
From: Gill Lindsay [Gill.Lindsay@edinburgh.gov.uk]
Sent: 08 May 2008 10:36
To: Fitchie, Andrew; Willie Gallagher; Graeme Bissett
Subject: RE: Update

Andrew

Thank you. This is helpful. Totally appreciate the current focus. Totally appreciate this is and can never be free from risk but we do need agreed legal view of ability to successfully defend ie how secure are we on this . From letter to Tramlines we have focussed on price differentials. My view is we would need to rerun with current likely additions. Donald discussed value briefly with Graeme re matters in letter and it would be helpful if we can identify financial value.

Gill

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 08 May 2008 08:52
To: Gill Lindsay; Willie Gallagher; Graeme Bissett
Subject: RE: Update

Legally privileged and FOISA Exempt

Gill

Thanks for the note. As matters evolve, I should be a better position than I am tonight to form a view on what you ask about. At the moment, I am endeavouring to support **tie** in actually nailing down the deal - which obviously plays back into some aspects of the detailed contract provisions and I need to focus that at present as well as managing the DLA Piper team who will be geared to work over this week end to service a close early next week. because the freeze on engagement there is still work to be done in making the document suite ready for execution. As we are , we have approximately 95% of the actual execution documents sitting complete but this last round will impact with domino effect.

I do not know what the final outcome is yet but you will have understood from my comments at the TPB this morning that this solution will not be free from risk of challenge or investigation. It was designed on an urgent basis within **tie's** letter yesterday to contain elements which would have a chance of demonstrating tangible value for money and risk re-balance, which could be attainable in the intense timeframe **tie** has to work within (there was a longer "shopping" list which I had prepared, but a commercial view was taken to be selective and not to risk presenting too complex a menu for BBS to object to).


The ability to ward off a challenge, if one were to eventuate, or stand ground in an investigation will rest on:

- what **tie** manages to wrestle from BBS in this last round and what BBS extracts
- what profile the final price for the project is given
- what appetite there would be for investing time and money to challenge **tie** and from whom
- what likelihood there is of a disgruntled individual or business launching a speculative complaint with the EU Commission

These are risk permutations, rather than legal points, but I shall cover these aspects in the report you ask for. The most relevant jurisprudence, in my view, is the EU Commission's investigation of the *London Underground* project the thrust of which I shared with Willie, Graeme, Steven, David Mackay when **tie's** plan of action and the written response was being formulated..

kind regards

Andrew Fitchie
Partner, Finance & Projects
DLA Piper Scotland LLP
T: +44 (0) [REDACTED]
M: +44 (0) [REDACTED]
F: +44 (0)131 242 5562

 Please consider the environment before printing my email

From: Gill Lindsay [mailto:Gill.Lindsay@edinburgh.gov.uk]
Sent: 07 May 2008 19:27
To: Gill Lindsay; Willie Gallagher; Graeme Bissett; Fitchie, Andrew
Subject: RE: Update

Hi Andrew

Can you give DLA view at present on procurement issues please assuming the position concludes as anticipated today. I am keen to receive now as matters advance to either clear this or highlight this as an issue re risk and at what level and with what advice.

Letter states many issues equal and majors on price. How will DLA sign of in letter to Tie and CEC. We need to clear this as we go forward with Member approval, Report currently being drafted. Do you remain satisfied on defending a procurement challenge and on what basis?

Gill

From: Gill Lindsay
Sent: 06 May 2008 15:43
To: 'Willie Gallagher'; Graeme Bissett; 'Fitchie, Andrew'
Subject: RE: Update

Thanks Willie.

Looking forward I have just received a copy of the debrief letter including the Notice of Intention to Award given to Tramlines. This states that BBS were some 4/5% lower on price and a range of other info. Clear understanding is of price fixed as of 18 March. Is it possible to have a financial calculation done now with some possible outcomes to have some additional info re procurement. Appreciate entirely first issue is to get solution but it would be good to know how close we are reaching.

I would also appreciate Andrew's view as to whether and how price differential will impact on notifications ie will there be a requirement to advise Tramlines again and if so will there be a potential for a further cooling off period and how can any risk here be managed.

Gill

From: Willie Gallagher [mailto:Willie.Gallagher@tie.ltd.uk]
Sent: 06 May 2008 07:10

To: Dave Anderson; Donald McGougan; Gill Lindsay; Phil Wheeler
Cc: Steven Bell; david_mackay [REDACTED]; Graeme Bissett (external contact)
Subject: Update

I met yesterday with BB in the tie Office. I was accompanied by Steven Bell & David MacKay.

BB reiterated their problem. It started at £17m, they propose actions which reduces it to the £12m discussed with me last week. It is claimed to be all down to the Supply Chain for not honouring prices given to the project at a previous time, Steel and Fuel were mentioned particularly. They acknowledge internal weaknesses and appeared genuinely sorry for causing the predicament.

We held the agreed line, no more money and even if there was, we have an EU Procurement problem with TramLines.

At the end of the meeting, I had a one-to-one with Joachim Enenkel, their Board Director. He raised the possibility of a refund of £3.3m should 1(b) not proceed. This would leave circa £9m. I suggested to him that tie / Siemens / BB should all then take £3m each. This was not discounted and he plans to discuss this with Siemens today. I suspect that Siemens will see this as BB problem, and be reluctant to contribute £3m margin.

In summary, we have a visible £9m problem. The phase 1(b) is worth having, but we would require to provide a contingency for the sum and we need some clarification of it no reappearing again in the future 1(b) price.

I have an opportunity to meet with both Siemens & BB tomorrow in Munich. This unfortunately means that I will miss the Tram Project Board. If it would be possible to pull the Board forward to this afternoon, it would be extremely helpful. I will ask Julie to check all diaries.

Regards,

Willie

The information transmitted is intended only for the person to whom it is addressed and may contain confidential and/or privileged material. If you are not the intended recipient of this e-mail please notify the sender immediately at the email address above, and then delete it.

E-mails sent to and by our staff are monitored for operational and lawful business purposes including assessing compliance with our company rules and system performance. TIE reserves the right to monitor emails sent to or from addresses under its control.

No liability is accepted for any harm that may be caused to your systems or data by this e-mail. It is the recipient's responsibility to scan this e-mail and any attachments for computer viruses.

Senders and recipients of e-mail should be aware that under Scottish Freedom of Information legislation and the Data Protection legislation these contents may have to be disclosed to third parties in response to a request.

tie Limited registered in Scotland No. SC230949. Registered office - City Chambers, High Street, Edinburgh, EH1 1YT.

This email and files transmitted with it are confidential and are intended for the sole use of the individual or organisation to whom they are addressed.

If you have received this eMail in error please notify the sender immediately and delete it without using, copying, storing, forwarding or disclosing its contents to any other person.

The Council has endeavoured to scan this eMail message and attachments for computer viruses and will not be liable for any losses incurred by the recipient.

ReduceRe-useRecycle - From May 1 to May 9, DLA Piper offices around the world are participating in a campaign to reduce our waste and encourage recycling within our firm.

Click [here](#) for more information. Please consider the environment before printing this email.

This email is from DLA Piper Scotland LLP.

The contents of this email and any attachments are confidential to the intended recipient. They may not be disclosed to or used by or copied in any way by anyone other than the intended recipient. If this e mail is received in error, please contact DLA Piper Scotland LLP on +44 (0) 8700 111111 quoting the name of the sender and the email address to which it has been sent and then delete it.

Please note that neither DLA Piper Scotland LLP nor the sender accepts any responsibility for viruses and it is your responsibility to scan or otherwise check this email and any attachments.

DLA Piper Scotland LLP is a limited liability partnership registered in Scotland (registered number SO300365), which provides services from offices in Scotland. A list of members is open for inspection at its registered office and principal place of business Rutland Square, Edinburgh, EH1 2AA. Partner denotes member of a limited liability partnership.

DLA Piper Scotland LLP is regulated by the Law Society of Scotland and is a member of DLA Piper, a global legal services organisation, the members of which are separate and distinct legal entities. For further information, please refer to www.dlapiper.com.

GLOBAL ENVIRONMENT WEEK AT DLA PIPER - 29 January to 2 February 2007
www.dlapiper.com/sustainability

Please consider the environment before printing this email
