

Len Duvall AM, Chair of the GLA Oversight Committee

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Keith Williams

Chair of TfL's Audit and Assurance Committee
Transport for London
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3 December 2015

Dear Mr Williams

TfL's internal audit review of the Garden Bridge design procurement

I am writing to you as Chair of the GLA Oversight Committee to outline our concerns about how the internal audit on the procurement process for the Garden Bridge design contract was carried out. The specific points relate to the TfL 90711 Design Services, awarded to Thomas Heatherwick Studios, which has been the subject of two meetings of the GLA Oversight Committee in September and October of this year.

These concerns relate primarily to the process of compiling the final published internal report; how decisions were made to remove or dilute critical statements; and the switch in focus of the audit from fairness and transparency to value for money considerations late in the process.

The GLA Oversight Committee has a wide ranging brief including several internal responsibilities related to staffing and approving scrutiny expenditure. It also deals with and determines any questions, issues or other matters not falling within the approved subject area and terms of reference of any other committee. It is under this remit that the GLA Oversight Committee has examined issues related to the Garden Bridge procurement.

One of the themes which the GLA Oversight Committee often returns to is transparency. In 2013, the Committee published a report, *Transparency in the GLA Group*, which stressed the importance of transparency and accountability in public bodies:

There are clear benefits to transparency. It can help mitigate the risks of poor practice, poor value for money, reputational damage and even corruption. The public also has a fundamental right to know how public money is being used.

In the spirit of this drive for greater transparency, we ask that our concerns are taken into consideration at the next Audit and Assurance Committee, on 8 December.

Background to the GLA Oversight Committee's work on the Garden Bridge

On 17 September, the GLA Oversight Committee examined the procurement of the Garden Bridge's design contract with Richard De Cani, Managing Director of Planning at TfL, Will Hurst, Deputy Editor of *Architect's Journal* and Walter Menteth of Walter Menteth Architects. Concerns had been raised about the fairness and transparency of the process after a series of documents were released to Will Hurst under the Freedom of Information Act. Although TfL had declared that it was satisfied that the process was robust, Sir Peter Hendy, former Chief Executive of TfL, ordered an internal audit review of the procurement and agreed to publish the results. The audit report was released to the public on 16 September and formed the basis of our Committee's discussion on the 17th.

Following this meeting, GLA Oversight Committee Members were sent what appeared to be an earlier draft of the internal audit review which had been submitted to the Managing Director of Planning at TfL on 22 July 2015. Once the draft was confirmed as authentic, I wrote to TfL on 30 September to request *"all iterations of the internal audit review document of the procurement of design and development services for the Temple to South Bank Footbridge Project, alongside any emails or notes relating to the changes that have been made to the document."* TfL complied on the 15th October, with a 470 page hard copy submission.

It was clear that substantial changes had been made by senior management to the original draft presented to them by the Internal Audit team on the 22 July. The GLA Oversight Committee requested that Clive Walker, Director of Internal Audit, appear before the Committee on 22 October. Our concerns relate to the changes to the report suggested by senior management and agreed to by Mr Walker, and Mr Walker's evidence to the Committee in October.

Issue 1 – Focus of the Audit

We are concerned that the focus of the audit has changed over the course of the review. The original Audit Objective agreed was to

*"provide assurance that the procurements of the design and development services for the Temple to South Bank footbridge Project are undertaken in accordance with procurement regulations and approved procedures and were open, fair and transparent."*¹

This scope was reproduced in each subsequent Internal Review report, and formed the basis of the original conclusion reached by the Internal Review team in the 22 July draft (ie before it was changed by senior management). This conclusion stated that *"there were a number of instances where the procurements deviated from TfL policy and process and OJEU guidance [...] and, taken together, these adversely impact on the openness and objectivity of the procurements"*.

Following that draft, the focus of the audit appears to have shifted from looking primarily at fairness and transparency to focusing mainly on a value for money conclusion. Despite the Objective and Scope of the Audit remaining the same in subsequent versions, the conclusion in

¹ Memo from Director of Internal Review to the Managing Director of Planning, 16 June 2015 – submitted to the GLA Oversight Committee by TfL on 20 November 2015

the 15 September (ie final) draft stated, *“The audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders”*.

In his oral evidence to the Oversight Committee in September, TfL’s Managing Director of Planning stressed the value for money conclusion several times as the ultimate mitigation for criticisms of the procurement process. For example, *“What this audit has confirmed is that that initial procurement was robust. It did offer value for money and it was acceptable for the job that we were doing at that time.”*

From evidence heard by the Committee, it appears that the suggestion to focus on value for money did not come from the Internal Audit team. In describing the sequence of events, the Director of Internal Audit said that, following initial drafts of the report, senior management asked him if there was anything that could be said on the issue of value for money. The Director of Internal Audit formulated the value for money judgement, and it appeared first in drafts dated 6 August, quite late into the process, and despite not having been addressed in the evidence gathered by the Internal Review team. Mr Clive Walker said that:

“I do not think we did really change the focus of the report. The actual issues that are raised are all around matters of transparency and openness, issues like the fact that there was contact with one of the bidders to ask them to drop their price when others were not contacted and so forth. The main issues that are in the report are about issues of transparency and openness”.

We do not believe that this constitutes an adequate explanation for the apparent switch in focus of the audit. The reason the Commissioner had the audit undertaken was to give reassurance that the procurement had been fair and transparent and that rules had not been breached in order to achieve a predetermined outcome. Given the changes and the sources of these changes we do not consider that the Audit report can provide such reassurance and doubts about the openness and transparency of this procurement process remain.

Issue 2 – The conclusion

The 22 July draft includes the amended conclusion reached by the Internal Review team. It summarised a list of errors found over the course of the review before reaching its final conclusion on openness and objectivity (ie *“taken together, these adversely impact on the openness and objectivity of the procurements”*). The list of errors included:

- There was no procurement strategy to manage and deliver each procurement;
- There were informal contacts with individual bidders in each procurement; and
- There was a lack of clear segregation of duties between TfL Planning and TfL Commercial in the evaluation of TfL 90711 Design Services.

Once the draft was circulated to senior management, the conclusion underwent substantial changes. The summary of errors was removed, as was the finding on openness and objectivity.

The conclusion was also re-written to include mitigating statements about TfL's actions in the procurement process, which arguably contradict the findings contained in the body of the report. For example:

"For these procurements the approach was not agreed at the outset, TfL's role in the project was unclear and this was a strong factor in there not being an agreed strategy from the commencement... However, the audit did not identify any issues that would suggest that the final recommendation in both cases was not sound."

This statement appears questionable in light of the original conclusion which stated that the fairness and transparency of the procurement process had been compromised.

It is notable that the conclusion in the final audit report also forms the basis of its executive summary. We believe that neither the conclusion nor the executive summary accurately reflect the critical findings contained in the body of the published report, and don't therefore include the most important criticisms of both individual and organisational conduct during this procurement process.

Issue 3 – Senior Management input

In examining this issue, a broader concern has arisen among Committee Members about the degree of influence senior managers, who are the subject of a review, have over both its findings and conclusions. From our analysis of the audit trail, it appears that substantial changes were suggested by the Managing Director of Planning, whose personal conduct and that of his department were a major focus of the review. Ultimately, the original draft completed by the internal review team raised significant questions about his role, yet it appears that he was allowed to suggest changes which eased or removed that criticism completely.

The Committee understands that the Director of Internal Audit had the final say on all changes related to the draft before publication. However, the degree of change, and the lack of any clear justification for the extent of the changes agreed to by the Director of Internal Audit raises questions about the ultimate independence of the audit's findings.

In summary, while we welcomed Sir Peter Hendy's quick response to concerns raised by Assembly Members and others in connection with the procurement of the Garden Bridge design contract, we are disappointed with the way it was carried out. Our letter highlights three main issues:

- We are concerned about the switch in focus of the audit to value for money. We do not consider that the final Audit report provides adequate reassurance about the process and we continue to have doubts about the openness and transparency of this procurement exercise.
- We believe that the executive summary and the conclusion do not accurately reflect the audit's actual, and more critical, findings as set out in the main body of the published report.

- The number and tone of changes to previous drafts of the audit report suggested by the Director of Internal Audit raises questions about the ultimate independence of the audit's findings.

I would be grateful if you would raise these issues with the Audit and Assurance Committee during discussion of the Internal Review report at your meeting on 8 December. We would also welcome a response from the Committee to these concerns.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Len Duvall'.

Len Duvall AM
Chair of the GLA Oversight Committee