

Ieuan Wyn Jones AC/AM
Dirprwy Brif Weinidog /Deputy First Minister



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref SF/DFM/0068/07.

David Melding AM
Chair – Audit Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

21 December 2007

Dear David,

AUDIT COMMITTEE REPORT (3) 01-07 – NOVEMBER 2007.

“PROTECTING PUBLIC MONEY IN THE LG PROJECTS, NEWPORT”.

RESPONSE TO THE REPORT OF THE AUDIT COMMITTEE

I have pleasure in enclosing a copy of the Welsh Ministers' response to the above report which will be laid before the Table Office.

On behalf of the Cabinet, I would like to thank you and the Committee for the careful and considered way in which you undertook the investigation and produced the report.

A handwritten signature in black ink, reading 'Ieuan Wyn Jones'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Ieuan Wyn Jones
Gweinidog dros yr Economi a Thrafnidiaeth
Minister for the Economy and Transport

RESPONSE TO THE REPORT OF THE NATIONAL ASSEMBLY FOR WALES AUDIT COMMITTEE'S REPORT ON:

“PROTECTING PUBLIC MONEY IN THE LG PROJECTS, NEWPORT”.

COMMITTEE REPORT (3) 01-07 - NOVEMBER 2007.

We welcome the findings of the Report and offer the following responses to the four recommendations in the Report. Item (1) of the recommendations also asks the Welsh Assembly Government to respond to each of the ten recommendations in the Auditor General's Report of the 13th March 2007 as part of the response to the Audit Committee's Report.

We propose to deal with those recommendations first.

RECOMMENDATIONS

1. **When an aid package has been agreed in principle, confirm whether any elements of it falls outside schemes that have been approved by the European Commission, and if so, notify the whole package without delay.**

Recommendation Accepted – all business support packages are now reviewed for State Aid issues at the start of the discussions with the applicant to ensure compliance with EU Commission approvals. This now forms part of the initial review of a project under the proposed new Single Investment Fund.

2. **Substantiate the investment figure submitted to the European Commission as part of the approval process, and document this fully. Such information should be cleared in advance with the applicant, and reconciled to funding agreements.**

Recommendation Accepted – this now forms part of the Appraisal process and is agreed with the Applicant before any submission is made to the Commission. It should be stated that this is a rare occurrence as most of our projects fall within agreed State Aid limits and do not need to be notified to the Commission.

3. **Unless there are compelling reasons of confidentiality or public policy that could restrict this, the Assembly Government should be as open as possible with the recipient on state aid issues.**

Recommendation Accepted – we always aim to be as open as possible with all applicants, particularly when there are potential state aid issues to be addressed. Following devolution and operating within the Memorandum of Understanding agreed with the UK Government, we are able to refer, with the support of our Legal Services Team and the UK Representative in Brussels, direct to the Commission for advice and agreement.

4. **Monitor state aid while the project is being implemented. The necessary information should be collated and analysed at appropriate intervals by someone with clear responsibility for that task.**

Recommendation Accepted – State Aid limits are monitored very closely by the Monitoring Team within Invest Wales, a part of the Department of the Economy and Transport. We routinely collect information from all other areas of Government who have supported a particular project, to ensure that State Aid limits are not breached. This procedure will be consolidated into the proposed new Single Investment Fund.

5. **Legal agreements that provide assets for the specific benefit of investors – for example, land and infrastructure – include conditions that enable the recovery of the assets or their value if the project fails to make reasonable progress against targets.**

Recommendation Accepted – Offer Letters are now carefully constructed and all contain clear recovery clauses, including those for Land, Buildings and Infrastructure. The Offer Letters for Land and Buildings in particular were revised following the LG Project and now contain clauses proposing Legal Charges or other appropriate security in relation to assets supported by the package of assistance.

6. **A general clause allowing for recovery of state aid in the event of limits being exceeded be included in an overarching agreement, or in each relevant funding agreement.**

Recommendation Accepted – as outlined above, clauses are now contained within all Offer Letters outlining recovery procedures, particularly where State Aid limits are exceeded. However, as State Aid limits are reviewed very closely during the payment and monitoring process, this should now be prevented.

7. **All grant agreements include suitable conditions for withholding and recovering grant before completion of a project, based on specific criteria, as well as recovering grant after completion.**

Recommendation Accepted – suitable clauses are now contained within all Offer Letters allowing for the withholding and recovering of grant, both before the completion of a project, as well as after completion and within the Post Completion monitoring period.

8. **Funding agreements specify clearly the duration and starting point of the period during which recovery conditions apply.**

Recommendation Accepted – Offer Letters set out the conditions covering the starting point and duration of the recovery period. This is usually from when a breach occurs until the project is out of conditions.

9. **If, exceptionally, it is necessary for the Assembly Government to pay job-related grants in relation to only a single phase of a project, then the agreements should include very clear provisions for recovering grant if job numbers for the total project fall short of targets.**

Recommendation Accepted – This situation cannot now occur as all parts of a project are closely linked together. There are now no separate phases within any projects, only one project with milestones and goals to be achieved before grant instalments are released. In all current Offer Letters there are clear recovery conditions that apply to the non-achievement of job numbers.

10. **Where front-loading of assistance is necessary to secure a project, the applicant be made fully aware, in writing, of the implications of not doing so.**

Recommendation Accepted – as stated above, this now forms part of all offer letters where this type of support is made. However, it should be noted that this is now a very rare occurrence.

Referring back to the other recommendations in the Audit Committee's Report

RECOMMENDATIONS

11. **We recommend that legal agreements to provide aid for phased projects should specify clearly the amounts and conditions of funding for each phase, so that the funding body has clear redress if later phases do not proceed as planned. The Assembly Government should seek to avoid front loading to such an extent that earlier phases would breach state aid limits if subsequent phases do not go ahead.**

Recommendation Accepted – all Offer Letters outline clear milestones for the claiming of an instalment of Grant, covering capital expenditure and usually job creation triggers. Also, it is clearly laid out in the terms and conditions of any Offer Letter when the Welsh Assembly Government can withhold grant if the project is not making sufficient progress and also the recovery of grant if the conditions are not met or there is a change in the position of a project after an instalment of Grant is paid. The front loading of Grant does not now occur, but if it was to be recommended, or was an inherent feature of a

project, the monitoring process now in place ensures that State Aid Limits are never exceeded.

111. **When a firm seeks to vary the standard or previously agreed conditions of a legal agreement for a grant or other form of state aid, we recommend that officials assess the risks involved and seek legal advice on the implications of the change if the amounts involved are substantial or other issues are complex.**

Recommendation Accepted – all projects are subject to a full assessment of risk as part of the detailed appraisal process, to ensure that Welsh Assembly Government support is not unduly put in jeopardy. Under the proposed new Single Investment Fund, a formal risk assessment will be undertaken for all applications and documented on the registered file. The risk assessment is reviewed and updated in the event of any changes to the application and/or to the conditions of support. Legal advice is sought where appropriate.

- IV. **We recommend that public announcements of aid packages for major investments should state that the aid is subject to due diligence and completion of contracts, and that the main conditions of the agreements, including recovery provisions, should be clearly agreed before the announcement is made.**

Recommendation Accepted – It is normal practice for public announcements to be agreed with the Applicant and approved by the Minister's Office before release. These press releases are made after the appraisal and due diligence process is complete and Senior Official or Ministerial approval obtained. No announcements are now made before the appraisal process has been concluded and all milestones and conditions have been agreed with the Applicant.

- V. **We recommend that legal agreements for major projects include a series of interim milestones against which progress can be clearly assessed, especially if the project is delivered in distinct phases.**

Recommendation Accepted – All Offer Letters now contain clear milestones which must be achieved before an instalment of grant is paid. All projects are presented as one phase, with grant released by instalments when the agreed trigger points have been met. Also, projects are subject to a viability review before grant is released.