

RED SKY HEARING

You asked me to provide a briefing on my knowledge of 3 key events and decisions. My submission is structured around the first 2 of these. The 3rd I believe relates to work commissioned into other NIHE contractors by the Minister /NIHE after the termination of the Red Sky contract at which stage I had retired.

1. CONTEXT –EGAN CONTRACTS.

You will no doubt have been briefed about the nature and form of this form of contract which was introduced in the Public Sector under the banner “Achieving Excellence in Construction” in 1999.

- The Housing Executive, from around the year 2000, gradually introduced this form of contract to all of its construction contracts on a phased basis over a number of years, having first piloted and trialed them.
- Key benefits of this form contract were a significant reduction in the number of contracts/contractors managed; cost efficiencies; improved tenant satisfaction and service delivery .There is no doubt there were improvements in these areas over the years.
- A key principle of Egan style contracts was Partnership which was intended to replace the adversarial style of the traditional form of contract which frequently lead to claims, counter claims, and arbitration.
- The contract form adopted by NIHE was the subject of legal advice obtained from a firm of leading London solicitors.

2. CONTEXT- RED SKY AND THEIR TRACK RECORD.

- Red Sky in its various forms had carried out work for NIHE for a number of years. Over these years it presented a number of management and performance difficulties.
- In 2000 it was alleged that an NIHE Maintenance Officer had a close relationship with the company and had gone on holiday abroad with Red Sky Directors. He was disciplined, sacked but was subsequently reinstated at a lower grade following the findings of an Independent Appeals Panel
- In 2005 an allegation was made that District Office staff had received excessive hospitality from the company. Allegations of overcharging also emerged at the same time. These were investigated by the RIU and at one stage overpayments of circa £200k were estimated. Following involvement of NIHE Contracts dept and legal advice a settlement of £20 k was agreed. A number of staff was disciplined. The matter was referred to PSNI who recommended no further action.
- Prior to the further award of contracts in 2006 legal advice was sought as to whether the company could be barred from tendering for any further work. The advice was that this was not possible.

3. PROPOSED CONTRACT TERMINATION WEST BELFAST –DECEMBER 2007

- Almost uniquely amongst the entire District maintenance contracts the Belfast West contract generated from the outset significant complaints from tenants, Community representatives and politicians regarding quality of work, completion of work and the attitude of Red Sky staff. In addition the relationship between local NIHE staff and the contractor staff was poor.
- I was advised by the Director of Housing and Regeneration in December 2007 that it was proposed to serve a 3 month notice to terminate the contract. The Company made representations and on legal advice the termination was deferred for 6 months. A number of special oversight measures were put in place by the Director to improve performance and subsequently the termination notice was withdrawn.

4. INVESTIGATIONS INTO THE RED SKY GROUP BY NIHE RIU, INTERNAL AUDIT, AND ASM HOWARTH

- My recollection is that there were ongoing problems with the performance of Red Sky in West Belfast and a Community Group in West Belfast had raised issues with NIAO.
- In April 2009 the Director following discussion with me commissioned RIU to carry out an investigation of all Red Sky contracts (5 in all in Belfast/Newtownabbey)
- The RIU report was finalised in June 2009 and found that 25% of inspections had some form of overpayment and 9% of work orders had been overpaid. It was also critical of high levels of non –compliance with performance standards.
- Following discussions with the Director, RIU, and the Chair of the Audit Committee it was agreed to appoint independent consultants to take this work forward. I took the view that based on past experience with Red Sky solid independent evidence would be required to take effective action against Red Sky. In addition there was ongoing public/private interest in the matter.
- ASM HOWARTH/VB EVANS was appointed following a procurement exercise. Their draft report was received in March 2010 and was finalised in October 2010. It confirmed the Findings of the RIU report and was forwarded to Red Sky sometime after that for comment. This process was still ongoing when I retired in November 2010.

5. ANNUAL ASSURANCES

- As Chief Executive of a large multimillion, multi function organisation, I obtained annual assurances from Internal/External Audit on the systems within the Organisation.

Internal Audit produce an annual report as part of the Annual Account process indicating their overall classification of the systems of control within NIHE. This report would highlight any significant Audit issues identified in their Audit work to both the Audit Committee and myself as Chief Executive.

- On reviewing these reports from 2005 and Response Maintenance was not raised as a significant issue until 2010 when the Red Sky issue was emerging.
- The Internal Audit Annual Programme of work would have included individual office Response Maintenance audits and these were generally rated as satisfactory.
- NIAO by Statute is the NIHE external auditor and certifies its Annual Accounts. As part of this role it issues a Management (now called report to those charged with Governance) letter to the Chief Executive which would highlight any significant audit issues. I have checked these letters back to 2005 and Response Maintenance was not raised as a significant matter until 2010 when the Red Sky issue had emerged.
- I did not rely on these measures alone to identify problems. Weekly visits to District Offices, monthly meetings with the Housing Council, meetings with District Councils, Politicians and Community groups identified where we had particular problems with the
- service or with a contractor.

In addition, the system of management and performance reports, produce monthly on a provincial basis provided assurance on performance across the whole range on of NIHE functions

