
From: Gill Lindsay
Sent: 31 October 2007 10:24
To: Alan Coyle
Cc: Duncan Fraser; Rebecca Andrew; Donald McGougan
Subject: RE: Feedback from DLA on Contractual Issues

Alan

following LAG on 22 October DLA asked Susan Clark at Tie and myself for further commentary on the points before approaching OGC. Andrew and I have not met since then but we have a planned call soon and I will provide him with additional detail. I am certain that DLA will then take the matter up quickly with OGC. Andrew did give us his initial view at LAG when I raised both points, being

re point 1, there requires to be a role which will eg approve matters and permit contract payments to flow. Duncan Fraser advised that this role need not be carried out by Tie and could be another party. This is really a technical/contract management issue for determination.

re point 2, this was a reference to the Croyden situation where DLA advised they considered there was a mis match between the requirements and the specification in the schedules re the supply of sufficient number of trams. There is awareness of the issue and risk of ensuring consistency through the contract documents.

I will ask DLA to advise us further at next LAG on Monday. Thanks for following this through.

Gill

From: Alan Coyle
Sent: 31 October 2007 09:18
To: Gill Lindsay
Cc: Duncan Fraser; Rebecca Andrew; Donald McGougan
Subject: Feedback from DLA on Contractual Issues

Gill

At legal affairs on 22nd Oct you raised the contractual issues noted by the OGC team below:

Firstly, they stressed the concerns already expressed in the report that they do not feel that **tie** have either the team or strategy in place to adequately manage the contract. This needs to be raised with **tie** as a matter of urgency as it is important that the team who will be managing the contract know it inside out. This is best done by involving them at the negotiation stage. The OGC team have given tie names of people appropriately skilled and experienced, although there may be others. (Susan Clark will report to the next Tram Project Board on tie's Contract Management Strategy)

This leaves the concerns below:

The concerns about the contract are two-fold

- 1) it places obligations on **tie** to manage the Infraco – if **tie** fails to do this, they could be open to legitimate claims from Infraco. The paragraph they pointed us to concerned the requirement to tie to give permission for the covering up of works (but there are likely to be others).
- 2) The contract is a fairly standard contract, with all the detailed specification being in the Employers Requirements. The team have experience of judges making rulings based on what is said in a main contract, ignoring accompanying schedules. One of the panel quoted losing £40m in a similar situation.

Andrew Fitchie was to take these comments up with OGC and feedback prior to the cancelled Legal Affairs meeting on the 29th.

Do you know if these issues have been addressed and feedback received.

Regards
Alan

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