

Len Duvall AM
Chair of the GLA Oversight committee
City Hall
London SE1 2AA

9 March 2016

Dear Mr Duvall

**TfL's internal audit review of the Garden Bridge design procurement
Audit meeting 8 March**

When I appeared before the GLA oversight committee I agreed that I would send you a summary of the matters arising from the TFL Audit committee on 8 March as they relate to the Garden Bridge.

I have broken the summary into three a) discussions on matters arising from the audit to include specific questions raised by your committee b) status of a follow up by external auditors on the audit process relating to the Garden Bridge and c) status of follow up by management on management actions arising from the audit.

A. Questions relating to the Garden Bridge project.

The committee covered the following points:

1) The role of Thomas Heatherwick ("TH") and the initial procurement of design services in March 2013.

The appointment was awarded by Planning and was in conformance with TFL procurement processes. Under TFL procedures the procurement of the design services had to be conducted with TFL commercial department involvement and competition must be involved. It did not require that the bids were individually scored.

Both of the required policies were adhered to fully. However there were some issues with the process. Firstly there was no procurement strategy. The rationale has been explained by several different officers at TFL. TFL was unclear as to the nature of the project and desired to put in place a preliminary exercise to look at concepts- the fee for which had been capped at £60,000. Any strategy document would have made this clear and been helpful.

Additionally there was some contact with bidders outside the evaluation process which did not follow TfL's procurement processes. In particular there was communication with TH after the bids were received. This was for clarification and therefore did not impinge upon the decision to award the project to TH. Nevertheless it was not in accordance with TFL process. These issues were properly picked up and highlighted in the audit drafts and in the final version of the audit report.

The initial draft of the audit report included a misunderstanding regarding the applicable procurement process – it was stated that the procurement needed an OJEU process (it did not as it was £60,000 when the cut off for OJEU procurement was £150,000). The initial draft of the report had included legal advice on OJEU procurement requirements which was given on 8 January. This was before the contract for design services was issued. The Audit report also concluded incorrectly that it required a panel sign off which it did not in view of the size of the contract.

These issues were rightly corrected following comments on the draft audit report from TfL management. It is normal audit practice for Audit reports to be redrafted in order to make sure they are accurate.

The misunderstanding in the draft audit report of the governance required on the contract is unhelpful in explaining the role of Richard de Cani. RDC had the authority to award the contract but agreed it with Michele Dix as TfL Managing Director of Planning beforehand. This point is not covered in the final audit report as the role of RDC was not being questioned at the time. The extent of his role was discussed with the Audit Committee by the Internal Audit team.

There is one further aspect of the TH contract which the committee covered and which I mentioned in my evidence to the GLA oversight committee.

Given that any appointment on the initial design would be important to the project for the technical design prior to any planning application, it might be thought that the larger project should have been taken into account at the beginning at the award for Design services.

There are two reasons given to the committee as to why this was not the case. The first is that the TFL contract with TH had been specific and had ended in July 2013 with the intellectual property rights to the products of that work clearly defined and that TH had no say on the award of the second contract and (furthermore) it was made clear to the bidders on the technical design that they could subcontract to whomever they wanted for any further work. The second reason was that all parties to the second contract bids had full access to all of TH's initial design work and therefore were free to choose the subcontract partner.

2) The appointment of Arup to the technical design project

The project went through a full tender process and evaluation which involved a joint panel from Planning and Commercial in accordance with TFL policies. The procurement was carried out using the Engineering and Project Management Framework (EPMF). The EPMF was properly advertised in the OJEU. This is key to proper procurement.

However there were again some failings in the process including the request made to Arup to review their fees when none of the other bidders were asked to do the same. It is good commercial practice and TFL policy to ask all second round bidders for a Best and Final Offer. The understanding of the committee is that there were five bidders still in the process at this point.

The explanation given to the committee is that Arup were by far the best Technical bid but needed to firm up on price. I can see the argument that as this was a procurement for services and needed the best technical supplier that this was

paramount (TFL had weighted the award criteria 70% towards technical). We can therefore understand that the steps taken by TFL might be reasonable in the circumstances. The explanation given is that they did not want to waste the time of the other bidders. However this was clearly poor commercial practice and everyone at TFL I have spoken to regrets that proper process was not followed. It is a point which has been made to and accepted by TFL management.

It has been also noted that TFL accepted some information from Arup after the deadline for bids had been reached. Again this was not usual process. As a committee we do see that this was a failure of process but cannot see that it produced unfair advantage given the nature of the of the information.

The committee discussed the scoring of the contract and was satisfied that this was done correctly. However it should be noted that the individual notes made by the Panellists during the technical scoring session had been kept for some time but were disposed of before the Audit, These were not the related to the scoring itself but to individual notes.

3) Was the project procurement open, fair and transparent in accordance with good procurement policies

In the first draft of the audit report Internal Audit wrote that there were several deviations from procurement process in that there was a) no procurement strategy b) there were informal contacts with individual bidders c) there was lack of segregation of duties on the design project (though this is an erroneous comment) and d) there were incomplete records.

The first draft then went on to say that “*taken together these adversely impact on the openness and objectivity of the procurements*”. Clive Walker has said to the GLA oversight committee and to TFL audit committee on behalf of Internal Audit that this was omitted from the final paper because it was repeating what was effectively in the report.

The final Audit Report concluded that *“there were some instances where TfL policy and procedure with regard to communication with bidders and tender evaluation were not fully complied with”*.

The Audit was not formally rated by Internal Audit as it was a review requested by the Commissioner and was not meant to be a standard audit.

In your questions to me at the GLA oversight committee you raised the question as to why the emphasis of the audit had been changed to one of value for money. Clive Walker as Director of Internal Audit has given evidence to both the GLA oversight committee and, as he confirmed to you on 22 October 2015, in his opinion, taken together, the issues identified by the audit adversely impact on the openness and transparency of the procurements. As a committee we concur with what Clive said.

B) Follow up on the audit process

At the meeting yesterday the committee requested that the External Auditors review the conduct of the Internal Audit of the Garden Bridge. The purpose of the review will be to confirm whether or not the audit was conducted in accordance with good Audit practice and to learn any lessons which might be come from their review.

C) Follow up by management

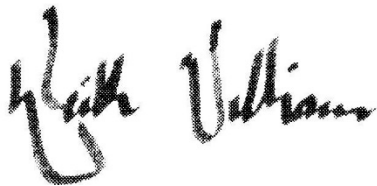
Management actions have been agreed and are being taken forward to ensure that established processes are followed in the future. These issues are not being taken lightly by TfL. The committee is aware from my discussions with Mike Brown and his team that they are very keen to learn from any lessons that might be taken from the Audit findings.

It is clear that if all TfL's policies and procedures had been complied with that the procurement process would have been better and TfL commercial have already issued guidelines to managers on procurement and procurement policy. In behalf of the committee I have reviewed these guidelines.

At the TFL Audit committee meeting yesterday we also reviewed to Audit Plans for 2016/17 to ensure that the Internal Audit team will spend sufficient time reviewing both the general compliance with Procurement policies and adherence to Procurement policies on specific projects,

The next meeting of the TFL Audit committee is scheduled for June 14 2016 at which time we will discuss the External Auditors report into the Audit of the garden Bridge. The committee will shall share any findings from that report with the GLA oversight committee as appropriate.

Yours sincerely

A handwritten signature in black ink, reading "Keith Williams". The signature is written in a cursive style, with the first name "Keith" and the last name "Williams" clearly distinguishable.

Keith Williams