

From: [REDACTED]
To: [REDACTED]
Subject: RE: reputational checks - current state of play [AS-MATTERS.FID3044369]
Date: 20 May 2019 16:56:42
Attachments: [REDACTED]

Hi [REDACTED]

Initial thoughts on this matter now set out:

1. As you know, the key for mitigation of risk of procurement challenge is to have a clear, upfront set of criteria which prospective tenderers can read and which allows them to fully understand what test we're asking them to meet and what we're assessing. Public sector procurement is about being open, transparent and accountable; it's about having a formula and sticking to it for every bidder, acting reasonably and objectively and without bias. These are the guiding principles.
2. My key concern about telling applicants we're going to ask for a report on their reputation is that I don't feel that's sufficiently transparent to allow anyone to understand why you need that report and what you're going to do with it.

I'd go so far as to say that before a commitment to instructing a report on an organisation is set out in this document pack, we need to be very clear on the following (and be in a position to write this into the Offer Document):

- a) What are the categories of matters that we are going to ask Red Flag to report on? My initial thoughts of an appropriate list (and this should apply across the globe, so we want to know about allegations which are equivalent in all jurisdictions) to all allegations, whether or not those were upheld, of the following :
 - i. Human Rights infringements;
 - ii. Health and Safety infringements;
 - iii. Bribery, Corruption and Anti-Money Laundering infringements;
 - iv. Financial or professional misconduct or financial impropriety levelled at any person holding an office/working at Executive level in the organisation, as well as information pertaining to any criminal sanctions against any person holding an office/at Executive level in the organisation;
 - v. Bankruptcy, receivership or similar proceedings with respect to the company or any person holding an office/working at Executive level;
 - vi. Environmental infringements;
 - vii. Animal Rights infringements;
 - viii. Employment Law infringements;
 - ix. Intellectual Property Law infringements;
 - x. Data privacy, data usage and data security infringements.

Are there other areas you feel are important? Do you want to know about all litigation actions against the companies?

- b) I think we'd also need to expand quite seriously on what each of these mean for us and why we feel these are important things for us – it's going to be a question of linking each of these back to CES as an organisation, current SG/UK government policy and/or domestic legislative provisions.
- c) Thereafter, what weight are we going to afford to every category? What I mean here is – which is more important to us, or are they all equally important? This is that if they don't all have the

same weight, we need to have robust reasons for, and possibly your PR team involved in.

- d) Are we going to take reports on parent companies? I think the answer to that has to be yes, particularly given the possibility of a parent company having a controlling interest in the company and the public embarrassment factor. We could word that with reference to all organisations with a controlling interest - again, that's what this is all about; in any organisation there is power and we understand who (both corporately and at human level) is wielding that power and whether we are comfortable in doing business with them.
- e) If there's a time limit on how far back we'll look, what is that? Or are there things that we'll consider unaffected by the passage of time, e.g. corruption 5 years ago, but all the same key personnel still in place notwithstanding that? I'd be inclined to have a soft time limit, but make the application of that time limit subject to the following:
 - i. Measures taken as a direct result of the matters raised, e.g. changes in personnel/procedures;
 - ii. Evidence of the effectiveness of those measures in securing that the issue will not arise in the future.

That is to say, anything that happened 6 years ago is not automatically included as part of our due diligence, but we reserve the right to bring it into the sphere of relevance if we're unhappy with the responses to questions i. and ii. above.

- f) My inclination would be to offer confirmation that a Green report will not be investigated or considered further by CES.
- g) Equally, I feel it's appropriate that applicants be afforded the opportunity to address any matter which appear as Amber/Red in a report. That doesn't need to be a hearing in person - we could deal with it by way of a set of written representations. This would go some way to addressing the matter of transparency because I would suggest we write a complete Procedure Note on this first (it wouldn't be very long and not very complex - rough draft now attached) and that this is published alongside this information at the outset of the process.
- h) In terms of how we'll assess the information we receive, the question for CES is what do you want to do here (and then how can we express that in a way that doesn't lead to complete subjectivity in approach). My inclination to minimise challenge going forward would be to set out clearly in the Offer document that our aim in proceeding in this way is not to punish people or organisations for prior infringements in these areas but, rather, to drive up standards of compliance and corporate responsibility by securing that organisations with whom CES enters into an agreement have demonstrated that they have learned from previous experience and have robust measures in place to secure compliance with law/regulation/policy in these 10 key areas? Does that do what you want it to ? I think that covers you

In short, my thinking is that we can do this, I just think we have to have quite a lot of thought as to what test you're applying here - and particularly where you're prepared to reject someone's otherwise successful application on the basis of historic violations - and then writing to reflect that (which I think goes into the Offer document).

I'm happy to prepare the drafting on this but I think worth discussing with [REDACTED] and [REDACTED] on Friday and I would need instructions from you on what your preferred approach would be. I'll also share this with them in advance.