
From: Colin MacKenzie
Sent: 29 August 2008 11:40
To: Duncan Fraser; Marshall Poulton
Cc: Nick Smith
Subject: RE: Tram - contract law

Duncan,

This sounds rather ominous, but not altogether surprising. I cannot recall the number of warnings given by the "B Team" about the risk of claims materialising in this project. It beggars belief that three consecutive Legal Affairs Group meetings have been cancelled by **tie**, as if there was nothing to discuss which might have implications for the Council.

Before we rush off to procure any external legal advice, which would have to be procured by the Council Solicitor, can we meet to discuss what the nature of the claims might be, the extent thereof etc. You will recall the roles of the Tram Sub-Committee and the Council respectively in connection with any claims over £500,000. What we have to look at is a strategy for dealing with compensation events which are to be picked up by the Council. As you say DLA will be protecting **tie's** interests under the contract. Presumably, although not guaranteed, **tie** will keep the Council fully informed on all compensation events and on their response to same, copying us in on legal advice which they receive from DLA. We would then have to take a view on these matters, advising City Development and Finance as appropriate. It may also be necessary to provide legal advice in reports to elected members at the Tram Sub-Committee or at full Council.

I am not saying at the present time Legal Services cannot do this work. We have contract specialists and litigation specialists within the Division, but we are not Tram contract specialists. My suggestion is that we meet to discuss these matters and then take a view on what resources and expertise might be needed, when and at what frequency to protect the Council's interests as guarantors and statutory undertakers.

Kind regards,

Colin MacKenzie
for Council Solicitor

From: Duncan Fraser
Sent: 28 August 2008 20:04
To: Marshall Poulton
Cc: Colin MacKenzie
Subject: Tram - contract law

It can be anticipated that **tie** will have to engage on extensive compensation events discussions with their contractors. They has DLA working to advise them. The issue arises that either through contract are as part of the Council liability for roads and tram that we may require at short notice independent advice. This has been a matter of debate for some time through LAC, without any conclusion. I am advised by Colin that legal services do not have the expertise. I suggest that CEC appoint a contract law adviser and one that has sufficient experience of such large scale contract and trams in particular. This work seems out with the scope of the term contract of professional services. One way forward would be to start a formal procurement process now so that we can prepare for the claims events over the next 3 years, in terms of the Council's interests and including an evaluation of **tie** reports from DLA and other claims consultants.

Our earlier discussion on this matter can now be separated from the technical matters as we have a common way forward with **tie** on this matter.

I would appreciate your guidance and direction on this matter as I am led to believe that already BSC are preparing multi million pound claim against **tie**.