NATIONAL PAEDIATRIC HOSPITAL DEVELOPMENT BOARD

Attn: Sarah Cremin Committee Secretariat Committee of Public Accounts Leinster House Dublin 2

Email: pac@oireachtas.ie

NCH Office Block A, Herberton St. James's Walk Rialto Dublin 8

TEL +353 (1) 556 4500

www.newchildrenshospital.ie

Date: 13th January 2023

Re: Response to S1120 PAC 33

Dear Ms. Cremin,

I refer to correspondence from the Committee of Public Accounts, Ref: S1038 PAC33, the NPHDB response letter dated 21 November 2022 and correspondence from the Committee of Public Accounts, Ref. S1120 PAC33 dated 22 December 2022.

Requesting detailed information in relation to the processes regarding penalty clauses on sub Section completion in respect of claims within the agreed Dispute Management Process.

The NPHDB letter dated 21 November, provided the detailed information on liquidated damages in relation to sub section completion as requested.

I include below a revised response as requested:

The Liquidated Ascertained Damages (LADs) set out in the Contract on Sub-Sectional Completion are as follows:

Sub-Section Phase B Works - the main ICT hub equipment room (MER), the secondary ICT hub equipment room (SER) and a minimum of 30% of the Secondary Communications Room (SCR) ICT hubs (with associated interlinking cabling):

€0 per week or part thereof for the first 13 weeks €25k per week or part thereof for the next 10 weeks €100k per week or part thereof for the next 15 weeks €200k per week or part thereof for the next 20 weeks €300k per week or part thereof thereafter

LADs cannot be deducted from payments to the Contractor, or paid by the Contractor to the NPHDB, until all disputes related to delay and extensions of time for that Sub-Section have been finally determined through the dispute management processes.

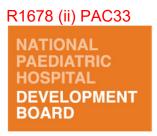
Sub-Section: Phase B Works: The Family Accommodation Unit (FAU) Site (basement/road/site)

€20k per week or part thereof for the first 10 weeks and thereafter €40k per week or part thereof

An Employer's Representative's determination for an Extension of Time for the FAU is required to assess any potential LADs for this Sub-Section.

Board Members:

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



I include below a response to the additional questions in the PAC letter dated 22 December 2022 Ref: S1120:

1. the overall total expenditure to date;

Total spend to the end of December is €1,234,297,110, including VAT and accruals.

2. the total number of claims and how many have been settled;

The NPHDB wrote to the Committee of Public Accounts on the 22nd December with an update on claims and adjustments, correspondence attached for reference. Information on the Dispute Management Process is also outlined in this correspondence.

3. the rate of construction inflation the Board expects in 2022 and 2023.

Construction tender price inflation has been particularly volatile due to factors including the impacts of Covid and the war in Ukraine. The NPHDB currently forecasts the following ranges for construction tender price inflation:

- 2019 6.67% this is the actual average of two construction tender price inflation indices for 2019 as published by Linesight and the SCSI.
- 2020 2.48% this is the actual average of two construction tender price inflation indices for 2020 as published by Linesight and the SCSI.
- 2021 10.25% this is the actual average of two construction tender price inflation indices 2021 as published by Linesight and the SCSI.
- 2022 between 9% and 11%.
- 2023 between 6.5% and 10%.

Further details in relation to liquidated damages for sub-sectional works due to a number of outstanding time extensions including:

4. was there a pre-estimate of associated liabilities:

Following deliberations over several months, including presentation to the Government Construction Contracts Committee, the Procurement Strategy for the NCH Project was agreed by a dedicated Procurement Subcommittee of the NPHD Board prior to the NCH being tendered to the Market in June 2016. This Subcommittee included membership from the HSE and the NCH Design Team. Under the guidance of the Subcommittee engagement with the Construction Market was undertaken both in Ireland and the UK in 2015 prior to the Procurement Strategy being finalised. This included a review of the appropriate rates to be applied as Liquidated and Ascertained Damages (LADs) commensurate with the potential actual losses that could be incurred. The Project QS undertook an estimate of these costs in conjunction with the NPHDB and these were reviewed by the Procurement Sub-committee. Following the engagement with, and feedback from the construction market, it was agreed that the LADs would step up in value over time to ensure the level of liquidated damages was appropriate to not deter the Market from submitting tenders.

5. when were the rates set;

The LAD Rates and how they were to apply were set out in the Tender and Schedule to the Contract that was included with the NCH Tender in 2016.



6. were they reviewed;

The LAD rates in the Contract executed on 14 August 2017, were reviewed and agreed as part of the Pre-Phase B engagement with the Contractor which culminated in the Phase B instruction issued on 8 January 2019. The timeframe in how the LADs step up and are applied was amended for the Date for Substantial Completion as follows:

LADs as Contract executed on 14 August 2017

€0 per week or part thereof for the first 13 weeks €25k per week or part thereof for the next 10 weeks €100k per week or part thereof for the next 15 weeks €200k per week or part thereof for the next 20 weeks €300k per week or part thereof thereafter

LADs as Phase B instruction issued on 8 January 2019

€0 per week or part thereof for the first 18 weeks €25k per week or part thereof for the next 10 weeks €100k per week or part thereof for the next 15 weeks €200k per week or part thereof for the next 20 weeks €300k per week or part thereof thereafter

7. do they take account of inflation.

The LAD rates are fixed rates and are not subject to inflation.

We are happy to provide any further information that the Committee requires.

Yours sincerely

David Gunning Chief Officer

National Paediatric Hospital Development Board

NATIONAL **PAEDIATRIC** HOSPITAL DEVELOPMENT **BOARD**

Ms. Sarah Cremin Committee Secretariat

Committee of Public Accounts Houses of the Oireachtas Service Leinster House Dublin 2

NCH Office Block A, Herberton St. James's Walk Rialto

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Date: 22nd December 2022

Re: Minute of the Minister for Public Expenditure & Reform April 2022 - Update on claims and the potential cost by category, for both settled and open claims within the Dispute Management Process

Dear Ms.Cremin.

In line with the 'Update on the implementation of previous recommendations made by the Committee of Public Accounts to the National Paediatric Hospital Development Board following the Committee's engagements of 9 February and 13 July 2021' and Minute of the Minister for Public Expenditure & Reform dated April 2022. Please find below an update on the Claims & Adjustments to the end of November 2022.

In May 2021, the NPHDB and BAM entered a 'Without Prejudice Engagement' including a moratorium on disputes. Engagement with BAM and the nominated 'Project Sponsors' of the 'Without Prejudice Engagement' continues. In addition to this, the NPHDB and the Contractor have agreed to engage in the Dispute Management Process for 'non delay related' disputes. If the parties cannot reach agreement, the dispute will be referred to the Standing Conciliator. Two such disputes are currently before the Standing Conciliator. The NPHDB's intention is to continue this process for 'non delay related disputes.

Please do not hesitate to contact me should the Committee require any further information.

Information on the Dispute Management Process

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

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6) Contractor claims for delay, extensions of time and/or disruption due to employer delay and/or compensation events

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, two Conciliator's recommendations have been 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. An adjudication decision can also be referred to the High Court.				



NCH Project to end of November 2022:

NCH- 10.3's Notified to the ER as at end November 2022	10.3 Qty No.	Contractor 10.3 Value (Excluding Inflation) €	ER Determined Amount Amending the Contract Sum €	Savings & Client Claims	Provisional Sum Budget Exceeded Value as End of November 2022	Net
10.3's Notified for ER Determination	1764					
Substantiated Claims Issued for Determination	1450	€ 643,376,416				
Claims Determined by ER	1250	€ 507,211,857	€ 10,600,771	-€ 5,478,595	€3,916,061	€ 9,038,237
ER Determined Claims that are disputed and referred to Project Board, Conciliation & The High court (Disputed Value	1107	€ 481,042,504				
Disputes agreed and no longer in Dispute Management (Additional to Determined Value)	8	€ 1,452,398				

Yours sincerely,

David Gunning Chief Officer

National Paediatric Hospital Development Board

R1678 (iii) PAC33

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