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Sent: 03 March 2008 10:00
To: Willie Gallagher; Steven Bell; Stewart McGarrity; Colin McLauchlan; Jim McEwan
Subject: COMMERCIALY CONFIDENTIAL and URGENT

The note below could have adverse impact on the negotiations underway with the bidders and is therefore exempt from disclosure under FOISA.

This is a critical week for the negotiations and almost all focus will be on getting to an acceptable conclusion. The additional problem is the interaction with the issue of a public report to the full Council, probably on Thursday 6th, followed by the Council meeting on the 13th, where any discussion will again be public. There are two serious sensitivities we need to manage :

1. That the message which reaches the public is that the signing of the construction contracts is now two months late, there is uncertainty about the final contract terms and yet we are progressing massive works in the city, spending substantial money and there is doubt about our ability to conclude the contracts on acceptable terms with grave consequences for the project etc etc
2. That the commercial negotiations are made more difficult to conclude on acceptable terms, eg because the public announcements imply to BBS that they are even more secure than they already believe they are at a point where serious negotiations are still underway.

The options are :

1. We get to such a stage of agreement that we can send the Notification of Award prior to the meeting on the 13th, which would require that the Report to council on the 6th be shaped as a brief holding notice with the expectation that the Notification will be issued "imminently". In this world, to the extent thought necessary by Council officials, any material shift in cost / programme / risk profile or scope compared to the December 2007 Business Case would be disclosed.
2. No report is prepared by the council and no discussion takes place on the 13th, with the Council Chief Executive able to rely on his existing delegated authority to manage the process in the Council's best interests.
3. A Report is issued which carries less certainty about conclusion and also highlights any material changes since December 2007.

Option 1 is clearly the most desirable outcome, with minimal change of any substance to the December 2007 terms. This is what we are driving for but the influence of BBS looms large. In addition to the hand-to-hand negotiating combat, we should address how we can impress on BBS early this week at all the right levels that an option 1 outcome is in everyone's best interests. We should also prepare a draft report with CEC to cover this scenario. The decision point is probably lunchtime Thursday 6th before the Report is circulated, although later circulation is possible at the risk of increasing the profile of the document.

Option 2 should be discussed with Council officials early this week. Their position will be influenced most by the extent to which the final terms are within reach and are in line with December 2007. If conclusion is a long way off, weeks rather than days, and / or if the terms are moving definitively away from £498m / Spring 2011 (or risks are shifting back to the council), I'd expect officials to require some form of disclosure. On the other hand, if matters are progressing well this week and we believe that there is genuine commitment to conclude by BBS on sensible terms, this may become an option. A half-way house

might be a report either in writing or verbally but which is restricted to a statement that negotiations are at a delicate but final stage with notification of award and conclusion expected this month. The delay from January can be properly explained as supporting the need to get the right deal.

Option 3 would create the most difficulty in public presentation and would open up possible political problems and funding uncertainty especially with the financial year-end looming. On the other hand, complacency by BBS that they are in charge of events might be significantly weakened, accelerating progress to a good conclusion. We should discuss this option asap and address the drafting for this scenario.

In all three scenarios, the next decision point is probably around lunchtime Thursday, but I'd prefer if we had the options agreed and drafting prepared well in advance.

There is a very delicate balance to be struck between ensuring that Elected Representatives are fully appraised of the state of play on a major project, but not doing anything which could result in a worse result for the Council and the public purse. The Council's officials will have their own views on how best to handle this, but the swing factor is the status of the negotiations and I think we should therefore take the lead in addressing how this is handled even if they have the final decision.

I would like to have a discussion on the options during today - say 4pm - with those not tied up in negotiations and we could then convene after tonight's LAC at around 6pm for a discussion with CEC officials, restricted to Andrew Holmes, Gill Lindsay and a representative from Donald's team.

Would you let me have your views by return and I'll make the arrangements.

Regards
Graeme

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