
From: Colin MacKenzie
Sent: 10 March 2008 15:22
To: Gill Lindsay
Cc: Alan Coyle; Rebecca Andrew; Duncan Fraser; Nick Smith
Subject: RE: Close Report

Importance: High

Gill,

Thanks for copying me in on this exchange.

I agree with you on the sign-off by Willie Gallagher and thought that this was actually agreed as a Council requirement some time ago to accompany the Critical Contractual Decisions report.

I do wonder whether tie can realistically confirm that the terms recommended are consistent with FBCv2 with our current state of knowledge.

I agree with you on the requirement for DLA to advise on any procurement risks flowing from the change to the risk allocation on design approvals. What we have not been told is the detail of the ITN on this matter. The FBCv2, which presumably reflects the ITN provisions, made a very clear statement that the private sector would be taking these risks. My paper on 28 February sets this out in more detail.

For your assistance in discussion with Andrew Fitchie can I suggest a number of other matters that need his attention. You will recall that BBS would not accept a qualification to the effect that they would bear liability for any actions of theirs which caused a reduction of or withdrawal of grant by Transport Scotland. Although the probability of this loss is quite low, I suspect the impact for the Council would be significant. We also need some security in relation to the Side Agreements at the Parliamentary Stage: it was never clarified whether all of these agreements had been exhibited to BBS and likewise whether BBS had priced on the totality of the obligations.

I would also like to flag up a governance matter. I understand that tie board and TPB are to consider their final positions on 12 March. Whilst the TEL Operating Agreement is still to be signed, it does include at Clause 2.20 two significant limitations on TEL's powers. Because TPB is stated to be a sub-committee of TEL, I would argue that TPB operates under the same limitations as TEL. Crucially TEL have no jurisdiction where the project is delayed by more than three months, nor where there is any increased cost over £10 million relative to the capital cost of £498 million. I have just read the latest Project Cost Estimates which this afternoon stand at £511.7 million. These are matters which are reserved to the Council, supporting the view that the changes should be reported to Council on 13 March 2008.

One final matter to draw to your attention on an issue of internal governance. In moving an amendment to reject the Final Business Case on 25 October 2007, the opposition moved to note " that the full risk report for the project would not be made available until after contract close, requiring Councillors to make decisions without access to essential information." That amendment was defeated, but arguably there is still a duty on officers to notify members of the changes to the cost, risks and delivery dates since 20 December 2007.

I am meeting Alan Coyle and Duncan Fraser prior to the LAC and will assist them in identifying the changes to FBCv2 in order that you may have a draft letter tomorrow morning.

Regards,

CEC01399012_0001

Colin MacKenzie
For Council Solicitor

-----Original Message-----

From: Gill Lindsay
Sent: 09 March 2008 22:07
To: Graeme Bissett; Gill Lindsay
Cc: Donald McGougan; Alan Coyle; Rebecca Andrew; 'Willie Gallagher'; 'Susan Clark'; 'Steven Bell'; Andrew Holmes; 'Fitchie, Andrew'; Colin MacKenzie
Subject: RE: Close Report

Graeme
Rest of response, sorry to quick with the keys!

As noted if the matrix held by Fin and Duncan can be closed out wherever possible this will narrow any remaining diligence issues for CEC. I have briefly considered your style close report sent by separate mail and agree this. 1 suggestion is you may wish Tie to recommend the final terms negotiated to CEC in order for Tom to receive this together with his internal sign off. Officers at CEC are considering this now. It would be helpful for Tie recommendation to also confirm that terms recommended are consistent with the Final Business Case version 2.

It would also be essential for DLA to confirm that no procurement issues arise following further negotiation of terms and allocation of risk.

I will be picking up mails and it would be very helpful to have a call Tuesday am to update and as you say plan remaining activities.

Gill

-----Original Message-----

From: "Graeme Bissett" <graeme.bissett@edinburgh.gov.uk>
To: "'Gill Lindsay'" <Gill.Lindsay@edinburgh.gov.uk>
Cc: "'Donald McGougan'" <Donald.McGougan@edinburgh.gov.uk>; "'Alan Coyle'" <Alan.Coyle@edinburgh.gov.uk>; "'Rebecca Andrew'" <Rebecca.Andrew@edinburgh.gov.uk>; "'Willie Gallagher'" <Willie.Gallagher@tie.ltd.uk>; "'Susan Clark'" <Susan.Clark@tie.ltd.uk>; "'Steven Bell'" <Steven.Bell@tie.ltd.uk>; "'Andrew Holmes'" <Andrew.Holmes@edinburgh.gov.uk>; "'Fitchie, Andrew'" <Andrew.Fitchie@dlapiper.com>; "'Colin MacKenzie'" <Colin.MacKenzie@edinburgh.gov.uk>
Sent: 08/03/08 12:33
Subject: Close Report

Gill, the negotiations yesterday were successful in reaching a sound conclusion within the parameters we discussed on Thursday evening. Effort is now focussed on finalising all of the detailed terms of the principal documents which we must complete to support issue of the Notification of Award. You are aware that we are seeking to update the Close Report early this coming week to reflect the final form of the key documents. To avoid duplication and to focus efforts, I have asked DLA to pick up the Close Report sections on the Infraco Contract Suite and the Council's Guarantee.

These sections will now be contained in a report to tie and CEC from DLA which will summarise the key terms. DLA's drafting will update the draft material already in the January version of the Close Report and will address the same headings and issues. The DLA Report will then be incorporated as an Appendix to the full Close Report.

This approach will avoid duplication and will ensure that all of the important legal as well as commercial / technical dimensions of the Infraco suite finalisation are reflected in the Close Report.

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The DLA report will incorporate the letter and risk matrix we have discussed previously. It is also important that the DLA Report picks up all of the confirmations the Council is seeking which DLA can reasonably be expected to provide and I would also like to ensure that the wording of these confirmations is agreed between CEC and DLA before we get to Wednesday. Can you let me know who from the Council we can discuss the scope and wording of DLA's confirmations with, preferably on Monday 10th.

Thanks

Regards

Graeme

Graeme Bissett

m : +44 [REDACTED]