

In the matter of an adjudication between Tiger Construction Ltd (“Tiger”) and Zumba Dance School Ltd (“ZDSL”)

## Response to Adjudicator’s Email Questions

### Question 2 – Extent of mirrored walls required for a dance studio

We understand that ZDSL are relying in a definition from Wikipedia to make a decision on dance studio mirrors, but we are not talking about any old dance studio but a Zumba dance studio. There’s a difference and that’s why we asked around before submitting our design as to what a ‘...modern day Zumba dance hall...’ actually looks like. We were told that mirrors are a thing of the past, as we stated in 2.3 of our claim. If you would like to speak with our Zumba experts then this can be arranged. Finally, this thing called ‘Wikipedia’, I asked the kids when I got home and was told this was some sort of on-line dictionary where anybody can add and change anything they like – so if one person has a strong opinion and nobody offers an alternative, then how can that represent a true meaning of something?

### Question 3 – Subcontractor pricing

The Subcontractor that we chose is an organisation that we have worked with for the past 15 years; they are an entirely trustworthy supply chain member. We have had engaged them for this sort of thing in the past and always find their quotes reasonable, but more importantly they do a proper job, clean their mess up and straight away sort out any problems. Lowest price does not always mean best value, as we’ve found out. They may be a fraction above lowest price but market rates is about the right price for the right job, not the lowest price for a poor job. If we would have picked a silly price from a firm we haven’t worked with before, we would have increased the risk amount and our supervision on the quotation to make sure they performed the job properly.

### Question 5 – risk allowance

We have only asked for £500 risk allowance money for this additional work; our QS actually thought this was way below what we’ve actually spent. If you’ve ever tried to install large, heavy mirrors onto a newly painted wall and get them in the building in the first place, you are bound to scratch and scuff things along the way, likely have to re-drill a few holes and generally make good as a result. The £500 is a couple of guys for a day patching things up to a level we are happy with. But for the additional mirrors, we would never have had to do such making good so this is properly included in the quotation.

### Question 6 – Pre-contract Discussions

This is one of the points we are really not happy about with ZDSL’s response, part 2.11 in particular. We never had any such conversations pre-contract; they were keen to make sure we consulted with Zumba experts as they clearly had no idea what one of these halls looked like. We think Matthew Garratt is confusing things with subsequent discussions; it must be all that shandy he drinks. There are no records of these discussions simply because they never happened.

This is a claim between Tiger Construction and Zumba Dance School Ltd.

This document is the claim from Tiger Construction to be considered in the adjudication.

Robert Gerrard, Contracts Director, on behalf of Tiger Construction

14<sup>th</sup> April 2014

## 1. Introduction

- 1.1. Tiger Construction has a contract with Zumba Dance School Ltd to design and construct a Zumba dance hall in Hull.
- 1.2. The particulars of the contract are shown in Appendix 1; included is the Contract Data parts one and two.
- 1.3. The contract between us is the NEC3 Engineering and Construction Contract (ECC) main Option C (target contract with activity schedule).
- 1.4. We have a disagreement on the assessment of a compensation event and wish the Adjudicator, Mr Peter Higgins, to decide this dispute between us.
- 1.5. We hope that this can be done simply and quickly, we have already paid out a subcontractor on this and just want to get our money back. We also want to get back to finishing the project as quickly as we can, so we can all get back down to London for the 2014 FA Cup Final!

## 2. History

- 2.1. The Works Information contains the following requirements, which we considered were ambiguous.
- 2.2. Part xxx states “The *Contractor* provides mirrors within the building to the satisfaction of the *Project Manager*.” Elsewhere, in part yyy, it states “The *Contractor* is responsible for providing a modern day Zumba dance hall, in accordance with industry best standards.”
- 2.3. We consulted with some industry Zumba experts who say that mirrors in the dance hall are a thing of the past and you don’t need them anymore. We are the designers but there was no requirement in the Works Information for us to submit our design for acceptance, so we didn’t. On 20 March 2014 the Project Manager (Mr Matthew Garratt) came to site, he doesn’t come here very often, and asked where the mirrors were inside the hall. I said there weren’t any, other than the bathrooms, have a look at our design and our Accepted Programme. He’s a nice enough lad but doesn’t get out often, at least not to Zumba.
- 2.4. Matthew went off in a huff and notified an early warning and called a risk reduction meeting later that day. I think he had spoken with the Employer, who perhaps wasn’t happy with how the Works Information was written, to us it is clear.
- 2.5. At the risk reduction meeting Matthew re-read to us the 2 statements above in the Works Information, which of course we are aware of. We have a different opinion – he thinks Zumba is all about mirrors, we do not. Up to that point we didn’t think the document was ambiguous, we didn’t believe industry standard demanded lots of mirrors in the dance hall but knew we had to satisfy the *Project Manager*, who we thought would be reasonable. We couldn’t agree how the problem was to be resolved so we suggested we go away and notify an ambiguity, which we did. This is shown as Contractor’s notification nr 18 dated 20<sup>th</sup> March 2014 in Appendix 2. The Project Manager then issued PMI nr 9 on 21<sup>st</sup> March 2014, finally detailing a significant amount of additional works that he actually wanted, and then notified us this was a compensation event and instructed us to submit a

quotation for this (see Project Manager's notification nr 18 dated 21<sup>st</sup> March 2014. As an aside, we remember some NEC training done by Stuart Kings stating notifications should be communicated separately from other communications but we are not sure if this is relevant here.

- 2.6. We then submitted our quotation for this, based on our subcontractor's quote we had to hastily arrange. In fact it was so quick and we were so efficient that we overlooked the Works Information requirement that all subcontract packages over £5,000 in value should be competitively tendered to not less than three organisations. Our quotation, which we believe is entirely reasonable, is shown in Appendix 2 in Contractor's submission nr 15. We have by the way paid the subcontractor the £7,500 in full and final settlement for this work.
- 2.7. The Project Manager then instructed us to submit a revised quotation, with explanations as to why. This is shown in Appendix 2 PMI nr 11 dated 31<sup>st</sup> March 2014.
- 2.8. We consider the Project Manager should get some NEC training as he doesn't properly understand the contract. We then re-submitted exactly the same quotation as before, these are additional works that we arranged because the Works Information was poorly drafted and we got on with it really quickly. Our quotation re-submitted is shown in Appendix 2 Contractor's submission nr 17 dated 4<sup>th</sup> April 2014.
- 2.9. The Project Manager didn't agree with our revised quotation (which actually stayed as it was) and he sent Project Manager's notification nr 17 dated 5<sup>th</sup> April 2014 to say he was to make his own assessment. It's a shame as the job went well to this point and he hasn't really spoken with us since. He's a good guy really, apart from his persistence in wearing brown shoes.
- 2.10. The Project Manager made an assessment of the compensation event under clause 64.3 and this is shown in Appendix 2 as Project Manager's notification nr 18 dated 12<sup>th</sup> April 2014. This is not right; we have actually paid out far more than this to our subcontractor for a scope of additional works. This is unfair and this is why we have notified this dispute to Mr Peter Higgins. We hear that he is a reasonable man.

### 3. Summary

- 3.1. We are a reasonable Contractor, all we want here is the £8,800 the additional works has cost us rather than the £2,200 assessed by the Project Manager. We have already paid this out to the Subcontractor so ideally need this back sooner rather than later, with interest of course.
- 3.2. The original requirements were ambiguous; the Project Manager even clarified what he actually wanted in terms of mirrors, which are way over and above a modern Zumba dance hall.
- 3.3. We jumped through hoops, worked hard, are doing a good job and just want fair recompense.

## Appendix 1 – Contract Data

Part one – Data provided by the *Employer*

1 General

- The *conditions of contract* are the core clauses and the clauses for main Option . C . , dispute resolution Option . W2 . and secondary Options X2, X7, X15, X16, Y(UK)2.... of the NEC3 Engineering and Construction Contract April 2013.
- The *works* are. . . . . **The design and construction of a Zumba dance hall . . . . .**
- The *Employer* is  
Name . . . . **Zumba Dance School Ltd . . . . .**  
Address . . . . **Dance Road, Hessle, Hull. HU12 4ST . . . . .**  
. . . . .
- The *Project Manager* is  
Name . . . . **Matthew Garratt. . . . .**  
. . . . .  
Address . . . . **Dance Road, Hessle, Hull. HU12 4ST. . . . .**  
. . . . .
- The *Supervisor* is  
Name . . . . . **I Watchit . . . . .**  
Address . . . . **Dance Road, Hessle, Hull. HU12 4ST. . . . .**  
. . . . .
- The *Adjudicator* is  
Name . . . . . **Mr Peter Higgins . . . . .**  
Address . . . . **Chambers Road, Hull. HU15 4PT . . . . .**  
. . . . .
- The Works Information is in  
. . . . . **Appendix 1, Works Information . . . . .**
- The Site Information is in  
. . . . . **Appendix 2, Site Information. . . . .**
- The *boundaries of the site* are . . . . **As shown on drawing SI/1043, Rev B . . . . .**  
. . . . .
- The *language of this contract* is . . . . . **English . . . . .**
- The *law of the contract* is the law of . . **England and Wales, subject to the jurisdiction of the courts of England and Wales . . . . .**
- The *period for reply* is . . . **4 weeks . . . . .** weeks.
- The *Adjudicator nominating body* is . . **the Institution of Civil Engineers . . . . .**
- The *tribunal* is . . . . **litigation . . . . .**  
. . . . .
- The following matters will be included in the Risk Register
  - Inability to obtain planning approval
  - Poor ground conditions
  - Inflation
  - Poor weather

3 Time

- The *starting date* is . . . . **18 August 2013 . . . . .**
- The *access dates* are  
Part of the Site . . . . . Date  
1. . . **South of the car park . . . . .** . . . . **18 August 2013 . . . . .**  
2. . . **Remainder of the Site . . . . .** .21 September 2013 . . . . .
- The *Contractor* submits revised programmes at intervals no longer than  
. . . . . **5 . . . . .** weeks.



Option C

- The *Contractor's share percentages* and the *share ranges* are  

<i>share range</i>	<i>Contractor's share percentage</i>
less than . . . . . 90 . . . %	. . . . . 30 . . . . . %
from . . . . . 90 . . . % to . . . 100 . . . %	. . . . . 5 . . . . . %
from . . . . . % to . . . . . %	. . . . . %
greater than . . . . . 100 . . . . . %	. . . . . 0 . . . . . %
- The *Contractor* prepares forecasts of Defined Cost for the *works* at intervals no longer than . . . **5** . . . . . weeks.
- The *exchange rates* are those published in . . . the Financial Times . . . . . on . . . . . 24 August 2014 . . . . . (date).

Option X7

- Delay damages for Completion of the whole of the *works* are . £300 . . per day.

Option X16

- The *retention free amount* is . . . . . **£1,000,000** . . . . .
- The *retention percentage* is . . . . . **3** . . . . . %.

Option X18

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to . . . **£500,000** . . . . .
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to . . . **£200,000** . . . . .
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to . . . . . **£400,000** . . . . .
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to **£2,000,000** . . . . .
- The *end of liability date* is . . . **12** . . . . . years after the Completion of the whole of the *works*.



Part two – Data provided by the *Contractor*

- The *Contractor* is  
 Name . . . . . Tiger Construction . . . . .  
 Address . . . . . Premier Road, West Link Industrial Park, Hull HU13 3LY . . . . .  
 . . . . .  
 . . . . .
- The *direct fee percentage* is . . . 10 . . . . . %.
- The *subcontracted fee percentage* is . . . . . 10 . . . . . %.
- The *working areas* are the Site and . . . area marked 'x' on drg nr 123 . . . . .
- The key people are  
 (1) Name . . . . . Robert Gerrard . . . . .  
 Job . . . . . Contracts Director . . . . .  
 Responsibilities . . . . . Overall responsibility for the contract . . . . .  
 . . . . .  
 Qualifications . . . . . C Eng., CIOB, . . . . .  
 Experience . . . . . 22 years in the construction industry – CV attached . . . . .  
 . . . . .  
 (2) Name . . . . . Ivor Brew . . . . .  
 Job . . . . . Site Agent . . . . .  
 Responsibilities . . . . . Management of the works on site . . . . .  
 . . . . .  
 Qualifications . . . . . CIOB . . . . .  
 Experience . . . . . 33 years in the construction industry, level 2 cookery – CV attached. . . . .
- The following matters will be included in the Risk Register
  - Inflation
  - Poor ground conditions (*Employer's* risk)
  - Kettle breaking
  - Tracey's Café closing down
  - Big Dave retiring
- The Works Information for the *Contractor's* design is in  
 . . . . . Appendix 1 – Contractor's Design  
 . . . . .  
 . . . . .
- The *activity schedule* is . . . . . Appendix 2 – Activity Schedule . . . . .
- The tendered total of the Prices is . . £2,320,321 . . . . .

**Data for Schedule of Cost Components**

- The listed items of Equipment purchased for work on this contract, with an on cost charge, are  

Equipment	time-related charge	per time period
.....		per .....
.....		per .....
.....		per .....
.....		per .....
- The rates for special Equipment are

Equipment	size or capacity	rate
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

- The percentage for Working Areas overheads is . . . 18 . . . . . %.
- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are

category of employee	hourly rate
..... skilled .....	..... £32.00 .....
..... unskilled .....	..... £23.00 .....
.....	.....
.....	.....

- The percentage for manufacture and fabrication overheads is . . . . . %.

**Data for both schedules of cost components**

- The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
..... Senior Engineer .....	..... £65.00 .....
..... CAD technician .....	..... £23.00 .....
.....	.....
.....	.....

- The percentage for design overheads is . . . . . 23 . . . . . %.
- The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the works and Equipment done outside of the Working Areas are

..... Those listed above .....

.....

.....

.....

**Data for the Shorter Schedule of Cost Components**

- The percentage for people overheads is . . . 45 . . . . . %.
- The published list of Equipment is the last edition of the list published by .....

..... CECA (Civil Engineering Contractors Association) .....

.....

- The percentage for adjustment for Equipment in the published list is .....
- The rates for other Equipment are

Equipment	size or capacity	rate
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

## APPENDIX 2

### PROJECT CORRESPONDENCE

#### *Contractor's Notification*

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To: Matthew Garratt Date: 20<sup>th</sup> March 2014

Project Name: Hull Zumba Dance Hall Project ID: 1234

Notification No: 18

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Under clause ...17.1..... I notify you:

That clause xxx and yyy of the Works Information is ambiguous. We consider no mirrors are necessary in a modern day Zumba dance hall, other than in the bathrooms and can give some expert opinion on this if required.

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Copy to: file

Signed: R. Gerrard

For: Tiger Construction Date: 20<sup>th</sup> March 2014

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***Project Manager's Notification***

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To: Robert Gerrard Date: 21<sup>st</sup> March 2014

Project Name: Hull Zumba Dance Hall Project ID: 1234

Notification No: 14

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Under clause ...60.1(1)..... I notify you:

That PMI nr 9 is a compensation event and I instruct you to submit a quotation for this under clause 61.1.

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Copy to: file

Signed: Matthew Garratt

For: Dance Consultants Ltd Date: 21<sup>st</sup> March 2014

## Contractor's Submission

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To: Matthew Garratt Date: 28<sup>th</sup> March 2014

Project Name: Hull Zumba Dance Hall Project ID: 1234

Submission No: 15

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Under clause ...62.3..... I submit:

This quotation for the compensation event nr 10 resulting from PMI nr 9. In preparing this quotation we note clause 63.8 which gives the Contractor the benefit of the ambiguity in the Works Information.

We have subcontracted this entire additional piece of works to a Subcontractor, his invoice is available for inspection.

Defined Cost:

Subcontractor, lump sum of £7,500 to supply and fix mirrors as sketch xyz, make good damage of walls already painted, include all temporary works.  
Add Contractor's 63.6 risk allowance of £500 for correcting Defects as there is bound to be other damage caused in these additional works.

Add 10% direct fee percentage to the £500 and 10% subcontracted fee percentage to the £7,500.

Total = £8,800 and no effect on planned Completion is envisaged, the subcontractor is happy to work nights and weekends around the Contractor.

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Copy to: File

Signed: R. Gerrard

For: Tiger Construction Date: 28<sup>th</sup> March 2014

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## Contractor's Submission

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To: Matthew Garratt Date: 4<sup>th</sup> April 2014

Project Name: Hull Zumba Dance Hall Project ID: 1234

Submission No: 17

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Under clause ...62.4..... I submit:

This quotation for the compensation event nr 10 resulting from PMI nr 9. In preparing this quotation we note clause 63.8 which gives the Contractor the benefit of the ambiguity in the Works Information. This is a re-submission but we consider the original quotation to be correct, in fact maybe we should have asked for more in hindsight as we didn't really allow enough of our own resources dealing with this. We have subcontracted this entire additional piece of works to a Subcontractor, his invoice is available for inspection.

Defined Cost: Subcontractor, lump sum of £7,500 to supply and fix mirrors as sketch xyz, make good damage of walls already painted, include all temporary works.

Add Contractor's 63.6 risk allowance of £500 for correcting Defects as there is bound to be other damage caused in these additional works.

Add 10% direct fee percentage to the £500 and 10% subcontracted fee percentage to the £7,500.

Total = £8,800 and no effect on planned Completion is envisaged, the subcontractor is happy to work nights and weekends around the Contractor.

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Signed: R. Gerrard

For: Tiger Construction Date: 4<sup>th</sup> April 2014

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***Project Manager's Notification***

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To: Robert Gerrard Date: 5<sup>th</sup> April 2014

Project Name: Hull Zumba Dance Hall Project ID: 1234

Notification No: 17

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Under clause ...62.3..... I notify you:

That your quotation for PMI nr 9 in your Contractor's submission nr 17 dated 4<sup>th</sup> April 2014 is unacceptable for the reasons I previously gave you in my PMI nr 12 and therefore I will be making my own assessment.

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Signed: Matthew Garratt

For: Dance Consultants Ltd Date: 5<sup>th</sup> April 2014

## ***Project Manager's Notification***

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To: Robert Gerrard Date: 7<sup>th</sup> April 2014

Project Name: Hull Zumba Dance Hall Project ID: 1234

Notification No: 18

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Under clause ...64.3..... I notify you:

That my assessment of compensation event nr 12 which arose from PMI nr 9 is as follows:

The Contractor intended to subcontract this entire additional piece of works to a Subcontractor but did not get 3 competitive quotes as he should have done. I assess the Defined Cost of a market rate subcontractor would likely have been say £500 lower than the lump sum of £7,500 procured to supply and fix mirrors as sketch xyz, make good damage of walls already painted, include all temporary works. I also consider that the Contractor should have made due allowance for at least 3 of the 4 walls to be mirrored – I therefore consider at most this is worth some 75% less than the £7,000 he should have paid so assess the Defined Cost at £2,000, which is generous, and includes a small allowance for Contractor's risk under clause 63.6.

As the direct fee percentage and subcontracted fee percentage are both 10%, I do not need to further divide the £2,000 so 10% is added to this.

Total = £2,200 and no effect on planned Completion is envisaged, the subcontractor is happy to work nights and weekends around the Contractor.

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Signed: Matthew Garratt

For: Dance Consultants Ltd Date: 7<sup>th</sup> April 2014



In the matter of an adjudication between Tiger Construction Ltd (“Tiger”) and Zumba Dance School Ltd (“ZDSL”)

This document is ZDSL’s response to the claim (referred to herein as the “referral”) submitted by Tiger on 14<sup>th</sup> April 2014.

Zumba Dance Studio Ltd

17<sup>th</sup> April 2014

This response follows the same paragraphs and numbering as the referral for ease of reference.

## 1. Introduction

1.1. ZDSL agrees with points 1.1 to 1.4 in the referral.

1.5 We have no comment to make in relation to this.

## 2. History

2.1. We do not accept that there is any ambiguity between the parts of the Works Information recited.

2.2. The content of the Works Information is as stated in point 2.2 of the referral, and clearly states that mirrors are to be provided.

2.3. Tiger's claim appears to be entirely based upon an alleged comment by "some industry Zumba experts" who are not identified, nor is there any supporting evidence or authority provided for these assertions. It is common knowledge that dance studios need mirrors. For the avoidance of all doubt, we enclose in Appendix 1 to this response an extract from the website Wikipedia ([www.wikipedia.org](http://www.wikipedia.org)) on the subject of dance studios. It confirms: "*In purpose-built dance studios, it is typical for at least one wall to be covered by floor to ceiling mirrors, which are used by dancers to see their body position and alignment.*" No doubt then that an "industry best" dance studio would contain a significant amount of mirrors, we say 80%. It is agreed that Tiger are responsible for the design, and it is crystal clear from the Works Information that mirrors are required - there is no ambiguity. Clause 21.2 of the *conditions of contract* requires the *Contractor's* design to be submitted to the *Project Manager* for acceptance, prior to proceeding with the work, which by their own admission Tiger failed to do. The Works Information requires mirrors to be provided "to the satisfaction of the *Project Manager*". The remainder of paragraph 2.3 within the claim contains mainly unprofessional comments, and as such, does not warrant a response.

2.4. ZDSL accepts that the *Project Manager* raised an early warning and called a risk reduction meeting. The other unprofessional and unsubstantiated remarks made in point 2.4 of the referral do not warrant a response.

2.5. The content of paragraph 2.5 of the referral is generally accepted. However, to clarify that ZDSL does not think that Zumba is "all about mirrors", only that an "industry best" dance studio should contain mirrored walls generally, possibly even mirrors on the ceiling, so the dancers can see the shapes and moves they are making, the weight they are losing and the happiness on their faces in whatever direction they are facing.

2.6. Tiger has by its own admission failed to comply with the acceptance procedures for subcontracting contained in the Works Information. It is clear that Tiger accepted the first and only quote it obtained for this work, without any attempt to obtain or check its competitiveness or value for money. Sloppy, to say the least. The *conditions of contract* are clear, under clause 11.2 (25) Disallowed Cost includes cost which "was only incurred because the *Contractor* did not follow an acceptance or procurement procedure stated in the Works Information".

2.7. Accepted - the *Project Manager* did indeed instruct Tiger to submit a revised quotation.

2.8. More unprofessional comments made by Tiger in this paragraph of the referral. Such an experienced adjudicator as Mr Peter Higgins will not be misled by these remarks, which are clearly intended to unfairly discredit the *Project Manager* and influence the adjudicator's decision. Tiger did simply re-submit the same quotation.

2.9. The first sentence of paragraph 2.9 is accepted, the remainder is ignored.

2.10. The *Project Manager* did make an assessment of the compensation event under clause 64.3 as shown in Appendix 2 of the referral. We note that Tiger thinks it is unfair, and we agree that Mr Peter Higgins is a very reasonable man, who is more than capable of forming his own view on the merits of the claim, and on the assessment made by the *Project Manager*.

2.11. ZDSL wishes to raise another point in relation to this issue. The requirement for mirrors in the main dance hall was discussed during the pre-contract award meeting on 1<sup>st</sup> July 2013. This meeting was attended by the *Project Manager*, Mr L Spence of ZDSL, and Robert Gerrard of Tiger. During this meeting, the *Project Manager* specifically clarified the requirement for wall to ceiling mirrors in the main dance hall, and there was a discussion about whether 3 walls would be sufficient or 4. This conversation concluded with the *Project Manager* stating his strong preference for mirrors on all 4 walls of the main dance hall. There does not appear to be any written record of this meeting, however the *Project Manager* is happy to provide oral evidence to support these facts.

### 3. Summary

3.1. The redress sought by Tiger is not made entirely clear in paragraph 3.1 of the referral. Our interpretation is that this adjudication is about the assessment of a compensation event, and that the referral requires the *Adjudicator* to decide whether Tiger's claim for £8,800 for this compensation event is correct, or not. It does not automatically follow that the *Adjudicator* is required to (or being asked to) order any payment from ZDSL to Tiger, or any interest, as no such request has been properly made or substantiated. ZDSL maintains that the assessment made by the *Project Manager* of the change to the Prices for this compensation event is correct, for the reasons given by him and in this response.

3.2. Contains arguments and statements which are repeated, and dealt with elsewhere in this response.

3.3. Interesting, but irrelevant.

## DANCE STUDIO

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From Wikipedia, the free encyclopedia



Dancing lesson at College, [Cambridge](#)

A **dance studio** is a space in which [dancers](#) learn or rehearse. The term is typically used to describe a space that has either been built or equipped for the purpose.

A dance studio normally consists of a smooth floor covering or, if used for [tap dancing](#), by a [hardwood](#) floor. In most cases the floor is [sprung](#), meaning the construction of the floor provides a degree of flexibility to absorb the impact of intensive dance exercise, such as jumping. This is considered vital to promote good [health and safety](#).<sup>[1]</sup>

Other common features of a dance studio include a [barre](#), which is fixed to the wall at approximately waist height and used as a means of support. As [music](#) is an integral part of dance, nearly all dance studios have a sound system for playing CD's or casset tapes, and a [piano](#) is still commonly used to accompany [ballet](#) and [tap dance](#), especially in professional studios. In purpose-built dance studios, it is typical for at least one wall to be covered by floor to ceiling mirrors, which are used by dancers to see their body position and alignment.





22<sup>nd</sup> April 2014

In the matter of an adjudication between Tiger Construction Ltd and Zumba Dance School Ltd

Dear Mr Peter Higgins,

We are in receipt of ZDSL's response to our claim dated 17<sup>th</sup> April 2014 and would like to make a further submission to address many of the shortcomings within the document. We would need a further week to prepare this properly.

Yours faithfully,

Robert Gerrard

Contracts Director, on behalf of Tiger Construction

**By email**

To: Robert Gerrard, Contracts Director, on behalf of Tiger Construction  
and Matthew Garratt, Project Manager on behalf of Zumba Dance School Ltd

22 April 2014

**Adjudication between**

**Tiger Construction**

**and**

**Zumba Dance School Ltd**

Mr Gerrard, Mr Garratt:

I now have Tiger Construction's submission of 14 April and Zumba Dance School response of 17 April 2014. I also have Tiger's request to submit a reply in their email of 22 April.

I have considered the submissions made, and have identified a number of issues where further information is needed by me to reach a decision. I consider the most effective way of dealing with those issues is for me to obtain clarification at a meeting.

The issues I need to deal with are listed below. Would you each prepare brief notes on the questions I have raised and bring them with you to the meeting. No other general submissions are needed.

At the meeting, you may explain your views further and deal with any final queries I have.

The issues are:

- 1) Ambiguity in the Works Information – no further information required.
- 2) There is a difference of opinion on the extent of mirrored walls required for a dance studio. Please explain further the basis for your opinion.
- 3) Would Tiger Construction explain how the subcontractor was chosen for the mirror installation and why their price was considered acceptable.
- 4) Would the Project Manager provide any further information to substantiate his assessment for
  - a) .the non-competitive price of the subcontractor and
  - b) the risk allowance.
- 5) Would Tiger Construction explain how they assessed the risk allowance in their quotation.
- 6) Would each party advise on the relevance of the pre contract discussions.

7) Whether or not I may order payment to Tiger - no further information required.

8) Addition of interest - no further information required.

I propose a meeting at my offices on 28 April at 2.00 pm. Please confirm that you are able to meet that date.

Peter Higgins

Adjudicator

**Adjudication between  
Tiger Construction  
and  
Zumba Dance School Ltd**

**Issues in dispute**

	Tiger position	Other	PM position
1. Is there an ambiguity in the Works Information	Yes		No
2. How many mirrors are required by contract	None	1	3
3. What is significance of Tiger's failure to submit proposals for the mirrors	None		Reject any resulting additional costs
4. Lack of competition for work - disallowed cost	Not disallowed		Accept PM disallowed value
5. Build up of PM assessment	Reject		Accept
6. Risk allowance	Accept Tiger allowance		Accept PM allowance
7. Pre contract discussion	Not relevant		Accept as identifying contract requirement
8. Payment to Tiger	Include in decision		Do not include
9. Interest	Include in decision		Do not include
Adjudicator's assessment of compensation event			

In the matter of an adjudication between Tiger Construction Ltd (“Tiger”) and Zumba Dance School Ltd (“ZDSL”)

## Response to Adjudicator’s Email Questions

### Question 2 – Extent of mirrored walls required for a dance studio

Firstly, the extract from Wikipedia makes clear that a dance studio typically has: “at least one wall to be covered by floor to ceiling mirrors”. Therefore one wall is the bare minimum. The Works Information requires: an “industry best” dance studio. This is a much higher than bare minimum specification. Best is the best – it means there is none better. Therefore the maximum number of mirrored walls is obviously required.

### Question 4 – The Non-Competitive Price & Risk Allowance

The non-competitive price of the subcontractor is assessed as £500 on £7,500: 6.67%. In my experience of competitive tender situations, the spread of tenders is usually 10% or more. I also know that there is significant negotiation opportunity in competitive tender situations which in this case has been wasted. I would expect at least a 10% reduction from the first price quoted by the subcontractor if a proper post-tender negotiation had taken place. I have therefore used 6.67% as a conservative estimate of the non-competitive element in the price obtained.

As for the risk allowance for correcting Defects, I consider this to be a Contractor’s risk and therefore not included in my assessment.

### Question 6 – Pre-contract Discussions

The relevance of the pre-contract discussions is that it addresses the very issue that is being argued here. We discussed whether 3 or 4 mirrored walls would be required, and I made it crystal clear that 4 was expected. I expect both parties to act in a spirit of mutual trust and co-operation, and not to deny what we both know was agreed face to face at the time the contract was awarded.

### Wikipedia Evidence

In support of Wikipedia as an information source used in legal cases in the USA:

St John’s Law Review Volume 84:

*“Wikipedia citations show up by the hundreds in cases, by the thousands in law review articles, and in countless numbers of legal briefs. Courts have also cited similar websites, like Wiktionary—the online dictionary equivalent of Wikipedia.”*

Wikipedia had 606 cites in the federal and state cases database on LexisNexis as of April 11, 2010

Wikipedia had 2086 document cites in Westlaw’s Journals and Law Reviews (JLR) database as of April 18, 2010