

Written Ministerial Statement

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Department for Infrastructure

AWARD OF CONTRACTS FOR ASPHALT RESURFACING 2015: INDEPENDENT INVESTIGATION REPORT

Published at 3.00 pm on Friday 25 March 2022.

Ms Mallon (The Minister for Infrastructure): In my statement to the Assembly on 15 June 2021, I announced that I was establishing an independent investigation in relation to a 2015 procurement competition for asphalt resurfacing works that was successfully challenged by Northstone (NI) Ltd. The purpose of the investigation was to ensure that my Department and others learned from the court judgments and to inform the development of future procurement strategies. I have only yesterday taken receipt of the report but, given that the Assembly will rise in the coming days, I wanted to provide Members with an update before this takes place.

Members will be aware of the background to this issue: a challenge was lodged by Northstone against the former Department for Regional Development's handling of a tender process, for asphalt resurfacing contracts in 2015. Northstone was successful in the High Court in 2020 and the Department's appeal to the Court of Appeal was unsuccessful in 2021. The judgments concluded that the Department's post-tender evaluation and scoring interaction with one of the tenderers and the resulting related contract award decisions were not in accordance with the governing legal principles and competition rules.

The independent investigation, which was led by Ms Sarah Hannaford QC, included a detailed review of all documentation and a series of interviews with my officials, some of whom were involved in the 2015 competition. The investigation has now concluded. Members will appreciate that some time is required to properly consider the findings ahead of publishing the report on the Department's website. To reassure Members this will be published on 4 April.

What is clear to me is that Ms Hannaford's findings generally accord with the court judgments. She also recognises that the disputed issue is not straightforward and, more broadly, that procurement is a challenging and developing area of law in which it is often not easy to work out the answer to specific problems which arise during a procurement given the limited number of published judgements.

It is reassuring that during my time as Minister, some significant improvements have been made to the Department's procurement practice. That said, Ms Hannaford has very helpfully pointed to the potential for further improvements. These include clearer competition rules, alternative assessment approaches, additional training and guidance for staff involved in procurement activities, and enhanced record keeping.

My officials are already considering the potential improvements and have had initial engagement with Construction & Procurement Delivery in the Department of Finance to identify any findings that have wider applicability, such as additional training and guidance. The investigation's findings will also help inform the direction of ongoing work to develop sustainable procurement strategies for much needed asphalt resurfacing work in the future.

In closing, I would like to thank Ms Hannaford QC and Ainslie McLaughlin for their work. Members will share my concern at how these issues arose and will want to be reassured that they never arise again. I want to assure Members that this is my focus and I have asked my officials to progress next steps as quickly as possible. My firm view is that the findings of the report must help identify lessons for all those involved in public procurement.