

EXECUTIVE COUNCIL

PUBLIC

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| Title: | Response to the Public Accounts Committee Report on Sea Truck Procurement |
| Paper Number: | 102/18 |
| Date: | 27 th June 2018 |
| Responsible Director: | Director of Commercial Services |
| Report Author: | Director of Development & Commercial Services |
| Portfolio Holder: | Honourable MLA Elsby |
| Reason for paper: | This paper is submitted to Executive Council: To meet a statutory requirement |
| Publication: | This report should be made public after submission to the Legislative Assembly |
| Previous papers: | None |
| List of Documents: | PAC Review of Sea Truck Procurement Ref: 2/2017-18 August 2017 |

1. Recommendations

Honourable Members are recommended to approve:

- (a) Approve submission of the attached response to the Assembly;
- (b) That this report be made public after submission to the Legislative Assembly in July 2018

2. Additional Budgetary Implications

There are no budgetary implications

3. Executive Summary

- 3.1 The Public Accounts Committee submitted a report on 14th December 2017 to Members of the Legislative Assembly “Review of the Sea Truck Procurement” Ref: 2/2017-18 dated August 2017. The Assembly passed a motion for a response within six months.
- 3.2 The PAC made four recommendations in the report and requested a response from FIG. A response to the Assembly is provided below:

4. FIG Response

PAC Recommendation 1

4.1 **“Where departments are not intending to go out to tender for procurement they should clearly state this in any ExCo paper and dispensation should be sought from the Treasurer”.**

4.2 Agreed

PAC Recommendation 2

4.3 **“In future where third parties are requested to oversee projects, a formal contract should be agreed setting out the roles and responsibilities for each party.”**

4.4. Agreed

PAC Recommendation 3

4.5 **“Where projects are delivered late FIG should consider if the relevant penalties in the contract should be applied. If penalties are not sought a note should be recorded to justify why late delivery penalties should not be applied”.**

4.6 Agreed, provided that there are penalty clauses for late delivery incorporated within the contract.

PAC Recommendation 4

4.7 **“FIG should request performance information from WSL in accordance with the contract covering all aspects of the contract. Regular contract monitoring meetings should be held between FIG and WSL.**

4.8 It is assumed that this recommendation refers to the Workboat Services Ferry & Coastal Shipping Charter Party Contract which is not related to the procurement of the Sea Truck. For the record, since the receipt of the PAC report (August 2017), FIG receives monthly performance statistics from the contractor, cargo delivery statistics and compliance with published sailing schedules. The Charter Party contract stipulates the parties should meet “twice yearly” but FIG communicates regularly with Workboat Services and regular meetings are held to review operational requirements, contract performance matters and general issues to be addressed.

5. Options and Reasons for Recommending Relevant Options

5.1 Not applicable.

6. Significant Risks

6.1 Not applicable.

7. Resource Implications

None

8. Legal Implications

- 8.1 The Public Accounts Committee Ordinance 2009 Section 14(1) states: “If the Committee in reporting to the Legislative Assembly recommends that the Government should or should not take a course of action, the Governor is to submit within six months a written response to the Assembly”.

9. Environmental & Sustainability Implications

- 9 None

10. Consultation

- 10.1 The PAC report has been shared with the Financial Secretary and the Contracts and Procurement Manager.

11. Communication

- 11.1 None.

The Public Accounts Committee

Falkland Islands

Review of the Sea Truck Procurement

Ref 2/ 2017-18

Report August 2017

The Public Accounts Committee

The Public Accounts Committee (PAC) is appointed under the Constitution to:

"Examine and report on all public accounts and audit reports that are required to be laid before the Legislative Assembly and shall have such other functions, and shall operate under such procedures as may be prescribed by or under an Ordinance"

The following additional functions are set out by the 'Public Accounts Committee Ordinance 2009:

a) to advise the Governor on appropriate arrangements for the auditing of accounts under section 80(1) of the Constitution, the respective priorities of audits under that subsection and the effectiveness of those audits;

b) in its discretion, to examine and report to the Legislative Assembly on the accounts of any body of a kind that is specified in the Schedule:

1. Bodies which receives public money
2. Bodies in which Government is a shareholder
3. Bodies in which statutory bodies are shareholders

c) to examine and report to the Assembly on all internal audit reports produced by the Internal Audit Department of the Government;

d) to consider and report to the Assembly on the effectiveness of the regulation by the Government of bodies to whom the Assembly or the Government has granted franchises to provide services of a public nature; and

e) to consider and report to the Governor on any other matter that the Governor may refer to the Committee.'

Current Membership

Dr Andrea Clausen (Chair)

Mr Richard Cockwell

Ms N Knight

Mr Ian Hansen MLA

Mr Barry Elsby MLA

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1. Introduction

- 1.1 The Public Accounts Committee (PAC) workplan for 2016/17 includes a review of the procurement of a Sea Truck for the costal shipping service. The Sea Truck has been named Concordia Baby as it operates in tandem with the Concordia Bay ferry. The PAC terms of reference were to
- Examine and report on the entire procurement process through to selection and purchase, with regard to value for money, taking into consideration suitability for purpose; and
 - To ensure that the FIG Financial Instructions were adhered to.
- 1.2 In June 2016 the PAC requested Mazars to review the procurement process for the Sea Truck. A draft report was received in January 2017 covering this topic but the PAC decided that further work was required. As part of the resource agreement between the PAC and the FIG Internal Audit Service the Chief Internal Auditor performed additional work. The findings from the Mazars review have been incorporated into this report.
- 1.3 The procurement of the Sea Truck was overseen by the then Director of Central Services who is no longer employed by FIG. We have met with the Project and Contracts Officer who was involved in some of the procurement decisions and we have reviewed the Central Services files (ref COM13/2C) and associated documents.
- 1.4 FIG has a contract with Workboat Services Ltd (WSL) to provide Ferry and Coastal Shipping services. Cargo is delivered to the outer islands by a number of different methods (Sea Truck, Jetty or Ramp) depending on the infrastructure at each of the islands and the weather conditions.

2. Findings

Procurement Process

- 2.1 In November 2011, Executive Council (ExCo 252/11) approved a request to research options for a replacement Sea Truck for use with the Concordia Bay. At the time two Sea Trucks were being operated but they were in a poor condition and their use had been restricted by the Maritime and Coastguard Agency (MCA) who have to certify the vessels and maintenance costs were significant.
- 2.2 A report was submitted to ExCo on 25th April 2012 (113/12) which provided six different options regarding the provision of a Sea Truck. The various options were considered and ExCo recommended to the Budget Select Committee Option 3 – the replacement of one or both Sea trucks with a purpose built single boat proposed by WSL. FIG would fully fund the building of the boat and provide it to WSL for use with the Concordia Bay.
- 2.3 On 2nd May 2012 The Budget Select Committee approved capital funding of £230,000 for the purchase of a new Sea Truck.
- 2.4 The ExCo report (113/12) provides details on Option 3 and refers to a boat proposed by WSL. The Project and Contracts Officer informed us that there was no tender or selection process as WSL had already identified the boat specification and the manufacturer and that this is what was meant by the description ‘a purpose built single boat proposed by WSL’ in the ExCo report (113/12). In our view the ExCo report does not specifically make it clear that the manufacturer for Option 3 had already been selected and that there was to be no tender process for the replacement Sea Truck.
- 2.5 The initial estimated costs for the replacement vessel were broken down as follows
- | | |
|------------------------------|-----------------|
| Build | £180,000 |
| Shipment | £15,000 |
| Spares holding | £15,000 |
| WSL fee for overseeing works | £20,000 |
| TOTAL | £230,000 |
- 2.6 An alternative manufacturer had been identified by FIG and this was included as Option 5 in the ExCo Paper (113/12). The overall cost for Option 5 was a build cost of £149,677 compared to Option 3 which was £180,000. Option 5 was not WSLs preferred option as they had concerns about the build quality and that the total cost may well exceed Option 3.
- 2.7 However, when finalising the specifications with the boat builder the price increased to £207,814 instead of £195,000 for the build and spares package. The spares package included a spare engine and so the Director of Central Services took the decision to remove the spare engine from the specification to bring the build cost down to £199,409.
- 2.8 A contract for FIG to purchase a new vessel from Alnmaritec Limited was signed on the 19th July 2012 for a value of £199,409. The contract includes the detailed specification of the vessel and also sets out the payment and delivery terms. In particular Schedule 4 of the contract states that delivery will be 24 weeks from receipt of the first stage payment. The contract also allows for Late Delivery Charges to be applied with £250 being refunded to FIG for each day the vessel is delayed between 31 and 60 days.

Payment and Delivery of Concordia Baby

- 2.9 Stage payments were made by FIG in accordance with the contract, in addition 9 Variation Orders were approved totalling £6,442.18.
- 2.10 The first stage payment was paid on the 26/07/2012. Therefore according to the contract the vessel should have been completed and ready for shipment 24 weeks after this date – 10th January 2013. However, the vessel was not completed and ready for shipment until the 26th March 2013. This is some 10 and a half weeks later than scheduled and therefore the contract fee could have been reduced in accordance with the contract by £7,500 (£250 per day for a maximum of 30 days). Whilst there is some correspondence to explain the reasons for the delays the option to charge penalties does not appear to have been considered from the information available to us during our review. Whilst FIG would have to prove that they suffered actual loss this may have been the case by having to find alternative shipping arrangements or pay for additional maintenance on the old Sea Trucks during this period. The contract files do not make any reference to these penalties and it is not clear if they were considered by FIG.
- 2.11 The Sea Truck was transported to the dock for shipping in late May 2013 but was damaged by the hauliers during the process. The vessel was repaired at no cost to FIG and then shipped to the Falkland Islands.
- 2.12 In September 2013 concerns were raised via Members that the Concordia Baby did not meet the required specification and that the cargo capacity was restricted to 3500kg as opposed to the specified 4000kg in the contract. These concerns were reported in the Penguin News on 27th September 2013.
- 2.13 WSL advised FIG that there were issues regarding the cargo capacity and stability of the vessel which WSL were attempting to resolve with Almaritec. The Central Services contract files include various correspondence of updates and a solution to rectify the cargo capacity and stability appears to have been agreed in December 2013 but the work was not carried out by Almaritec until October 2014. During this time the Concordia Baby would have been used to ship goods to the islands but would not have been able to operate at the intended cargo capacity.

Additional Costs

- 2.14 FIG had agreed to pay WSL £20,000 for the Superintendency and oversight of the Sea Truck build. This amount had been included in the ExCo Paper (113/12) and was paid on the 27 August 2013, one month before the issues regarding cargo load and stability were identified.
- 2.15 However, there was no formal agreement detailing what FIGs and WSLs responsibilities were and as a result following various discussions and legal consultation it was agreed that the costs of the work not covered by Almaritec would be split 50/50 between FIG and WSL. A payment of £10,965.51 was made by FIG to WSL to represent 50% of the additional costs incurred in rectifying the issues with the Sea Truck.
- 2.16 It was also decided that additional improvements to the vessel would be made at the same time as the above remedial works to improve manoeuvring and buoyancy at a cost of £9,200 plus shipping and travel and accommodation expenses. A payment for £9,200 was made by FIG on 04/12/2014.

- 2.17 During the time between delivery of the Concordia Baby and the capacity and stability issues being resolved we understand the Concordia Baby was able to be used and to provide the majority of cargo deliveries. However, it was not able to deliver urgently required cargo to Sea Lion and Speedwell Island and as a result FIG made alternative arrangements with the MoD for this cargo to be shipped. The Director of Central Services wrote to WSL on 26 March 2014 advising them of the position and that FIG intended to raise an invoice to recharge the expected costs of £16,500 to WSL. On the 3rd April WSL responded stating they did not accept FIGs interpretation of the situation and FIG referred the matter to the Attorney General for advice. The final bill for the alternative transportation came to £21,467.70.
- 2.18 Following legal advice a decision was taken not to pursue WSL for the alternative transportation costs of £21,467.70.
- 2.19 Clearly from the information above it has cost considerably more than the initial budget to arrive at an appropriate vessel. The original and actual costs are compared in the table below.

| | Original budget | Actual cost |
|---------------------------------------|-----------------|-------------------|
| Build | 180,000 | 199,409 |
| Shipment | 15,000 | 15,000* |
| Spares holding | 15,000 | ** |
| WSL Superintendency | 20,000 | 20,000 |
| Variation Orders | | 6,442.18 |
| Additional modification improvements | | 9,200 |
| 50% of remedial works | | 10,965.51 |
| MoD charges for alternative transport | | 21,467.70 |
| TOTAL | 230,000 | 282,484.39 |

*Shipment costs were not checked as part of this review so we have assumed that they were in line with the budget.

**Spares were included in the revised price of £199,409. However, the actual spares did not include a spare engine as per the original specification.

- 2.20 The actual cost of the replacement vessel was £52,484.39 higher than the original budget, an increase of 23%.
- 2.21 In addition there was a delay in the vessel being ready for shipment to the Falkland Islands and then additional problems relating to its cargo load and stability which meant it was not able to operate at full capacity for a significant period of time. We are aware of the urgent deliveries that had to be carried out by the MoD and it may be that other deliveries would have been requested during this period had the Concordia Baby been fully operational.
- 2.22 The Concordia Baby Stability Information Booklet was approved in February 2015 by MECAL who are a certified authority authorised by the MCA. This document confirms that the maximum load case conditions allow for 2 crew and 4000kg

Financial Instructions

2.23 The FIG Financial Instructions are clear regarding procurement and the version in place at the time the vessel was ordered states that:

- Above £50,000 for all goods and services a formal tender board must be held (FIF 1001)

2.24 Where the Financial Instructions cannot be followed departments should request a Dispensation from the Treasurer. However, no dispensation has been requested regarding the purchase of the Sea Truck.

Contract Monitoring

2.25 The Project and Contracts Officer advised us that there are regular meetings held with WSL. However over the last 2 years these meetings have focussed on the contractual negotiations and the new agreement between FIG and WSL rather than performance against the contract.

2.26 FIG does receive annual statistics on the service but this only covers ferry crossings and does not cover cargo shipments. The contract requires monthly statistics to be provided but these have not been provided to date. Following enquiries as part of this review the Project and Contracts Officer has contacted WSL and arranged to receive monthly performance statistics including cargo deliveries.

2.27 In addition an annual Customer Survey is conducted which includes cargo deliveries. The results of the 2017 survey are due soon.

3. Conclusion

- 3.1 The PAC concludes that value for money was not achieved by the procurement of the replacement sea Truck. This is down to three main issues.
- 3.2 Firstly it was not clear in the ExCo paper that the supplier for Option 3 had already been selected and it is not clear how this supplier was selected. In addition the actual cost of the vessel was significantly more than the original budget.
- 3.3 The Concordia Baby was delivered to the islands later than the contract specified and once the vessel arrived issues were identified with its cargo load and stability which meant it was not fully operational in line with the contract specification until it was certified in February 2015. The ExCo paper (113/12) stated that WSL would receive a fee of £20,000 to oversee the new build but the issues regarding the vessel were not identified by WSL. FIG did not agree with WSL what their exact responsibilities were.
- 3.4 There has also been a lack of contract monitoring in recent years and FIG has not been requesting or receiving the monthly performance information from WSL. FIG also has insufficient information on the number of times the Concordia Baby has been used to deliver cargo to the outlining islands and as such it's not currently possible to calculate the cost per cargo delivery.

4. Recommendations

| Rec ref | Report ref | Recommendation | FIG Response and Implementation Date |
|---------|------------|--|--------------------------------------|
| 1 | 2.4 | Where departments are not intending to go out to tender for procurement they should clearly state this in any ExCo papers and dispensation should be sought from the Treasurer. | |
| 2 | 2.15 | In future where 3 rd parties are requested to oversee projects a formal contract should be agreed setting out the roles and responsibilities of each party. | |
| 3 | 2.10 | Where projects are delivered late FIG should consider if the relevant penalties in the contract should be applied. If penalties are not sought a note should be recorded to justify why late delivery penalties should not be applied. | |
| 4 | 2.25 | FIG should request performance information from WSL in accordance with the contract covering all aspects of the contract. Regular contract monitoring meetings should be held between FIG and WSL. | |