

Email to Bob Earnshaw dated 23rd March 2011

Dear Bob,

I am writing to make you and DSG members aware of a change to our approach in closing competitive dialogue and issuing our Invitation to Submit Final Tender

Our key driver in considering these altered arrangements has been the continued recognition that we need to create the opportunity for what we have termed contract clarification discussions. The timing of these planned discussions always recognised the probability that participants would be exposed to deeper corporate governance reviews in the tender preparation phase, reviews which could give rise to some degree of alteration to the approaches discussed with the NDA in dialogue. It would be consistent with our objectives in dialogue to ensure that opportunity was created for any such alterations to be exposed to the NDA so that the participant could gain feedback on their acceptability and attractiveness prior to tender submission. Hitherto, we had envisaged these clarification discussions taking place in the period after issue of the ITSFT. However, having taken legal advice on this approach, we note a risk that these contract clarification discussions could reasonably be interpreted as continuance of dialogue, in contradiction to the existing plan for closure of dialogue on 15 April 2011.

In light of the foregoing, we have developed an alternative plan, the essential features of which are that the NDA would:

- not declare dialogue closed in April;
- issue a document entitled "draft ITSFT" in late May;
- provide opportunity for contract clarification discussions in June/early July;
- declare dialogue closed in late July;
- re-issue the May ITSFT document as the final version, removing "draft" from its title; and
- call for tender returns in late August

The remainder of the competition programme would run as previously advised, preserving share transfer by the end of March 2012.

In respect of this change, there are a number of important points to emphasise. Firstly, while this revised plan could be interpreted as the NDA extending dialogue from mid-April to late July, in reality there is no change to the planned activity in this period. Rather, the revised plan simply ensures that the benefits of holding contract clarification discussions can be secured without risk of procedural non-compliance and challenge. Secondly, the NDA recognises the criticality of ensuring stability in the ITSFT documentation as between the draft and final versions. So, the draft ITSFT will be produced and issued to the same standard and expectations previously envisaged for the final version, with all required governance reviews undertaken against the draft document. To the extent any changes are incorporated in the final version, these will be confined strictly to points of editorial correction. That discipline will ensure that participants continue to enjoy the originally planned period of three months to develop responses against a stable ITSFT document. Thirdly, the NDA will ensure equality of opportunity for both participants in relation to planned contract clarification discussions.

I hope this is all clear to you, but please let me know if any clarification is required.

Kind Regards

Graeme
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Secretary's note:

Comparing the update received on 16th February with the update above the following has changed:

Next steps (*italics and red text depicts additional or change in date*)

Major Project Review Group meets	9 th March 2011
Competition Programme Board meeting	15 th March 2011
<i>Dialogue continues</i>	<i>April – May 2011</i>
Preparation of <i>draft</i> Invitation To Submit Final Tender (ITSFT) for Governance Board	April – May 2011
Approval of <i>draft ITSFT</i> by NDA Board	25 th May 2011
<i>Issue draft ITSFT</i>	<i>1st June 2011</i>
<i>Provide opportunity for contract clarification discussions</i>	<i>June/early July 2011</i>
<i>Declare dialogue closed</i>	<i>late July 2011</i>
<i>Re-issue final version of ITSFT</i>	<i>Late July 2011</i>
Tenders submitted	<i>Late</i> August 2011
NDA Evaluation of Tenders	<i>Late</i> Aug – Nov 2011
Governance Board approval and announcement of preferred participant	Nov 2011
Contract finalisation	Dec 11 – Mar 2012
Transition of new PBO	Dec 11 – Mar 2012
<i>Share Transfer</i>	<i>30 March 2012</i>
New PBO takes over	31 March/2 nd April 2012