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**INDEPENDENT REVIEW OF THE  
MAGHERAFELT HIGH SCHOOL  
PROJECT  
December 2010**

## INDEPENDENT REVIEW OF THE MAGHERAFELT HIGH SCHOOL PROJECT

### Background

The Under Secretary of the Department of Education (the Department) wrote to the Acting Chief Executive of North Eastern Education and Library Board (the Board) on 17<sup>th</sup> September 2010 seeking answers to some concerns about the management of the contract to provide a new Magherafelt High School. In his reply of 22<sup>nd</sup> of October 2010, the Acting Chief Executive confirmed that the Board had:

- “Entered into an arrangement with Heron Brothers Limited, which has resulted in construction works (both on the sub structure and the super structure of the building of a new school which would house a LTE [Long Term Enrolment] of 600 pupils) without all the necessary approvals being in place with the Department.
- Made payments to Heron Brothers Limited for work which has been done (which includes an element of that which has not yet been approved by the Department).”

And concluded that;

“...the Board has incurred spend in the 2010/ 11 financial year which may be deemed to be irregular.”

This review was commissioned as a consequence of the Department's concerns about these matters.

## **Methodology**

The review was commenced on 29<sup>th</sup> November 2010 and since then meetings have taken place with relevant staff at the Department of Education; North Eastern Education and Library Board (Chief Executive, Property Services Division and Internal Audit); Central Procurement Directorate (CPD) and Building Design Partnership (the design team).

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Correspondence between the Board\* and Department has been examined as have records of the procurement process and of the various progress meetings held since the contract was awarded in December 2009.

The discussions and agreements recorded at an important meeting held between Departmental and Board officers and the design team on 7<sup>th</sup> September 2009 has informed the way in which Board officers managed the subsequent procurement steps and it is largely against that background that this review has been conducted.

\* The term Board or Board officers in subsequent sections of this report refers to officers in the Property Services Division unless otherwise stated.

## Conclusions

The conclusions reached based on what has been obtained from these sources of information are as follows:

- **There is nothing to indicate that the Department has suffered any financial loss as a consequence of how the contract has been handled to date,**
- **There is no suggestion that any member of staff at Board level has benefitted improperly in any way from the decision to proceed with Phase 2 of the project without all of the necessary approvals being in place with the Department.**
- **Any failing has been one of not appreciating the need for approval required by the Department before committing to Phase 2 of the project rather than a deliberate attempt to set aside the formality of approval and control processes.**

In coming to these conclusions the following arguments and supporting evidence advanced mainly by Board officers and the design team have been taken account of.

- Phase 2 of the project was not commenced until after planning approval had been obtained on 17<sup>th</sup> March 2010 ie approximately two months after the contractor was given possession of the site. This was an important element of the approach agreed with the Department on 7<sup>th</sup> September 2009.
- Board staff were clear that the monthly financial update to the Department was based on a construction cost of £10.5m (not the tender figure for Phase 1 of £8.3m approximately). The £10.5m figure had, as the Board understood it, been factored into the Department's capital programme. The Board was confident that the anticipated Phase 2 cost (to be arrived at by subsequent negotiation) when added to the original tender sum

would in total come within the provision which they understood had already been made by the Department. In those circumstances it was felt appropriate to proceed with the total 600 LTE school scheme (Phase 1 & 2 together) on receipt of planning approval and in parallel seek formal approval from the Department to the contract variation.

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- That formal request for approval and variation to the contract was essentially the subject of the Board's letter of 8<sup>th</sup> April 2010 to the Department (shortly after receipt of planning approval) and a reminder email of 18th May 2010. The difficulty in concluding the necessary variation to the contract was that the negotiation of the cost for Phase 2 proved to be a lengthy process and it was only on 7<sup>th</sup> October 2010 that the Board was in a position to forward the updated costs to the Department with an explanation for the delay.
  - The understanding of Board officers in early 2010 was that Departmental officials agreed on the urgent need to get ahead with the 600 LTE school scheme as soon as planning approval has been secured. Board officers consequently felt that having been clearly and properly charged as the Contracting Authority to get ahead with the works as quickly as possible they were doing just that and ensuring as far as they could that the contract in its totality was (and is) managed effectively and efficiently without avoidable delays.

Having made the above points, Board officers do accept that in their letter of 8<sup>th</sup> April 2010 or in some other communication of around that date, they should have made it absolutely clear to the Department that there was little or no room for holding the contractor back from the full (600 LTE) school project on receipt of planning approval if delays and associated additional costs were to be avoided. Board officers also accepted that they should have sought approval from the Department to proceed as a matter of urgency.

My view therefore is that taking account of all of the circumstances, the (accepted) communications and approval omission on the part of the Board was not as serious a matter as it might first have seemed. It is clear that it was the intention of the Board to regularise the contractual position by obtaining Departmental agreement to variations to the contract including cost and programme implications. However, before that step had been taken it came to the attention of the Department that the significant additional cost involved was already being considered by the Board. That changed the whole situation and subsequently led to this Review. A final point here is that a regular (perhaps quarterly) progress report, Board to Department, would have picked up this developing situation and allowed it to be dealt with as a normal item of business. The introduction of such a regular reporting programme is one of the recommendations in this report. Other areas of the report expand on the above views and findings.

## Response to the Scope of Review in Terms of Reference

- *The actions of both the Department and the Board in relation to the development, approval, procurement and implementation of the contract;*

It is clear from the available advice and information that the Board and Department had worked closely together in developing a way forward for the procurement of Magherafelt High School in the wake of all of the difficulties encountered with the Framework approach to major capital works procurement. It is also evident that there has been a good, constructive and effective working relationship between Board and Departmental staff.

In respect of more recent stages of the procurement process the meeting between representatives of the Department, Board and design team on 7<sup>th</sup> September 2009 and referred to earlier established a clear way forward which the Board was committed to complying with.

- *The governance, financial control and communications processes and procedures around the commissioning, procurement and implementation of the project;*

Any weaknesses in the process to date are probably in these areas.

The Board believed that the Department was aware of exactly what was taking place in the management of the contract but the Department seemed unaware of what was going on, particularly in respect of procurement of Phase 2 of the scheme.

Review of available information would point to weaknesses in the areas of communications and reporting. The consequences of uncertainty resulting from any such weaknesses would appear to have impacted on understanding of the financial planning and controls procedures. The Board believed that there was funding already available for Phases 1 & 2 and understood that there was pressure from the Department to proceed with the complete scheme as soon as planning approval had been obtained for the 600 LTE

scheme. On the other hand, the Department is understood to have been expecting a request from the Board for formal approval to proceed without it seems a shared understanding with the Board of the actions required in order to avoid delays in the contract.

It is difficult to comprehend how such a situation had arisen. If indeed the Department believed that it was for the Board to initiate the flow of information, it was surprising that there was not some kind of check mechanism in the Department to ascertain what was happening during the 7-8 month period after the contractor first went on site particularly in view of previous difficulties with the scheme and in view also of its value. It is further unclear why the Department was working to and accepting from the Board a cost figure for the contract of £10.5m (plus fees) from the outset.

A quarterly capital progress meeting would have identified the difficulties much earlier and would probably have led to a quick solution.

There are some concerns also about informal communications and their impact on such matters as the formal approval process. Further comment on this is included in the later section on Recommendations.

- *The actions of the Board in tendering and approval of the contract and in particular compliance with EU procurement regulations and procedures;* Background documentation including papers on EU advertising; 'Invitation to Tender'; 'Pre-qualification Questionnaire' and the scoring and selection matrices and documents generally have been reviewed.

All of the documents examined were thorough and professionally produced with good records retained. There was evidence that in pursuit of transparency the results of the selection processes including the individual firm's scores and comments were sent back to the contractor concerned. There were no challenges received during the "Standstill period".



It is understood that Departmental officials played an important part in the preparation of documentation and that other Boards assisted with the selection process. Without that sharing of resources it seems unlikely that the Board with its limited staffing resource would have been able to manage the contract, particularly in the early stages of selection and tendering.

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- *The terms and conditions of the current contract let for the building of the school and how that compares with the approval given by the Minister and the Department.*

The contract let at the end of 2009 was for a 500 LTE school - that is what was tendered for!

The updated Economic Appraisal which had to be approved before the contract could be let was for a 600 LTE school. The approach agreed at the meeting on 7<sup>th</sup> September 2009 to handling that difference was that the design team would develop plans for providing the additional 100 places and seek planning approval to a new design for 600 LTE preferably by developing the already approved 500 LTE design.

The design team produced two such schemes. One a "flexible" version of the 500 LTE design providing only a reasonably workable solution and secondly a 600 LTE purpose designed school with the 500 LTE design essentially extended and reconfigured in some areas to accommodate the additional spaces in the areas in which they were needed. The 600 LTE design was submitted for planning approval which was received approximately two months after the contractor went on site to commence Phase 1.

The contractor was (properly) made aware of a possible extension to the contract and cooperated with the design team and Board by concentrating activity during that 2 month period in areas which were not to be affected by proposed changes in design. The contractor also undertook some minor alterations to the phase 1 works to avoid possible difficulties at a later date. By way of example the route of the drainage scheme was altered slightly to avoid the enlarged footprint of the proposed 600 LTE school.

N.B. No work was undertaken on Phase 2 (the additional 100 places) until planning approval had been obtained.

In respect of the planning application the design team has advised that gaining planning approval to the redesigned school to accommodate the 600 LTE need was far from a certainty. A full submission was required and at the outset concern was expressed by Planning Service about the extended building line proposed at the rear of the school and its impact on neighbouring properties. In the event, approval was issued on the 17<sup>th</sup> March 2010, much earlier than expected.

If planning approval had not been obtained for the 600 LTE school design, the design team would probably have recommended taking forward the alternative of the 'flexible' 500 LTE design or an even less satisfactory 'bolt-on' solution where the additional spaces would probably have been a block of the correct overall size in one location rather than where the extended areas were ideally needed.

If that 'bolt-on' solution had been the only approved way forward then depending on timing and possible impact on the works already on site, the Board has confirmed that procurement options would have been considered again with the possibility of a separate contract for the additional 100 places, possibly after completion of the 500 LTE school.

However, the securing of planning approval for the 600 LTE design allowed an instruction to be issued to the contractor to proceed with the 600 LTE designed school with the cost of the additional works negotiated in parallel as a 'Compensation Event' as provided for in the Public Contract Regulations. The option of a separate tendering process for the additional 100 places was considered by the Board and design team to be an unworkable solution (agreed by CPD).

- *Is the building under construction consistent with the current contract and if there is a variance how this has arisen, been funded and managed.*

On receipt of planning approval for the 600 LTE school the contractor was instructed to proceed with the full scheme ie including Phases 1 & 2. At the same time, the cost of additions was being negotiated. The negotiation has taken a long time to complete but eventually on the 7<sup>th</sup> October 2010 in a letter to the Department, the Board was in a position to confirm that the cost of the additional works to provide the 600 LTE school was £2,095,780.36. As can be seen from this correspondence, the estimated revised cost for the project as a whole became £11, 442,039.28. That included some Compensation Events already dealt with and an allowance for anticipated future Compensation Events. These figures have been carefully checked and agreed by the design team and the Board.

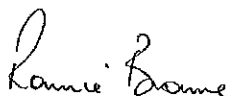
It is understood that some formalities are still outstanding before the revised contract between the Board and contractor can be formally updated. However, no difficulty is anticipated in that area.

## Recommendations

1. A programme of quarterly meetings between the Board and Department should be set up to monitor progress on capital schemes.
2. There is undoubtedly a risk associated with having only one professional and technical officer (a Quantity Surveyor) responsible for capital procurement in the Board. It is understood that there has been a vacancy for an architect for approximately three years. Additional professional and technical staff or redistribution or pooling of staff resources should be considered. The present arrangement is almost certainly not sustainable and leaves the Board, the Department and the individual exposed.
3. There was evidence of a lot of informal communication much of it by email and some with no indication of where the sender was from or what standing the view expressed had. It is recommended that communication around capital planning and approvals both internally in Department and the Board and between the Department and Board is reviewed and a more formal communication arrangement adopted.
4. Expert advice should be obtained (probably specialist legal advice) on the handling of the current Freedom of Information (FOI) requests in respect of the contract. It is understood that FOIs have been received by both the Board and Department; there would be some obvious benefits in sharing the questions raised and draft answers prepared.

## Acknowledgements

I am grateful for the willing cooperation received from all of the people with whom meetings were requested. Without that cooperation it would not have been possible to complete this work in the short time available.



**R.H. Browne, 20th December 2010**