

T: 0131-244 5598
E: DGeconomy@gov.scot

[Redacted] , Deloitte
[Redacted] , Deloitte

By email:

[Redacted] [@deloitte.co.uk](mailto:[Redacted]@deloitte.co.uk)

[Redacted] [@deloitte.co.uk](mailto:[Redacted]@deloitte.co.uk)

Dear [Redacted] and [Redacted] ,

We refer to your letter of 25 September 2019 and your subsequent email of the same date. We note that you confirm that, with the exception of the offer from Macrocom (1067) Limited, there is no offer to acquire the business and assets of Ferguson Marine Engineering Limited (in administration) (“FMEL”) that you are pursuing.

We also note that you state that in light of the timescales, and the failure to receive the documentation from the solicitors for the Company pre-administration, you have not yet been able to determine whether there is any value in any potential claim against Caledonian Maritime Assets Limited (“CMAL”) in relation to the 801 and 802 contracts (“the Claim”). As a result, you are suggesting that the option of the administrators under the Option Agreement to require Macrocom (1067) Limited to acquire the business and assets of FMEL be extended or alternatively, that the Claim is excluded from the sale and purchase.

Whilst we note the points you make in your letter relating to the reasons leading up to this request, we do not consider either of these routes as a viable option. Having allowed sufficient time to identify potential buyers for the FMEL business and assets, we are now keen to acquire the business and assets of FMEL as quickly as possible. Continuing unlimited delays only serve to prejudice the position of the business and the creditors. We also wish to execute that acquisition in a manner which allows the best prospect of success for the business. Trying to separate the rights and obligations of the 801 and 802 contracts would defeat this objective.

We are also firmly of the view that there is no value in the Claim. Notwithstanding that we are firmly of this view, (which is well-informed after lengthy and detailed analysis not just by ourselves) in the event that any attempt was made to pursue the Claim, our understanding is that CMAL would (i) terminate the 801/802 contracts with FMEL, (ii) make a substantial counter-claim (which would exceed the previously intimated value of the Claim) and (iii) make a separate claim against the surety provider (HCCI). In these circumstances, by our calculations, there is no prospect of any return to any creditor ranking behind the Scottish Ministers – this is particularly the case when the legal ranking of the securities provides that the loans from the Scottish Ministers totalling £45m plus interest rank ahead of the loan provided by Clyde Blowers Capital III Limited (“CBC”).

We believe that the failure of the solicitors to the business prior to administration to provide the information requested risks further prejudice to the business. In addition, in light of the circumstances described in the paragraph above, where even if the conclusion was formed that there is any value in the Claim there would be no return to CBC in their position as secured creditor, we believe that there is no requirement to seek an opinion of Counsel and that we should now move to execute on the transaction.

We would suggest therefore that now that it is clear there are no other credible offers, a meeting should be organised between you, your advisers, our advisers, CMAL and CMAL's advisers to agree timescales and to discuss anything arising from the points above. We are concerned that further delays (including delays caused by seeking Counsel's opinions) further prejudices the business, the interests of the only creditors likely to make any realisation from the distributions and the other suppliers to the business.

[Redacted]

LIZ DITCHBURN

From: Rooney M (Maureen) <Maureen.Rooney@gov.scot>
Sent: 10 October 2019 22:44
To: Cabinet Secretary for Finance, Economy and Fair Work <CabSecFEFW@gov.scot>
Cc: DG Economy <DGEconomy@gov.scot>; Rollison R (Richard) <Richard.Rollison@gov.scot>;
Chief Executive Transport Scotland <ceo@transport.gov.scot>; [Redacted]
>; [Redacted] >; Chief Financial Officer
<cfo@gov.scot>; [Redacted] >; McCaig C (Callum)
<Callum.Mccaig@gov.scot>; Maxwell S (Stewart) (Special Adviser)
<Stewart.Maxwell2@gov.scot>; [Redacted] >;
[Redacted] >; [Redacted] >;
>; [Redacted] >; Wilcock C
(Chris) <Chris.Wilcock@transport.gov.scot>; [Redacted]
>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; First
Minister <firstminister@gov.scot>; Rhatigan D (Dermot) <Dermot.Rhatigan@gov.scot>; [Redacted]
>; Rooney M (Maureen) <Maureen.Rooney@gov.scot>

Subject: Routine update: Ferguson Marine (10/10/19)

PS/Cabinet Secretary for Finance, Fair Work and Economy

This email is by way of short update to the Cabinet Secretary on current developments in relation to Ferguson Marine.

Update on transaction

- Our commercial advisors and solicitors met with the Administrators on Wed 9th, with a further update from their solicitors today (10th). Their QC is still developing opinion on the CPI claim. A clear position on this from the Administrators is now expected towards the end of next week (18th Oct). The Administrators' solicitors have confirmed that title to the vessels lies with CMAL, as we expected.
- On the basis of timeline for the Administrators' Counsel opinion, the transaction is expected to take place at some time from 25 Oct. Full completion of the sale will require all securities to have been discharged by the relevant secured creditors (HCCI, SG, CBC and ClydePort).
- Your communications team are considering options for media around the transaction and will prepare advice.

State aid considerations

- [Redacted]

Other

- Work continues to progress on the development of the schedule and cost for delivery of 801 and 802, with the Programme Review Board (which meets fortnightly) meeting again today to provide support and constructive challenge.

I am on annual leave until Wed 23rd Oct. In my absence, Chris Wilcock will provide you with update notes each Monday and Thursday.

I hope this continues to be helpful.

Mo.

Mo Rooney

Deputy Director (Ferguson Marine Response)

Scottish Government

4th floor, Atlantic Quay

150 Broomielaw, Glasgow

[Redacted]



Our reference WATTE/358022-19

26 September 2019

PRIVATE AND CONFIDENTIAL
the Administrators of Ferguson Marine Engineering Limited
c/o Deloitte LLP
Saltire Court
20 Castle Terrace
Edinburgh
EH1 2DB

by email only (as agent): [Redacted] @shepwedd.com

Dear Sirs

**Our client: Caledonian Maritime Assets Limited ("CMAL")
Newbuilding contracts with Ferguson Marine Engineering Limited (in Administration)("FMEL")**

1. Introduction

We act for CMAL.

We provide below our analysis of our client's rights in terms of the shipbuilding contracts between CMAL and FMEL dated 16 October 2015 (as amended, together, the "**Contracts**") for the design, construction and delivery of hull nos. 801 and 802 (together, the "**Vessels**").

Hull 801, launched in November 2017 as "GLEN SANNOX" was due for delivery on 25 May 2018. Hull 802, as yet incomplete (at approximately 75% fabrication of the hull, before outfitting) and on hard-standing at the yard premises, was due for delivery on 26 July 2018. These dates are as shown in Box 10 of the Contracts and have not been varied by the parties at any time.

As you may be aware, FMEL contend that the delays experienced are in part somehow attributable to CMAL. On 20 December 2018 a claim in excess of £66 million, prepared by a firm of consultants known as HKA, was presented by FMEL to CMAL (the "**Claim**").

The Claim rests entirely upon the existence of an alleged implied term. This detail is not revealed in the various public statements made by FMEL in support of their contentions. The Claim does not in any meaningful way address the provisions of the Contracts generally. The Claim does not refer to the specific clauses in the Contracts through which FMEL may be entitled to claim additional time or money.

On 4 March 2019 a comprehensive legal rebuttal of the Claim was presented by CMAL to FMEL. We enclose a copy, in strict confidence. This rebuttal was prepared by this firm and revised by Senior Counsel (Gerry Moynihan QC). To the date of their entering Administration, since March, FMEL have made no reply to the rebuttal nor raised proceedings against our client.

Active-17351142-6\358022-19

Addleshaw Goddard LLP, Exchange Tower, 19 Canning Street, Edinburgh EH3 8EH
Tel +44 (0)131 228 2400 Fax +44 (0)131 222 9800 DX ED27 Edinburgh
www.addleshawgoddard.com

Addleshaw Goddard LLP is a limited liability partnership registered in England and Wales (with registered number OC318149) and is authorised and regulated by the Solicitors Regulation Authority and the Law Society of Scotland. A list of members is open to inspection at our registered office, Milton Gate, 60 Chiswell Street, London EC1Y 4AG. The term partner refers to any individual who is a member of any Addleshaw Goddard entity or association or an employee or consultant with equivalent standing and qualifications.

In May 2019, the Scottish Ministers commissioned another Queen's Counsel to provide an "independent view" of the Claim in light of the CMAL rebuttal. The findings of that review are confidential, but we understand that you have access to the copy provided by DG Economy to FMEL. Suffice to say that there has been no want of scrutiny of the parties' respective positions.

2. Background to the Contracts

Following a competitive OJEU tender process, in October 2015 CMAL entered into the Contracts with FMEL for the design, fabrication and delivery of two dual fuel LNG ferries with a total contract value of £97 million. Note here that design is a FMEL responsibility.

The quality of the tender submission by FMEL was very good, and was the highest scoring technically. We understand that a significant portion of the tender document had been outsourced by FMEL to a marine consultancy known as Houlder, and the output was compelling. At this price, FMEL was the most expensive of the bidders and at any greater value the contracts would have been awarded elsewhere.

CMAL however envisaged cost savings in the supervision of the build phase, as compared to foreign bidders, because as you know FMEL is located directly across the road from CMAL in Port Glasgow. Ordinarily for a project of this scale a buyer would budget to invest in full-time attendance by a supervision team on its behalf, together with their associated travel and accommodation costs, at a foreign yard.

The Contracts are identical, save for their intended delivery date. The form of the Contracts is an amended BIMCO standard template agreement "NEWBUILDCON", broadly as contained in the invitation to tender, though the financial security which was provided by FMEL is somewhat less.

The template NEWBUILDCON is not significantly amended by the parties in areas relevant to the Claim and the key provisions for present purposes relating to the consequences of design change or delay for any reason (clause 24 and clause 34) are entirely unaltered from the standard wording and their apportionment of risk and cost that the industry-standard form of agreement describes.

In July 2017, FMEL presented a spreadsheet to CMAL claiming an additional £17.5 million financial support but without vouching, detailed explanation or apparent contractual foundation. These claims were disputed by CMAL and have been the subject of protracted correspondence. That correspondence and an attempted mediation of these claims shall be discussed briefly below.

Save for the approval of routine and agreed change order requests, no headline price increase nor any additional funding has been conceded nor paid by CMAL to FMEL to date.

To date, CMAL has made instalment payments of over £82 million in aggregate to FMEL.

3. VTC claims and attempt to convene Mediation

FMEL described the July 2017 spreadsheet as "VTC", i.e. variations to contract. Elements of the claim include amendments to the contractual specification by CMAL; unanticipated technical complexity; unforeseen circumstances; delays in Class and Flag approvals; new regulatory requirements; additional required warehousing space; excessive supervision by CMAL; and currency losses.

No contractual justification for the payments was given at this time. No 'payment notices' or 'permissible delay' notices, as one would expect to encounter, had been issued by FMEL with reference to the appropriate provisions of the Contracts for the large lump-sum elements claimed. We shall consider clause 24 and clause 34 of the Contracts further below.

In August 2017, CMAL issued a full legal and technical rebuttal to the VTC claims and again noting the complete absence of any contractual notices as required for the allowance of additional time or money in terms of the Contracts for the heads of claim described. In September 2017 the parties agreed to submit the dispute to mediation, as anticipated in the Contracts. A draft mediation agreement was agreed in principle subject to FMEL clarifying the legal basis of the various heads of claim.

On 11 December 2017, FMEL issued a 16-page letter in explanation of their claim but which contained no single reference to the various detailed provisions of the Contracts which allow the builder to claim additional time or money from the buyer.

CMAL responded on 24 December 2017 and again on 12 January 2018 stating that for the mediation to be successful the legal basis of the claims required to be fully understood before a mediation could be sensibly convened.

On 25 January 2018, FMEL replied that the issues between the parties "*go beyond the specific terms of the Contracts that you refer to*". On 2 February 2018 CMAL replied that payment of any non-contractual elements would not be possible given the responsibility of the CMAL Board of Directors not to sanction spending of public funds without legal basis.

Soon afterwards, the attempt to mediate was abandoned by FMEL on 15 February 2019, realising that the Board of CMAL would not countenance non-contractual or ex-gratia payments.

4. High level analysis – CMAL position prior to notification of the Claim

Prior to receipt of the Claim, it did appear to CMAL that a combination of inexperience or disorganisation or a failure to take or act upon suitable advice may have led FMEL into their stated difficulties. Most noticeably, none of the inter-parties correspondence from FMEL refers to the Contracts in any detail whatsoever. To provide some more background on the themes raised by FMEL and the CMAL perspective in turn:

Changes and Modifications

The industry-standard Contracts include a mechanism for recovery by the Builder of costs for changes to specification (Clause 24) and new regulatory requirements (Clause 26). The Claim is not founded on these provisions, instead the majority of the claims had – at that time – been justified by FMEL on grounds that the circumstances encountered were "unforeseeable".

A schedule of the ongoing routine Variation Orders in respect of each of the Vessels – those in which FMEL have followed the requirements of the Contracts for claims to additional time or money – can be provided if this would be of assistance. To 5 August 2019 the agreed net value of additional work commissioned by CMAL was £364,216 for hull 801 and £365,478 for hull 802.

Unforeseen complexity

CMAL have obtained an independent expert report which expresses the view that the Vessels are, relatively speaking, neither novel nor complex. It seems that FMEL, perhaps because of their relative inexperience, have underestimated the complexity (and therefore the cost) of fabrication of the designs and further failed to understand the allocation of risk in the standard design-and-build form of agreement.

Indeed, for a period of the inter-parties correspondence, large elements of their claim were predicated and described by FMEL under the head "unforeseen complexity", and so revealing their state of knowledge or understanding of the requirements of the project at the time of bidding.

In fact, during an interview with STV in December 2018 a director of the company appeared to concede that FMEL "*wrongly assumed*" the extent of the design development which was expected of them:

<https://stv.tv/news/west-central/1433506-shipbuilder-s-costs-spiral-due-to-albatross-ferry-contract/>

It is recognised that CMAL awarded the Contracts to FMEL which at that time had no track record in LNG nor any recent experience of fabrication of this scale. Yet with significant professional support in the preparation of their bid, FMEL submitted a winning tender. It is in the execution where FMEL, and in turn CMAL as a disappointed buyer, have suffered.

In broad terms, the approach of CMAL is that FMEL have held themselves out as (i) fully understanding the contract requirements; and (ii) competent to deliver in accordance with those requirements.

Difficulties which FMEL may well have encountered in the design development – and the doubtless cost impact suffered – perhaps through over-optimism, are for the Builder's account.

Issues such as Class and Flag approvals are commonplace causes of delay in ship-building projects and are hardly unforeseeable, rather, it is for the Builder to anticipate and provide for such contingencies in their budget and their programme.

Prematurity

We consider that, in accordance with clause 15(b)(i) of the Contracts, payments for modifications to the specification of the Vessels – as appeared from the press coverage to be the source of FMEL complaints – fall to be determined at the time of delivery of each of them:

"15(b)(i) *The sums due or refundable as a result of modifications and changes, and changes in Rules and Regulations under Clause 24 (Modifications and Changes)... shall be added to or deducted from the Final Instalment."*

In principle this is sensible because it allows amendments (both additions and subtractions) through the build phase to progress without a formal modification to the price on each occasion, to be reconciled at completion. This also allows a buyer to set off increased costs against any liquidated damages payable for late delivery.

To date, liquidated damages of £1,500,000 in aggregate have accrued to CMAL under the Contracts for late delivery.

Contractual time-bar

In relation to claims for time, in many instances we believe FMEL have missed the compulsory notification requirements to allow an extension of the delivery date (Clause 34):

"34(b) *The Builder shall notify the Buyer within ten (10) running days of when the Builder becomes aware of the occurrence of any event of delay on account of which the Builder assert that it may have a right to claim an extension of the Delivery Date. A failure to so notify shall bar the Builder from claiming an extension to the Delivery Date..."*

No claim for additional time has yet been expressed by FMEL as Permissible Delay or Force Majeure according to the Contracts – save for an allowance of some 'red weather warning' days in February 2018.

Entire agreement

Related to the allegations of unforeseeable complexity and the criticism we have seen of the procurement method, arises the possibility that FMEL were at some time seeking to pursue a non-contractual claim or wrong. Clause 47 of the Contracts speaks for itself.

5. The Claim

Were the Claim founded on a catalogue of agreed design changes and documented notices for time and money passing between CMAL and FMEL since the inception of the Contracts, we can see that a detailed review of the merits may be considered appropriate in the Administrators' valuation of the business. There is no such basis to the Claim.

Instead we find from HKA a voluminous, dubious and partial account of alleged delays and interference by CMAL during the build phase and the assertion of an implied term of "non-hindrance". Notably, of the 158 page narrative (Part 1) and over 700 pages of appendices (Parts 2, 3 and 4) the Claim contains just four pages of legal explanation and which is almost wholly empty of argument. In their analysis, FMEL simply does not directly address – far less satisfy – the legal test for the implication of a term.

6. The CMAL rebuttal

We do not repeat here the legal analysis shown in the enclosed CMAL rebuttal letter dated 4 March 2019 but kindly request that particular focus is given by the Administrators to sections 12, 13 and 21.

We would be pleased to discuss further with you in confidence any issues arising, should you wish either in person or on a call.

7. Executive summary

We have addressed the context and history of the dispute between the parties because it shows that, in successive formulations from "amendments to specification", through "unanticipated technical complexity" to the present implied term of non-hindrance, for reasons unexplained we see an entire disregard for the Contracts themselves.

FMEL has failed to establish a basis for the implication of the term upon which its entire Claim proceeds. Furthermore, the credibility of the Claim is significantly undermined by the absence of any reference to any contemporaneous compliance by FMEL with its obligations under clause 34(b) of the Contracts.

Reports in the press have suggested that the findings of the independent view engaged by the Scottish Ministers were consistent with our approach on behalf of CMAL. With sight of that Opinion, you may agree. We suggest that one need look no further than:

- (1) to verify that the Claim rests entirely on the establishment of an implied term; and
- (2) to consider the very fundamental and well-established rules for the creation of such a term in the context of a detailed commercial agreement,

to reach the view that the Claim is quite worthless.

Yours faithfully

[Redacted]

Addleshaw Goddard LLP

Direct line [Redacted]
Email [Red @addleshawgoddard.com]

Enclosure: Copy letter CMAL to FMEL, 4 March 2019



Our reference WATTE/358022-19

26 September 2019

Shepherd & Wedderburn LLP
1 West Regent Street
Glasgow
G2 1RW

by email only: [Redacted] [@shepwedd.com](mailto:[Redacted]@shepwedd.com)

Dear Sirs

Our client: Caledonian Maritime Assets Limited ("CMAL")
Your client: the Administrators of Ferguson Marine Engineering Limited (in Administration)

We refer again to the Statement of Affairs of Ferguson Marine Engineering Limited (in Administration) dated 6 September 2019.

Given the inclusion of the value of some £48,329,000 shown in the Summary of Assets as "801/802 PRICE CLAIM" we thought it appropriate to explain to the Administrators why that estimation of the Directors respectfully is misguided.

Please find enclosed for consideration with your clients our letter of today's date to the Administrators together with the CMAL rebuttal letter referred to.

In particular, as distinct from the 'independent view' engaged by the Ministers which considers the HKA assertions in isolation, we hope that this letter assists the Administrators by allowing the claim to be seen in the context of its previous incarnations presented under the head of "unforeseen complexity" which we suggest rather betrays the misunderstanding by FMEL from the outset of the project entrusted to them.

We would be pleased to clarify or explain any issues or concerns arising.

Yours faithfully

[Redacted]

Addleshaw Goddard LLP

Direct line [Redacted]
Email [Redacted] @addleshawgoddard.com

Active-17387722-1

Addleshaw Goddard LLP, Exchange Tower, 19 Canning Street, Edinburgh EH3 8EH
Tel +44 (0)131 228 2400 Fax +44 (0)131 222 9800 DX ED27 Edinburgh
www.addleshawgoddard.com

Addleshaw Goddard LLP is a limited liability partnership registered in England and Wales (with registered number OC318149) and is authorised and regulated by the Solicitors Regulation Authority and the Law Society of Scotland. A list of members is open to inspection at our registered office, Milton Gate, 60 Chiswell Street, London EC1Y 4AG. The term partner refers to any individual who is a member of any Addleshaw Goddard entity or association or an employee or consultant with equivalent standing and qualifications.

Cabinet Secretary for Finance, Economy and Fair Work

Sale of business and assets of Ferguson Marine Engineering Limited (FMEL)

Purpose

1. To update the Cabinet Secretary on the administration process and next steps.

Priority

2. Routine

Background

3. Deloitte were appointed administrator for FMEL on 16th August. Since that time they have been conducting a marketing process for the sale of the business and assets of FMEL. The process was due to last 4 weeks and the deadline for bids expired on 13th September

4. Scottish Government has continued to operate the yard under agreement with the administrators throughout that period with a view to ensuring continued employment and co

Levels of Interest in Purchase.

5. The following is a summary by Deloitte to the workforce council on the marketing process:

In respect of the sale of business process we would note:

- 35 potentially interested parties were contacted;
- 31 received the teaser, 4 did not respond or declined to receive;
- Of the 31 receiving the teaser, 18 declined the opportunity or failed to respond;
- 12 parties received an NDA, of which 11 agreed to terms to receive the IM;
- 2 parties were only interested in acquiring certain assets, not the business; and
- 3 parties submitted indicative offers for the business.

The joint administrators are considering the offers received, and where appropriate are having further dialogue with bidders to explore their indicative offers.

The Joint Administrators retain the benefit of an option to sell the business to Macrocom, the Scottish Government Special Purpose Vehicle (the "SPV"). As before, where there are no offers arising from the sale process that represent a better return for creditors than a transaction with the SPV, then the Joint Administrators would seek to exercise the option to sell to the SPV.

6. [Redacted]

7. [Redacted]

• [Redacted]

• [Redacted]

• [Redacted]

Consideration of Bids

8. It was deemed the third bid was worth consideration, however following an update meeting on 17 September we have considered the merits and implications of this offer and it has emerged that there would be serious legal difficulties with elements of the offer relating to completion of the 801 and 802 Contracts, more specifically in a public procurement context.

9. The proposal would also not stack up in Value for Money terms, with similar arrangements for vessel leasing resulting in overall payments of around 3 times the initial capital cost. We are currently extracting ourselves from these deals elsewhere in the lifeline network.

10. As secured creditors we have now requested that the administrators of FMEL consider the offers that have been received and recommend the best offer available.

11. Deloitte have written to CMAL today seeking their confirmation around the proposal from bidder 3. CMAL have now issued this and we expect Deloitte to confirm that our bid remains the only viable option as they indicated they would do in a letter received this afternoon (attached).

Contract Claim

12. However, Deloitte have also highlighted to us that they require to undertake further work on the potential FMEL claim against CMAL to establish whether or not any value should be assigned to this. CBC are pushing the administrators on this point.

13 The administrators have indicated that due to delays in obtaining information from Brodies (FMEL solicitors prior to administration) and availability of a QC to provide Deloitte with an opinion (in addition to those already obtained by SG, CMAL and CBC/FMEL) suggest this work may take a number of weeks to complete.

14. Deloitte are recommending that the option to purchase be extended by a four week period, or that we exclude the claim from the purchase. PWC and MacRoberts are preparing a response on this issue.

Contracts for 803-805

15. [Redacted]

16. [Redacted]

17. Although we would have the option of leaving this contract behind in administration, the clear preference is to find a solution that allows us to take all of these contracts with us on a commercial basis. We continue to work on this and engage with the customers (who have welcomed the more open and honest engagement they have had since SG control of the yard).

Conclusion

18. The Cabinet Secretary is invited to note the content of this submission and that further briefing will be provided once this matter has been considered further.

Chris Wilcock
Director AMFC
Transport Scotland
X [Redacted]
ted1

25 September 2019

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constituent Interest	General Awareness
As per covering email					

--

DRAFT

From: [Redacted]
To: [Redacted]
Cc: Wilcock C (Chris); [Redact @pwc.com]; DG Economy; Chief Executive Transport Scotland; Chief Financial Officer; Rollison R (Richard); Kooney M (Maureen); [Redacted] Rennie M (Michelle); [Redacted] @pwc.com; [Redacted] @pwc.com; [Redacted] ; [Red @macroberts.com]; [Redact @macroberts.com]; [Redacted] @pwc.com
Subject: RE: [EXT] FMEL administration - Bidder 3
Date: Monday, 23 September 2019 17:11:33
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

[Redacted]
acted

Thanks for your email.

As indicated, the bidder's offer raises public procurement and value for money concerns in relation to the proposed "novation and purchase" of the current contracts for 801 and 802, and to the proposal for CMAL subsequently to take the vessels on a 25 year bareboat charter in return for periodic lease payments from the public sector (CMAL). Any addition of an equity stake would not assist in that analysis.

The current uncertainty, noting the upcoming end of the management agreement period, surrounding the identity of any new owner continues to be unsettling for the business and impacts key decisions going forward regarding structures and strategy.

We think the best way of proceeding is for Deloitte to consider the offers against this background and don't feel any direct conversation between us and other bidder is going to assist in that analysis.

Regards

[Redacted]
- -"

From: [Redacted] <[\[Redacted\]@deloitte.co.uk](mailto:[Redacted]@deloitte.co.uk)>
Sent: 21 September 2019 11:10
To: [Redacted] <[\[Redacted\]@transport.gov.scot](mailto:[Redacted]@transport.gov.scot)>; [Redacted] <[\[Redacted\]@deloitte.co.uk](mailto:[Redacted]@deloitte.co.uk)>
Cc: Wilcock C (Chris) <[Redacted]@transport.gov.scot>; [Redacted] <[\[Redacted\]@pwc.com](mailto:[Redacted]@pwc.com)>; DG Economy <DG_Economy@gov.scot>; Chief Executive Transport Scotland <ceo@transport.gov.scot>; Chief Financial Officer <cfo@gov.scot>; Rollison R (Richard) <[Redacted]@gov.scot>; Rooney M (Maureen) <[Redacted]@socialsecurity.gov.scot>; [Redacted] <[Redacted]@transport.gov.scot>; Rennie M (Michelle) <[Redacted]@transport.gov.scot>; [Redacted] <[\[Redacted\]@pwc.com](mailto:[Redacted]@pwc.com)>; [Redacted] <[\[Redacted\]@pwc.com](mailto:[Redacted]@pwc.com)>; [Redacted] <[\[Redacted\]@gov.scot](mailto:[Redacted]@gov.scot)>; [Redacted] <[\[Redacted\]@macroberts.com](mailto:[Redacted]@macroberts.com)>; [Redacted] <[\[Redacted\]@macroberts.com](mailto:[Redacted]@macroberts.com)>; [Redacted] <[\[Redacted\]@pwc.com](mailto:[Redacted]@pwc.com)>
Subject: RE: [EXT] FMEL administration - Bidder 3

[Redacted]
- -"

Thank you for your note. We have relayed the messaging noted below to the bidder and have cancelled the planning for the requested meeting on Monday.

The bidder has asked for further clarity around the difficulties you note so that they can consider whether their offer can be adapted to alleviate the challenges. They noted that they'd be open to CMAL taking equity in the asset owning entity ("Redacted") as part of the process whereby the Redacted acquire the current hulls. Overall they have stated a willingness to be flexible if there is a possible solution.

If it is felt that a discussion is the simplest process to set out the above, to understand and assess whether a revised offer would be workable then the bidder is happy to have a working call with the relevant personnel from your side.

We look forward to hearing from you once you have had time to consider.

Regards
[Redacted]
dact

For and on behalf of [Redacted]
Joint Administrator
Ferguson Marine Engineering Limited (in administration)

[Redacted]
Director | FA - Restructuring Services | Deloitte LLP
Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2DB

D: [Redacted] | M: [Redacted]
[Redacted] [@deloitte.co.uk](mailto:[Redacted]@deloitte.co.uk) | www.deloitte.co.uk

[Blog](#)

[LinkedIn](#)



One Million Futures

From the classroom to the boardroom, we are helping one million people overcome barriers to education and employment, giving them the skills and opportunities to succeed.

[Watch this film](#) to find out more.

Michael Magnay and Robert Harding of Deloitte LLP were appointed Joint Administrators of Ferguson Marine Engineering Limited ("the Company") on 16 August 2019. The affairs, business and property of the Company are managed by the Joint Administrators. The Joint Administrators act as agents of the Company without personal liability. The Joint Administrators are authorised by the Institute of Chartered Accountants in England and Wales. All licensed insolvency practitioners of Deloitte LLP are licensed in the UK.

From: [Redacted] [@transport.gov.scot](mailto:[Redacted]@transport.gov.scot) <[Redacted]@transport.gov.scot>
Date: Friday, 20 Sep 2019, 16:37
To: [Redacted] [@deloitte.co.uk](mailto:[Redacted]@deloitte.co.uk), [Redacted] [@deloitte.co.uk](mailto:[Redacted]@deloitte.co.uk)
Cc: [Redacted] [@transport.gov.scot](mailto:[Redacted]@transport.gov.scot) <[Redacted]@transport.gov.scot>, [Redacted] [@pwc.com](mailto:[Redacted]@pwc.com) <[Redacted]@pwc.com>, DGEEconomy@gov.scot <DGEEconomy@gov.scot>, ceo@transport.gov.scot <ceo@transport.gov.scot>, cfo@gov.scot <cfo@gov.scot>, [Redacted] [@gov.scot](mailto:[Redacted]@gov.scot) <[Redacted]@gov.scot>, [Redacted] [@socialsecurity.gov.scot](mailto:[Redacted]@socialsecurity.gov.scot) <[Redacted]@socialsecurity.gov.scot>, [Redacted] [@transport.gov.scot](mailto:[Redacted]@transport.gov.scot) <[Redacted]@transport.gov.scot>, [Redacted] [@transport.gov.scot](mailto:[Redacted]@transport.gov.scot) <[Redacted]@transport.gov.scot>, [Redacted] [@pwc.com](mailto:[Redacted]@pwc.com) <[Redacted]@pwc.com>, [Redacted] [@pwc.com](mailto:[Redacted]@pwc.com) <[Redacted]@pwc.com>, [Redacted] [@gov.scot](mailto:[Redacted]@gov.scot) <[Redacted]@gov.scot>

<[Redacted] @gov.scot>,[Redact @macroberts.com <[Redact @macroberts.com]>,
[Redacted] @macroberts.com]<[Redacted] @macroberts.com>,[Redacted]@pwc.com
<[Redacted]@pwc.com>

Subject: [EXT] FMEL administration - Bidder 3

Dear [Redact
-]

Following the update meeting on Tuesday we have considered the merits and implications of the [Redac offer. As you know, it is important to Scottish Government that all reasonable offer^s are considered fairly. In the meantime we had also requested that a meeting be arranged with [Redac to get clarity on certain elements of their bid. Since that request it has emerged th^{at} there would be serious legal difficulties with elements of the [Redac offer relating to completion of the 801 and 802 Contracts, more specifically in a p^ublⁱc procurement context.

With this in mind, we feel that the proposed meeting is now likely to be redundant. As secured creditors we request that you as administrators of FMEL consider the offers that you have received and recommend to us the best offer available.

Kind regards

[Redact
-]

[Redacted]
Special Project Manager
Ferries Unit
Aviation, Maritime, Freight and Canals Directorate
T: [Redacted]
BlackBerry: [Redacted]
[Redacted] @transport.gov.scot

Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF



Transport Scotland, the national transport agency
Còmhhdhail Alba, buidheann nàiseanta na còmhhdhail

This e-mail (and any files or other attachments transmitted with it) is intended solely for the attention of the addressee(s). Unauthorised use, disclosure, storage, copying or distribution of any part of this e-mail is not permitted. If you are not the intended recipient please destroy the email, remove any copies from your system and inform the sender immediately by return.

Communications with the Scottish Government may be monitored or recorded in order to secure the effective operation of the system and for other lawful purposes. The views or opinions contained within this e-mail may not necessarily reflect those of the Scottish Government.

IMPORTANT NOTICE

This communication is from Deloitte LLP, a limited liability partnership registered in England and Wales with registered number OC303675. Its registered office is 1 New Street Square, London EC4A 3HQ, United Kingdom. Deloitte LLP is the United Kingdom affiliate of Deloitte NSE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NSE LLP do not provide services to clients. Please see www.deloitte.co.uk/about to learn more about our global network of member firms. For details of our professional regulation please see [Regulators](#).

This communication contains information which is confidential and may also be privileged. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please notify it.security.uk@deloitte.co.uk and destroy this message immediately. Email communications cannot be guaranteed to be secure or free from error or viruses. All emails sent to or from a @deloitte.co.uk email account are securely archived and stored by an external supplier within the European Union.

You can understand more about how we collect and use (process) your personal information in our [Privacy Notice](#).

Deloitte LLP does not accept any liability for use of or reliance on the contents of this email by any person save by the intended recipient(s) to the extent agreed in a Deloitte LLP engagement contract.

Opinions, conclusions and other information in this email which have not been delivered by way of the business of Deloitte LLP are neither given nor endorsed by it.

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>
