the emails I sent to the Tie Executive Team, you may read too much into them. I would say that my relationship with Matthew was good. We would sometimes fall out or I would give him a hard time because I felt that he wasn't doing things well enough from our perspective. He would just give as good as he could back.
32. You need to get in the best calibre of people. If you are going to try and get in the best calibre of people you can then you need to think through the structure of remuneration in the contracts. You need to have associated with that performance management mechanisms which are clear and transparent. You will not attract the best people if you don't have these things in place. Ultimately they were put in place. To be fair to CEC they understood what was going on, we kept them part of the boards and they understood what was required to be put in place to recruit the calibre of people we needed. The point I kept on making to CEC was that we have the best possible chance of running this project if we have the best calibre of people in Scotland appointed.

33. We did have difficulties attracting people to the project, of course we did. That was a result of both the pay structure and the fact that the project was in the public sector. They just didn't want to work in the public sector. I can't say whether generally it is a problem attracting people to public sector projects. At the time we spoke to people from all over the world to put in place the Tram Project Director. We were talking to expats, we were talking to people from all over the place. There was a lot of competition from projects in China, the Far East, places like that where these top guys were in demand for. There was no difficulty for these guys in getting jobs. They were able to achieve salaries which would be well in excess of what we were able to offer. We were only able to offer a good salary based on what would be offered in Scotland. We were lucky with Steven. He wanted to work in Scotland. He had a young family. We were part of a worldwide selection process for the top infrastructure guys. We weren't just looking in Scotland and the UK. We were working with search agencies who were looking across all of the available markets across the world.
34. Graeme Bissett was also very important to the project. Graeme was a consultant to TIE when I came on board. In terms of understanding really complex governance structures, the approvals process and strategies he was very good, important and valued by the board.
35. Stewart McGarrity was Finance Director and Commercial Director. He was recruited from the private sector. He was put in charge of all of the Financial Business Cases, the Business Plans and all of the funding stuff. He was a great addition to the team.
36. Stewart, Graeme and Steven were really central to the project. There were other people who were good too. I brought Jim McEwan in. Jim had worked with me previously. I brought him in because I felt we needed a bit more fire power in different areas. Jim was very direct and forceful.
37. I'm asked whether there were a lot of changes at an executive level. There weren't really a lot of changes. The Tram Project Director role changed three

times, that was the visible stuff, but meanwhile we were strengthening underneath all of the time. If Andie Harper had agreed to stay with us he would have been with us all the time. Then Matthew Crosse came in and did a really good job but we had already recruited Steven Bell. Because the decision to cancel EARL had been made there was no requirement to have a Chief Engineer for that project. The TIE board just felt that Steven was a better fit than Matthew. At the same time there was an evolution of the team but that had to be expected as the size of the project grew.

38. The change of responsibilities in TIE were as a result of the cancellation of the EARL project by the government. When the project was cancelled we had to let about twenty staff go. I said I would do that in a way that wouldn't cause any public embarrassment to the company. Then what we had to do was bring forward a new structure. It was effectively creating new roles and compressing things. It was a rationalisation of the skillset we had present.
39. The TPB was a condition by government of the award. As part of the OGC Process you had to have a project board and a governance structure associated with that. The TPB would have all the people that were responsible to the stakeholders for that specific project. The TEL board was the board set up to look at the combination of Lothian Buses and the trams further down the line. TEL was set up in advance of when it was really required but that was so it could get it into the thinking of what was actually going to happen when the trams were operating.
40. When the rationalisation took place, the TIE board and TPB had a lot of the same people. To overcome duplication we looked at the agendas so that we wouldn't have the same agendas between the two boards. The TPB had its specific agenda and the TIE board and the TEL board had their own agendas. All the key players were on the TPB. The role of the TIE board became solely about matters relating to TIE and it dealt with things like the remuneration of people or future work for TIE.

41. The TEL agenda was very much items only relating to TEL. The TIE agenda would only be items relating to TIE. The TPB agenda was the crux of the matter. What we tried to do was to look at the members and make sure that they didn't have to sit through things three times. . . I know to some people it was confusing and I know that to some people it was a bit strange but it was just the way that things were. Trying to change governance at that time would have taken a huge amount of effort. The big challenge was to get the procurement of the right people to the TPB. David, Neil and I felt that all of the restructuring of governance could come later on.
42. I'm asked whether the discussions were done there and then during the TIE board meetings or whether there were side meetings about the board meetings. No, there was an agenda for the meetings with standing items to discuss. There was a calendar for certain items which would come forward. There were the classic reports from committees e.g. the remunerations, the signing off of the accounts. There would be a meeting between the non-execs for items which anyone felt they wanted to discuss. Stewart McGarritty was the TIE board Secretary. I would meet with him a couple of weeks before the board meetings. We would look at what papers were required for the board. There was a duty for me to raise things then which I felt would be relevant or interesting to the board. That would feed into inviting non board members along eg. representatives from MUDFA or from the stakeholders. There were presentations during the board meetings which allowed further discussions to take place. There was nothing strange in the way the board operated, it operated in a classic fashion. There weren't side meetings. All the decisions were taken in the room during the board meetings.
43. The one thing that we didn't lack in the TIE / TEL / CEC tripartite arrangement was the amount of information that went out. Everything was communicated and minuted. Papers would be circulated for comment as well. There were no side meetings or any withholding of information from the boards.
44. During the early stages it was quite quick and easy to put together meetings in terms of the key players. I would make the comment that it was sometimes

difficult to get CEC as close to the project as they could have been. I think if you look at the attendance at some of the board meetings you'll find that some of the CEC officials didn't come along or send along deputies.

45. In my opinion, everybody worked really well together. I never got involved in the detail but I made sure that people talked to each other. I used to spend a lot of time meeting with the staff, not in a group meeting, just going out on the floor and sitting down with someone and asking how things were going.
  
46. I am referred to the Report to the TPB dated 9 August 2007 and found at **CEC01018359**. I note the comment about 'people working in silos'. Working in silos just means that people get very focused on what they are doing and they may not communicate the implications of what they are doing because of that. This was particularly to do with SDS. The guys would be working away and wouldn't be calling out for help or informing other people. People and communication was important. The other thing that that refers to is the different projects which were going on at the same time. The resources you had with the other projects was very precious. Instead of being able to share things and move people around to the best position, people became very focused on their own projects. These projects were both projects outside of the ETP, such as EARL, and projects within the ETP. There was a great pressure on people at that time in terms of time and resources. Sometimes people didn't like that their project was not top of the priority list and so it had to be postponed. That said, it didn't seem to me, as Executive Chairman of the board, something that was causing me or the guys real problems.
  
47. I am referred to **CEC01629382** which is the OGC Gateway 2 Assessment in September 2006. It refers to a positive transformation of the organisation. This had to be correct. The type and calibre of people we had brought on board was good. The transformation comment is not just about the people but also the structure and the controls we would have been looking into at the time. It was also about the readiness for taking things on to the next stage of the procurement. We had strengthened the management, all aspects of the project. We continued to strive to do this.

48. I am referred to the email from me to a number of people dated 1 March 2007 and found at **CEC01813895**. This is an email chain concerning the temporary Traffic Regulation Order (TTRO) notice. I do remember sometimes, and it really annoyed me, if we were doing something for the first time e.g. something to do with traffic management, and we had put stuff in the newspaper and we got the details wrong. I was always conscious of, and it was something I found difficult to explain to people, the amount of money being paid on legal fees. I just felt that these people were great at putting their hands up and saying "*this has happened*" but it was me who would have to say "*no, you are responsible for that.*" I wouldn't read too much into that email, it was just me blowing off. We eventually made Susan Clark responsible for traffic management. She was excellent. Traffic management was a thing we had to get right and this was early on in the project. I felt I had to make a statement that slackness would not be acceptable.
49. I am referred to the document entitled 'Organisational Changes' dated 30 October 2007 and found at **CEC01441488**. I think that this is to do with the re-organisation of TIE after EARL fell away. Steven Bell, at that time, was still involved in doing Stirling-Alloa-Kincardine so it was everything associated with that. The change of roles with Steven Bell and Matthew Crosse came later on than the date of this document. Steven started to take on more responsibility about February / March 2008. So that came at a later stage than this. The vote in parliament on EARL and the ETP changed the roles and responsibilities in terms of utilising the staff we had. I also think we were learning what had to be in place to work with the contractors (or the partners as I called them). At that time it was the case that we needed to strengthen what we were doing. There was nothing suspicious or difficult in it. It was driven by the outcome of the government's decisions.
50. I am referred to the review of the design process carried out by David Crawley dated January 2007 and found at **CEC01811257**. I didn't see this. I can't speak about the document.

51. The likes of Jim Harries and Douglas Leeming were persons lower down below the executive level who had their concerns. These must have been reasonably junior guys. I just don't remember **CEC01811257** at all. I wouldn't be involved with junior people expressing their concerns.
52. I wasn't heavily connected with Partnerships UK but they are involved with the government. They are a government backed organisation. We used them to prepare for the Gateway reviews. We would have mock Gateways and we would get Partnership UK to come along and do the mock with us. We would use them to audit the follow ups to the Gateway reviews. They were small and they did add value but we didn't use them all the time. I am asked why they were scaled back. Initially they did a bit of consultancy but once we actually took on our own people we didn't need them. We did use them for the roles that they were there for. They were helpful in terms of challenging us and testing our readiness to go to the next stage of the project. Once we got sufficient staff and reviewing processes in place we felt that they weren't required.. I would only come across Partnerships UK as part of being interviewed. I wouldn't come across them in terms of actually asking them to do any work.
53. I can't remember too much about TSS. Turner and Townsend were involved with EARL but I don't recall coming across them much in the ETP. If you want to talk about the role of TSS and Turner and Townsend then I guess you would need to speak to Steven Bell. He would be the guy to talk to.
54. I had never worked with DLA before. When we started working with them they had already been involved in the procurement process. They had already structured all of the boiler plate contracts. Andrew Fitchie worked extremely hard and was extremely committed to the project. During the project I found DLA's support to be great. There were times when I was frustrated by them. That said, having worked with a lot of legal firms, I think they're up there in the upper quartile. I didn't really have a lot of dealings with Sharon Fitzgerald. Most of the dealings I had with DLA was with Andrew Fitchie.

55. Just on the general topic of legals. I really worked hard to manage the amount of money that had to be paid for legal representation. TIE utilised DLA and Dundas and Wilson. CEC then employed their own legal support. We had lawyers preparing documents prepared by other lawyers who were then taking different positions depending on their potential exposure to liability. One of the reasons why we seconded Andrew Fitchie was because we wanted to make him part of the team. What we didn't want was to have our own lawyer working to Andrew who was then sending information into CEC to Gill Lindsay who would then employ her own lawyers to review the stuff that was done. We just wanted to simplify that. Seconding Andrew Fitchie was just an attempt to simplify that. He was a working part of the team, that's his role, that's what the commercial guy does. I just didn't want to be employing more people as part of the chain.
56. I was happy with Andrew. He was a key member for us. I've never seen a guy work as hard. I think maybe that was his style, he had to be so hands on with everything. He had a lot of people underneath him. The amount of documentation produced for signature of the contract was extensive. I remember the first time I read the draft INFRACO contract. I've been involved with DLA since and the structure of their contracts is fairly standard in terms of all the sections. I think one of the things that I learnt from the ETP is that you have to put in place really good legal people. It's not necessarily about the firms they're working for.
57. I am asked about the amount of support that Andrew Fitchie had from the CEC lawyers. I think that the CEC lawyers saw themselves as outwith the project. They saw the TIE lawyers as the guys who were doing what they were doing over there and that it was the CEC lawyer's role to review what they did. That's helpful I suppose in some ways but in others it can be seen as a bit adversarial. To get the legal part of this process working for me was quite a challenge. It was a challenge to get them to realise what was going on and what they were signing up to.
58. I'm asked about DLA also representing CEC. They were also representing CEC's interests. I remember a time when Gill Lindsay wanted to bring in another

set of lawyers. I remember saying *"this is daft"* and *"who is going to pay for it?"* But to go back to the point of Andrew Fitchie. He worked extremely hard, he was a key player and I had no difficulties with him. He could always have access to me. He could walk into my door at any time, and anyone else on the board's door for that matter. He could speak at any of the board meetings. There were no discussions between myself and Andrew that were kept a secret from the boards. I always made sure that there was full disclosure of everything that was going on in terms of discussions with the board, the TIE board, the TEL board, the TPB, Transport Scotland, any other board, because it was important that everybody knew what the position was.

## LESSONS LEARNED

58. I am referred to the Lessons Learned Paper drafted by Graeme Bissett and found at **CEC01344688**. I did ask Graeme to draft it. I can see from my email of 3 June 2008 found at **CEC01304460** that I gave my thoughts on the paper. I don't have any memories of this email but in terms of what it says I think it is fairly straightforward. We talked about recruitment, we talked about the negotiation, we tried to get the best people we could, we set up a procurement sub-committee to make sure everything was being done as transparently and thoroughly as possible. Getting TRAMCO procurement separated from INFRACO was really good.
59. When people talk about SDS and design, it is important to remember that you need to talk about the degree of detail. Sometimes companies will bid for a job. The job will say that this is a straight line and all you have to do is build that road. That wasn't the case here. There was a lot of design work done on this project for everything that was going to be built. There were bits that weren't finished but there was nothing that wasn't defined. I thought that perhaps one of the things about the original contract was that the specification of the design was too big. Maybe there could have been an earlier cut off point so that it wouldn't have been as exclusive.

60. I guess one of the problems which became apparent for us was the 'not invented here' syndrome created by BBS. This was in terms of "*we didn't do the design so how do we know it's right?*" I think a learning point would be that if you were going to do the design again then you would have the cut-off point a bit earlier. This is what we had to do, at the end of the day, as part of the contract.
61. From my own personal point of view, I think it was an error separating out the design from the build and not having a combined contract. Unfortunately, by the time I took my role on the procurement strategy had already been out in place. I guess one of the key learning points for me was that there was no appetite in the market for bidding for contracts where the design is separated from the build. I felt, if you actually look at the behaviour of PB, it seemed they didn't want to be involved with the build at all. They wanted to be away. BBS and Tramlines were suspicious of PB. They didn't want their design, they both wanted to do their own design. If I had to do it again I would have a single design and build contract. If you did that you would not necessarily need a structure like TIE because the company you would be dealing with would be a management consultancy. One of the issues that the guys found, and I have no way of knowing if this is true, was that there was a lot of duplication between what TIE was trying to do and what BBS was trying to do and this caused conflict. The theory was that by doing the design up front you're then able to negotiate the best price you can. That's ok in theory if you can get the design up front. It is also ok if you have a market that wants to compete for it. However, we ended up with just two responses. I think one of them, Tramlines, was non-compliant so we had BBS or nothing. I am asked why I think the responses weren't forthcoming. Maybe they just felt that working in the streets of Edinburgh from a brand point of view was not a good idea. It would be just too politically difficult for them. I'm asked whether I mean the political situation itself had an effect on the attractiveness of bidding for the project. No, the political atmosphere unfortunately did have an effect in terms of us being able to conclude the negotiations but not in terms of the pre selection period.
62. I'm asked about the potential for keeping Tramlines in the bidding process longer. Our procurement strategy was clear and with the information provided, BBS were

the clear winners. . In terms of our procurement process the right thing to do was close it down and try and go for a rapid conclusion of the contracts.

63. The contractual arrangements were very complex. . For me the contractual arrangements were the main difficulty. In theory in 2002 or 2003 there was agreement about how procurement process was going to be for the ETP. In theory the guys who looked at this thought that this was the best way to do things. Maybe at that time, when the economy was growing and everything was vibrant, they thought there would be a lot of competition. Maybe they thought that they'd get the competition, they'd get the design then they'd be able to negotiate these guys and achieve the best price possible. Maybe that's what they thought would happen. When we got to 2006 and 2007 the economy had floored and the environment politically was quite different. I guess if you were looking back to 2002 or 2003 nobody would have had these assumptions. So we were ending up either having to abandon the procurement process and start again or to continue. Personally I felt that it would have been the end of the project if we had started the procurement again. I do not think that it would have been tenable for anyone to have done that. That said, there were times when I had to say up front that we couldn't do this because we don't have the authority to do that and if it meant we didn't have an ETP then we didn't have an ETP.

64. I'm asked whether I felt there was a pressure from anyone or anywhere to proceed. No, I think everybody wanted to get the procurement process concluded because there had been so much invested in it. I think it would have been hugely difficult for us to come forward and say that we couldn't do it. Be under no illusion though, the TIE board would have done that if they thought that was the final position. If we couldn't have negotiated the deal with BBS then we couldn't have negotiated the deal. That would have been the position. Then there would've had to be the decision whether to go back to Tramlines or to start again.

65. I think if you are to look at Graeme's Bissett's lessons learned paper (CEC01344688) he got a lot of input from a lot of people. I think it is a good document for the Inquiry. In terms of my response to Graeme's paper,

CEC01304460 is my input to the report. Graeme then sent the report out to us all. Around about that time we were about to start up the construction. I left the project a few months after that. I can't recall what happened to the report.

66. I am asked whether a separate delivery entity was a good idea for the project. I think that you needed a delivery vehicle to deliver projects like this. It needed to be able to recruit the best people as best it could and remunerate and control its people in the best way it could. That said, I think if you had a different contract structure then having a smaller delivery vehicle would have made more sense. I think that, if I was taking this thing forward again, I would have a small lean contractual type delivery vehicle and I would contract the whole thing to the private sector through either a management consultancy or whatever. I wouldn't try and build up an organisation the size of TIE. I would have still had a separate entity outwith CEC though.
67. A real factor for us that caused a problem with BBS was the Scottish Government awarding them the contract to upgrade the M80. At that point key resources were moved out of the BBS office to go and build the road. The Director, Scott McFadzen, alongside a number of other key people disappeared. I pointed out to TS the difficulty that this would cause. This company was just setting itself up in UK. I didn't have a lot of personal interface with any of the contractors. I met with Steve Reynolds from Parsons Brinckerhoff (PB) because I wanted to meet him to help him to help me. I also met with Richard Walker and Michael Flynn from Bilfinger Berger (BB) and Siemens occasionally as part of trying to build the relationship. I had some contact with their bosses.
68. It's a small point about third party consultants. These guys would come in and if they could get a better day rate they would just move on. I don't remember it as being a particular problem. We tried as much as possible to have people on TIE contracts but if there was a role which was only required for three months then we would just use third party consultants. We tried as much as possible for the enduring roles for those persons to be employees.

69. I am referred to the lessons learned paper and note the comment regarding an attempt to do without DLA. I don't recall the attempt to do without DLA. I think what we might have said was that we were spending far too much on legal people and legal fees and that we should just try and reduce it. I think that we just looked at perhaps trying to take somebody on ourselves. DLA were still involved, they just weren't involved in some of the more menial stuff. That's my recollection of it. At no point did we have a discussion to deal without DLA. I don't think this was to do with any of that. This was just to do with asking whether we could reduce legal costs.

## PROCUREMENT STRATEGY

70. We never deviated from the strategy used to procure the various work packages. I wasn't involved in creating the strategy so I don't know what options were considered. I do understand why they went with it at the time. I don't think I was involved with the review of the strategy in 2006. Even if I had been involved, it would have only been on a superficial basis because I was a Non-Executive at that time. At the time, there was good strong presentation as to where they were going and why they were doing it. The strategy was set up. The guys were executing the strategy. I think that those were the fundamentals by which we were operating later on in 2008. I think that if the guys who were looking at it had gone for a design and build contract there would have been a different outcome.

71. All I can say is that I understand the de-coupling of the design and construction but the reality was that the benefits, for me, to the company were not delivered. Maybe in another time and another place it would have worked. There will be people who will tell you that having separate design and build contracts is best practice. It just didn't work for the ETP. All of the procurement strategy stuff was before I started. When I started the SDS had started. We dealt with the management of the procurement strategy as best we could. At no point did we say that we were not going to achieve it. It was just difficult.

72. I wouldn't have been on the TIE board at the time of the OGC Readiness Review in 2006. I wouldn't have seen the report at **CEC01827975**. The Readiness

Review must have been right because, as time showed, the novation of the contracts was very difficult.

73. The consequences of the procurement strategy and the novation of the contract into INFRACO we've already talked about. In my opinion PB didn't want to novate. They had become comfortable working with TIE. They didn't fancy working for BBS. BBS didn't particularly want PB because they had their own design department. I felt we had to force the parties together even though, contractually, they were obliged to do that.
74. I have no idea about the OGC Gateway 2 Assessment. It was before my time and I don't recall seeing it.
75. I am referred to the letter from me sent on May 2007 found at **CEC0167959**. TS was involved in the design of the procurement strategy. They would have been involved in 2002 or 2003 and would have set the conditions as part of the grant award for the ETP. I know exactly what happened at the time of this letter. John Swinney had been saying the ETP had been a disaster and had spent £200 million or something. I was just pointing out that you do all of the upfront stuff upfront e.g. purchasing the land etc etc. The point here was that TS were part of the design of the procurement strategy as it was originally envisaged.

**CEC0167959  
should be  
CEC01674959**

## **SDS / DESIGN**

76. As Chairman of the board I was involved with the oversight of the overall SDS programme. I didn't have a detailed role within SDS though. That was the role of the Tram Project Director. I only got involved to help the Tram Project Director when it was appropriate to use whatever skills or leverage I had to either put in place better controls or to put pressure on PB. I was involved at a very senior level. The Tram Project Director was always the one responsible for managing the delivery of PB's design. The Tram Project Director may have had people beneath him. I couldn't comment on what their various roles might have been.

77. The management of SDS got better over time because there was much more clarity about progress, issues and issue resolution. The management towards the end was a lot more focussed. It was a lot more output driven. I think people, as time went on, better realised the importance of their own work. The controls were put in place to help people realise where their work was deficient.
78. I discussed SDS performance with Andie Harper, Matthew Crosse and Steven Bell at almost every weekly meeting we had. It was always being discussed. It was always on the agenda with the board.

#### *DEFECTIVE PERFORMANCE*

79. I am referred to the TPB minutes dated 23 January 2007 found at **CEC01360998**. This TPB meeting was held in advance of my trip to America to meet with PB. The meeting with PB worked because ultimately they put in place Steve Reynolds. That was what was meant by a review of internal expertise to manage SDS.
80. The SDS performance was critical for MUDFA delivery because they had to provide the drawings which enabled McAlpines to then plan the diversion of the utilities. If SDS's dates were missed it then meant that the dates for McAlpine's work programme would have to be altered. It was part of the pressure of the line of the delivery plan. However, you have got to make sure that the processes are working and there are early warnings to enable the programme to be re-designed. McAlpines, Halcrow and PB were asked to work closer together in order to synchronise their work. We also offered our help, in terms of contacts with the utilities, to enable the better flow of information.
81. I am asked whether I was surprised about continuing slippage as critical issues were removed. The programme was working its way through the design so it was always discovering new challenges. The question then became how to resolve the challenges on your table. The programme was forever being re-baselined based on where we were at any given time.

82. I am referred to my email exchange with Thomas O'Neill about 19 January 2007 found at **CEC01826306**. Thomas O'Neill was the head guy at PB. I invited him to Edinburgh and we met. The fact that he took the email from me and met to have a conversation meant that he also realised the current PB issues.

83. I am referred to **CEC01643087**, a letter dated September 2007 from PB, which suggests that they had provided much of the drawings. I recall commenting to Steve Reynolds that they had provided many of the drawings but they hadn't hit any of the dates. There was a consistent theme about PB not doing what they were saying they were going to do. I didn't get involved in the details. It wouldn't have been possible to get involved in the detail. All I got was a piece of paper saying there should have been a certain number of work packages completed and ultimately there were none. I would then say that this is clearly unacceptable.

PB were awarded the contract to design the Edinburgh tram network. It wasn't TIE who were designing the network. As the project went on it became TIE's responsibility to manage the delivery of the design contract but, at the end of the day, the contract was with PB. Steve Reynolds was an excellent guy. Although I didn't want to get involved in the detail, I ended up setting up weekly meetings with Steve so that if there was any stuff that he was concerned about or things which I could help him with we would work them through. The project was always behind schedule. There were always people coming to me about the manpower, resourcing and quality from PB and PB never being there.

84. One of the reasons PB used to explain why they were behind was because they needed approval for their stuff by CEC. In my opinion, the approvals process was never properly managed by CEC. The timescales were never met. Then there would be changes to specifications. That was when we were required. That interface was a difficult interface. To try and resolve it TIE became involved in the micromanagement of the process. It was never envisaged that TIE would be involved in that. On one hand it was good because it gave focus and clarity about where we were and what we were doing. On the other hand it meant that the guys became responsible for why it wasn't working. The contract was with PB.

85. As we started to get to the end of the project, PB didn't want to novate to BBS. Conversely BBS never wanted PB working below them. They would always state that the design wasn't complete. The design was complete to a line which was certainly complete enough to allow BBS to tender against the job. The design was sufficient enough for BBS to be confident enough in terms of what they were going to do. It was sufficient enough for BBS to be confident in terms of their obligations under the contract. .
86. People will say "*if the performance was so poor, why didn't you get rid of PB?*" At that point there was no serious alternative to working with PB. I remember, at one of the boards, we had the discussion about getting rid of PB. The tender process was underway, the structure of the contracts was underway, every day we had spent serious money and there was a belief that PB had designed systems like this all through the world. It wasn't like there were hundreds of companies who could do this job. Whatever way you looked at the risk or the cost, the most cost effective approach to take was to just get this part of the design finished. You could almost see the finishing line, the end of the tunnel was just there. It was just getting to it. This goes back to my point about where the line had been drawn. I think it was drawn in the wrong place.
87. What really annoyed me was what happened right at the end of the process. This was the day before PB were due to sign contracts. PB knew we had agreed a position with BBS and Greg Ayres came to me and asked for more money. He said that PB weren't going to sign the contract unless £2.2 million or something is given. It was shameful. At the end of the day we had to take a view. I said to them that we couldn't just pay them the money. We had to find a way to attribute value to the contract otherwise the parties wouldn't sign. They would have walked away from the table and the whole thing would have collapsed.
88. I wasn't involved in the day to day management of SDS. I wasn't involved in the detail. All I saw was the fact that this thing was behind. If the organisation had put the focus on SDS the day they started then they might have got the design

finished. Particularly if they had focussed on the approvals process. Like in a lot of projects, a lot of the float was burnt up at the start.

89. I do agree that there were problems and that they started on day one. I think the approvals process with CEC was a problem for PB. . Another area is that PB should have taken more ownership. They should have brought in the right people given the calibre of the project. I think I asked for someone like Steve Reynolds to be brought on board at PB. He wasn't there at the start. Even when he was appointed, I don't think he worked full time.
90. I'm asked for my view as to how much of the design was complete when INFRACO went to tender. The outline design must have been complete because, if it wasn't, they wouldn't have been able to go to tender. The process was that, once we went to the tender, the design would be complete enough to enable bids for the INFRACO contract.
91. We did give consideration to whether we should slow things down. The problem was that, at that point, we had had the government change. We were burning money. TIE's running costs were about £1 million a month. I don't know what the consortium's costs were but the costs in terms of penalties for say a further three month delay would have been about £15 million to £20 million.
92. I think PB will say that BBS had enough information to be able to work. Also the priorities that BBS were looking for were already there. BBS were effectively saying that they weren't able to do this unless they had 100% of the design. That's not the case, they were never going to have 100% of the design. We did look at slowing things down. The reason we didn't was because that option was sub-optimal. The best option was to continue with the process we had. We had to try and get as much of the design as complete as possible.
93. I am referred to the papers for the TPB meeting dated 7 December 2007 and found at **CECE01023764**. I note the figure of 63% being the amount of design delivered at that date and the figure of 75% being the amount of design which would be delivered by January 2008. I don't know what the figures would have

been at those times. It's the principle that there was enough information to enable BBS to complete the process. Maybe BBS didn't agree with us as to how complete the design was but ultimately they must have taken a view because they signed up to the contract.

94. I'm asked whether the pressure to carry on was purely financial. No, I wouldn't say that. There were also logistical considerations. We had to consider what logistically would happen if we slowed the process down. From looking at all of the alternatives on the table, the best option was to drive this all to a conclusion.

95. I'm referred to an email chain which includes me dated on and around 24 July 2007 and found at **TIE00035918**. I note that I express my concern to PB that they weren't producing designs. I say that I was seriously considering pulling the MUDFA programme. This is just about a piece of work that was underway. I'd got involved partly as a result of my weekly walk down Leith Walk. I had said to the local residents that things were going to get done. Unfortunately, the designs had not been delivered. I thought it was important that, when we told the public we were going to do something, we did it. These guys had businesses and lives to lead. This was just a smaller thing. There was no big thing about pulling MUDFA.

96. I was very passionate about the impact of our work on people. Once a week I walked the full route. I would look at what was going on and talk to the guys who were working. I would do safety audits myself. I would also stop in and talk with a lot of the businesses. I would meet with the public on an adversarial front but I would also pop in and chat and have a coffee. I would look to mitigate the impact of the project on their businesses. I would look to see if I could help them out e.g. I would make sure our staff used their bed and breakfasts or I would make sure that we used their car washes for our vehicles. They would tell us things that the contactors were doing that were disruptive.. I would take that back and speak to people to get that sorted. This is what that **TIE00035918** is about.

97. I am asked about CEC00114831 which notes that it was never intended that the design and construction periods would overlap. That was true.

*RESPONSIBILITY OF TIE AND CEC*

98. I am referred to the report from Alisa McGregor dated 17 January 2007 and found at CEC01799542. I don't recall ever seeing this report.

99. PB outsourced work to Halcrow locally and there were always problems there. There was this issue between PB and Halcrow about resources. I think, generally, getting the records from the utilities was a problem. Maybe there were programmes which were brought forward which were too ambitious. It was important to get the MUDFA programme out of the way. During the early part of that programme, all of the KPI work controls were positive.

100. I'm asked about Alisa McGregor's reference to people working in silos. That's just about when you have small groups of people. MUDFA was separate from INFRACO. SDS had subcontracted the work to Halcrow. There was the potential for information not to be passed on. An example of this would be something being changed in the programme for MUDFA. The programme for MUDFA was part of the INFRACO contract. INFRACO needed to know if there were changes. It was just about making people realise who they had to relate to in their peer group. You had to make people realise that they couldn't work in isolation.

101. MUDFA was a contract that was given to McAlpines. They were ultimately bought over by Carillion. TIE were sort of supposed to facilitate the contract. We didn't plan the work so it was important that persons realised where their responsibilities lay. There was a danger that you could muddy the water by putting someone in. Graeme Barclay came down and agreed what the work programme would be. He then had his own facilities to make sure that all the road openings were ready. The actual execution of the work was the responsibility of McAlpines.

102. I'm asked about whether there was a 'them and us relationship' and a 'blame culture' between TIE and SDS. This is suggested in Alisa McGregor's report. She would have her own view of life and how things were getting on. Some of these problems might be right but I don't know. This report could be just a moment in time or there might be prejudice there.

103. It isn't true that TIE staff were poor at record keeping and didn't understand the importance of keeping records. It's not true that the quality of information from TIE was poor. I don't know anything about the statement about an ineffective and indecisive design management team who did not follow processes, procedures and contract timescales. I don't know about CEC having ineffective management and lack of understanding of complexity of tram project.

### *CONSEQUENCES*

104. I think it is wrong to say that little progress was made by SDS. In comparison to what it might have been, a lot of progress was made. In terms of trying to remedy the problems on both sides, I think the actions we took strengthening the management of information and controls were good. I think the actions we took in improving the CEC consents and approvals process were good. One criticism could be that this was all too late. But, saying that, I do think there was a lot of progress made. We're talking about being in 2007 and the bids for INFRACO have come back. What we were looking at then was how to continue the process and realistically what information will we have. At that point BBS were still explaining that the strategy would be that the PB's design would be complete. I do agree with PB that BBS didn't need 100% of the design to be complete to bid on what they were doing. If there were any key elements that needed to be provided then PB could have prioritised that. BBS had enough information.

105. We did consider what the options were. There was full disclosure to all of the involved parties of all of the positions we were at. We weren't doing this in secret or in isolation. Consideration was given to what effect the progress would have on INFRACO. Discussions with both TRAMCO and INFRACO included

discussions about SDS. There were also direct discussions between SDS and INFRACO to optimise the position so that we could get as much progress as possible to enable conclusion of the contracts.

### *COUNTERCLAIM*

106. I am referred to the claim and counterclaim with PB. I can't recall this. I would suggest PB's claim may be to do with the delay in getting approvals and agreement from CEC on their designs. The subject of the counterclaim would be about the fact that PB had missed their contractual milestones. I don't know who would know about the claim. You would need to either go through the paperwork, because it would be documented, or find the person who dealt with it. I can't recall the detail. Either the Finance Director or the Tram Project Director would know. I'm not really able to comment on the ins and outs of the claim. It would have come to the board for approval otherwise it couldn't have been signed off. When it would have come to the board there would have been a recommendation from the Tram Project Director. Any decision made would have been made in the context of the overall management of the project and the implications for the funds we had available.

### *SDS CLAIMS AND ADDITIONAL MONIES*

107. I would agree that in light of the procurement strategy TIE were, to a degree, over a barrel with the SDS request for additional monies. The alternative with SDS was to get someone else to do it. There were elements of the SDS claim that were valid. It was a case of finding a way towards a negotiated settlement. The other thing I recall at that time was that it was important for Steve Reynolds to be able to defend PB's position. The facts were the facts. In the terms of the contract there were breaches on PB's side. Similarly on CEC's side, in terms of the approvals process, there were also breaches. At the end of the day there was an agreement. The important thing was to engender the behaviour that was going to drive the design through to its conclusion. We were not far away with PB. We had to draw a line in the sand. We had to finish this process. That isn't

to say we just threw money at it because we didn't. There had to be a rationale explained to the board and the board had to be happy with it.

108. I have been asked to comment on the suggestion that TIE could not invoke their contractual remedies so they were going to have to pay SDS no matter what. No, that wasn't the case. We couldn't do that, our governance procedures meant that we couldn't just give money away. We had to explain all budget variations to the board, to CEC and to TS. Any changes to budget were monitored monthly. Not only culturally would we not do it, we couldn't practically do it.

#### *NOVATION*

109. PB didn't want to novate. PB didn't want to be managed by BBS. They had signed up to the TIE contract but they didn't want to novate. It was evident that PB were nervous about the novation. It was evident that BBS were nervous about it too. We had to try and reinforce the message to both parties that there was no alternative to the novation. This was what the agreement was. They had signed up to the novation. It also has to be remembered that SDS were still going to be responsible for maintaining the design longer term. They had obligations under the contract. Even if PB had completed the design, they would still have had obligations to BBS as part of the design. They were always going to be involved.

110. BBS were always fully informed of where the design was. We were up front about everything. They expected the design to be 100% complete and it wasn't. There was a baseline for the design. The baseline was set out in the contracts. The contracts said where the design was going to be and what designs were going to be available. The intention was that, as the design developed, the baseline would be moved. This was all fully disclosed between PB, BBS and TIE. We were working as a group as we moved towards novation. I remember that we prioritised some of the work as it helped BBS firm up their pricing. The position of BBS though was that the design was not complete. The design was sufficient and complete enough for BBS to firm up their pricing and they

accepted the transfer of the design completion task for a price. They must have been able to take a view as to what was going to be required to complete the project as this is what they eventually did. My view is that there were other factors at play for BBS, other than design, which was impacting their behaviour.

111. I am referred to the TPB minutes of 13 February 2008 found at **CEC01246826** and the comment about me speaking to Andrew Holmes in relation to the issue of seeking approvals. I did raise the issue surrounding approvals with Andrew Holmes and Tom Aitchison. This was one of the problems that we had at the time with Andrew and David Anderson not being present at the board meetings. We had to have further meetings. We put in place a different way to fast track and facilitate approvals. There was a lot of engagement required to improve this. We put in place dedicated resources, we put in place timescales and we put in place a traffic light warning systems.

112. The problem holding up the conclusion of the INFRACO contract in March 2008 was the fact that PB didn't want to go and BBS didn't want them. It was pointed out to PB that they had to go. This was pointed out to BBS also. We made it clear that both PB and BBS's reasoning didn't make sense to us. We had to work through a process to alleviate their concerns and get the contract negotiations complete. PB just didn't fancy working for these contractors. I think they had become comfortable working in the council environment. I think they were concerned that BBS would deflect their non-delivery on the fact that PB hadn't done things for them.

113. There were signs present that BBS weren't ready when they signed up to the InfraCo contract. I think part of BBS's negotiating strategy was to buy as much time as possible. I think that BBS had lost control of their supply chain. It became apparent, just at the time when they were due to close, that they couldn't close. BBS had tried to get their supply chain back on board. Perhaps their supply chain had them over a barrel in terms of prices. This became a real problem for us a week or two before we were due to close the contract. I recall having deputations from both companies pleading for the novation not to go

ahead. I didn't even get involved in the emotional discussions because I had nowhere to go on this. The contract structure was such that this was the way it had to be. From my point of view it wasn't even up for discussion, it was just a case of 'how do we do it?'

114. The mechanisms by which the novation occurred were in the INFRACO contract, the MUDFA contract and the TRAMCO contract. Interestingly enough, there were no issues about novation with TRAMCO or MUDFA. There were only issues between SDS and BBS. These were the only novation issues. In the end it was the case that the contract term was enforced against PB and BBS.

115. There was never any doubt that TIE would close the novation. It was just made more difficult by the issues we were dealing with at that time. I think, overarching all of this, you have got to think about the emotions involved here. These were two companies who just didn't want to do it. I think what's important to say here is that they did novate and we did get it through. I'm not of the view that anything more could have been done by TIE. Ultimately, the end product was that both parties novated. It was painful for them, it was painful for us, the parties were never going to be the perfect partnership but they had signed up to novation and that was what they did.

116. It was utterly not the case that the concessions made to PB were a reward for defective performance. This was a contract that was causing us a lot of concern.. Everything that was being done was being done in a way that could get as best value for money as possible. It was brutally difficult to get PB to sign the contract and to get PB out of TIE's office and into BBS's. Culturally they just didn't want to do it. The Inquiry must understand here that the guys we had negotiating on behalf of TIE were negotiating furiously. They were trying to protect the public purse and the integrity of the project. There should be no doubt in Inquiry's mind that that was the motivation of all of the people concerned. To be clear, the option not to novate was never an option that was up for debate. It was always going to happen.

117. I'm asked about PB causing problems right to the wire. This concerns the last minute request from Greg Ayres for the extra £2.2 million. I remember immediately reducing the claim by £200k. The point here was that they were the ones who brought it forward the day or two days before INFRACO was due to sign. There's no doubt in my mind that this had been timed by PB to get the last price squeeze out of TIE. The request could have been brought forward months in advance. I think you need to look at the TPB minutes dated 4 June 2008 found at CEC00080738 and the email which I sent to Greg Ayres. I had to bring together an emergency meeting of the TPB purely on this issue. Everybody was aware of the issue and the meeting – CEC, TS, TIE, TEL. I actually think there were two TPB meetings as a result of the issue. There was one which was set up for the close out and then there was a follow up emergency TPB meeting. There was only a small group of people at the emergency TPB meeting. This was to approve the SDS payment. At the time I spoke to Steven Bell. I remember saying to him that we can't take this personally. We needed to look at the request objectively and find out how we could get further value e.g. looking at whether we could get PB to accept further risk. Otherwise we couldn't recommend an increased payment. We did ultimately achieve that.

118. I am asked to answer the question "*how were PB able to get away with this?*" It was because the consequences of stopping would have been like taking a domino out and the whole thing falling down. It had been so difficult to get the novations, the negotiations and the pieces in place. We had a duty not only to stakeholders but to the people of Edinburgh to get this done. The alternative to providing the extra money would have been ultimately to stop. If we had stopped the negotiation at that point then the design baseline would have changed. The design baseline was in the contract. So if the baseline had changed then the contracts would not have been able to have been signed. The running costs and delay penalties would have then kicked in. By the time we would have gone round that all again it would have been another two to three months of attempting to herd the cattle back into the pen. We would have been back to where we were at the start. What we had to do was find a way to get something back from their claim in respect of additional work or reduction in risk

to the deliveries. We then would have something which could be reasonably agreed by the stakeholders and the TPB (which it ultimately was).

119. You would need to speak to PB to understand their rationale.

120. I am referred to the Design Due Diligence Report of 18 February 2008 found at **CEC01449100** which notes that the design was incomplete, required significant further development and that 40% of the detailed design had not been issued. It further notes that there had been a slippage of more than a year and that BBS considered that novation presented a "*significant and unforeseeable risk to the project.*" I can't recall whether BBS's interpretation of 40% of the design not being issued was right or not. I don't think that this corresponded with the view of the ETP Team at the time. Again, we come back to how you interpret 'detailed design' in terms of being able to firm up and quote prices. We were always completely transparent with BBS as to where we were on design. We wanted to work with them to help them to facilitate their bid. We also worked with them to make sure as much of the detailed design was as complete as possible. We wanted to make sure that anything that tailed over would be of a minimalistic nature. That was the strategy. That said, part of BBS's negotiating strategy, all the way through, was to repeatedly state that the design was incomplete. You will find that right the way through every statement made by BBS and at every meeting attended by BBS. I think you would need to go to PB but I am sure they would argue that, in terms of the work that they had done, in the lead up to novation the amount of information that was available to BBS was well in excess of what (I believe would) normally be made available on any tram project across the world.

121. I am asked what the advantage to BBS was in saying that the design was incomplete. I think that BBS had lost control of their supply chain. I think that they needed stalling tactics. It all became apparent when it actually came to signing the contract because they asked for more money. I think there were other factors at play. Stating the design was incomplete isn't exactly a red herring but it was a negotiating technique as part of a bigger strategy.

122. I'm referred to the email chain about 20 December 2007 and found at **CEC00547740**. I note Richard Walker's comment to Geoff Gilbert that BBS had thought the design would be finished upon novation. That is true and we all thought that but, as we kept on saying to Richard and Michael Flynn, this is the position where we are and we have to work our way through it. I would then get Richard and PB to speak together to see what could be done. They would meet with PB to prioritise, to mitigate, to get assurances, to ask what they needed as opposed to just saying "no". BBS had a team of people working on the contract. They were aware of the position.
123. I can't really comment on the quality of the design packages once they were delivered. You are talking about a worldwide company and the quality of what has ultimately been delivered is good.
124. I am referred to the email chain involving Susan Clark dated about 2 March 2007 and found at **CEC01815376**. I think this was all to do with Susan flagging up a change which was coming through.
125. **PBH00032471** and **PBH00032472** are as a result of my weekly meetings with Steve Reynolds. He then sent the minutes to his own bosses. All this comes back to BBS's view that they couldn't price the design if it was incomplete. Steve was saying that the design was complete enough to allow for BBS to price. This is the point again about detail. Say if you wanted to describe an engine do you need to describe it down to the last tap and washer of how a piston worked? We are talking about BBS's request for detail being at the level of them asking whether they need three bags of cement not the fact that it is an eight foot by four foot hole which needs to be filled. It's important that people understand that. If you were talking to PB they would defend the level of detail provided.

#### CAUSES

126. There would have been many causes for SDS slippage but the most obvious cause was the delay in getting the documents approved in terms of approvals and consents. If the documents went in to CEC and they weren't right then they

would have to be re-worked. That was where the majority of the issues surrounding SDS delay lay. What really annoyed me with this was that everybody needed better visibility so people could then work on where the priorities were. That, to me, was something that we worked on long and hard. I'm asked what I mean by 'visibility'. The fact was that a lot of work was going on and it wasn't obvious, in terms of the management information systems, that people knew where the real critical path was. We all worked together in terms of improving that.

127. I'm asked about PB's claim that the delays were due to the slow responses of the statutory utility companies. The contract with PB was for them to get this information. TIE would help if they could. Why it may have taken longer is because the records were not where they needed to be. PB had Halcrow working. Halcrow had a lot of experience working with Scottish Power and Scottish Gas. PB should have known what the state of the records were.

128. I'm referred to the DPD minutes for August and the email chain associated with them dated about 13 September 2007 and found at **CEC01630996**. This is the concurrent theme of me saying to everyone *"is the issue that the deliverables have not been met?"* This is just me re-stating my position that you would expect PB to have met the deliverables. Steve would've been unhappy because he's working really hard with his guys but the bottom line is that PB are just not getting it over the line. To me it was just not good enough.

*RESPONSIBILITY OF TIE AND CEC (additional comment)*

129. There were issues where PB would put forward designs to CEC for work packages and were of the view that they were 100%. CEC would come back and say that they didn't meet the specifications. There would then be back and forward communication between them. That created a delay in itself.

130. I am asked about the use of charettes. This was an idea which David Mackay and myself came up with - to get all the people round the table at the one time and look at packages of work which are connected and try and resolve them all

in one go. It did look to me that it was good process for these guys to resolve the issues. I think the charettes were positive things and they did clear up a lot of issues.

131. I am referred to the TPB meeting minutes of 23 October 2006 found at **CEC01355258** and the comment that TIE recognised it needed to control and manage the contract more effectively. This is just a statement of fact. At that point I had been on the board for about three months and the contract and deliverables were starting to get behind. I was starting to get concerned at this point that we were burning up float. What I was saying to the team here was that we have to understand where this contract is in terms of the deliverables and we have to make the contract work more effectively.

132. I am referred to the TPB meeting minutes of July 2007 found at **CEC01565576** and the comment that Matthew Crosse makes that both parties had played a part leading to the current situation. This is just PB and CEC again. There are no new players or themes in this.

133. I am referred to the TPB meeting minutes of August 2007 found at **CEC01018359** and the note that PB sought to place some of the delay in designs on TIE and other parties from whom approval was required. This is not correct because all of the approvals had to come from CEC. TIE was, however, the conduit. I am referred to the email chain concerning the DPD minutes of August 2007 found at **CEC01630996** and the further email chain dated about 13 September 2007 concerning them found at **CEC01666985**. I note Matthew Crosse's statement to me that he had other comments to make. This is the same email chain discussed before. As I said before, this is Steve Reynolds trying to say why he hadn't delivered and that the work packages weren't delivered. I am saying that this is not acceptable. I have no idea what Matthew Crosse's other comments to me were or whether he actually came to me and said anything further.

134. I am referred to the TPB meeting minutes of 9 April 2008 found at **CEC00114831** and the statement that "the performance of SDS has been consistently

disappointing on a number of levels and it is fair to say that the weaknesses have also existed in execution by TIE and CEC". I do agree with this statement but, and it is an important 'but' here, the contract was with PB to deliver. TIE somehow found themselves as the conduit for persons commenting that the processes were not working. We were never intended to have that role. That would be the caveat that I would add to my response. We had to help and get involved in terms of the management of the information, particularly in terms of trying to improve the response times of CEC. So, in this sense, I do agree. My comments would have been placed in the minutes to the board. The weaknesses on the part of CEC was the timescales it took on the approvals and sending their consents back.

#### *CHANGES TO DESIGN PROCEDURE*

135. I am referred to the Design Assurance and Review Process paper dated 14 March 2007 and found at **CEC01359648**. I have had a look at this document, I do not recall it and I did not see it. I wouldn't be able to comment on why the changes were made.
136. I am referred to the TPB minutes dated 19 April 2007 and found at **CEC0688584** which suggests that the change was to address below quality submissions. I am asked how the new procedure would help. I do not know what the new procedure was. I wouldn't have been involved at that level.

#### *REALISATION OF RISK*

137. I am referred to the risk registers produced at each TPB meeting. I have been referred to risk 280, an example of which can be seen in the TPB meeting minutes of 23 January 2007 and found at **CEC01360998**. Risk 280 states that SDS deliverables were below the required quality levels or were late. I am asked whether by this time the risk was in fact no longer a risk and now more of a reality. All actions would be taken to mitigate the risk and the recovery actions, in terms of minimising the impact on the programme, must have been underway. I'm asked why risk 280 keeps reappearing in the risk register included in the

papers for each meeting. Risk 280 would appear on every risk register we would have. The actions, priorities and resources we used to tackle this risk have already been talked about. There can be no misunderstanding that the management of SDS and the improvement of the programme wasn't a top priority for the tram project. The risk would always be a risk because the risk register was a snapshot of a moment in time. Once the risk was resolved, new issues would come back onto the register. The risk register wasn't a static document. Risk 280 would be referring to new deliverables meeting by meeting, not necessarily the same deliverables. Risk 280 would be concerning different issues meeting by meeting. They would just be categorised under risk 280 as time went on.

138. I am referred to the TPB meeting minutes of 9 April 2008 found at **CEC00114831** and the note stating that I "*explained that in particular to buy-out the risk of SDS non-performance was considered good value for money.*" I can't recall this. I'm looking at the date being April 2008 which is getting close to the time when we had to consider how to price in INFRACO and the fact that the SDS had not fully delivered the programme. Whether TIE or BBS were going to be in charge of the contract, PB were still going to have to complete the contract and they were still going to have to be paid. By avoiding paying them earlier we were avoiding delays. It was in the round within the overall budget for the project. I think by this time this wasn't about managing the delays. It was how we were going to package up the SDS and get it into the INFRACO. I think the timing of the issue here is almost at contract close. Looking forward we are now looking at different scenarios. This is about the risk being transferred as part of the INFRACO signature.

#### *ATTEMPTS TO REMEDY*

139. I am asked what was done to solve the problems within the project. I would say, better management, better controls, improvement of the productivity of people, adequate resources on the part of the contractor and PB and better visibility of progress and control systems. Also improvements to the controls of the approvals process within CEC. We had the best people, the best brains looking

at this and this is what we did. It must be borne in mind that we are talking about twenty four months to conclude matters before the novation. It is not a great deal of time.

140. Contractual remedies were available on both sides in terms of not making payments for not meeting the programme and there were claims and counterclaims. I think it is fair to say that we tried to manage sensibly the contract. We tried to work in the spirit of a partnership. I'm asked whether we avoided litigation to avoid the breaking down of the relationship between parties. No, I think we all agreed that if we had to go there we would. We were talking about a scenario here where the closure of the contract would be put back. We always took a realistic view of where we were with the contract at any one time.

141. I am referred to my email of 19 January 2007 to Tom O'Neill of PB found at **CEC01826306**. I did get what I was asking for because there was a change in management at PB. There was further an improvement of visibility as the Chairman of PB had now become involved. The Chairman of PB was now able to take emails and phone calls directly from the Chairman of TIE. Tom O'Neill visited me in Edinburgh. We discussed the contents of the email which was to improve the quality of what was being produced by PB, improve the level of resources provided and improve the overall management from PB's perspective. Agreement was reached and it did make some difference but there was a lot to do.

142. I think that the working relationship with PB was in the main positive. It was adversarial in some aspects but I genuinely believe there was a common purpose in what we were trying to achieve. The relationship improved after Steve Reynolds was put in. It has to be borne in mind that there was an exponential growth in work for them. This wasn't linear. As PB became more involved in more worksites there was a lot more for everyone to do. The relationship did improve. This might not be apparent from the control systems because deadlines were still being missed but, that said, there was an awful lot more work going on.

143. I wasn't involved at the level of dealing with critical design issues. I would only have become involved if the parties had reached a complete and utter impasse or if something stupid had been suggested or agreed. This may come to me either from TIE or from CEC. Or indeed it might come from Steve Reynolds. He might ask me why certain decisions have been taken. I would have been a kind of last resort for people to come to. All the critical design stuff wasn't dealt with at my level. I am referred to the TPB meeting minutes of 20 March 2007 found at **TRS00004079**. I think this is about the time when I had asked Jim McEwan to become involved. I felt that it may be of use to have a weekly critical issues meeting with all the relevant parties in attendance. Jim wasn't involved in the detail but he managed the process. I think what it is saying in these minutes is that that helped in terms of trying to get the right people talking to each other on the priorities for the programme. I wasn't involved in any of the meetings but I knew what the process was and I thought that the process was good. At this stage I was only involved inasmuch as I was suggesting improvements to the process. I suggested a guy that could manage it. I wasn't involved in the actual resolution of the issues. I suggested the process by which the issues could be resolved. Was it unusual for me to be involved with stuff like this? Probably no because I was trying to see where there were gaps. If I could use my experience to see how things could be done differently to help improve communication then I would do that. I wouldn't impose it on people. I would just suggest that this could be something they could be thinking about. Ultimately the accountability lay with the Tram Project Director.

144. The meeting with Tom O'Neill on 4 October 2007 was when I went across to America to meet with him. I am referred to the draft letter dated 4 October 2007 revised by Matthew Crosse and found at **CEC01621849**. If Matthew had revised the draft then the letter sent out wouldn't be a whole lot different to what it appears here. The letter accepts that part of the delay is the result of poor management focus by TIE and CEC. This is to do with the approvals process. I'm asked whether the letter focuses on the concern that PB were trying to improve its profit and loss. I don't think the letter focuses on this at all. The TIE board were unhappy that they had to pay an additional £2.5 million as part of the negotiation. They wanted me to personally tell PB that. We wanted to make our

point clear about our view of PB's performance with regards to the main design, performance with regards to MUDFA, the behaviours we would expect and that we were aware of their potential concern about brand image. We wanted to make it clear that we were going to be contacted by other projects. I think at that time Manchester were using SDS for doing the design of their tram network and we said that we would be completely open and honest with everybody as to how we felt their performance was. It was a business like conversation with PB. It wasn't two guys having a chat.

145. I am referred to the record of meeting with Andie Harper and PB on 7 November 2006 found at **CEC01797353**. I can't remember this meeting. I think it's about the same themes. I would have been there to give Andie support. I note Greg Ayres was there. He was an executive so maybe that's why I was in attendance. I'm asked whether the steps referred to in the meeting were carried out. I have no reason to suggest that they weren't carried out. I do remember Mike Jenkins getting involved.

146. I am referred to the TPB meeting minutes of 26 September 2007 found at **USB00000006**. It states that a strong message had to be sent to PB. This is just before I went to New York in October 2007 with the letter. This is the letter found at **CEC01621849**. This was the message as to how I would report on SDS if people asked me.

147. I don't think that stronger measures could have been taken. The actions that were taken were always taken after balancing the consequences of a stick and carrot approach. We were using all the mechanisms that we had in our control to resolve the issues. Again, I will stress the point about there being a lag between improvements being put in place and them starting to materialise on the ground. We are talking about a period here of about twelve months before the contract is due to conclude. There was more of a recognition than a concern about the consequences of taking stronger action. We weren't concerned about falling out with PB, we just needed to understand the consequences of what it would mean if we did 'x'.

148. I am referred to the email chain dated on and around 2 April 2007 found at **CEC01670358** and the attached document found at **CEC01670359**. These issues were worked through by Matthew Crosse and Steve Bell. This was probably the agreement in terms that the commercial issues in terms of the prolongation and things not getting turned around. This was us trying to say that we were going to deal with this in a business like way and how we were going to manage change going forward.

149. I am referred to my letter to Greg Ayres dated 26 September 2007 and found at **CEC01643235** where I noted that PB's failures threatened the critical path programme. I am asked why my response appears quite muted. I do not agree that my response was quite muted. After that letter I was so angry with the guy that I then got on the next plane to America. I don't think I was muted at all about anything. I think if you look at the fifth paragraph I say that I have reviewed the incentive mechanisms of our most senior staff to ensure MUDFA failure is dealt with. This, in other words, means that we were taking money off our team and requesting that they did the same. I think if you look at this with the follow up meeting I was saying to PB that this was going to affect them both in the pocket and in terms of reputation if they didn't improve. I'm asked why the decision was not taken to have a more formal and contract based approach. I think there was, that was happening all of the time.

*CONSEQUENCES (additional comment)*

150. I joined the TIE board in 2006. There was no one coming to me at that time to say that the slippage of the design was going to risk the overall delivery of the strategy. What I would concede is that there wasn't the ferocious pressure placed on SDS at that time that was placed a year later. If we were doing this again you would change the level of the degree of control, improve the process and change the level of cut off for the design.

151. There were pressures present to assist SDS complete the design, not to prevent it being done. The pressures weren't being imposed, they arose because of the performance of PB. I think it is fair to say that most people's expectations were

that PB would go away and work with CEC to complete the design and it would be below the radar in terms of where people's concerns would be. When I first joined the board, that was the expectation I had. I didn't expect that the design would be such a major issue. There were no external pressures from TS, CEC etc. Everybody wanted the programme timetable to stay 'as is' or even accelerated. There was nobody asking us at that time to put the programme back.

152. It is a statement of fact that the SDS performance undermined the bidder confidence.

153. I am referred to the TPB meeting minutes of 9 April 2007 found at **CEC01015822** and Andrew Holmes's expression of concern in relation to the design. This is just a statement of fact. This was a recognition that the deliverables were late. I can see that Matthew Crosse explained that he understood but they had put in place new procedures which were going to alleviate the position and that he assured the board that the revised programme would be realistic and fully underwritten by CEC. I have no reason to believe that it wasn't.

9 April 2007  
should be 19  
April 2007

154. I am asked about the fact that both bidders were initially willing to enter into design and build contracts but changed their respective positions to protect themselves from the incomplete design. To me this indicated that PB were uncomfortable working for BBS and that BBS were uncomfortable having PB working for them. BBS had their own design department and it seemed to me they really didn't want to inherit anybody else. By 9 February 2007 we had received responses from the bidders. The procurement process was well developed. We noted both the responses but there was no opportunity for us to go back and re-negotiate because this was fundamental to the contracts that had been tendered. I don't think there was anything different we could have done in terms of change of strategy or otherwise at that stage.

155. I am referred to the TPB meeting minutes of 12 July 2007 found at **CEC01565576** where it is noted that the reason for slippage is the delay in issuing price critical information to bidders. I don't think it is anything more than

what it says i.e. it is a statement of fact. This was all being driven by Matthew. I think what Matthew was saying is that we might have to get a final price, firm up what we know and agree a process for what we don't know. We have to work through and find a way to price out the final places where there is uncertainty. This was just a plan and I guess a statement of the obvious. This view is consistent with a fixed price contract as it was still going to get to a fixed price. It's saying that if 85 to 95% of everything is fixed then let's agree a price for that. Then let's look at a way for pricing the rest of the things which aren't fixed. It's saying let's not wait to try and get the 100%. TIE's running costs were something like £1 million a month, the consortium's costs were running at that level, there would be costs as a result of the delay in opening the network (I don't know the numbers but it would have been in the tens of millions). The figures would have been documented and you may be able to get them from other people. The costs would have been huge. There would also have been financial penalties in terms of delay penalties from BBS. I guess another factor to consider would have been the political climate we were working in, it would have been another missed deadline. That would have been a background factor as well.

156. I am referred to the TPB meeting minutes of 9 August 2007 found at **CEC01018359** where I say that a line on the design might have to be drawn prior to full completion. This is a recognition that 100% of the design was not going to be complete. It was a statement of fact and it is actually where we ended up. The programme for what was known was built into the contract schedule. In the contract it said there would be a design programme. There were expectations as to the degree to which the programme would be fully specified. We wanted to get there but, if we couldn't get there, we had to have a method that would allow everybody to fully agree the basis by which the project would be built.
157. The intention as to the state of design at the time that the INFRACO contract would go out to tender was that there would be high level design. The high level design of the tram network was quite detailed.

158. I am referred to the TPB meeting minutes of 9 August 2007 found at **CEC01018359** and the statement that the approach would be that price crucial items would be provided to bidders. I think that this is a statement of fact. Priorities for the critical items, e.g. the plans for Picardy Place, had been worked on at this time and they would be provided to bidders.
159. I am referred to the TPB meeting minutes of 26 September 2007 found at **CEC01357124** and Andrew Holmes's concern that an assumption the designs would be correct the first time round was not a good one. Matthew Crosse appears to reject this position within the minutes. I can't comment on the discussions. What I can say is that my job and relationship to this matter was to try and ensure that the process had the right resources and to assist if there were any blockages or personnel issues. The interface between PB and CEC was a thorny one. That interface needed to be well managed.
160. I am referred to the TPB meeting minutes of 9 January 2008 found at **CEC01363703** and Andrew Holmes question as to how the effect of design delays was allowed for in the cost of the estimates. I think the reasons are there. I explain that normal design risk passed to BBS through SDS novation. Sensitivity testing had been undertaken for a six month programme delay which is covered by risk allowances. The risk of potential programme delays due to system integration would be passed to BBS through TRAMCO. I'm asked how this gave comfort to the project. Once BBS had signed up to the contract and design, if there were things that SDS had got wrong, BBS were responsible to sort it out. Let's say there was a material difference in the design, where for some reason something had not been picked up, there was a way of dealing with that. Normal everyday things like the footpath should be here not there, that would just be dealt with by BBS. TIE and CEC would not be involved in that. Sensitivity testing refers to looking to see what the worst scenario was e.g. a six month delay in handing the contract over. There was a risk allowance which would be put aside to make allowances for that. The risk of potential programme delays due to system integration is Andrew being concerned that the trams were not going to be able to fit on the tracks. TRAMCO and INFRACO novated and had to be able to change to fit whatever the specification is.

161. I am referred to the TPB meeting minutes of 23 January 2008 found at **CEC01015023** and note the design slippage meant that the time available to get consents was compressed. I am asked whether, this being the case, it was likely that the consents would be forthcoming in sufficient time to allow the programme to proceed as intended. I really don't know. What I would say is that there was a lot of prioritisation taking place at that time to make sure the big ticket items would be cleared and that the low priority items were sitting at the end of the list.

162. I am referred to the TPB meeting minutes of 12 March 2008 found at **CEC01246825** and that slippage eventually became such that programme construction commenced before approval was due. This again goes back to the priorities. There were elements of the advanced works which could get underway anyway. There were demolition of worksites, pubs, things like that that required to take place and weren't connected to any part of the chain or required to be approved.

#### *MISMATCH*

163. I am asked about the apparent mismatch between the SDS obligations, the Employer's Requirements and the INFRACO Proposals under the contract. I think this came out very close to contract close. It would be in February or March 2008. This was a very technical issue for me. I remember Matthew Crosse and then Steven Bell working it through. I remember Steve Reynolds being very helpful in terms of using some the resources he had within PB and the process was worked through. It was resolved in advance of the contract being issued. It was just a period of work which we had to go through. I really don't know whether anyone can be blamed for the contracts not being aligned. It is something which came out once the design had moved on. There had been an oversight either by TIE or SDS. The design obligations hadn't been updated and it was just a case of retrospectively making sure that the work was undertaken. I am asked who had the responsibility for overseeing this. I can only say that Matthew and then Steven were right at the heart of resolving it

alongside Steve Reynolds. It was resolved. It didn't become a sticking point for the contracts moving forward. It was an odd position to be in but it was sorted out.

164. I am referred to an email chain involving Matthew Crosse dated on and around 28 February 2007 and found at **CEC01826931**. I note that there is a reference to avoiding Freedom of Information (Scotland) Act (FOISA) requests. If the documents were part of commercial discussion then they were FOISA exempt. I always tried to be as open and transparent as possible. One of the priorities I accomplished when I first became Chairman was that I changed the process for how we responded to FOISA requests. I wanted to make sure that any request was answered with a response written in plain English as opposed to being written by lawyers. I wanted the answers to clearly address any reasonable request which had been put forward.

165. I am asked about document management. There was not a practice to destroy documentation or to avoid making written records of discussions.

166. I am referred to an email chain involving Steve Reynolds dated on and around 13 June 2007 and found at **CEC01630511**. He states that TIE had issued Employers Requirements to the prospective bidders which were inconsistent with ones prepared by PB. I wasn't aware of these emails at the time. I wouldn't know what was issued to bidders. This would be an issue between Steve and Matthew. I wasn't involved in any of this.

167. I am referred to the TPB meeting minutes of 13 February 2008 found at **CEC01246826** and the comment that the Employer Requirements (ERs) were being 'validated' by BBS. INFRACO assumed the ERs and we had to go through a process to make sure that that was done. Although there wasn't a great deal of debate there was a small amount of debate about synchronising the ERs. We prioritised this because this could be another reason for BBS to delay signing the contract. I don't think that the ERs were evolving in part at BBS's control after the price was fixed. They weren't evolving. This was just part of the design being concluded. The ERs were part of the detailed design. I

think this was all a technical issue. It was dealt with by technical people but it was a contractual obligation. All we did was make sure that, in actual fact, this information was provided. By the time of this meeting it was agreed that the work surrounding the ERs would have to be completed. I think that Matthew would be able to help you more here than I can. All I know is that it was one of these tasks that had to be done and it was completed. It wasn't at all at the same level as the resolving of INFRACO's parent company guarantee or anything like that. It was just a nuisance piece of work that had to be done. I don't recall it as being a major thing which was going to cause delays.

168. I am referred to the TPB meeting minutes of 12 March 2008 found at **CEC01246825** and the note of a potential incompatibility between tram vehicle and tram infrastructure. I don't know whether this relates to Andrew Holmes's comments. I can't recall this problem at all and obviously it was resolved. It might ultimately not have been a problem at all.

*COUNTERCLAIM (additional comment)*

169. The subject of the claim was about the delay of CEC in terms of approvals. The counterclaim was to do with PB's slippage in the programme. I'm asked again whether from the outset the assumption was that this would merely be dealt with by a commercial agreement with TIE. It would have been a commercial agreement but it would have had to have been signed off by the TPB with full exposure to CEC and TS. The contract provisions would have been fully utilised in terms of coming to a conclusion as to what the monies were. There were adjustments to SDS's budget at various stages throughout the programme.

*SDS CLAIMS AND ADDITIONAL MONIES (additional comment)*

170. I am referred to the report to the TPB of August 2007 found at **CEC01632267**. I am asked whether I can explain and comment on the report to the TPB in relation to SDS by Matthew Crosse. I can see that it says that there was a major risk to the programme budget and the termination of SDS and subsequent release could potentially add up to twelve months in view of the tendering

mobilisation. It states that this would apply irrespective of whether it was a TIE or INFRACO appointment. I note it says that a high level summary of the grounds for a potential counterclaim has been generated but the production of the evidence to support this has not. It states that such production of evidence from staff would take a number of weeks and risks other procurement objectives.

171. I am asked, given TIE realised that the designs were inadequate, whether there was a realisation that there would be a material risk that there would be difficulty in getting sufficiently firm prices for INFRACO. It has to be pointed out that information was at this time being sent across to INFRACO. If there were specific items which INFRACO said they could not price they could, and did, raise in terms of priority the bits they needed. In most instances there was nothing material missing that would result in them not being able to firm their price up. There was also provision in the contract for any material changes to the design. There was a schedule for how that would be dealt with throughout the contract.

172. I am asked about my approval of a paper concerning the commercial settlement of PB's claim. I think what happened here was that the first paper to the board got knocked back because the board said that they were not paying it. I think the guys had not done enough work to justify why we needed to pay PB another penny more. I think the board were exasperated about what was going on. I think they went away to draft a paper setting out why SDS were entitled to this under the contract and also why going into formal dispute resolution would not have been a good thing. They also set out what would require to be done in the future so that this wouldn't re-occur. Timescale wasn't the only consideration. It was the overall consequences of what the alternatives would be. Cost to the programme was another consideration.

173. I think the Inquiry must not buy into this theme that BBS were incapable of building the ETP in the absence of 100% of the design being complete on day one. The detailed design in certain areas still had to be completed but that was prioritised. The design that enabled BBS to firm up their price to something like 95% to 98% of the budget was in place. The SDS contract was always going to

be novated, it's just the fact that PB didn't intend to work for a period of time under BBS. If their design had been complete then their work would have been complete. This is of course separate to PB's obligation to warrant the design for the duration of the tram network. BBS would further undertake design as part of the project.

174. I'm referred to the letter I wrote to Tom O'Neill at SDS in October 2007 found attached to the covering **CEC01621848** and at **CEC01621849**. I think this is the letter we have already discussed. It is the same letter. This is the letter which Matthew wrote for me. I don't have a copy of the letter actually sent. There would have been some changes to Matthew's draft letter in terms of typos etc. A copy of the final letter should be in the files. I am asked what leverage TIE had in light of the settlement already being done. I think TIE had the leverage in terms of this being 2007, we're looking at six months until contract completion, we want this over the line. At this point I wanted to look Tom O'Neill in the eye and say *"look Tom, if we all work together with one final push this is all concluded."* It's about getting the contract complete, him using the worldwide resources of PB for the benefit of the ETP and finishing the job. The fact that I took the time to actually fly over and see him was a signal to them of how important this was to us. The issues had been raised prior to the agreement. In the final settlement it was agreed that there was an acceptance of the pros and cons from each side. It wasn't just a one sided argument or settlement. This was a number which was the difference between two sides. The areas in which TIE and CEC were at fault comes down again to this issue of approvals. The relationship between PB and CEC hadn't broken down. The relationship was difficult because we were all feeling the pressure but it hadn't broken down.

175. I am referred to the PB claim for additional monies caused by the delay in concluding INFRACO. I am referred to **CEC01294745** from 8 May 2008 which is a letter from Greg Ayres to me. I think this isn't the settlement. There were two sticks of dynamite produced by both parties close to the time of the signing of INFRACO. One was from PB which was for £2.2 million which we actually paid £2 million for. The other one was from the consortium. The consortium one came before the PB one. This note came completely out of the blue and it was a

last minute attempt by PB to try and squeeze as much money as they could out of the contract. I was very troubled that they would make a claim at such a late stage. We processed the request in terms of investigation. We looked for resolution and to add value to the ETP. This was as opposed to simply paying off PB's request for more money.

176. I am referred to the TPB meeting minutes of 5 September 2007 and found at **CEC01561047** and the issue raised about whether the delay made the contract affordable in light of the grant from TS being fixed. I am asked who evaluated the impact of potential delays in bidder selection against the costs and programme at each stage of the negotiations. I don't know whether there was a written report produced and, if it exists, I do not know where it could be found.

177. One of the benefits of the government saying that it was £500 million and not a penny more was that it focussed everybody's minds. It helped, I think, the discussions we were having with CEC. CEC then really understood that the delay could mean that, if the project overran, they would be picking up the difference or the project would have to be stopped. CEC became better from this point on in terms of understanding that they had to simplify and not gold plate the designs. They also realised that they had to do things more quickly because there was a limited pot of money available. The approvals process did speed up around here.

## GOVERNANCE

178. The relationship between CEC, TIE, TEL and TPB is documented. The TPB was a statutory body that was required to manage the funds provided from the government. TIE was an arm's length company set up by CEC to deliver transport infrastructure projects in Edinburgh and the Lothians. TEL was established to manage the integrated transport network in Edinburgh for bus and tram. The delivery for the Edinburgh Tram Project was for the TPB which was initially managed through TIE. Following the changes in 2007 TS felt that TIE (which was a contracting body) should be a function of TEL because they were eventually going to operate the trams. This is why ultimately the TPB became a

sub-committee of TEL. TIE had to remain involved, and couldn't be dissolved, because the contracts that were in place were between TIE and the various parties. The role of TIE latterly was to effectively provide the staff and direction for the TPB. At the time it was necessary to have TIE, TPB and TEL because they all performed different functions for different reasons. There wasn't really an overlap in terms of TIE, TPB and TEL. The TPB was a sub-committee and that was where all of the work was focussed. TIE was an overseeing body helping to provide an increased degree of scrutiny. Originally TIE would have overseen other project boards as well but those other projects either fell away or were completed. Having TIE was a good idea, in particular in its role as an arm's length recruiter. The structure was a bit more entrepreneurial as a result of TIE being there. It offered an entrepreneurial aspect that would not have been present had the projects been purely overseen by CEC.

179. The TPB would always have been there because it was a requirement of government guidance and best practice.

180. I am asked what advantages TIE conferred as opposed to CEC carrying the project out with the benefit of project managers and consultants. It was the ability to be entrepreneurial, to drive forward, to have the clout, interdependence and focus that may not have been present if it wasn't there. I wasn't involved in the construction of TIE. I am sure one of the reasons why TS were happy to have TIE part of the structure was because the governance became very clear and distinct from the governance of CEC. I think that that was an important factor. It stopped the governance of the project becoming lost in the governance of a large public authority.

181. I am referred to the TPB meeting minutes dated 5 September 2007 and found at **CEC01561047** and the Readiness Review dated May 2006 and found at **CEC01793454**. I am referred to the comment that the structure "*appeared complicated*". I think there was a requirement for the companies that were put in place. As things evolved it looked as if there were one too many parties. CEC were always going to be there. The question was did you need TIE and TEL? I think the answer to that is, once the EARL project was cancelled, CEC could

have decided TEL could perform the functions of TIE. This was because there may be no further infrastructure projects or what infrastructure projects appeared further down the line could be done by TEL. I have always been of the view that had I stayed TIE and TEL would have been rationalised into one body.

182. I am referred to the OGC Gateway Assessment of 26 September 2006 found at **CEC01629382** which thought that the joint working between TEL, TIE and TS had improved. There was starting to be the same people with common objectives on both boards. The OGC Gateway Assessment was a consequence of the cancelling of EARL and the re-focussing of TIE purely in terms of the ETP. I was driving the recruitment and re-structuring. We had to make sure that we were putting the best people into the best roles. The new structure was considered an improvement because it had dedicated resources e.g. the HR, the communications etc weren't being shared across multiple projects. They were now working for the one project. I didn't see there being any change in executive responsibility. The reporting to TIE by the TPB stayed the same. I was comfortable with what we got and where we were. We also felt that later on in the process the structures would change again. I saw the changes as an improvement. I couldn't see any downsides to the changes.

183. When I first arrived I thought that generally the quality of staff which TIE had was good but I felt that the experience and seniority of some of the staff was less than what I would expect in a private company. I took steps to address that though.

184. I think the role for TIE post September 2007 was what it was. The TPB was now a sub-committee of TEL. That was as a result of a condition of the grant being put in place by TS. The TIE board in practice didn't see a change in the information coming to them because they were still responsible for the contracts which were going to get signed. All the issues and problems we had moving forward were to do with the design and the novation. I note the comments made by Kenneth Hogg in the email dated 28 September 2007 found at **CEC01667446** and Graeme Bissett in the email dated 1 October 2007 and found at **CEC01682986** that they doubted the very narrow role left by TIE and the

intention to dilute the role of TIE are to do with the longer term as opposed to what was happening at that very moment. The role of TIE at that stage was providing the staff under the auspices of the TPB. It was also responsible for the signing of the contracts. When I had to sign the contracts I signed them as Executive Chairman of TIE on behalf of CEC. I wasn't even Chair of the TPB, that was David Mackay.

185. The same persons did sit on many of the boards / committees. In many ways I think that was helpful. It meant that you didn't have to have the meeting three times. Again I think that this would have been rationalised over a period of time. I didn't think it had an effect on the demarcation of responsibilities. The things that were in the remit of TEL were dealt with by the TEL board. The information that was prepared for TIE was dealt with purely by TIE. The members of the TPB were members of the TPB for a reason. We tried to make it as efficient as possible. I would agree with the view that it prevented duplication. It worked in practice. It meant that when people came along for a meeting they would be fully briefed. For example, there were persons who attended the TIE board and also the TEL board. They would get their full briefing at the TIE board and then those persons who weren't members of the TEL board would leave and the members of the TEL board, who weren't members of the TIE board, would arrive. The matters then dealt with by the TEL board were the matters only pertinent to TEL. It would look odd to duplicate things because the same people may be on both boards.
186. Although people were concerned about the change, TIE was responsible for signing the contracts and in practice it worked the same as it worked before. Only now there was a 100% focus on the tram project.
187. I don't know whether there was an intention at that time to transfer people from TIE to TEL. I was a member of the TEL board and some of the councillors were members of the TEL board but the other members of the boards were different. That was the way it stayed.

188. TEL was set up to manage the buses and the trams. It wasn't about the delivery of the project. TIE was set up to promote and advance transport projects, that was the original conception. I think the TPB, which was a governance mechanism, had to sit as a sub-committee of either TEL or TIE. Initially it sat in TIE and that seemed to make more sense to me. When TS visited as part of the review they insisted that the TPB became a sub-committee of TEL. TS said that the new relationship within the project would be more compatible with the view of the government.

189. I am referred to the governance diagram found in the papers to the TPB meeting in 6 November 2006 and found at **CEC017758865**. I am asked to explain it. I don't think I can explain it. All I know is there were a lot of sub-committees involved in trying to work the project through. I think that this was an effort to put the structure in a pictorial form which didn't particularly work.

CEC017758865  
should be  
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190. I am referred to the TPB meeting minutes of 7 December 2007 and found at **CEC01023764** and the proposals in relation to TIE. I am looking at the diagram found at page 46. I think this diagram outlines all the work which was underway to enable document codes. This wasn't a change to governance structures. All these bodies and committees were already there and in place. All this says is that I had a role in overseeing the management and communication that was going on both to the TIE and the TPB boards. This was so that there was no opportunity for information to not be communicated to the parties which needed to know about it. I was acting as a focal point at that point for what was going on. I think it would be wrong to use this diagram to depict how TIE worked in practice. This was the period where we were going to manage ourselves from the beginning of January 2008 to financial close. This was a discussion document. I'm not sure where it went. I think though that this is at the point when there was the opportunity to be radical and question what we wanted to do with TEL. This was the time when there was the opportunity to rationalise TIE and TEL.

191. I am referred to the papers for the TPB meeting dated 23 January 2008 and found at **CEC01015023**. I am asked about the revised funding structure at this

time and what effect it had on the new structure. There was a condition in the agreement between TS and CEC. There will be a copy of what the conditions were between TS and CEC surrounding funding. TS at this time were arm's length from TIE. All conversations had to go through CEC. It was tied into the new way in which information had to be handled. I am asked how the evolution of the projects towards the final structure merited the changes. It was to do with experience. It was a short term adjustment to make sure that all persons were kept in the loop and that we placed all the persons with relevant experience into the right places. I am referred to the diagram contained within the papers to the TPB meeting dated 23 January 2008 and found at page 71. I can see that approval has been given for the new governance structure. This is the approval of the diagram we looked at in the TPB meeting minutes of 7 December 2007 and found at **CEC01023764**.

192. I am asked about what I understood to be the function of the reports to TS and the meetings with them. I didn't attend any of the meetings. The TPB had to provide a report for CEC and then CEC produced a report for TS. Following the restructuring, there were no reports produced by TIE which went directly to TS. The finance department of CEC were the ones who met directly with TS.
193. TEL were involved because they were going to run the trams. The Chief Executive of Lothian Buses was not the Chairman of TEL. He was the Chief Executive Officer of TEL. David Mackay was the Chairman of TEL. I'm asked what was the benefit of having the Chief Executive of Lothian Buses on the TEL board. What you didn't want was having the bus network competing with the tram network. You wanted to plan the integration of the services so the people of Edinburgh got the best service possible. We didn't want there to be any revenue incentives for the buses in competing with the trams. In my opinion, Neil Renilson was probably the top transport professional in Scotland. His input into the design of the trams, the services about the trams, the ticketing, the tram stops, the signing, the livery – it was all invaluable. I didn't feel he had any conflicting views which impacted upon the project. It made so much sense to have him involved.

## OPERATING AGREEMENTS

194. The Operating Agreements between CEC and both TIE and TEL took much longer than expected because CEC took their time with producing the Agreements. It wasn't a function of TIE to produce the Agreements, it was their Agreements setting out what they wanted. It just took them a long time to produce. I don't know why. Graeme Bissett was the guy who was responsible for liaising with CEC from our side. Gill Lindsay was dealing with them at CEC's end. Andrew Fitchie was also assisting.
195. I'm asked about the idea in December 2007 of a Peer Review Group whereby persons external to the project and with experience of delivering trams would challenge various areas. I have no recollection of this.
196. I am referred to the papers for the TPB meeting of 23 January 2008 and found at **CEC01015023**. I note that at page 76 it states that "*it is recognised that there is inevitable duplication between the scrutiny by the tie Board of its Executive activities and the oversight role performed by TEL and the TPB. However, this situation is normal, if TIE's role of providing a service to its client, in this case TEL, is borne in mind.*" This was part of the governance structure, it was rationalised by the way in which the boards worked in practice. The duplication was necessary at the time but it didn't create a great degree of additional work. The structure was also put in place to make sure that there was no accusation about the people involved in the project not having been kept involved. I do not agree that it blurred the lines of demarcation. The duplication was not really an issue for us. I think people were a bit concerned if they viewed it from an external perspective. At that moment in time and where we were, David Mackay was Chair of TPB and Chair of TEL and myself and Neil Renilson worked very very closely together. I think the relationships we had were very strong.
197. The legal affairs committee was established on 25 July 2007. I am asked why. I was concerned that the legal approvals which were necessary for enabling the contracts to be signed (e.g. from Network Rail, First Group, Forth Ports Authority) were starting to show as lagging on our risk register. I felt that there

needed to be more focus on this area so I suggested that we set up a legal affairs committee which would meet up once a week. We wanted all the people involved in a similar role to meet together. If I could make it I would go along just to show that the committee was important to the board. Gill Lindsay was a member of the committee. It was important that she was there because underneath her she had the resources from CEC for dealing with the approvals.

198. The legal affairs committee did not consider the consequences of the Wiesbaden agreement and Schedule Part 4 at that time because it was focussed on other agreements. There was a separate procurement committee which dealt with the major procurement issues. The legal affairs committee, as I recall, were more involved in the third party agreements. I am asked whether latterly the legal affairs committee became involved with either the Wiesbaden agreement and Schedule Part 4. No, I don't think so. I am asked whether I would have wanted the legal affairs committee to have become involved with the Wiesbaden agreement and Schedule Part 4. The people who were involved, e.g. Gill Lindsay and other lawyers, were all involved through other committees. It wasn't the case that they weren't involved with the Wiesbaden agreement and Schedule Part 4 it is just that the legal affairs committee was set up to deal with the specific issue of setting up the third party agreements which hadn't been put in place. If the third party agreements had not been put in place then it would have cost the project in terms of concluding the contracts.

199. I am asked to discuss the comment that during the committee meetings the importance of explaining to CEC all the risks retained by them was emphasised and that, despite this, CEC were not informed that changes would necessarily arise. This is not true. There was full discussion with CEC. I think there was a problem that there were a number of persons coming to the project late. That said, CEC were on the TPB, the TIE board and the TEL board. CEC were also part of the legal affairs committee and of the procurement committee.

200. Consideration of design and design risk was not the remit of the legal affairs committee. The committee was looking at the specific issue of the third party

agreements. I am asked whose remit it was to consider design and design risk. I think you would need to speak to Graeme Bissett.

201. I am referred to the minutes of the legal affairs committee of 17 December 2007 found at **CEC01501051**. I note my comment that the cost was 97% fixed and that INFRACO had taken on the design risk. I am asked what the basis was for that comment. That was a comment based on where we were at that time. I think I must have given an overview and update of where we were with INFRACO. This was the plan at the time setting out the issues. I would say again looking at this document that that legal affairs committee wasn't a committee which looked at the INFRACO contract or the negotiations involved with that. My understanding at the time must have been that 97% of the costs were fixed otherwise I wouldn't have said it.
202. I'm asked whether TS concerns meant that the TPB was set up as a separate body rather than being a subcommittee of TEL. No this is not correct. It was a subcommittee of TEL. I am referred to the TIE board meeting minutes of 2<sup>nd</sup> October 2006 found at **CEC01579841**. It states at page 3 that "*TPB is now a single independent entity specifically authorised by CEC and TS. TS/CEC reserved power to be drafted into the documentation before the end of this month*". I think this accords with what happened at that time. I think what happened when David Mackay and I came on board it was agreed that it would make more sense for the TPB to be a subcommittee of TIE. TEL didn't exist at that time. There were no staff other than the board. The change to the TPB becoming a subcommittee of TEL came in December 2007 because of the change in the funding structure from TS. By that time TEL did exist.
203. I am referred to the TIE board meeting minutes of 11<sup>th</sup> December 2007 found at **CEC1048838** where it is noted that the arrangements could not be approved. I think this is down to the Operating Agreement between TIE and CEC. I think all the board were saying here is that we would not sign off the governance until the Operating Agreement between TIE and CEC has been fully agreed. The TPB did eventually become a subcommittee of TEL.

## COST ESTIMATES AND FUNDING

204. I am asked what cost estimates were in place when I arrived. The only figures I recall were the £500 million from the government and the £45 million from CEC. There were budget estimates in place stating that the project would be affordable within those figures. I can't recall any numbers in terms of detail below the £500 million and £45 million figures. The funding estimates came from TS and CEC. That was before my time. I think the estimates were prepared on the basis of the outline designs from SDS coupled with benchmarking. I think estimates were brought forward on this basis. These estimates in turn evolved. I am asked what had been done to assess the accuracy / reliability of the cost estimates. It was based on the design from SDS at that time. Then there were assumptions based on the analysis of the cost of materials and labour. They were using the benchmarks available to build up an estimate. That would be the industry standard way of how you would value a project. You would then put in place a high degree of contingency and risk. The idea would be that, as the project developed, more and more of the risk would crystallise. This would mean that increasingly you would know what actually was going to be required.

205. I am referred to the lessons learned document dated June 2008 and found at **CEC01344688**. It considers that the basis for cost estimates were weak and ill defined. I am asked whether I agree with this statement. I don't agree with this statement. I don't know what else could have been done to calculate the estimates. I don't know where this comment has come from. I wasn't there when the cost estimates were put together, I don't know whether it was ill defined. The overall budget and number which was set out throughout the bid process appeared to me to be in the right ballpark.

206. I am asked what the differences are between risk, contingency and optimism bias. As part of building up a business case you take a view in the early stages as part of the OGC process of the cost. I think in this case it was something around about £375 million. You then apply an optimism bias of something like 50%. Within that number there are firm costs and contingency and risk. Contingency is the value. Risk is the process by which you ascribe the value.

The optimism bias would then reduce as the OGC gateways are produced. As the project became more mature you would expect to see the optimism bias come down because you increasingly get much firmer costs.

207. I am referred to the INFRACO Initial Tender Return Project Estimate Update Report dated 26 January 2007 and found at **CEC01789822**. I think this was produced based on the information that was available from the design. It states that costs are backed up by market tested prices or market rates applied to quantities derived from the project preliminary designs. There was benchmarking carried out against the Merseytrams project through Neil Scales and also Nottingham as well. I think they also looked at the bids from the two bidders for the project. They were within 2% of one another. I am asked what the sources for the estimate of cost were from. It is from looking at the market price for steel, labour, cement, electronic equipment. There was a schedule of rates which the bidders had to come back with which would be market tested.

208. I wouldn't be able to provide a technical definition of P90. "Scoop" and "Roley" were BBS and Tramlines. The identity of the bidders was hidden in the information which initially came to the board to be evaluated. They were given pseudo names so that, when we were sitting down to do the evaluation and get the report back, we wouldn't know who we were talking about. I recall that within the bids further pseudo names were given to keep the bidders identity anonymous.

209. The benchmarking was done against Merseytram to give us confidence that the figures coming from the bidders was consistent with our work on the tram project. I can't provide an overall view as to why, if the estimate was on a par with Merseytram, the final outcome in Edinburgh was so much more expensive.

210. Optimism bias is tied in with what funds are available. The tenders are firm prices. We worked on the terms of our internal estimate. An example could be say we have an estimate of £400 million. An optimism bias of 30% would take our estimate up to £520 million.

211. I am referred to the email from Graeme Bissett dated 26 January 2007 and found at **CEC01812256**. There should be no suggestion that there was anything hidden from TS. I believe these were Graeme's personal comments in terms of his views on what was taking place. He was just giving comment back to the guys. Whether they did anything with his comments or not I do not know. I think that because of his commercial background, Graeme was always of the position that you shouldn't promise something you couldn't deliver. What would be presented to TS would be an absolute statement of fact because that's what the TPB would have signed off. I am asked whether the data showing in January 2007 in fact showed that there was no real headroom and that savings were being assumed long before it was shown that they could be made. At the end of the day, the prices that I recognise are the prices which were built into the last contract. We had hoped that the forecasted estimate would come down to something like £498 million with a funding package of about £545 million. I think, in an ideal world, we would have liked to have had more contingency but it wasn't there. There was nothing to suggest at that time, given the bids that we had, that it wouldn't be built. I do not wish to comment on the conduct of the contractors after I left. I would not know anything about their conduct and have had no connection with the project since leaving.

212. I am asked about benchmarking and whether I can offer any suggestion as to why the final costs were so much higher for the Infrastructure Component than initially estimated. The costs of the Infrastructure Component built into the contract and the final costs are two different figures. I think it goes back to the question as to why did the Infrastructure Cost end up twice as much as what was initially tendered for. I don't know the reason for that. The final costs were realised after I left the project.

#### *RISK*

213. I wasn't involved in the detailed pricing of risk, uncertainty and P90. These areas were all managed by Stewart McGarrity and the procurement people. All I saw were the headline numbers. There wasn't any external influence on changing the figures but there was assistance to try and get realistic numbers

from various industry bodies. I think you would get better feedback and information for this area of the project from those who were involved.

214. I am asked what the difference is between risk and uncertainty. It is a definition point. I would not be best placed to offer any comment.
215. The management and monitoring of risk in terms of its development was undertaken by the Tram Project Director, the TPB and the Finance Director. The risk management in TIE followed the Government guidelines for major infrastructure projects. There were rules in place that you had to abide by. Decisions weren't taken on a subjective basis, there were certain criteria that you had to go through. When the risk was realised the cost was crystallised and there would, in turn, be a transfer of money from contingency into the main budget.
216. I am referred to the email from Nina Cuckow dated 9 February 2007 and found at **CEC01791687**. I do not have any recollection of Nina Cuckow. She may have been contracted in to work for someone at some time. I don't know why it was noted in the papers for the June TPB meeting that a new project risk manager had been appointed to replace T&T. I suspect that the reason would be that we wanted someone who would be part of the long term future of TIE. We wouldn't want it contracted out to a third party. This would be consistent with trying to get key resources into the key roles.
217. I am referred to the TPB minutes dated 24 May 2007 and found at **CEC01015822**. I note the comment that it is noted that the risk register was taken as read. The whole TPB would have read the risk register. If there were any issues or concerns relating to the risk register then they could raise them during the 'any other business' part of the meeting at the start. There would be an opportunity for any board member to say "*can we discuss item number 'x'*". It was the TPB (i.e. the Tram Project Director and his staff) who considered whether the assessments were accurate and whether further action was required in relation to any risk. Reporting to the TPB was inherent in the process because it was the TPB who were scrutinising and discussing risk.

218. I am asked whether, following the funding cap imposed by TS after the 2007 election and in light of the increased risk to CEC, there was a change in the way in which risk was analysed and monitored. Not that I am aware of.
219. I am referred to the TPB papers dated 9 August 2007 and found at **CEC01018359**. I note that it is mentioned at page 7 that following the election it was noted that the risk register needed to reflect the additional funding to CEC. I am not aware that there was change to the risk register. It would be a funding element that would need to be looked at. At the point of this meeting it wouldn't have been known that a cap was to be put in place. I have a feeling that the Government announced what they were doing with the ETP in September 2007.
220. The risk assessment was transferred to the legal affairs committee so that they looked at it. It was not their role to manage the risk register. That was undertaken by the TPB. It was transferred to allow the legal part of the project to become aware of the legal aspects associated with the risk register. It was up to the legal affairs committee then to reinforce where the risks were.
221. I am referred to the TPB minutes dated 23 January 2008 and found at **CEC01015023**. It is noted here that the intention of risk reporting was that all risks not transferred to the private sector would be noted. I am asked whether there should have been noted in the register the significant risk left with TIE. It wasn't noted in the register. The plan at the time was that there wouldn't be significant risk left with TIE. The whole purpose of the novation of the contracts was that BBS would be responsible for the building of the network. TIE's role as being the promoter for the network would then shift to BBS. TEL was then envisaged to take on the delivery of the network. TEL, post novation, would become the delivery vehicle. I'm asked whether the fact that it was not included meant that it was not priced or included in QRA. I can't recall.
222. I am referred to the papers for the legal affairs committee date 26 September 2007 and found at **USB0000006**. It is said that risk was dealt with at the legal affairs committee. There is no record of it in the minutes. I am asked how it was

addressed. The only thing that would be dealt with by the legal affairs committee would be risks pertaining to matters that the legal affairs committee were looking at. The general risk to the project was dealt with through the TPB. There is no record because it wasn't addressed. The things that were addressed were the things relative to the items in the risk register that the legal affairs committee were addressing.

223. I am referred to the papers for TPB meeting dated 12 March 2008 and found at **CEC01246825**. It is apparent from these papers that the allowance was reduced. I am asked why. It was because the negotiations would have crystallised the outcome of certain items on the risk register. At this point money would have been transferred from contingency into firm costs.

224. I am referred to the papers for TPB meeting dated 9 April 2008 and found at **CEC00114831**. At page 71 there is a reference to 'stakeholder instructed design changes'. I am asked, standing the design freeze inherent in the Wiesbaden agreement, what degree of importance was attached to this risk. Absolute importance. What we had to do was try and ensure that there was stability in the design. I am asked to what extent I would say that this put CEC on notice of the financial risks if they failed to ensure an adequate approvals process or made changes. We didn't put CEC on notice. It was the fact that it was now transparent that if the stakeholders started to instruct design changes then that would have to be a change control. The change control would then have to be evaluated and would only increase the price of the overall project.

225. I am referred to the papers for TPB meeting dated 9 April 2008 and found at **CEC00114831**. It states that "*The only material change in the Risk Allocation Matrices between Preferred Bidder stage and the position at Financial Close is in respect of the construction programme costs associated with any delay by SDS in delivery of remaining design submissions into the consents and approvals process beyond Financial Close.*" I am asked to explain to what extent I agree with this and my reasons. We're just about to sign the contracts here. We signed the contract in June but we hoped to sign it in May. It was important that

we had a freeze to enable the final contractual negotiations and signatures to take place.

226. I am referred to the papers for TPB meeting dated 19 November 2008 and found at **CEC01053731**. It states that once the contract was let a review of the QRA kept the total risk and contingency element of the project at £28.9 million. I am asked whether I am surprised that it remained the same despite the changes made on the course of concluding negotiations. No because I think the contract was signed in June so the prices were pretty firm. At that point there hadn't been claims or counterclaims that I had been aware of. The actual state of the project for me remained the same.

227. I am referred to the papers for TPB meeting dated 19 November 2008 and found at **CEC01053731**. One of the early reports to TS (contained within the papers) states *"All primary risks being managed in relation to the infrastructure works are recognised and provided for in the risk allowance – including those related to the completion of outstanding design at financial close and a more general provision for delay or recovery of time on a complex project such as this. These provisions reflect the nature of the contract as a fixed price contract to deliver to a contractual programme"*. I am asked whether I consider that this was an accurate description of the position. It was. This was what was communicated to the board. I am asked, in that the price at Wiesbaden was expressly on the basis of the design as at November 2007 and Schedule 4 to the INFRACO agreement expressly recognised that changes would arise as soon as the contract was signed, to what extent was the price 'fixed'. It wasn't expressly recognised that changes would arise as soon as the contract was signed. I don't know who said that. The price for the contract evolved from December 2007 right up until May 2008. At 2008 the prices were fixed. There were mechanisms within the contract that, if there were major changes to scope or design, meant that that would have to be dealt with. The underlying price for building specified by the contract was fixed. It was a fixed cost based on the funds we had to fund that plus an element of contingency.

228. I am referred to the papers for TPB meeting dated 19 November 2008 and found at **CEC01053731**. I am referred to page 41. It says that risk is kept under review. I am asked how this was to be done. . I left after this board meeting so I cannot comment. Although I didn't officially finish until the end of December, this was my last board meeting. I can't really comment on anything that happened after this date. I am asked to comment on the statement that even when risks appeared and started to crystallise, little change was made to risk allowances. Again, I don't know whether that was the case. I don't know what happened after my time.

229. I wouldn't be able to comment on what risks were retained with the public sector when the project was ready to go. It would be in the Final Business Case, it would be quite clear.

230. I was not involved with ARM or QRR. I don't know what the ARM software was.

#### *OPTIMISM BIAS*

231. Optimism bias is a figure that the Government recommends as a percentage on the costs based on previous experience of similar projects. It differs from risk because optimism bias is applied to the funding side of things. Risk is applied to what the costs of the project are applied to. Optimism bias was part of the OGC. You would have to apply the sums that were in place. There is guidance and rules which you have to apply in calculating optimism bias. I think Partnership UK did provide assistance in this area. I think they took a view on the suitability of the figures. I am sure that there would have been other people we would have asked to independently look and see whether our budgets were in the right ballpark. My view is that optimism bias is part of the government process for the management of infrastructure projects. It is non-negotiable. It is what has to be in place. There are rules that are associated with producing the figures.

232. I am referred to papers for the TPB meeting dated 9 August 2007 and found at **CEC01018359**. At page 21, it can be seen that it is clear that funding for phase 1a was to be applied to design for 1b. I am asked what the basis was for this. I

can't recall. It was agreed that the priority would be to construct 1a. I think that, because the design for 1b was almost complete, it made sense to finish the design for 1b on the basis that if the infrastructure negotiations came in at that level then we would have a price to see what it would cost. There would have to have been approval from TS under the conditions of the grant. They would have to have understood that this was going to take place. I am asked whether, as the funding for 1a was marginal and savings were required to make it affordable, loading any additional cost on to 1a could have affected affordability. Most of the costs at that point were already spent. This might have just been how they were recorded.

233. I am referred to the email between myself and Stewart McGarrity dated 2 July 2007 and found at **CEC01665340** and the attached Efficiency Review Summary found at **CEC01665341**. I think what Stewart was trying to identify here was areas where there were opportunities to make savings. This is all that I can understand this to be.

234. I am referred to the papers to the TPB meeting dated 31 October 2007 and found at **CEC01357124**. At page 26 there are tables which were presented to the TPB. The funding available for phase 1a is recorded as £545m - £500m from TS and £45m from CEC. However, the notes to this information state that of the contribution of £45m from CEC, £3.3m is land which relates to phase 1b. I am asked to comment on the inference that this means that this contribution was not available for phase 1a but was still included in the funding available for phase 1a. There was a lot of debate about the £45 million. This, however, was an issue between CEC and TS. All the TPB had to be assured of was that CEC would contribute £45 million to the building of the project. The means, mechanisms and timing as to how they would do that was an agreement between CEC and TS. This really isn't an area for me to comment on further.

235. The 1a costs did include £2.5 million of the 1b design cost but these would have been sunk costs. Phase 1b had been designed as part of the overall design. The costs would have been sunk so it would have to have been reported. The money had been spent and allocated against 1a and 1b. The decision was then

taken by the government that we would only be building 1a. The costs put against 1a had to be allocated somewhere. TS were fully aware of this and understood what the accounting treatment was. There was no new money being spent on 1b at that time. This is all about historic expenditure.

236. I am referred to the papers to the TPB meeting dated 23 January 2008 and found at **CEC01015023**. At page 69 it is stated that TIE has assessed a risk allowance of £49 million. It is stated that this does not allow for significant changes in scope or significant delays. I am asked whether it was not clear that both would arise. No, not at the time. At this time the design was complete, there was a lot more information available to the contractors (more so than had been available to any contractor on any previous contract), there had been full disclosure given, there had been a negotiation and BBS had a history of doing great work in some of the major cities in the world. It wasn't clear at that time that there would be significant changes in scope, or significant delays, that the risk allowance put in place wouldn't be able to cater for.

## THE INFRACO CONTRACT

237. I am referred to the Readiness Review dated 25 May 2006 and found at **CEC01793454**. It notes that there was no evidence of a negotiating strategy and that this would be developed and discussed at a chief executive level. I note that a Follow Up report dated November 2006 found at **CEC01791014** stated that this had been done. This is 2006 so it must be the initial OGC Gateway before I joined the board. This is when the PIN and the initial ITT had just been issued. The PIN is a procurement device whereby you indicate to the market through the government and EU wide journal. It is something that is required to comply with EU procurement law. So, you issue a PIN which gives advance notice that you are going to be issuing a document. Then you issue the initial tender document. Within that document you outline the process by which you are going to select. Once you have issued the tender document you then get initial inquiries back. Those people who comply with your initial conditions then qualify for going through to the detailed tendering and negotiating stage. It wouldn't surprise me that a detailed negotiation strategy for INFRACO would not be available at that

time (May 2006). I can't recall being involved at the time of the follow up report saying that it was done. It would have been done by the Chief Executive. What the board would have been looking is comfort for how we were going to deal with the bidders and the preferred bidders. Going back to November 2006 I remember the whole project going to plan. The issuing of the various procurement documents was on schedule. I don't recall there being any member of the team raising flags and saying don't go ahead. If anything I think people were looking to see how the process could be advanced because it had been running so long.

238. I am referred to the OGC Gateway 2 Assessment dated September 2006 and found at **CEC01629382**. It concludes that there is no reason not to issue the INFRACO ITN in October. I am asked whether the readiness of design and the effect it would have on pricing was considered by them. The answer to this would be yes. The OGC are experienced government practitioners. There is a government process which requires to be followed on all major infrastructure projects which are funded by government money. They would have to have followed the process exactly. They would have concluded that the information available to them was appropriate. Therefore their recommendation to continue would have followed. In September 2006 the design would have still been getting worked through.

239. It was disappointing that we only had two responses. We were now in 2007 and, as I recall, there was quite a lot of blue water between the BBS bid and the Tramlines bid. By blue water I mean that there were significant differences in terms of price and compliance with the tender specification. I do recall Matthew Crosse saying at one point that the Tramlines proposal wasn't compliant. The decision of making BBS the preferred bidder was based on the information that had been provided by the bidders. There was a clear winner. There was also a recognition of the time and effort that would require to be taken with dealing with two bidders rather than one. The decision to make BBS the preferred bidder was made by the procurement subcommittee which involved myself, Neil Renilson and the procurement team. We, as the procurement subcommittee, didn't know the identity of the bidders. We were presented with the information

which was anonymised as Scoop and Roley. All the boards were presented with the evaluation of the tenders by the procurement committee. The date when the decision was taken will be in the board minutes. It would have bound to be reported to the TPB. It must have been 2007. I am asked why the OGC Gateway 3 Review seemed to want this stage to be reached asap. I think this was because it was best practice to make use of the limited resources you have if there is a clear winner of the process.

240. I am referred to the lessons learned document dated June 2008 and found at **CEC01344688**. I am referred to page 13 that notes it considers the appointment of the preferred bidder as premature. I understand the point that is made in general for lessons learned that it would have been better to have had more bidders. However, you have to consider where we were at the time in terms of the differential between the two bidders. The Tramlines bid required so much work to be done to close the gap with BBS's. We also wanted to proceed with the procurement as quickly as possible because of time and money. In light of those factors I was happy to carry on. We considered the option of working further with Tramlines but concluded that it was better to recommend to the board that we enter into single company negotiations.

241. To conclude negotiations on such a complex set of contracts, particularly when you consider the novation, when the design development was still underway was always going to be difficult. In reflection, I think the length of time taken to achieve the discussions was probably about right for such a complex matter. We lost perhaps a couple of months due to BBS or the INFRACO contractor changing its position on a number of key items. I recall that TIE and all of the interested parties did everything they could to try and conclude the process in a way that was totally compliant with the procurement. I think that the couple of months lost wouldn't have been lost if there was more expertise and all the parties were all aligned to conclude the negotiations as quickly as possible. I'm not sure that BBS wanted to conclude negotiations as quickly as possible. I am asked whether the original estimate was realistic. We had benchmarks to suggest what we would get back. The numbers we got back from BBS and Tramlines were in that region. Although there was movement in price as

negotiations took place, the numbers moved within the area of the overall estimate of the project in terms of price. At the end of the day we ended up with a cost that was affordable and with a plan we felt was realistic.

242. I am asked whether I felt comfortable with the levels of optimism bias and risk built into the cost. In an ideal world we would have had more but we weren't living in an ideal world. The funds were capped.

243. The consortium used the fact that the funds were capped as a negotiating factor against us. They knew that that was all the money there was. It was a concern for them as to what would happen if the money ran out. As part of their negotiation strategy they made sure that they secured as much of the risk transfer and money as they could. If we had been a different position, where the funding cap hadn't been public knowledge, we potentially may have been able to negotiate a better deal. I am asked whether revealing that there was a funding cap resulted in PB and BBS de facto competing for as much of the funds as possible in the lead up to novation. I don't know if that was what was going through their minds but I do know that it was now a factor that wasn't there before. I think BBS found it strange that they were now bidding for a project that the government really didn't want to do. They were looking for additional guarantees on getting paid. They were concerned that the government may change their mind on the funding again. I am asked whether I think that BBS were minded to secure the money sooner than later. I would say yes.

244. I am referred to the papers to the TPB meeting dated October 2007 and found at **CEC01023764**. I note that Matthew Crosse stated that all the big items were agreed prior to the preferred bidder stage and that only the schedules and mechanics of the agreement were outstanding. I am asked whether this statement can be reconciled with the outcome of Wiesbaden given that it was reported that negotiations on price, programme, risk allocation, legal and contract elements. I think Matthew's report to the board in October 2007 would be his interpretation of what he thought had been agreed with the contractor at the time. The contractor, should it be their wish, could then change their position. They would then try, and I think this a valid negotiating strategy, to re-

open certain areas if they felt there was more leverage they could get. This was a tough negotiation that we entered. I have no reason to believe that Matthew wasn't honestly updating the board with what he thought the negotiating position was at that time. I am asked whether there would be any benefit to him in not being honest to the board at that time. None, none at all. It is important to understand that everyone on the board was supportive. We wanted to conclude the negotiation but we wanted to conclude it properly. We didn't want to take shortcuts. We wanted to make sure there was clear transparency on the deliverables in the contract.

245. I am referred to the email exchange between Geoff Gilbert to Richard Walker dated 26 November 2007 and found at **CEC01493250**. It infers that there was growing concern that TIE did not have a full set of prices from BBS. My understanding of what happened at Wiesbaden was that the board and I were concerned that we didn't have a firm price. I think that I suggested to Matthew to put some pressure on the consortium to close out as many items as possible. I suggested that a meeting be convened at a senior level with the consortium to get commitment from the directors and agree the required prices. As leverage to setting up the meeting, I indicated to them that CEC required a report prior to Christmas. I don't think that CEC did require a report before Christmas. We used the indication that we required to report to CEC as part of a negotiating strategy for ourselves to force the key issues. It was a way of trying to force a lot of discussions to a conclusion. If you look at the date of Wiesbaden and the date of the CEC meeting, it would have been impossible to have got a report to CEC within those timescales.

246. Wiesbaden was a thing that was introduced by myself in conjunction with Matthew to achieve two things. Firstly, to allow me to speak with the head guys at BBS and to understand and gain their commitment to the project. Secondly, to provide an opportunity for BBS to agree the last few percentage points of costs that were outstanding. We wanted to get on and conclude the contract negotiations as quickly as possible. We knew we had a complex approvals process to manage ourselves i.e. obtaining all of the approvals from CEC and TS on our side. We knew that the approvals were going to come into play in the

first quarter of 2008. The approach at Wiesbaden was to get as much clarity on the issues we could get clarity upon. We wanted to try and achieve a target price or a fixed price. Then if there was work that had to be worked on in the month of January to finalise that then that would be worked on together. There would be a joint project team sponsored by both TIE and the consortium with a commitment from the senior players to close out the negotiations in the early part of 2008. There was no pressure from CEC or TS. There was support, concern and help when required. They were fully informed of what was going on. They knew it was a difficult negotiation. I don't recall there being any pressure other than the pressures of supporting the procurement team to come to an agreement on a difficult procurement.

247. I am asked why concerns about the state of the design were only emerging in December 2007. They weren't. There was clarity about where the design was. Part of the negotiating strategy for BBS was that they stated they understood the design would be complete. They were aware of where we were. They were aware of the programme to complete the design. They were aware that there would have to be agreement, as part of the process, as to where the baseline of the design was and how the remainder of the design would finish through. I wasn't in all of the detailed meetings but I know for the discussions we had at the board that BBS's opening gambit was that they understood the design would be complete. This was part of their negotiating strategy. We were where we were with the designs. There were discussions taking place between all of the parties. There was prioritisation of areas which were important based on pricing and programme. I come back to the point that it wasn't that there was no design. It was just that there was further work which required to be done to finish the design. BBS had already quoted on outline design and we came to an agreement on price which included their view as to what would be needed to complete the design. There was as much information given to BBS as we could get to them. Where information wasn't available they were in discussions with PB. At the end of the day we got to a position where there was an agreement.

248. I am referred to the TPB minutes dated 19 December 2007 and found at **CEC01526422**. I note Geoff Gilbert explained the process and timescale to

obtaining maximum price certainty. I am asked what was suggested. I guess it would be an update of the negotiating strategy that Matthew Crosse and Geoff had at the time. I really can't recall. I am asked why the programme for the award slipped. I think it was just down to getting agreement on a small number of issues. I am asked whether there is anything more substantive here in the comment. It was near the end when BBS informed they couldn't meet the price that they had agreed and wanted more money.

249. I am asked whether I was involved in what form the INFRACO contract should take i.e. whether it should be based on one of the standard forms or whether it would be bespoke. No, I wasn't involved with that. The form of the contracts had already been determined as part of the original procurement strategy. I understood the structure of the agreements that were negotiated and put in place. I understood the approach that was being taken. It was explained to me both by the Tram Project Director when I joined TIE and also by DLA. I am asked whether there is a document relating to the explanation of the structure of the agreements. It would be part of the final business case. It would be outlined in there.

250. I am referred to the email dated on and around 30 January 2008 between Matthew Crosse, Stewart McGarrity and others found at **CEC01478027**. I note that the issue of what BBS were undertaking to do for their money was raised by CEC. I am asked whether I know what was said in response. I didn't see this email so I can't comment.

251. I am asked about BBS noting that one of the issues outstanding in January 2008 was the 'status and completion of the design'. This was the standing item that BBS raised with the procurement team as part of their negotiation. It was ultimately agreed through the process we were going through. Every conversation we had they would say that "*the design is not complete*". We would say "*yes but you already have baseline 'x', or whatever it was, and we have a process to work through this to completion. Now do you want to talk about that again or can we move on to the other issues?*" I'm simplifying things but, at the highest level, that is what it was. At the same time we had the guys down

below trying to negotiate as many points off one another as they could. It was part of BBS's negotiating process. If the design had been complete would we have got there earlier? Perhaps but perhaps not.

252. I am referred to the papers for the TPB meeting dated 7 December 2007 and found at **CEC01023764**. I note that James Stewart suggested that *"an independent legal review of the contracts may have been desirable, however, it decided that given the advanced progress and significant involvement of legal resources such a review was inappropriate."* I am asked why was this not done. I can't remember to be honest. I do remember at that time that there would be no point in having another independent review of documents given that we had DLA, D&W, the legal team at CEC whilst we were in detailed negotiation on the contracts. I think the actual contracts here had already been exchanged with BBS. I think it just wouldn't have been possible and it wouldn't have been practical. I can't remember specifically though but that is what I guess would have been the reason.

253. I am referred to the email and attachments sent from Graeme Bissett to me dated 27 November 2007 and found at **CEC01500210** (attachments **CEC01500211**, **CEC01500212** and **CEC01500213**). I note that this shows that the grant funding letter from TS was still outstanding but that it was still thought that approval could be obtained by 20 December and the contract finalised by January. I am asked how the December date for approval was chosen. It would have been based on the best estimate of the project team based on the negotiations at that time. There was not a great deal of pressure to work towards that date. Wiesbaden was a negotiation tactic which materialised in December. It wasn't there before. I am asked about the December date itself. I think we came up with 20 December because there would have been a CEC meeting on that date. We would have had to have had papers into CEC two weeks before. For us to have been able to report to that meeting the results of Wiesbaden we would have had to have gained agreement in early December. I am asked how realistic it was to expect that matters would be sufficiently finalised to close in January. We were hopeful. There were no new issues at that time. We were doing everything in our power to conclude it because at that

point the construction team should be starting to get mobilised for us to be getting started with work.

254. I wasn't involved in the negotiations in terms of price. I was involved in the governance of the process. The only direct discussions I had with BBS came at the very end. All the detailed discussion on price and contract structure was undertaken by the lawyers and the procurement team. That would be Andrew Fitchie working with Tram Project Director and the tram project procurement team. Wiesbaden was to try and look the directors in the eyes with the key players there and say "*we are very close to deal, why can't we can't agree, what can we agree and what more do we have to do.*" That's what it was for.

## WIESBADEN

255. We were nearly complete but BBS were sticking. It wasn't for the want of our side trying to conclude. BBS were reluctant to agree. Because of this we felt we had to get as much leverage as we could on them. This was why we decided we wanted to meet at a senior level at Wiesbaden. It was to try and conclude things.

256. The designs being behind schedule was not a key issue at Wiesbaden. We discussed at Wiesbaden the fact that the design was not complete. We discussed the process that we had to go through to enable us to agree. We agreed what the process was going to be. There was agreement that there would have be a cost agreed in terms of the finalisation of the SDS work. BBS had to take a view as to what the risk to them on the project was. They also had to take a view as to their belief that the design was not complete. This would then have to be reflected into the final price of the contract. We were working as hard as we could to fulfil PB's role. We had a baseline agreed at that time. There was then an agreement with BBS that, as more work from the SDS was completed, we could continually update the baseline with a view to hopefully having the whole thing complete before contract signature. There was full exposure of the state of the design between all of the parties.

257. I am referred to the letters exchanged between myself and my counterpart at BBS and the emails relating to the travel plans found at **CEC01481843**, **CEC00547787**, **CEC00590611**, **CEC00547788** and **CEC00547779**. I am asked to comment on the exchanges in the correspondence and my concerns. I am referred to the letter dated 11 December 2007 from me to Richard Walker and found at **CEC01481843**. Our objective in going there was to cement the deal and to finalise the price. I put down the areas in this letter that we felt were still outstanding and should be discussed at Wiesbaden. I am referred to the letter in reply of 12 December 2007 from Richard Walker to myself which can be found at **CEC00547788**. I think that this letter is fairly self-explanatory. It states that the discussions should lead to a contract award on 28 January. It's just what it says. I am referred to my reply to that letter dated 13 December 2007 and found at **CEC00547779**. I can't recall this letter. I did send the letter. It would have been dictated by Matthew. I can't recall the context of the letter. I think this letter is in advance of us going to Wiesbaden. This must have been a response to that BBS letter. It is saying your (BBS's) position isn't acceptable and this is what we want from you. This is us going through each of the points said and stating where we were at that point. It was part of the 'let's make sure we really get an agreement here'.

258. The core of the negotiations were led by the procurement team. They were supported by DLA. DLA were involved in the negotiation of the contract, the schedules to the contract and the wording of the contract. The numbers and all of the schedules, in terms of content of the schedules, were put together by the procurement team with the support of the various managers at TIE. At that point the preparatory work for Wiesbaden was around the very few issues which were still outstanding. The preparatory work was undertaken by Matthew and the procurement team. I didn't get involved in the detailed negotiations because I didn't have the detail. I was there to say "*we must try to secure an agreement*" and "*if we can't secure an agreement then I can't ensure that I'll be able to recommend the deal to the Tie Board, the TPB, CEC and the Scottish Government*". In the lead up to Wiesbaden, I felt that we were so close to reaching an agreement. I wanted the key people to come up with a basis of an agreement, or at least firm up on a price. I wanted to discuss with them where

there was more work to do. I wanted to agree who was going to do that work and the timescales which it would take to complete.

259. The preparation for Wiesbaden was an extension of the work that was already being undertaken. Wiesbaden was to help Matthew get focus from BBS. Wiesbaden was to say *"these items are all complete, there are a few issues here and we want to get agreement on these issues."* From my perspective, I wanted to ensure that if we achieved agreement it was with the senior people within the organisation. I wanted the directors to be signing up to the agreement as well. I am asked whether there may not be any reference to preparation to Wiesbaden because any work was a continuation of what was going on any way. No there may not be any reference because of that. I may already have even had a meeting arranged with the senior directors in Wiesbaden. I may have said *"let's use this meeting to do the following"*. It was difficult to get time with the senior people at BBS, they were busy guys. Given that we had that as a window, I suggested that we used it to force a conclusion on some of the discussions and negotiations that were underway. Ultimately the BB Director had the final say on agreement of price. Richard Walker would have had to have taken any agreement to him if we had only spoken with him. I would agree that we were short-circuiting that process by speaking directly to him. We also wanted to speak to him directly to see if there was something more sinister behind why we couldn't get agreement. If there was then I would be able to ask about that and understand it. I am asked whether I had any impression whether there was anything sinister. No, nothing at all.

260. The meeting was just a way to insert some momentum to help conclude the negotiations.

261. What I realistically hoped would happen was that we would close out the critical issues or agree a process that we could close out the critical issues. I hoped that any agreement or process would be supported by senior executives. I think the original meeting may well have been placed in the diaries for Christmas lunch. It was that time of year. I recall I had set up bi-quarterly meetings with

BBS so we could discuss any issues we may have. They also came to Edinburgh so it may be one of those meetings that had been set up in the diary.

262. The meeting was needed because we needed to bring the negotiations on price and the details within the contract to a conclusion. It worked because BBS became concerned that the prices wouldn't be available to be reported to the CEC. It definitely helped them move to a conclusion.

263. It was only myself and Matthew Crosse who went because both sides agreed that they didn't want a team of procurement people and lawyers there. We wanted to speak at a senior executive level. We only wanted to discuss those final items that were to be negotiated on price. Matthew Crosse, Richard Walker and Michael Flynn were all there. They were the ones who understood all of the detail. They had access to all of their teams via email and phone. There would be certain issues where there would be sub meetings where people would leave to make calls etc. They would be taken as part of trying to come to a conclusion. This was at Wiesbaden itself. I am asked whether there was more than one meeting. No, there was only one meeting but the meeting would have breaks where both sides would consider their positions. If further information was needed, Matthew would get it from Geoff Gilbert or someone else in the team. Likewise the consortium could speak to persons they needed to get information during the breaks. I am asked whether Andrew Fitchie was on the end of the phone if need be too. I can't recall but I presume he was.

264. I am asked, in summation, why no legal advisor was taken to Wiesbaden. We didn't think it was required. At that time we were not talking about the structure of the contracts or clauses.

265. I think it is quite clearly stated in our letters to BBS in the lead up to Wiesbaden what TIE wanted to achieve.

266. Matthew Crosse and the team were the people who gave consideration to the design prior to going out. I cannot recall which portions of the design were not complete prior to Wiesbaden. I am asked whether it would have been possible

to agree prices for the elements of the works in respect of which there were completed designs. We did. It is important to understand that we wanted to get a fixed price for doing all of the work. BBS wanted to get a fixed price plus the time and materials for the things that weren't complete. How could you get a price for that? We were arguing strongly and saying *"you understand the scope of the outstanding work. The design is there at a level that is not complete but you understand what is involved in building a bridge or tarmacking a road. If there are areas that need more information then we can provide that information. You are already talking to PB. We want a fixed price. We don't want this bit fixed but this bit not because we did not see this as being advantageous for any party."*

267. I am asked whether Matthew Crosse and I discussed between ourselves, or with others, what we hoped to achieve and how we might go about it. Yes. We wrote to BBS and we went across. We were quite clear in the roles. I was not going to get involved in any of the detailed negotiations. I was there to state the company's position and support Matthew as strongly as I could. Matthew documented the meeting at Wiesbaden from our side. It was either Richard or Michael who were taking notes on their side. Both sides then compared their notes from the meeting and made sure that they reconciled with each other so that we didn't have one interpretation and the consortium had another. I am asked whether any meeting prior to going to Wiesbaden between myself and Matthew would have been documented. No. I can't recall. Once we had agreed the letter we would have discussed that. We wouldn't have minuted the discussion. I am asked whether options papers were prepared. No because this was all part of concluding the procurement process that we were working on. What we were prepared to agree would have already been prepared but that would be completely in accordance with what had been agreed with the board. There can be no suggestion that we were acting ultra vires and trying to agree something that would take us beyond the limits of negotiation that the procurement team had got from the board. I am asked whether a range of possible outcomes were prepared before the meeting itself. No. We had a short list of items we wanted to get agreement on. Most of the procurement had

already been agreed. We were focussing on finalising the four or five outstanding items.

268. I think Matthew would have been talking to Geoff Gilbert and Steven Bell, and to other people, to make sure he was fully aware and briefed prior to Wiesbaden. I didn't go into that level of detail because it wasn't what I was there to do. I had to respect Matthew's negotiating position. There was so much going on that the potential for me to stray into the areas Matthew was dealing with and say the wrong thing would be very high. I am referred to the email and attachment between Geoff Gilbert, Steven Bell and Matthew Crosse dated 13 December 2007 and found at **TIE00087524**, **TIE00087525** and **TIE00035209**. I am referred to the INFRACO tactics document. I would have seen this document. It would have been good background information for us all to have. It highlights what the position is and what we hoped to achieve. I wouldn't have referred to it. It would have been part of Matthew's script. The document would also have been used to make sure, from Geoff's point of view who was handling all the detail of the documents and the numbers, there was no dubiety. It was to make sure that both Matthew and I knew exactly where the numbers were and the position was at that time. It would have been helpful for me because I wouldn't have known that. There wouldn't have been responses to the INFRACO tactics document. It was just a briefing note. We met on 13 December 2007. We flew over in the morning and met about mid-afternoon and we worked until about midnight. So Geoff Gilbert's email with the INFRACO tactics document would have been with us before we arrived.

13 December  
should be 11  
December

269. I remember that Richard Walker seemed to be slightly uncomfortable at Wiesbaden. I think this was because his boss was going to be there. I am asked whether I thought that this was because his boss had difficulties with the way Richard Walker had handled BBS's side of the project. No, I think the BB Director perhaps had questions why we were arguing over things that, in the overall scale of things, were really small fry. I shall come to why Richard was uncomfortable a little later on.

270. I am asked if there were other documents preparing for the meeting and, if so, where and how were they kept. No there weren't any other documents. The stuff that we've looked at is the stuff that was done. I am asked whether most of the correspondence would have been done between Matthew and BBS directly as a continuation of negotiations on-going anyway. Wiesbaden was to try and conclude on the discussions that the procurement teams on both sides had been negotiating for weeks. It was to try and apply a layer of executive pressure to either support the procurement teams' positions or to agree a compromise that we could all accept.

271. I am asked whether there was a fall back plan if BBS did not provide what was wanted. The fall back plan was for us that, if we couldn't agree a final number, we would try and agree a process where we could agree a final number. I think that was being pragmatic. There would always require to be some follow on work in the month of January but we wanted to make sure that Richard and Michael's bosses understood the timescales we were working to. We wanted them to support the process with whatever resources Richard and Michael needed. The sign off of the contracts, from their point of view, would also be a complex issue. This would be a major undertaking by their board so they would need various assurances on documents in the same way that we did.

272. I am referred to a paper presented to the TPB dated 7 December 2007 TPB and found at **CEC01023764**. I am referred to page 24 where it is noted that the priority was to negotiate the pricing of the provisional elements included within the bid. I am referred to another paper to that meeting found at page 101. At paragraph 4 it is noted that changes should be kept to a minimum. I am asked whether I was aware of this position when we went to Wiesbaden. Absolutely. The negotiations were all about closing out items and not opening any new ones.

#### *OUTCOME*

273. I am asked what actually happened at Wiesbaden. There was a note prepared by Matthew which documents what was agreed and discussed at Wiesbaden. It also documented the actions which were agreed to be taken. I am asked

whether I was content with the deal done at Wiesbaden. I felt that we had made progress.

274. I am asked what was done by way of removing provisionals and fixing the price. You would need to look at the note that Matthew prepared because that is a factual statement of what happened. I am referred to the papers to the TPB meeting dated 12 March 2008 and found at **CEC01246825**. I am referred to page 6 where it appears, from discussions before the February TPB, to have been recognised that the payment agreed at Wiesbaden was simply in respect of provisional items and some contingencies on design issues. I am asked whether I agree with this. I can't recall. I don't know whether it went further. At that point in the negotiations we were coming to a conclusion in terms of price. There were movements. It was all documented and would have all been discussed with the TPB.

275. I'm asked what I consider was done at Wiesbaden in terms of design risk. We agreed a price for how it was going to transfer from being TIE's responsibility to BBS's responsibility. The numbers are all clearly documented in the documents that are there. I am referred to the TPB minutes dated 9 January 2008 and found at **CEC01363703**. I note that at point 5.4 on page 4 Andrew Holmes asked for more information about passing design risk to BBS. It has been suggested to me that this request does not appear to have been specifically with reference to Wiesbaden. I am asked whether I know what information he was given. Andrew had all of the information that was available to the TPB. If he had asked for more he would have been given more. I am asked where the liability for development of designs lay after Wiesbaden. Once it was agreed and the contract was signed the responsibility for the completion of the final design lay with BBS. I am referred to the note in the document that states, to protect costs, it is essential to avoid client side design and/or programme changes. I am asked how this fits with the agreement at Wiesbaden to fix the design in terms of information provided in November. It was to provide a baseline by which agreement could be made. It was recognised that any further completion of design would not be a change of scope but just a firming up of design. The further firming up of design was built into the baseline.

276. I am asked why the various parts of the deal were agreed to. All I was there to do was to help the conclusion of the negotiations as to what the price would be. This would then be taken to the various governance bodies for approval. There should be no misunderstanding that I was there to negotiate the deal. I was there to help close the negotiations on the discussions with the consortium. This would then enable the price to be firmed up and taken back to the TPB and the various governance bodies to finalise. This is the process we had to work through. I am asked whether, as far as I was concerned, Wiesbaden was not the final stage. No it wasn't, this is where I think the Inquiry is perhaps getting confused. Wiesbaden was a negotiation opportunity that we used knowing that there was a CEC meeting and knowing that BBS were very aware of CEC meeting dates. It was an opportunity to use that lever to try and help us get agreement not only from the directors but the senior directors as well. It was also to ensure that they understood the importance to the city of getting agreement.

277. The meetings were undertaken mid to late afternoon in their offices. I am referred to an email from Andrew Fitchie dated on 21 February 2010 and found at **CEC00649211** which refers to, based on a call by me, discussions going on late into the night in a hotel bar. I am asked whether those discussions were just general discussions rather than the formal negotiation. Maybe I had given Andrew a call late at night to tell him what had happened but there were no negotiations in a hotel bar. As far as I am aware, Matthew Crosse, Michael Flynn and Richard Walker carried on discussing the notes from the meeting in the hotel bar. It states in Andrew's email that *'there were further and late discussions in the hotel bar. WG remembers these carrying on as he retired of the night'*. I went to bed. What happened, I recall, is that when we came back Richard, Michael and Matthew went to finalise the notes. I just went to bed. As far as I am aware, they weren't continuing the negotiations. They were just finalising their notes.

278. I can't remember whether Wiesbaden was considered in detail at committee or board level before or afterwards. Again I come back to the point that it wasn't a

deal. We didn't do a deal. What we did was reach agreement on price and some of the outstanding negotiations. That was then brought forward and the TPB was updated. We weren't given express authority at the TPB to reach the deal. We were there to try and bring some of the negotiations to a conclusion. There was no agreement by either party. What we tried to agree was the price or a process by which we could close the price out for the remaining items that were under negotiation. There won't be any discussion in the TPB minutes of the parameters within which a deal might be done. The parameters were, however, consistent with the procurement objectives that had been agreed by the TPB.

279. I am referred to the TPB minutes dated 19 December 2007 and found at **CEC01363703** and the preparatory papers for that meeting found at **CEC01526422**. If there was a meeting on 19 December the papers would have been out before Wiesbaden and so there would be no mention of the outcome within them. The papers would be circulated a week in advance. I can't remember what the meeting of 19 December would have been about. I am referred to Geoff Gilbert's email dated 19 December 2007 and found at **CEC00547738** which states "*generally everyone was ok with it*" (the agreement). I think that's true because we were. We had made progress on all of the items that were outstanding. We had agreed the items with either a price or a price with caveats with a process we were going to work through. It is right that the cost estimates were based on Wiesbaden. To be fair to BBS, I believe they were trying to work to those cost estimates as well. I am referred to the papers for the TPB meeting dated 23 January 2008 and found at **CEC01015023**. On page 9 the terms of the agreement are reported to the board. This includes 'Effective transfer of design development'. I am asked which part of the agreement achieved this. If it was one of the outstanding issues then it would be the process by which BBS finally agreed and how they would accept the responsibility for the design programme.

280. It has been suggested to me that part of the deal was to 'fix' the design at November 2007. I have been referred to a paper to the TPB meeting dated 7 December and found at **CEC01023764**. It is noted at page 101 that changes

post financial close would add costs to the project. It is also stated at that meeting that designs were only 63% complete. It has been suggested to me that taking a decision to fix the design at a time when it was known that so much was yet to be done appears to create a large scope for variation and additional costs. I am asked to comment on this suggestion. Again I go back to the point about the interpretation of the design being complete, the prioritisation that was going on in the programme and the process we were going through. We were all on the same page. It is stated that to deal with this, further work would be done on designs prior to close. I am asked whether that was not done anyway. Yes.

281. I am referred to a PowerPoint from Stewart McGarrity dated 19 December 2007 and found at **CEC01483731**. It states on page 5 and 8 that it was a good deal for TIE as the design development risk was transferred to BBS. I am referred to the minute to the CEC/TIE legal affairs group meeting dated 17 December 2007 and found at **CEC01501051**. At page 1 I say the same thing. I am asked to comment on this and state whether this was my understanding. I am asked, if it was my understanding, what my basis for this was. It was my understanding. It was the basis by which they would then take responsibility for going on to build the tram network.

#### *DOCUMENTING THE AGREEMENT*

282. Matthew Crosse definitely produced a note because it was circulated. I'm sure that it was circulated to the consortium as well. I can't remember but it could have been a joint note. Matthew documented what was said at Wiesbaden and took responsibility for whatever actions had to be put in place. That was his role. Matthew would have documented Wiesbaden and then other people in the project would have been responsible for then taking forward certain items. This would have been a continuation of what they were doing but now there were parameters as to what they had to achieve.

283. When Steven Bell took over from Matthew, at the turn of the year, he took on the responsibility for the building side of the project. Matthew continued working on

closing out the negotiations. Both would have been involved in Wiesbaden in terms of knowing the outcome of Wiesbaden.

284. I am asked why Matthew Crosse and I did not continue the process of converting the Wiesbaden agreement into contract terms. I wouldn't have been involved in that level of detail. Mathew was involved in that level of detail. In terms of continuity of negotiations, the agreement became the new benchmark we were trying to achieve. I am asked whether I think it was disadvantageous that I wasn't involved in the turning of the agreement into contract terms. No. This was now a very technical task that the right people with the right skills would have to achieve. It was Andrew Fitchie working with Mathew Crosse then Steven Bell who dealt with that. I wasn't involved at all with any of the drafting of the contracts. I am asked whether the crossover from Matthew Crosse to Steven Bell had an effect on the continuity of the negotiations. No. They sat side by side. The responsibility for the on-going negotiations sat firmly with Matthew. Steven was fully aware of the detail of what was being discussed and agreed.

285. I am referred to Matthew Crosse's summary of the agreement dated 17 December 2007 and found at **CEC01494927**. I am asked why there was a hurry to meet with CEC and seek immediate agreement. I suspect it was to recognise we had used the 20 December CEC meeting as a burning bridge. I think, in terms of being open and honest, he would have just wanted to report back to them as soon as possible. There was no external pressure from CEC. 20 December was just used as a negotiating tactic.

286. I am referred to the email dated 17 December 2007 between Geoff Gilbert and Richard Walker and found at **CEC01494951**. I wouldn't have been involved with the revision and drafting of the wording. What this looks like is Geoff taking Matthew's notes and interpreting them into a formal note which details the agreement between the procurement teams. This is taking the high level discussions we had and making sure there weren't any gaps. I wasn't involved in any discussions between Richard and Geoff. I don't know how it was discussed and I don't know how matters were left. I am referred to the email

chain between Richard Walker, Geoff Gilbert and Matthew Crosse later on the same day and found at **CEC01494961**. I am asked whether I can comment on this and upon what was the scope of the matters outstanding. I didn't see this. This would have been Richard's response to the note in terms of trying to provide more opportunity for him to have further negotiations. I couldn't comment on the scope of the matter outstanding.

287. I am referred to Andrew Fitchie's email dated 18 December 2007 and found at **CEC01430872** and asked what use was made of his comments. I never saw this. It looks like it has been copied to Alistair Richards from TEL. I don't know what this is for. I am asked to comment on whether any further legal advice was sought. Andrew was working on this project 24 hours 7 days a week with DLA. There was nothing in the project involving the structure of the contract that Andrew would not be involved in. It was absolutely the case that follow up advice was sought as to the content of the deal. It would have been sought from Andrew.

288. I wouldn't have been involved in any of the negotiations involving Geoff Gilbert, Matthew Crosse and Richard Walker. What was happening in December was that we hoped that everyone was accepting that we were getting to the end of the negotiations. We had to try and hold the line as to what had been agreed. I'm not surprised that there was a lot of toing and froing here. I wouldn't have seen any of the agreements which were drafted up after Wiesbaden. It was at a level of detail which the project teams were working on. What I would be interested in was the governance of the process in terms of where we were, the negotiation of scope \ budget and what we had agreed to do from the TPB's perspective. I would be looking to see that we were consistent with that. What I was interested in was the high level process I was involved in i.e. agreeing a final price and ensuring that the transfer of risk and the deliverables was consistent with the remit of the TPB.

289. I am asked to comment on it appearing that BBS appear to initially view the deal as a poor deal in response to the first draft to one that they were very happy to enter into. I am asked whether there was any big thing offered that suddenly

turned BBS around. Not that I am aware of no. I am asked whether I could comment on why it no longer was a poor deal for BBS. I never thought it was a poor deal for BBS.

290. I am referred to the email from Stewart McGarrity to Geoff Gilbert dated 22 February 2010 and attachments found at **CEC00618189**, **CEC00618190** and **CEC00618191**. I note that the email summarises the Wiesbaden process. I am asked to comment on it and its attachments. This is in 2010, I had left in 2008. I've told you as part of our discussions what I understand, and what I understood the agreement was at Wiesbaden. .

291. I am referred to the table dated 14 December 2007 and found at **CEC01546352**. I think that this is an explanation of the initial bid from BBS prior to concluding the negotiations and what the expected outcome was after the conclusion of the discussions at Wiesbaden. It also sets out the work that was to be completed at Wiesbaden. What it was doing was it was expecting an overall outcome on the final outcome price of INFRACO being £217 million. I am asked whether this was a preparatory document drafted in advance of Wiesbaden. No this looks like the outcome. I am referred to the table dated 18 December 2007 and found at **CEC01546353**. I think, because there is a different date, there have been a change in the discussions between the parties. This is now slightly higher so there must be a mistake in the first table which has now been corrected. It's the same structure as the first table though. It is interesting that it states the total firm price as being 94%. I have already commented earlier on that I thought that something like 95% of the price had been fixed and this appears to confirm that. The provisional sum including the variables is this element.

#### *AFTERMATH*

292. I am referred to the email from me dated 18 January 2008 and found at **CEC01432555** and the attached letter from BBS found at **CEC01432556**. What BBS looked at following Wiesbaden was the amount of work which was required to finalise all of the contracts. This was when the legals really came into their own. I suspect that we were more advanced in these areas than they were.

They came back and said *"we can't meet the programme we are working towards"*. They needed an extra six weeks. I think this is BBS coming forward and saying that they couldn't meet the timescales they had agreed to. They were now asking for a follow on period. If they couldn't do it then what could we do? We had to then ask them whether this was realistic and, if we make a further commitment, could they keep to those timescales. We had to ask this because, time after time, there had been missed deadlines from BBS. I think BBS were coming to realise that they were going to close the document out and that they had a lot more work to do than perhaps they had planned to do.

293. Scott McFadzen had been prior planned to become the programme director. However, he didn't ultimately take up that role. He went to work on the M80 upgrade. He wasn't the only key resource that BBS took off of the tram project. BBS were a new company starting in Scotland. As I understand it, they bought over part of Mowlem so I don't think they had a great deal of resources. This was always a concern for us in terms of BBS being able to meet their commitments. It didn't worry us at the time because we didn't know that BBS were going to be awarded the M80 upgrade. It was around about the time of programme close that BBS's programme director was taken off to work on the M80 upgrade. Obviously Scott was heavily involved in all of these discussions and then he disappeared. Suddenly someone new was brought in who had no background in what had been agreed. I am asked who that new person was. I don't recall who that was. I am asked whether I think, when there were the two projects placed side by side, contractors found the M80 project more appealing. My personal view would probably be yes. The M80 project was maybe more their background. I think this is all probably more of a question for BBS i.e. how they resourced up their projects. I am asked whether the M80 project may have affected BBS's supply chain. No, I think that the problems they had with their supply chain was in advance of the M80. I'll come to the problems that BBS had in terms of their supply chain later on. Further down the line, we all came to a point where we all thought we had agreed. BBS then informed us that they believed that we hadn't reached agreement. Richard Walker informed us that they hadn't finalised the agreements with the contractors he was making further to the agreements with Edinburgh trams. I can only assume that he wasn't in

close discussion with the people who were going to do the work. He said that BBS couldn't meet the price commitments that they had agreed because the prices had changed. There will be correspondence regarding this. It was a very difficult part of the final negotiations.

294. I am referred to an email from Graeme Bissett dated 15 January 2008 and found at **CEC01429681**. It is suggested that this appears to contemplate that there would be changes from the Wiesbaden Agreement. My understanding of Wiesbaden was that it was part of the on-going negotiations. My understanding of the agreement reached at Wiesbaden was that we had agreed price, scope and the whole process. If there were going to be changes in terms of additional scope or information which was found as part of the construction which required legitimate changes then there was a change control process as part of the contract. Did I believe that there was going to be wholesale change to the design? No.

295. I am referred to the TPB minutes dated 9 January 2008 and found at **CEC01015023**. The minutes state at page 38 that *"the principal pillars of the contract suite in terms of programme, cost, scope and risk transfer have not changed materially since the approval of the Final Business Case in October 2007."* In light of the Wiesbaden deal I do agree with that yes. Although there had been an increase of price, in terms of the overall budget it was deemed to be manageable. It was always expected that there would be adjustments based on the final negotiations. We have covered the design part already. The design part was that we had to have a design baseline based on what was available to us. As well as that there was a process by which that baseline would be updated as more information came through. Our intention was to hold the line in terms of price. The understanding as to what had to be built by BSS had been agreed. There was as much design information given to BBS as possible. The information enabled them to come to that conclusion on the price and the additional schedules that were going to be agreed as part of the contract. I am referred to page 66 which states that TIE was relying on the provisions as to normal design development. That was the baseline which would then evolve as more information came through.

296. CEC were full members of all of the governance that went on from December 2007 onwards. They were at all the meetings. Indeed there were additional meetings to provide them with the information they would need to be able to get agreement from the full council. They would need that because they would be the signatories to the grant letter from TS.
297. I am referred to the TPB minutes dated 12 March 2008 and found at **CEC01246825**. At page 5 I give an overview of the progress towards close, key issues and the means to resolve them. I'm sure there is another document which outlines the process by which all of the approvals had to be worked through. It set out all of the approvals that would be required. It was within all the papers required for the preparation of the final business case. Schedule 54 sets out all of the documents required to put the approvals in place.
298. It has to be remembered that when we are talking about this time we are talking about a process of a matter of weeks, perhaps a couple of months. In the overall scale of these sort of projects it was quite condensed. We had an agreed process for governance in terms of sign off. We had recommendations for all of the boards, recommendations for all of the committees and letters which had to be prepared for parties to ensure we had all the necessary approvals and agreements in place for the signing the contracts. It was a big piece of work that had to be done.
299. I am referred to the TPB minutes dated 12 March 2008 and found at **CEC01246825**. At page 6 there is a question from Donald McGougan as to whether it would have been possible to buy out design risk. I am asked what is meant by this and the response. I don't know. I don't recall the context in which the question was asked. I don't even know who responded to him. I am asked whether this shows that there was an understanding that a design risk remained with TIE. No. We have covered the position of what the contract was intended to achieve. There was no dubiety in our mind as to what was being transferred.

300. I am referred to a letter to Tom Aitchison from me dated March 2008 and found at **CEC01399076**. I indicate that the intention to award letters could be issued. I am asked how much more work had to be done on the contracts after that date and why. This would have been a formal letter as part of the process. I think we thought we were there and moving towards contract signature. BBS were still to come forward and say they couldn't meet the figures which had been agreed. At the moment of this letter we had a six week process which we had to adhere to. This would be anticipating contract signature at the end of April. The six week notice period was to give Tramlines the opportunity to object, on whatever basis, to the award of the contract. The letter is part of the formal process. I am referred to an email from Colin Mackenzie to Gill Lindsay dated 13 March and found at **CEC01399075**. It is suggested that CEC now appear to have had doubts about the position. I don't know. There had to be a DLA letter to CEC stating we were good to go. Maybe Colin was working for CEC awaiting the letter. Quite rightly he would be looking from the legal aspect from CEC. It didn't come to me. Tom didn't come to me either and say we couldn't do it. I am asked whether I knew Colin Mackenzie. I think I did know Colin but I can't say that I knew him extremely well. I didn't know the legal people. The only person I really knew was Gill Lindsay.

301. I am asked why there was a need to issue the PIN by a certain date to secure TS funds. I really don't know. I can only assume that there may have been a requirement to have something achieved by the end of the financial year. TS work on the basis of the fiscal year. So there may have been a requirement for TS's budget to have had to achieve something by 31 March 2008. I am referred to the email chain dated about 14 March 2008 and found at **DLA00006396**. Yes this is all to do with the money TS had in their budget and what they had available to spend in that financial year.

302. I am referred to the email from Colin Mackenzie dated 13 March and found at **CEC01401628** and the attached letter from PB to myself found at **CEC01401629**. I am asked why it was it that as late as March 2008 there was still doubt about whether the Employers Requirements and the INFRACO proposals were consistent. I think this was raised by BBS late in the day.

Matthew was of the view that everything was concluded and BBS said it wasn't. They said that more work had to be done and it would mean that the date would have to be pushed back. I do recall this being a discussion and it was just something that again had to be worked through. I think is now the period that TIE is starting to be in the middle of the crossfire between PB and BBS. BBS are starting to say that they were unhappy with the work of PB. They were wanting more work done and PB was saying that they had done it. From looking at the letter I can see that this is exactly what it was. I am asked whether the issue of the Employer Requirements was a bar to the Novation Agreement and raises a question as to the what had been priced at Wiesbaden. No. This was about BBS wanting a specific document from PB as they weren't happy with what was on the table. This was used by BBS to attempt to delay signature. It was about them buying more time. PB were pretty adamant that the work they had done at the time met BBS's requirements. BBS said that it didn't. What we then had to agree was what was required. The only way forward was to do this additional piece of work. At the end of the day, I recall, it was just a mechanistic piece of work that caused a bit of time delay. It didn't throw up any new issues or anything. I'm asked whether there was a feeling that a lot of these sort of things were popping up at the time. Yes, I recall we were getting frustrated at our inability to close the deal out. There were always new issues coming from BBS. It was a worry at that time. We were starting to question what BBS's overall intent was. It was primarily the BB part rather than the S part of the consortium that were causing problems. I think that this was because their readiness behind the scenes was not there.

303. I put Jim McEwan in charge of close out as of 18 March 2008. He came with a very strong authoritarian project management background. I wanted someone who could look at all the tasks that had to be done and the people who were doing them and monitor progress. If pressure was required to make sure the tasks were achieved then I wanted pressure to be applied. I didn't want any tardiness from our side.

304. Under Jim we had implemented a traffic light management system for the daily meetings. All the tasks were either green, amber or red. As part of the review of

documents there was a line owner responsible in the line for the subject matter. There was a procurement owner responsible for the detail of what was going into the document. Then there was a legal person responsible for that clause. The traffic light system meant we could look down a list and see where we were. Every schedule, every document would be reviewed by legal, procurement and by the line person who would end up inheriting the document. Only if all three were happy would there be a green placed against the task. I think this method does help people focus on what requires to be done. I should make it clear that there was no responsibility on Jim's part for negotiations. Jim was responsible for monitoring the progress of what was being undertaken. I think that, at that time, this wasn't Jim's only task. He was also monitoring the conclusion of the SDS work. He was monitoring the work PB were doing on behalf of TIE. That was his substantive role at that time. There was so much going on I just think we needed focus. I wasn't there on a daily basis but the management meeting would meet on a daily basis with Steven and Matthew in the lead. They would review where we were with the tasks and put in place any actions that would follow. This was a focal point of what we were doing during a very busy period. I am asked whether there was any disadvantage in re-allocating responsibility to Jim McEwan. There wasn't a re-allocation. Jim didn't take any responsibility from Matthew or Steven. All that Jim did was project manage the process.

#### *SCHEDULE 4*

305. I am referred to an email string including one from Andrew Fitchie dated 6 February 2008 and found at **CEC01501176**. I am asked to comment on the various comments in the string. I am aware of schedule 4 but cannot recall the detail. Andrew must have written to me about it on 6 February. I don't recall the email or what it was. I would have been meeting with CEC on 7 February. I state in my email that it is mandatory that, before I go to CEC, I have to have a good understanding on outcome of Price, Programme, Commercials and Contracts. That wouldn't mean that I needed to know what was in schedule 4. My discussions with CEC would be at a level of price, programme and risk. I wouldn't have been involved in the construction of it. I think in the contract there would have been twenty or thirty schedules. This would be one of them. Can I

say, however, that schedule 4 would have been part of the control process that was being managed by Jim McEwan. Each of the schedules had an owner. There would be three people who would look at it from a legal perspective, a procurement perspective and a line management perspective. This process wouldn't have started until March and Andrew's discussion here is in February. Certainly, ultimately there would have been full exposure to everyone in the team of what was contained in schedule 4 but maybe not at this time.

306. I am referred to an email from me dated 21 March 2008 and found at **CEC01491920**. It notes that the PIN was released and that the price schedule had been agreed. The PIN was released because we had thought that a price had been agreed. There wouldn't be a re-negotiation of price. What I believe schedule 4 must have been was an articulation of how we had made up that price. Matthew Crosse and Andrew Fitchie would have negotiated schedule 4. It would have been negotiated in February or March. I think we saw earlier correspondence involving Scott McFadzen that they needed an extra six weeks to close out. That happened in January. This must have been part of the negotiations to close out the schedules. I really don't know what input there was from others including board members and legal advisors.

307. I am referred to the email of Stewart McGarrity dated 31 March 2008 **CEC01546703** with an attachment found at **CEC01546704** which notes various increases. It is suggested that this email indicates that there was a schedule 4 meeting the next day and that one of the increases is the Rutland Square Increase. I am asked to explain the Rutland Square Increase and the Final Deal increases. I don't remember this at all so I wouldn't be able to comment.

308. I am referred to the email chain between Andrew Fitchie and Jim McEwan and others dated on and around 26 March 2008 and found at **CEC01466408**. I am referred to a number of emails regarding the negotiation of schedule 4. On 26 March Ian Laing of Pinsent Masons specifically draws attention to the fact that as drafted there will be an immediate notified departure. I am asked to comment on what the various changes were and whether I was made aware that there would be an immediate departure. I cannot recall whether I was aware or not.

309. I am referred to an email sent to me by Steven Bell with table dated 1 May 2008 and found at **DLA00006438**. The table refers to the TIE wish that there be no claims at contract award. I am asked whether the notified departure is at odds with the desire to limit cost increases and whether TIE were aware that there would be a claim. No. The table is just a statement of fact. I think at the time that we didn't want any claims. We wanted to be clean. We didn't want to be say "*apart from x, y or z*". You are at a level of detail now that I wasn't involved in. This is all now Matthew and Andrew working through the detail. I note that the table in this email chain was sent to me. I am asked whether the table would have been sent to me more out of courtesy rather than out of expectation that I would examine it. This table looks like there is a management meeting going to take place. Steven Bell has sent forward this document as part of the management team meeting. He says "*as part of the preparation for Monday, I have distilled the thoughts from the team*". So the email would have gone out to the key people involved in the management of the project. It would be an agenda item for the management meeting. I don't know if this table is anything more than that.

310. I am referred to the email between Graeme Bissett, myself and others dated 21 April 2008 and found at **CEC01336152**. It is suggested to me that this suggests that there is a recognition of the possibility of claims. James Stanley used to be the legal director of Scottish Power. I think that we felt it would be worthwhile getting James just to give us some sort of external view looking at things from the consortium's side. We wanted him to tell us what he saw. I think we were in discussion as to whether there would be a role for James. I don't remember this email but I think that was the context of it. We got in James because we were actually thinking about post contract closure in terms of what legal support TIE would need. Post contract award it was intended that the role of DLA would be greatly reduced. We were considering whether it made sense to have our own legal support. James was known to myself and one or two others. They were in discussions with him. I think we paid him to do a piece of work. Ultimately we didn't scale back or proceed without DLA. Once James's piece of work was concluded we just left it at that. This didn't impact on the work DLA did

at all. I'm not sure that DLA would have been aware that we did this. It would have been a piece of work over a few days. That's all it would have been.

311. Schedule 4 was always part of the contract. We must have been populating the schedules on and around February 2008. We were in the position in February where we were putting the data into the contract that was going to be signed by all parties. The contract was the articulation of all the agreements which had been made in the procurement field. I am referred to the emails between myself and Andrew Fitchie dated in and 6 February 2008 and found at **CEC01501176**. I am asked whether I was surprised at the terms of schedule 4. This was the point that the work had now started with DLA to quantify and codify the documents. There was a lot for them to do. They were now working their way through the work that they now had to do. They would be raising issues and concerns. Occasionally Andrew would keep me in the loop in terms of what he was doing and where. I am asked whether I would have been involved with the intricacies of the contract. Not at all. I can only say in terms of all of the schedules that there were owners within procurement, legals and within the line. Each of these had to be happy before we were happy that that part of the contract was good enough to be recommended to the TPB. The governance was in place to manage that through. What I think you will find here is that this is part of the process of going through the month of March and people are finding that there are gaps or there are things that still need to be done. That would then have to be worked through and then discussions would take place as to what would have to be agreed. I am asked what was done to change the wording of schedule 4. I don't know. I am asked whether there were discussions about schedule 4 in TIE. Yes, there would have been. I am asked whether were records kept. Yes, for audit trail purposes. I am asked how TIE kept records of what was discussed or agreed. There would have been minutes for all formal meetings. I am asked where the records would have been kept. It would all have been within the procurement team and the legal team. They would all be saved to the system and DLA would have copies.

312. I am referred to the email chain dated about 6 February 2008 and found at **CEC01547689** and its attachments. It is suggested that these are revisions to the

schedule made by the TIE team and that they show that someone sought to query the use of 25 November 2007 as the date for BDDI. I don't know what BDDI is. I wasn't involved at all at this level. I can't comment on any of this area on schedule 4.

313. I asked who would have been in charge of schedule 4 at the time. If you reviewed the process then there would be someone from legal (Andrew Fitchie or one of the DLA people), someone from procurement (probably Geoff Gilbert) and probably Stewart McGarrity from finance. That section would have to have been coded green i.e. all three people were happy with the schedule, for it then to have been recommended to the board that that part of the contract was good to go. That was the governance that was being applied. I wasn't involved in the detail of the discussions or indeed the details as to how the contract was written up. I'm asked what level of understanding I would have of the contract. My understanding would be in terms of the deliverables at a high level based on the programme and the risk. It would all communicated back to the TPB. It would have been said that all of the detail had been approved by legals, by procurement and the line expert personnel.

#### *PRICE INCREASES*

314. All of the price increases would be documented as part of the negotiation process. I am referred to the table titled 'Infraco Price Reconciliation' which can be found at **CEC00132442**. This is just an explanation of how the initial bid compares to where the final negotiated settlement was. It sets out what caused the prices to go up and down. I am asked about the Rutland Square Agreement. I remember Rutland Square although I wasn't part of it. It was part of the intent then that all of the negotiations on all aspects of the contract would be concluded. After that it would be up to the lawyers to then finalise the drafts of the contracts that would then be available for signing. I think it came about in part because of the agreement at Wiesbaden that we would work our way through. I think if you recall the Scott McFadzen email requesting six weeks, this is at the end of that six week period. It was making sure that we got everybody back in the same room to finalise the position before the agreement was

articulated in the legal documents. That was the intention behind the Rutland Square Agreement. The Rutland Square Agreement involved all of the companies. The agreement only stuck for about a few weeks. BBS eventually walked away from what had been agreed. They put in another price increase.

315. I am referred to the further agreement with BBS in March 2008 which bumped the cost up by £8m. It can be found at **CEC01429610**. I think that this something different to that. This must be the outcome of a final negotiation on the transfer of design risk and the acceptance of the transfer by BBS. This was where there had been a negotiation and a recognition of programme and risk transfer. Agreement must have been necessary as part of closing out the final discussions.

316. I am referred to the papers to the TPB meeting dated 4 June 2008 and pages 4 and 6 where I outline my frustration and the board's frustration at BBS's strategy and that TIE did not have a lot of room to negotiate further. At this point we had agreed with CEC, the backers and TS what the basis of the agreement was. Our ability and desire to negotiate had concluded. We were at the stage where we felt that we either had to have an agreement or not.

317. I'm asked whether TIE were unable to stick to their guns. I think that there is a difference between the £8 million and the £12 million. The £8 million looks like, from what I have seen, a final negotiation based on a claims / potential for claims and the potential for the opening date for the tram not being when it was expected to be. The £8 million was a fully quantified buy out of the design risk and a recognition of the updated design programme. There were agreements that there were benefits to both sides of the extra £8 million. Then there was a transfer of risk as part of the firm price. It was clear what we getting in return at that time.

318. The £12 million was completely out of the blue. I recall at the time being nervous about being able to get the contract signatures in place. Richard Walker had stopped calling and was not answering calls about when we were going to proceed to sign the contracts. I then got a call from a nervous Richard. He

explained that BB couldn't sign up to all of the negotiations that had been agreed. He informed me that the reason BB couldn't sign was because they had lost control of the supply chain. I am referred to email chain dated about 28 April 2008 and found at **CEC01274960**. This is the correspondence concerning BB's request for the £12 million. It was right at the wire and right out of the blue. It was dreadful behaviour. I felt personally let down. I felt that the behaviour of BB here was disgraceful. I think, originally, I decided that I didn't want Richard involved in the project ever again. However, it wasn't obvious at that point what the solution was going to be. I don't think S were aware until slightly before BB made me aware that there was a problem. This was not a S problem. This was a BB problem. After speaking with Richard, I had discussions with everyone to explain to them what had happened. I then had discussions with legal and S as to what options were open to us moving forward. I explored whether we could replace BB with S, whether we could replace BB with someone else and whether, from a legal procurement point of view, there were other options. In the timescales involved there really weren't any options other than going back and doing something which would have been another long drawn out process. I have to say that, at the time, I wanted to look anywhere else other than using BB. I couldn't just give money away just for the sake of it. In the end I asked for senior executives from BBS to come to Edinburgh to meet us. Originally I wasn't going to have any involvement from Richard. However, I felt that we needed to understand fully why the request had been made. The only person who could provide that was Richard. They came to Edinburgh and explained the position. They said that they were extremely sorry (or words to that extent). It didn't cut a lot with me. I said to them that we had a short period of time to see if we could resolve the issue. I made it clear but that there should be no illusion that we would just give them more money. We had agreed the position with all parties prior to that meeting. If we had to reach an agreement which resulted in BBS getting more money we had to receive something in return, whether that be a reduction of risk or further assurances on design work. There was an agreement by the parties that we had to find an agreement which provided value for money for public funds. If we could, then that may be acceptable to our stakeholders. We had to consider what the alternative would be if we couldn't reach an agreement. We had to investigate both options.

319. I think BB's lack of readiness is important when considering what went wrong further down the line whilst I was not there. This is all evidence that, for whatever reason, BB were not manning up in expectation that they would be meeting their commitments in terms of the construction programme. They hadn't put in place agreements further to our own negotiations and contracts. It was understood that the day after signing BBS would be starting work. It was very worrying discovering that the agreements, work, people and orders for materials had not been put in place. I think that their lack of preparedness became a factor as to why there were delays in mobilising further down the line. I am asked whether I suspected that BBS had not got their supply chain in place. I had no suspicions at all

320. I think that the loss of supply chain was the factor behind the scenes that resulted in all of the stalling tactics surrounding the detailed negotiation. I think that, behind the scenes, they were struggling to put in place the agreements with their supply chain that they should have been putting in place.

321. I am asked what exactly my response to BBS was further to the claim for the extra £12 million. There was an immediate demand to come and meet us in the city of Edinburgh to explain not only why they were making the request but why they were making it at the last minute. We wanted to explain to them in explicit terms (a) how personally and from a company point of view we felt; and (b) how difficult an issue for us this was going to be. We also wanted to inform them that this was not an issue that could be dealt with by me on behalf of the TPB. It would have to be resolved by CEC and TS after they were exposed to all the people who were involved in the approvals process. I am asked why ultimately there was an agreement to pay BB the additional sums sought. Because we achieved a reduction in what they asked for. We also found a way of getting further improvements to either programme or risk which we could quantify and justify as adding further value to the project. Work was undertaken by Steven Bell to achieve this. He went away and came back with the proposal to be made to BB. He developed a suite of small works which would be undertaken by BB in return for the sum of money that was going to be agreed. I am asked whether I

think that BB expected to get the money and, the fact that they did, meant that they got caught on the hop. No I think it was pretty evident from BB corporate's body language at the meeting that they were not aware at that time of the difficulties that Richard had been having. That was certainly my impression. It was also my impression that S were not aware of the problems either. I think that, from BB corporate's perspective, it would have been embarrassing for them (from a brand perspective) if their position were to have been made public. We would have had to have made it public if we came to the view that we couldn't continue. I do believe as part of our response to BB we said we would make the reasons public were we to have to start the whole process again. Unfortunately, that threat was not sufficient enough to make BB take the request off of the table. They informed us that, if the extra money was not provided, their board would not sign off the deal. They said that this was because it did not provide them with sufficient enough of a profit margin. I guess BB took a view of Scotland and the project in the overall scheme of things and decided they had to draw a line in the sand that they wouldn't cross. We had to agree a compromise with them. We didn't just give them the money. Anyone who was involved in that process would recognise how difficult an issue it was for all of us.

322. I am asked what other options were considered. We were so close to this being signed. We did consider all of the options. We had discussions with S independently of BB. I had discussions with Jochen Keysberg independent of Richard. I guess what we ultimately had to do was make the best out of a difficult position. We had to try and reach an agreement that demonstrated to our own governance that there was a rational reason for the additional sum.

323. I am referred to email chains dated about early May 2008 and found at **DLA00006446** and **CEC01373756**. These emails are all about whether we could take BB out of the consortium and replace them with someone else. Andrew is just pointing out that, from a procurement point of view, we couldn't just give them the money or just take them out of the process.

324. I am referred to the TPB minutes dated 13 May 2008 and found at **CEC00079774**. At page 1 it is noted that any delay to completion would result in

significant additional risk regarding project survival. I am asked what was the risk and how it would materialise. This risk was that, if we are not building the tram then we would all carry the programme costs. The completion date of the programme would go back meaning the overall costs of the project would increase. The business case for the project would diminish because the date for revenue start would get further and further out. Therefore the return on the project would get less worthwhile because the business case was not getting taken forward. It is suggested that the comment at page 1 is made in the context of settlement payments to PB. I am asked whether it did have an effect across the board. It did, that's just a statement of fact here.

325. I think that if you look at the correspondence you will see a lot of quite irate emails from me in my communication with people. I think it will demonstrate the fact that nothing was hidden and that it was fully transparent to everybody what was going on and what was involved. There was a lot of discussion that went on in a very short period of time. To be honest, at the time, I wasn't sure whether we could continue to work with BB. For me it was on a knife edge as to whether there would be an appetite from everyone to continue with BB.

326. I want to make the point here that TIE weren't straining to accommodate BB's late request. What we were trying to do was look at all avenues to see how the construction phase could be moved into. If we came to the conclusion that the negotiation of something with BB was the best outcome then we needed to get something in return for the money. We would need to add further value. We were not driven by a feeling that this had to be agreed at all costs. If we couldn't have got agreement then we would've taken that back to the boards. The position was ultimately agreed by all of the boards. All of the board members were aware of what was going on. If we couldn't have got an agreement we would have taken it back to the TPB, TIE board, TS and would have said that we are unable to conclude this matter and look for guidance as to what they wanted to do next. It wasn't a case that we just wanted to pay it. I am asked whether any guidance at this time was provided by TS. I think everyone gave us as much support as they could. The whole thing was over and done with over a period of days. It wasn't a long drawn out matter.

327. I am referred to the incentivisation bonus found at **CEC01275191**. I am asked whether this is what was known as the Kingdom Agreement. I think that the incentivisation was part of the settlement. If you look at this it says that to get the £3 million you have got to do the following things. To get the next £3.2 million you've got to do the following things. To get it all they have got to close out on all of the various points. So they are not paid the £3 million as part of an incentivisation, it was just on completion of certain parts of the construction. I am assuming that this was never paid because they never completed it. If they had done all of these things then they would have got £6.2 million. This was worth money to us in terms of making sure that they met their construction schedule dates. I don't recall this as being referred to as the Kingdom Agreement.

*SIGNATURE*

328. Andrew Fitchie and Graeme Bissett prepared all of the documents and letters and, in essence, all we had to do was sign them. It was the agreement as part of the sign off process with TS and CEC. I signed all of the documents. I'm asked whether I would have read through them. I would have read through them in terms of what they were. There would have been a suite of documents ahead of us to sign. It would have been a formal process that I would sign on behalf of the TIE board, each document was supported by a paper involving legal procurement and line management recommending signature. The whole board alongside the TPB would have been briefed as to what was happening. The stakeholders would have had their own letters to sign as well. There was a management of the process that had to take place. I don't think I need to work through all of the documents. TEL also had to sign the documents. The approvals process required by CEC and required by the governance, designed by legal, was all followed through.

329. I'm asked to describe the progress between FBC in December and signature in May. It was very stressful and very intense. There was a lot of hard work by a lot of people. I'm asked how we expected it to be before December. The

intention was to get INFRACO signed and have construction started. I am asked why it didn't go the way that it was intended. BBS didn't have the resources that were required to be able to sign the contract. I'm asked whether it would have been practicable to have had INFRACO signed by the original date intended. I think you always have to have challenging dates. However, you have to also have a range of possibilities. I think we did end up somewhere within that range. If we hadn't been challenged to aim for early dates I think we would have ended up signing the contracts a lot later in the process with no further detail being refined. I think that it was right to push to closure because TIE did not have an infinite sum of money and there was an expectation from the people of Edinburgh that we would go on and build the tram. The street works had started and the people were asking where the trams were.

330. I'm asked whether any of that process could have been done quicker. If BBS had the resources and had control of their supply chain, if SDS been more diligent in the design process, if we had had a design and build process as opposed to the contract we ended up with then yes. You must not underestimate the complexity of what was being negotiated due to the novation of MUDFA, SDS and all of the obligations with third parties such as Forth Ports etc. It was extremely complex. I doubt I will ever be involved again in anything as complicated as this. If the contracts had not been separated out then we wouldn't have been in that place. If we had gone for a design and build contract you would have tendered back in 2002 and then you could have appointed someone like BBS as the consortium. They then would have taken on the responsibility for the design beneath them. If this had been done the delivery vehicle for CEC could have been TIE but it would have had a different shape and form. I'm asked whether taxpayers money could have been saved if this had been undertaken. Maybe not, one of the advantages of separating out design and build contracts was that you could negotiate the design and because there is more confidence in the design you might get a better price for the build part. That may be what was achieved here. I don't know though because there is no benchmark to compare separated contracts to a joint design and build contract. The reason the procurement strategy was put in place was probably because that was seen as best practice. I'm just talking from the perspective of someone

who has seen the end stages of a procurement process where the contracts were separated out. The conclusion of the agreements was very very difficult. I think what wasn't covered was how comfortable companies feel working with each other. That was an important factor as to how things ultimately were.

## **FBC AND CEC APPROVAL**

331. I wasn't involved with the preparation of the FBC. I am referred to an email from Graeme Bissett to Matthew Crosse and me dated 12 October 2007 and found at **CEC01624078**. It is suggested that this email suggests that it would have been appropriate to have more clarity in the FBC on what is meant by "fixed price". It is suggested that this is important because although everyone in TIE was aware of what is meant, this shows they were aware that it might be misunderstood by others. I am asked whether anything was done in response to this. I have no idea. You would have to ask Graeme and Matthew about this. I'm asked whether I have any recollection whatsoever about the definition of "fixed price". I think what was clear at the time was that the FBC had to reflect what had been agreed. It had to be consistent with what had been agreed. Whatever was placed in the FBC would be an articulation of what had been agreed. By articulation I include to the public as it was a public document.

332. I am referred to the email exchange between myself and Geoff Gilbert dated 15 October 2007 and found at **CEC01667805**. I am also referred to the attachment to this email exchange which can be found at **CEC01667806**. This is just an explanation prepared by someone to someone which explains what the highlights of the business case are, what the estimates are to build 1a and 1b, how this compared with the draft FBC in 2006, how risk and contingency had been moved over the period of the negotiation and where the funding was. This is all it was. I don't think that this makes things less clear with regards to the "fixed price". I think this is fairly clear as to what is trying to be shown. There was no intention to articulate anything other than what was already agreed. There was no doubt or confusion in my mind as to what "fixed price" meant.

333. I am referred to the papers for the TPB meeting dated 23 January 2008 and found **CEC01015023**. The Draft Close Report was considered at this meeting. It is noted at page 35 that the CEC would prepare appropriate papers for its own approval purposes. I am asked what was meant by this. This would be part of the process for all the various agreements and letters to come through. This is just saying that for CEC to approve the grant letter this is what they need by way of documents. It is just a statement in advance of all the work that had to be complete.
334. I am referred to page 38 where there is a statement that the principal pillars of the contract suite in terms of *inter alia* risk transfer have not changed materially since the approval of the Final Business Case. I am asked whether I consider this to be an accurate statement. Yes. If anything, what we were trying to do is negotiate to get further clarity. We ended up having to pay explicit sums of money to get explicit agreements on design and risk transfer. I am asked whether I believe the core of the contract changed. No it didn't.
335. I am referred to page 66. There is reference to responsibility for normal design development - excluding changes of design principle shape form and outline specification as per the Employers Requirements. I am asked was meant by this. I don't think that the Employers Requirements was a major issue. It was part of the stalling tactics by BBS. I think by normal design development it means things changing on the street and there may be things that involve changes to 'x, y or z'. That would be dealt with through a normal process. You would come forward and say "*here's a proposal for a change, go through the change control process and give us a cost.*" You would then as the client pay for the design and then you would get an estimate as to both the design and the delivery and you would have to decide whether you were going to do it or not.
336. I am referred to page 68. There is a statement that, "*There has been no material change in the Risk Allocation Matrices between Preferred Bidder stage and the position now.*" I am asked whether this is accurate. Yes I would say that this is accurate.

337. I am referred to a further draft included with the papers to the TPB dated 9 April 2008 and found at **CEC00114831**. It is suggested that this does not appear to have changed the key statements despite the development in schedule 4. I am asked whether I can comment on this. No. I am asked why I can't comment on this. Schedule 4 would just be an articulation of what was discussed and what was agreed.
338. At page 50 the version notes that the increase in costs is as a result of achieving risk transfer. It is suggested that, as it is intended to justify the increase since close, this indicates that the view was that further risk had been transferred since then. I am asked what was that risk and how it was transferred. It was transferred as part of the discussions about agreeing explicitly in terms of BBS's responsibility for concluding the design and firming up the prices. I am asked what risks specifically were transferred. It's the stuff that's in the documents. It's all articulated in the documents as to what was paid for what. There would be other things tied into programme as well. But I wouldn't be involved in that level of detail.
339. The draft also states that *"the increase in Base Costs for Infracore of £17.8m approximates 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."* I am asked were these risks quantified and, if so, where. I think that if you go through the negotiations there will be a schedule which makes up the £17.8 million. It will be in the FBC. The risks are identifiable in the FBC and the documents leading up to it because we have seen them. We saw what was paid for as part of the negotiation. It is set out in the tables we referred to earlier which showed how it moved from something like £212 million to £219 million (**CEC01546352** and **CEC01546353**). There would have then been further adjustments which would have been explained based on the £8.2 million based on the further transfer of risk. There would also be the adjustments for the final BB discussions.

340. I am referred the notes to the TPB dated 13 May 2008 and found at CEC00079774. At page 6 there is a letter from me to Tom Aitchison dated 13 May 2008 which says that in concluding the contract, "*certain matters have been concluded which are **marginally different** from the terms set out in the FBC*". I am asked whether this is accurate and what matters were marginally different?. I think in terms of the overall price the margins we are talking about were accurate. It doesn't though accurately express the frustration we had in terms of trying to have to manage the process. The matters that are marginally different are the negotiations of the final price in terms of what the change in the balance of risk between the client and TIE was going to be. I am asked whether the change to introduce in the final version of schedule 4 (which came in during February) was just a marginal difference. No, schedule 4 was part of the contract. It wasn't a separate document. If you look at the INFRACO document it is a standard document produced by DLA in terms of a contract with a list of schedules. Schedule 4 was just part of the contract not a separate document.

#### **ADVANCE WORKS**

341. I am asked why works were carried out in advance of INFRACO. I think at the time there was confidence that there would be a conclusion to the negotiations. There was a proposal brought forward. I think it was also tied into one of the requirements for the grant funding from TS. There was money available to spend in the current financial year and there would be problems with budgets if that money was not spent. I think the best person to speak to about this would be Steven Bell but I think that there was a proposal brought forward to try and help the construction programme to work on elements in terms of getting sites ready. This was so that when BBS signed they would be able to roll in the heavy equipment. This was all about clearing land and getting preparatory works underway. It seemed to me at the time to be a sensible proposal.

342. At the time, when the discussions were taking place, we were all expecting to have had the contract signed in January or February. These works had been planned to be undertaken immediately after the signing of the contracts by INFRACO. I think they became advance works because there was a delay in

getting the contracts signed. If there hadn't been a delay then they would just have been preliminary works. The advance works were not a factor in the negotiating the terms of the negotiation of the last elements of the contract.

343. I am asked what the relationship was between the advanced works and INFRACO. They were part of the programme. The advance works did not place any pressure on TIE to agree the INFRACO contract. It wasn't even a consideration.

344. I am asked whether, as a result of the considerable delay of signature of the agreement, there were more works carried out as advance works. I don't know. I am asked what additional works were carried out. I don't know what works were carried out. I am asked what agreement was in place for these additional works. I don't know what agreement was in place for the additional works. I am asked how much was paid for advance works. I don't know how much was paid. I am asked where a record of the sums be kept. There would be a record of the sums because it would be budgeted and funded. I think it would be tied into the grant transfer from TS.

## RELATIONSHIP WITH CEC

345. I am referred to the email dated in an around 27 September 2007 and found at **TIE00693651** and **CEC01643076** which suggests that there was some unhappiness in TIE when CEC advertised for a consultant to provide oversight of TIE proposals. I am asked what was the concern. This is something to do with delegated authorities. There was some sort of conflict between the delegated authority of the TPB and CEC. There was a bit of heat in terms of where the authority lay. I don't recall the detail of this. There always was at the interface on an individual level between TIE, the TPB and CEC some friction. You would expect that on any big project. This wasn't an issue for me. At the end of the day CEC wanted TIE as the arm's length company feeding into them. There was delegated authority and operating agreements put in place.

346. I am asked about Cyril Sweett. I can't remember them. I don't know what they were brought in to do. I am referred to the email chain dated on and around 11 September 2007 and found at **CEC01630901**, the email chain dated on and around 12 September 2007 and found at **CEC01630932**, and the email chain dated on and around 12 September 2007 and found at **CEC01630940**. I can't comment on this as I have no recollection of them or this whatsoever. I don't recall CEC appointing external consultants to TIE or the TPB. CEC might have wanted independent reviews of advice that was being given by TIE to them. That was their right if they wanted to do that. I was aware that from time to time things flared up. If there was anything like that, and it came to me on a personal level, then I would have a word with Andrew Holmes or Tom Aitchison and get it resolved because it was just not constructive.

347. I am referred to the update report to CEC dated 8 March 2007 and found at **CEC01814155**. I am asked to comment on the report. This is from Colin Mackenzie. All I can say is, from my perspective, I tried to work as openly and productively as I could with CEC. There was no attempt to either hide or manipulate the information that they needed. It was all totally transparent. The working relationships I had with CEC were good. It is suggested that this report shows that TIE are being asked to comment on and revise a note to go to Councillors. I am asked to comment on this. We worked with CEC to help them prepare documents for their council meetings all of the time. This was because a lot of the detail that was required for the councillors was with TIE. It was just part of the day to day interface.

348. I am asked whether I or others ever had doubts about the ability and commitment of CEC to see the project through. No. None at all. I am referred to email chain dated on and around 11 December 2007 and found at **CEC01500899**. It has been suggested to me that there was a concern as to whether CEC were up to the task. Andrew obviously was worried about CEC legal. I had no concern at all about CEC's appetite for doing the project. The governance arrangements were in place. This was just a nervousness from Andrew about the work that was about to come along and whether the solicitors at the CEC legal department would be able to cope. I am asked what my view of

the CEC legal department was in terms of being able to cope. I can only comment on the fact that we had difficulty in getting a lot of documents agreed. I set up the legal affairs committee. This was a way of forcing them to meet some of the timescales. I think if we hadn't done that then we would have had more difficulties. I am asked whether I think the fact that Andrew Fitchie was representing both CEC and TIE caused problems. I don't recall that Andrew was representing both CEC and TIE. It might be because I was only focussed on TIE but I don't recall that Andrew was also representing CEC. . I may have been told that we had the same legal advisors but I don't recall that. It would have been sensible given we had the same objectives. I do recall at some point that CEC wanted to bring in another set of legal advisors. I remember thinking that that was strange.

349. I am referred to an email from Andrew Fitchie dated 5 December 2007 and found at **CEC01550238**. It is suggested that this email also casts doubt on CEC's ability. I got emails from Andrew like this on a regular basis. . Andrew would have articulated all of this and then he would have gone away, done something and moved on. I think it was all part of the pressure that Andrew was working under at that time. I would read it and ask him what he wanted me to do about it. If there was stuff that seemed reasonable for me to do then I would help. Otherwise I would say that this is just part of the process we were working through and we just have to work our way through.

350. I am referred to an the email chain dated on and around 6 December 2007 and found at **CEC01546916**. This is again going back to the TIE operating agreement. This was about how TIE and CEC were going to operate. I have to say at the time that a lot had to be put in place but it wasn't a top priority. We are talking here about the middle of December when we were in the final throes of the negotiations with INFRACO. How CEC and TIE would operate beyond the agreement would just be agreed. I remember at the time there was just lateness coming forward from CEC legal. It was annoying Graeme Bissett and it was annoying Andrew Fitchie. It wasn't really annoying me, I just knew it would eventually be done. It was one of these tasks that would be done at the last moment. At that moment I just felt that there were more important matters that

we had to be working on. I am asked whether from my own point of view I had any concerns about the relationship between TIE and CEC moving forward. No, none at all. I knew it would change. I knew that it would be right that it would change. I knew that it would be good that it would change. The relationships I had at an executive level with CEC were very good. I thought that the calibre of the guys I worked with at CEC were good.

351. I am referred to the papers to the TPB dated 5 September 2007 and found at **CEC01561047**. At page 9, I state that the monthly meetings held between Andrew Holmes, Gill Lindsay, Jim Inch and myself supported the resolution of any issues and assisted in identifying resource and timescale requirements. At the same time, Andrew Holmes notes a need for greater assistance with providing information to Councillors. I am asked to describe the extent to which the Council in general or particular officers were kept involved. They were part of the governance of the programme. They were involved in all aspects of the programme. Andrew Holmes was on the board of TIE and on the TPB. His replacement, Dave Anderson, was also there. There were meetings between CEC, SDS and TIE all of the time. There was great co-ordination between Stewart McGarrity's people and Donald McGougan's people. Graeme Bissett was, in terms of governance and controls, always working alongside CEC. Indeed, one of the things that was brought in, and we put in to assist CEC, was seconding senior members of staff from CEC. It helped the project having on board that expertise. A good example of this was the secondment of Keith Rimmer into traffic management. He became part of us rather than criticising us from the outside. He helped us a lot with building solid traffic management plans. There were other secondments which took place but Keith is a good example. From my point of view we tried to work with CEC as productively as possible.

352. I am referred to an email to me from Trudi Craggs dated 15 February 2007 and found at **CEC01826792**. I am asked what was the concern that Trudi Craggs had. I don't know what this is about. . I didn't get involved in stuff like this. I am asked whether I had much involvement with Trudi Craggs. No.

353. I am referred to an email to me attaching a copy of a CEC report and dated March 2007 from Stewart McGarrity and found at (CEC01830998 and CEC01830999). It is suggested that this states that TIE were unhappy at the level of control being exercised by CEC. I am asked to comment. Stewart was Finance Director. He was always prickly about the demands that were placed on him about providing additional information. I took a more sanguine view. If the information was required then it was required.

354. I am referred to the email and attachment dated 30 May 2007 and found at CEC01674291 and CEC01674292. I say, "*we could get this [the project] over the door for £575m*". I am asked what I meant by this. I think what I was looking at here was the combined cost of 1a and 1b. This would be before there was the election. I can't recall this email and attachment. I do recall at this time hoping that, in terms of the bids, we could do both 1a and 1b. We only had funding to £545 million. However, if we could present a case coming out of the submissions saying we could do 1a and 1b for £575 million then that might have been worth looking at. If, for an extra £30 million of funding, we could get a commitment to do both parts of the network then I felt that that might be of interest to all parties. It all fell away because of the outcome of the election. This was just my view at the time. This wasn't the view of the board or anyone in any of the governance. It is just maybe a discussion I had with someone and I've thought that this looks interesting, maybe we could have a chat about it.

355. I am referred to the close letter to CEC dated 28 April 2008 and found at CEC01312368. I am asked whether I stand by the comment in it that there was no change of risk balance since the December report. This is just part of the contract suite we had to work through.

## ELECTION

356. In the run up to the election of 2007 the tram project became a political football in the city of Edinburgh. That then started to cause difficulties in the discussions we were having. This was before we had proceeded to the preferred bidder stage for INFRACO. Indeed TRAMCO as well. It also resulted in us getting a lot of FOISA requests from political activists and journalists about how much money had been spent, what the money had been spent on and what commitments had been made. There was starting to be some noise at that time. The result of the election was announced at about the time that I was intending to go on holiday with my family to China. I decided not to go because I knew the election would have an effect on the project. The manifesto of the SNP had been to cancel both EARL and the tram project.

357. After the election, Audit Scotland were asked to come in and do a short sharp audit of both of the projects. The conclusion from Audit Scotland with regards to the tram project was positive. I remember, however, the interpretation by the government of the Audit Scotland's report on the EARL project was different from my own. I felt that EARL was at a much earlier stage in the process. Regardless of my view, however, the government's decision was to cancel EARL. This had an implication in terms of my role as Executive Chairman of TIE. I had to work out what I was going to do with all of EARL's resources. We worked that through in a planned and thought through manner with the assistance of TS.

358. Around the time of the audit there was a period of uncertainty about the tram project. The government were considering whether it wanted to go ahead or consider other alternatives e.g. guided busway. We had to then provide extra information for their consideration. Eventually, the decision went back to parliament. I remember getting a phone call from John Swinney to explain what was happening. I appreciated that. Although the government had changed their position with regards to the projects, my relationship with the key ministers was good. I understood that, at the end of the day, they had a mandate and this was what they wanted to do.

359. I think that the decision to cap the funding at £500 million and £45 million from CEC was on the one hand helpful. It meant that it became quite clear to all parties, including the CEC and their approvals process, that any delay to the project was going to increase the cost to CEC and not to central government. I think that decision was a factor in allowing us to gain improvements in some of our processes. On the other hand it was not helpful in terms of the government appearing still hostile to the project. It resulted in the bidders becoming really nervous. It affected their perception of the programme, bidding process and their own costs. The government's decision was also not helpful because TS were removed from the project. TS had provided some key players. Bill Reeve, for example, was a key member of our board. He had a lot of experience with light rail and heavy rail projects. Bill and I had met in a previous existence during my time with the Strategic Rail Authority where he was also working. TS had been hugely helpful to us in terms of providing us advice, allowing us access to other parties, helping the interface with Network Rail, generally being part of the bidding process and assisting us with our involvement with the bidders. Indeed, who knows, but the decision by TS to award BB the contract for the M80 might not have happened had they been still involved with the tram project. I felt that we missed the contribution of TS. I felt that we had to cope with an extra difficulty in the that we had to explain that, on the one hand, the project was being funded to the extent of £500 million (which was one of the biggest single investments Scotland had made in this sort of infrastructure) and on the other that the government was openly hostile to what we were trying to achieve. I felt it was a difficult thing to reconcile.

360. I am referred to the email chain involving me dated 7 May 2007 and found at **CEC01653467**. It refers to wanting to have a "Council of War". This is just the use of an over emotive term by John Boyle. It is not a term I would use. All I wanted to do at this stage was talk to people and gain some feedback from them as to how they felt. Obviously, with the announcement of the election result, there would be a lot of uncertainty within the organisation. I wanted to sit down with all the key people and chat with them about their feelings. I wanted to talk to them about what was about to happen. I wanted to agree a communication

plan for our staff to ensure that they were kept up to date about what was going on. I am asked whether the email appears to suggest that there was a move of TIE from the role of a delivery vehicle for the tram project to a role of being advocates for the project. I don't agree. This didn't change the role of TIE at all.

361. I am referred to a section in the same document setting out the intended response of TIE in the immediate aftermath of the 2007 election. This again was from John Boyle. It was a proposal. It is John's initial thoughts about what we should do. I took the slightly different view that we should keep as low a profile as we could. Our job was not to try and second guess government policy. Our job was to implement what we were being asked to do. I decided that the strategy should be to work as constructively with TS and government as we could to provide them with the information to enable them to make a decision on what they wanted to do with the project. If their decision was to end the project then I would help them to close down everything with as little fuss as possible. I wanted to make sure that there was going to be no 'prima donna' type stance taken either by myself or the organisation. I am asked what Matthew Crosse's role was in formulating the response. He wasn't really involved with this. What I said to Matthew at the time was *"look, your job is to focus on procurement. Don't be distracted by what is going on in the political scene."* It was my role as Executive Chairman to become involved (in the political scene) and keep Matthew updated as to what was happening as I went along. Matthew hadn't to become distracted by it. We knew that it was going to make the procurement process more complicated. We didn't want to lose any more time.

362. The election result did have an effect on MUDFA. We had to take a view as to whether we should suspend the street works on Leith Walk while the review of the tram project was undertaken. It seemed to me that we had no other option but to suspend the works. There was the potential that the safety of the staff could be compromised. There were high emotions about what was going on. The considerations were that, on the one hand suspending the works would save a bit of money. On the other hand, continuing might have added further to potential write off. It also had to be considered that suspending the MUDFA works would condense the works further and result in a risk that they would

overlap with the beginning of the INFRACO contract. At the end of the day we decided we should suspend the works because we felt there was no alternative. I guess the only practical effect on Matthew was that he was in charge of the MUFDA programme as he had to put in place the pause of the works. Matthew was fine with this. He was the programme director and just continued in that role until the conclusion of the procurement in March 2008.

363. I am asked whether the outcome of the election had been discussed within TIE prior to the election itself. I am sure there would have been a discussion at board level about the potential outcomes of a change in approach by the government. The discussions would have been consistent with what I have just said though. I think what I articulated before would have been the approach discussed at the TIE board level. I am referred to the papers for the TPB meeting dated 26 September 2007 and found at **USB00000006**. It is suggested that at page 6 there is an example of discussions held prior to the election. Yes, that's right. Donald McGougan was from CEC. What he was concerned about was that the final business case still needed to sell the project. He was concerned that the government wouldn't listen to CEC needs. The CEC officials were absolutely solid in their opinion that there was a need for the tram to help the city grow and develop.

364. I am referred to the email chain dated about 3 April 2007 and found at **TRS00004141**. I had a meeting with Bill Reeve. I can see that I was right – “*his sense is that tram would survive... but EARL... would, at the very least, be reviewed*”. This email goes back to the relationship that Bill and I had. I think a part of my role was to make sure that the relationships between the stakeholders always remained strong. Outwith formal governance meetings I would meet with officials from CEC, TS and government and others who were involved e.g. the guys who ran Harvey Nichols or Marks & Spencer etc. I would just chat to people as part of my job. I think Bill and I chatted at this meeting, given what was happening at that time, and said that if the government changes and their manifesto plans went through then there might be a change in the relationship. I don't think, to be fair, that TS thought they would be taken off of the project. I think that came as a surprise to them. I think it was also a surprise to Bill that he

would no longer be involved. I do recall a later meeting with Bill. It was a difficult meeting for Bill because he had to say that we could not have discussions anymore because, on a formal basis, the government was 'anti the project'. It wasn't a personal thing. It was a shame not having access because not only did we lose Bill's personal expertise but we also lost all his connections and the input he could provide during a critical point in the project.

365. I think that when TS were removed from the project, and the government stated that they no longer supported the project, BBS became aware where the money was going to come from and became concerned as to how secure the money was. I think that they became aware that there may be issues if the government changed its mind again. I think that the decision to limit the funding to £500 million was understandable, although I would have liked more flexibility based on outcomes. I think, however, that the government's decision to publicly state that they were against the project and remove their assistance to the project was a bad decision.

366. I am referred to the email and its attachment dated 23 May 2007 which can be found at **TRS00004312** and **TRS00004313**. This is a document which was prepared to provide a simplified version of the business plan which could be provided to all interested parties. It states the facts of what the project hoped to achieve, the benefits, and if the decision was taken to cancel the project what the implications were going to be. I think what happened was that I sent the document to Bill and TS. I also sent it to the Chair of TEL because he wanted it. It was just to provide some basic information to the government or whoever was looking at the project.

367. I don't know what the response of CEC was to the election. There was a shared administration after the election between SNP and Liberal Democrats. They had agreed to disagree on the issue of the tram project. At the end of the day the leader of the SNP had access to the same briefings as everybody else. I am referred to the letter from me to Malcolm Reed dated 28 May 2007 and found at **CEC01555676**. It notes that TIE were instructed not to enter into new financial commitments for trams. I think that this is a good letter. It articulates the

concerns and the necessary agreements which we had to have to hold the line with at that time. If we hadn't undertaken this type of action we probably would have been negligent.

## VALUE ENGINEERING

368. Value engineering is where you take a design that has been prepared and look at the objectives you are trying to achieve. You then see if there are ways in which you can reduce cost and still maintain the same objectives. You challenge the objectives to see whether they have been over specified e.g. has 'x' been over-engineered. You ask "can we take cost out of the project?" As part of any large infrastructure project you would set yourself targets for value engineering. It is required because if you are spending £220 million on infrastructure and can improve the design by, say, 10% or challenge the need for certain aspects of the design and reduce the scope by 10% then you can save £22 million. It was all part of the domain of the Tram Project Director. What I would have been aware of was that it was being undertaken and that there would be targets to achieve it. Indeed in discussions that we had with BBS they were confident that there were value engineering savings which could be made based on their valuation of the design from SDS. I wasn't involved with what was done to achieve the value engineering. By its definition it happened after I had left. I am not able to comment on how successful it was.

369. I am referred to the papers for the TPB meeting dated 12 July 2008 and found at **CEC01565576**. At page 23 it states that value engineering and negotiation savings are required in order to deliver Phase 1a within the £501.8m current AFC, as set out in the INFRACO initial tender return project estimate update paper dated January 2008. It was important for the delivery of the project and it was right that targets were set. If not there could be the accusation that some items were either gold-plated or over designed. We wanted to make sure that we challenged all aspects of that. I am asked whether it is normal to report that you can achieve budget on the basis of value engineering opportunities that have been brought to fruition. Yes. What would have been identified were the areas where these savings were going to be made and whether these savings

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should be  
12 July 2007

were going to be realistically achieved. There would be a risk rating attached to each of the savings in terms of probability for whether they could be achieved. I can't remember whether it was intended that value engineering proposals would be largely ascertained before the preferred bidder stage. The value engineering proposals were agreed as part of the agreement with INFRACO. I think INFRACO agreed and signed up to the agreement something like £21 million worth of value engineering savings. I am asked about the £34.9 million figure. That £34.9 million would be for everything that could potentially be value engineered. There would be a probability of success applied to each element. To come up with a figure you would take down all of the savings and come up with a figure stating all the potential future savings as a result of value engineering. You would then say that, of the potential total savings, £23 million is probable, £5 million is possible and £5 million is difficult. So you would have gone through all the possible things where there could be savings and identified what you could likely save. There would be big ones e.g. depot re-orientation and construction. This was one of the things that was discussed with INFRACO. It's not unique to the Edinburgh Tram Project. It goes on in all projects.

370. I am asked whether the value engineering position indicates that the apparent lack of 'head room' over the budget meant that there would need to be a very tight control over contract price and a need to ensure the situation was not one in which there could be variations and extras. This is just a statement of fact. I am asked how necessary it was that the value engineering opportunities be realised if the project was to be affordable. It was necessary to enable us to have headroom for risk. If no value engineering savings had been delivered then it would have taken away in the order of £20 million of the headroom that was available. If the savings had not been delivered then the headroom for risk would have had to have been reduced.

371. I am referred to the papers to the TPB dated 9 August 2007 and found at **CEC01018359**. At page 7 Matthew Cross describes value engineering as critical. I am asked whether this is a reference to affordability issues. No, this is just a statement of fact. There is an opportunity here to reduce the price of the

project by say £20 million. It had to be worked hard because it wasn't going to produce that saving by itself.

372. I am referred to the papers to the TPB dated 5 September 2007 and found at **CEC01561047**. Jim McEwan states at page 10 that not all of the value engineering is required to achieve affordability. What Jim is saying here is that there are a whole range of projects being looked at and not all of them are going to come to fruition. What we then had to do was work through and pick out all of the low hanging fruit. These were the ones we needed to concentrate on because they gave us a higher degree of certainty on value.

373. I am referred to the email from Jim McEwan dated 26 September 2007 and found at **CEC01598234**. Jim is sending round the value engineering register to various people including myself. He suggests that the future of the project rests on being able to accrue and garner these opportunities. Jim's language sometimes was a bit regal. The position with value engineering was always the same. There was always an expectation in building up the business case that as the price firmed up it would become evident that we needed as much value engineering as possible. That's the same when you're running any business. You want to try and do things as efficiently as possible. Therefore, as more and more of the detailed design was made available we increasingly looked to see where we could take cost out of it. Any cost that could be taken out could be held back in reserve for risk. It could be used for other matters that may or may not occur later on. I am asked whether the level of importance attributed to value engineering changed as the project went along. It changed as we got more information. In the early stages we had a target for value engineering but there wasn't enough material to judge how we were going to get there. You have to also remember that there weren't the same amount of bodies in TIE around at the start as there were later on. At the start of TIE, it was very much a small organisation tied into approvals, consents and getting the legals put through. As more and more of the engineering came through part of the remit of the job became to find ways to deliver the project more efficiently. I am asked whether it was cost critical. It is always cost critical. It is good because, if it is achieved, it can take pressure off the budget. Because the funding remained the

same, value engineering enabled us to increase the amount put aside for risk. Value engineering was always part of the discussions. Indeed, as part of the tendering process I am pretty sure that the bidders would have been asked to identify and quantify value engineering proposals in their own proposal. It wasn't just something we were doing, BBS were also involved.

374. I am referred to the papers to the TPB meeting dated 26 September 2007 and found at **CEC01598234**. At page 8 the TPB view had come around to one where changes in value engineering could be absorbed within the estimate. There was always going to be change because you may identify 200 opportunities and out of those 200 opportunities only a certain percentage of them would be realised. Out of a certain percentage of them only certain percentages of the savings would actually come to fruition. This is reflected in the table we looked at earlier (**CEC01565576**).

375. I am referred to the papers for the TPB meeting dated 23 January 2008 and found at **CEC01015023**. At page 65 it notes that an allowance of £4 million was made against value engineering opportunities of £13.2 million to reflect risk that they would not be realised. I am asked to comment on why the allowance was made, how the sum was determined and whether the sum was appropriate. This is the same table as we have just referred to. It would have been all identifiable opportunities that were achieved or were achievable then there would be the sum of these savings in an accumulation. The total support available might have been £13.2 million and out of that there would be an assumption that only £4 million would be achieved. The challenge for the project though would be to achieve the full £13.2 million.

## **TRANSPORT SCOTLAND**

376. I am referred to the papers for the TPB meeting dating 9 August 2007 and found at **CEC01018359**. At page 6 it is noted that, although the funding regime was to change post-election, TS would remain on the TPB as it had a function to ensure prudent spending of public money. I am asked who expressed this view. This is James Stewart. He was from Partnerships UK. For a period of time, he was an

observer at our boards. This is just a personal view from an advisor to the board in his role in Partnerships UK. This view wasn't from TS. Not at all. That must have been Partnerships UK's view on what was likely to happen. It was a surprise to us when it was changed so that TS no longer had any involvement. I don't know but I think it was a surprise to TS too.

377. I had a role involving TS as part of the governance structure. That role was to attend meetings where TS were present. TS were members of the TPB. They attended the TIE board and the TEL board. They were also helpful in that they assisted us by being a conduit to other government bodies e.g. Network Rail and First Group. I had regular meetings with Malcolm Reed who was the Chief Executive. I had regular meetings with Bill Reeve alongside other more informal meetings. The other person I met with, and he was the kind of TIE liaison guy, was Damian Sharp. I would not be able to tell you the exact titles of Malcolm, Bill and Damian. I can speak in terms of seniority. Damian reported to Bill and Bill reported to Malcolm. I am asked whether they were all supportive. The relationship overall between TIE and TS was very good. TS were very supportive. It worked well in the early stages. I personally found them very helpful.

378. I am asked what my role was in relation to the finalising of the grant letter. I cannot recall being involved. It was all negotiated between CEC and TS. My involvement with the grant letter was to the extent that I was aware that there were negotiations to make sure we understood the commitments on all sides. The negotiations were undertaken between our finance guy, Stewart McGarrity, CEC's guy, Donald McGougan, and TS. At the end of that there were discussions with myself and the board. On the basis of that I got approval from the board to be able to confirm what the understanding of the board was.

379. I am referred to the email dated 26 January 2007 from Graeme Bissett to myself and found at **CEC01812256**. It is suggested to me that this states that there had to be a lot of fine tuning when reporting costs to TS. I am asked to explain the various issues raised in the email. TS had very detailed requirements for reporting. That was undertaken by Stewart McGarrity and Donald McGougan's

people. They understood how they wanted costs allocated. We had to meet TS's requirements. The costs had to be reported on a monthly basis. There was a good bit of work undertaken by everyone to do that. I wasn't involved at all with the detail. I would only be involved if there was an issue that, for some reason, the information had not been, or couldn't be, provided to TS. However, I am not aware of any issues which were brought to my attention. I am asked whether the underlying figures were sufficiently robust. Absolutely, they were at a very low level of detail. Part of the problem we had was describing the expenditure at such a low level because it had to be broken down. There were some subjective views required. I am asked to comment specifically on point 4 of the email. I am asked what the concern was. I don't know. At the time that this email was written 1a and 1b were still in play. There still were no firm costs for either. There had to be assumptions as to the allocations between 1a and 1b. At that time there were various views from all parties about the attractiveness of doing 1b so it was important that we tried to make the reports as factual as possible. I am asked what my response is to the problem being about giving too much information to TS. No I don't agree with that. We didn't have the decision as to what we provided and what we didn't provide to TS. We provided all the information we could to TS. I can't comment on whether the reply was sent to Damian Sharp at TS. I wasn't involved at this level.

380. I am referred to my email to Bill Reeve dated 25 July and found at **CEC01666083**. It summarises the intended role for TS in future. I am referred to an email from Bill Reeve dated 21 August 2007 and found at **CEC01666597**. It emphasises that they will not participate on the Board. I am asked what my views of this were and, in particular, the decision that they should not participate in the TPB. We have already covered this. I was very disappointed from a personal point of view, as I enjoyed Bill's company, but also from a project point of view because Bill was a really good contributor to the board. Bill had good contacts, good experience and good judgement. He really was missed.

381. I am referred to my letter to Malcolm Reed dated 26 September 2007 and found at **TRS00004851**. I am asked to comment on the letter. I think it was the letter Malcolm required from me as part of the new agreement moving forward. I

suspect there will have been a letter from Malcolm to myself formally informing me of the decision by ministers to cap the funding at £500 million. I think he needed something back from me acknowledging that we understood. It was just part of closing that formal understanding on the part of TIE.

382. I am referred to the email chain dated about 8 October 2007 involving me and found at **CEC01565313**. It suggests that there was apparently some difficulty getting the funding letter out of Transport Scotland. I am asked to comment. I can't comment. This was always the domain of Stewart McGarrity. Stewart only brought things to me if there was a specific requirement for me to become involved. Other than that I would not get involved. Stewart would be the person you need to speak to about this. He would have sent this to me just for information purposes. I wouldn't have got involved. The only way I would have got involved is if there was a direct requirement for me to speak to Malcolm Reed. I only got involved when it was absolutely necessary. There was a tendency between CEC and officials that things ran up to the deadline. We would get frustrated because we were trying to get things agreed in advance. For whatever reason though, a lot of stuff like this got resolved just before it was required. There was no desire or attempt by TIE to make anybody's life more difficult when providing information.

## **INVOLVEMENT WITH POLITICIANS**

383. I am referred to a letter from me to Stewart Stevenson dated 29 May 2007 and found at **CEC01674959**. The reason for this was that it was in response to a comment made by the First Minister in Parliament. He said that new information showed that the costs for the tram project were well over budget and that nothing had been delivered. I felt that I had to write on behalf of the board to the Minister responsible for Transport to explain to them the actual facts of the project and what had been delivered. I wanted to point out that the information was being misrepresented. I understood the political process but this comment was so far off the wall that I felt I had to say something. I just felt that, on behalf of the staff and the organisation, the actual facts of where we were and why we were doing things needed to be properly understood. I am referred to the section of the

letter which states there is advanced detail design to get competitive fixed prices. I think the point here is that we were doing the design separate from a design and build contract. This is a statement of fact as to where we were at that time. 'Advanced' means in terms of it being in advance of contract signature and getting firm prices on the design. It was as part of the procurement strategy that had been agreed. 'Competitive fixed prices' is just exactly what we were hoping to achieve. We would tender for the work, we would get the designs and then we would fix the price. I am referred to another version of a letter signed on behalf of David Mackay to Stewart Stevenson dated 29 May 2007 and found at **TRS00004407**. I am asked which letter was sent. What's happened here is that we have both signed the letter. The second letter has been signed by both of us. It is a TIE letter jointly signed by me as Executive Chairman and David as Chairman of TEL. There must have been a decision that both of us would sign the letter. Why it would have made any difference for us both to have signed the letter I don't know.

384. I am referred to the email dated 20 June 2007 and found at **CEC01650422**. It states that I wanted a letter to John Swinney when he criticised the project in June 2007. A letter to John Swinney was ultimately sent. It can be found at **CEC01677601**. John had said that we had spent £200 million just doing the utilities diversions. This was not true. I wanted to send him a letter to say that we hadn't spent £200 million and to explain what had been done and why it had been done in advance of the work. I can't remember whether we sent the letter in the end. I maybe spoke to someone and said we should send a letter and this is what the key messages should be. I don't know whether it came to fruition but this is what this was about. Looking at the letter itself I can see my signature so it must have been sent.

385. I am referred to my emails dated around 20 September 2007 and found at **CEC01647555**. This was to do with the fact that because EARL wasn't going ahead could we now accommodate another stop at Gogar. This would then enable an interface between heavy and light rail and enable those coming from Fife and the North of Scotland to get off the train and go to the tram. Barry Cross was the Programme Director for EARL. He was still working for us before

he left. Steven at this point was the Chief Engineer not the Tram Project Director. What we were looking at during this time was whether, in light of EARL being cancelled, there was an opportunity to adjust the design for tram and put in a multi transport stop at Gogar.

386. Any dealings I had with John Swinney were very positive. Our meetings were cordial and helpful. I had no difficulties with John. I think I only met with him two or three times. He did make the time to give me a call personally to tell us about the outcome of the review.

## MUDFA

387. I recall the reports that were put forward to the TPB concerning MUDFA. At this time I was out doing my weekly walks. I saw a lot that wasn't being reported on these walks. Graeme had made a similar point. I had a word with Matthew as I was concerned. Although the financials and the high level discussions were getting reported it was also important for the board to get a feel as to the tensions and difficulties that the on street works were having.

388. I am referred to the papers to the TPB meeting dated 2 July 2006 found at **USB00000005**. It was always a concern as to Carillion's resources and supervision. It was a concern whether they had the right number and type of people at work. In terms of the quality of execution and timing of the works, I can point to instances where there was good work done. I can point to instances where the work wasn't so good. That might be just down to the complexities of what they found though. I can't give you any instances where MUDFA works had to be re-executed but I'm sure that may have been the case because once you came to infrastructure work there is the possibility that there would have to be some re-work. The hope was that by getting 90% to 95% of the utilities out of the road you would make the infrastructure easier to plan. The infrastructure was the more costly part of the programme.

389. The reason why Carillion would have appointed a new Project Director was because they may have underestimated the complexity of the work that required

to be undertaken. The Project Director they had in place just wasn't experienced enough and he needed support. They needed to put in place someone who could provide more assistance. When they did that their performance started to improve. It was a similar scenario, as discussed earlier, with SDS. They too underestimated the complexity of the work which required to be done. They too put in a more experienced person in the form of Steve Reynolds and managed to improve their performance and the quality of the contracts they were working to.

390. The delays to INFRACO in Leith Walk was very early on in INFRACO. I don't know what happened. It may be that there was some sort of overlap in work. I'm not sure if there was any other examples of this sort of thing. It was always understood that at some point there would be an overlap or there might be a requirement to re-visit work that had been done before.

391. Prior to the commencement of the work there was a lot of survey work undertaken by SDS as part of their contract. That was to enable them to get the necessary drawings for the utilities to enable them to design the work packages which would be passed to Carillion or McAlpines to undertake. It is difficult to understand what more could have been done because that was the strategy that was being employed. Perhaps a learning point might be that for some of the key junctions (e.g. the Mound, Frasers Corner or Haymarket) more detailed work might have been worthwhile doing. You had to have the necessary agreements under the Public Street Works Act to carry out the work. These would be undertaken and got by the contractor (i.e. McAlpines or Carillion). They would do this all the time. It's what contractors do in Scotland already. There was a process which they had to work their way through in order to provide advance notice and a programme for the work. That was already done. I'm not sure it was ever brought to me as a key issue which caused problems.

392. These companies would have their own resourcing strategies and standards. They would be the ones responsible for the work. This was all managed at a lower level than I was in the organisation.

393. The contract allowed us to charge betterment to the utilities companies. There were formulas that were applied. I was only required to become involved on a small number of instances where the sums required to be negotiated. There was charging that took place.

394. I am referred to the email from Andrew Fitchie dated 10 December 2007 and found at **CEC01547743**. I don't know why he sent it to me at that time. It was December 2007 and the MUDFA programme was in full swing. We were hoping to conclude it in the first or second quarter of 2008. Maybe he just was aware we were actually recovering the costs from the utilities.

## **PUBLIC**

395. I took on the role to be the public face of the project. I was the one who got involved with the meetings with the public and managing the press and TV. We always tried to communicate in language that was clear and understandable. We always tried to be upfront and frank with people. It was a lot of hard work. During the early stages things of course were okay because the bulk of the construction hadn't started.

396. I am referred to the email chain involving traders dated about 28 September 2006 and found at **CEC01828641**. This was the difficulties that TIE had. The programme for MUDFA for instance would be planned and managed by McAlpine and they may, for good reasons known to them, decide that they're going to change their priorities. It wouldn't be, however, their role to communicate with the businesses as to the change who had different expectations as to what was going to happen. This was a consistent cause of friction. It is something I worked hard to resolve. I stressed the importance of better communication between the contractors and the public. One of the things that I implemented to overcome these problems was 'Tram Helpers'. We didn't have that at the start of the project. There were a dozen people allocated to different areas of the network. They spent all of their time speaking to the traders and businesses trying to improve the flow of information. It was a constant challenge for us. The Tram Helpers were put in place shortly after I

arrived because I felt our setup, in terms of communication with the public, was just not good enough.

397. I am referred to the papers for the TPB meeting dated 12 March 2008 and found at **CEC01246825**. On page 8 at paragraph 10.4 I state that I wanted to carry out a review of the communications to be undertaken. We had learnt a lot from MUDFA. MUDFA was small scale when compared to INFRACO. It was obvious that communication with the public and business was always going to be a challenge for us throughout the construction phase. I just wanted to make sure that we were as ready as we could possibly be to try and help the businesses and community to function as normal. A good example of this perhaps would be the work we undertook on Shandwick Place. The businesses wanted to know how and when they were going to be able to get their deliveries if all the roads and junctions were blocked off. We just wanted to make sure these logistical issues such as this had been properly scrutinised and that we were going to be sensible. One of the other things that I found was that sometimes the contractors would take decisions which would seem sensible to them but would appear idiotic to the public. We wanted to manage that.

398. I am referred to the email chain involving me dated on and around 10 August 2007 and found at **CEC01666342**. At this point CEC and councillors were starting to get pressure from their constituents. That was then coming back to council officials who were then making us aware that 'x' problem was happening. We were well aware of the problem. We tried to do everything we could to communicate as much as we could in a helpful and informative way.

10 August  
should be  
9 August

399. I could understand all of the complaints from the public because, if I was placed in their shoes, I would feel the same. We were not perfect (the consortium and all of the stakeholders). There were many demands in terms of not only information but compensation too. I didn't have the means and mechanisms to address all of the demands. However, TIE as the sponsor and deliverer of the project was the focal point for the public. All the letters came to me. That's perhaps part of the reason why TIE was there. It was inevitable that there were going to be complaints. I tried as many ways as possible to improve the flow of

communication. From talking to people who had run tram projects in other areas, e.g. Dublin, they had the same issues. The key thing I took away was that if you said that you were going to do something, do it. If you are going to say that something is going to take two weeks or two months make sure it takes two weeks or two months. Make sure you do what you're saying you're going to do. Also, make sure that you provide clear information to people as to who they can speak to if they are unhappy and that they understand the scope of what can be dealt with by those people. I think the public reaction was inevitable. I suspect that if we hadn't taken the steps we did, e.g. the Tram Helpers, then there could have been more complaints. The Tram Helpers were really good because they provided a face for businesses to go and speak to. If there was something that could be done information could be provided. The public wouldn't have to spend their time calling around people. We would do that on their behalf.

400. Notice of closures was a requirement of the contractors. Sometimes work had to be done in short order because it was remedial work. The complexity of some of the sites was more than expected and this would mean that sometimes it would run on. One of the things that that the public would get annoyed with was worksites remaining open for a long period of time and not being closed. They couldn't understand why sites had to remain open until sites elsewhere were completed. I understood their frustration.

401. There was only a limited amount available for compensation. There were rules put in place concerning compensation. This was public money which had been allocated for the tram project and there had to be guidance from government, TS and CEC in terms of entitlement to the funds and the level of compensation involved. In many instances it was only a small amount of money paid, perhaps a few hundred pounds, but it was intended to recognise the impact that the project had on their business. We worked with CEC to look at whether, in some instances, business rates could be reduced in certain circumstances for particular businesses.

402. It was inevitable that there would be an obstruction of store fronts and parking. It was a consequence of digging up the roads. Again it was about trying to provide as much information as possible. The reality was to try and build the tram in as short a time as possible. We tried to take control of certain parts of streets and do all of the work in one go e.g. Princes Street.
403. You had to have strict adherence to the Code of Construction Practice in terms of health and safety and working hours. One of the things we did consider was whether we could do 24 hour work in some instances. This was particularly considered during the Summer. Could we work on weekends or on a Sunday. However, in terms of the Code of Construction Practice this was not allowed. If there had been changes to that then the overall time it took to put in place the trams might have been reduced.
404. Traffic management was extremely difficult. In particular trying to predict the impact of traffic management on the key junctions e.g. on George Street, Princes Street and the Mound. There was one instance I recall that, because of the changes in traffic management, effectively the whole of Edinburgh became gridlocked. One of the tensions we had had with traffic management was trying to get a better balance in terms of the number of buses on the streets. This was a problem for Lothian Buses in the main. They were being affected by the traffic management. Reducing the number of services would reduce their revenue.
405. There were instances of poor signing e.g. poor spelling which was brought to my attention. It was part and parcel of trying to do things quickly with perhaps the right control systems not being in place, however, it wasn't for want of trying that these things slipped through.
406. We tried to provide as much information as possible to everybody concerned. We gave advanced briefings to the press. We had advance notices. We held local meetings in churches, local venues and local offices. The introduction of the Tram Helpers really helped with the flow of information as well.

407. I guess the transport professionals would understand exactly why plans changed. It was difficult for people who were planning their lives and holidays to discover at a minutes notice there was a change in what was going to happen. It was unfortunate that this was a consequence of where we were.
408. There was at times, particularly during the festival and Christmas, a pressure on us to get rid of as many of the street works as we could. We did that but, at the same time, that came with a cost. We understood why it was required. Particularly during 2007 we wanted to keep going. We were grateful to CEC as I recall they allowed us to carry on working through the embargos at certain key sites because those sites were essential to the programme. It was always a balance between the programme and the quality of life for the residents of the city. I am asked, given the pressures involved and the deadlines, whether it would have been helpful not to have had the embargos. No, I don't think so. I think that everybody needed a break. The intensity of this work was so great that it was needed. The embargos had been planned for. Although there were pressures on me at the time it really was important to businesses to provide a break during the Christmas and festival periods. It was important for the businesses to still get people coming into Edinburgh.
409. I left before the main INFRACO work started. I think that the turning point, in terms of feedback becoming negative, was during the difficulties with Carillion on the utilities diversion programme down in Leith Walk. People just got fed up with the continuing disruption. This was the same point as the economy taking a nosedive. They got fed up with all of the points we have just covered. Seeing workmen at sites that were not working must have been so frustrating for the public. I think that it wasn't so much of a turning point but an accumulation of disruptions as the programme became greater. I would say that the feedback gradually became negative as the amount of work accumulated. I would have anticipated the negative feedback but that isn't to say that it wasn't difficult. It was difficult for me to defend some of the things the contractors were doing under their contract to TIE. I didn't have control of them on a detailed level. I tried to have a relationship with everyone whereby they might not like what I had

to say but at least they appreciated I was being honest with them and telling the truth.

410. I am asked whether things could have been done differently to achieve a better result. I think if we had started off with the stakeholder and management communication interface that we had latterly in the project then we would have had a much better start at the beginning of the project. I still think that regardless of all the communication vehicles that we could have put in place the fact that you are digging up 12 miles of a route through some of the most urban areas was always going to cause problems. The best solution was to plan well, do what you say you're going to do and try to do it as quickly as possible

411. I am referred to the email chain dated on and around 1 April 2008 and found at **CEC01515742**. This is the small claim made by 'The Cricket Bat'. What I recall was that there was a claim made against the project. When it was looked at by our claims people (I think it was Dundas & Wilson) it was discovered that it was open to interpretation as to whether TIE had the power to open the roads and whether there had been something fundamental missed in the Act. As it happened, we did have the powers and we had made sure that there was no dubiety in our interpretation of the Act. This is what it was about. The company was a company that was based near the top of Constitution Street which sold specialist cricket equipment. They wanted £50 or something. They weren't entitled to compensation though because they weren't on the main line of work. The rules of entitlement were that you had to be on the line to gain compensation and they were off the street. So they weren't entitled. I think that we had to ultimately go and get some regulation tied up. It was their claim for compensation. Maybe the reason I was copied in was because of the issue surrounding road openings. I can't remember what the substance of the claim was itself.

412. I am referred to the email chain dated about 29 April 2008 and found at **CEC01352044**. I met with traders all of the time. There was at that time a competition between the Federation of Small Businesses and either the Edinburgh City Traders Association or the City Traders to get new members. I

went along to one of the meetings. When I turned up there was something like 500 people there. It was a difficult meeting. There was a lot of personal abuse and emotion at the meeting from the persons who were having difficulties. Unfortunately, there was very little I could say to provide them with comfort. One of the things that I remember from that meeting was that there was a lack of support from CEC as there were no councillors in attendance. I came back from that meeting determined to do anything we could to improve communication.

413. I am referred to the email chain dated on and around 14 November 2007 and found at **CEC01496600**. This goes back again to the fact that once a week I would walk the route. I had walked down the route and I could see there had been improvements. This was after the new supervisors had been put in.

## START UP

414. I am referred to the document entitled 'BSC Progress Analysis based on Contract Programme' found at **CEC01355364**. This document provides a useful summary of the lateness of mobilisation. I guess my reaction was that I was disappointed but not surprised. From the discussions we had with BBS it was evident that they didn't have their supply chain available. I can't comment on the detail but I do recall speaking to Steven Bell who was now in charge. I remember encouraging Steven to do everything he could to enable BBS to gain access to the works but at the same time ingather any documentation he could in case we had to talk to them on a contractual basis. BBS were late so there were options open to TIE under the contract. We had to have discussions with BBS to discuss why there were delays, when they were going to start, how was going to impact on the programme and what was going to be done to enable them to catch up. It was just common sense discussions. TIE did everything they could to find out whether there were things which could be done to assist. What we now had in place was a contractor put in place who had committed to obligations and was now saying they were not going to undertake the work they said that they were going to do. Indeed there was no sign of them undertaking the work that they were going to do. I would refute that TIE didn't take any action to address the situation. I don't know how realistic it was to assume that

the lost time would be made up. I think that for the first couple of months of INFRACO and also the programme it was realistic to assume that the time would be made up. It wasn't, at that time, the time critical work in the city centre. The initial work was out at the airport and the sites prepared between Haymarket and the airport. It was realistic to think at that time that the work could be made up.

415. I am referred to the papers to the TPB meeting dated 27 August 2008 and found at **CEC01053601**. I have been referred to page 5 to 7. This is all about traffic management and the impact upon traffic management due to changes in programme. I don't know the context of what this was about.

416. I am referred to the papers to the TPB meeting dated 24 September 2008 and found at **CEC01053637**. It is suggested that both the slow start up and design delays meant that progress was behind schedule. I am referred to page 9 where the Project Director reported that *"Tie is confident that sufficient float and false logic constraints exist in the programme, along with methodology improvements, to maintain open for Revenue Service as July 2011 with a range of May 2011 to December 2011"*. I can't explain this comment. All I can say is that Steven Bell would have given the board his own view. There would have been no reason for me with the information that had been provided to contradict that. I don't recall what scope there was within the programme to accommodate slippage and delay. I would not have been involved in the level of detail required to comment on what analysis had been carried out as to the likely effects of the delay. There would have been impact analysis undertaken but I don't know what the detail would have been.

417. I am referred to the papers to the TPB meeting dated 22 October 2008 and found at **CEC01210242**. The Project Director notes that *"The underlying contractual issues are complicated and their resolution will require a concentrated management effort"*. I think what Steven is referring to here is that BBS are probably 3 months behind where they needed to be and that there needed to be a re-calibration of the work programme. We needed to see what the impact was going to be on the programme and how that was going to be recovered. I think this is all I would understand this to be. I don't know whether

dispute resolution was to be used to address the concerns. This all started after I left.

418. I am referred to the letter from BBS dated 13 October 2008 and found at **CEC00652926**, my reply of 14 October 2008 and found at **CEC00652927** and the report that led to found at **CEC00652929**. I can't remember the letter from BBS but I do recall having a discussion with BBS. It might have been that Richard Walker and Michael Flynn had come to see us. They were concerned about hold ups in our process for the signing of claims for work that had already been undertaken. The difficulty was that Steven was managing this process and the claims that were coming through, in his view, from BBS were not being substantiated. He must have spoken to Richard Walker following the meeting. I had had a chat with Stewart. BBS had no success with Steven. I think BBS then came to me. I then replied. We put forward a proposal in terms of how we would take the issue forward. That's all I can remember about this. I think I was away by the time of the follow up report. I don't remember seeing it.

## **DISPUTES EMERGE**

419. I am referred to the email from Graeme Bissett to me and others dated 8 August 2008 and found at **CEC01355359**. The email notes that TIE had a claim in respect of the failure to mobilise. I am asked to comment on and explain the email. I am not able to comment on this. This might not have been after my time but I was certainly not involved at this level. I wasn't involved with any of the individual claims. It would have been Steven Bell who would have dealt with this.

420. I am referred to the minutes of the Legal Affairs Group Meeting dated 27 October 2008 and found at **CEC01166757**. At page 1 there is a discussion about what constituted the base date design information. I am asked why this was being considered at that time. I don't think it was being considered. I think what Steven Bell is commenting on here is a point of principle. This goes back to BBS's interpretation as to what they had to do under the contract. I really can't remember this. I can't comment.

421. I am referred to the papers for the TPB meeting dated 19 November 2008 and found at **CEC01053731**. At page 8 there is a note that discussions were on-going with BSC about "*normal design development*". I am asked what the nature of the discussions were. I had left the project by this time. I can't comment on any of this.

## PRINCES STREET

422. I wasn't involved with Princes street Infracore works. I can comment on issues around Princes Street during my time there though. I can comment on things to do with the MUDFA work. I don't think it is right to say that there was significant traffic congestion on Princes Street. The traffic management was the only way you could have done it because of the work. People didn't like it but I think the traders were supportive of it. They would rather have all of the work done quickly than for the work to have been piecemeal. If it is to do with the MUDFA works then the reason to allow the buses one way along Princes Street was to try and get all of the work done in one go. This was done in consultation with the traders. The timing of it was done after Christmas after the sales were down. All I can say is that we had discussions with everyone who was involved was to find out what the best approach to the work on Princes Street was going to be. It was clear that everybody wanted the disruption to be as short as possible. The best way to do things was to take possession of the full length of Princes Street and allow buses to go one way and make better use of George Street for the use of the buses at the same time. Lothian Buses were involved with the design. I

423. I am referred to the powerpoint dated 22 October 2008 and found at **CEC01167539**. I provide an overview in the agenda. Steven Bell presents a section of the powerpoints on Project Delivery. I am referred to page 22. He states that a "*Revised approach to Princes Street also needs to be carefully handled and is likely to create a change opportunity with BSC*". I don't know, I can't recall. At the time we were looking at how we were going to do the work at Princes Street. I would have been at the meeting but I can't recall what the outcome was.

424. I am asked generally what special measures were taken to alleviate concerns. Yes. Of course they were taken because it was such an iconic street. We tried to manage the traffic to do the work as quickly as possible. Unfortunately, the Lothian Road junction and the Mound were the junctions where MUDFA had the most problems as they had to remove the 100 years plus water mains. The traffic resolution had to overcome this work being done at the same time. I can't recall what the resolution was.

## CONSULTANTS

425. We brought in Partnerships UK because they were helpful in terms of helping us prepare for the OGC Gateway reviews. They were a small number of specialised consultants who had a lot of experience of these sort of projects. Indeed they had undertaken OGC Gateway surveys for other companies. They helped us make sure we were ready and that our plans were robust. It was good to have their critique. They were retained and they were used to improve processes. As the project became more complete then their requirement to do the reviews fell away. They were used but only sparingly. James Stewart, who we talked about earlier, would have been recruited through Partnerships UK. Their recommendations about readiness were reviewed. Their reports would have been reviewed by whoever commissioned their work. Their work would have been reviewed by either Matthew Crosse or Steven Bell. I never commissioned them.

## ENGAGEMENT

426. I was under contract directly with TIE as an employee. All I want to say about leaving was that it was for private and personal reasons. When I was contracted to TIE I had my contract changed because I was, at the time, a Non-Executive. I was appointed Non-Executive Chairman 7 July 2006 and then I was appointed Executive Chairman on 11 August 2006. I was awarded an Executive Chairman bonus for 2006 of £15,000 based the achievement of certain objectives which had been agreed between myself and CEC. The initial contract was a temporary contract and the intention was that we would then recruit another Chief Executive. We never did this because of the changes to the structure of the company. Latterly, had I stayed on as Chairman of TIE, my intention was to recruit Steven Bell to become Chief Executive and I would have reverted back to a role as Non-Executive Chairman. That was the plan. I had had informal discussions both with CEC and Steven to start the process for that. It made more sense as INFRACO was kicking in. TIE was never intended to be just one project. I was never involved in the detailed contractual procurement stuff. That was always done by the Tram Project Director. My role was to manage the governance / the stakeholders and to provide support in driving this process through. I felt we were reaching the point where there was no requirement to have an Executive Chairman when we could have a Chief Executive.

427. I was given a new contract on 3 October 2007 with different objectives. It articulated what my bonus would be. It gave me an eligibility for an annual bonus of up to 50% of annual basic salary. This was based on 30% subject to the achievement of certain defined key objectives and 20% long term bonus for being there until the end of the project. In 2006 I received a bonus of £15,000. In 2007 I did receive a bonus but I can't recall what it was, the information will be available within CEC. When I left in 2008 I was paid a bonus of £19,707 for the annual performance in 2008.

428. Performance management was undertaken by both line managers and the remuneration committee. The committee were responsible for the bonuses for the TIE executive team. The managers were then responsible for the persons

below them in their teams, subject to the scrutiny of the HR Director. He would then report to the remuneration committee who would discuss, amend or approve. I wasn't involved in the negotiation. I would, however, be asked for input into a review of executive performance but I wasn't involved in the setting of any bonuses. The process I think we followed was best practice. I am asked whether I was aware of any benchmarks used to determine bonus levels. Colin Maclaughlin and Steven Bell were involved in the detail of that. There were clear objectives set for all the staff who were eligible for bonuses right through the organisation.

429. I am referred to the email to me dated 17 December 2007 and found at **CEC01514119**. It is suggested that there was a keen desire when negotiating the operating agreement to avoid a situation in which TIE remuneration policy would be subject to CEC approval. I can remember at the time there being some concern about the oversight of TIE's remuneration policy by some committee in CEC. I guess that there was then some discussion and there was some resolution. I don't think there was a deliberate attempt by CEC to undermine TIE policy. I think it was just legal people putting statements down which required to be refined and put into practice.

430. I am referred to the email dated 4 April 2008 and found at **CEC01515788** and attachments found at **CEC01515789** and **CEC01515790**). I have looked at this and all I can say is that the proper process would have been followed in terms of the proper paperwork.

## **MISCELLANEOUS / FINAL THOUGHTS**

431. TIE was set up by CEC as a delivery vehicle to provide multiple projects. To do that there was a requirement for project boards under the government guidance on infrastructure best practice. The project boards would be made up of the relevant constituent members. There was an element, in order for TIE to exist, that required shared services. It didn't make sense, for example, to have two HR managers or communication managers. I was concerned in terms of the checks and balances on the project. We required commercial and engineering

expertise. When the other projects, such as EARL, was scrapped there became no need to have certain shared resources. All the resources just became the tram project's resource. What we decided to do was to rationalise the shared resources TIE had underneath the Tram Project Director. This led to the situation where we didn't need both Matthew and Steven. There was then a logical handover to Steven with his role being developed into a Chief Executive with all of the resources folded underneath him. Up to the middle of 2007, I spent a lot of time on EARL. My time was split between EARL, the ETP and the whole of the organisation. That was why the Tram Project Board was so important. It is one of the reasons why I was never involved in the detailed discussions. The remit of the Tram Project Board fell to the professionals who had the experience and expertise to undertake that work.

432. I am asked if I have any final thoughts. From my point of view, I think it is important to highlight that it was a significant challenge to strengthen the TIE organisation. I think the Inquiry should question whether this should have been done earlier.

433. The second point I would like to make was that through my role, I inherited a procurement strategy which intended the design to be done up front followed by the construction. No one could have anticipated the government changes that took place. I think it would have been a better approach to have let a design and build contract right from the word go. The difficulties we faced later on were all down to each of the companies not wanting to novate. They weren't interested in novating. If you look at what we ultimately paid for design, and compare it to what PB originally quoted, I think that was paid for twice again. Added onto that were the extra costs paid to BBS for taking on the incomplete design plus the added risks associated with that. I can't see how the separation of the contracts was in any way economically advantageous. I think that there was a major issue concerning the structure of the contracts.

434. The third point I would like to make is that, for me, moving forward, if a government is going to fund a project it has to be seen to be behind that project. The government can't be hostile to the project. It can't make sense for a

government to provide £500 million and to say, at the same time, that the project is 'not for us'. The consequential withdrawal of support from TS and the nervousness introduced into the minds of the bidders left TIE with no place to go. I can understand what the government wanted to do and the rationale behind that. That said, I can't understand the logic in why they came out publicly and said that they were withdrawing all support. It would have been better for TIE if everybody was on board.

435. I didn't have an experience within the organisation of people being difficult. I had two flashpoints with Greg Ayres and Richard Walker but I put that behind me and encouraged others to do the same thing for the greater good of the project. I think the behaviour of both companies in both these instances was wrong.

436. I hope the Inquiry makes recommendations on best practice for doing infrastructure projects like this again. I hope it will take on board the issues surrounding funding, contracts, contract management, public reaction and communication and provide some recommendations surrounding that. I hope the Inquiry produces a concise report that tackles the key strategic issues.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 147 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 signature.



Date of signing..... 29 SEPTEMBER 2016