
From: Fitchie, Andrew [Andrew.Fitchie@dlapiper.com]
Sent: 09 March 2008 23:04
To: Graeme Bissett (external contact)
Cc: Steven Bell; Jim McEwan; Geoff Gilbert; Stewart McGarrity; Hecht, Philip; Susan Clark
Subject: Close Report
Attachments: 18178167_1_UKMATTERS(Close Report - v6 responses (ASF comments 09.03.08)).DOC; 18180129_1_UKMATTERS(Infraco Risk Allocation Matrix March 2008).DOC

Here are:

- DLAP version of the Close Report including Tramco section, corrections and further commentary.
- The contractual Risk Matrix as at 11pm tonight. We have a check and a Consents section to review tomorrow.

I am starting on the report to the Council now.

In relation to Gill's e mail at 10.30pm approx. , I need to be clear that DLAP will not be in a position to advise definitively that there is no procurement risk, following the negotiations which have been conducted since preferred bidder - not least because we played no role in evaluating the bids other the contractual evaluation.. Price and technical advantage were the factor s which were stated by **tie** to have created differential. There have been several price moves since November and we have no knowledge of the final price offered by Tramlines or of how the technical offering from BBS has change since its Preferred Bidder offering..


The materiality of that risk depends upon the losing preferred bidder's appetite to make a challenge , based on (i) their perception of why it has taken four month to reach award (ii) their assessment of the cost benefit equation. It should not be forgotten that a challenge may be made not just by a losing participant , but by any person.

The main mitigant (in terms of the contractual position) will be that both preferred bidders qualified their final submissions heavily (commercially and contractually).

Kind regards

Andrew Fitchie
Partner, Finance & Projects
DLA Piper Scotland LLP

T: [REDACTED]
M: [REDACTED]
F: +44 (0)131 242 5562

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