



Caledonian Maritime Assets Ltd  
Municipal Buildings  
Fore St  
Port Glasgow PA14 5EQ

Tel: 01475 749920  
Fax: 01475 745109

Richard Leonard MSP  
Convener, Rural Public Audit Committee  
Room T3.60  
The Scottish Parliament  
Edinburgh  
EH99 1SP

by email only: [publicaudit.committee@parliament.scot](mailto:publicaudit.committee@parliament.scot)

21 October 2022

Dear Mr Leonard

**New vessels for the Clyde and Hebrides:  
Arrangements to deliver vessels 801 and 802**

Thank you for your letter of 30 September 2022.

Please find below my replies to the questions that you have asked, to the best of my knowledge based on the information currently available to me. First, it is important to clarify a central issue where there appears to have been some misunderstanding or misinterpretation by certain parties. In all the circumstances, I hope the Committee will find it useful if this were clearly explained.

**Clarifying the PQQ requirements**

You have quoted question 44 of the Pre-Qualifying Questionnaire (PQQ) in your letter, I will not repeat it again here. I would like to make very clear what question 44 asked of the bidders. It asked for an "evidentiary statement in the form of a letter from your bank" that confirmed the bank's willingness to provide a guarantee, in due course, on behalf of the bidder.

Preceding the question, as you know, there appear two sentences which provided an explanation for the bidders of the importance of Refund Guarantees to the project as a whole. The first sentence prominently describes the issue of a Bank Guarantee for the project as a MANDATORY MINIMUM REQUIREMENT. The second sentence describes when such a guarantee shall be required to be provided, namely "before work starts".

It is very important not to confuse the two deliverables identified in this question and, critically, their timing. Question 44 makes clear that the bidding yards should provide an evidentiary statement from their bank (at the time of submitting their response to the PQQ); and, if successful and awarded the contract, a Refund Guarantee from their bank (before work starts). The second, future, deliverable was expressed as a mandatory requirement. The first, PQQ phase, deliverable was not expressed as a mandatory requirement.



I note that the letter from the Auditor General for Scotland to the Committee dated 6 October 2022 appears to conflate the two deliverables as both being mandatory at the time of the PQQ responses. Please note that CMAL did not have the opportunity to review or comment on the Auditor General's letter before it was issued to the Committee.

The Auditor General in his letter rightly refers to the recent BBC documentary, though I fear that this programme may be the source of the misunderstanding. The BBC documentary made no attempt to distinguish the categories or timing of the deliverables required by question 44 and invited the viewer to focus on the words mandatory minimum requirement rather than their context or purpose.

Respectfully, for the reasons explained above, the Auditor General is mistaken when he mentions that FMEL was "unable to meet the mandatory requirements" at the time of the PQQ – because the mandatory requirement applied only later in time and if and when a candidate yard were awarded the contract and ready to commence work.

### **Pre-Qualification Questionnaire, question 43**

You ask if CMAL explored with all bidders who completed a PQQ, including FMEL, if they were willing to provide either a parent company guarantee or a bank guarantee, and how this was undertaken.

In this question 43, in contrast to the structure described above for question 44, the question appears in the first sentence and is then followed by further sentences of background and explanation of its purpose.

I can confirm that CMAL explored this question with all bidders by asking the question when the Contract Notice was published on 15 October 2014. This question is a simple request that provokes a simple "yes" or "no" answer. All bidders, including FMEL, answered this question affirmatively.

### **Pre-Qualification Questionnaire, question 44**

You ask if CMAL sought an evidentiary statement from any of the bidders, including FMEL, or their respective banks confirming that a staged payment refund guarantee could be provided.

Yes – the matter of a refund guarantee was duly raised as question 44 of the PQQ as you describe. As originally published, the Contract Notice required PQQ responses from the bidders by 19 November 2014.

I can confirm that at conclusion of that initial PQQ phase, namely by 19 November 2014, none of the responding bidders had provided a letter from their bank confirming willingness to provide a staged refund guarantee. This discrepancy was raised in follow-up with all 10 bidders, in emails sent individually by the CMAL procurement manager to each of the candidate shipyards on 26 November 2014.

In this way the issue of the availability of refund guarantees formed part of a 'PQQ clarification phase' during which the bidders were asked to provide further information in addition to their original responses.

As explained above, here what was being sought by CMAL as part of the financial diligence was a recognition that a financial institution had been engaged with by the bidding yard, to be reviewed in the round with the other financial information requested.

At the risk of stating the obvious, it would not be practical to insist on the provision of the Refund Guarantee itself at this earlier stage in the process, as no bank would or could provide a meaningful guarantee at this point before their customer had been successful in their bid. This is for several reasons including the necessity for any bank to see a negotiated contract, including the final price, before agreeing to provide guarantees; and because of banks' general unwillingness to allocate credit against speculative projects.

To be clear, none of the bidding shipyards that responded to the PQQ initially provided a letter confirming that their banks would provide a refund guarantee in the event that the particular yard won the tender. Instead, what was later received following clarifications was a diverse range of responses including a letter of creditworthiness, a letter of credit, a letter confirming available facilities, an email from a Managing Director, a letter of goodstanding and an example of previous guarantees used by one bidder for an earlier project.

At the conclusion of the PQQ clarification phase, only one bidding yard provided an evidentiary letter precisely in the terms anticipated by question 44.

#### **CMAL Board meeting: 25 August 2015**

You ask whether papers prepared for this meeting included details about the inability of FMEL to provide a full coverage bank Refund Guarantee; and when the Board meeting papers were circulated to the attendees.

The 'board pack' of briefing papers, prepared in the normal course in readiness for this Board meeting, was circulated by email to the attendees on 19 August 2015. The pack of papers did not contain any materials or details about the inability of FMEL to provide full coverage bank Refund Guarantees.

The reason for this is that the inability of FMEL to provide full coverage refund guarantees was disclosed by the solicitors acting for FMEL to the solicitors acting for CMAL only on the evening of 21 August 2015, two days *after* the board pack has been issued to the Directors.

This chronology is also shown in the timeline forming Appendix 1 to the Written Submission for CMAL, provided to the Committee prior to our oral testimony on 30 June 2022.

The discussion by the Board of the FMEL inability to provide Refund Guarantees at this meeting at Victoria Quay was reactive to new information that had come to light just a few days earlier, rather than a topic that was anticipated and prepared in advance for debate at the Board that day.

Yours sincerely

Morag McNeill  
Chair

Caledonian Maritime Assets Limited