
From: Colin MacKenzie
Sent: 14 January 2008 14:48
To: Nick Smith
Subject: FW: EDINBURGH TRAM: CONTRACT AWARD AND FINANCIAL CLOSE

Nick,

For information.

Colin

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 14 January 2008 14:43
To: Colin MacKenzie; Fitzgerald, Sharon
Subject: RE: EDINBURGH TRAM: CONTRACT AWARD AND FINANCIAL CLOSE

Colin

Thanks for this. Sharon is in fact with **tie** at the moment working on the Employers' Requirements. She and I will be at the LAC meeting this afternoon.

kind regards

From: Colin MacKenzie [mailto:Colin.MacKenzie@edinburgh.gov.uk]
Sent: 14 January 2008 14:27
To: Fitzgerald, Sharon
Cc: Fitchie, Andrew
Subject: FW: EDINBURGH TRAM: CONTRACT AWARD AND FINANCIAL CLOSE

Sharon,

I refer to my message below. Matters have moved along since Friday in that I understand from **tie** they will not be sending out the Award Notice before 24 January, thus pushing back Financial Close to 5 February at the earliest.

The question now is whether issue of the Contract Award Notice obliges the contracting authority to conclude the contract with BBS ? If, for any reason the contract was not concluded with BBS would this create any rights against **tie** and the Council ?

I suspect this matter may feature at the LAC later today. Would it be possible to have your advice ahead of the LAC meeting ?

Can you forward a style of the Award Notice at the same time ?

Kind regards,

Colin MacKenzie
for Council Solicitor
City Chambers
Edinburgh

From: Colin MacKenzie
Sent: 11 January 2008 12:44
To: 'Fitzgerald, Sharon'
Cc: 'Fitchie, Andrew'; Alan Squair; Nick Smith
Subject: EDINBURGH TRAM: CONTRACT AWARD AND FINANCIAL CLOSE
Importance: High

Sharon,

I wondered if you could assist with a matter relating to the above relationship.

As you may know the Council on 20 December 2007 delegated authority to its Chief Executive to authorise the Chief Executive of **tie** to enter into the BBS contract when the former was satisfied on a number of issues.

I have been made aware that TPB decided on 9 January to approve the formal publication of notice for contract award on 18 January, subject to certain conditions and internal discussion. I do not know what the conditions are.

tie have been asked by the Council to report on a number of matters, referred to as "Contract Deliverables". These have been set by the Council as the basis for satisfying the Chief Executive that he can exercise his delegated authority described above. From the Council's perspective, as Guarantor of all **tie's** financial obligations, I have concerns about the timing of these events. I appreciate that the procurement has been undertaken by **tie** as the contracting authority, and that the issue of the award notice does not constitute a formal acceptance of the BBS offer. The contract will only be concluded at the time of execution, on or about 28 January after the cooling-off period.

My view is that it would be in the Council's best interests to be satisfied by **tie** on the Contract Deliverables before **tie** are given authority to publish the Contract Award Notice, followed at the appropriate time by Financial Close. In other words it is a matter of risk management (including reputation) for the Council.

I would welcome your advice on this matter. Please let me know if I have misunderstood the legal implications of the procurement process in any way.

Kind regards,

Colin MacKenzie
for Council Solicitor
City Chambers
Edinburgh

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