



Anglian Water Services Ltd
Lancaster House
Lancaster Way
Ermine Business Park
Huntingdon PE29 6XU

By e-mail only: DPC@ofwat.gov.uk

David Young
DPC Licence changes consultation
Ofwat
Centre City Tower
7 Hill Street
BIRMINGHAM B5 4UA

Tel 01480 323000

Our ref: [REDACTED]

21 December 2020

Dear David

Direct procurement for customers: statutory consultation on proposed changes to the conditions of appointment of five water and sewerage companies, published 26 November 2020 (the “Consultation”)

Thank you for sending us the Consultation which asks for stakeholders to comment on the licence modifications and for each affected water company to give its consent to them. I am pleased to confirm that Anglian Water consents to the proposed licence modifications set out in the Consultation.

We are pleased with the collaborative way in which Ofwat has developed the licence modifications necessary to put into effect the direct procurement delivery route for new large-scale infrastructure. I set out below a number of comments regarding the way in which the direct procurement process might proceed within the framework provided by the modifications. To be clear, our consent is not conditional on the resolution of the points made below. These points have been raised before (and some are referenced in the Consultation). We merely re-state them in a public context, and as a further reminder:

- i. Companies must use reasonable endeavours to achieve “best value”. However, the concept of “best value” is not defined in the licence modifications, nor is there any detail as to how “best value” will be assessed. We understand the challenge of providing a precise definition of this concept and we are grateful for the clarification that Ofwat has provided, particularly in explaining that this term is not intended to be synonymous with “least cost”. Were that to be the case, there may be unpredictable and adverse consequences for companies and customers.



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Anglian Water Services Ltd
Lancaster House, Lancaster Way,
Ermine Business Park, Huntingdon,
Cambridgeshire. PE29 6XU
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an AWG Company

- ii. The form of Allowed Revenue Direction is not subject to companies' agreement, and nor is there an appeal process if not agreed. We understand that (i) as a regulatory document, it is difficult for its form to be subject to companies' consent; and (ii) as a matter of fact the process must be highly collaborative and iterative, otherwise companies will simply allocate any unfunded obligations to the CAP which would not lead to an efficient allocation of risk.
- iii. We have previously expressed concern that the level of regulatory oversight inherent in the framework is too high. We think that it still is. However, we accept that, in the context of the early DPC Delivered Projects, there is no real alternative. We hope that this level of oversight will tail off once the DPC Delivered Project is up and running. It is clearly critical for Ofwat to be properly resourced in order to give speedy responses where the market demands them.
- iv. There remains the question about how the Independent Technical Expert ("ITA") should be funded. Previous consultations seemed to assume that the ITA would be funded by the CAP through the ITA Appointment Agreement. This approach concerns us: a poorly-performing CAP might find itself on the wrong side of ITA decisions, such that the CAP is tempted to withhold payments to the ITA. However, companies are obliged to ensure that the ITA does its job. We would therefore like to see the ITA charges included as "certain other amounts" in the DPC Allowed Revenue Direction.
- v. Finally, and also on the question of the drafting of the DPC Allowed Revenue Direction, weather events and similar (eg. unforeseen ground events) should be Compensation Events, not Change Events.

We look forward to working with Ofwat on DPC Delivered Projects in the coming years.

Yours sincerely



ALEX PLANT
DIRECTOR OF STRATEGY AND REGULATION

Email: regulation@AnglianWater.co.uk