

PROCUREMENT POLICY REVIEW: STAKEHOLDER EVENT

GLASGOW - 26 MAY 2017: KEY SUMMARY POINTS

Thirty five key stakeholders, including representatives from local authorities, community, tourism and business groups were invited, to represent the local community. The following attended the meeting:

[REDACTED]

- Inverclyde Council
- Inverclyde Council
- Argyll & Bute Council
- North Ayrshire Council
- Dunoon-Gourock Ferry Action Group
- Bute Community Council
- Dunoon Community Council
- Arran Community Council
- Visit Scotland
- Nestrans
- Road Haulage Association
- Visit Arran
- Federation of Small Businesses
- Dunoon-Gourock Ferry Action Group

[REDACTED]

- Transport Scotland
- Transport Scotland

Apologies: [REDACTED]

Introduction

1. [REDACTED] thanked everyone for attending the event and explained that he would give a short presentation about the policy review into the provision of lifeline ferry services in Scotland. He welcomed input and discussion from those present.
2. Firstly, it was made clear that the policy review is into the provision of lifeline ferry services and that the existing ferry contracts for Gourock-Dunoon, the Northern Isles and Clyde and Hebrides ferry services are due to expire in 2017, 2018 and 2024 respectively.
3. The background to the procurement policy review was explained, including historic approaches to the European Commission (EC) regarding the procurement of Scottish ferries, the application of the Teckal exemption and the necessity of meeting MCA and State aid regulations. It was clarified that the EC guidance was that 'Teckal should be capable of being applied'.
4. It was noted that on 22 September 2016, there was a shift in the guidance and advice provided by the EC. After giving this due consideration, Humza Yousaf MSP, Minister for Transport and the Islands announced a policy procurement review on 2 February 2017.

5. In addition, it was clarified that the stakeholder meeting was about the provision of services and who communities want to operate these. It was not about the funding of vessels, the setting of harbour charges or any assets relating to CMAL.

Presentation from Transport Scotland

5. The presentation highlighted the following points:

- Provided background to the Scottish Government's decision to carry out the policy review, including details around how the Review will consider the legal, policy and financial implications relevant to the procurement of ferry services in future, including the possible application of the Teckal exemption and the requirement to comply with State aid rules;
- Provided necessary detail in relation to the Teckal exemption and State Aid;
- How the outcome of the Policy Review cannot be pre-judged, noting though that the Minister had made clear in his announcement that should the Policy Review conclude that it would be possible to apply the Teckal exemption and meet State aid rules, Ministers would be minded to provide ferry services through an in-house operator, subject to the views of the communities served and relevant policy and financial implications;
- Noting the level of financial investment made by Scottish Ministers to lifeline ferry services in Scotland;
- Noting the current situation in relation to Scotland's lifeline ferry services and assets;
- Noting that we were looking for stakeholders to consider two main questions:
 1. the key considerations that would support in-house operation or competitive tendering of the ferry services in future from a local community perspective?; and
 2. If we can apply Teckal and comply with State aid rules, and subject to wider policy and value-for-money implications, should we a) provide services through an in-house operator, or b) continue to tender?

6. In considering these questions, discussion took place and the following was expressed:

Distortion of the Market

- We should just make a direct award as Scotland is leaving the European Union (EU). Noted that Scotland, as part of the UK, is still a member of the EU and has to abide by rules and regulations, otherwise the UK Government is in breach of the agreement. Consideration needs to be given to the implications of Brexit.
- How can you prove that you get the best price from the market, if you don't tender? There is a requirement to prove efficiency ie services are well run and adequately equipped. (Altmark 4).
- It was noted that State aid is the main issue in making an in-house award. If all 4 Altmark condition can be met, then any subsidy given is not State aid. The issue of State aid is not an issue if a contract is awarded to a private operator.

Costs and Savings

- It was noted that CalMac and CMal are both independent trading companies, owned by Scottish Ministers and the reasons for having two separate companies explained. It was commented that an in-house operator may not need two separate companies.
- Would a cost/benefit analysis be undertaken? Noted that there is a requirement to show the EC, after analysis, that the service is well run and economical.

Performance Management

- There are benefits from tendering ie continuous improvement, which may be difficult to prove if an in-house award.
- Will the Audit Scotland report be included as part of the review? These are two independent reviews and Transport Scotland is not working with Audit Scotland.
- How would SG quality assure and meet service demands, if in-house? Clarified that the economic development of services and destinations would continue.

Decision Making

- Decisions made about the procurement review should be based on evidence. Wider consultation will take place and feedback will be received from Local Authorities and other parties, with the outcome of the review being published in late autumn.
- Easier to get people 'around the table' if Ministers are involved. Consistency and quality of service and routes needs to be maintained.

- Ferry User Groups still require a voice, irrespective of how the service is procured.

Vessels

- Concerns expressed over vessel replacement, maintenance and infrastructure, and how this would be impacted, depending on the award made.

In-house v contract

- View expressed that there is no difference in private v public, but expressed a preference for public. However, if the public could not provide the service that communities want, then the service should be put out to tender to provide the best overall outcome.
- If an in-house award then Scottish Ministers would develop the specification.

Community benefits

- DML board needs Islanders on it to represent people at strategic levels. A desire for people with local maritime experience to be on the board.

Conclusion

7. The pros and cons of both approaches were noted. The in-house operator considered to provide more structure and governance to ensure performance and improvements. There would be more democratic input, if in-house.

8. A tendered contract was considered to 'sharpen creativity'.

9. It was also noted that whichever option is chosen, there will be a policy driven legal aspect, with a focus on value-for-money, shaping islands and economies.

Ferries Unit
May 2017