

25 January 2024

Richard Leonard MSP
Convener
Public Audit Committee
Scottish Parliament

By email

Dear Convener

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

Thank you for your letter of 15 December. I have now fully considered Mr Barry Smith's (KC) report and the responses from CMAL, Transport Scotland and the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy to the report. Colleagues have also had further engagement with CMAL and Transport Scotland about the actions they have taken to address procurement issues since the procurement of Glen Sannox and Glen Rosa and any further improvement or review work they have planned.

Following the allegations made in the BBC's Disclosure investigation, I initially wrote to the committee in [October 2022](#), setting out the three areas that any future audit work on procurement of the vessels would be likely to focus on. My consideration of Mr Smith's report has focused on how it addresses these three areas and whether there is scope for further audit work to add value to public understanding and Parliamentary scrutiny of the procurement process.

Firstly, on the basis of what Mr Smith has said in his report about the scope of his investigation, and through our engagement with CMAL and Transport Scotland, I have no reason to question Mr Smith's independence or to believe that his access to documentation or witnesses was restricted in any way. I also consider that although the investigation was focused on identifying any fraud or impropriety on the part of any CMAL employees, the Terms of Reference and the report prepared were sufficiently broad to cover the main allegations of impropriety including the three areas of interest I had previously set out.

The circumstances that allowed FMEL to progress beyond the pre-qualification stage of the procurement, despite being allegedly unable to meet the mandatory requirements

Mr Smith considered whether one of more CMAL employees "permitted FMEL to pass the PQQ stage, though the criteria for doing so may not have been fully satisfied". He did not find any evidence of fraud or impropriety but did highlight a lack of clarity in the wording of the PQQ about what constituted a "minimum mandatory requirement". Nonetheless, he concluded that neither the provision of a builder's refund guarantee or of a letter from a bank confirming their willingness to provide such a guarantee constituted a mandatory requirement at the PQQ stage. He also found that there was no evidence that the PQQ criteria were not met in any other respect.

Since the procurement of the vessels, CMAL has advised us that they have implemented improvements to its procurement processes, including greater clarity around the expectation

that no shipbuilding contract can be awarded to a successful bidder unless a builder's refund guarantee has been provided prior to the "contract date of effectiveness".

Other improvements cited include appointing an independent expert to inspect all shipyards at the ITT stage and to be involved in the ITT assessment; and appointing a shipbroker with relevant expertise to advise on the activities and track record of the shipyards bidding. CMAL also now has the financial standing of bidders assessed by a credit rating agency and specialist accountancy firm in addition to the CMAL finance team.

FMEL's access to restricted technical information about the vessels, and its use of this when preparing its bid for the contract

Mr Smith did not find any evidence of fraud or impropriety in relation to FMEL's access to the Specification of Technical Requirements (SOTR) through their engagement with an organisation previously contracted by CMAL. He was clear that this consultant provided the document to FMEL and was not contractually restricted from doing so. He also found that it was not the case that FMEL gained any advantage that affected the outcome of the procurement by having access to the document. Mr Smith found no evidence that any other confidential or restricted information was shared with FMEL.

CMAL has provided assurances that it has now enhanced its terms and conditions to include confidentiality agreements to prevent sensitive information being shared with bidders by companies previously engaged by CMAL, including any primary consultants that appoint specialist sub-contractors. This should prevent this situation from arising again.

CMAL's compliance with procurement rules (that apply to the Restricted Procedure) during the tender clarification and negotiation process

Mr Smith concluded that FMEL was permitted to "revise" its bid during the post-tender clarification process, as were the other two shortlisted shipyards, but that while this part of the process was "not entirely satisfactory", the "technical evaluation by the CMAL vessels team was undertaken professionally and properly, with regard to the criteria and in the appropriate exercise of professional judgment". He also found that while a private meeting did take place between CMAL and FMEL at the shipyard, there was no evidence of fraud or impropriety and was satisfied that this meeting took place in person solely because of the proximity of the shipyard to the CMAL offices.

In order to ensure consistency of approach, CMAL has provided assurances that all post-ITT clarification is now done in writing. It has also advised us that it has strengthened its oversight of key stages of the procurement process, obtaining legal advice and independent confirmation of compliance with legal requirements.

Transport Scotland has also advised us that it is in the process of carrying out a review of its internal assurance controls. It has also made other changes to its oversight arrangements, including separating the shareholder and sponsorship functions. It has not yet determined the scope of its end-of-project review, but we will continue to engage with Transport Scotland and CMAL about ongoing and future planned work in this area.

Having considered Mr Smith's findings, as well as the evidence provided by CMAL and Transport Scotland to both the Public Audit Committee and the Rural Economy and Connectivity Committee, I am satisfied that Mr Smith's investigation was both independent and thorough and that his conclusions were reasonable. This investigation highlights some concerns over specific aspects of the procurement process. I am satisfied that CMAL and Transport

Scotland have taken steps to correct the issues highlighted in the report and continue to look for opportunities to strengthen their processes.

On that basis, I have decided not to undertake any further audit work on the procurement of Glen Sannox and Glen Rosa at this stage. Having considered the position carefully, I have concluded that this would not add sufficient value to the ongoing scrutiny of the delivery of these vessels. As you know, I have committed to reporting further once the vessels have been completed and when scoping that work I will consider to what extent the audit should review the changes made to the procurement process.

I hope that the committee finds this information helpful.

Yours sincerely

Stephen Boyle
Auditor General for Scotland