



BILLET D'ÉTAT

WEDNESDAY, 28th FEBRUARY, 2007

**V
2007**

PUBLIC ACCOUNTS COMMITTEE
INVESTIGATION INTO THE AWARD OF THE CLINICAL BLOCK CONTRACT

B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **28th FEBRUARY, 2007**, at **9.30am**, immediately prior to the meeting already convened for that day and time, to consider the item contained in this Billet d'État.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
25th January 2007

PUBLIC ACCOUNTS COMMITTEE

INVESTIGATION INTO THE AWARD OF THE CLINICAL BLOCK CONTRACT.

The Presiding Officer
The States of Guernsey
Royal Court House
St Peter Port

25th January 2007

Dear Sir

1 Executive Summary

- 1.1 In pursuance of the States' Resolution 5 of Article XI of Billet d'Etat XVII 2006, which stated:

“To instruct the Public Accounts Committee to cause to be carried out a full independent review of all the circumstances leading to the withdrawal of the lower tender (referred to in Section 8 of Article 11, on page 1896) and to report back to the States with the findings of that investigation as soon as possible.”

the Public Accounts Committee (the Committee) commissioned the Auditor General for Wales to undertake the appropriate review and is grateful to both him and his team from the Wales Audit Office (WAO) for producing a comprehensive report within a very short timescale.

- 1.2 The Committee has now fulfilled its obligations that were set out in the above States' Resolution by attaching the WAO report to this Report. The Committee is confident that the public interest will be paramount when Members of the States consider the conclusions of the WAO report.

- 1.3 The WAO report's main conclusion is:

“The withdrawal of the RG Falla Limited tender for the Princess Elizabeth Hospital (PEH) Clinical Block was the culmination of a series of process and procedural weaknesses, and a series of unplanned and unconnected events and actions which led to an outcome which was neither anticipated nor desired.”

In this regard, the WAO has made a number of procedural recommendations and, the Committee has set these out in this Report, in accordance with its mandate.

- 1.4 The Committee is of the opinion that, as a result of R G Falla Limited withdrawing its tender, the States have not achieved best value for money in the award of the contract for the Clinical Block and some £2.4m of unnecessary expenditure has been incurred.

2 Background

- 2.1 In October 2006, the Health and Social Services Department (HSSD) presented a Report to the States recommending the award of the contract to construct a clinical block (Phase 5 at the PEH) to the only tenderer - Charles Le Quesne (Gsey) Ltd. - at a cost of £26,974,565. The Committee had been previously informed by the Minister of HSSD of problems in the tendering process and the withdrawal of the only other tenderer. In the light of this, the Committee carried out a brief, expeditious review.
- 2.2 The Committee documented its findings in a short report that was issued to States' Members at the relevant October States Meeting. (This is attached as Appendix 1 of this Report). The Committee also planned to lay a Sursis to delay the award of the contract in order that it could carry out further investigations into the matter (and possibly save £2.4m). However, the legal position of the States of Guernsey in respect of the withdrawal of the original preferred tenderer was clarified by HM Procureur during the Debate.
- 2.3 This advice clearly indicated that, once the original preferred contractor had withdrawn its tender and the withdrawal had been accepted by the HSSD (as was the case in this instance), for all intents and purposes, this tender could not be re-instated. As further costs could be incurred if there was a delay in the award of the contract, the Committee resolved not to lay its Sursis.
- 2.4 However, the States unanimously approved an amendment proposed by the Minister of HSSD and seconded by the HSSD's Deputy Minister for a full independent review of all circumstances leading to the award of the contract for the HSSD Princess Elizabeth Hospital - Phase 5 (Clinical Block).
- 2.5 In accordance with this Amendment, the Committee appointed the Auditor General for Wales and his team from the Wales Audit Office to carry out the review. The terms of reference were taken from the Amendment.
- 2.6 On behalf of the States, the Committee is grateful to the Auditor General for Wales and his team from the Wales Audit Office for their handling of this important and sensitive matter and the speed with which they have concluded their work.

- 2.7 The overall cost of the independent review is estimated to be in the order of £50,000.

3 Review Findings

- 3.1 The Auditor General for Wales and the WAO were requested to investigate **all** circumstances that led to the withdrawal of the lower tender for the Clinical Block. To reach its conclusions, the WAO interviewed all relevant individuals who were directly or indirectly involved in the withdrawal, examined all necessary documentation, and also gained an understanding of the procedures that are currently in place with regard to capital projects.
- 3.2 The WAO report is appended to this Report and the Committee is resolved to report on the findings which relate to processes, best practice, and value for money. In this regard, the Committee makes the following comments.
- 3.3 The WAO has stated that the use of inadequate and outdated procedures in capital project management is a major weakness which needs to be addressed. Many of these deficiencies have already been highlighted in a number of Reports presented to the States and/or its former committees.
- 3.4 In February 2004, the States' Internal Audit Unit's report, entitled 'The Management of Capital Funding', which focused on the Board of Health capital projects, gave a "deficient" grading. Although by the time of the follow up review in October 2005, a number of internal issues had been addressed, several corporate matters still remained outstanding.
- 3.5 In January 2006 (Resolution 2 Article I Billet d'Etat III), the States resolved inter alia:
- "To recommend the Treasury and Resources Department to review the existing procedures and processes, including timing, for setting the budgets for specific individual capital projects and to request the Public Accounts Committee to monitor such action taken by Departments and to report back when appropriate."
- 3.6 In February 2006 the Treasury and Resources Department took over responsibility for the management of States land and property including the management of major construction projects. However, the Clinical Block project was being progressed by the HSSD during the transfer period. The WAO review has indicated that procedures and processes are still being considered and developed.
- 3.7 Since 2001, the States have continually been recommended to develop a method of prioritising capital projects as outlined in the appended WAO report paragraphs 1.7 to 1.21. No proposals were forthcoming and not until capital funds had been virtually depleted, was a list of projects brought before the

States. This was immediately prior to the October 2006 debate on the Clinical Block. At this capital prioritisation debate, the Public Accounts Committee's Chairman highlighted the delays that had occurred in capital prioritisation and criticised the methodology in drawing up the list. The States agreed in October 2006 (Resolution 3 Article X Billet d'Etat XVII):

“To note the Treasury and Resources Department's intention to review the method of funding and accounting for Departmental routine capital expenditure and to report back as soon as practicable.”

- 3.8 The WAO found no evidence to suggest that the tender process itself did not comply with best practice.
- 3.9 Finally, the Committee is concerned over major shortcomings in the administrative procedures, as detailed in paragraphs 2.105 to 2.111 of the WAO report, and is firmly of the view that a full review of current procedures should be undertaken and new guidelines introduced.

4. Detailed Recommendations

- 4.1 The WAO report has identified a number of major weaknesses and shortcomings in systems and processes. By addressing these, the States can ensure value for money is achieved and the reputation of the States as a client for capital projects is recovered.
- 4.2 The WAO has made fourteen recommendations and the Committee is of the opinion that these should be considered by the Policy Council. It is then for the Council to determine, as soon as practicable, which Department or Committee of the States should be charged with implementing the recommendations as listed below:
1. There is a need to determine whether the total funding requirements for capital schemes should be approved prior to undertaking detailed design work and inviting tenders.
 2. The processes and procedures for letting, managing and scrutinising capital contracts needs to be reviewed and updated to take into account the Machinery of Government changes and public sector good practice.
 3. Guidance for contract letting arrangements to clearly define roles and responsibilities.
 4. There is a need to decide whether limits should be introduced on the amount of work that the States would be prepared to award to a single contractor, and what those limits would be.

5. There is a need to review current policy of not mandating the requirement for performance bonds, insurance cover and to review parent company guarantees to establish if these practices should be made mandatory.
6. There is a need to evaluate whether the construction industry Economic Model is fit for purpose. If it is considered to be fit for purpose, the roles and responsibilities for its management need to be clearly defined and executed.
7. There is a need to ensure that the timing of major capital schemes is effectively managed to avoid, wherever possible, 'peaks and troughs' within the construction industry as a result of the confluence of major schemes.
8. There is a need to develop a robust methodology for prioritising capital expenditure which sets out the criteria to be used and the frequency of prioritisation exercises.
9. There is a need to clarify the procedure and formalise the methodology used to undertake financial evaluations of contractors. This needs to cover responsibilities, timing, documentation and the criteria to be applied.
10. To minimise the risk of misinterpretation, the issuing of guidance to officers on the compilation and retention of notes used to support briefings given to States Members needs to be considered.
11. Guidance should be developed for politicians on meetings or discussions with external parties. This guidance should cover appropriateness of meetings, procedures, recording, timing and whether officer support is needed.
12. Consideration should be given to whether notes of key meetings used to prepare minutes are kept for a defined period in case of dispute. An option to make audio recordings of proceedings would achieve a similar objective.
13. Consideration needs to be given as to whether the States should debate the general issues of member interests, in particular the compatibility of political and business and other outside interests.
14. A procedure should be put in place for the handling of minutes or agenda papers setting out whether such documentation should be distributed to individuals who have declared their interest in an item under discussion.

- 4.3 The Committee will closely monitor the implementation of these recommendations and will report back to the States on the progress made.

5 Conclusion

5.1 The WAO report concluded that the withdrawal of the original preferred tender was, amongst other issues, the culmination of a series of process and procedural weaknesses, some of which are connected with capital projects. Although the States have taken some measures to instigate improvement, the benefits have yet to materialise.

5.2 The Committee agrees with that WAO conclusion and is of the opinion that best value for money has not been achieved in the award of the contract for the Clinical Block as some £2.4m of unnecessary expenditure has been incurred.

6 Recommendations

6.1 The Committee recommends that the States:

- a) note the contents of this Report;
- b) direct the Policy Council to determine which Departments/Committees be responsible for implementing the recommendations listed in paragraph 4.2 of this Report and for the Council then to request those relevant Departments/Committees to implement the recommendations, as soon as practicable.
- c) note that the Public Accounts Committee will monitor the progress made by the Departments/Committees in the implementation of the recommendations listed in paragraph 4.2 of this Report and will report progress back to the States before the end of 2007.

Yours faithfully

Leon Gallienne
Chairman

(NB The full Wales Audit Office Report, which is appended to this Report, is published separately.)

INTERIM REPORT
PUBLIC ACCOUNTS COMMITTEE
HEALTH AND SOCIAL SERVICES DEPARTMENT
THE AWARD OF THE TENDER FOR
HEALTH AND SOCIAL SERVICES DEPARTMENT - PRINCESS ELIZABETH
HOSPITAL - PHASE 5 (CLINICAL BLOCK)

1 Executive Summary

- 1.1 This brief Report is to draw States' Members' attention to the events leading to the consideration of one preferred tenderer as outlined in Article 11 of Billet D'Etat XVII, 25 October 2006.
- 1.2 The Public Accounts Committee wishes the States to be aware of the facts in an open and transparent way so that value for money is assured should the contract to construct the Clinical Block at the Princess Elizabeth Hospital be awarded.
- 1.3 These facts are:
- a) Of the tenders received, the tender in the States Report from the Health and Social Services Department is some £2 million higher than the withdrawn tender.
 - b) There is no reported evidence to support the claim that a significant proportion of States' construction projects should not be in one contractor's hands at any one time.
 - c) Currently, there is no legal option within the tender process to pursue re-activation of the withdrawn tender. If the present sole tender is not accepted, then a re-tendering exercise will be required.
 - d) The tender bid referred to in the Health and Social Services Department Report remains capable of being accepted until 26 January 2007.
 - e) The Public Accounts Committee is willing to commission a full and expeditious review of the events leading to this tender recommendation.

2 Review Scope

- 2.1 To ensure that value for money is being achieved in the construction of the proposed Clinical Block, the Committee has carried out a very brief review into the circumstances leading to the submission of one preferred tenderer to the States at its October 2006 Meeting.
- 2.2 The Minister of the Health and Social Services Department explained the unusual events leading to the States Report during a routine visit of the Chairman and Vice Chairman to the Department, where the Clinical Block had been placed on the agenda by the Public Accounts Committee.
- 2.3 Following a meeting of the Public Accounts Committee Contract Review Working Party, a letter was written to the Policy Council requesting extracts from its minutes and accompanying documentation. This was duly supplied, and the Committee thanks the Chief Minister and the Policy Council for their support and openness in this matter.
- 2.4 The content of this Report is mainly based on the information gathered from extracts of the Policy Council minutes and accompanying States Reports, copies of correspondence requested from Health and Social Services Department, and past and present Billets d'Etat.
- 2.5 In no way does this work constitute a full review and, at this stage, the Committee can only assume that the Health and Social Services Department has followed States' tendering procedures in reaching its decision.

3. Review Findings

- 3.1 This initial review centres on the comment made in Section 8 of the States Report from Health and Social Services Department found on page 1896 of Billet d'Etat XVII where it states:

“Two tenders were received initially and it is recommended that the tender from Charles Le Quesne (Gsey) Ltd. is accepted in the sum of £26,974,565.31. A lower tender was received from another company but was subsequently withdrawn.”¹

- 3.2 As States' Members are not privy to all the facts, the Committee considers that this information is insufficient for them to form an opinion on whether the sum is or is not acceptable. Issues of commercial confidentiality have to be complied with before a full disclosure of the facts can be made.
- 3.3 Although the tender documents have not been reviewed, the Committee understands that, at the outset, there was no indication given to the interested

¹ Billet D'Etat XVII, 25 October 2006, page 1896

tenderers that the volume of States work awarded to a single contractor at any one time would be taken into account in the final selection process. Therefore, it is assumed that tenders were submitted in accordance with normal practice.

- 3.4 Both tenders were assessed by the Project Team and marked against pre-determined criteria. At this particular stage, there is no evidence to suggest that one or both tenders could not be accepted. The Health and Social Services Department's States Report dated 22 August 2006 indicated that the tender for the clinical block construction was very competitive and, at £26,974,565, was below pre-tender estimate², a claim also made about the other tender quoted at £24,981,085.
- 3.5 In July 2006, the Policy Council was presented with a States Report from Health and Social Services Department which indicated that the lower tender was preferred at a value of £24,981,085. The Health and Social Services Department has at all times opted for the lowest tender. The contractor had been informed of its preferred status for the contract by letter on 13 July 2006.
- 3.6 As a result of concerns from some members of the Policy Council, this tender was withdrawn in writing dated 15 August 2006, although an offer was made by the tenderer that it would hold the tender price (increased only for RPI) until a more suitable time. A year's delay would result in the same completion date, as the contract period quoted within the tender documentation was one year longer.
- 3.7 Amongst other issues, the concern of some members of the Policy Council was the commercial risk, arising from a single contractor being appointed for the majority of States Capital spend on constructions within the next two to three years.
- 3.8 Therefore, there was only one tender on offer as the first preferred contractor had chosen to withdraw its tender.
- 3.9 Although the documentation received showed that the States had considered this potential commercial risk in the past, there was no evidence found to suggest that this was the case. The lack of a risk management approach to the States of Guernsey business meant that this was not identified at an earlier stage³ than at the time of the tender being considered.
- 3.10 Whilst, throughout 2002 and 2003, a number of reports had been written regarding the Guernsey Construction Industry and States' Capital Spending, the Committee has been unable to find mention of the possible impact of the majority of States' construction projects resting with one contractor. The reports did however specify the effects of bringing in non-local construction companies and that, of the two main contractors at that time, one concentrated on private work and the other on public sector.

² Billet D'Etat XVII, 25 October 2006, page 1876

³ Billet D'Etat VI, 24 April 2002, pages 489 to 528

- 3.11 These reports led to the creation of an Economic Model which, amongst a number of aims, assessed the economic impact of changes in the management of the States of Guernsey's Capital Spending Programme. Again, this document, issued as a green paper, did not specify the effects of the States awarding its work to one main contractor. The Committee believes that this green paper was never debated by the States of Guernsey as a States Report.
- 3.12 Following the withdrawal of the first preferred tenderer, the Health and Social Services Department returned, as it was bound to do, to the remaining tender in the sum of £26,974,565. The Committee has ascertained that the Department has informed this contractor that it is now the preferred tenderer.
- 3.13 The Managing Director of the other construction company concerned has indicated that the offer in the withdrawal letter (dated 15 August 2006) still stands but, in addition, that it could commence work immediately, should the States so decide - although within contract law this is not now possible.

4. Conclusion

- 4.1 This brief review has raised a number of issues and the Public Accounts Committee is of the opinion that it is in the best interests of the States that an independent review be carried out to:
- ensure that the States are receiving value for money from this contract;
 - check that the award of the contract has been in accordance with best practice; and to
 - determine the circumstances surrounding the withdrawal of the first preferred tenderer.
- 4.2 In accordance with our normal procedures, the Public Accounts Committee would set the terms of reference and scope of the independent review, and the Committee would endeavour to report back to the States for their November meeting 2006.

Appendix II**CLINICAL BLOCK REVIEW TIMELINE OF KEY DATES****2006**

| | |
|--------------|--|
| 6 September | PAC Chairman and Vice Chairman informed of Clinical Block contract issues during a pre-arranged informal visit to Minister and Chief Officer of HSSD |
| 18 September | Contract Review Working Party of PAC met and considered matter – decided to gather documentary evidence to substantiate alleged events |
| 22 September | PAC Letter sent to Policy Council requesting minutes |
| 28 September | Policy Council provided extracts of minutes and relevant States reports and letters |
| 3 October | At a regular meeting of the PAC, Policy Council extracts of minutes and other documents distributed to members at end of meeting to be discussed at an additional meeting |
| 5 October | PAC meeting considered way forward on procedural and value for money issues, and to seek legal clarification. |
| 11 October | PAC sought advice from Law Officers |
| 11 October | PAC received copy of RG Falla withdrawal letter from HSSD |
| 16 October | Chairman and Vice Chairman met with Chief Minister at a pre-planned informal meeting |
| 16 October | At the request of PAC, WAO indicated its willingness to carry out a review should it be needed. |
| 17 October | PAC met and agreed to inform the full facts to the States through one of the following means: <ul style="list-style-type: none"> – a Statement to the States prior to States debate, – issue an emergency Billet with facts or – Sursis |
| 18 October | PAC interim report drafted (see Appendix I) |
| 20 October | Draft interim report issued to Chief Minister and Minister HSSD |

| | |
|-----------------------------|--|
| 23 October | PAC Chairman and Vice Chairman met with HSSD Board PAC distributed PAC interim report to all States Members |
| 25 October | States meeting when amendment was passed to carry out an independent review into all circumstances leading to the award of the Clinical Block contract |
| 25 October | WAO notified, by telephone, of the States decision for a full independent review. |
| 27 October | Auditor General for Wales informed in writing of independent review. Policy Council minutes and papers included. |
| 9 November | Briefing meeting in Wales between WAO team and PAC Executive Officer. |
| 13-14 November | WAO carried out fact finding interviews |
| 23 November | WAO carried out further interviews |
| 27 November | WAO carried out further interviews – completing on site interviews |
| 29 November - 8 December | WAO drafted report structure and content |
| 12 December | WAO sent report extracts to interviewees to confirm interpretation |
| 18 December | WAO finalised first draft of the report |
| 19 December | Auditor General for Wales and WAO presented first draft to members of PAC |
| 19 December | WAO carried out further interviews |
| 22 December | WAO sent out revised extracts to interviewees |
| 2007 | |
| 5 January | Deadline for interviewees' replies to WAO |
| 7 January | First draft of PAC report written |
| 8 January | Comments sent out by WAO to interviewees' replies |

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|------------|---|
| 15 January | PAC read final draft of WAO report and draft PAC report |
| 16 January | WAO final report sent to printers |
| 17 January | PAC considered its Report |
| 17 January | WAO replied to interviewee comments |
| 22 January | PAC approved its final Report |
| 23 January | Billet sent to printers |
| 25 January | Publication of Billet |

Throughout the review the Law Officers and Chief Executive of the States of Guernsey have been kept informed, and additional research carried out by WAO to verify facts.

(NB The Policy Council and Treasury and Resources Department have waived their right to append statements to this Report in accordance with Rule 2 (2) of the “Rules of Procedure of the States of Deliberation”.)

The States are asked to decide:-

Whether, after consideration of the Report dated 25th January 2007, of the Public Accounts Committee, they are of the opinion:-

1. To note the contents of that Report.
2. To direct the Policy Council to determine which Departments/Committees be responsible for implementing the recommendations listed in paragraph 4.2 of that Report and for the Council then to request those relevant Departments/Committees to implement the recommendations.
3. To note that the Public Accounts Committee will monitor the progress made by the Departments/Committees in the implementation of the recommendations listed in paragraph 4.2 of that Report and to report progress back to the States before the end of 2007.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 1ST DAY OF MARCH 2007

(Meeting adjourned from 28th February 2007)

**The States resolved as follows concerning Billet d'Etat No V
dated 25th January 2007**

PUBLIC ACCOUNTS COMMITTEE

INVESTIGATION INTO THE AWARD OF THE CLINICAL BLOCK CONTRACT

After consideration of the Report dated 25th January, 2007, of the Public Accounts Committee:-

1. To note the contents of that Report.
2. To direct the Policy Council to determine which Departments/Committees be responsible for implementing the recommendations listed in paragraph 4.2 of that Report and for the Council then to request those relevant Departments/Committees to implement the recommendations as soon as practicable.
3. To note that the Public Accounts Committee will monitor the progress made by Departments/Committees in the implementation of the recommendations listed in paragraph 4.2 of that Report and to report progress back to the States before the end of 2007.

**K. H. TOUGH
HER MAJESTY'S GREFFIER**