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Cc: Hepper, Fiona[Fiona.Hepper@detini.gov.uk]; Hutchinson, Peter[Peter.Hutchinson@detini.gov.uk]
From: Keith Avis
Sent: 2012-10-03T09:34:51Z
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Subject: RE: Administrative Arrangemnts
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Joanne

Thank you for feeding back comments to us. I will discuss internally, particularly with our legal team, and will come back to you quickly with some initial headline views on the points that you have made. As you say, we can consider the appropriateness of a meeting once I have done this.

Regards

Keith

Keith Avis

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From: McCutcheon, Joanne [mailto:Joanne.McCutcheon@detini.gov.uk]

Sent: 03 October 2012 10:20

To: Keith Avis

Cc: Hepper, Fiona; Hutchinson, Peter

Subject: Administrative Arrangemnts

Keith

Thank you for the initial draft of the Administrative Arrangements. Having received feedback from our legal consultants and reviewed the Agreement within the Department, I have a number of points to make.

Issues with current content

1. We note that it is an informal agreement without the status of a legally binding document. That being the case, if GEMA was to breach any provision or were to terminate the Agreement, DETI would have no legal recourse. We are not entirely comfortable with this position. Grateful if you could outline your reasoning for adopting this informal approach and also advise us of the position for the GB RHI and for the NIRO (as you are aware we have not been able to have sight of either of these Agreements).

2. Clause 1.1 – Definitions of “Administration Costs” and “Ancillary Activities”

This appears to give GEMA the right to pass through all costs associated with the scheme without exclusion. We are not content with this position. Firstly we need clarity in exactly how NI costs are going to be calculated going forward. For example, we would like a list of the various costs you anticipate and precise information on how DETI costs will be calculated - will it be actuals relating to the NI installations, or will it be a percentage of overall costs? We consider this to be an important area given recent conversations between Fiona and Matthew which have highlighted the unreliability of the estimates contained in the feasibility study and the current difficulty in providing robust projections. Just to be clear, we are going to need some degree of certainty going forward. I am sure you can appreciate we would be unable to agree to a 'carte blanche' on charging which this currently appears to be.

3. Under 'ancillary activities' GEMA appears to have an unfettered right to perform any duties it deems appropriate.

This would not be acceptable and we would need to see a list of anticipated ancillary activities and would have thought that any additions to this list in the future would need agreement of both parties (and would need to be costed in advance).

4. Clause 2.2 GEMA's responsibilities

Under (a) (i) – 'in such a manner as it thinks best' – this should presumably be with the agreement of DETI.

5. **Clause 3 (e)** – grateful for clarity on what is meant by 'matters of common interest and common concern' – we are content to consult GEMA on matters relating to the administration of the NI RHI. Are you thinking wider than this?

6. Clause 5 – Payment of the Administration Costs

We note that you propose that any billing disputes in relation to Administration Costs (i.e. the costs to GEMA of performing the Conferred Functions and the Ancillary Activities) are not adjudicated by an independent party and are decided by GEMA's Chief Operating Officer. This causes us concern particularly when read in conjunction with Clause 1.1. We would require some form of dispute resolution process iro Administration costs and would wish third party involvement where agreement cannot be reached.

7. Clause 7& 8

We will obviously need to agree review dates, breakpoints/notice for termination. Meanwhile, grateful if you could advise exactly what you are suggesting we would have a right of access to in terms of - data, metadata, systems, documentation etc., in the event of termination. Given our investment we would want to be clear on what we can expect.

8. Clause 9.3

Have you some specific examples in mind? DETI would probably want to be informed before such disclosure.

9. Clause 12.1 e

DETI would wish the appointment of Counsel to be agreed between GEMA and DETI. Is there any reason why GEMA would be unhappy with this ?

Issues not covered by current Agreement

10. We would need the Agreement to include some detail on performance targets, remedies and safeguards in place for underperformance. I cannot see anything on these issues in the current draft.

11. We will also require a right of audit entry to be included – this was discussed some months ago.

I think this summarises the main issues. We obviously need to populate some of the gaps but I would have thought that this would be relatively straightforward.

There is probably no point in scheduling a meeting until you have had a chance to respond to the points raised and provided some of the detail requested. We will then need to revert to our own Accountability and Audit branches as well as our legal consultants. I think that would probably be the best point in time to have a meeting.

Fiona Hepper will be out of the office from the end of this week until Monday 29th October. We will off course be able to continue work on the Agreement in her absence and hopefully make substantial progress but you will wish to note that it will ultimately require her approval and signature.

Regards

Joanne

Joanne McCutcheon

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The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk



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