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11 September 2014

Dear Kevin

**SDC Inquiry – Phase 3 evidence session – 23 September 2014**

I refer to your letter dated 7 July 2014 requesting Mr Declan Allen, NIHE, to attend a Phase 3 Inquiry session which is to be held on 23 September 2014. I can confirm that Mr Allen will attend as requested.

In advance of his attendance a written briefing is attached at Annex A.

Yours sincerely



**SUSAN MCCARTY**

**Briefing for the Social Development Committee Session on the 23<sup>rd</sup> September 2014 – Declan Allen, Head of Procurement NIHE**

**1. Investigations into the Red Sky Group by the NIHE Repairs Investigation Unit, NIHE Internal Audit (IA) and ASM Horwath/VB Evans;**

As Head of Procurement, Declan Allen was involved in the appointment of ASM Horwath. ASM was appointed in September 2009 and their terms of reference were amended in October 2009 following various meetings between NIHE personnel including the Head of Internal Audit. The revised terms required ASM to include details of a report written by Central Procurement Directorate (CPD) on the procurement process carried out by the NIHE to let Response Maintenance Contracts. In addition they were also asked to carry out interviews with NIHE staff who had an in-depth knowledge of the workings of maintenance contracts.

In order to satisfactorily carry out the investigation ASM retained the Services of VB Evans, a quantity surveying company, to carry out reviews of all work done including re-measurement to ensure that work that was ordered was carried out and paid for.

**2. Investigations into other NIHE contractors as requested by the Minister;**

The Head of Procurement was not involved in any other investigations requested by the Minister, into our contractors.

**3. Investigations into other NIHE contractors undertaken by NIHE Internal Audit and the Repairs Inspection Unit;**

The Head of Procurement was not involved in any other investigations carried out by the RIU or IA into other contractors.

**4. NIHE Board's decision of 13 April 2011 to terminate the response maintenance contracts held by Red Sky Group;**

A paper was submitted to the Board at its meeting of the 13<sup>th</sup> April 2011 which recommended the termination of Red Sky. The Head of Procurement provided advice to the senior management team in the drafting of this Board paper relating to the operational implications if termination was to go ahead.

The Head of Procurement was not involved in the Board's discussion at this meeting.

**5. Your contact with the adjacent contractors regarding the transfer of Red Sky Maintenance work following the decision to terminate the Red Sky contract on 13 April 2011;**

Following the decision to terminate the contracts the Head of Procurement held discussions with adjacent contractors to discuss the provision of maintenance services in each of the affected districts. These discussions continued throughout the termination notice period and culminated in the issue of letters to each adjacent

contractor on the 11<sup>th</sup> July 2011. These letters set out the terms of the back-up/support provision they would provide while a new procurement exercise was carried out.

**6. Your contact with the Red Sky Administrators, BDO, following their appointment on 20 April 2011;**

The Head of Procurement attended a meeting with the BDO on 5<sup>th</sup> May 2011 in a support capacity to the senior management team members present.

As Head of Procurement, Declan Allen had e-mail correspondence with the administrator relating to the supply of information on TUPE matters and the completion of outstanding response maintenance jobs.

**7. Your contact with the adjacent contractors and BDO regarding the TUPE arrangements;**

The Head of Procurement was in contact with BDO in regard to the transfer of employees from Red Sky in Administration to each of the adjacent contractors. This was to ensure that the TUPE liability information was passed to the contractors to enable those eligible employees in the affected districts to transfer to the adjacent contractors.

**8. Confirmation of the number of Red Sky employees who transferred to adjacent contractors under the TUPE arrangements;**

Some 133 employees transferred to the adjacent contractors. The breakdown of this figure was Carillion employed 65, H & A Mechanical, 15 and PK Murphy, 53.

**9. Request from the Chairman of the Oversight Group on 24 June 2011 that the NIHE should include a clause in the new response maintenance contracts regarding damages resulting from poor contractor performance;**

Following the DSD Health check of December 2010 the Housing Executive commenced a full review of Contract Management, including contracts, and in turn the use of KPIs. The request from the Chairman of the Oversight Group was taken into account when the new approach was being developed. The Board in July 2011 approved the procurement strategy for the new Response Contracts which included a new set of KPIs based on the Government Construction Clients Group KPIs. In addition, the provision for the application of low performance damages was added.

**10. NIHE Board meeting of 5 July 2011 regarding the Minister's request for an extension to the Red Sky contract;**

The Head of Procurement attended this meeting in an advisory capacity. Discussion ensued regarding e-mails between the Head of Procurement and the administrator on the potential for Red Sky in Administration continuing to provide the Response Maintenance services for a period of 6 months.

The Head of Procurement had issued a further e-mail to BDO regarding the length of time they could provide the services for. The response from BDO was received on

the 4<sup>th</sup> July and outlined that they could provide a service to the 31<sup>st</sup> July 2011. They could provide a service past this date only if a new company took on Red Sky's business. The Head of Procurement then e-mailed early on the 5<sup>th</sup> July 2011 to outline that it was not clear whether the administrator could provide a service for a further period past the 31<sup>st</sup> July 2011.

A further response from the administrator was received later on the 5<sup>th</sup> July 2011 again confirming that the administrator could only provide a service to the 31<sup>st</sup> July 2011 and that post this date it would require the assistance of a new company. The Board concluded that, from the information received, they had no guarantee that a service could be provided past the 31<sup>st</sup> July by the administrator.