

To: Ruth Lancaster[Ruth.Lancaster@ofgem.gov.uk]
From: Paul Heigl
Sent: 2012-07-25T08:04:51Z
Importance: Normal
Subject: RE: Development costs for NI RHI
Received: 2012-07-25T08:04:00Z

Hi Ruth,

I've just had a meeting with the project team regarding the budget queries you stated below. You are absolutely spot on, we would need all of the activities you have stated. We were a little concerned though that the costs may rise from the originally quoted £62,000 (which only apply to internal legal costs) in the Feasibility Study published in December 2011.

If the costs are to rise above that figure could you also provide some reasoning for why this has now increased?

Thanks Ruth and speak soon,

Paul

From: Ruth Lancaster
Sent: 19 July 2012 12:35
To: Paul Heigl
Cc: Luis Castro; Marcus Porter; Keith Avis
Subject: FW: Development costs for NI RHI

Paul

Development Phase Agreement

I'm aware Marcus has already provided you with some comments on the document. I have had a quick look through this and noted a few comments (listed below). In view of the lack of time (and budget) for a proper review of this we have not considered whether there may be other issues e.g. whether there are any contractual/procurement issues arising from the proposals to extend current audit and procurement contracts or any IP issues arising from proposals to use systems/processes developed for the GB scheme for the NI scheme. You may have already considered this.

1. General comment – what is the purpose of/intended audience for this document? Some of it seems to be aimed at an internal rather than an external audience. Surely all that's needed is a revised statement of what we're doing and what that will cost? Some further editing is required
2. Page 5, Table 1 – why is there no mention of the outstanding work on the Regs?
3. Page 5, Table 1 – extending current audit and procurement contracts. It's not clear to me what this covers, but have you checked there are no contractual/procurement issues arising from this?
4. Page 6, Figure 2 – In the PM support box – what does the reference to "Assurance" refer to? What are you providing assurance on and what obligations does this give rise to? I suggest you delete it.

5. 2.1 – This appears to suggest that the development phase overlaps with the operational phase, the overlap being referred to as the transitional phase. Is this correct and, if so, is this interpretation reflected consistently where these terms are used elsewhere (e.g. in relation to costs etc)?
6. The baseline assumptions need to be consistent throughout. There is some indecision on this e.g. 2.13, 2.14 and 2.16.
7. 2.17 – presumably there will be additional costs in any event.
8. GB and NI Scheme diversion – we have provided advice on the issues arising from this previously. In the absence of a response we assume a decision has been taken to proceed as DETI suggest notwithstanding our comments.
9. 3.2 – The document doesn't appear to specify what "Phase II" is (unless this refers to section/module II in 3.4.
10. Section three generally – are you satisfied you can disclose information about DECC (a) at all and/or (b) as described?
11. 4.1 – consultation in August/September. As August is only 2 weeks away this seems unrealistic particularly when you factor in possible disruption from the holiday/Olympic period.
12. 4.1 – How do you plan to select invitees to the workshop? Interaction with stakeholders during consultation processes needs to be very carefully managed to ensure openness, transparency, non-discrimination. See also the reference to capacity for 100 workshop attendees (incl or excl Ofgem/DETI attendees?) in Table 2. Does this adequately address the requirement for openness etc? Will details be available, for example will there be an open invitation on the DETI/Ofgem websites with details of what is to be discussed the outcomes etc?
13. 4.2 – See previous comment.
14. Table 2 – are other possible expenses such as taxi/bus fares, sustenance etc omitted intentionally?
15. Section 5 - **Budget** - See below for comments on the figures.
16. **Legal costs and contingency** – based on the description of contingency at paragraph 5.3 (a sum set aside deal with change unforeseen costs) it is incorrect to describe the bulk of legal costs as contingency. We will be breaking into this contingency amount just to cover the bare minimum of work.
17. What is "the remaining budget forecast" referred to in 5.7? What tasks and period does it cover? How will you deal with a scenario in which the contingency for any aspect of the work is insufficient?
18. What are the legal aspects referred to in 5.9? I assume it is understood that we are not providing legal advice to DETI/NIAUR. If not, that should be made clear.
19. Section 6 - Cost Recovery – Whilst the principles can be captured in the ASA I understood there was going to be a separate baseline costs document setting out the detail. Is that no the case?
20. 6.3 and 6.4 – we would like to understand what you mean by "recourse" and "enforceable" – do you mean legally enforceable ie enforceable by (and against) you in court?
21. 6.5 – I understand the discussion about the content of the ASA is being addressed separately.
22. I haven't had time to look at the long table in Appendix 1. Please let me know if there if anything you require our assistance with.
23. Appendix 2 – 3rd bullet point – does this work with the proposals in section 3?
24. Appendix 2 – 4th bullet point – it is not clear what is required here. Generally you should make it clear that we are not considering or advising DETI on legal matters (English or NI) (see

further on this below). However, we need instructions from policy about how you intend to deal with the matter of any relevant NI law with regard to the Authority.

25. Appendix 2 – Legal resource requirements – see comment on budget below

Budget

The budget needs to include external as well as internal legal resources. We already have a law firm secondee working on the project plus law firm support. In view of the constraints on resources and the compressed timescale this is necessary to deliver the minimum requirements i.e. it is not merely a contingency, we are drawing on it already.

The detail of the legal input required is a bit unclear still so I am assuming the following:

The development phase covers the period to the end of October 2012 only;

Dealing with the Regs - outstanding issue of state aid/grants only.

Guidance - We have assumed 2 reviews only (one pre and one post consultation). We have based our estimate on your time line of 10 working days for each review, but you should be aware we think this is insufficient for a thorough review of the guidance so these reviews will be limited and our advice qualified accordingly;

Advice on revising 2 contracts (on site auditing and ID verification) – we have assumed no more than 2 reviews of each contract; no contentious issues or protracted discussions and negotiations; the contracts including any schedules, appendices etc do not exceed 50 pages in length

ASA – We have assumed this will be one document, limited to reviews of 3 versions with no contentious issues or protracted discussions.

As a rough estimate I would say this is likely to cost something in the region of £100k (assuming minimal external support), but this will be subject to change if there are variations to timescale, scope or our reliance on external resource, for example due to conflicting demands on our time from the GB RHI team. Let me know if you require a more detailed breakdown of this figure.

You haven't given any indication of whether you require legal input on other matters such as:

- Development Phase Agreement;
- Consultation documentation (I assume DETI are responsible for this)
- Queries arising in respect of the consultation process;
- Operating Procedures and documents;
- Operational issues/queries (the development phase appears to overlap with the operational phase);
- NI GB Scheme divergence issues;
- Preparation of papers for internal purposes e.g. MC, GEMA, SMT etc;
- Preparation for future amendments expected to be introduced by DECC;
- NI law
- Project governance matters;

Resource planning and cost estimates;

Managing interfaces with DETI, NIAUR, local lawyers [and DECC?]

□ Technical Standards Directive

These are not included in the figure above and without further information it is difficult to assess what an adequate contingency sum would be. If you have no clear view of this or not sufficiently clear to be able to estimate an appropriate contingency sum with any confidence I suggest you exclude them from the scope and limit what we are doing to the matters highlighted in green with appropriate caveats and scope for change.

Happy to discuss.

Ruth

From: Paul Heigl
Sent: 18 July 2012 13:43
To: Ruth Lancaster
Subject: Development costs for NI RHI

Hi Ruth,

Rita just pointed out that there has already been considerable legal work on the NI RHI legislation in preparing comments and feedback to DETI. As this was before my time it has slightly fallen off the radar, is it possible to factor this into any costs you're currently collating?

Many thanks and apologies for the 11th hour requests,

P

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