
From: Stewart McGarrity
Sent: 16 November 2010 16:58
To: Richard Jeffrey
Cc: Gregor Roberts; Steven Bell
Subject: HANDOVER - DLA Appointment
Attachments: DAL Piper Mandate; DLA Appt_AppointmentBrief_0802.PDF; DLA Appt_DLA v BDB and D&W_1102.PDF; DLA Appt_Pre-Qual letter_0802.PDF; DLA Appt_Procurement Advice_0504.PDF; DLA Appt_tie Press Release_1102.PDF; Legal services; Legal services - DLAP; DLA Piper Fee position -Fitchie Secondment; RE: DLA Mandate and secondment

HANDOVER - DLA Appointment

Richard,

We spoke briefly this morning re the question I was asked by Gavin as per the email below. Appointment of DLA was well before my time - they were appointed late 2002 and I joined **tie** in February 2005. Here's what I can provide at present from the information available to me. I've added some observations and what you might look for to add to this in blue text.

Original Appointment in Nov 2002

In Feb 2010 as part of the my exercise to check we had the appointment documentation for all resources involved in DRP and related matters, I asked Andrew Fitchie himself to give me what he had in his files. He provided the attached email *DAL Piper Mandate* of 4/2/10 and a lever arch file of the documents which I retain. Scanned from that lever arch file and attached are the following:

- *DLA_Appointment_PreQual letter_0802* – Letter to DLA confirming they were one of 4 pre-qualified parties to deliver legal services to tie. Interestingly this was sent by the Purchasing Manager at CEC perhaps indicating that tie being a three men and a dog organisation at that stage did not have the resources to conduct the procurement itself.
- *DLA_Appt_AppointmentBrief_0802* – Which is the document describing the services to be delivered as ties appointed legal advisor. The brief is undoubtedly focussing on the services for the Parliamentary Approval Phase of the project only. There are fairly standard looking assessment criteria at the back. I don't have a tender report itself – nor do I have tie Board paper / minutes recording the selection. I suspect it happened at a tie Board meeting on 15th Nov 2002.
- *DLA_Appt_tie Press Release_1102* – Our press release of 25th Nov 02 announcing the appointment of 3 different sets of legal advisors to complete different parts of the brief ie Bircham Dyson Bell as the Parliamentary, D&W as the public policy, planning and land experts and DLA on procurement. My impression would be that this decision to divi up the mandate did not go down well with either DLA or D&W – may even have been a source of tension between them. I don't have a copy of the actual appointment letter dated 25 Nov 02 – as per AF email of 4/2/10 he couldn't find it either.
- *DLA_Appt_DLA v BDB and D&W_1102* – Further explains the respective roles of the 3 firms.
- *DLA_Appt_Procurement Advice_0504* – This document from May 04 looks like a pitch from DLA to keep the assignment for the procurement phase. I have no details as to what may have prompted the review of their appointment. By that stage they had just finished the procurement of DPOFA which was awarded on 14th May 2004. They had also been involved in the 'Procurement Working Group' which had devised the backbone of the procurement strategy – it may have had something to do with the artificial of Ian Kendall as Project Director for implementation. In my opinion the tie Tram resources were a wee bit dysfunctional even when I joined with the Parliamentary Approval team separate for the Procurement and

Implementation team and not joined up too well. The tie Board papers for April, May and June 2005 say nothing of this review.

Review of Appointment

In addition to the apparent review in May 2004 – there was a further review administered by Graeme Bissett in June 2008 – just after financial close on the Infraco contract. GB emails *Legal Services* and *Legal services – DLAP of 1/7/08* attached. A proposal from DLA dated June 2008 is referred to in one of those emails - I don't have that proposal.

Fees etc

I've been overseeing the DLA invoices for some time – since Geoff Gilbert left at the end of Infraco negotiations (by the way neither Geoff nor Matthew Crosse was actually here at the date of Financial Close). I attached an email exchange between C McLauchlan and AF referencing the latter's dissatisfaction with the Secondment arrangement we had because they led to a large amount of unrecovered DLA time cost – primarily due to a very prolonged close progress beyond preferred bidder stage.

Rates being charged by DLA are just 7% above what they tendered in 2002 – of its own this looks pretty cheap - but value is about what you get for the money of course.

Regards,
Stewart

Stewart McGarrity

Finance Director

Edinburgh Trams

Mobile: [REDACTED]

From: Gavin Henderson
Sent: 15 November 2010 17:28
To: Stewart McGarrity
Subject: DLA

Hi Stewart,

From our conversation earlier today, Gordon Mackenzie contacted me on Friday to ask for some background info on how DLA Piper came to be the law firm chosen by the project. I have already spoken to Susan Clark, Ken McLeod and Dennis Murray about this who have all given me different pieces of information, however ultimately it was before their time on the project.

If it's possible to give him a date and confirm the type of tendering process that was carried out it should be sufficient enough however no one has been able to confirm this so far and the grounds on which they were chosen.

Thanks for your help with this, let me know if the note above isn't clear.

Regards,
Gavin

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