EXECUTIVE COUNCIL

CONFIDENTIAL

Title:	Response to the Public Accounts Committee - Review of the VHF/2-metre Repeater Replacement Project [Letter dated 28/09/2023]
Paper Number:	27/24
Date:	27 February 2024
Responsible Director:	Becky Clark, Director of Development & Commercial Services
Report Author:	Becky Clark, Director of Development & Commercial Services
Portfolio Holder:	MLA Mark Pollard
Reason for paper:	This paper is submitted to Executive Council: To meet a statutory requirement
Publication:	Yes - this report should be made public after submission to the Legislative Assembly
Previous papers:	ExCo report 79/19 'Replacement of VHF Repeater Camp Radio System
List of Documents:	PAC letter with recommendations, dated 28th September 2023 PAC letter on separation of reports on VHF and Emergency Services Digital Mobile Radio, dated 28th September 2023 PAC project timeline PAC review of the VHF/2-metre repeater replacement project

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1. Recommendations

Honourable Members are recommended:

(a) To approve submission of the responses to the Assembly as set out in Section 5 of this report.

(b) To approve that this report be made public after submission to the Legislative Assembly.

2. Additional Budgetary Implications

2.1 There are no budgetary implications.

3. Executive Summary

3.1 The Chair of the Public Accounts Committee submitted a letter, with an associated report, regarding the VHF/2-metre Repeater Replacement Project to the Clerk of the Legislative Assembly and Executive Council. The PAC report provides an analysis of whether the funds spent on this project represented value for money in terms of economy, efficiency and effectiveness The Assembly passed a motion for response by February 2024.

3.2 In light of the findings of the investigation above, the PAC made three recommendations. The PAC requested a response from FIG and a response to the Legislative Assembly and Executive Council, which is provided in Section 5 of this report.

4. Background

4.1 FIG provides a local VHF 2m repeater network to provide public safety communications across the Falkland Islands, including by FIGAS, emergency services, and the Camp community. Historically the maintenance of this system fell to the Royal Falkland Islands Police (RFIP).

4.2 The history of issues with this system is a long one. Most pertinent to this report is the complaints recorded from 2017-2019 that show public feedback about the system not operating correctly. From these it became clear that the system had not been maintained to ensure operating efficiency.

4.3 The decision to seek a full replacement system was made in 2019 and an invitation to tender issued in June with a two-week response period. There were two bidders, Sure South Atlantic and KTV. Following the process, Executive Council approved (report 79/19) to award the contract to Sure South Atlantic, both for the new system and for annual maintenance. The reason for officers recommending Sure over KTV centred on the quality of tender submissions, mainly levels of detail.

4.4 Concerns about the process were raised by KTV shortly after award of contract. These included the historical lack of investment from FIG requiring this full replacement, the short notice expected on tender responses, and questions around how much prior notice of the project Sure South Atlantic had. The PAC concluded that Sure South Atlantic had been aware of the project from earlier in 2019, potentially giving them an advantage in preparing a tender response.

4.5 The PAC did not find any evidence to suggest that the contract with SSA does not provide value for money. However, the PAC did find that the tender process through which the contract was awarded was not one that ensured competitiveness.

4.6 The PAC found FIG records of documentation and communications regarding this project to be deficient.

5. FIG Response to the report of the Public Accounts Committee

5.1 Recommendation One: Clarity of Tender detail. The PAC recommends that FIG consider amending Tender Instructions.

5.1.1 The PAC identified issues with the scope of the tender being fair and clear to all. FIG accepts this finding; records from the time show that there was no specification provided as part of the tender, simply a request to replace old with new.

This was not in line with current procurement practice in FIG.

For a project over £50k in value tenders are now run by Procurement within DCS and where a dispensation is not awarded a competitive procurement tender pack will include:

- An advert
- Clear specifications
- Pricing schedule
- Quality response questions
- Tender guidance document
- Terms and conditions

5.1.2 The Proactis Pro-Contract e-procurement system imposes proper restrictions on issues such as the opening of tenders, referenced in paragraph 3.8 of the PAC report, ensuing compliance with the Financial Instructions.

5.2 Recommendation Two: Guidance to FIG Officers on Tender process

a) The PAC recommends that guidance be published and distributed to government officers on 'open and non-discriminatory process', particularly in the time afforded to one bidder over another.

b) The PAC further recommends that clarity be provided to FIG Officers over the process for approaching a contractor outside of the Tender process.

5.2.1 FIG accepts this recommendation, and has addressed most elements of it since the tender subject to the report.

5.2.2 There is one outstanding action: FIG will look to issue a specific guidance note to all officers on the matter of approaching suppliers outside of the tender process, and ensure this is incorporated with the updated Financial Instructions to reflect the new procurement working practices with the adoption of the e-procurement system.

5.2.3 On open and non-discriminatory process, the online advertising and document set outlined in 5.1.1 above is issued to achieve this aim.

5.2.4 Procurements over £50k in size will be determined by a tender board made up of the Head of Procurement, a representative from Legal Services and Finance, and the FIG lead officer. This board ensures that decisions are not based on a single opinion or assessment.

5.2.5 The tender board will consider tenders on a clear set of criteria, based on the Most Economically Advantageous Tender (MEAT), a combination of price and quality assessments.

5.2.6 Tenders must be published and open for a minimum of 14 days. Consideration is given to extending this in cases where one party may have an advantage through prior knowledge of the upcoming tender, to give equal opportunity to other parties.

5.3 **Recommendation Three: Electronic Information retention. The PAC recommends that FIG adopt a basic standard for the archival of electronic communication.**

5.3.1 Over the past five years FIG has improved and developed its records management procedures, policies, and conducted staff training to raise awareness of the importance of managing corporate records.

5.3.2 In regards to retention of records, each government department now has a records retention schedule. This document outlines what records should be captured, why, and for how long they are stored for before either being securely destroyed or transferred to the Jane Cameron National Archives for permanent preservation. This covers all formats and media, including electronic information.

5.3.3 Going forward FIG will be developing practices further and progressing plans for a dedicated electronic document records management system which will centralise and support the effective capture, retention and long-term digital preservation of all electronic records including those deemed archival value by the JCNA. All of the above is undertaken in line with professional standards and best practice.

5.3.4 DCS will always use ProActis, our online procurement system, for tenders of this size, creating a record of processes, documents, queries, clarifications and outcomes.

6. Consultation

6.1 Discussion with Director of DESIS on links with emergency services radio and use of VHF in emergency situations.

6.2 Discussion with Head of Procurement on current FIG processes.

6.3 Contribution from the FIG Records and National Archives Manager on electronic communications archiving.

7. Resource Implications

7.1 Financial Implications
None.

7.2 Human Resource Implications
None.

7.3 Other Resource Implications
None.

8. Legal and Legislative Implications

8.1 The Public Accounts Committee Ordinance 2009 Section 14(1) states: "If the Committee in reporting to the Legislative Assembly recommends that the Government should or should not take a course of action, the Governor is to submit within six months a written response to the Assembly". This report fulfils this requirement.

9. Equalities and Human Rights Implications

9.1 None.

10. Environmental & Sustainability Implications

10.1None.

11. Camp Implications

11.1 This report is relevant to procurement actions taking place across the Falkland Islands, including Camp. The VHF system specifically serves Camp in multiple ways and is considered essential infrastructure.

12. Significant Risks

12.1No significant risks. If actions had not been taken to improve and standardise procurements there would be a risk of not achieving best value for public money.

13. Publicity

13.1This report will be made public after presentation to Legislative Assembly.

14. Reasons for Recommending Preferred Option

14.1To fulfil the statutory requirement for a response and to ensure openness and transparency.

Public Accounts Committee
PO Box 420 Dean Street Stanley Falkland Islands FIQQ1ZZ
Tel +500 22905 Email: pacsecretary@horizon.co.fk

Ref: PAC 23/09/02

28th September 2023

Cherie Clifford
Clerk of the Legislative Assembly and Executive Council
Legislative Assembly and Executive Council Members
Gilbert House
Stanley
Falkland Islands

Dear Members

Review of the VHF/2-metre Repeater Replacement Project

The Public Accounts Committee (PAC), as part of their work plan, committed to reviewing the VHF/2m repeater replacement project.

The PAC has now utilised the resources available to it to facilitate background research and to review the project. Findings are provided in the attached document.

The purpose of the review was to consider whether the funds spent on the work carried out on the replacement of the VHF 2m repeater replacement represented value for money in terms of economy, efficiency and effectiveness.

Key Conclusion:

The review did not find evidence that the contract with Sure South Atlantic Limited did not provide value for taxpayer's money. However, it did find that the tender process through which the contract was awarded was not one that ensured open competition. The PAC also found there to be an extensive and concerning lack of paper trail relating to the contract and highlights a consequent risk to good governance.

Planning of replacement VHF 2m repeater, reasoning behind key decisions; tendering process; oversight of project

1. In June 2019, the Department of Development and Commercial Services launched a tender for the Replacement of the VHF 2m repeater system. A contract for £132,849 in

capital costs and REDACTED in recurring maintenance contract costs was awarded to Sure South Atlantic Limited (SSA). Only one other bid was received, from KTV.

2. The deadline for submission of bids was two weeks from its publication. No documentation other than the advert was available to tenderers. Further questions were sought from KTV after they submitted their bid, and they were given five hours to respond. No communication between the Director of Development and Central Services (DDCS) and SSA relating to this contract has been seen by the PAC.

3. Earlier that year, SSA had been approached by FIG to put together a proposal for the replacement of the VHF 2m repeater. That proposal ultimately resulted in a Budget Select Committee paper submitted by DDCS, recommending that FIG "enter a contract with Sure South Atlantic Ltd" to replace the VHF repeater system. The above invitation to tender was put out following the paper to Budget Select Committee. Six working days after the invitation to tender closed, ExCo considered the matter and agreed that the contract be awarded to SSA.

4. The PAC has found that the lack of information provided regarding what tenders were expected to contain, together with the short time frame given to submit tenders, meant that the tender process was not a "competitive and non-discriminatory" process, as is required by Financial Instructions. By seeking a proposal from SSA prior to the contract being put out, FIG gave SSA an advantage, because it meant that SSA already had what was effectively a pre-approved bid ready to submit. By contrast, KTV were given two weeks and were not given any information about specifications or criteria. It is the view of the PAC that, given the level of detail that was already known about the SSA proposal, a fuller description of what the contract sought to fulfil would have ensured that competitive bids were received from all bidders.

5. As a contract worth over £50,000, the tender should have been subject to a tender board, according to Financial Instructions at the time. The PAC has found no evidence that a tender board was convened, nor of a dispensation being sought or granted. If a Tender Board was convened, it is highly likely that the Tender Board rules as set out in Financial Instructions were not followed.

6. The PAC did not find any evidence to suggest that the contract with SSA does not provide value for money. However, the PAC did find that the tender process through which the contract was awarded was not one that ensured competitiveness.

7. The PAC found FIG records of documentation and communications regarding this project to be extremely deficient.

Recommendations:

In light of the findings of the review the PAC recommends:

Recommendation One: Clarity of Tender detail.
The PAC recommends that FIG consider amending Tender Instructions.

The review identified issues with the tender scope being fair and clear to all. The PAC recommends that FIG consider amending the Tender process in Financial Instructions to include a requirement for invitations to tender to be accompanied with a document setting out in detail the contract criteria and specifications. The PAC does not believe that this would be onerous, and may be tied to contracts of a certain value but nevertheless it would appear absolutely necessary for a contract requiring a formal tender process, such as this contract.

Recommendation Two: Guidance to FIG Officers on Tender process

a) **The PAC recommends that guidance be published and distributed to government officers on 'open and non-discriminatory process', particularly in the time afforded to one bidder over another.**
b) **The PAC further recommends that clarity be provided to FIG Officers over the process for approaching a contractor outside of the Tender process.**

The review identified some lessons that could be learned from this project to ensure that value for money is assured through the 'open and non-discriminatory' tender process. When FIG officers approach a contractor outside of the tender process, assurance of how transparency and fairness is ensured during the consequent tender process and thus value for money for the taxpayer is an important factor.

Recommendation Three: Electronic Information retention
The PAC recommends that FIG adopt a basic standard for the archival of electronic communication.

The PAC noted the difficulty in gathering information due to the natural churn of FIG officers. This was exacerbated by poor archiving of electronic information. A basic standard for archiving of electronic communications so as to ensure that these are filed according to subject matter and not deleted upon the departure of officers is essential to help FIG officers new in post as well as requests for information from the PAC or other parties. Without this, good governance is not attainable.

In Summary:

This review addresses the background to the project and concludes, as stated above, that the project did provide value for money. However it notes that the process through which the contract was awarded was not one which ensured open competition.

The PAC recognises that the Falkland Islands Government has a significant challenge in the natural churn of staff and as a result the loss of corporate memory is endemic. The findings of this review - in particular the lack of a Tender Board - highlight the need for PAC investigations to be carried out in a timely manner so that, where possible and necessary, officers are held to account and lessons learned are swiftly implemented. As such the PAC stresses the importance of documentation, files and papers requested by PAC being submitted in timely manner and in their entirety. Without this we believe a satisfactory level of governance is not attainable.

It is our intention to publish this report at our earliest convenience, but the committee wanted to give the Government prior notice of our intention.

Yours sincerely

Andrew Newman
Chair, Public Accounts Committee

c.c. HE The Governor
Chief Executive

Enc. Public Accounts Committee Review of the VHF/2m Repeater Replacement Project

Public Accounts Committee
PO Box 420 Dean Street Stanley Falkland Islands FIQQ1ZZ
Tel +500 22905 Email: pacsecretary@horizon.co.fk

Ref: PAC 23/09/03

28th September 2023

Cherie Clifford
Clerk of the Legislative Assembly and Executive Council
Legislative Assembly and Executive Council Members
Gilbert House
Stanley
Falkland Islands

Dear Members

Reviews of the VHF/2m Replacement and Emergency Services Digital Mobile Radio project

The Public Accounts Committee (PAC) as part of their work plan committed to reviewing the above projects. The PAC has now utilised the resources available to it to facilitate background research into the reviews in terms of value for money and findings are provided in the attached reports and letters of recommendation.

The VHF/2 metre replacement and Emergency Services Digital Mobile Radio projects were originally intended to be combined into a single review by the PAC. The two are heavily inter-related: the failure of the original VHF system was a deciding factor in the investment in a digital mobile radio system, and that digital mobile radio system's limitation was a contributing factor in FIG's decision to revamp the VHF/2 metre system.

However, upon initial research into the projects, it became apparent that both had very distinct issues in so far as the remit of the PAC is concerned. In the VHF/2 metre replacement project, the PAC found there to be issues regarding the tendering process; and in the Digital Mobile Radio system, the issues identified surrounded the system's initial planning and implementation.

It was therefore decided to address each of the two projects in separate reports. Attached you will find a timeline of how the two projects progressed since 2014, as well as indicating where developments in one affected the other.

Yours sincerely

Andrew Newman
Chair, Public Accounts Committee

c.c. HE The Governor
Chief Executive

Enc. Public Accounts Committee Reviews and Recommendation Letters and timeline for VHF/2m Replacement and Emergency Services Digital Mobile Radio projects

	VHF/2 Metre Replacement	Emergency Services Digital Mobile Radio
2014	"Obsolete analogue radio system and repeaters" referred to in 57/14 is part of the island-wide VHF network, which is used by Emergency Services and the Camp community where there is no landline or mobile phone coverage. Network had been managed by KTV since the 1980s. KTV had been further given a contract in 2001 to manage Emergency Services VHF network. However, lack of investment by FIG and/or assumption that mobile coverage would render it obsolete, meant that the VHF/2M system had fallen into disrepair and was unreliable.	ExCo paper 57/14 requests replacement of "obsolete analogue radio system and repeaters" with Digital Mobile Radio (DMR) that provides secure, interoperable communications across Emergency Services. ExCo requests that interoperability is confirmed before approving.
2015		ExCo paper 39/15 requests approval for contract for DMR system to be given to sole tenderer, Sure South Atlantic (SSA). Total contract value is £242,680 in capital costs and £22,640 annually in operating costs. Approval is given. At some point, and against the advice of the contractor, a decision is taken to only invest in three repeaters for the system as opposed to six
2016	As SSA is given contract for providing DMR system, KTV's involvement with VHF network effectively ends. No party seemingly under contract to manage or repair VHF network.	DMR system is bought and rolled out.
2017	MT Caroline VHF repeater on West Falkland becomes unserviceable. Ongoing complaints by Camp community and RBC.	The RFIP Chief of Police, who was leading the project, is suspended on an unrelated matter during the system's roll-out. As the system begins to be implemented, several issues arise related to handsets, coverage, and training. Some handsets are replaced. At an users' meeting designed to address the issues, SSA again stresses that the system coverage reliant on three repeaters only, and thus hindered. Members of the group, which include emergency services, say that they had not previously been made aware of the decision to cut the number of repeaters to six.
2018	FIG decides to replace VHF network infrastructure.	Use of the system by emergency services largely limited to Stanley. Services remain reliant on mobile phones and VHF radio system.
2019	Sure South Atlantic Ltd approached by FIG to provide costs of providing/ replacing VHF/2m network, no other contractor approached. Costs used to formulate put to Budget Select Committee, states that the VHF/2M system is used by emergency services when "Digital Mobile Radio System has no coverage or is	Use of the system by emergency services largely limited to Stanley. Services remain reliant on mobile phones and VHF radio system.

	not working effectively." Tender launched for the replacement of the system, no evidence for tender board or suitable dispensation available. Contract given to SSA at a value of £139,849 capital costs REDACTED annual maintenance and rental following ExCo paper 79/19	
2020		Fire and Rescue service revert to VHF as main system of communications, with mobile phone and DMR system as backup. Only RFIP using the system regularly, and only in Stanley vicinity.
2021	Contract varied to include additional VHF station at Leicester Hill and additional hardware at Sussex Mountain as coverage fell short of initial predictions.	DMR system manufacturer taken over, and new owner no longer bound to honour contract. System effectively becomes obsolete and RFIP/ Emergency Services begin to search for new system.

PUBLIC ACCOUNTS COMMITTEE

REVIEW OF THE VHF/ 2-METRE REPEATER REPLACEMENT PROJECT

September 2023

Contents

Abbreviations

BSC – Budget Select Committee
DDCS – Director of Development & Commercial Services
ExCo – Executive Council
FIG – Falkland Islands Government
PAC – Public Accounts Committee
SSA – Sure South Atlantic Limited

Executive Summary

1. In June 2019, the Department of Development and Commercial Services launched a tender for the Replacement of the VHF 2m repeater system. A contract for £132,849 in capital costs and REDACTED in recurring maintenance contract costs was awarded to Sure South Atlantic Limited (SSA). Only one other bid was received, from KTV.

2. The deadline for submission of bids was two weeks from its publication. No documentation other than the advert was available to tenderers. Further questions were sought from KTV after they submitted their bid, and they were given five hours to respond. No communication between the Director of Development and Central Services (DDCS) and SSA relating to this contract has been seen by the PAC.

3. Earlier that year, SSA had been approached by FIG to put together a proposal for the replacement of the VHF 2m repeater. That proposal ultimately resulted in a Budget Select Committee paper submitted by DDCS, recommending that FIG "enter a contract with Sure South Atlantic Ltd" to replace the VHF repeater system. The above invitation to tender was put out following the paper to Budget Select Committee. Six working days after the invitation to tender closed, ExCo considered the matter and agreed that the contract be awarded to SSA.

4. The PAC has found that the lack of information provided regarding what tenders were expected to contain, together with the short time frame given to submit tenders, meant that the tender process was not a "competitive and non-discriminatory" process, as is required by Financial Instructions. By seeking a proposal from SSA prior to the contract being put out, FIG gave SSA an advantage, because it meant that SSA already had what was effectively a pre-approved bid ready to submit. By contrast, KTV were given two weeks and were not given any information about specifications or criteria. It is the view of the PAC that, given the level of detail that was already known about the SSA proposal, a fuller description of what the contract sought to fulfil would have ensured that competitive bids were received from all bidders.

5. As a contract worth over £50,000, the tender should have been subject to a tender board, according to Financial Instructions at the time. The PAC has found no evidence that a tender board was convened, nor of a dispensation being sought or granted. If a Tender Board was convened, it is highly likely that the Tender Board rules as set out in Financial Instructions were not followed

1.6 The PAC did not find any evidence to suggest that the contract with SSA does not provide value for money. However, the PAC did find that the tender

process through which the contract was awarded was not one that ensured competitiveness.

1.7 The PAC found FIG records of documentation and communications regarding this project to be extremely deficient.

About the Public Accounts Committee

2.1 The Public Accounts Committee (PAC) was established by section 81 of the Constitution[1] and it is regulated by the Public Accounts Committee Ordinance 2009.[2]

The PAC's membership

2.2 The PAC has five members:

- After consulting Members of the Legislative Assembly (MLAs), the Governor appoints the PAC Chair and two other PAC members.
  (None of these can be MLAs. Nor can the Financial Secretary, described in the Constitution as Director of Finance, be a member of the PAC.)

- The Legislative Assembly elects 2 MLAs to be the other two PAC members.
  (An MLA cannot serve on the PAC at the same time as being a member of Executive Council nor at the same time as being the Chair or Deputy Chair of the Standing Finance Committee - see section 81(1) of the Constitution and section 5 of the Ordinance.)

2.3 The current members of the PAC are:

- Andrew Newman (Chair)
- Sacha Cleminson (Deputy Chair)
- Nadia Knight (Lay Member)
- MLA Teslyn Barkman
- MLA Peter Biggs

2.4 The work of the PAC is supported by a full time Clerk, Nancy Locke, and it can also engage other people to assist in its work.[3]

The PAC's role

2.5 The functions of the PAC[4] can be summarised as follows:

- to examine and report on public accounts and audit reports, including those of FIG itself, as well as statutory bodies, bodies that receive public money and bodies in which FIG or a statutory body is a shareholder;[5]
- to advise on external audit arrangements and to examine and report on all reports produced by FIG's Internal Audit Department;

[1] https://www.legislation.gov.uk/uksi/2008/2846/schedule/paragraph/81/made
[2] https://legislation.gov.fk/view/whole/inforce/2021-04-11/fiord-2009-11
[3] See section 81(4) of the Constitution and sections 9 and 9A of the Ordinance.
[4] See section 81(5) of the Constitution and section 11(1) of the Ordinance.
[5] The bodies covered by this include Falklands Conservation, FLH, FIDC, FIMCo, the Museum and National Trust, the Media Trust, SAAS, SAERI and Stanley Services.

- to consider and report on the effectiveness of the regulation of bodies that have been granted franchises to provide services of a public nature;
- to consider and report on any other matter that the Governor may refer to the PAC.

2.6 When carrying out its functions, the PAC has to look at the value for money derived from the public money that has been spent. It can also look at the arrangements made to manage financial risk.[6]

2.7 The Ordinance uses the terms "economy, efficiency and effectiveness",[7] which are widely used in relation to PAC activities worldwide. Economy, efficiency and effectiveness can be described as "spending less, spending well, and spending wisely".[8]

2.8 One way[9] of measuring these involves looking at:

- Inputs, such as staff and buildings vs costs in monetary terms (economy)
- Outputs of a particular good or service vs inputs (efficiency)
- Outcomes in terms of the impact on society vs outputs (effectiveness)

Value for money is the overall relationship between costs and outcomes.

2.9 The role of the PAC does not include considering matters of policy: the PAC's job is not to look at why money has been spent, but how.[10]

2.10 However, although the Ordinance provides that the PAC's functions do not include considering matters of policy,[11] it does not define what are matters of policy and there is a clear potential for overlap between policy and delivery, particularly when looking at effectiveness.

2.11 A common sense approach is being taken in this review to determine what are matters of policy and what are matters of delivery.

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6 See section 11(3) of the Ordinance

7 Section 11(3)(a)

8 Joachim Werner, "Best Practices of Public Accounts Committees" (22 November 2002), p8
The paper, originally contributed for the Handbook for Public Accounts Committees commissioned by the Association of Public Accounts Committees (APAC) in South Africa, is published online by the International Budget Partnership at https://www.internationalbudget.org/wp-content/uploads/Best-Practices-of-Public-Accounts-Committees.pdf

9 "Measures of Achievement" to Kristensen, Groszyk and Bühle, "Outcome-focused Management and Budgeting", OECD Journal on Budgeting Volume 1 Number 4 (2002), pp32-33
The article, cited by Werner in his paper, is available online at https://www.oecd.org/gov/budgeting/44526575.pdf

10 See section 11(2) of the Ordinance.

11 Section 11(2)(a)

The VHF/ 2-Metre Repeater Replacement project

3.1 An islands-wide repeater network providing VHF/ 2-Metre coverage has historically been used by the Camp community, Emergency Services and FIGAS. In 2019, the Falkland Islands Government (FIG) set out to replace the system. In July of that year, FIG issued a tender for the replacement of that VHF system. This report relates solely to that specific tender process, and does not consider previous contracts, management and maintenance relating to the system prior to that tender.

3.2 Prior to 2019, the system had become faulty and had attracted complaints from the community. Furthermore, following the introduction of the Digital Mobile Radio system (DMR) in 2017 and its limitations with regards to coverage and usability[12], a reliable island-wide VHF network was still required for emergency services operations.

3.3 In May 2019 the then Director of Development and Commercial Services (DDCS) submitted a paper to Budget Select Committee seeking to enter a contract with Sure South Atlantic Limited (SSA) for the replacement the VHF 2-metre repeater system.[13]

3.4 According to the paper, SSA proposed to put in place a new VHF repeater system across seven sites. The paper included detailed capital and operating costs, although these are redacted (the PAC has not been able to obtain an unredacted copy of this paper). It is assumed, however, from the later tender bid submitted by SSA, that the costs would be in the region of £132,849 in capital costs and a yearly site rental fee of REDACTED until Financial Year 2021/22.

3.5 Following the submission and approval of the Budget Select Committee paper, the Department of Development and Commercial Services put out an invitation to tender for the replacement of the VHF repeater system (see Figure 1). The invitation to tender provided no details of required coverage or technical specifications, nor was there any accompanying documentation available to tenderers providing a list of criteria or specifications that FIG wished to be met. In 2020, when the contract amount was published, enquiries on the subject were made by local press. Asked why there hadn't been any specification accompanying the tender, DDCS said:

> *"There was no specification as the system had been installed for some 30 years and maintained by a local contractor so all we were asking for was a new system to replace the old."*[14]

[12] See Public Accounts Committee report on Emergency Services Digital Mobile Radio Project
[13] Budget Select Committee paper from the Director of Development and Commercial services, unnumbered, May 2019
[14] Email from DDCS to Penguin News, 24/6/2020

PUBLIC NOTICE

INVITATION TO TENDER

REPLACEMENT OF VHF 2M REPEATER SYSTEM

The Falkland Islands Government is seeking quotations from suitably qualified contractors for the supply and replacement of the VHF 2m Repeater System across the islands.

Further information can be requested from Iain Robertson, Director of Development and Commercial Services by e-mail to ddcs@sec.gov.fk or telephone 28444.

The closing date for receipt of tenders is Friday 28th June 2019.

The Falkland Islands Government reserves the right to reject any tender received and the right to publish the names of tenderers and the amounts in which they tendered.

Figure 1 Invitation to Tender for Replacement of VHF 2M Repeater System (*Penguin News)*

3.6 Only two companies submitted tenders: KTV Ltd and Sure South Atlantic Limited. The PAC has not been able to obtain a copy of the original SSA tender or the original proposal referred to in the Budget Select Committee paper. Equally, the PAC was not able to obtain any correspondence between FIG and SSA with regards to the original proposal or the subsequent tender.

3.7 The proposal submitted by Sure prior to the tender being published estimated the value of the contract for the installation of the repeater sites to be £132,849 and REDACTED per year for maintenance and rental. The contract was therefore likely to pass the threshold set out in the Financial Instructions in force at the time requiring a tender board to be convened (£50,000). The PAC found no evidence of a tender board being convened for the award of this contract.

3.8 If a tender board was convened, it would have been bound by process rules set out in Financial Instructions. These rules required bids to be opened in the presence of the tender board "as soon as possible after the closing date." The closing date for this tender was 28th June 2019, and as a time was not specified in the advert, it can be reasonably surmised that the closing time was end of the Government working day (4:30pm). It is therefore not clear why the Director of Development and Commercial services emailed KTV Ltd to seek more information on their bid at 11:13am[15], some five hours before the tender deadline was due to close. According to the letter of Financial Instructions, that bid should not have been opened until the tender deadline had passed. Given the nature of the questions within that email, it had clearly been opened. If any dispensation had been given allowing those rules to be bypassed, then no

[15] Email from Director of Development of Commercial Services to KTV limited, 28 June 2019.

evidence of that dispensation has been submitted to the PAC. It is worth noting that copied into the email to KTV were the deputy Director of Development and the Chief Fire Officer. Given the lack of records in relation to this contract, it is not clear why they were included. If they were intended to constitute a tender board, then it is again not clear why representatives from the Treasury and Legal Services were not included, as was required by Financial Instructions. In any case, the issue of bids being opened and considered prior to the deadline passing remains.

3.9 Seven working days after the close of the tender deadline, a paper was submitted and considered by Executive Council requesting that a contract be entered into with SSA.[16]

3.10 The tender submitted by KTV limited was a one-page quotation, which listed the type of equipment that would be installed and included a price per repeater site of £5,803.46 if 230V AC power was already installed on the site, or £6,528.46 if it was not. The quotation did not include delivery (which would depend on how quickly the installation was required), and it stated that "2M VHF Frequencies, locations, and number of repeaters/sites plan has to be agreed with the Telecoms Regulator for best possible coverage of the Islands' road network." It further stated that "not all the sites require the Duplexers filter, with a saving of £3,372.58 per site." The bid did not therefore give a total cost, but rather gave a cost per site (excluding shipping).

4.1 DDCS responded to KTV with several questions, including the below. KTV responded later that day (KTV responses in blue).

> *"Can you please confirm the equipment (manufacturer) specification that you have quoted for?"*
>
> *Transmitter Specs:*
> *RF power output 50W.*
> *Modulation type F1D, F2D, F3E, F7W 4FSK (C4FM).*
> *Spurious emission < 60dB below carrier.*
>
> *Receiver specs:*
> *Double conversion super-heterodyne.*
> *Intermediate frequencies 1st 47.25 MHz, 2nd 450KHz.*
> *Sensitivity 0.2uV FM for 12dB SINARD.*
> *Adjacent Channel Selectivity > 65dB at 20KHz off.*
> *Audio output 4W for 10% THD.*

[16] Executive Council paper 79/19

"What is the coverage profile for your proposition? Are you proposing to provide 100% coverage across the Falkland Islands?"

"It goes from basically replace/repair what we installed 30 plus years ago or upgrade to what is needed today to cover the new road network or 99.8% road coverage and will depend on user equipment (mobile or portable)."

"How many sites are you proposing to install the equipment and please describe the locations? Do you have permissions for installing the equipment on "KTV's existing equipment cabins, towers and masts? I believe some locations are military sites and can you confirm there will be no interference?"

"Anything from 3 sites on the west Falklands to 9 sites Island wide East and West. With the quality of filters proposed no co-interference is envisaged.

Only 3 sites are sheered [sic] *with MOD and there is no problem to replace from an existing installation.*

Sites: Mt. Alice, Byron H., Mt Caroline, Mt. Maria, Sussex Mt. Mt. Pleasant Peak, Bombilla, Mt. Kent and Sapper Hill."

What is the total cost of the project to FIG, including shipping.

"Depending on final scope of the project."

Are you proposing a maintenance contract?

"After installation is completed and the size of the network is known."

3.11 Executive Council paper 79/19 recommended that FIG enter a contract with SSA. That paper provides further context behind the original proposal from SSA the elicited the paper to Budget Select Committee:

"Following community feedback from Telecommunications public meetings, Farmers' Week and other events, FIG approached Sure directly to look at the architecture required and proposals to install a replacement VHF radio repeater network to provide 100% coverage across the Falkland Islands, utilising Sure infrastructure. FIG issued a public invitation for

quotations on 13th June to replace the existing radio infrastructure with new."

3.12 There is no mention in the ExCo paper of KTV being approached to provide an equal or similar proposal at the same time that Sure were initially approached.

3.13 In evaluating the two options, the ExCo paper identified several advantages of the SSA bid over KTV's, namely:

- *SSA has designed the system architecture*
- *SSA has provided a coverage map*
- *SSA has identified the equipment manufacturer, who are well known as a high-quality manufacturer of radio equipment*
- *SSA has the capacity to deliver and complete this project by the end of 2019*
- *SSA has the capacity to deliver a long-term maintenance program*

3.14 In responding to press enquiries a year later, when the contract amount was published, DDCS said of this ExCo paper:

> *"A comprehensive report was provided to Elected Members of Executive Council which clearly set out a summary of the of the proposals received and the evaluation criteria, which highlighted a number of issues with the proposal submitted by KTV"*

While this is correct, it is perhaps of note here that these evaluation criteria were not made available to the bidders, nor was there any minute or record seen by the PAC of officers using these criteria to evaluate the bids.

3.15 ExCo agreed that the contract be awarded to SSA for the installation of 8 VHF repeater sites, and a contract was duly drafted and signed in March 2021. It is not clear why there was such a delay in signing the contract.

3.16 An extension to the contract was later signed in November 2021, after it became clear that the actual coverage fell short of the modelling carried out by SSA. Under this supplementary agreement, SSA would install an additional VHF station at Leicester Hill and additional VHF hardware at Sussex Mountain. As it was a variation to an existing contract, no other quotations were sought. The contract is still in force.

How the review was carried out

4.1 Budget Select Committee and Executive Council papers relating to the contract were examined.

4.2 KTV's quotation was reviewed, as was the communication between DDCS and KTV following up on the tender submission. No correspondence between the then DDCS and SSA, nor SSA's original proposal or consequent tender bid, was available for the PAC to view. It is understood by PAC that this documentation has since been deleted. Only a later bid, adding two repeater sites to the original contract, was provided to the PAC.

4.3 The PAC also viewed correspondence between DDCS and Penguin News, as well as a letter written to the PAC and Members of Legislative Assembly by KTV in response to comments made to Penguin News by DDCS. Further corroboration was sought from KTV and SSA on a number of matters.

4.4 Follow-up questions were asked of KTV and the Chief Executive of SSA. No response was received from KTV.

Key Findings

5.1 The PAC found that, by virtue of approaching SSA outside of a tender process to request a proposal, DDCS effectively gave SSA months of advance notice to prepare an eventual tender bid. This, while not improper in itself, provided an advantage over other bidders that was not offset at the later tendering stage. In reaching this conclusion, the PAC has considered three matters: What was the nature of that proposal, why wasn't KTV approached at the same time, and how much time and information were KTV given to prepare an equal bid.

5.2 In trying to determine the nature of the proposal, the PAC has not been able to obtain any correspondence between FIG and SSA. However, the Chief Executive of SSA provided some background to the PAC regarding how and when FIG had approached the company:

> *"…the issue of new VHF repeaters was raised at Farmers week in mid 2018 and raised again by […] the RBA representative at the TDG [Telecommunications Development Group] later that year as a priority issue to improve public safety in camp. It was indicated the previous provider had no interest in maintaining the original repeater network. At the TDG meeting the FIG [Chief Executive] agreed that this was an issue and asked if Sure could provide such a service, I have looked through the summaries from that time which are not full minutes and cannot find reference to this.*
>
> *"As Sure are the only organisation with significant infrastructure located across camp and with reliable power generation FIG asked if we could provide indicative Rough order of Magnitude costs of such a network prior to the launch of an ITT process."*[17]

5.3 It does not appear from the recommendation made to Budget Select Committee that DDCS intended to hold an ITT process at all, but rather sought approval to enter a contract straight away:

> *"Honourable members are recommended to approve:*
>
> *(a) To enter a Contract with [SSA] at an estimated additional cost of REDACTED to replace the Falkland Islands VHF 2m Repeater Radio System;"*[18]

[17] Response from SSA Chief Executive to PAC questions, 10 March 2023
[18] Budget Select Committee paper from the Director of Development and Commercial services, unnumbered, May 2019

In fact, the wording is exactly the same as in the later ExCo paper which followed the Invitation To Tender process. The above wording, and the fact that figures were presented as final Operating Expenditure and Capital Expenditure budgetary implications, suggests that the DDCS did not consider that proposal to be merely an "indicative rough order of magnitude costs."

5.5 The PAC has not been able to find a conclusive answer as to why KTV were not approached to provide a proposal at the same time as SSA (whatever the nature of that proposal might have been). Some clues may be found in DDCS's response to press enquiries:

> *"Historically, FIG provided a local VHF Radio 2m repeater network to provide public safety communications across the Falkland Islands. The system fell under the responsibility of the RFIP and in 2001 a contract was awarded to Mario Zuvic of KMZ Electronics to upgrade and maintain the system to ensure continuity of operation.*
>
> *"When I joined FIG in 2017, there were constant complaints from the public that the 2m system was not functioning correctly and both the emergency services and members of the public that the 2m system was not functioning correctly and both the emergency services and members of the public (particularly in remote settlements) could not operate effective communications from the network. It was clear that the system had fallen into disrepair and had not been maintained to ensure operating efficiency."*[19]

In their response to DDCS's response to press enquiries, KTV rejected the implication in that response that they had been responsible for allowing the system to fall into disrepair:

> *"The Camp and Emergency Services repeater system was designed, built, maintained and kept in perfectly good working order continuously for many years by KTV on a very small (in many years non-existent) budget to undertake major repairs, replace faulty equipment and undertake upgrades of the network.*
>
> *"This high level of service was provided throughout the 1980s, when the network was used by Camp Education. It was also supported throughout the 1990s when it was re-allocated for use by the Emergency Services as they had no budget to build*

[19] Email from DDCS to Penguin News, 24/6/2020

their own network. In the majority of the repeater locations around the Islands, the repeaters were hosted in KTV owned cabins at no cost to FIG as it was providing key public services. This was acknowledged by FIG at the time.

"In 2001, the Royal Falkland Islands Police awarded us a contract to implement an encrypted communications system between mobile/portable units and the Police Station. This was a very successful project and achieved on a small budget. Unfortunately FIG did not make any further investment or enhance this service for many years.

"In 2016, another company was awarded a contract to replace the complete system [20]. From this point on KTV was no longer responsible for the operation of the network and some equipment did develop problems which were to be expected due to its extreme age (approximately 30 years for some equipment such as the Mt Caroline repeater).

"KTV held numerous meetings with the Chief Police Officer on the detailed planning of a new network to replace the old encryption system which would include Island-wide repeaters, but the decision to go ahead was delayed.

"One of the reasons provided by FIG at the time, was that Sure was going to provide a reliable Island-wide mobile phone system, therefore the reliance on 2M VHF equipment was going to be "a thing of the past" for local essential communication. This seemed to be an entirely understandable reason."[21]

In fact, DDCS appeared to agree with KTV's version of events in ExCo paper 79/19:

"Confidence in the system is low due to user experience and there is general frustration in the community that the Government has failed to invest in a system that provides comfort and resilience to remote communities."[22]

In any event, if KTV's previous management of the network (whether deemed satisfactory or not) was a reason for not approaching KTV at the same time as SSA, the PAC has found no evidence of it. According to Financial Instructions

[20] This is thought to refer to a contract for the provision of Digital Mobile Radio System for emergency services (which was ultimately also awarded to SSA)
[21] Letter from KTV to Members of Legislative Assembly and PAC 23/7/2020
[22] ExCo paper 79/19

in force at the time, a contractor's past performance could have been considered when deciding the award of a contract.[23]

5.6 Nevertheless, the PAC recognizes that approaching contractors outside of a tender process can be a useful and necessary exercise for budgeting purposes. It is also recognized that it is not practical to approach all potential tenderers before an ITT is launched. In this instance, approaching SSA made sense: SSA had an array of sites across the islands into which VHF infrastructure could be incorporated, and therefore were likely to be able to provide an accurate estimate of costs with relative ease. However, this also gave SSA a de-facto advantage, as it effectively gave them advance warning of the invitation to tender. If FIG felt it worthwhile to carry out an ITT exercise to ensure value in the contract, then it would logically follow that bidders in that ITT should be given sufficient time and information to make their bids as competitive as possible. This would have offset the advantage SSA held by virtue of being approached at an early stage. The PAC does not believe that sufficient time and information were given with this contract's invitation to tender to ensure that all bids were complete and competitive.

5.7 It is surprising that there was no tender document provided to potential bidders given the grounds on which KTV's tender was later rejected. The PAC does not entirely agree with the statement made by DDCS that "there was no specification as the system had been installed for some 30 years"[24]. As a contractor that previously managed the system, KTV was aware of the technology involved, but the PAC does not consider it reasonable to expect them to compete on an equal basis to SSA on that information alone. The fact that the system had been in place for 30 years appears all the more reason to set out the requirements of such a contract, as the criteria surrounding it were likely to have changed in that time. The PAC recognizes that invitation to tenders need not be prescriptive in situations where innovation and different approaches are sought, or where FIG does not have the detailed technological knowledge to be highly prescriptive. However, this does not seem to be the intent here. In fact, DDCS effectively said as much in his answers to the press on the matter.[25] And yet, it is clear that FIG had basic expectations of what they wanted this contract to deliver, such as a costed maintenance contract, or a specific level of area coverage. Such basic expectations could have been easily set out in a tender document without making it overly prescriptive, but they were not. Instead, they were asked as clarifications after a bid had been submitted, and the bidder given five hours to answer them.

5.8 It is also not clear to the PAC why this contract was not subject to a tender board. Again, the proposal requested from SSA meant that it was known that the cost of the contract would likely exceed the threshold that prompts a

[23] Financial Instructions 2016, Section 8, paragraph 856
[24] Email from DDCS to Penguin News, 24/6/2020
[25] Email from DDCS to Penguin News, 24/6/2020

tender board, and yet there is no evidence of one being held. According to Financial Instructions in force at the time, a dispensation could be sought to deviate from the formal tender process. If one was sought and consequently granted, the PAC has seen no evidence of it.

5.9 The PAC found there to be an extensive lack of a paper trail or communications relating to this contract. Of particular concern here is the absence of communications between DDCS and SSA prior to SSA originally submitting a proposal for the replacement of the system. While this may be down to the high turnover of staff in the relevant department, it is nonetheless concerning that so little information with regards to a recent and extant contract be available. While this is not evidence of any wrongdoing, lack of a clear record leaves the department open to public scepticism and accusations of bias.

5.10 The PAC has ultimately found that by failing to provide all tenderers with an equal and reasonable time period with which to prepare bids, and by failing to provide clear basic contract specifications and criteria to all tenderers, the award of the contract failed to meet the requirement set out in Financial Instructions calling for relevant departments to "operate a competitive a non-discriminatory process"[26] in order to achieve value for money.

5.11 The PAC has not found any evidence suggesting that the SSA contract does not constitute value for money. However, it is possible that if KTV had been given a fuller specification of FIG's expectations, and had they been given as much time as SSA to prepare a proposal, that they may have been able to put forward a more competitive and detailed bid.

5.12 In delivering a successful bid for this contract, it is likely that SSA benefitted from the existing telecommunications infrastructure and general maintenance and delivery capability required to fulfil obligations under their exclusive telecommunications arrangement with FIG. Indeed, in listing the reasons why the contract should be given to SSA, DDCS noted that all the sites proposed by Sure "are already operating via the existing Sure infrastructure" and "have robust infrastructure and existing power generation."[27] Leaving aside the argument of whether other bidders could have provided similar sites or not, the issue raises considerations in terms of the wider impact on competition. Such synergies may allow a statutory monopoly holder to submit competitive bids that offer the better value-for-money. But they may also stifle competition in open or potentially accessible markets. This may in turn remove incentives for innovation and improvement of service levels, thus reducing the long-term value-for-money of the market in general.

[26] Financial Instructions 2016
[27] Executive Council paper 79/19

Recommendations

6.1 The PAC may wish to recommend that financial instructions be amended to include a requirement for invitations to tender to be accompanied with a document setting out in detail the contract criteria and specifications. The PAC does not believe this would be onerous, and may be tied to contracts of a certain value, but nevertheless it would appear absolutely necessary for a contract requiring a formal tender process, such as this contract.

6.2 The PAC may wish to recommend that guidance be published and distributed to government officers on the meaning of an "open and non-discriminatory process", particularly as it relates to the amount of time afforded to one bidder over another. The PAC may further wish to recommend that clarity be provided over the process for approaching a contractor outside of a tender process, and how transparency and fairness are assured during the consequent tender process when this is done.

6.3 The PAC may wish to recommend that FIG adopt a basic standard and procedure for the archival of electronic communications, so as to ensure that these are filed according to subject matter and not deleted upon the departure of officers.

6.4 The findings of this report, (in particular the lack of a Tender Board) highlight the need for PAC investigations to be carried out in a timely manner so that, where possible and necessary, officers are held to account and lessons learned swiftly implemented. As such the PAC stresses the importance of documentation, files and papers requested by PAC being submitted in timely manner and in their entirety.

Appendices

Appendix 1

Public Accounts Committee report on Emergency Services Digital Mobile Radio Project
Email from DDCS to Penguin News, 24/6/2020
Email from Director of Development of Commercial Services to KTV limited, 28 June 2019
Executive Council paper 79/19
Letter from KTV to Members of Legislative Assembly and PAC 23/7/2020
Financial Instructions 2016

Confidential Appendices

Budget Select Committee paper, unnumbered, May 2019