Carillion and Ernst and Young

Thank you for your letter regarding the involvement of Ernst and Young (EY) during HS2 Ltd’s procurement of its Main Work Civils (MWC) contracts. I am happy to provide the information below in support of your ongoing work.

First, I would like to take this opportunity to clarify the contractual relationship between HS2 Ltd and CEK - the joint venture made up of Carillion Construction Limited (‘Carillion’), Eiffage Genie Civil SA (‘Eiffage’) and Kier Infrastructure and Overseas Limited (‘Kier’).

HS2 Ltd had no direct contract with Carillion, and the CEK joint venture had provided HS2 Ltd with contractual assurances that each party in the joint venture is jointly and severally liable for performance of each other and the contract as a whole. This meant that, in the event of any member of the group being unable to deliver on its responsibilities, the remaining members - now Eiffage and Kier - would fill the gap.

Following the disappointing news on 15 January 2018 that Carillion was entering liquidation, HS2 Ltd’s contingency plan was put into place. This meant all 51 employees – including apprentices - involved in the HS2 contract at Carillion were offered positions with the remaining joint venture members. In addition, all companies within the supply chain retained their contracts, which are now being honoured by the remaining joint venture members.
This transition was quickly and effectively executed and did not result in any material cost implication or programme delays. It is also a testament to the robust approach to procurement taken by HS2 Ltd that encouraged joint ventures to its MWC contracts.

With this context, I welcome the opportunity to clarify the part played by EY in the appointment of CEK to two of the seven MWC contracts in July 2017, which can be found in Annex One to this letter.

Rt Hon Chris Grayling MP
SECRETARY OF STATE FOR TRANSPORT
Annex One

1. Were you aware that EY was simultaneously advising Carillion on its finances and HS2 Ltd on the state of Carillion’s finances?

- EY was commissioned by HS2 Ltd to conduct financial assessments across all procurements for a two year period - this included MWC bidders. EY’s commission for this work commenced on 1 December 2015. This included financial assessments carried out for HS2 procurements at Pre-Qualification Pack (PQP) and Invitation to Tender (ITT) stages.

- HS2 Ltd makes clear in all of its contractual relationships that the onus for identifying, and putting into place mitigation of, any perceived or actual conflict of interest rests with the supplier.

- On 16 December 2015 EY sent HS2 Ltd a letter entitled ‘Conflicts Check Confirmation’. This letter identified known relationships between EY and companies that were part of the consortia that responded to the PQP for the MWC procurement. At this stage EY identified that they had a non-audit relationship with Carillion, as well as the protections in place, which are set out in more detail below.

- Immediately following the Carillion profits warning on the 10 July 2017, HS2 Ltd commissioned an ad hoc report covering Carillion Construction Limited and Carillion PLC. This report was commissioned on 11 July 2017 and was delivered on the same day.

- The ad hoc report that EY completed for HS2 Ltd specifically on Carillion Construction Limited and Carillion PLC concluded on the 13 July 2017. This was before EY took up the role of advising Carillion on restructuring its organisation.

- EY did not alert HS2 Ltd of its intention, or appointment, to advise Carillion on restructuring at the time of its appointment on 14 July. It did so on overall completion of the final report on all shortlisted suppliers (which included the ad hoc additional report specifically on Carillion which was completed on 13 July) submitted to HS2 Ltd on 28 July, ten working days later.

- This notification restated the protections EY had in place. With no evidence presented to HS2 Ltd that these processes were not sufficient, there was no requirement for HS2 Ltd to inform the DFT.

2. Do you consider it to be a conflict of interest?

Please see response to question 3 below.

3. What steps, if any, did you take to mitigate that conflict?

- HS2 Ltd sets out in all of its contracts that the onus for identifying, and putting into place mitigation of, any perceived or actual conflict of interest rests with the supplier.

- EY had previously identified its work with both Carillion and a number of other respondents to the initial PQP, both those successfully shortlisted and otherwise.

- At this point EY set out its procedures for managing potential conflicts of interest - this included, but is not limited to:

  o No sharing of confidential information between teams without written consent from the client (HS2 Ltd).

  o Securing and restricting access to client information.

  o That no advice would be provided by EY to any other body in relation to HS2 Ltd’s procurement.
• These kinds of procedures for managing potential conflicts of interest will be present in many other large financial or audit and accountancy firms who carry out work for a large number of clients both here in the UK and globally.

• These processes were notified to HS2 Ltd on both the 16 December 2015 and 28 December 2017.

• HS2 Ltd has not been presented with any evidence that there was a breach of these processes.

4. On what date did EY’s work for HS2 Ltd commence? And when was that work completed?
   • EY were competitively procured on a two year contract running from 1 December 2015 to 30 November 2017.
   • The specific work on undertaking the Financial Standing and Economic Assessments for the seven MWC contracts, including the CEK joint venture (who were one of nine bidders for MWC), started on 1 December 2015 and concluded on 28 July 2017 with two final EY reports on evaluations of the Economic & Financial Capacity of the bidders and the Nominated Parent Company Guarantors.
   • The work specifically on the financial standing of Carillion and its nominated parent guarantor in connection with the profit warning made on 10 July 2017, was commissioned and completed on 11 July 2017 (with two follow up questions on email dated 12 and 13 July covering the subject of the market capitalisation, legal status & listing, and share price for both Kier Group PLC and Eiffage Group SA and the Net Tangible Assets for CEK JV).

5. Was the work competitively tendered for?
   • Yes. The contract for undertaking financial and economic analysis with EY was procured from a Crown Commercial Services Framework in a competitive tender.

6. What exactly were the due diligence tests?
   • The applicants were assessed in the form of two tests:
     i) Minimum Standards: Meeting a defined threshold for both turnover and net assets.
     ii) Due Diligence, requiring the bidders to meet the following criteria:
        a. Liquidity - equal to or greater than 0.9
        b. Gearing - equal to or less than 80%
        c. Interest Cover - equal to or greater than 125%
        d. Dun and Bradstreet failure score of 25 or more

7. How exactly did Carillion perform against them?
   • The EY report delivered to HS2 Ltd on 11 July 2017 assessed Carillion Construction Ltd and Carillion PLC who both passed all the tests.

8. Were they solely dependent on published information?
   • All input from EY was based on publicly available information, assessed against criteria specified by HS2 Ltd.
9. Are you satisfied that £29,000 of due diligence was proportionate to the size of the contracts and Carillion’s financial circumstances?

- Value for money for the taxpayer is at the heart of the HS2 programme of delivery. The figure spent is in line with other procurement assessments undertaken and is in line with the size and scale of the work tendered.

- This amount also includes the financial due diligence undertaken for the whole CEK JV.

10. Were the tests repeated following Carillion’s subsequent profit warnings?

- After the first Carillion profit warning on 10 July 2017, three elements of work were completed and submitted to HS2;


  2. 12 July 2017 - Short analysis on Market Capitalisation, Legal Status & listing, and share price for both Kier Group PLC and Eiffage Group SA.

  3. 13 July 2017 - Short analysis on the Net Tangible Assets for CEK JV.

- There were two further profit warnings on 29 September 2017 and 17 November 2017. No further analysis was completed by EY in response to these profit warnings. Prior to these further profit warnings, on 31 July 2017, HS2 Ltd awarded two MWC contracts to the CEK joint venture, with no valid legal reason to not award. HS2 Ltd began preparing contingency arrangements in October 2017 in close collaboration with the CEK joint venture parties.

- Further due diligence tests were undertaken on the remaining members of the joint venture, Eiffage and Kier, in January 2018. However, by this stage EY’s contract had finished. This work was undertaken jointly by HS2 Ltd and Grant Thornton, who had replaced EY.