

**WRITTEN QUESTION TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY
THE DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 24th MARCH 2009**

Question

Will the Minister advise Members of the contractual terms in the Energy for Waste Contract covering unforeseen circumstances (such as extra hard granite) causing additional costs to be met by the purchaser, including the maximum additional potential cost to which the purchaser is exposed?

Answer

The Contract requires the Contractor to establish, through its own investigations, what circumstances apply on site. The risk of encountering, for example, unforeseen ground conditions remains with the Contractor. The only exception within the Contract relates to unforeseen contamination, but this is limited to where this is over and above the amount and type of asbestos defined within the asbestos remediation plan appended to the Contract.

In terms of unforeseen circumstances, it is for the contractor to prove that he has encountered these circumstances whatever form they might be and under the contract, they are dealt with as a claim. Under Clause 17 - Contractors Variation and Clause 18 - Contractors Claim, of the Institution of Chemical Engineers Red Book Contract, the methodology for dealing with claims is clearly dealt with, a copy of which has already been supplied to the Deputy.

In the case of extra hard rock, the "preferred bidder" was provided access to the site to undertake their own ground investigation to ascertain the exact nature of the ground conditions to validate the information contained in the tender documents prior to contract signature. If there were any discrepancies between the two sets of information, the preferred bidder had the opportunity to vary their tender price prior to the contract being signed in November 2008. The Contractor advised that, due to the need for a slight adjustment to the footprint of the plant there would be a £75,000 adjustment to the cost of excavation which was included in the final contract price. There were no other variations resulting from the process. The risk therefore is with the contractor to remove the material found on site.