


<p>Economic Development Directorate Colin Cook, Director</p> <p>E: DirectorDED@gov.scot M: 07794039775</p>	 <p>Scottish Government Riaghaltas na h-Alba gov.scot</p>
<p>Public Audit Committee</p> <p>By email: publicaudit.committee@parliament.scot</p>	

7 July 2022

Dear Convenor,

Thank you for inviting us to attend the Public Audit Committee meeting 9 June, where we agreed to write to you with further evidence.

In response to a question from Ms Dowey, Frances Pacitti undertook to confirm the date on which Ministers became aware that a Builder's Refund Guarantee (BRG) was not in place. Ministers were first made aware by CMAL that there was a potential issue over the Guarantee after they had approved, on 21 August 2015, the appointment by CMAL of FMEL as the preferred bidder. It was surfaced initially as a potential issue in a written briefing dated 28 August 2015 and, following subsequent assessment by CMAL, FMEL's inability to offer a full BRG, and the mitigations negotiated prior to final contract award, were set out in the published advice to Ministers of 8 October 2015.

Mo Rooney undertook to check with FMPG what access they have to the records of FMEL. The sale and purchase agreement between the Administrators and FMPG granted physical possession of any available records from FMEL (at that point under the control of the Joint Administrators) to FMPG. FMPG therefore have access to the records the Administrators had of FMEL, to the extent the records were appropriately kept and maintained by the Directors of FMEL. The FMPG Chief Financial Officer is not aware of any formal record, list or index of these records.

The Committee asked for additional clarification on the consideration of any potential conflict of interest between CMAL and Ferguson Marine as a result of the new contracts entered into in March 2021.

The potential for any conflict of interest between CMAL and Ferguson Marine was considered prior to the new contractual arrangements being implemented in March 2021. As detailed in Audit Scotland's report, "New Vessels for the Clyde and Hebrides – Arrangements to deliver vessels 801 and 802", published in March 2022, the Scottish Government worked for a number of months following public ownership to establish appropriate arrangements for the vessels and FMPG. This involved liaising with Transport Scotland and CMAL, conducting due diligence and taking appropriate advice to develop contractual relationships which best reflected the roles that each party was now playing in helping to deliver the vessels.

An extract of the accountable officer submission considering the new contractual arrangements of FMPG is contained below. This extract relates to the assessment of any potential conflict of interest associated with the new contractual arrangements (“Option 4”) and illustrates that this was appropriately considered at the time the new arrangements were entered into.

“Conflicts of interest

*The financial arrangements outlined in Option 4 are considered **low risk** in terms of presenting any additional conflicts of interest between relevant bodies. The relationship between the Scottish Government and Ferguson Marine is already widely recognised. The financial arrangements outlined under this option would only act to formalise this relationship into a contract.*

As the vessels will be transferred to CMAL upon completion, it would also be considered appropriate for CMAL to retain its current involvement of providing technical feedback, without this giving rise to any perceived conflict of interest.”

In response to a question from Mr Hoy, Frances Pacitti undertook to confirm what readout was received of a meeting between the First Minister and Mr McColl on 31 May 2017. I note the committee also asked Mr McColl about this meeting and he confirmed that another person was present. I can confirm that this was a Special Adviser. Scottish Government / Transport Scotland officials did not attend and did not make a record of that conversation. DG Economy sent a short note the same day setting out further information requests from the First Minister. A redacted version of this email was published in 2018 – see document 17 in the attached [FOI-18-03135+-related+documents+.pdf \(www.gov.scot\)](#).

Please let me know if you or the committee wish any further clarification, we will be happy to provide.

Yours sincerely

Colin Cook
Director, Economic Development Directorate
Scottish Government