

New Vessels for the Clyde and Hebrides Further written submission from CMAL, by email 28 September 2022

Good afternoon,

In light of the BBC Disclosure programme, CMAL wish to provide you with the following statement.

Statement from Caledonian Maritime Assets Limited (CMAL) in response to BBC Disclosure programme

The issues raised by the BBC Disclosure programme, as reported by BBC Scotland today (27 September 2022), make serious and concerning allegations. The details came to the awareness of the current CMAL Board and senior management team for the first time on 8 September 2022 when we received detailed questions from the BBC Disclosure team.

We provided a lengthy statement in response to the BBC. Questions on the dual fuel ferry contract and procurement process were answered to the best of our knowledge and understanding based on the information and data we hold. As they relate to events over seven years ago, many of the participants involved at that time are no longer employed by CMAL. Initial internal searches have found no evidence in our files to support the allegations presented to us. We have asked the BBC to share its evidence to allow us to investigate further.

The procurement process for the dual fuel vessels contract was subject to an audit by the Scottish Government's Procurement Services team, and this audit found no issues with non-compliance. The dual fuel ferry project has been subject to the scrutiny of two parliamentary inquiries and a comprehensive analysis and report published by Audit Scotland. Throughout these independent investigations, CMAL has provided significant written and verbal evidence to all three probes, all of which is in the public domain. Our senior management team and Board have been wholly cooperative and transparent throughout these inquiries.

CMAL's concerns in relation to the award of the two contracts in 2015 are now well-documented (in the Audit Scotland report published in March 2022, and in evidence to the Public Audit Committee in June 2022). Our concerns led to our stated preference to re-start the procurement process. This position and course of action contradicts the suggestion or allegation of favour towards a particular bidder.

We have not yet seen the BBC Disclosure programme and we do not know the full extent of information and detail that will feature in the programme. If further issues are raised and it is appropriate to do so, we will respond to them later. However, below we have responded to the main issues raised in BBC Scotland's news reporting today:

PQQ and Bank Refund Guarantee

The Pre-Qualifying Questionnaire (PQQ) issued to the market in October 2014 required each of the intending bidders to confirm they would be able to provide Bank Refund Guarantees (BRGs) if they were to be awarded the contracts, and prior to works starting. The BRG requirement was subsequently included in clauses of the draft contract contained in the Invitation to Tender (ITT) package provided to shortlisted bidders.

On 9 December 2014, the Managing Director of FMEL confirmed to CMAL: *"Parent Company guarantees would not be appropriate. Therefore it would be our intention to provide Bank Guarantees to required levels. ...we understand the importance of Refund Guarantees to your*

procurement process. We will endeavour to provide Guarantees to levels that provide the security you require".

The mandatory requirement expressed in the PQQ was the provision of the BRG at the time of contract award. In its response to the ITT, received by CMAL on 31 March 2015 – which included the draft contract that required Bank Refund Guarantees to be issued by the builder – at no point did FMEL state that Bank Refund Guarantees would not be provided as the contract envisaged. Because the formal tender bid by FMEL was unqualified, until 21 August 2015 CMAL were unaware that the draft contract requirements could not be fulfilled. It was after FMEL was announced as preferred bidder in August 2015 that FMEL confirmed it could not provide the required BRGs.

Bidder anonymity

We can confirm the evaluation process for the vessel contracts was anonymised. CMAL employed an independent expert marine consultancy to support this anonymous evaluation of the tender bids received. Of the six shortlisted yards that received the ITT, it is understandable that certain details of the shipyards' track record and facilities described in their bids may have revealed or suggested which is which, especially to experts in our team who have significant shipbuilding industry experience.

Statement of Operational Technical Requirements (SOTR)

CMAL did not provide FMEL with a copy of the Caledonian MacBrayne "Statement of Operational and Technical Requirements" (SOTR) for the dual fuel vessels. The BBC appears to accept that the SOTR was provided to FMEL by a technical consultancy and not by CMAL.

Clarification meeting

Since receiving the BBC Disclosure questions, we have confirmed that one technical clarification meeting was held between CMAL and FMEL in-person at Port Glasgow on 4 June 2015. Technical clarifications are an ordinary and iterative question-and-answer process where ambiguities within lengthy and complex documents are resolved. Other bidders participated in similar technical clarification engagement digitally given their non-UK locations; the geographical proximity of the FMEL shipyard to CMAL's office led to this engagement being held face-to-face. The meeting was arranged by, and also attended by, [REDACTED] at that time. The other CMAL technical representatives at the meeting relied on their in-house procurement expert that such a meeting was appropriate. Throughout every step of the procurement process, we relied on the expertise and advice of our in-house procurement resource and marine technical consultants.

Alleged change in bid

As part of the ordinary question and answer clarification process described above, bidders were asked to confirm technical details on their submission. Two bidders, one being FMEL, had provided an "approximate" volume for LNG tanks. CMAL asked both bidders to provide the actual tank volume. That is a normal step of clarification in a process such as this.

Please note the following additional comments by way of update following the Disclosure programme last night.

PQQ and Bank Refund Guarantee

No shipyard provides, or has in place, a bank refund guarantee (BRG) at the point of PQQ. What the PQQ in this case asked for is evidence that bidders understood a BRG is required at the point of contract award and prior to work starting. FMEL did not provide a letter from a bank. However, the managing director at FMEL at the time provided confirmation in writing that the BRGs would be provided to the required levels. CMAL's team took this in good faith as explicit intent to provide the

levels of security required if FMEL was to be awarded the contracts. As previously stated, the requirement for BRGs is stated in the draft contract terms and conditions contained within the invitation to tender and all bidders were required to accept these Ts & Cs. In submitting its bid, FMEL did not provide any comments or amendments to the Ts & Cs within its bid, thus implying it accepted the contract terms.

Alleged change in bid

We don't believe it is clear from the BBC Disclosure programme that FMEL's original bid included proposals for two variant design options – 'Model 10 and Model 20'. As part of the normal technical clarification process, CMAL asked FMEL to confirm which model was the one they intended to design and build (and therefore which proposal should be scored). FMEL confirmed Model 10 with an attached cost. This was not a change to bid or submission of a new bid; it was clarification of content in its original bid.

Please do not hesitate to get in touch if you require further information.

Kind regards,

Brian Fulton.

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