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: 22<sup>nd</sup> 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

## **Board Members:**

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



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** 

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