

To: Marcus Porter[Marcus.Porter@ofgem.gov.uk]; William Elliott[William.Elliott@ofgem.gov.uk]
From: Faye Nicholls
Sent: 2012-07-04T10:26:15Z
Importance: Normal
Subject: RE: NI RHI - Development phase costings
Received: 2012-07-04T10:26:17Z
Fw: Ni Feasibility Study

Marcus, Will,

Sorry not to respond to you sooner on this, the email that I needed to send you was in my archive folders and I couldn't get access to it all day Monday Irrelevant information redacted by the RHI Inquiry

Please see attached. If this does not provide adequate information, I suggest you speak with Ruth, who might have further details of how the figures were arrived at.

Faye

From: Marcus Porter
Sent: 29 June 2012 13:40
To: William Elliott
Cc: Faye Nicholls
Subject: RE: NI RHI - Development phase costings

Hi Will.

I'm afraid I don't know the answer to that as I wasn't involved with NI RHI when the feasibility study was undertaken. Faye may possibly know the answer so I'm copying this to her.

Marcus

From: William Elliott
Sent: 29 June 2012 13:13
To: Marcus Porter
Subject: RE: NI RHI - Development phase costings

Marcus

Paul telephoned to ask whether I could look at the figures for legal costs and contingency. I am very happy to do so, but would be grateful for your input as to how the figures (£62k and £200k) in the Feasibility Study were arrived at. I am attending a conference at Blackstone Chambers this afternoon, but is this something we can pick up on Monday next week?

Thanks
Will

From: Paul Heigl
Sent: 29 June 2012 12:19
To: William Elliott; Andrew Amato
Cc: Keith Avis
Subject: NI RHI - Development phase costings

Hello,

Apologies for sending this over and then running (am out for the afternoon). I have barely looked at this document myself, but these are the relevant sections from the Feasibility Study on the development phase resources and costings. I am planning to have a working doc by the end of next week, would greatly appreciate you both having a look at your relevant sections and letting me know whether this seems feasible for then or if you need longer timescales.

<http://sharepoint/Ops/Environ/New Scheme Development Lib/New%20Projects/NIRHI/Development%20phase/NI%20RHI%20Development%20phase%20revised%20costs.docx>

Thanks and hope you all have a great weekend,

Paul Heigl

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To: Faye Nicholls[Faye.Nicholls@ofgem.gov.uk]; Marcus Porter[Marcus.Porter@ofgem.gov.uk]
From: Ruth Lancaster
Sent: 2011-12-02T15:08:59Z
Importance: Normal
Subject: Fw: Ni Feasibility Study
Received: 2011-12-02T15:09:00Z

FYI

From: Ruth Lancaster
To: Catherine McArthur
Cc: David Fletcher; Jonah Anthony
Sent: Fri Dec 02 15:02:32 2011
Subject: Re: Ni Feasibility Study

Catherine, David, Jonah

We were asked to provide ball park figures for three scenarios:

1. in which we only review sections of documents added specifically for the NI scheme;
2. in which we review the NI aspects and also those issues we are aware of in the GB "base documents";
3. as for 2, but with additional technologies included in the scheme (nature and extent unknown).

Scenario 1. As you know we have concerns about the approach suggested in 1 above. From a practical point of view it will not be easy to review just the NI additions as these are likely to have to be integrated into the existing text of the documentation rather than added in a separate section at the end. Wherever amendments are made to a document, however small the changes may appear to be they can have a significant effect on the meaning and interpretation of a document. Failure to review this in the round may mean that changes to the risk profile for the Authority are not identified and dealt with and the Authority is inadvertently exposed to an unacceptable level of risk. We strongly advise against proposing this as an option to NI. We do not propose to provide a cost estimate for option 1 as this might be seen incorrectly as an endorsement by Legal of this option. We do not endorse scenario 1.

Scenario 2. I have looked at the list of legal tasks expected for NI RHI provided to us on 25 November there are quite a few omissions. Looking at the items that have been included our comments are:

- 1st and 2nd review of the draft Regulations – we have previously advise that 4 weeks should be allowed for each review. You have only allowed 2;
- Review of Guidance – We assume this refers only to the Guidance document itself. Limited to two reviews
- Standard Operating Procedures – It's not clear what input will be required of us (we did not review this for GB RHI therefore all content will be "new" to us). We have therefore made an assumption that 15 working days will be sufficient;
- Fraud and compliance policy – On GB scheme this was limited to review for compliance with the Regulations. We assume this will be the same;
- Audit strategy - It's not clear what input will be required of us we have therefore assumed this will be limited to review for compliance with the Regulations;
- Information Scheme content for accreditation - we have assumed this will be limited to review for compliance with the Regulations;
- Consultation on 2 contracts (on site auditing and ID verification) – we have assumed no more than 2 reviews of each document and no contentious issues or protracted discussions;
- Consultation on Agency Services Agreement – We have assumed this will be one document, limited to 2 reviews with no contentious issues or protracted discussions. Note our previous comments on the nature of this document. We would advise against calling it or referring to it as a services agreement. This type of commercial terminology is likely to create misconceptions about our role and responsibilities that we know from experience are difficult to correct.

Based on the list of tasks provided to us on 25 November for NI RHI with the amendments listed above(together "the Scope") our estimate for scenario 2 is as provided previously i.e.

internal FTE 0.8
external legal £250k
external local lawyers, say £40k

This is based on the following general assumptions:

No timetable slippage
No changes to scope
Working days are Monday to Friday (excluding bank holidays and privilege days) and shall not exceed 7.2 hours
No more than 4 hours a week in meetings
All meetings at Ofgem, London
No travel to NI
No contentious issues or protracted discussion of issues.

Any items not included in the Scope as described above will be considered Out Of Scope and therefore outside of our remit. Note as advised previously that where matters are excluded from the scope of legal review the exposure of the Authority to risks is potentially increased. You should consider this carefully when limiting the scope of legal review. I mentioned above that there are some omissions from the 25 November list of tasks and consequently these will be Out Of Scope. Examples of matters that have been omitted from your list include :

- any matters relating to the operational period e.g. advising on issues arising from applications received;
- discussion back and forth between parties about particular issues;
- state aid;
- Authority papers and other internal policy papers;
- project governance matters;
- resource planning and cost estimates;
- managing interfaces with DETI, NIAUR, local lawyers [and DECC?]

Scenario 3

I don't seem to have a list of the additional technologies that might be included in this scenario. Apologies if you have sent that to me. Therefore as a complete guesstimate for scenario 3 I would suggest the cost of scenario 2 plus an uplift of 30%.

With regard to the matters listed below that we are being asked to "sign off", I'm afraid we are not in a position to do that as we have not reviewed the key assumptions, the feasibility study, the sensitivity analysis or the calculation methodology.

Please let me know if you have any comments on the information provided above.

Kind regards
Ruth

From: Catherine McArthur
To: Ruth Lancaster; Jacqueline Balian
Cc: David Fletcher; Jonah Anthony
Sent: Thu Dec 01 16:33:22 2011
Subject: RE: Ni Feasibility Study

Hi Ruth,

Just for clarification, I was provided with a Feasibility Study approval form by Matthew on 10th November which required approval for various aspects of the study from IT, Legal, Finance, Matthew and Bob. I haven't been with Ofgem long so I'm not aware if this is standard practice or a new

initiative. Of Legal it requires sign-off of the following:

- I confirm that I have discussed and included the key Assumptions relating to the Legal Services needs of the programme.
- I confirm that I have discussed the Legal Services needs of the programme and have included best estimates of the resources required in accordance with the Assumptions contained in the Feasibility Study.
- I confirm that I have discussed sensitivities around those Assumptions and have included best estimates of Legal Services resource requirements in the scenarios defined in the sensitivity analysis.
- I confirm that I have discussed the calculated costs of the Legal Services resources identified needs of the programme and have agreed the calculation methodology.

I believe this is consistent with the legal resourcing discussions we've been having over the past weeks, which will be finalised with the figures you agreed to provide to us. I did not mean to suggest that you were required to read the whole Feasibility Study, but merely offering it as a courtesy in case you wished to review any sections of it before we sent it (as I provided it to Richard Kayan, Peter Rice, and Bob Hull).

Apologies if there was any confusion.

Thanks,
Catherine

From: Ruth Lancaster
Sent: 01 December 2011 16:19
To: Jacqueline Balian
Cc: Catherine McArthur
Subject: Ni Feasibility Study

Jacqueline

Catherine has just informed me that Legal are expected to read and sign off the feasibility study for this project by tomorrow. I have reminded Catherine that reviewing the Feasibility Study was not part of the scope agreed for Legal in this initial phase and therefore we have not planned for capacity to support this. This is something of a recurring issue on scoping and budgeting of the schemes. On the one hand we are told that our remit is limited and therefore the budget for Legal should be minimised, but in practice there is always scope creep with us being expected to support a much wider scope. The Feasibility Study is a good example of this. Another example is GB RHI where we were told our involvement would be limited to 3 areas in order to keep legal costs down. The three areas were reviewing the regulations, reviewing the guidance and procurement (3 specific procurements). You will be aware that the level of involvement required from us has far exceeded that.

As Matthew is aware we monitor incoming work to check if it is in scope. If it is not we may not be able to support it without an amendment to the budget or without dropping something else from

the scope. In practice we have always provided what assistance we can and will continue to do so if we have capacity. However, this should be an emergency contingency only and not relied on regularly to cover shortcomings in project planning or unrealistic budgeting. Our team supports a wide range of E-Serve activities and it is unlikely that we will have spare capacity. Please be aware of this when scoping and budgeting for legal support. As I have commented before whenever items are excluded from the scope of legal review in order to keep costs down the exposure of the Authority to risk is potentially increased

As a general comment on requests for Legal sign off please be aware that Legal do not *approve* or *sign off* policy documents. The role of Legal is to provide comments and advice for consideration by the author, who retains responsibility for the document.

I think it would be useful to have a discussion about the issues of scoping and budgeting for Schemes generally at our meeting next week and probably a further discussion with Matthew when he returns from leave.

Kind regards

Ruth

Ruth Lancaster

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 ofgem E-Serve