NATIONAL PAEDIATRIC HOSPITAL DEVELOPMENT **BOARD**

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

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Date: 27th January 2023

Response to S1080 PAC 33 Re:

Dear Ms Cremin,

I refer to correspondence from the Committee of Public Accounts, Ref: S1080 PAC33.

Requesting clarification regarding the timeline for dealing with claims arising under the contract and the estimate of the overall cost of construction inflation for the project

The timeline for dealing with claims arising under the contract.

The form of contract used for the new children's hospital project is the standard Office of Government Procurement Public Works Contract (PWC) for employer design, a small number of elements of the works contract were modified to meet the 2-stage procurement requirements of the project.

The Contract includes Clause 10 Claims and Adjustments, and Clause 13 Dispute Management Procedure.

Under Sub-Clause 10.3 if the Contractor considers there should be a Claim or Adjustment, the Contractor is to give notice to the Employers Representative (ER) within 20 working days after it became aware or should have become aware of the event.

Within a further 20 working days of issuing the notice to the ER, the Contractor shall provide full substantiation of the claim to the ER. The Contractor shall give any further information requested by the ER, if requested to do so within 10 working days.

Within 20 working days of receipt of the substantiation requested by the ER, the ER shall issue a determination of any adjustments to the Contract Sum and or the Date for Substantial Completion.

The ER's determination is final and binding on the parties unless within 28 days of the determination a party issues a notice to the other party disputing the determination and referring the dispute to the Project Board. The Project Board is part of the Clause 13 Dispute Management Procedure.

The Project Board meets monthly. The Contract facilitates that the Project Board may resolve disputes that cannot be addressed at the project level. Either party may refer unresolved disputes to conciliation within 14 days of the Project Board.

The conciliation timeline in the Contract between referral and a conciliator's recommendation is 42 days, or a longer period proposed by the conciliator and agreed by the parties.

- Ms Fiona Ross (Chair) Mr John Cole

- Mr Tim Bouchier-Hayes
 Mr Liam Woods
 Ms Anne Butler
 Mr Karl Kent
 Mr Michael Shelly
 Mr Michael Barry
- Mr Karl Kent Mr Brian Keogh
- Mr John McGowan Mr Alan Seabourne



If either party is dissatisfied with the conciliator's recommendation, it may issue a notice of dissatisfaction to the other party within 20 days of receiving the recommendation. If a notice of dissatisfaction is not issued, the recommendation is conclusive and binding.

If a notice of dissatisfaction is issued the dispute moves to the High Court.

There are currently two disputes before the High Court:

- The Phase B instruction dispute court proceedings are currently adjourned.
- The frame claim dispute court proceedings initiated, but no action currently being taken by either party.

Without agreement between the parties, further disputes may be referred to the courts in the future. Without agreement between the parties, it is likely that disputes will continue after the hospital is operational.

Adjudication is a statutory payment dispute process that either party can avail of in parallel with the Contract. The adjudicator is required to issue the decision within 28 days of the adjudicators appointment or 42 days as agreed to by the referring party and as directed by the adjudicator. An adjudicators decision can be referred to the courts for final resolution. There are currently no adjudications in process on the project.

The estimate of the overall cost of construction inflation for the project

The amounts certified for payment to the Contractor are adjusted for inflation in accordance with the Contract for works to the Date for Substantial Completion. The contract Date for Substantial Completion includes any ER determined extensions of time. Based on the current contract Date for Substantial Completion including the current ER determined extensions of time, the NPHDB estimate of inflation payments to the Contractor on the NCH project of approximately €54m including VAT.

I hope the above is clear and provides the information that the Committee has sought.

Yours sincerely

David Gunning

Chief Officer

National Paediatric Hospital Development Board