



From Lord Berkeley 07710 431542, tony@tonyberkeley.co.uk

From: Tony Berkeley

Sent: Friday, October 13, 2023 10:02 AM

To: Francis Robert mob <robert.francis@scilly.gov.uk>

Cc: 'Steve Sims' <stevesims99@gmail.com>; 'nigel.blackler@cois.gov.uk' <nigel.blackler@cois.gov.uk>

Subject: FW: IOS Sea link project

Dear Robert,

I read with interest your Council's information (see below) put out this week about the Scilly Transport procurement process. A number of questions arise from reading this and the Soft Market Test notice that you issued in September.

I note first of all that 'Participation in this soft market assessment will not prejudice suppliers participating in any future procurement' so this allows any existing or potential supplier (such as the IOSSG) not to respond to the SMT but to apply to be considered for a formal tendering procedure later.

The SMT document does not set out information about any future tendering procedure but I note that this has to comply with government public sector tendering rules. However, there are also indications that, as any results and/recommendations of the tendering procedure will feed into a business case to be presented to the DfT, and since we are told that the recently submitted outline business case is confidential, it would seem that your Council is moving towards a scenario that the names of those companies who tender, any names of short lists, any recommendations from your Council to the DfT and any details of how your Council has evaluated the responses to the SMT and tender will all be kept confidential (Lords written answers HL9964, 10217, 10218 & 10344).

My reasons for being concerned about this is that you will recall that, in late July, I wrote to you, copy Bns Vere (see below), expressing surprise that the agenda for your meeting with DfT and the IOSSG set out the process for completing negotiations which included the IOSSG being a majority shareholder in the proposed Special Purpose Vehicle.(agenda attached).

From this, I concluded that your Council and DfT had already agreed to negotiate with IOSSG for that company to receive the Levelling up fund money. It was only a month later that the COIS announce that they were finally issuing a market test, and at the same time the IOSSG announced that it would not participate in any such process or seek LU funding and that they would go ahead with financing their own vessels through private sector funding.

Now Harland and Wolff have announced their interest in applying through the SMT process for the funding, and no doubt other companies will do so by the closing date of 31 October.

So we now have a situation where your Council very nearly recommended the award of the LU funding to the IOSSG before even starting a tendering process. The current process seems to be intended to be entirely confidential so that, whether companies submit bids under the SMT and/or a future tendering procedure, there will be no transparency of which companies are involved and the reasons for your Council's choice. It could be that this is just a smoke screen for awarding the LU funding to the IOSSG (who might change their mind about needing it if the bank loan does not work) or alternatively to Harland and Wolff.

Either way, without some transparency of process, I can see endless legal actions and judicial reviews from either aggrieved party.

It would seem to me that, in order to comply with Government procurement rules, your Council must provide answers to the following questions:

1. For the SMT, will you publish as soon as possible after 31 October 2023 the evaluation criteria and weightings that you to use to consider response or recommend dations to the questions in the SMT.
2. Will you publish the names and companies who have responded in full or part to the SMT by the closing date?
3. Will you confirm that you will consider responses from companies to only parts of the SMT?

I note in the SMT that you plan to proceed with a formal tendering process after you have evaluated the results of the SMT. In this respect:

1. Will you publish a public notice informing interested parties of the tender?
2. Will the tender documents be put in the public domain?
3. Wil you clarify in public that there is/was no obligation for companies who plan to bid to have responded to the SMT.
4. Will you publish the evaluation criteria that you will use to assess bids received?
5. Will you list the companies who have responded to the tender invitation?

The above Written Answers make it very clear that your Council is required to comply with public procurement rules. I suggest that the present situation, when you very nearly awarded the LU fund to the IOSSG without any competitive tendering, and may still do to so to either IOSSG, Harland and Wolff or any other bidder without any transparency or justification, will not comply with such rules and will, as I suggest above, result in several years legal action. If you intend to continue to seek the LU funding for the benefit of transport for the islands, I suggest that the above issues need addressing urgently.

I look forward to your comments.

I am copying this to Bns Vere.

Yours, Tony

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