
FROM: David Sterling
DATE: 23 January 2017
TO: Máirtín Ó Muilleoir MLA

RHI COST CONTROL BUSINESS CASE

1. Following our recent discussions on the RHI Cost Control Business Case I am writing to you with some further assurance on the two issues you have raised: the role of Ofgem in the future management of the RHI scheme and the current progress with the Audit and Inspection procurement. I also understand you have also sought advice about the State Aid clearance process.
2. Andrew McCormick has just written to me (see correspondence attached). His letter addresses your concern about the ability of Ofgem to process the proposed new tariff and also to carry out a programme of ongoing inspections to ensure compliance with the regulations. You will note that he has said:

"I can provide a firm assurance that DfE will be maintaining a very tight grip on this issue with OfGEM between now and the date when our new contract for inspection, audit and enforcement comes into effect (obviously we have no alternative agent for the short term). I will be writing again to Chris Poulton shortly with a view to resolving a point about the way in which they can require beneficiaries to provide information to demonstrate and support eligibility, for example where an installation has a domestic aspect (some heat for domestic purposes can be eligible, but we have been concerned that OfGEM had been taking too laissez-faire a view and we have legal advice that will help on this point, which backs up the need for OfGEM to obtain evidence from the applicant that they are operating a business in line with their application. Our contract with OfGEM requires them to carry out some further inspections in the next three months (I'll get you details tomorrow), and we are also able to ensure that where particular concerns arise (eg if we or OfGEM receive specific or generalised allegations against beneficiaries of the scheme, OfGEM can take the appropriate action to investigate and advise us on what may be found.)"

3. Andrew has also reiterated to me that there is no short-term practicable alternative to engaging Ofgem given that they have proprietary systems which would not be easily re-produced without considerable cost. This is a valid point.

4. We have still not received the Audit and Inspection Business Case however I have been assured that this is nearing completion and should be with us within a few days. DfE have engaged a former member of CPD to provide specialist advice on the preparation of the procurement specification.
5. I have asked the Supply Team and Sharon Smyth from CPD to contact their colleagues in DfE to assess their current state of preparedness.
6. Sharon Smyth has spoken to Paul Montgomery and Carol Caves from DfE and has been given sight of the draft specification for the contract for RHI Inspections. Sharon confirms that:
 - (a) The draft specification is progressing well and is incorporating best practice from the previous contract for boiler inspections and other similar contracts;
 - (b) The draft specification includes good governance arrangements and sufficient controls to facilitate contract management and ensure delivery by the target dates; and
 - (c) DfE is seeking legal advice to ensure that the contract includes details of the evidence which should be gathered during the site inspections to facilitate any necessary enforcement measures.
7. CPD is working closely with the DfE team to ensure the procurement is progressed as soon as the specification has been finalised and business case has been approved.
8. Supply has also spoken to DfE and has been advised that the business case is progressing well and will be submitted for Supply approval shortly. DfE is unable to give an exact timeline for submission as this is dependent on the receipt of legal advice as set out at point 3 of CPD's note above.
9. I am satisfied that all reasonable steps are being taken to expedite the Audit and Inspection procurement and that while some risk remains, it is reasonable to conclude that the contract should be awarded by May 2017 and hopefully before then.
10. Lastly, I also understand that you have sought assurances about the State Aid approval process and that a telephone call with Collette Fitzgerald, Head of the EU Commission Office in Belfast is being arranged this morning.
11. Taking all this into account I would reiterate Mike Brennan's recent advice and recommend the approval of the Business Case. It represents the only credible means by which costs may quickly be brought under control. If the Regulations are adopted by the Assembly today there is a reasonable prospect that the projected cost overrun in 2017-18 will be reduced from £27.4m to around £3m. If the Regulations are not adopted today it is not clear given the current political uncertainty when the next opportunity will arise to bring costs under control.

12. If the regulations are adopted today it will also allow DfE to focus on the additional analysis which will be needed to identify whether any further tariff adjustments are required to ensure the RHI scheme complies with its original objectives and is affordable within the forecast future AME cost envelope.

A handwritten signature in black ink, appearing to read 'DS', with a large, sweeping flourish extending to the right.

DAVID STERLING