

# New Vessels for the Clyde and Hebrides

## Third Written submission from Robert Trythall, by email 20 June 2022

Further to my last, and the 16 June 2022 appearance of Mr Jim McColl in front of your Committee, it is now self evident that the pivotal issue still to be resolved is how FMEL qualified to advance from the PQQ (Pre-Qualification Questionnaire) stage of the Tender process, to the Invitation to Tender (ITT) stage.

In the past two months I have requested the FM /Ms Kate Forbes MSP /Ms Jenny Gilruth MSP to locate /provide -

- any evidentiary letter from FMEL's Bank confirming their willingness to provide the required BRR guarantee a/o
- any correspondence between with FMEL/CBC re provision of a parent company guarantee.

So far neither the FM /Ms Kate Forbes MSP /Ms Jenny Gilruth MSP have responded, nor acknowledged my request.

It is self evident from Jim McColl's statement(s), and 3<sup>rd</sup> party communication between FMEL and Messrs Swinney and Mackay of Scottish Government (SG) in the period Dec 2014-Feb 2015 that :-

- **FMEL could not meet the BRR stipulations as stated in the PQQ**

The terms of the PQQ put the onus on FMEL to secure such a letter from FMEL's Bank, and submit to CMAL accordingly.

**Therefore it is logical to assume that the required evidentiary letter from FMEL's Bank was never presented.**

The default alternative was stated below in the PQQ -

43 If requested, would you be willing to provide either a parent company guarantee or a bank guarantee? If you cannot provide any of these assurances, and it is determined by CMAL that your financial strength is not adequate then your company may not pass the financial evaluation. If you can provide the assurances as detailed above, CMAL may explore these options with you before determining whether your company can be taken forward in this procurement exercise as per the Guideline on Financial Health of Suppliers.

This clearly puts the onus on CMAL to pursue any parent company guarantee with CBC

Is there any documentary evidence of correspondence between CMAL a/o TS with FMEL-CBC seeking provision of a parent company guarantee? But from [documents published by SG](#) after FMEL's preferred bidder status declaration, a parent company guarantee from CBC was never a possibility from the outset.

**Therefore it is logical to assume that no documentation exists of any correspondence between CMAL a/o TS with FMEL-CBC seeking provision of a parent company guarantee**

In the absence of the required evidentiary letter from FMEL's, a/o any documentary evidence of CBC's willingness to provide a parent company guarantee, **FMEL should not have been invited to tender**

Therefore FMEL's invitation to tender from CMAL could only have been a consequence of:-

- (1) an intervention to waive the PQQ tender stipulations ?
- or
- (2) CMAL incompetence, a/o a breach of due diligence.

If (1) such an intervention could only come from SG-TS a/o CMAL's Board and would require documentary evidence a/o CMAL Board Minute to that effect recommend PAC interrogate all parties accordingly .

If (2) I recommend PAC interrogate CMAL. .

This is pivotal. If the BRR stipulation was waived or ignored at the PQQ stage, then it offers a rational explanation as to:-

- why FMEL, by being invited to tender, would assume the BRR had been deferred to a post preferred-bidder negotiation
- and
- why FMEL spent £1m in consultancy fees to submit to the tender

The tender document only offered the indicative requirements of the BRR . The BRR's detail could only be negotiated, /agreed/finalised with the preferred bidder's Bank, ie a 3<sup>rd</sup> Party, **after declaration** of preferred bidder status announcement **and before any any subsequent tender award.**

This is the normal push-pull process in any contractual negotiation requiring a Bank-backed guarantee

The validity of the tenders received was originally due to expire on 30 June 2015, but this expiry date was subsequently extended to 31 August 2015 with the agreement of the tenderers. Did CMAL at this stage remind tenderers of the BRR stipulations? Did any of the tenderers vary their original tender offer to agree to extend to the 31<sup>st</sup> August 2015?

It is common in shipping that an extension is requested /offered /granted with a variation to the original terms, including price

Irrespective, it is commercially naive to assume that any evidentiary letter from a Bank confirming willingness to provide such a required BRR guarantee, or any correspondence re a parent company guarantee, would remain valid 8 months later in any tender process.

It would appear that CMAL, and SG-TS, may have demonstrated commercial naivety in this regard.

**It is would be normal due diligence, and commercial prudence/practice, to require any possible preferred bidder to re-submit the evidentiary letter from their Bank a/o their parent company guarantee, as per the PQQ, prior to any preferred bidder being announced.**

Neither CMAL or SG-TS took this elementary commercial precaution before announcing preferred bidder status, and the rest is history .

### **Summary**

**Prime facie the evidence suggests that FMEL did not meet the PQQ criteria ,and as such should not have been invited to tender.**

**It is incumbent upon the PAC to establish if FMEL's invitation to tender was a consequence of :-**

- An intervention to waive the PQQ tender stipulations, and if so, by whom ?
- or
- CMAL incompetence, a/o a breach of due diligence.