

Additional notes re terms and conditions for HS2 Contract works

These notes are compiled from various emails provided by AG members and represent a compilation of what appears to be sensible, knowledgeable or practical. They will constantly evolve and should not be relied upon as being definitive.

The purpose of the community forums appears to be to try and placate us. Divide and conquer is a tried and tested technique. We need to agree a standard set of terms and conditions that we all take to these forums and to our MPs and insist they form part of the Hybrid bill.

It would be beneficial to have a detailed programme of proposed works which should include geographical locations and estimated start and completion dates.

A legally binding Commitments register.

This is something that Andrew MacNaughton raised at a meeting with some of us many moons ago. He said he was working to see that put in place but we have seen no evidence yet. The importance of this to the community discussions is obvious: there is no point in reaching a position where communities believe they have achieved certain commitments from HS2 Ltd/ HMG/ etc if those are not recorded and then binding on sub-contractors, councils etc... legally binding obligations is one of the key principles to establish at the outset with the community forums. It may be that this is best achieved within the hybrid bill which is referred to later in this note.

Until a "Brief" [including the "Form of Contract" to be used to administer these works], is issued, it is difficult to make anything other than general comments at this stage.

However, as these works will be undertaken under the auspices of the Secretary of State for Transport, the preferred Contract of choice is most likely be one of the suite of Options available under the NEC Engineering and Construction Contracts and/or another similar "Civil Engineering" Form of Contract.

Once the above has been confirmed, a "Draft" set of Contract Documents will be compiled and these will incorporate the terms of the Contract, Specifications, Drawings, Site Investigation Information etc., which will then be issued to the Developer/Contractors as "Works Information", for Tendering/Pricing purposes.

It is important to note, that the "Works Information" will include details of all constraints, requirements, obligations etc., that the Contractor will have to comply - i.e. wrt traffic management, weight restrictions, noise, vibration, hours of work, import/disposal of materials, environmental matters, contamination of watercourses etc.

Once on site, the works will be supervised to ensure that they are undertaken in compliance with the "Works Information".

It is likely that the construction of HS2 will be undertaken utilising similar practices to those operated on both the Channel Tunnel and M6 Toll Road projects and it is likely that an independent "Overseeing Organisation" [i.e. Engineers], will perform this role.

Therefore, it is of considerable importance, that all concerns [i.e. such as those detailed below], are raised prior to the preparation of the "Draft" Contract - obviously, this will enable allowance for such issues to be incorporated within the Contract Documents.

Notwithstanding the above, it is considered that all of the issues raised in various emails and consolidated in the appendix to this note [and most likely a few more], will be incorporated within the "Works Information".

It is also important to note, that the "Considerate Constructors Scheme"* (also attached) is an [optional] registered body that monitors a Contractors performance against a set series of criteria.

Whilst the Employer may incorporate a requirement within the "Contract" that the Contractors are registered under CCS*, they have NO Contractual bearing on how the Contractor undertakes the works themselves.

It's not unreasonable for each element of the project, irrespective of the additional cost, to seek to attain the highest standard under CEEQUAL. Further information at: <http://www.ceequal.com/>.

The terms and conditions we want should form part of the contracts and sub contracts for the works and the contractors should sign up to the CCS and the civil engineers more rigorous scheme.

However whether the conditions are or aren't included in the contract is irrelevant as far as we are

concerned, as we will not be party to any of these contracts. Only the parties to the contract can seek to have its terms and conditions enforced.

Example:

A landowner and builder contract to build a new duck house, but change their minds during the course of the work and choose to dig a moat instead. You as a duck and the original beneficiary of the project can not take them to court and force them to build the duck house, as you were not party to the original contract. You were just a third party outside the contract that stood to benefit. The only "contract" that we will be able to enforce, by recourse to law, is the hybrid bill. In terms of this discussion the hybrid bill is in effect a "contract" between the government and the electorate. Any terms and conditions that we want **MUST** be incorporated in the hybrid bill and not in some unenforceable side agreements or locally agreed set of assurances and promises.