
From: McLaughlin AC (Ainslie) **On Behalf Of** McLaughlin AC (Ainslie)
Sent: 09 October 2015 17:15
To: Director of Financial Management [Redacted] Nicholls J (John) [Redacted] Middleton DF (David) [redacted] **Cc:** [Redacted]
Subject: RE: CMAL contract award to Ferguson shipyard - request for Ministerial approval

Just finished my call with DFM. He now understands the background and that Mr McKay has cleared the proposal. So the way is clear to award.

Ainslie

From: Director of Financial Management
Sent: 09 October 2015 15:45
To: Nicholls J (John) (TRANS); [Redacted] McLaughlin AC (Ainslie)
Cc: [Redacted]
Subject: RE: CMAL contract award to Ferguson shipyard - request for Ministerial approval
Importance: High

Thanks John.

Ainslie – would you drop a note in the system to confirm the absence of banana skins after your call with DFM please (worth letting him know the intention is to tell CMAL immediately)?

G

*Gordon Wales
Director of Financial Management
The Scottish Government
3B-77, Victoria Quay
Edinburgh
EH6 6QQ
Tel [Redacted]*

From: Nicholls J (John) (TRANS)
Sent: 09 October 2015 15:40
To: Director of Financial Management; [Redacted]; McLaughlin AC (Ainslie)
Cc: [Redacted]
Subject: RE: CMAL contract award to Ferguson shipyard - request for Ministerial approval

Gordon

OK. Stating the obvious, please let us know the outcome of the call today so we can expedite matters with CMAL as requested by Mr Mackay.

John

From: Director of Financial Management
Sent: 09 October 2015 14:40
To: [Redacted] McLaughlin AC (Ainslie)
Cc: Nicholls J (John) (TRANS); [Redacted]
Subject: RE: CMAL contract award to Ferguson shipyard - request for Ministerial approval

[Redacted],

Ainslie and I are just off the phone. Might it be sensible to wait until he and DFM have spoken (5pm) to ensure there are no financial/procurement issues that he might want further reassurance on? Unless there is a critical deadline, my sense is that it we should hold fire for a few hours.

Gordon

*Gordon Wales
Director of Financial Management
The Scottish Government
3B-77, Victoria Quay
Edinburgh
EH6 6QQ
Tel [Redacted]*

From: [Redacted]
Sent: 09 October 2015 14:37
To: McLaughlin AC (Ainslie); Director of Financial Management
Cc: Nicholls J (John) (TRANS); [Redacted]
Subject: FW: CMAL contract award to Ferguson shipyard - request for Ministerial approval
Importance: High

Ainslie
Gordon

FYI. We will be passing on this news to CMAL this afternoon with a view to them signing a contract with FMEL asap.

Thanks
[Redacted]

From: [Redacted] **On Behalf Of** Minister for Transport and Islands
Sent: 09 October 2015 14:32
To: [Redacted]
Cc: Cabinet Secretary for Infrastructure, Investment and Cities; DG Enterprise, Environment & Innovation; [Redacted]; Middleton DF (David); Transport Scotland Directors; Fairweather S (Sharon); [Redacted] Anderson A (Alexander); [Redacted]
Subject: RE: CMAL contract award to Ferguson shipyard - request for Ministerial approval
Importance: High

[Redacted]

The Minister is content with the proposals and would like to be moved on as quickly as possible please.

Thanks,
[Redacted]

[Redacted]
Private Secretary to the Minister for Transport and Islands
5 Atlantic Quay, Glasgow, G2 8LU

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From: [Redacted]
Sent: 08 October 2015 18:24
To: Minister for Transport and Islands
Cc: Cabinet Secretary for Infrastructure, Investment and Cities; DG Enterprise, Environment & Innovation; PS/Transport Scotland; Middleton DF (David); Transport Scotland Directors; Fairweather S (Sharon); [Redacted] Anderson A (Alexander); [Redacted]
Subject: CMAL contract award to Ferguson shipyard - request for Ministerial approval

[Redacted]

(sent on behalf of [redacted] – and apologies for the late delivery)

This email seeks the Minister's agreement for CMAL to proceed to contract award with FMEL in respect of the two 100m vessels.

DFM approved the financial implications of the contract award prior to the announcement by FM on 31 August that FMEL were "preferred bidder".

CMAL have concluded contract negotiations with FMEL, having secured some improvements in the terms of the refund guarantees to be provided by the shipyard. CMAL's assessment is that this is the best deal that can be negotiated given FMEL's financing structure. However, it is clear that the Board of CMAL are still concerned at the risks this contract basis presents in placing orders at FMEL without the full refund guarantees in place that were specified in the original tender documents. They are concerned in respect of the position this could leave the company if the ship failed to perform or the shipyard went into liquidation.

We have been in discussion with CMAL on how best to address those concerns. Following that further engagement, I enclose the following for the Minister's consideration:

- A note from CMAL setting out details of the contract award and the associated risks. Linked to that I also attach Erik Ostergaard's e-mail of 26 September referred to in that note. Erik's note was drafted prior to the latest round of negotiations between CMAL and FMEL.

<< File: Ferguson Marine Engineering Limited Risk 06102015 tracked 7 Oct 2015.docx >> << File: CMAL - 100m vessels - Erik Ostergaard email - 26 September 2015.docx >>

In response to those concerns I attach for the Minister's consideration two draft pieces of correspondence from Transport Scotland:

- Firstly, a draft voted loan letter from Transport Scotland setting out our agreement to fund the two new 100m vessels to be built at FMEL; and

<< File: CMAL - 100m Vessels - Voted Loan Letter - draft - 2 October 2015.doc >>

- Secondly, a draft letter from John Nicholls to CMAL Chair, Erik Ostergaard.

<< File: CMAL - 100m vessels - letter JN to EO - draft - 6 October 2015.docx >>

The "voted loan letter" is an enhanced version of our standard voted loan letter giving greater assurance to CMAL that Scottish Ministers:

- have been sighted on the CMAL note (referenced above)
- are aware of the potential risks associated with this contract; and
- are content to give approval to CMAL to proceed.

The other letter provides more general assurance to the CMAL Chair and Board of Scottish Ministers', and Transport Scotland's, commitment to CMAL in respect of the contract for the construction of the two new 100m vessels. SGLD and SG Finance have been consulted on this letter and are content.

In addition to the financial risks, absence of a full refund guarantee in the final contract could represent a considerable departure from the advertised contract terms and may raise significant procurement risks. Procurement risk can rarely be removed entirely in complex contracts and CMAL have addressed this, taking their own legal advice, and in particular by agreeing contractual terms with FMEL which are broadly comparable with the tender specification.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

In the case of a challenge, CMAL would robustly defend their position on the basis of the legal advice they have received and the steps they have taken to bring the final contract clauses into broad comparability with the tender specification.

More generally, and in discussions between Transport Scotland officials and CMAL Senior Executives on Tuesday 29 September and on Friday 2 October, the CMAL Senior Executives made clear that CMAL would likely be facing similar problems no matter who the preferred tenderer was. Their Senior Executives also made the point that despite receiving stronger financial assurances in previous shipbuilding contracts they still subsequently faced problems, and in one instance significant challenges, during the respective construction phase.

We would welcome the Minister's confirmation that he has/ is:

- considered the CMAL note,
- aware of the potential procurement and financial risks associated with this contract;
- content with both the "voted loan letter" and the letter from John Nicholls to Erik Ostergaard; and
- content to give approval to CMAL to proceed.

If the Minister wanted to speak to a representative of the CMAL Board to offer his further confirmation of the above then that could be arranged.

Thanks
[Redacted]