

To: Fitchie, Andrew[andrew.fitchie@dlapiper.com]
Cc: Glover, Joanne[Joanne.Glover@dlapiper.com]
From: Graeme Bissett
Sent: Thur 13/03/2008 7:51:07 PM
Subject: Final CEC requirements
[QRA_DLA_align \(v2\) 13.03.08.doc](#)
[Infraco readiness and ERs 13.03.08.doc](#)
[ASSESSMENT OF RISK OF PROCUREMENT CHALLENGE 12.03.08 v3 Clean.doc](#)

Andrew, below is the note I intend to send to Gill at midnight or so tonight. Let me have your comments on it. The attachments are described in the text, comments also welcome. I have added the procurement risk paper but will not send this to CEC. I think you got this earlier.

Gill, this email responds to the matters we discussed by phone this afternoon. I would be grateful if you would urgently review the content of this email and the attachments. The intention is to establish a platform from which we can quickly conclude matters supporting the Notification tomorrow morning.

Please find attached a brief note from me summarising the updated position on all of the key components of the Infraco negotiations, which reflects a meeting of the tie project management team held here tonight to conclude on readiness for issue of the notice. Although there has been good progress today, you will see that there are [XXX] matters which are not sufficiently concluded. We also addressed the Employer's Requirements alignment and a more detailed note attached summarises the position. You know that we have already concluded on SDS. Subject to resolution of the [XXX] points we concluded that the position reached supports the issue of the Notification.

I also attach on behalf of DLA a draft letter which updates their letter to you dated yesterday. This addresses the up to date position on Infraco terms and Employer's Requirements as set out in the paper attached. Please note that we asked DLA to give you this draft form of letter which presumes that the [XXX] matters above are satisfactorily concluded. The purpose is to ensure that the proposed final form of the DLA letters is acceptable. Unless the issues are satisfactorily concluded, the DLA letter will need to be amended and indeed we may not be in a position to recommend issue of the Notice.

These [XXX] matters are being urgently addressed and we will keep you abreast of progress.

The draft DLA letter also addresses procurement risk. We have updated the paper on procurement risk which supported the DLA letter dated yesterday, which Andrew Fitchie has reviewed. This paper now has a very detailed comparative financial analysis of the bids and it is necessary for us

to keep this material under lock and key here to minimise the risk of breach of confidentiality undertakings. However, you will notice that the new draft DLA letter now positively supports our robustness against the risk of challenge.

Finally, I attach a note explaining the linkage from the DLA letter to the risk contingency contained in the project budget.

We will need to satisfy ourselves at tie that we have a robust position on the [XXX] outstanding Infraco issues. Assuming we can achieve this, we are strongly of the opinion that the Notification must be issued tomorrow at the latest. We all need to bear in mind that there are potentially severe consequences of delay. Our negotiators have successfully used the guillotine of both today's Council meeting and the impending financial year-end to achieve considerable progress with counter-parties who are using the passage of time to try to damage the tie / CEC position. Delay in the issue of the notice will diminish our negotiating credibility. Even more fundamentally, delay from today onward will jeopardise the chances of completing the contract in time to crystallise the 2006-7 funding from Transport Scotland, creating a range of possible difficulties for achieving Close on the agreed financial terms and substantial borrowing pressure on the Council. The ten-day interregnum is calendar days – the weekend of 15th / 16th could be critical.

I understand that you are meeting at 8.00am tomorrow and a team of tie's senior team will be at Waverley Court available if you wish to speak with us in order to achieve resolution of any final questions.

Regards

Graeme

Graeme Bissett

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