

Len Duvall AM, Chair of the GLA Oversight Committee

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**Keith Williams**

Chair of TfL's Audit and Assurance Committee  
Transport for London  
Windsor House  
42-50 Victoria Street  
London, SW1H 0TL

3 December 2015

Dear Mr Williams

**TfL's internal audit review of the Garden Bridge design procurement**

I am writing to you as Chair of the GLA Oversight Committee to outline our concerns about how the internal audit on the procurement process for the Garden Bridge design contract was carried out. The specific points relate to the TfL 90711 Design Services, awarded to Thomas Heatherwick Studios, which has been the subject of two meetings of the GLA Oversight Committee in September and October of this year.

These concerns relate primarily to the process of compiling the final published internal report; how decisions were made to remove or dilute critical statements; and the switch in focus of the audit from fairness and transparency to value for money considerations late in the process.

The GLA Oversight Committee has a wide ranging brief including several internal responsibilities related to staffing and approving scrutiny expenditure. It also deals with and determines any questions, issues or other matters not falling within the approved subject area and terms of reference of any other committee. It is under this remit that the GLA Oversight Committee has examined issues related to the Garden Bridge procurement.

One of the themes which the GLA Oversight Committee often returns to is transparency. In 2013, the Committee published a report, *Transparency in the GLA Group*, which stressed the importance of transparency and accountability in public bodies:

*There are clear benefits to transparency. It can help mitigate the risks of poor practice, poor value for money, reputational damage and even corruption. The public also has a fundamental right to know how public money is being used.*

In the spirit of this drive for greater transparency, we ask that our concerns are taken into consideration at the next Audit and Assurance Committee, on 8 December.

## *Background to the GLA Oversight Committee's work on the Garden Bridge*

On 17 September, the GLA Oversight Committee examined the procurement of the Garden Bridge's design contract with Richard De Cani, Managing Director of Planning at TfL, Will Hurst, Deputy Editor of *Architect's Journal* and Walter Menteth of Walter Menteth Architects. Concerns had been raised about the fairness and transparency of the process after a series of documents were released to Will Hurst under the Freedom of Information Act. Although TfL had declared that it was satisfied that the process was robust, Sir Peter Hendy, former Chief Executive of TfL, ordered an internal audit review of the procurement and agreed to publish the results. The audit report was released to the public on 16 September and formed the basis of our Committee's discussion on the 17<sup>th</sup>.

Following this meeting, GLA Oversight Committee Members were sent what appeared to be an earlier draft of the internal audit review which had been submitted to the Managing Director of Planning at TfL on 22 July 2015. Once the draft was confirmed as authentic, I wrote to TfL on 30 September to request *"all iterations of the internal audit review document of the procurement of design and development services for the Temple to South Bank Footbridge Project, alongside any emails or notes relating to the changes that have been made to the document."* TfL complied on the 15<sup>th</sup> October, with a 470 page hard copy submission.

It was clear that substantial changes had been made by senior management to the original draft presented to them by the Internal Audit team on the 22 July. The GLA Oversight Committee requested that Clive Walker, Director of Internal Audit, appear before the Committee on 22 October. Our concerns relate to the changes to the report suggested by senior management and agreed to by Mr Walker, and Mr Walker's evidence to the Committee in October.

### *Issue 1 – Focus of the Audit*

We are concerned that the focus of the audit has changed over the course of the review. The original Audit Objective agreed was to *"provide assurance that the procurements of the design and development services for the Temple to South Bank footbridge Project are undertaken in accordance with procurement regulations and approved procedures and were open, fair and transparent."*<sup>1</sup>

This scope was reproduced in each subsequent Internal Review report, and formed the basis of the original conclusion reached by the Internal Review team in the 22 July draft (ie before it was changed by senior management). This conclusion stated that *"there were a number of instances where the procurements deviated from TfL policy and process and OJEU guidance [...] and, taken together, these adversely impact on the openness and objectivity of the procurements"*.

Following that draft, the focus of the audit appears to have shifted from looking primarily at fairness and transparency to focusing mainly on a value for money conclusion. Despite the Objective and Scope of the Audit remaining the same in subsequent versions, the conclusion in

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<sup>1</sup> Memo from Director of Internal Review to the Managing Director of Planning, 16 June 2015 – submitted to the GLA Oversight Committee by TfL on 20 November 2015

the 15 September (ie final) draft stated, *“The audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders”*.

In his oral evidence to the Oversight Committee in September, TfL’s Managing Director of Planning stressed the value for money conclusion several times as the ultimate mitigation for criticisms of the procurement process. For example, *“What this audit has confirmed is that that initial procurement was robust. It did offer value for money and it was acceptable for the job that we were doing at that time.”*

From evidence heard by the Committee, it appears that the suggestion to focus on value for money did not come from the Internal Audit team. In describing the sequence of events, the Director of Internal Audit said that, following initial drafts of the report, senior management asked him if there was anything that could be said on the issue of value for money. The Director of Internal Audit formulated the value for money judgement, and it appeared first in drafts dated 6 August, quite late into the process, and despite not having been addressed in the evidence gathered by the Internal Review team. Mr Clive Walker said that:

*“I do not think we did really change the focus of the report. The actual issues that are raised are all around matters of transparency and openness, issues like the fact that there was contact with one of the bidders to ask them to drop their price when others were not contacted and so forth. The main issues that are in the report are about issues of transparency and openness”*.

**We do not believe that this constitutes an adequate explanation for the apparent switch in focus of the audit. The reason the Commissioner had the audit undertaken was to give reassurance that the procurement had been fair and transparent and that rules had not been breached in order to achieve a predetermined outcome. Given the changes and the sources of these changes we do not consider that the Audit report can provide such reassurance and doubts about the openness and transparency of this procurement process remain.**

## *Issue 2 – The conclusion*

The 22 July draft includes the amended conclusion reached by the Internal Review team. It summarised a list of errors found over the course of the review before reaching its final conclusion on openness and objectivity (ie *“taken together, these adversely impact on the openness and objectivity of the procurements”*). The list of errors included:

- There was no procurement strategy to manage and deliver each procurement;
- There were informal contacts with individual bidders in each procurement; and
- There was a lack of clear segregation of duties between TfL Planning and TfL Commercial in the evaluation of TfL 90711 Design Services.

Once the draft was circulated to senior management, the conclusion underwent substantial changes. The summary of errors was removed, as was the finding on openness and objectivity.

The conclusion was also re-written to include mitigating statements about TfL's actions in the procurement process, which arguably contradict the findings contained in the body of the report. For example:

*“For these procurements the approach was not agreed at the outset, TfL’s role in the project was unclear and this was a strong factor in there not being an agreed strategy from the commencement... However, the audit did not identify any issues that would suggest that the final recommendation in both cases was not sound.”*

This statement appears questionable in light of the original conclusion which stated that the fairness and transparency of the procurement process had been compromised.

**It is notable that the conclusion in the final audit report also forms the basis of its executive summary. We believe that neither the conclusion nor the executive summary accurately reflect the critical findings contained in the body of the published report, and don't therefore include the most important criticisms of both individual and organisational conduct during this procurement process.**

### *Issue 3 – Senior Management input*

In examining this issue, a broader concern has arisen among Committee Members about the degree of influence senior managers, who are the subject of a review, have over both its findings and conclusions. From our analysis of the audit trail, it appears that substantial changes were suggested by the Managing Director of Planning, whose personal conduct and that of his department were a major focus of the review. Ultimately, the original draft completed by the internal review team raised significant questions about his role, yet it appears that he was allowed to suggest changes which eased or removed that criticism completely.

**The Committee understands that the Director of Internal Audit had the final say on all changes related to the draft before publication. However, the degree of change, and the lack of any clear justification for the extent of the changes agreed to by the Director of Internal Audit raises questions about the ultimate independence of the audit's findings.**

In summary, while we welcomed Sir Peter Hendy's quick response to concerns raised by Assembly Members and others in connection with the procurement of the Garden Bridge design contract, we are disappointed with the way it was carried out. Our letter highlights three main issues:

- We are concerned about the switch in focus of the audit to value for money. We do not consider that the final Audit report provides adequate reassurance about the process and we continue to have doubts about the openness and transparency of this procurement exercise.
- We believe that the executive summary and the conclusion do not accurately reflect the audit's actual, and more critical, findings as set out in the main body of the published report.

- The number and tone of changes to previous drafts of the audit report suggested by the Director of Internal Audit raises questions about the ultimate independence of the audit's findings.

I would be grateful if you would raise these issues with the Audit and Assurance Committee during discussion of the Internal Review report at your meeting on 8 December. We would also welcome a response from the Committee to these concerns.

Yours sincerely

A handwritten signature in black ink that reads "Len Duvall". The signature is written in a cursive style with a large, prominent 'L' and 'D'.

**Len Duvall AM**  
**Chair of the GLA Oversight Committee**

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15 December 2015

Dear Mr Duvall

**TfL's internal audit review of the Garden Bridge design procurement**

Thank you for your letter of 3 December 2015. I note the concerns of the GLA oversight committee in respect of the above project. This was discussed at a meeting of TFL audit committee last week and subsequently in a private meeting which the committee members had with the Director of Internal audit. The members of the committee agreed that I should write to you with a summary of their thoughts and discussions.

I understand the substantial amount of public interest in the project which has sometimes strayed into the political arena. In the light of that interest it is important that your concerns are fully addressed and this was indeed the intent of TfL through its commissioner in establishing the audit.

Your letter has expressed three main concerns- the focus of the audit, the conclusion of the audit and the degree of senior manager input into the audit (you have highlighted your concerns in bold in your letter).

If I may, I would summarise the nature of the concerns as falling into two broad areas. The first is whether the audit report gives the necessary assurance that the procurement was open fair and transparent and the second is whether it was conducted in an independent fashion.

I should like to take the second concern first. As you know TFL operates a large internal audit function and one of the primary roles of the audit committee is to satisfy itself of its independence. We have no evidence to suggest that this is not the case. Indeed I would note that in May this year the Chartered Institute of Internal audit noted that within the TFL organisation "Internal audit has (still) maintained its independence and objectives and this is respected in the business".

I note your comments on the various changes which were made to the report before its issue and want to address that. I am aware (I have been involved in financial oversight for more than thirty years) that it is not unusual for audit reports to go through several drafts and several meetings with management before being issued and I do not see anything wrong in that or in itself to suggest a lack of independence on the part of the Head of Internal Audit.

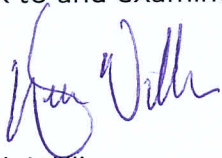
As part of the assessment of its independence the Audit committee meets each year with the Director of Internal Audit in order that he might relay any concerns that he may have. This is part of good audit practice and the meeting was already scheduled and held as planned on 8 December.

The Director of Internal Audit did not indicate to the committee that at any stage with regard to the audit that his independence was challenged or compromised in any way.



With regard to your (first) concern about whether the audit report adequately addresses the issue of reassurance on openness, fairness and transparency I would start by noting that the some of the summary findings are that a) the procurement approach was appropriate b) there were no issues with regard to the selection of bidders c) there were no issues with the development of the tender d) no issues with the process for developing the invitation to tender **but** e) there were some issues with the evaluation process and analysis of the tenders in the contract which did not follow procurement policy.

I know that the management of TfL are very keen to learn from any lessons that might be taken from this last finding. I have agreed with the new commissioner that this part of the audit report should be further followed up by him and his senior team and presented back to and examined by the audit committee in due course.



Keith Williams



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9 March 2016

Dear Mr Duvall

**TfL's internal audit review of the Garden Bridge design procurement  
Audit meeting 8 March**

When I appeared before the GLA oversight committee I agreed that I would send you a summary of the matters arising from the TFL Audit committee on 8 March as they relate to the Garden Bridge.

I have broken the summary into three a) discussions on matters arising from the audit to include specific questions raised by your committee b) status of a follow up by external auditors on the audit process relating to the Garden Bridge and c) status of follow up by management on management actions arising from the audit.

**A. Questions relating to the Garden Bridge project.**

The committee covered the following points:

**1) The role of Thomas Heatherwick ("TH") and the initial procurement of design services in March 2013.**

The appointment was awarded by Planning and was in conformance with TFL procurement processes. Under TFL procedures the procurement of the design services had to be conducted with TFL commercial department involvement and competition must be involved. It did not require that the bids were individually scored.

Both of the required policies were adhered to fully. However there were some issues with the process. Firstly there was no procurement strategy. The rationale has been explained by several different officers at TfL. TfL was unclear as to the nature of the project and desired to put in place a preliminary exercise to look at concepts- the fee for which had been capped at £60,000. Any strategy document would have made this clear and been helpful.

Additionally there was some contact with bidders outside the evaluation process which did not follow TfL's procurement processes. In particular there was communication with TH after the bids were received. This was for clarification and therefore did not impinge upon the decision to award the project to TH. Nevertheless it was not in accordance with TfL process. These issues were properly picked up and highlighted in the audit drafts and in the final version of the audit report.

The initial draft of the audit report included a misunderstanding regarding the applicable procurement process – it was stated that the procurement needed an OJEU process (it did not as it was £60,000 when the cut off for OJEU procurement was £150,000). The initial draft of the report had included legal advice on OJEU procurement requirements which was given on 8 January. This was before the contract for design services was issued. The Audit report also concluded incorrectly that it required a panel sign off which it did not in view of the size of the contract.

These issues were rightly corrected following comments on the draft audit report from TfL management. It is normal audit practice for Audit reports to be redrafted in order to make sure they are accurate.

The misunderstanding in the draft audit report of the governance required on the contract is unhelpful in explaining the role of Richard de Cani. RDC had the authority to award the contract but agreed it with Michele Dix as TfL Managing Director of Planning beforehand. This point is not covered in the final audit report as the role of RDC was not being questioned at the time. The extent of his role was discussed with the Audit Committee by the Internal Audit team.

There is one further aspect of the TH contract which the committee covered and which I mentioned in my evidence to the GLA oversight committee.

Given that any appointment on the initial design would be important to the project for the technical design prior to any planning application, it might be thought that the larger project should have been taken into account at the beginning at the award for Design services.

There are two reasons given to the committee as to why this was not the case. The first is that the TFL contract with TH had been specific and had ended in July 2013 with the intellectual property rights to the products of that work clearly defined and that TH had no say on the award of the second contract and (furthermore) it was made clear to the bidders on the technical design that they could subcontract to whomever they wanted for any further work. The second reason was that all parties to the second contract bids had full access to all of TH's initial design work and therefore were free to choose the subcontract partner.

## **2) The appointment of Arup to the technical design project**

The project went through a full tender process and evaluation which involved a joint panel from Planning and Commercial in accordance with TFL policies. The procurement was carried out using the Engineering and Project Management Framework (EPMF). The EPMF was properly advertised in the OJEU. This is key to proper procurement.

However there were again some failings in the process including the request made to Arup to review their fees when none of the other bidders were asked to do the same. It is good commercial practice and TFL policy to ask all second round bidders for a Best and Final Offer. The understanding of the committee is that there were five bidders still in the process at this point.

The explanation given to the committee is that Arup were by far the best Technical bid but needed to firm up on price. I can see the argument that as this was a procurement for services and needed the best technical supplier that this was

paramount (TFL had weighted the award criteria 70% towards technical). We can therefore understand that the steps taken by TFL might be reasonable in the circumstances. The explanation given is that they did not want to waste the time of the other bidders. However this was clearly poor commercial practice and everyone at TFL I have spoken to regrets that proper process was not followed. It is a point which has been made to and accepted by TFL management.

It has been also noted that TFL accepted some information from Arup after the deadline for bids had been reached. Again this was not usual process. As a committee we do see that this was a failure of process but cannot see that it produced unfair advantage given the nature of the of the information.

The committee discussed the scoring of the contract and was satisfied that this was done correctly. However it should be noted that the individual notes made by the Panellists during the technical scoring session had been kept for some time but were disposed of before the Audit, These were not the related to the scoring itself but to individual notes.

### **3) Was the project procurement open, fair and transparent in accordance with good procurement policies**

In the first draft of the audit report Internal Audit wrote that there were several deviations from procurement process in that there was a) no procurement strategy b) there were informal contacts with individual bidders c) there was lack of segregation of duties on the design project (though this is an erroneous comment) and d) there were incomplete records.

The first draft then went on to say that “*taken together these adversely impact on the openness and objectivity of the procurements*”. Clive Walker has said to the GLA oversight committee and to TFL audit committee on behalf of Internal Audit that this was omitted from the final paper because it was repeating what was effectively in the report.

The final Audit Report concluded that *“there were some instances where TfL policy and procedure with regard to communication with bidders and tender evaluation were not fully complied with”*.

The Audit was not formally rated by Internal Audit as it was a review requested by the Commissioner and was not meant to be a standard audit.

In your questions to me at the GLA oversight committee you raised the question as to why the emphasis of the audit had been changed to one of value for money. Clive Walker as Director of Internal Audit has given evidence to both the GLA oversight committee and, as he confirmed to you on 22 October 2015, in his opinion, taken together, the issues identified by the audit adversely impact on the openness and transparency of the procurements. As a committee we concur with what Clive said.

#### **B) Follow up on the audit process**

At the meeting yesterday the committee requested that the External Auditors review the conduct of the Internal Audit of the Garden Bridge. The purpose of the review will be to confirm whether or not the audit was conducted in accordance with good Audit practice and to learn any lessons which might be come from their review.

#### **C) Follow up by management**

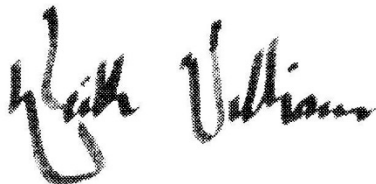
Management actions have been agreed and are being taken forward to ensure that established processes are followed in the future. These issues are not being taken lightly by TfL. The committee is aware from my discussions with Mike Brown and his team that they are very keen to learn from any lessons that might be taken from the Audit findings.

It is clear that if all TFL's policies and procedures had been complied with that the procurement process would have been better and TFL commercial have already issued guidelines to managers on procurement and procurement policy. In behalf of the committee I have reviewed these guidelines.

At the TFL Audit committee meeting yesterday we also reviewed to Audit Plans for 2016/17 to ensure that the Internal Audit team will spend sufficient time reviewing both the general compliance with Procurement policies and adherence to Procurement policies on specific projects,

The next meeting of the TFL Audit committee is scheduled for June 14 2016 at which time we will discuss the External Auditors report into the Audit of the garden Bridge. The committee will shall share any findings from that report with the GLA oversight committee as appropriate.

Yours sincerely

A handwritten signature in black ink, appearing to read "Keith Williams". The signature is written in a cursive style with a large initial 'K'.

Keith Williams