

**Construction Sector Transparency Initiative (CoST)**

**Assurance Team Report**

**Esh Winning Primary School Project, Durham County Council**

**September 2010**





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## Acknowledgements

This CoST Assurance Team Report has been prepared by Bob Crease of the Dispute Resolution Joint Venture on behalf of the UK CoST Multi-Stakeholder Group (MSG).

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## 1. Summary

- 1.1 The Esh Winning Primary School Project is being procured by Durham County Council (the Council) to replace old school buildings serving a former colliery village. In order to achieve economies of scale, the intention was to combine the project with a similar one at Brandon, another village nearby.
- 1.2 At the date of this report, the projects were undergoing design development with a view to inviting tenders for a main contract for detailed design and construction of the school in the autumn of 2010. The overall plan for Esh Winning was to complete construction works in the spring of 2012 and to complete both the demolition of the old buildings and the landscaping of the school grounds by the autumn of that year.
- 1.3 The focus of this study has therefore been on the award of contracts for design and project supervision, on the early stages of design development and on planning for the main contract.
- 1.4 We noted that the Council was undergoing the aftermath of a significant re-organisation at the time of this study, with changes of key personnel, vacancies and office relocation.
- 1.5 The contract for a lead designer was awarded to Red Box Design Group (Red Box) following a competitive tendering process involving companies who had previously qualified to bid for such works under a framework arrangement administered by the Council. That contract was originally intended to include project management as part of its scope. However the council also required pre-construction contract management services due to a lack of internal project management resource and decided to change the scope of services in order to contract separately with a project management organisation. This was done to ensure a robust and consistent project management approach.
- 1.6 The Council also decided to add cost management services to the scope of the project management contract, which was awarded by negotiation with Turner & Townsend. Turner & Townsend was one of the firms on a framework arrangement for providing such services administered by the Office of Government Commerce (OGC), which is an independent office of H.M. Treasury. The Council decided that the OGC framework arrangement provided a better alignment with the required services than any of the similar arrangements administered by the Council.
- 1.7 In returning their Material Project Information to us, the Council stated that they had disclosed a Procurement Strategy which included details of the contract strategy and type. However, we were only shown a procurement strategy for the main contract, which did not specify all the proposals we would have expected to see relating to that contract, although those details were found in other documents. It did not cover the award of the contracts for other services.
- 1.8 We saw no evidence of contemporary cost reporting, as the plan was only to start this at the commencement of the construction phase. Emerging issues were resulting in charges in excess of agreed schedules for lump sum instalments, in respect of both claims and charges agreed to be made on the basis of time spent. However, so far such expenditure was contained within both the budget and the overall forecast fee levels. The overall estimated project cost was being maintained within the Council's budget, subject to the Council's formal approval of engineering economies.
- 1.9 The processes whereby the design and project and cost management services were procured and managed were, in our opinion, satisfactory from the perspective of transparency. The design and management of the project were progressing towards achieving the Council's objectives in ways which in our opinion were consistent with normal construction industry practice.

## 2. Introduction

### 2.1 Background

- 2.1.1 The Construction Sector Transparency Initiative (CoST) is an international multi-stakeholder programme designed to increase the accountability of public sector organisations and construction companies for their construction projects. It will do this by disclosing information at all stages of the construction project cycle, from the initial identification of the project to the final completion.
- 2.1.2 It is, however, recognised that the disclosure of this information may not be sufficient on its own to achieve greater accountability. This is because some of the information is likely to be complex and not easily intelligible to the general public. For example, there are many reasons for time and cost overruns on construction projects. To ensure that the information that is released is both accurate and available in a form that can easily be understood by stakeholders it has been verified and interpreted by experts appointed for this purpose -- the assurance team.
- 2.1.3 Eight projects have been identified by the UK Multi-Stakeholder Group (MSG) to form a pilot study of operation of this initiative, in the UK. The MSG has divided the 'CoST projects' into two groups of four projects referred to as Group A and Group B. The Esh Winning Primary School Project is one of the chosen Group B projects.
- 2.1.4 The Institution of Civil Engineers (ICE) is managing the pilot on behalf of the MSG. The MSG directs the implementation of the UK pilot. It consists of representatives from government, the private sector and civil society.
- 2.1.5 The assurance team appointed by the MSG for this pilot study comprises four senior construction industry specialists, working together to obtain and assess information and provide reports. This report has been prepared by Bob Crease, the team member who carried out the Esh Winning information review.
- 2.1.6 We have included at Appendix 1 a glossary of terms used in the report where they have a particular technical meaning in relation to construction.

### 2.2 Objectives of the pilot study

- 2.2.1 The UK pilot has four objectives:

- to learn lessons to help in the development of CoST
- to learn lessons on improving transparency
- to gain an improved understanding of construction project costs amongst public sector clients
- to learn and share lessons on the management and control of publicly-funded construction projects.

2.2.2 On each of the projects in the pilot study, the assurance team has been appointed to carry out the following tasks:

- collect the project information
- verify the accuracy and completeness of the information
- report on the extent and accuracy of the information which has been released
- on Group B projects only, analyse the information and make informed judgements about the cost and quality of the project
- on Group B projects only, report on the findings regarding the cost and quality of the project and highlighting any outstanding questions.

### **2.3 Work carried out on the pilot study**

- 2.3.1 The remit given to the assurance team was to study projects in varying degrees of depth, depending upon whether the project in question had been identified by the ICE as Category A or B. The assurance team was not required to subject Category A projects to the analysis and verification that was to be applied to Category B projects. Esh Winning was a Category B project.
- 2.3.2 Initially, we held a meeting with the Council's project management team for the scheme to explain the objectives and procedures for this pilot study. Subsequently, we held a workshop with the project sponsor, the Council's procurement officer and Red Box's team leader to explain what information was needed and how it would be used. Other members of the Council's team and Turner & Townsend's project staff were invited to the workshop but were unable to attend. We also visited the site.
- 2.3.3 The CoST International Secretariat had prepared a standard list of material project information to be used on all pilot projects, and we could adapt this into a set of schedules to suit the individual pilot contracts. The International Secretariat had prepared two lists of material project information: the first list of disclosures would be requested for both Group A and Group B projects; a second list of further disclosures would be requested for Group B projects. The further disclosures would provide the information that was required to meet the additional Group B objectives. Jointly with the project team, we reviewed how this information could best be produced to minimise additional work for the project team. The completed schedule for Esh Winning is set out in Appendix 2.
- 2.3.4 We assisted the ICE in setting up a computerised data store to receive and store this information, and in establishing the arrangements for providing access to the data store. At the workshop, we explained how this data store would operate and how access to information and other material would be controlled. We explained how the disclosed information would be used, and what access team members would have to review and comment on reports before publication. This briefing was summarised later to people who were not able to attend the workshop, and their attention was drawn to guidance notes that we had prepared to assist in the use of the data store.
- 2.3.5 The Council provided the documents by electronic transfer to the data store. The Records of Exercise of Chief Officer's Delegated Power, records of Red Box's selection and associated e-mails, together with the invitation to tender and contract documents for the design and project/cost management agreements, were shown to us but were not loaded into the data store.
- 2.3.6 We reviewed the information disclosed in two phases, and for each phase held a further meeting, telephone conversations and e-mail correspondence with the Council and project team personnel to clarify certain matters, to verify the accuracy and completeness of information, and to obtain further understanding of how the project was managed. There were some instances when the Council's personnel did not provide the further information which we requested in order to verify some of the statements made. However, in our opinion sufficient contextual information was available to enable us to complete this report in a proportionate manner.

2.3.7 The information which was disclosed to us is listed in Appendix 3.

2.3.8 In writing this report, we have taken into account information supplied to us up to 2 August 2010, which we designated as the cut-off date.

## **2.4 The Esh Winning Primary School Project**

2.4.1 The Esh Winning project is a scheme promoted by the Council aimed at replacing the existing buildings, sports areas, playgrounds and other facilities at Esh Winning Primary School. The Council has appointed consultants to design, manage and provide information on the project and to prepare tenders for, and assist in the letting and management of, a contract for the detailed design and construction of the new school.

2.4.2 The Esh Winning Project is almost identical to a project to be undertaken at Brandon Primary School, and the scopes of the contracts under consideration in this report cover the works at both schools. The decision to combine the two projects into one management endeavour was taken in the interests of economies of scale. The risk of budget cuts to the procurement of the design and construction contract was recognised in the procurement strategy produced in April 2010.

2.4.3 The Esh Winning Project is thus at an early stage in terms of the overall design and construction process, and the plan current at the cut-off date was to award the contract for detailed design and construction in November 2010. The Esh Winning Project began more slowly than the one at Brandon because of a need to change the site within Esh Winning village, and ways of meeting the target date for completion of construction were being developed.

2.4.4 The Council has undergone a Local Government Reorganisation exercise in which seven district councils and the county council have become a new Unitary Authority. In addition to this the Council was also managing an internal reorganisation, and as a result had a number of vacancies in its organisation. In order to assist its permanent staff during this period, the council appointed Turner & Townsend to provide a person to act as project sponsor for the Esh Winning and Brandon projects. This person's role was to co-ordinate the activities of the various Council departments and act as a single point of contact with the equivalent persons in the project consultants' organisations. The appointment of Turner & Townsend to provide these services was outside the scope of this study but it is worthy of note that the appointment of Turner & Townsend to provide other services relating to the projects, to be described later in this report, took place before that person's deployment.

2.4.5 Turner & Townsend's project manager has also been deployed, part-time, onto other duties on behalf of the Council, but, again, in a way that is managed openly and avoids potential conflicts of interest.

2.4.6 Red Box was appointed as the lead designer for the Esh Winning Project (and the Brandon Project). The scope of the services which Red Box was to provide included the engagement and supervision of a number of specialist sub-consultants, including one which was to provide project management services. Turner & Townsend was the company which participated in Red Box's bid and which was going to provide those project management services.

2.4.7 For reasons described later in this report, the Council decided to omit the project management services from Red Box's scope of services and instead to enter into a direct contract with Turner & Townsend. The Council also added cost management services to Turner & Townsend's contract's scope.

2.4.8 Whilst Red Box engaged a number of other sub-consultants, it was found not to be necessary to involve them in this study in order to meet our objectives, as sufficient validation was able to be obtained from Red Box and Turner & Townsend.



### **3. Validation and analysis of documents**

#### **3.1 Durham County Council Procedures**

- 3.1.1 It is necessary to set out the Council's procedures for awarding and managing contracts in order to understand the status of documents disclosed by them.
- 3.1.2 The Council's practice was periodically to appoint consultants to various panels covering specific types of potential work for a fixed period of time, but without any obligation to contract any work. Such appointments took place after the completion of pre-qualification processes, which are outside the scope of this study. Such panels were sometimes referred to as frameworks. When the Council required a piece of work to be undertaken, they could call for those consultants on the appropriate panel to express an interest, whereupon the Council would normally invite tenders from those who responded positively. If there were reasons why a particular consultant should be chosen, there would be no competition: instead the cost and time for the work would be discussed and agreed between the council and the consultant in question.
- 3.1.3 In addition to the frameworks which it administered itself, the Council had access to frameworks established by the OGC, which also had a practice of providing (for a fee) model forms of contract for the engagement of consultants using the OGC frameworks. The OGC arrangements operated in similar ways to those administered by the Council, as described in the previous paragraph, and both arrangements were regarded as compliant with the Public Contracts Regulations 2006.
- 3.1.4 The use of frameworks is a cost effective way of awarding contracts, as it avoids the delays and increased costs which would result from opening the tender to a wider selection of companies.
- 3.1.5 Frameworks are frequently used by major organisations as they also allow efficiencies to be gained through familiarity between employer and contractor or consultant.
- 3.1.6 We consider that the selection of suppliers from a framework for consultancy and contract services is an effective and efficient way of providing good value for money and potential time savings.
- 3.1.7 By seeking tenders from several suppliers from a framework, the Council retains the benefit of competition between suppliers to identify the best option. We conclude that the approach used to awarding the design contract to Red Box was likely to give the Council the best price for the work.
- 3.1.8 We conclude that the approach to awarding the project/cost management contract to Turner & Townsend was reasonable in the circumstances and justified by the avoidance of delays to the project and by Turner & Townsend's prior contribution to Red Box's bid, in the context of the amount of fees involved.
- 3.1.9 There are a number of choices which an Employer needs to make when setting out to procure detailed design and construction of such projects as the one at Esh Winning. We were told that the options were discussed by the Council's officers at the appraisal stage, but the Council was unable to provide us with any notes of the meetings in question. We were also told that it was not the Council's practice to pass copies of appraisals to the Council's project management staff.
- 3.1.10 The fundamental approach was to procure the works under a form of contract where the contractor was to undertake both detailed design and construction, which has become a popular means of procuring building works, as it facilitates better co-ordination between design and construction activities. In this case, the original plan was to appoint the contractor under an industry-standard arrangement whereby the award of the contract was made in two stages.
- 3.1.11 The award of the initial stage is intended to allow the contractor to contribute to the outline design so as to reduce the overall cost of the project, and the technique is known generically as "Early Contractor Involvement".

- 3.1.12 The two-stage approach was reconsidered after advice from the consultants, and the present proposal is to procure the contract for detailed design and construction on a more traditional, one-stage approach, where the prospective contractors tender against the outline design and detailed specification prepared by the Council's consultants.
- 3.1.13 The regime under which the Council delegated elements of its authority to its officers was set out in its Constitution. Further delegations by departmental chief officers were permitted within their departments.
- 3.1.14 Novation (see glossary) is a legal mechanism which is used in the construction industry in similar circumstances to these, and was a mechanism which, as will be seen later in this report, was proposed by the Council in this instance. Contracts with lead designers sometimes include provisions requiring the lead designer to procure services that require its sub-consultants to enter into collateral warranties with the client, and, again, the Council proposed to use them here.
- 3.1.15 The stages referred to in the titles of various documents cited in this report refer to the stages of project development identified by the Royal Institute of British Architects, and are accepted as an industry-standard way of describing outputs which are due as progress is made.
- 3.1.16 The Council provided us with access to a number of documents which they had generated, most of which did not show a version number, date or authorisation details on the documents themselves. The Council were unable to show us a quality management procedure which they used for document control. Owing to these factors, we were not able to conclude from those documents when read in isolation that they were the definitive versions. However, the information contained in them was consistent with the other documents we saw regarding the Esh Winning Project and we have no reason to believe that they were inaccurate.
- 3.1.17 The deployment of Turner & Townsend employees within the Council's organisation, as described in paragraphs 2.4.4 and 2.4.5 above, was recognised by all concerned as creating a potential conflict of interest. Such arrangements are commonplace in an industry where skilled personnel can be in short supply. This aspect was outside our scope and we have therefore not studied it in detail, but we have noted that the potential conflict of interest was recognised and managed in an open manner.
- 3.1.18 Value engineering is a common practice in the construction industry, whereby designers and contractors are encouraged to find alternative ways of meeting clients' expectations at lower cost than would result if the clients' specifications were precisely followed. Once again, this technique was deployed on this project.
- 3.1.19 We consider that we have seen sufficient information to substantiate the procedures employed by the Council on the Esh Winning Project adequately for the purposes of this study.

## **3.2 Project identification and budget**

- 3.2.1 The schedule of material project information which the Council was expected to disclose under the pilot study is set out in Appendix 2. The schedule was completed by the Council stating either the information required or identifying the documents which contained the information required. We have made amendments to it following our enquiries and have added answers "Not yet applicable", "Not applicable", "None to date" and "Not yet known" where such answers were appropriate but where the relevant boxes were left blank or answered in abbreviations. The amendments made were:

- Addition of the name of the project supervision consultant
- Addition of the project supervision contract price for the Esh Winning element
- Addition of the project supervision contract scope of work
- Clarification that the Procurement Strategy applied only to the main Design and Construction contract
- Deletion of the assertion that the contract strategy/type was included in the procurement strategy (although the question was still answered in the affirmative as the information was found elsewhere)
- Addition of changes to the Project Supervision contract's scope of work by reference to Appendix 4 (N.B. when the disclosure was made, there were none to report)

3.2.2 A detailed schedule of the documents disclosed, with a description of their purpose, is included at Appendix 3.

3.2.3 The documents disclosed fall into the following categories:

- General material describing the project and the council's management arrangements, identifying the estimated costs of the project and its feasibility, and the progress of the project through the design development and approval gateways.
- Documents dealing with the appointment of Red Box and Turner & Townsend and the management of their contracts.

3.2.4 The Stage A/B Feasibility Report stated that the Council had confirmed that there were no issues affecting the funds and that the monies for this scheme were in place and thus ring-fenced.

3.2.5 From the documents disclosed to us, the Procurement Strategy which was produced first, chronologically, consisted of a section of the Stage A/B Feasibility Report for Brandon, dated January 2010, and covered only the strategy for the main contract for detailed design and construction for both schools. It was described as being on the basis of a two-stage tendering process for a design and construction contract following a recognised process to gain the benefit of early contractor involvement in the design, prior to awarding the contract. By the time of the equivalent report for Esh Winning, in March 2010, the strategy had been amended to follow a single-stage tendering process, whereby the contractor would be appointed following the traditional, initial appraisal of his offer. Subsequently, we were given a copy of the fuller procurement strategy for that contract which had been developed by the project manager in April 2010. Whilst the strategy did not fully identify the contract type, we found in the Stage C Cost Plan, dated June 2010, that the contract was to be based on the JCT Design & Build (2005) form of contract, a recognised industry standard form.

3.2.6 The material in the following table, required to be disclosed as part of the project information, has not been disclosed. The table also sets out the reasons why it has not been disclosed, to the extent that we have been able to discern them.

Information not disclosed	Reasons for non-disclosure
Initial Council procurement strategy covering the procurement of all services to be contracted-in, i.e. the contracts for design and project and cost management. The procurement strategy produced covered only the contract for detailed design and construction.	The Council was undergoing a re-organisation which involved changes of key personnel, vacancies and office relocation. We were advised that no records of meetings could be found to demonstrate the discussions which took place at the time.

3.2.7 We did not see the original target dates set by the Council. Whilst the project team’s continuing reliance on the Stage A/B Feasibility Report implies that the Council had accepted the target dates shown in that report, we cannot tell whether they met the Council’s original plan. Neither did we see an initial project risk register produced by the Council at the outset.

3.2.8 A review of the management of risks and opportunities does not feature in the list of Material Project information which we are required to review, but it is noteworthy that it is an important activity towards the achievement of value for money, especially at this stage in a project. The Council has not been able to show us any records of discussions which took place at the appraisal stage, except for the project estimates which make an allowance for risk based in part on the average costs of previous, similar schemes, and in part by a review by experienced officers. The project team has produced a risk register taking into account the developments to the design to date.

3.2.9 Notwithstanding the observations in paragraphs 3.2.7 and 3.2.8, we consider that the information provided is accurate and adequate to identify the project scope and budget.

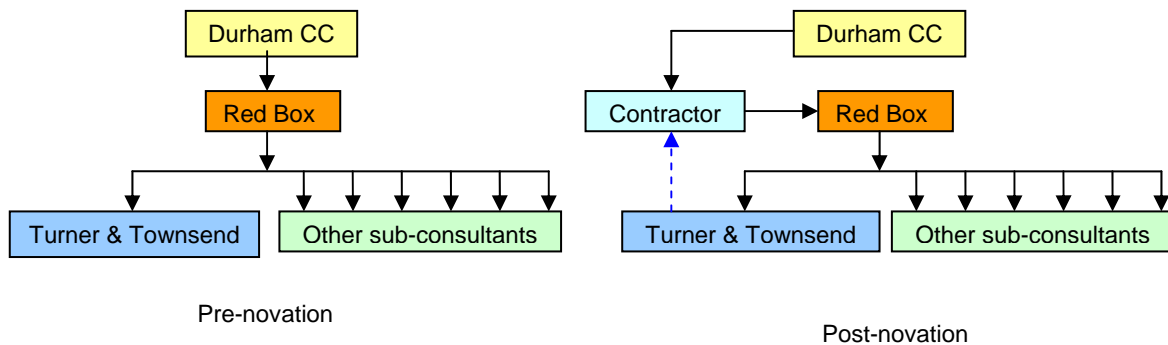
**3.3 Red Box’s appointment as lead designer**

3.3.1 The following documents have been provided in relation to the appointment of Red Box as lead designer:

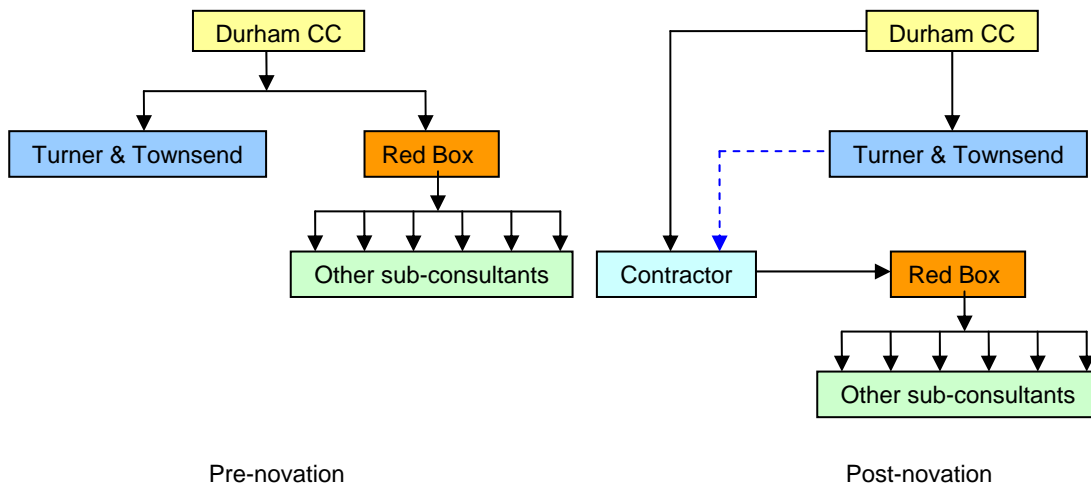
- The Council’s Project Estimate dated 4 June 2009
- Officer Scheme of Delegations from the Constitution of Durham County Council
- Record of Exercise of Chief Officer’s Delegated Power dated 30 July 2009 relating to the appointment of Red Box
- E-mail from the Council’s then Service Development Manager to Red Box’s Managing Director dated 13 November 2009 recording agreement to the omission of project management services from Red Box’s scope, together with a corresponding reduction in fee rate
- Terms and conditions forming part of invitation to tender for a framework for multi-disciplinary design services
- Letter of tender for the Esh Winning and Brandon projects under the above framework

3.3.2 The Record of Exercise of Chief Officer’s Delegated Power showed that Red Box had been selected after a competitive procedure involving four companies within a framework arranged by the Council, having been awarded the highest marks against the designated scoring criteria.

- 3.3.3 The scope of the services which Red Box was to provide included the engagement and supervision of a number of specialist sub-consultants, including one which was to provide project management services. Turner & Townsend was the company which participated in Red Box's bid and which was going to provide those project management services.
- 3.3.4 The original intention for the Esh Winning and Brandon projects was that the Council was to novate the contract with Red Box to the contractor under the design and construction contract.
- 3.3.5 It was realised after the decision was made to appoint Red Box that the novation should not include project management services, as the project manager during the construction phase should be employed by the client, in this case the Council, and not the Contractor, in order properly to operate the contract for detailed design and construction. The relationships originally proposed to be created between the various parties are shown in the following diagrams and are compared to those which are actually being put in place.



**Original proposal**



**Final arrangement**

Legend:     ↓ Contractual relationship                     ↓ Contract administration relationship

- 3.3.6 Steps were therefore taken to omit the project management services from Red Box's contract's scope and to reduce their fee accordingly.
- 3.3.7 We have seen e-mails which were exchanged setting out the agreements about the revised fee levels and a summary of the revisions to the scope of services. We were shown a draft contract which has been circulated for execution by the Council's Principal Solicitor. It was, as at the cut-off

date for preparing this report, awaiting the collection of sub-consultants' agreements to collateral warranties, the purpose of which is described in paragraph 3.1.15 above. Even though it was not yet signed at the cut-off date, the contract was being performed by both parties.

- 3.3.8 The contract was not in a standard form, nor was it required to be. It provided for remuneration on the basis of a fixed percentage applied to the Council's project estimate, to be paid in lump sums according to an agreed schedule. There was also provision for activities in Stages A and B, as well as some of those outside the scope, to be undertaken on the basis of defined time charges, which were subject to a price adjustment formula to account for the effects of inflation.
- 3.3.9 We are satisfied that the information we have seen is accurate and adequate to record the appointment of the lead designer.
- 3.3.10 One of the Council's key objectives was to achieve a high rating for sustainability for the new school, and much emphasis had been placed on this in both the Client's Design Brief and the designers' response to it, set out in the Stage A/B Feasibility Report. Appropriate emphasis had of course been paid to health and safety risks, and to laying the foundations for quality management during the later phases of design and construction.
- 3.3.11 The design process, including the involvement of stakeholders in design development, identified a number of risks and opportunities – a common occurrence. Whilst the initial design which was brought forward in the Stage A/B Feasibility Report showed that the design aspirations were placing pressure on the budget, the project team addressed them in appropriate ways, and we agree with their analysis that it is likely that further risks and opportunities will emerge which will require similar attention.

### **3.4 Turner & Townsend's appointment as project manager and cost manager**

- 3.4.1 The following documents had been provided in relation to the appointment of Turner & Townsend as a project manager and cost manager:

- E-mails from the Council's then Service Development Manager and the Council's Corporate Procurement Manager dated 2 November 2009 and between the Service Development Manager and a Director of Turner & Townsend dated 13 November 2009 recording the agreement that Turner & Townsend would undertake project management and cost management services for a fee.
- Contract in OGC model form dated 25 February 2010 between the Council and Turner & Townsend and signed on the Council's behalf by its Principal Solicitor
- Record of Exercise of Chief Officer's Delegated Power dated 19 July 2010 relating to the appointment of Turner & Townsend

- 3.4.2 No documents except those listed above have been disclosed to us relating to the appointment of Turner & Townsend to provide project management and cost management services. However, we have been told by the Council's representatives that the Council opted to approach Turner & Townsend by virtue of their position on the OGC Project Management & Full Service Design Services Framework (RM457) and to negotiate directly with them in order to maintain the continuity and momentum established by Turner & Townsend's participation in Red Box's bid.
- 3.4.3 The contract is in the OGC model form entitled "Standard Model Contract Relating to Professional Services" and provides for remuneration on the basis of a fixed percentage applied to the Council's project estimate to be paid in lump sums following an agreed schedule.
- 3.4.4 A project manager is needed to look after the client's interests in building projects, especially during the construction phase. Such a person needs good cost information in order to take the correct decisions or make correct recommendations to the client. This person will oversee the construction



work, and deal with the contractor on programming, payment, risk management and control of any changes that arise.

- 3.4.5 The role of project manager can be carried out from within the Council, by the consultant appointed for supervision, or by the use of a separate consultant. For the Esh Winning and Brandon projects, the Council decided that an external appointment was required, and we concur that it was appropriate for the project management role to be separated from that of the designer, and for it to be supplemented by cost management services.
- 3.4.6 We have not seen any contemporaneous documents which demonstrate the delegated powers of the Council's officers who agreed the substitution of the provision of project management services by Turner & Townsend for the corresponding element in the scope of the contract with Red Box. That substitution on its own did not exceed the original exercise of delegated power as recorded on 30<sup>th</sup> July 2009.
- 3.4.7 We saw no direct, contemporaneous evidence of the use of such delegated powers in respect of the cost management services being provided by Turner & Townsend, and such services were not within the original authority. However, the Council ratified the agreements recorded in the exchange of e-mails by means of the formal contract with Turner & Townsend. The Council has shown us a retrospective record which certifies that the alteration to the arrangements was approved at the time, but not recorded, by an officer holding the necessary authority.
- 3.4.8 It is our opinion that the disclosure to us is complete and that it is an accurate record of events.

### **3.5 Other contracts**

- 3.5.1 Tenders for the main contract for the design and construction of the school have yet to be issued and so no information is yet available other than the strategy for procurement set out in the Stage A/B Feasibility Report, the Procurement Strategy and the Stage C Cost Plan. The outline design has been passed to the relevant section of the Council for consideration for outline planning permission, and a notice has been prepared for publication in the Official Journal of the European Union, in order to comply with the public procurement regulations. As at the cut-off date, that notice was still under legal review by the Council, and we were not able to see it, as had been expected from consideration of the latest programme.
- 3.5.2 The Council justified the decision to change from a two-stage to a one-stage procurement process for the main contract by the benefits attributable to consideration of design issues surrounding sustainability, current market conditions and the realignment of the Esh Winning programme with that at Brandon. We conclude that the approach to letting a main contract on the basis of design and construction form of contract with a one-stage tendering process is likely to lead to the best overall achievement of the Council's objectives.
- 3.5.3 The proposals for inviting tenders for the main contract were likely to result in value for money and reasonable plans were in place to enable the contract to be varied if necessary to meet contingencies. The intention was to let the contract on an industry-standard form of contract after the completion of the recognised tendering procedures.
- 3.5.4 Whilst Red Box have a number of sub-consultants in place, their roles are considered not to be material to the pilot study.

### **3.6 Project outturn costs.**

- 3.6.1 Several documents have been provided to establish payments made and forecast future costs to completion of the project:

- A fee schedule for Red Box commencing (for Esh Winning) in March 2010 (the schedule also shows payments for Brandon starting in January 2010 as the project covers both sites)
- A fee schedule for Turner & Townsend commencing in December 2009
- E-mails from Red Box and Turner & Townsend representatives confirming that fee instalments are being paid in accordance with the respective schedules as stated by the Council's representatives and recorded by us in notes of discussions
- Progress reports from the lead designer and the project manager
- A cost report included within the Stage A/B Feasibility Study
- The Stage C Cost Plan
- Invoices from Red Box and Turner & Townsend rendered in accordance with agreed draw-down schedules
- Invoices from Red Box for additional costs together with additional material clarifying the basis of the claims
- A letter from Turner & Townsend requesting the payment of additional costs together with additional material clarifying the basis of the claim
- E-mails from and to Council officers clarifying the basis for payments in addition to the draw-down schedules

- 3.6.2 The commentary in the Feasibility Report stated that the benchmark cost, in terms of cost per square metre of gross internal floor area, cited in the estimate is under pressure following design development to date. Possible action plans to recover the position were noted in the report and have been pursued.
- 3.6.3 The Stage C Cost Plan includes provision for a number of risks and contingencies, and the project team has taken advantage of a number of value engineering opportunities to bring the cost plan back to budget after having absorbed increases which arose during the development of the design. We have seen indirect evidence that the Council has agreed the value engineering proposals and the Stage C Cost Plan, and we understand that formal agreement is to be recorded at an imminent review meeting.
- 3.6.4 Payments under the Red Box and Turner & Townsend contracts were made in accordance with the respective draw-down schedules for lump sum instalments. Red Box has billed for time charges, and emerging issues have resulted in claims by both Red Box and Turner & Townsend for payment over and above those draw-down schedules. So far the costs are contained both within the budget allocation for, and the forecast costs of, the consultants' work. Those claims which have been disclosed to us as at the cut-off date are set out in Appendix 4. A claim has been made for a price adjustment to time charges using a formula agreed in the contract, but this adjustment does not constitute a variation as Red Box was thus entitled under the contract to additional payment for inflationary increases in cost.
- 3.6.5 The Council's officers have again been hampered by the turn-over of staff and the consequent lack of access to, and production of, some contemporary records. We have seen no records showing the Council's position regarding the claims – although we have been told that the Council officer who holds delegated authority to agree to variations has accepted two of them.
- 3.6.6 We note that issues surrounding payment will continue to develop as the project progresses and that the status of individual claims for additional payment will vary from time to time, so lack of demonstrable agreement or disagreement to every such claim at any given moment is to be expected.



- 3.6.7 We noted that the plan was for cost reporting to start at the commencement of the construction phase. As noted above, there have been claims for payment in excess of agreed schedules for lump sum instalments, and so far such expenditure has been contained within both the budget and the overall forecast fee levels.
- 3.6.8 The forecast of the project's final cost is well-understood, given the actions that have been taken or proposed to keep the outturn costs within budget and a level of contingency remains within the Cost Plan. We are not expected to offer an opinion on the adequacy of the contingency.
- 3.6.9 A table showing the project cost forecasts and budgets reported at various stages is set out below. Whilst the overall predicted cost has not changed, the design continues to be developed to reflect the emerging understanding of costs, risks and opportunities as the detail has been produced and discussions with end-users and other stakeholders have take place. The Council, the lead designer and project manager are content that, with their state of knowledge at the cut-off date, the overall project remains affordable within the Council's budget.

4 June 2009	30 March 2010	18 June 2010
Council's Budget	Stage A/B Feasibility Report	Stage C Cost Plan
£6,400,000	£6,385,000	£6,385,000

## **Appendices**

1. Glossary
2. Material Project Information
3. Schedule of documents disclosed
4. Schedule of contract changes

## Appendix 1: Glossary

**Accountability:** CoST's aim is to enhance the accountability of procuring bodies and construction companies for the cost and quality of public-sector construction projects. The core accountability concept is to 'get what you pay for'. The 'you' in this context applies equally to national governments, affected stakeholders and to the wider public.

**Audit:** A review of procedures to establish whether work has been carried out as anticipated.

**Benchmarking:** Comparison of performance against other organisations or providers of similar services, particularly those recognised as undertaking best practice.

**Budget:** An amount of money allocated to a project or scheme.

**Collateral Warranty:** Collateral warranties are intended to give the Employer the legal ability to recover damages directly from the consultant(s) who carried out the design in the event that defective design leads to problems. They are collateral in the sense that they provide a route for recovery which lies alongside the chain of contracts comprising the main contract between the client and the lead designer and the sub-contracts between the lead designer and the consultant(s) who carried out the design.

**Compensation event:** An event at the risk of the Employer, which may change the programme or price for the project if it occurs.

**Competitive Tendering:** Awarding contracts by the process of seeking competing bids from more than one contractor.

**Computerised data store:** A centrally located computer on which information is stored and made available to those who have been given access to it.

**Construction Sector Transparency (CoST) Initiative:** An international multi-stakeholder initiative designed to increase transparency and accountability in the construction sector.

**Consultant:** An organisation or individual who has made a contract to provide services.

**Contract:** A binding agreement made between two or more parties, which is intended to be legally enforceable.

**Contract Documents:** Documents incorporated in the enforceable agreement between the Procuring Entity and the contractor, including contract conditions, specification, pricing document, form of tender and the successful tenderers' responses (including method statements), and other relevant documents expressed to be contract documents (such as correspondence, etc.)

**Contractor:** An organisation or individual who has made a contract to undertake works, supply goods or provide services.

**Contract period:** An arrangement for the supply of works, goods or services established for a fixed period of time.

**Cost estimate:** A cost estimate prepared by the buyer of works, goods or services which provides a benchmark or a basis for evaluation and/or negotiation when tenders/offers are received from tenderers. It also serves as an instrument of project planning and budgeting.

**Early Contractor Involvement:** This is a procurement technique under which contractors' expertise can be harnessed before the start of the detailed design and construction phase of the project in order to achieve savings later. One way of managing the relationships contractually is to form a contract for a first stage, comprising a review of the outline design etc. The contractor's appointment to the contract for the second stage, comprising detailed design and construction for the price resulting from the review, is conditional upon performance to date against specified criteria, and may involve a fresh competition.

**Employer:** In the context of the CoST initiative, the Procuring Entity awarding construction and consultancy contracts for the project.

**Feasibility study:** An evaluation of a proposed project to determine the difficulty and likely success and benefits of implementing the project.

**Framework Agreement:** An arrangement under which a Procuring Entity establishes with a provider of goods, works or services, the terms under which contracts subsequently can be entered into or called off (within the limits of the agreement when particular needs arise).

**Material Project Information (MPI):** MPI in this context is intended to indicate that information disclosed on a project is sufficient to enable stakeholders to make informed judgements about the cost and quality of the infrastructure concerned.

**Novation:** Novation is a legal procedure under which the contract of the consultant who carried out the initial design for the Employer is transferred, or “novated”, to the contractor by agreement with all concerned. The consultant then completes the design for the Contractor.

**Offer:** An offer can be the positive answer issued by a tenderer in response to a tender invitation, or an announcement to deliver goods, carry out works and/or services to every buyer or a specific buyer without a specific request or invitation to tender. It also refers to an expression of readiness by a tenderer to enter into a contract.

**Procurement:** The process of acquiring goods, works and services, covering acquisition from third parties and from in-house providers. The process spans the whole life cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset.

**Procuring Entities (PEs – also referred as clients and contracting authorities):** The State, regional or local authorities, bodies governed by public law or associations formed by one or several of such authorities that procure works, goods and services with full or part public funding.

**Programme:** The projected timing of activities required under the contract.

**Quality Management System:** Procedures and practices for controlling the quality of the work carried out.

**Quotation:** A proposed price and programme for work.

**Supervision contract:** A contract with a consultant to oversee the performance of the contractor on the construction work, to give a level of reassurance to the Employer about the quality of the work.

**Specification:** Is an essential part of the design, and states how the work should be executed to ensure that it meets the designer’s assumptions.

**Tender:** An official written offer to an invitation that contains a cost proposal to perform the works, services or supplies required, and is provided in response to a tendering exercise. This normally involves the submission of the offer in a sealed envelope to a specified address by a specified time and date

**Tender Documents:** Documents provided to prospective tenderers when they are invited to tender and that form the basis on which tenders are submitted, including instructions to tenderers, contract conditions, specification, pricing document, form of tender and tenderers responses.

**Tender Evaluation:** Detailed assessment and comparison of contractor, supplier or service provider offers, against lowest cost or most economically advantageous (cost and quality based) criteria.

**Transparency:** In the context of the CoST initiative transparency relates to the disclosure of material project information on construction projects.

**Value Engineering:** A process whereby designers and contractors work with Employers to find more economical ways of achieving the Employers’ requirements.

**Value for Money:** The optimum combination of whole-life cost and quality to meet the PEs and user’s requirement.

## Appendix 2: Material Project Information

Stage of project cycle	List of MPI to be disclosed	Project name: Esh Winning Primary School Procuring Entity; Durham County Council
Project identification	Project purpose	Replacement Primary School
	Location	Esh Winning Primary School, The Wynds, Esh Winning, County Durham, DH7 9BE
	Intended Beneficiaries	The local community
	Specification	New Build 270 place school with 39 place nursery
Funding	Budget	£6.4million
Tender process (project design)	QS's estimate	£6.4million
	Tender procedure	Durham County Council Multi Disciplinary Design Framework – Further Competition (4 Bidders)
	Name of main consultant	Red Box Design Group
Tender process (project supervision)	Tender procedure	OGC BS Framework (Direct Appointment Turner & Townsend) NB: selected because of previous experience working with the Council to successfully deliver similar projects
	Number expressing interest	Not applicable
	Number shortlisted	Not applicable
	Number submitting tender	Not applicable
Tender process (main contract for works)	Tender procedure	OJEU Restricted Procedure – Notice to be placed June/July 2010
	Number expressing interest	Not yet known
	List of tenderers	Not yet known
	Number shortlisted	Not yet known
	Number submitting tender	Not yet known
Contract award (project supervision)	Name of main consultant	Turner & Townsend
	Contract price	£112,000 (Esh Winning component only)
	Contract scope of work	Project Management & Cost Management
	Contract programme	Completion of site works March 2012
Contract award (main contract for works)	Name of main contractor	Not yet known
	Contract price	Not yet known
	Contract scope of work	Not yet known
	Contract programme	Not yet known
Contract Execution (project)	Changes to contract price, programme, scope with	See Appendix 4

Stage of project cycle	List of MPI to be disclosed	Project name: Esh Winning Primary School Procuring Entity; Durham County Council
supervision)	reasons	
Contract Execution (Main contract for works)	Individual changes to the contract which affect the price with reasons	Not yet applicable
	Individual changes to the contract which affect the programme, with reasons	Not yet applicable
	VO's, claims, Early Warnings & Compensation Events	Not yet applicable
	Payment certificates	Not yet applicable
	Details of any re-award of main contract	Not yet applicable
Post contract completion details (main contract for works)	Actual contract price	Not yet applicable
	Total payments made	Not yet applicable
	Actual contract scope of work	Not yet applicable
	Actual contract programme	Not yet applicable
Documents to be disclosed		Disclosure status
Feasibility study		Yes
Financing agreement		Not applicable
Procurement Strategy		Design & Construction Contract only
Contract Strategy / Type		Yes
Tender evaluation report (Main contractor)		Not yet applicable
Project evaluation reports (on completion and on-going)		Yes

### Appendix 3: Schedule of documents disclosed

Document title	Subject of document
<b>Definition and budget for project</b>	
Esh Winning Primary School Estimate	The Council's estimate
New Build Esh Winning Primary School Design Brief (Appendix to Stage A/B Feasibility Report)	Client Brief by the Council's Children & Young Persons Department
Esh Winning Primary School Replacement Project Stage A/B Feasibility Report	Feasibility report by Red Box dated 30 March 2010 seeking agreement to Stage A/B plans to meet original Design Brief and the Council's estimate
Project Directory – PM 18077 Revision 2 – 1 February 2010 (abridged version in Stage A/B Feasibility Report)	Contact details of participants
Cost Management Report (included in Stage A/B Feasibility Report)	Cost Manager's estimate
Brandon & Esh Winning Primary School Master Programme Rev 04 (15 March 2010) (Appendix to Stage A/B Feasibility Report)	Cost Manager's programme
New Build Esh Winning Primary School Design Brief Controlled formal revision 2, 14 April 2010	Revised Client Brief by the Council's Children & Young Persons Department
<b>Contract for design (Red Box)</b>	
Design Services for Various Building Projects May 2008 – April 2011: Framework Arrangement for the Appointment of Consultants Providing Multi-disciplinary Design Services	Tender invitation document for framework arrangements for the scope of works set out in the title (not in data store), including terms and conditions
Red Box letter dated 23 June 2009 (abstract)	Abstract of letter of tender in response to invitation to tender for Esh Winning and Brandon projects in accordance with the framework set out in the previous item
The Council's Organisation Chart Resources	Overall Durham County Council Organisation
The Council's Asset Management Organisational Structure	The Council's Asset Management Organisation Structure
E-mail with attached Section of the Council's Constitution: Officer Scheme of Delegations	Delegated authorities granted to Chief Officers
E-mail from the Council's then Service Development Manager to Red Box's Managing Director dated 28 July 2009	Notification of pending appointment
Record of Exercise of Chief Officer's Delegated Power dated 30 July 2009	Authority to appoint Red Box and record of tender appraisal (not in data store)
E-mail from the Council's then Service Development Manager to Red Box's Managing Director dated 13 November 2009	Record of agreement to the omission of project management services from Red Box's scope, together with a corresponding reduction in fee rate (not in data store)

Document title	Subject of document
Unexecuted contract in between the Council and Red Box	Contract and forms of collateral warranty for execution by sub-consultants (not in data store)
Red Box Fee Schedule	Draw-down schedule of lump sum instalments
<b>Contract for Project Management &amp; Cost Management (Turner &amp; Townsend)</b>	
E-mails from the Council's then Service Development Manager and the Council's Corporate Procurement Manager dated 2 November 2009 and between the Service Development Manager and a Director of Turner & Townsend dated 13 November 2009	Record of agreement that Turner & Townsend would undertake project management and cost management services for a fee rate (not in data store)
Contract in OGC model form dated 25 February 2010 between the Council and Turner & Townsend	Contract (not in data store)
Turner & Townsend Fee Schedule	Draw-down schedule of lump sum instalments
Abstract from Durham County Council's Constitution: Contract Procedure Rules	Rules for contract procurement
Record of Exercise of Chief Officer's Delegated Power dated 19 July 2010	Retrospective certificate of decision taken using delegated powers on 13 November 2009 to appoint Turner & Townsend (not in data store)
<b>Project outturn cost</b>	
Cost Management Report (included in Stage A/B Feasibility Report)	Cost Manager's estimate
Esh Winning School 09023 CDM Risk Register (Identical to Appendix in Stage A/B Feasibility Report)	Lead Designer's Construction, Design and Management Risk Register
Progress Report: Brandon & Esh Winning Primary Schools Project Team Meeting No. 12, 10 February 2010	Progress report on design issues
Progress Report: Brandon & Esh Winning Primary Schools Project Team Meeting No. 13, 24 February 2010	Progress report on design issues
Brandon & Esh Winning Schools: M&E Services Report No. 4, 10 February 2010	Progress report on M&E design issues
Brandon & Esh Winning Schools: M&E Services Report No. 5, 24 February 2010	Progress report on M&E design issues
Durham Schools Sustainability Framework – Esh Winning Primary School – 4/3/10 (version dated 26/3/10 included in Stage A/B Feasibility Report)	Sustainability framework
Abstract from Red Box quality manual	Document / version control procedures
Monthly Client Report No. 1, February 2010	Project Manager's report to Client. Appendices not completed and no contemporary cost report included



<b>Document title</b>	<b>Subject of document</b>
Progress Report 19 March 2010	Project Manager's internal progress report
Brandon & Esh Winning Primary School Master Programme Rev 05 (19 March 2010)	Cost Manager's programme
Monthly Client Report No. 2, April 2010	Project Manager's report to Client. Appendices not completed and no contemporary cost report included
Brandon & Esh Winning Primary School Replacements: Procurement Strategy v. 0 14 April 2010	Project Manager's Procurement Strategy
Progress Report 29 April 2010	Project Manager's internal progress report
Brandon & Esh Winning Primary Schools: TTCM Information Received Register	Project Manager's internal register of drawings received to 27 April 2010
Brandon & Esh Winning Primary Schools: TTCM Information Issued Register	Project Manager's internal register of information issued to 29 April 2010 mentions cash flow
Brandon & Esh Winning Primary School Master Programme Rev 06 (4 May 2010)	Cost Manager's programme
Brandon & Esh Winning Primary School Master Programme Rev 07 (6 May 2010)	Cost Manager's programme
Turner & Townsend letter dated 18 May 2010 seeking additional fees for whole-life costing work	Claim for additional payments
Turner & Townsend Invoice no. 000514508 dated 21 May 2010	Invoice for services rendered in accordance with draw-down schedule
Red Box Invoice no. 2022 dated 31 May 2010	Invoice for services rendered in accordance with draw-down schedule
Stage C Cost Plan version 1 (June 2010)	Cost Manager's report on outturn costs at Stage C
Minutes of Esh Winning and Brandon Client Progress Meeting dated 2 June 2010	Project manager's notes of Client review meeting
Agreed notes of telephone conversation Crease/Red Box dated 7 <sup>th</sup> June 2010 & e-mail Red Box/Crease dated 21 June 2010	Payments specified in draw-down fee schedule are being made
Agreed notes of telephone conversation Crease/Turner & Townsend dated 14 <sup>th</sup> June 2010 & e-mail Turner & Townsend/Crease dated 17 June 2010	Payments specified in draw-down fee schedule are being made
Turner & Townsend Invoice no. 000515114 dated 15 June 2010	Invoice for services rendered in accordance with draw-down schedule
Minutes of Esh Winning and Brandon Client Progress Meeting dated 16 June 2010	Project manager's notes of Client review meeting
Red Box Invoice no. 2044 dated 16 June 2010	Invoice for additional sub-consultants' services
Red Box Invoice no. 2042 dated 28 June 2010	Invoice for services rendered in accordance with draw-down schedule
Minutes of Esh Winning and Brandon Client	Project manager's notes of Client review meeting

<b>Document title</b>	<b>Subject of document</b>
Progress Meeting dated 1 July 2010	
Esh Winning Risk Register July 2010	Risk register identifying risks, allocating responsibility for mitigation
E-mail chain from Turner & Townsend to Council officers, last transmission dated 7 July 2010 timed at 1035	Clarification of position relating to Turner & Townsend letter of 18 May 2010 (cited above)
Red Box Invoice no. 2046 dated 15 July 2010	Invoice for price adjustment formula agreed to cover inflation on time charges. Refers to time charges for which invoices have not been disclosed.
Further copy of abstract from Red Box letter dated 23 June 2009	Clarification of agreed basis for time-charging
Monthly Client Report No. 3, July 2010	Project Manager's report to Client. Appendices not completed and no contemporary cost report included.
Turner & Townsend Invoice no. 000516000 dated 23 July 2010	Invoice for services rendered in accordance with draw-down schedule
E-mail from Council officer dated 2 August 2010 with attachments	Clarification of circumstances behind Red Box invoice no. 2044, cited above

## Appendix 4: Schedule of contract changes

### Part a) Red Box contract

Date	Subject	Value if agreed	Value if not yet agreed
31 May 2010	Additional sub-consultants' fees		£7,868 *
2 August 2010	Additional sub-consultants' fees for acoustic and fire engineering and quality management support		#

\* The Council has indicated that it has agreed this figure but has not yet recorded that agreement formally. The figure applies to both Esh Winning and Brandon as we have not seen a break-down.

# Estimate not yet submitted

### Part b) Turner & Townsend contract

Date	Subject	Value if agreed	Value if not yet agreed
18 May 2010	Whole-life cost analysis and frame feasibility study		£20,750 *

\* The Council has indicated that it has agreed this figure but has not yet recorded that agreement formally. The figure applies to both Esh Winning and Brandon as we have not seen a break-down.

*DRE JV*

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