

Ms. Sarah Cremin
 Committee Secretariat
 Committee of Public Accounts
 Leinster House
 Dublin 2 D02 XR20

14th December 2021

Ref: S0640 PAC33 – National Paediatric Hospital Development Board

Dear Ms. Cremin,

Thank you for your correspondence dated 22nd November 2021. Please find below responses to the Public Account Committee's questions. As outlined in your letter, the external independent report by PwC (April 2019) which accompanies this letter is a public document and can be published on external websites.

- 1. Up to date financial information to end 2021 to include inflation/projected inflation, clarification if forecasting has been undertaken, projections for 2022, and if there will be a significant increase in costs.**

Inflation scenarios are regularly updated. Under the contract, the average of two published tender price indices is used to calculate inflation payments. The tender price index for 2021 is currently forecasted between 6.5% and 8%. This would result in a potential inflation payment to BAM in 2022, for works carried out in 2021, of €12m (including VAT). The inflation payment in 2020, for works carried out in 2019, was €1,773,949 with an average tender price index of 6.67% and the inflation payment in 2021, for works carried out in 2020, was €1,496,526 with an average tender price index of 2.48%, these figures include VAT.

- 2. The numbers of staff currently onsite and whether staffing levels are impacting on construction targets.**

As previously reported, the global Covid-19 pandemic has disrupted the construction sector and all its supply chains both nationally and internationally. In December, approximate numbers on site weekly are 1350, which include 120 office-based staff. For December there is a slight decrease in numbers that may be related to Covid impacts and strengthened Government guidelines.

Progress on the main new children's hospital is continuing and below is an outline of work undertaken in 2021:

Board Members:

- Ms Fiona Ross (Chair)
- Mr Tim Bouchier-Hayes
- Ms Anne Butler
- Mr Karl Kent
- Mr John McGowan
- Mr John Cole
- Mr Liam Woods
- Mr Michael Shelly
- Mr Michael Barry
- Mr Brian Keogh

- Over 95% of all concrete has been placed and the concrete frame is complete since March 2021. This concludes the pouring of approximately 150,000 m³ of concrete in 3 years.
- The building was topped out to its final level on the 7th storey.
- Approximately 2,300 tonnes of steel structure have been fabricated and erected.
- Over 800 windows have been installed.
- Approximately 6,200m² of toggle glazing, 5,800 m² of stone cladding and 10,800 m² of utilized glazing have been installed.
- More than 86,000 m² of partitions have been installed.
- Installation of the steel roof has commenced.

The construction sector is facing challenges related to supply of market essentials as a result of increased global demand and shortages driven by Covid related factory shutdowns, production disruption and inventory depletion. In addition, it is reported that there that there are Brexit-related import delays and constraints. This is a global challenge, and one that is not unique to the construction sector but one that will have potential impacts on the project with cost and lead time uncertainty. The contractor continues to work through these challenges.

3. An update in relation to contractor claims and the moratorium on High Court claims and if it is still in place.

Information on claims and adjustments is outlined in a separate document attached to this correspondence. However, as part of the combined effort to achieve delivery of the programme within the shortest timeframe possible, all dispute mechanisms have been paused for a period. This moratorium has been agreed which enables the parties to focus all their efforts on ensuring that the new target completion date can be realised. This does not mean that there will not continue to be claims and adjustments. Claims and adjustments will continue to be determined by the employer's representative as set out in the contract. The moratorium was agreed in May 2021 and is ongoing at this time.

4. Clarification regarding the discrepancy in the number of design changes previously provided by the Board at the meeting on 9 February and the corresponding number provided in this correspondence.

We have reviewed the Public Accounts Committee Transcript dated 11th November (page 43) and believe there may be a misunderstanding regarding the context in which the figures are referred to. We would therefore like to clarify that the figure of 700 referred was the number of claims made by the Contractor at that juncture, of which 466 have been determined through the contract (Feb 2021). These figures are updated as set out in Item 3 above.

The figures, "135 of 170", noted in our correspondence of 29 October 2021 are not related to claims whatsoever but to contractor design packages that are the responsibility of the Contractor to submit

to the Employer. The revised figure to the end of November 2021 is that 143 of the 170 packages submitted by the Contractor have been approved for incorporation into the Works.

5. Further information in relation to the two-stage procurement process, why it was chosen and where has this model been used before.

Shortly after receipt of planning permission the procurement process for NCH contractors began in June 2016. A procurement sub-group was established which included NPHDB, HSE Estates and members of Government's Construction Contracts Committee (GCCC) to determine the most appropriate procurement strategy for the NCH given the size and scale of the hospital and the complexities that would arise during construction. Reference was made to lessons learned and evolving best practice in UK as articulated in Cabinet Office 'Government Construction Strategy' published in May 2011 which identifies collaborative contracting arrangements as the optimum arrangement for major project delivery. The construction of Terminal 5 at Heathrow Airport is seen as a prime example of collaborative working between the project partners.

It was determined that the standard Capital Works Management Framework PW-CF1 Form of Contract and procurement model would not be appropriate for the NCH project. In response to this the procurement model adopted for the NCH was based on the two-stage contracting arrangement which embraced the principle of collaboration through Early Contractor Involvement (ECI), aligned with EU procurement requirements and closely followed the established Government Construction Contract forms. Following deliberations over several months including presentation of the proposed option to the Government Construction Contracts Committee, the procurement sub-group recommended a two-stage contracting arrangement which embraced the principle of collaboration through Early Contractor Involvement (ECI) for procurement of contractors.

6. The status re percentage completion of the project, current challenges, and if there are delays in specific areas.

Valuation of works at end Oct was €531.5m which is equal to 58% of the €910m Guaranteed Maximum Price (Construction Price). Current challenges are outlined in item 2 above.

Yours sincerely



David Gunning
Chief Officer
National Paediatric Hospital Development Board

Information on the Dispute Management Process

The PwC report (April 2019) makes clear that the Guaranteed Maximum Price established through the two-stage tender process does not provide a contractual ceiling on cost and significant residual risks remain of further cost escalation. The residual risks, for which there cannot be cost certainty, include items such as construction inflation, variations, provisional sums, claims and adjustments and certain uncontrollable risks, such as potential costs relating to BREXIT.

The processes for the determination of contractor claims and adjustments and for the resolution of disputes are set out in the Construction Contract.

Clause 10.3 in the Public Works Contract is entitled 'Contractor Claims'. Contractor Claims include items such as:

- 1) Valid variations / adjustments to the Main Contractor that could not be foreseen at contract stage
- 2) Employer change orders / variations that could not be foreseen at contract stage
- 3) Expenditure of Provisional Sums against allowances in the contract that could not be fully determined at contract stage
- 4) Omissions of scope, savings, that were not included at contract stage
- 5) Value engineering and opportunities that were not included at contract stage
- 6) Contractor claims for delay, extensions of time and/or disruption due to employer delay and/or compensation events

An example of a Contractor 10.3 notice is where the fire alarm drawings are updated by the Employers design team to comply with fire certification, this may result in additional time and/or cost being awarded to the Contractor subject to the ER's determination. This may also result in a cost saving to the project where changes in certification have resulted in the omission of works previously specified. Another example is where the external lighting requirements have been reduced resulting in reduced scope and a cost saving.

As it stands, claims are now at all levels of the Dispute Management Process, which involve:

Employers Representative	All claims and adjustments are independently assessed and determined by the Employers Representative (ER). This can include additional payments to the Contractor, savings for the Employer, or no costs awarded either way. This can also include an Extension of Time awarded to the Contractor. Once determinations are made the Contract Sum is adjusted up or down accordingly.
Project Board	Claims and adjustments determined by the ER can be disputed by either party by referring to the Project Board. The Contract facilitates that the Project Board may resolve disputes that cannot be addressed at the project level.
Conciliation	Under the Contract if the Project Board is unable to resolve the dispute it is referred to Conciliation. The Conciliator's recommendation is not legally binding and should either party disagree with the recommendation then High Court Proceedings can be initiated, four Conciliator's recommendations have referred to the High Court.
Adjudication	This is a statutory payment dispute process that either party can avail of in parallel with the Contract.
High Court	Either Party has the option to issue a notice of dissatisfaction with the Conciliator's Recommendation. When this occurs either party may issue High Court Proceedings.

NCH Project to end of November 2021:

NCH- 10.3's Notified to the ER as at November 2021	QTY
10.3 Notified for ER Determination	1,035
Substantiated Claims Issued for Determination	951
Claims Determined by ER	800
ER Determined Claims that are disputed and referred to Project Board & Conciliation	664
Disputes agreed and no longer in Dispute Management	9 (Value €2.9 million including VAT)

As reported to the Public Accounts Committee (July 2021) all stakeholders are fully aligned around the goal of opening the hospital in 2024. Currently the NPHDB and the main contractor are engaged in a series of workshops to map out the detail within the Programme to take account of the risks that remain and to take every effort to ensure that the target date can be achieved. As part of the combined effort to achieve delivery of the Programme within the shortest timeframe possible, all dispute mechanisms have been paused for a period of time. This moratorium has been agreed between both parties which

enables the parties to solely focus all their efforts on ensuring that the new target completion date can be realised. This does not remove the risk of claims, nor does it mean that we will not continue to receive claims, it does however temporarily take away the time and cost burden of robustly defending those claims referred to dispute. The moratorium is ongoing.

Connolly & Tallaght Project Budget & Claims

The Paediatric Outpatient and Urgent Care Centre, CHI at Connolly opened in July 2019 & the Paediatric Outpatient and Emergency Care Centre at Tallaght reached substantial completion in September 2021 and opened to patients in November. There are no claims outstanding as a final account has been agreed with the Contractor.