LONDONASSEMBLY

GLA Oversight Committee

The Garden Bridge Design Procurement

March 2016

GLA Oversight Committee Members

Len Duvall (Chair)	Labour
Tony Arbour (Deputy Chair)	Conservative
Jennette Arnold OBE	Labour
Gareth Bacon	Conservative
Roger Evans	Conservative
Darren Johnson	Green
Joanne McCartney	Labour
Caroline Pidgeon MBE	Liberal Democrat
Navin Shah	Labour

Role of the GLA Oversight Committee

The GLA Oversight Committee is responsible for a range of matters, including responding on the Assembly's behalf to formal staffing consultations from the GLA's Head of Paid Service, monitoring scrutiny expenditure and approving the expenditure over a certain level, approving rapporteurship proposals, overseeing the programming of the Assembly's business and recommending to the Mayor a budget proposal for the Assembly for the financial year and then allocating that budget. In addition, the GLA Oversight Committee now has responsibility for scrutinising any actions or decisions taken by the Mayor on matters relating to education. The Committee usually meets ten times a year.

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Chair's foreword

With a budget of £10.5 billlion of public money, making it one of the largest public organisations in the country, Transport for London (TfL) has a duty to uphold the highest standards in openness, fairness and transparency, particularly when it comes to awarding multi-million pound contracts.

There is no doubt that the Garden Bridge is a proposal which captures the imagination, but over the past year the project has also attracted significant criticism for flaws in the procurement process that resulted in the Bridge being commissioned. It is this procurement process, not the principle of the Bridge per se, that the London Assembly GLA Oversight Committee has examined over the past six months. This investigation has revealed significant and worrying failures by TfL.

Our investigation has identified significant failures of process throughout. This led this Committee to "conclude that the objectivity and fairness of this procurement process was adversely affected by these actions, which casts a shadow on the ultimate outcome."

Whenever public money is committed to a project, fairness in the awarding of the contract is paramount. Ensuring fairness and best value for taxpayers is precisely the purpose of the procurement process.

Whilst the Committee was looking at the procurement concerns, further information came to light about contact prior to the procurement between the Mayor and potential bidders. Despite strict rules in place to ensure potential bidders are not given preferential treatment, the Mayor, who is also Chair of TfL, and his team met five times with Thomas Heatherwick to discuss the concept of a Garden Bridge prior to the procurement process beginning. This included taking a taxpayer-funded trip to San Francisco in order to drum up funding for the project.

Over many months, the Mayor attempted to conceal who attended the meeting with potential funders in San Francisco. This was despite promising a full list of attendees which was never forthcoming. It was revealed later through a Freedom of Information response, that Thomas Heatherwick, the architect behind one of the bids for the Bridge design contract had joined the Mayor. We were then asked by the Mayor to believe that it was no more than

a “coincidence” that they just happened to be in San Francisco at the same time.

This rightly triggered alarm bells, but the lack of documentation related to the trip and meetings has hampered attempts to get to the bottom of the Mayor’s true intention and judgement in undertaking a fundraising trip with a potential bidder prior to the formal procurement process even beginning.

Only days after the trip, the tender for the scheme was launched with TfL seeking bids for a ‘pedestrian footbridge’ with no reference at all to a Garden Bridge despite the Mayor’s clear support for the concept.

When taken with the fact that key documents related to the procurement process are missing, and that Clive Walker, TfL’s Director of Internal Audit, accepted that flaws in the procurement “adversely impacted on the openness and objectivity of the procurement,” it is clear that, despite the Committee’s best endeavours, many questions remain about the way in which the Garden Bridge project was awarded.

The Mayor’s actions, providing access for one of the bidders ahead of the procurement process, appear to have undermined the integrity of the contest.

A leaked early version of the TfL audit report into the Garden Bridge procurement was highly critical of the way the bid had been handled. The final version of the report, while less critical, concluded that a number of problems existed with the procurement process as a result of TfL’s role in the project not being sufficiently clear.

Special mention must go to the excellent investigative work of Will Hurst and the Architects’ Journal for their persistent and meticulous scrutiny of this project. As an aside, it is worth noting the importance of the Freedom of Information laws which were so vital to building a clearer understanding of what occurred in this procurement process. It would be a travesty if Government tinkering with FoI laws resulted in less scope for such transparency.

The principles of the Garden Bridge proposal are sound. There is little doubt that it would have been a strong contender in any open and objective procurement. The controversy which has beset the project has stemmed from the Mayor’s prior contact with bidders, TfL’s mishandling of the procurement process and the favourable treatment and access offered to one of the bidders in advance of the process. Transparent procurements are always incredibly important at retaining confidence in the process, particularly when

significant amounts of public money are being spent, including in this case, the underwriting of £3.5m in yearly running costs for decades to come.

In light of our findings and evidence provided by TfL showing flaws in the process, the Committee recommends bidders which expended notable costs are reimbursed and that TfL's internal processes are significantly strengthened to ensure these kinds of mistakes do not happen again.

Len Duvall AM
Chair of the Oversight Committee

Executive summary

In June 2012, the Mayor of London received a letter from the actress and activist Joanna Lumley, requesting a meeting to discuss a proposed Garden Bridge across the Thames. The resulting meeting, between Ms Lumley and the Deputy Mayor for Transport, and the Mayor's Chief of Staff, was the first in a series of discussions throughout 2012 and early 2013 between Ms Lumley, representatives from Heatherwick Studio and high level contacts from the Mayor's Office and TfL. Heatherwick Studio was subsequently awarded the contract for design services for the Garden Bridge.

The process which led to that decision has been the focus of intense scrutiny over the last two years. As more details have emerged about the circumstances surrounding TfL's management of the design contract procurement process, journalists, industry experts and the London Assembly have called into question the objectivity and fairness of TfL's decision making. Despite initial claims by the Mayor and TfL that the process had been robust, the mounting criticism led to an investigation by TfL's internal audit function into the procurement's fairness and objectivity. This came in response to a letter from Caroline Pidgeon MBE AM to Sir Peter Hendy, the then Commissioner of TfL. Unlike other internal audits, where the public only see the conclusion and summary, Sir Peter also pledged to publish the review in full when completed.

The GLA Oversight Committee has held four meetings to shed some light on both the procurement process and the internal audit review. This was not an investigation into the merits or otherwise of a Garden Bridge but instead focused solely on the procurement processes around its design. Our investigation has allowed us to conclude that:

- The Mayor should have been more upfront about the range and nature of contacts between his Office, TfL senior management and Heatherwick Studio.
- TfL did not have a clear idea of the extent of its involvement in the early stages of the project, leading to the decision to run a closed tendering process for the design contract. Senior managers now admit that TfL would have followed a different path if it had had a better understanding of its role earlier in the process.
- There was a series of procedural errors in the procurement process including informal communication between TfL and the selected design firms; questions over how the bids were scored and why it was left to just one individual to score the bids; and the loss of key documents which would have provided a detailed paper trail for the tender evaluation.

We also looked in some detail at the way the internal audit review was carried out. An earlier version of the audit report was leaked to the Committee and a comparison of that document and the published version shows that:

- The final published audit failed to address the original objective and scope of the project. Instead, it judged the process on 'value for money' terms, when the audit's original intention was to assess its openness and transparency.
- The early draft judged that the balance of evidence demonstrated that the fairness and objectivity of the procurement process had been "adversely affected" by the errors in the procurement process. This was totally removed in the published version.
- The conclusion underwent substantial changes to include mitigating statements about TfL's actions in the procurement process, remove criticisms of the process's openness and transparency and insert the value for money judgement.

In short, the earlier, leaked version of the audit report was substantially different in content and tone from the published version. In almost every case, the changes reduce or soften criticism of how senior managers conducted the procurement. Although the main body remained truer to the original, the key findings were not, to our mind, adequately represented in the conclusions and the summary.

We wrote, with cross-party support, to TfL's Audit and Assurance Committee outlining these concerns. We were initially disappointed with the response we received but are more encouraged with subsequent commitments from TfL to do more work on the issue. TfL has committed to a series of actions as a result of its internal audit review, including improving communication between officers and departments at the start of a procurement process; evaluating how tenders are scored with a view to establishing a consistent approach across TfL; and developing a training package on TfL's procurement processes for use by current and future staff. We look forward to a report back on progress against this plan and our recommendations which are set out in the conclusion to this document. External factors will often put pressure on TfL to deliver priority projects. It is TfL's responsibility to ensure it has the processes in place to respond to such projects while still maintaining openness, fairness and transparency in its operations.

This report represents the view of a majority of the Committee. The GLA Conservatives' dissenting views are set out in a minority opinion in Appendix 1 of this report.

1. Introduction

1.1 In February 2013, Transport for London (TfL) invited three companies to tender for the design contract for a "pedestrian footbridge" from Temple to South Bank. The three organisations which submitted proposals were Marks Barfield, Wilkinson Eyre and Heatherwick Studio. In April, Heatherwick Studio was awarded the contract, valued at £60,000. The contract was to "secure design advice to help progress ideas for a new footbridge crossing of the River Thames in Central London."[1]

1.2 This procurement was the first major step towards the construction of what has become known as the Garden Bridge, a major new landmark proposed for Central London. The Bridge's current final cost is estimated at £175 million, with a completion date set for mid-2018. According to the Mayor and TfL's Commissioner for Transport, the project needs to be completed before construction on the Thames Tideway Tunnel begins.[2] Since October 2013, the construction and future maintenance of the Bridge has been the responsibility of a charity, the Garden Bridge Trust. The Trust has received £60 million in public funding, £10 million of which is in the form of a grant by TfL, with an additional £20 million earmarked as a long-term loan to the Trust. The remaining £30 million has been pledged by the Treasury. In February 2015, the Mayor also committed the GLA to guarantee the ongoing maintenance[3] costs of the Bridge should the Garden Bridge Trust fail, potentially costing the Greater London Authority (GLA) an additional £3.5 million a year.[4]

1.3 The decision to award the Garden Bridge's design contract to Heatherwick Studio has been the focus of intense scrutiny over the last two years. The London Assembly's Budget and Performance Committee considered it as part of its ongoing examination of TfL's use of commercial sponsorship for public transport projects.[5] The wider Assembly discussed the project in plenary in June 2015 and it has been the subject of several Mayor's Questions and a review carried out by the National Audit Office (NAO) into the value for money issues arising from the £30 million grant awarded to the Garden Bridge from central Government.[6]

1.4 As more details have emerged about the circumstances surrounding TfL's management of the design contract procurement process, journalists, industry experts and the London Assembly have called into question the objectivity and fairness of TfL's decision making.

Why we undertook this investigation

1.5 The GLA Oversight Committee is a cross-party group established to scrutinise internal processes of the GLA and its functional bodies. Much of the work of the Committee is about ensuring that decision-making processes within the GLA group of organisations are undertaken properly. Making the GLA group more transparent is a key goal for the Committee. The Committee has published two reports on this theme stressing the importance of transparency and accountability in public bodies. In the 2013 report, it said:

> *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.* [7]

1.6 In response, the Mayor made the following commitment:

> *I welcome your report on GLA Group transparency. This is an important part of my agenda and I will continue to emphasise to the GLA Group the importance of prioritising transparency.* [8]

1.7 The investigation into the Garden Bridge provided the Committee with an opportunity to address public concerns about how this important contract was awarded, and how TfL dealt with those concerns as they arose. This was not an investigation into the merits or otherwise of a Garden Bridge but instead focused solely on the procurement processes around its design. TfL's internal procedures have been the subject of the Committee's work on several occasions, including discussions on how it meets its duties on equalities, and the quality of its Board-level governance.

1.8 In the course of its investigation, the GLA Oversight Committee met representatives from TfL, industry experts and the Mayor of London. These meetings examined both the procurement itself, and the production of TfL's own internal audit review of the process, and are detailed in the table below:

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 Architects' Journal and Walter Menteth of Walter Menteth Architects.
22 October	The GLA Oversight Committee discussed TfL's internal audit review of the procurement process with Clive Walker, Director of Internal Audit

17 December	The GLA Oversight Committee met with the Mayor of London (who is also Chair of TfL's Board) and the TfL Commissioner to discuss broad strategic issues which had been raised by its past work.
25 February	The GLA Oversight Committee met with Keith Williams, Chair of TfL's Audit and Assurance Committee to discuss that Committee's response to the Oversight Committee letter of 3 December.

1.9 This report summarises the work of the GLA Oversight Committee on this issue. Section 2 looks at the procurement process itself, highlighting the extent of contact between the Mayor, senior management at TfL and Heatherwick Studio, the lack of a clear strategy for the procurement, and the procedural errors that were identified by TfL's own internal audit review. Section 3 explores how TfL's own review of the procurement was produced, and the concerns the Committee expressed about its coherence and independence. Appendix 2 includes a list of documentation TfL provided to help us in our investigation. We are looking for TfL to learn from this experience and improve its processes for the future.

2. The Procurement Process

Mayoral Contact

Key issues

Throughout 2012 and early 2013, the Mayor, his Deputies and TfL held several meetings with Thomas Heatherwick and his employees about the Garden Bridge proposal. These included a meeting between the Mayor, Thomas Heatherwick and a potential major sponsor for the Bridge, less than two weeks before the Invitation to Tender for the Garden Bridge design contract was released. Many of these meetings were only revealed as a result of Freedom of Information (FOI) requests.

2.1 In June 2012, the Mayor of London received a letter from the actress and activist Joanna Lumley, requesting a meeting to discuss a proposed Garden Bridge across the Thames. The resulting meeting, between Ms Lumley and the Deputy Mayor for Transport, and the Mayor's Chief of Staff, was the first in a series of discussions throughout 2012 and early 2013 between Ms Lumley, representatives from Heatherwick Studio and high level contacts from the Mayor's Office and TfL.

2.2 One meeting in particular has become a focal point of criticism. In early February 2013, the Mayor, the Deputy Mayor for Planning and Policy and the Deputy Mayor for Transport had a 24 hour visit to San Francisco, USA to lobby Apple for sponsorship for several projects in London, including the Garden Bridge. This was paid for by the GLA. Thomas Heatherwick was in the city at the same time and attended the same meeting with Apple to discuss the concept of his design. The Mayor, under questioning, claimed this was nothing more than a coincidence. This trip took place between the 3 and 5 February, just under two weeks before TfL issued its Invitation to Tender for the design of the Bridge to other firms. The Mayor was unsuccessful in gaining financial sponsorship.

2.3 Details about this and other meetings were slowly revealed over the last year as a result of a series of FOI requests, Mayoral Questions and an investigation by TfL's internal audit team. Few appear to have been minuted, or included in the Mayor's regular diary notices to the Assembly, and in some cases, the Mayor has been reluctant to outline the discussions which took place. For example, the San Francisco trip was not set out in the Mayor's monthly report to the London Assembly for February 2013 and in response to a Freedom of Information request, it was labelled as a private trip, despite it being funded

by public money. Details of its purpose and those in attendance only came to light as a result of the GLA Oversight Committee questioning the Mayor at its meeting in December 2015.

2.4 One of the reasons this degree of contact was problematic was that it gave one potential bidder – Heatherwick Studio – access to more information about the Mayor's vision for this project. TfL's Invitation to Tender specified only that it was looking to commission a pedestrian footbridge. In fact, it was clear, as evidenced by TfL Legal Opinion from 8 January 2013, that the Mayor was looking for a Garden Bridge.[9]

2.5 TfL Legal had highlighted the level of contact between the Mayor, TfL and Heatherwick Studio as a potential risk to the fairness of the procurement process for the Garden Bridge. On 8 January 2015, it sent a memo to senior management outlining its advice on how the procurement should be managed. In it, it stressed the importance of ensuring a "level playing field" for all contenders.[10]

The Mayor should have been more upfront about the range and nature of contact between his Office, TfL senior management and Heatherwick Studio. It took over a year of Assembly requests and meetings to piece together the extent of this relationship. This is contrary to the Mayor's stated support for greater transparency. It has also given the impression to outside observers that there is 'something to hide', even if there is a case to be made for Thomas Heatherwick's involvement prior to procurement.

The Mayor should also have been more upfront about his preference for a Garden Bridge, rather than just a pedestrian bridge. This would have allowed TfL to give design firms a better steer during the tender process and helped ensure a more level playing field among those competing for the contract. All these factors only reduce public confidence that the procurement process for this potentially iconic landmark was fair and transparent.

A Clear Strategy

Key issues

TfL's role was in constant flux during the early stages of the Garden Bridge development. There was no coherent strategy, which contributed to a series of errors in the initial procurement of the design services contract. TfL acknowledges that it would have followed a different strategy had it known from the start the extent of its involvement in the Garden Bridge.

2.6 TfL's decision to base the Garden Bridge design on the outcome of a small-scale design contest between three firms has been criticised as inadequate by industry experts. Walter Menteth, architect and former head of the Procurement Best Practice Sub-Committee for the Royal Institute of British Architects (RIBA) told the Committee that:

> *In the normal case one would be seeking to achieve best value by going to the widest possible competition for the broadest range of creative and inventive ideas that could fully explore all the parameters of the requirements being sought by both the authorities and the public. One would do it as transparently and openly as was possible. We do not see that in this.* [11]

2.7 The decision to pursue a limited design contest was taken before TfL understood the full extent of its role in the early stages of the management of the Garden Bridge. TfL initially believed that its role was primarily to get the ball rolling before handing over to a private Trust which would manage the planning and construction of the Bridge. However, delays in setting up the Trust, and the pressure to ensure the Bridge's completion before the Thames Tideway Tunnel construction in 2018, meant that TfL played a greater role in the initial preparations for the Bridge than originally envisaged. TfL's internal audit review identified confusion about its role as one of the key reasons for the errors in the procurement process. The conclusion of the review states:

> *TfL's role in the project was unclear from the outset and this was a strong factor in there not being an agreed procurement strategy in place. It is clear that the project would have benefited from a procurement strategy, although the reasons for not having one are understandable.* [12]

2.8 Senior management admitted that TfL would have followed a different process if it had had a better understanding of its role earlier in the process. In his oral evidence to the GLA Oversight Committee on 17 September, the Managing Director of Planning at TfL, Richard De Cani, said that the initial conception of TfL's role was to engage with a design firm to look at various

options for a bridge over the Thames. Looking back on the scale of its ultimate involvement in the Bridge, the Managing Director of Planning stated:[13]

> *If we had known at that stage that we were going to be involved two years later - and that this bridge would have progressed from an initial idea to something that went through planning and was now being delivered by a charitable trust - then we might have adopted a different procurement process. We did not. We have done this in stages, in increments, as we progressed along.*

We understand that TfL's role was shifting throughout the early stages of this project, and that a degree of flexibility is important in managing a changing brief. However, this cannot be used as an excuse for not following best practice in procurement when large sums of money are involved. External factors will often put pressure on TfL to deliver priority projects. It is TfL's responsibility to ensure it has the processes in place to respond to 'fast track' projects while still maintaining openness and transparency in its operations. In this case, the organisation clearly fell short of what was expected of it.

Procedural errors in the procurement process

Key issues

TfL's internal audit review outlined several procedural errors in the procurement of the design contract. As well as the lack of clear strategy for the procurement, there were also issues around the scoring of the bids and improper contact with bidders during the process.

2.9 TfL's internal audit review of the design contract procurement uncovered a series of smaller, procedural errors made by management during the process. These included:[14]

- Informal communication between TfL and the selected design firms, which was contrary to TfL's policy on engagement with bidders. These communications included the release of a design brief to all three firms, discussion with Heatherwick Studio on its day rates, and an informal notification of success to Heatherwick ahead of the formal announcement. The review states that "communications outside of the formal tender process are inconsistent with TfL policy and procedure".

- The technical and commercial evaluation of the three bids for the design contract was undertaken by the same person in TfL Planning. This is inconsistent with TfL procedures and guidance on managing procurements and accepted good practice. The respective roles of TfL Planning and TfL Commercial (in effect, the procurement department) were not well defined at the outset of the procurement process and thus there was some confusion among those departments.
- The documents which would provide a detailed paper trail for the evaluation of the design contract procurement are missing. TfL said that the documents were accidentally destroyed during the process of moving offices.

Taken in isolation, none of the above are major problems. But taken together, these errors give the appearance that TfL consciously decided to disregard its own procurement policies. While the Committee notes TfL's view that this was due to internal confusion about its role, it is not an acceptable excuse for taking shortcuts in how it managed the design contract procurement. These examples provide a clear demonstration of the need for robust procedures that senior managers and staff must adhere to, no matter what the immediate circumstances of the project.

3. TfL's Internal Audit Review

Key issues

TfL's internal audit review of the Garden Bridge procurement process identified several errors, from relatively minor mistakes to larger issues with the management by senior figures within TfL. The draft version of the internal audit review went much further in criticising TfL and suggesting that mismanagement had adversely affected the procurement's objectivity and fairness. These criticisms were removed before the review was finalised and made publicly available.

3.1 The Mayor has consistently defended the procurement of design services for the Garden Bridge. For example, in March 2015 when criticisms of the procurement first arose in public, he stated:[15]

> *You have asked whether the procurement process was conducted in a satisfactory way. The answer to that is emphatically yes. Transport for London (TfL) has a lot of experience in managing procurement processes. The competitive tendering and all the rest of it for the design consultants was entirely appropriate. There were three candidates and Heatherwick Studio came out considerably ahead on the criteria.*

3.2 TfL also initially rejected the Committee and others' criticisms of the procurement process. As mainstream news outlets picked up the story, TfL released a statement saying it was "satisfied a robust and proper process was followed to award this contract."[16]

3.3 Despite dismissing the initial concerns, the pressure on TfL to justify its decisions continued to grow. In response to a letter from Caroline Pidgeon MBE AM in June 2015, Sir Peter Hendy, former Commissioner of TfL, acknowledged the ongoing concerns of the public and launched an internal audit review of the procurement process. Unlike other internal audits, he also pledged to publish the review in full when completed. If we hadn't secured that commitment, only the conclusion and summary would have been published, which would have given the public a misleading impression of the seriousness of the review's findings.

3.4 The audit, which was published in September 2015, gave a mixed picture of the success of the procurement process. Though it identified several errors with the procurement's fairness and transparency (see para 2.9), it concluded that these errors were understandable under the confused circumstances in which the procurement took place:

> *"The audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders… However, TfL's role in the project was unclear from the outset and this was a strong factor in there not being an agreed procurement strategy in place. It is clear that the project would have benefitted from a procurement strategy…Two different procurement approaches were adopted and, in both procurements, there were some instances where TfL policy and procedure with regard to communication with bidders and tender evaluation were not fully complied with."* [17]

Leaked document

3.5 Following the release of TfL's internal audit, GLA Oversight Committee Members were sent an email from Will Jennings, an anti-Bridge campaigner and manager of the *Folly for London* website. Mr Jennings attached what he claimed was an earlier draft of the internal audit report which was submitted to Richard De Cani on 22 July 2015. This draft had some substantial differences when compared with the final published version and several mitigating comments had been added. TfL subsequently confirmed that this document was a genuine early draft.

3.6 A comparison of the leaked document and the published version shows that:

- The final published audit failed to address the original objective and scope of the project. Instead, it judged the process on 'value for money' terms, when the audit's original intention was to assess its openness and transparency.
- The early draft also judged that the balance of evidence demonstrated that the fairness and objectivity of the procurement process had been "adversely affected" by the errors in the procurement process. This was totally removed in the published version.
- The conclusion underwent substantial changes to include mitigating statements about TfL's actions in the procurement process, remove criticisms of the process's openness and transparency and insert the value for money judgement.
- There were several other changes to the final published draft. In almost every case, the changes reduce or soften criticism of how senior managers conducted the procurement.

3.7 In discussion with the GLA Oversight Committee, TfL's Director of Internal Audit said that the changes were agreed as part of the normal process of finalising the internal audit review and that he had final approval of the text. He had also been asked by senior managers to make a determination on value for money, and was unconcerned about the change in focus from fairness and objectivity to value for money as the body of the report still detailed the mistakes found by the original review investigation.[18]

Correspondence with TfL Audit and Assurance Committee

3.8 In December, the Chair of the GLA Oversight Committee wrote to Keith Williams, Chair of TfL's Audit and Assurance Committee to detail the Committee's concerns (Appendix 3).[19] These related 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.

3.9 The response from the Chair of the Audit and Assurance Committee (Appendix 4) conflated the Committee's concerns into two broad themes:

> *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."*

3.10 In terms of the first theme, the Chair (Keith Williams) said:

> *"I would start by noting that … some of the summary findings are that a) the procurement approach was appropriate b) there were no issues with regard to the selection of the bidders c) there were no issues with the development of the tender d) there were 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."*

3.11 GLA Oversight Committee does not believe that summarising the findings of the internal audit report gives necessary assurance that the procurement was open, fair and transparent. The early draft of the internal audit (i.e. the version agreed before senior management outside TfL's Internal Audit team were asked to comment) concluded that the errors did "adversely" impact on the openness and objectivity of the procurements. This view was repeated in an exchange between the Chair of the GLA

Oversight Committee and the Director of Internal Review on 22 October 2015:

Len Duvall AM (Chair): Taking together all those points, then, these adversely impact on the openness and objectivity of the procurement. Is that true?

Clive Walker (Director of Internal Audit, TfL): Those are a bunch of issues with the procurement.

Len Duvall AM (Chair): Is that true? Taken in the context of those issues, because they were your words, is that true? Is that what took place?

Clive Walker (Director of Internal Audit, TfL): There are certainly a range of issues of things that we found in respect of the procurement that should not be the case. We raised them as issues and we are trying to get action taken –

Len Duvall AM (Chair): Sorry. I am asking if it is true. It is a yes or no. Is it true? Is it true in your professional view as a chief auditor about what took place within this process? Was that true? Do you stand by those issues? You are telling me it is in the report. I am quoting to you where it was clearer in the report and I am quoting that back at you. Is it true?

Clive Walker (Director of Internal Audit, TfL): It is true. Yes, you are right: it is true.

3.12 The response also fails to address the Committee's specific point on the 'value for money' addition. During the editing of the internal review by senior management, the focus of the audit shifted from looking primarily at fairness and transparency to focusing mainly on a value for money conclusion. The value for money conclusion appeared first in drafts dated 6 August, quite late in the process, despite not having been addressed in the evidence gathered by the Internal Review team. The reason this particularly concerns us is that this shift resulted in a more positive tone to the audit's conclusion than would have be the case had the focus remained on its original objectives of examining fairness and transparency.

3.13 The second theme takes up the main body of the letter and is a robust defence of the level and nature of senior management input into the review:

- The letter states that the TfL Audit and Assurance Committee has no reason to doubt the independence of TfL's audit function, noting that the Chartered Institute of Internal Audit said TfL's "internal audit has maintained its independence and objectives and this is respected in the business."
- The Chair also notes "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 with that."
- The Director of Internal Audit did not indicate to the Audit and Assurance Committee that his independence was challenged or compromised in any way during the process.

When he attended our meeting on 25 February 2016, TfL's Chair of the Audit and Assurance Committee stressed several times that he had been particularly keen to assure himself of the independence of TfL's internal audit function. He, and other external audit experts, have told us that the degree of senior management input into the Garden Bridge document was not unusual. We accept this and we understand that to stifle such exchanges would not be beneficial. There needs to be a productive dialogue between internal audit staff and their subjects, not least to correct inaccuracies in early drafts. It is the discontinuity between the main body of the published internal audit review and its summary and conclusions that concerned us particularly. This altered the tone of the document.

4. Conclusion

Key issues

TfL has in place a number of policies and procedures setting out its requirements for the governance of procurement exercises. In the case of the Garden Bridge, it is clear that these policies and procedures were not fully followed, possibly pointing to a lack of understanding of requirements by the staff concerned. TfL's Commissioner has committed to monitoring the successful implementation of TfL's programme of improvement resulting from its review of the Garden Bridge procurement experience.

4.1 TfL's internal audit review of the Garden Bridge outlined a number of measures to ensure that any future process is managed in accordance with TfL's own best practice (see Appendix 5). In particular, senior managers and staff can no longer claim to be ignorant of TfL's own guide to procurement processes. The review states that:[20]

> *Individuals involved in the management and delivery of procurement activities are responsible for ensuring they are fully aware of the requirements placed on them and TfL by guidance and statute to ensure best practice is followed. Planning staff involved in procurement activities should make themselves aware of these requirements.*

4.2 TfL's Commissioner has committed to personally monitoring the implementation of the action plan (see Appendix 5), and stressed the importance of improving TfL's internal processes:[21]

> *Now, as I have said … there are some issues within the audit report that we are following up. There is a timeline and actions needed to do just that. I will be scrutinising that in great detail to ensure that those lessons are learned and those actions are taken going forward, as will the one point that is raised by the chair of the Audit Committee. That is my job. That is exactly what I am responsible for doing.*

4.3 In addition, as a result of our inquiries, the Chair of the Audit and Assurance Committee has examined the procurement, and the internal audit report in greater detail. And he has committed, in his letter of 9 March to asking TfL's external auditors to review how the internal audit exercise was undertaken and whether it complied with good audit practice.

The Committee is pleased that TfL has committed to improving its procurement process, and ensuring its staff is properly briefed on their responsibilities before each procurement takes place. We welcome the response from the Chair of TfL's Audit and Assurance Committee when he appeared in front of us on 25 February 2016 and his subsequent letter of 9 March (Appendix 6). At that meeting, it was clear that he understood the issues, agreed that we were raising valid concerns and intends to do more work on the issue. This constructive attitude seemed at odds with his original letter of 15 December which did not mention any intention to investigate the matter further. This knowledge would have assured us that the Chair was giving proper weight to these issues.

However, we believe that the errors in judgement and process, and the officer actions detailed in this report, would not have come to light without the dedicated work of the wider community, journalists, external experts and the London Assembly. TfL and the Mayor were too quick to defend the original procurement process for the Garden Bridge's design contract, allowing valid concerns to go unanswered and creating genuine doubt about the robustness of the contract. We conclude that the objectivity and fairness of this procurement process was adversely affected by these actions, which casts a shadow on the ultimate outcome.

At the Committee's first meeting on this topic, the Managing Director for Planning suggested that these errors were driven by confusion over the role of TfL, which was originally envisaged as much more limited, and the need to maintain a strict schedule. When placed under pressure, TfL procedures were found wanting. With TfL's budget coming under increasing pressure over the next few years, this is not something which can be allowed to happen again.

Recommendations

We welcome the Commissioner's acknowledgement of the importance of improving TfL's internal processes. Better pre-tender planning should help to ensure that all relevant TfL departments are engaged with how procurement is managed, including ensuring that documentation is kept. The GLA Oversight Committee will monitor the implementation of these recommendations, and we ask that the Commissioner reports progress on the action plan to the Committee within six months.

Specifically, we recommend that:

- in its ongoing work on internal audit, the TfL Audit and Assurance Committee:
  - publishes audit reports in full, not just the summary and conclusions as is now the case; and
  - carries out spot checks to monitor the nature and degree of changes by the audited department to internal audit drafts – with a view to assuring the independence of the function.

- TfL should:
  - consider which other officers or teams, besides the manager of the audited project, should comment on initial drafts of internal audit reports;
  - report back to this Committee on progress against all the recommendations of the published audit report around training, tender evaluation and enforcement;
  - consider introducing a co-ordinated, cross-directorate approval process for the finalisation of procurement decisions. It could require a signature from each of the key directorates at the awarding of major contracts and would have the advantage of avoiding potential disputes between directorates; and
  - consider reimbursing the unsuccessful bidders from the Garden Bridge design contract to compensate them for the time and expense incurred in preparing their proposals for a pedestrian bridge.

- The Mayor's Office should take responsibility for compiling a written record of all meetings the Mayor holds with external bodies which should include clarity about what capacity he is there in (i.e. as Mayor or as Chair of TfL)

- Where major, priority projects are commissioned by a future Mayor and are not in the Mayor's Transport Strategy, that the Mayor implements them by directing the TfL board. Making it clear that such projects have a different status would offer two benefits: a) better protection of the respective functional body and its officers in the case of external challenge and b) greater clarity to potential bidders about the status of such projects.

- TfL's External Auditor and the National Audit Office may wish to consider whether appropriate steps were taken to ensure the public received value for money as a result of the flaws discovered in the procurement process.

Appendix 1 – Minority Report from GLA Conservatives

The GLA Conservatives have been unable to agree to this report. Unfortunately, due to significant time pressure, it is not possible for the Group to write a full minority report that would accurately reflect the way in which we believe the report should have been written. However these points should give a fair reflection of how the report should have been drafted:

- The focus of the report should have been on the difficulty of procurement when a project evolves significantly. This project was a textbook example of this and a focus on the challenges this created and the lessons that TfL should learn from this would have been a very valuable piece of work.
- Instead the report is hugely critical of the project, only referencing in passing the fact that TfL fully accepts that the evolution of the project made it a challenging one. Had this point been more prominent, much of the rest of the report would flow far more clearly.
- Additionally, the Conservative Group believes that the current structure of the report is flawed. The emphasis on a leaked early draft of the audit report is unreasonable and seeking to draw lessons from it ignores the way in which such reports are written. It is entirely normal that a first draft would be written by a junior officer and then improved or corrected by a more senior officer. Attempting to suggest conspiracy in the changes is a huge error and all aspects of the report that focus on this should have been removed.

Clearly, a report that cleaved more closely to the points above would look very different from the report that is being released. Such a report would reasonably produce the following recommendations.

Recommendations

1. In its ongoing work on internal audit, the TfL Audit & Assurance Committee should publish audit reports in full, not just the summary and conclusions as is now the case.
2. TfL should consider which other officers or teams, besides the manager of the audited project, should comment on initial drafts of internal audit reports.
3. TfL should report back to this Committee on progress against all the recommendations of the published audit report around training, tender evaluation and enforcement.

4. The Mayor's office should dramatically improve its recording of details of official Mayoral meetings including attendees and headline topics discussed. This should be easily accessible to GLA Members when it is relevant to GLA Committee business.

Appendix 2 – List of background material

The GLA Oversight Committee has published all documents relating to its work on the Garden Bridge on our website. These include:

Transcripts

Transcripts of meetings from the 17 September 2015, 22 October 2015, 17 December 2015 and 25 February 2016.

TfL documents and correspondence

TfL Audit Review of the Garden Bridge Procurement Process (September 2015).

As a result of its meeting on 17 September 2015, the Chair of the GLA Oversight Committee wrote to TfL to request "all iterations of the internal audit review document of the procurement of design and development services … alongside any emails or notes relating to the changes that have been made to the document." TfL complied on the 15th October. The full file, including the earlier draft of the audit dated 22 July (see par 3.5) is available for download on our website at https://www.london.gov.uk/about-us/london-assembly/london-assembly-publications/garden-bridge-investigation

After the Oversight Committee's October meeting with the Director of Internal Audit, TfL released a further set of documents, including notes from the auditors who carried out the Internal Review, and the original legal advice offered by TfL Legal on procurement in January 2013. This submission included a letter to the Chair of the GLA Oversight Committee, and five appendices, which are also available on our website.

Correspondence between the GLA Oversight Committee and TfL's Audit and Assurance Committee is included in Appendix 3, 4 and 5 of this report, and is also available on our website.

Appendix 3 – Letter to TfL Audit and Assurance Committee

Keith Williams

Chair of TfL's Audit and Assurance Committee

3 December 2016

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 *Architects' 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 17th.

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 15th 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."[22]

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 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; and
- 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.

Appendix 4 – Response from TfL Audit and Assurance Committee (December 2015)

Len Duvall AM

Chair of the GLA Oversight committee

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.

Is 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

Appendix 5 – TfL Action Plan

TfL has agreed to two sets of actions. The first were set out in the internal audit review of September 2015 and are as follows:

Pre-tender briefing

At the start of any procurement, and depending on the size and level of risk, TfL Commercial should brief all staff involved in the process giving clear instructions relating to:

- The process that will be followed;
- Roles and responsibilities;
- The documentation they will be expected to produce and provide to TfL Commercial; and
- Escalation procedures for reporting non-compliance.

This briefing will emphasise the rules of engagement with bidders and the need for segregation of duties during the evaluation of bids.

Training package

TfL Commercial will develop a training package on TfL's procurement processes for use by staff who are not familiar with them, and for staff who are new to TfL. The purpose of this training material should be to raise awareness of the guidance available, the policy and procedure that must be followed and the potential ramifications of non-compliance.

Tender evaluation

We have been informed by TfL Commercial that over the past year the Commercial Centre of Excellence (now called Commercial Strategy and Performance) have led a piece of work to identify the methods of tender evaluation across TfL and Crossrail and to use best practice to develop a consistent approach to bid evaluation. The new approach has been mandatory since October 2015.

Enforcement

TfL Commercial should be robust in ensuring that issues in relation to the procurement process are highlighted on a timely basis and escalated as

appropriate to ensure action is taken to mitigate any breaches of policy or procedure.

Additional actions from TfL's Audit and Assurance Committee

A second set of actions was set out in the letter of 9 March from the Chair of TfL's Audit and Assurance Committee and include:

- Re-examining key decisions made during the procurement process. On 8 March 2016, the Audit and Assurance Committee discussed the findings of the internal audit with TfL's Managing Director of Planning, providing additional clarity on some issues raised during our investigation..
- Requesting that TfL's External Auditors review how the internal audit of the Garden Bridge was carried out. The review will focus on whether the audit was conducted in accordance with good Audit practice and will set out any lessons that can be learned as a result.
- Putting more emphasis on auditing procurement practices across TfL as part of the Committee's work programme for 2016/17.

Appendix 6 – Response from TfL Audit and Assurance Committee (March 2016)

Len Duvall AM

Chair of the GLA Oversight committee City Hall

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.

Keith Williams

Endnotes

[1] Invitation to Tender for Bridge Design Consultancy, TfL, February 2013, pg 16
[2] Transcript of the GLA Oversight Committee meeting, 17 December 2015
[3] In June 2013, the TfL Commissioner, Sir Peter Hendy, said that the Bridge "would be funded by third parties and our contribution is limited to enabling costs associated with securing the necessary consents and approvals. TfL has no budget to build or maintain the bridge" – Commissioners Report, TfL, 3 July 2013, pg 34
[4] Letter from Fiona Fletcher Smith, GLA to Bee Emmot, Garden Bridge Trust, 18 February 2015
[5] *The Viability of Sponsored Transport Schemes,* London Assembly Budget and Performance Committee, November 2014, pg 10
[6] Letter from National Audit Office to Gareth Thomas MP, 7 January 2016
[7] *Transparency of the GLA Group*, GLA Oversight Committee, June 2013, pg 7
[8] Letter from the Mayor of London to John Biggs AM on *Transparency of the GLA Group*, 24 September 2014
[9] Garden Bridge – Procurement Issues and Powers, TfL Legal, 8 January 2013, pg 3
[10] Garden Bridge – Procurement Issues and Powers, TfL Legal, 8 January 2013, pg 3
[11] Transcript of the GLA Oversight Committee meeting, 17 September 2015
[12] Internal audit review of the Garden Bridge procurement process, TfL, 15 September 2013, pg 1
[13] Transcript of the GLA Oversight Committee meeting, 17 September 2015
[14] Internal audit review of the Garden Bridge procurement process, TfL, 15 September 2013
[15] Mayors Question 2015/0879 (Oral) – the Mayor has discussed various aspects of the Bridge's design, construction and operation with Assembly Members during monthly Mayors Question Time meetings. Examples of issues raised can be found in the following Mayors Questions: Question 2014/3558, Question 2013/3413, Question 2015/3125, 2016/0379 and Question 2015/0880.
[16] 'Osborne faces probe over £30m garden bridge grant', The Guardian, 12 September 2015
[17] Internal audit review of the Garden Bridge procurement process, TfL, 15 September 2013
[18] Transcript of the GLA Oversight Committee, 22 October 2015
[19] Letter from the Chair of the GLA Oversight Committee to TfL's Audit and Assurance Committee, 3 December 2015
[20] Internal audit review of the Garden Bridge procurement process, TfL, 15 September 2013
[21] Transcript of the GLA Oversight Committee meeting, 17 December 2015
[22] 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

Most of the above material can be accessed here: https://www.london.gov.uk/about-us/london-assembly/london-assembly-publications/garden-bridge-investigation

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یا مذکورہ بالا ڈاک کے پتے یا ای میل
پتے پر ہم سے رابطہ کریں۔

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