

I refer to the recent emails and meetings re Infraco and Tramco and thought that I should bring to your attention a current issue which is of major concern to the team.

As you know, the Council is now likely to be asked to guarantee all of tie's financial obligations in relation to Infraco (and possibly Tramco). In short, the Council will be expected to stand behind tie for all significant purposes. The Council therefore needs to be absolutely sure that the Infraco and Tramco negotiations have been carried out in the Council's best interests and that the final contract represents the best possible protection which the Council could expect given a project of this size and nature. Indeed, in due course I assume that the members will need to be appraised of all inherent risks in order that they may formally allow the Council to contract with the bidder.

As previously indicated, it is my view that it will be impossible for the internal legal team to provide the expected comfort in relation to the contracts as this would require a full review of all the negotiations to date by persons familiar with this type of transaction. Legal Services have neither the experience nor the manpower to undertake such a task, especially given the time now available. Accordingly, as per our previous options paper on this issue, to progress matters a decision will have to be taken by the Council to either (i) accept that tie have considered the Council's interests to date and have appropriately negotiated the deal on this basis; or (b) have a formal independent legal review carried out on the negotiations to date.

What now appears to have been offered is that the Council is treated as joint client from the preferred bidder stage onwards. This would be useful in theory, but given the Council has not been involved in the lengthy and complex negotiations to date, it is not clear what comfort or assistance this will actually provide in practice. In short, to provide effective input at this stage would require the Council to fully understand all the previous negotiations and be satisfied that the position to date is acceptable. tie have indicated to the Council that they are clearly not expecting a full review of the documentation at this stage as this would be too time consuming. Indeed, tie have previously indicated that all major principles are already agreed and it is not practicable for the Council to have input into the detailed drafting. However, to give the Council sufficient comfort, I am not sure what other option there is. Whilst an independent high level review of the risks highlighted by DLA would be possible, anything short of a full review would still require the Council to accept and approve that tie's negotiations and instructions to DLA to date have been sufficient in terms of the Council's wider interests and obligations. This is not something which in my view Legal Services could approve as it is a commercial issue.

Therefore, whilst a letter from DLA appointing us as joint client, together with a risk matrix, may go some way to assisting the Council and its advisers in understanding the current position, it does not in my view remove the primary issue, being that the Council has had no involvement to date in the negotiations. Indeed, it now appears that even DLA have not been involved at all stages. We understand from tie that DLA have simply been providing advice on specific issues as negotiated between tie and the bidders direct.

In our view this is a significant issue which requires to be addressed as soon as possible in order that sufficient comfort will be able to be given to the members in due

course when formally approving the terms of the contract. Failure to address this issue quickly may also give the opportunity to accuse the Council of dragging its feet. Without an independent review or a high-level decision to homologate the past-actions, officials may not be able to provide the comfort which will inevitably be sought by members.

Accordingly, I should be grateful for your recommendation on how best to proceed in the circumstances. Given the nature and significance of the issue, it may be that you will wish to obtain input from the appropriate Directors.

On another note, it has been made clear to Council officials by the fact that certain parts of the project, including MUDFA, are experiencing delays and other delivery problems. Whilst details are incomplete at present, it is clear that the Council is now aware of such information. I should be grateful for your views as to when you consider that the Legal have an obligation to recommend that such issues be brought to the attention of the members given the financial implications for any projected overspend, which now appears to be inevitable.