



AUDIT ST HELENA
External Auditors

Performance Audit Report: Procurement of the Fuel Management Contractor

September 2019

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INTRODUCTION

BACKGROUND

In November 2011, the Department for International Development (DFID) approved funding to enter into a Design, Build and Operate (DBO) contract for the construction and running of an airport on St Helena. As part of the project it sought interest from suitably qualified contractors to provide the services of a Fuel Management Contractor (FMC) for the management, operation and maintenance of the Bulk Fuel Installation (BFI) and the Aviation Fuel Facility (AFF), as well as management of the supply of all fuels to the island.

The contract, signed on 15 August 2014 with GreyStar Europe¹ was placed on SHG contract register to the value of £15m over 11.5 years.

The Public Accounts Committee (PAC) and other stakeholders expressed an interest in the procurement process leading to St Helena Government (SHG) entering into a fuel management contract with GreyStar Europe (now trading as Penspen Ltd).

Audit St Helena is the body that carries out financial and performance audits on behalf of the Chief Auditor.

The Chief Auditor is a statutory position required by the Constitution of St Helena (Section 110). The Chief Auditor's responsibilities are set out in the Constitution and the Public Finance Ordinance – more specifically section 29(2) of the Ordinance requires the conduct of performance audits on behalf of the Legislative Council to determine whether resources have been used with proper regard to economy, efficiency and effectiveness.

The PAC is a Select Committee of the Legislative Council (LegCo). In accordance with section 69 of the St Helena Constitution and Order 23 the primary function of the Committee is to objectively scrutinise how the government spends public funds.

OBJECTIVES

The overall aim of the audit is to determine that value for money² and propriety³ has been achieved in procuring a fuel management contractor for St Helena.

The audit objectives are to assess the effective functioning of the procurement cycle in relation to this specific procurement exercise, and to evaluate if the objectives have been achieved with the outcome of the procurement exercise.

¹ GreyStar Europe, part of Penspen Group, was shortly after contract signing rebranded to trade as Penspen Ltd.

² Procurement Regulations definition for Value for Money:

Is not the lowest possible price; it combines goods or services that fully meet your needs, with the levels of quality required, delivery at the time you need it, and at an appropriate price.

³ Propriety audit definition: concerns the decisions of the executives, with an emphasis on public interest, financial discipline, and satisfaction that such decisions are within the frame-work of sanction, authority, rule, procedure and law made by a competent body.

SCOPE

Our original scope was to:

- assess whether the procurement was undertaken in accordance with the applicable procurement regulations;
- identify what the procurement was set to achieve as per the tender specifications, and assess whether this was achieved with the final outcome of the procurement process;
- verify that, with regard to the appropriate quality and delivery of service, the available least cost alternative was selected; and,
- recommend areas of improvement to SHG.

As we began our enquiries, it became clear that the procurement had been done by a third party, largely on the outside of SHG procurement regulations, and that the information regarding the procurement was unavailable.

This had the following implications on scope:

- we were only able to assess the procurement to a limited portion of the applicable regulations; and,
- we did not have sufficient information to conclude if the available least cost alternative was selected.

This report does not look at the construction of the Bulk Fuel Installation nor does it assess the value for money of the Fuel Management Contract itself – those aspects are out of scope of this procurement review but may be subject to separate audit in due course.

METHODOLOGY

This performance audit followed a system based, as well as a result based approach. We assessed whether the applicable procurement regulations were followed, and further evaluated whether pre-defined objectives have been achieved as intended. The following methods were applied:

- **Document review:** We obtained and inspected the applicable procurement regulations, alongside the received procurement documentation for the procurement in question. This gave us historical information to help determine the procurement process.
- **Enquiry of management:** We made appropriate enquiries to SHG officials for clarity whenever required. This was done by the use of emails, interviews and/or meetings.

REFERENCES

The following sources of reference were used for the review of procurement of fuel management contractor:

- Public Finance Ordinance 2010
- Interpretation Ordinance 1968
- SHG Contract Regulations 2011 (CR2011)
- SHG Procurement Regulations July 2013 (PR2013)

- SHG Procurement Regulations July 2013 Revised 10 February 2014 (PR2014)
- Supporting Documentation SHG Procurement Regulations
 - Request for Authority to Award a Contract (RAAC)
- SHG Code of Management October 2013
- Fuel Management Contract AIR-00002
- Faithful+Gould Fuel Management Contract Final Recommendation Report January 2014

EXECUTIVE SUMMARY AND KEY FINDINGS

SHG did not use its involvement in the Airport Project governance structure to exercise effective oversight of much of the FMC procurement process. SHG officials sat on the Airport Project Board, the SHG Airport Team and the St Helena 2020 Board, however the Financial Secretary expressed concern that SHG had not been properly engaged in the procurement process. It is clear however that officials in SHG were informed of the procurement and were in a position to request updates and give input to the process throughout.

SHG holds no documentary evidence of approval to waiver the procurement regulations. The regulations in place at the time the invitation for expressions of interest was sent out require either approval from the Financial Secretary (in the event of an emergency), or the Governor (in the case of public interest) if SHG chooses not to follow them. While we have been informed that the then Financial Secretary agreed to an adapted process, no evidence has been provided to corroborate this management representation.

The SHG Procurement Board eventually became involved, and the procurement process followed SHG regulations from that point on. We assessed the procurement against the 2014 regulations from the point where the firm contracted to undertake the procurement, Faithful+Gould, presented its award recommendation. In assessing compliance, we found:

- **Regulations were followed with regards to the awarding of the contract.** The Procurement Board scrutinised the award recommendation, decisions were documented and timelines were followed.
- **The Procurement Board provided effective challenge and oversight.** Following the recommendation by Faithful+Gould, the Procurement Board raised a number of concerns regarding commercial and operational risk. These were worked through in order for the Board to approve the contract in a timely manner.
- **Contract documents were signed and dated, but the procurement office no longer holds an original copy of the contract.** The regulations were followed with regards to the form, terms and formalities of the contract.
- **Documents have not been easy to access owing to the majority of work done by the third party.** Even though the procurement was handled by a third party and outside of SHG regulations, we would expect that reports and documents essential to the procurement to be kept as per the Public Finance Ordinance.

DETAILED FINDINGS

OVERSIGHT

DFID announced a Ministerial Statement on air access in 2010, and approved the airport grant in 2011. The grant included funds for appropriate technical assistance with the procurement of a management contract for fuel. The St Helena Airport Project (SHAP) Board (including representatives from DFID, SHG and the main contractor Basil Read) was later established. One of the responsibilities of the SHAP Board was the procurement of a fuel management contractor.

DFID established an Airport Team, reporting to the SHAP Board. The Project Manager contracted an integrated project and programme management firm, Faithful+Gould⁴ (F+G), to run the fuel management contractor (FMC) procurement.

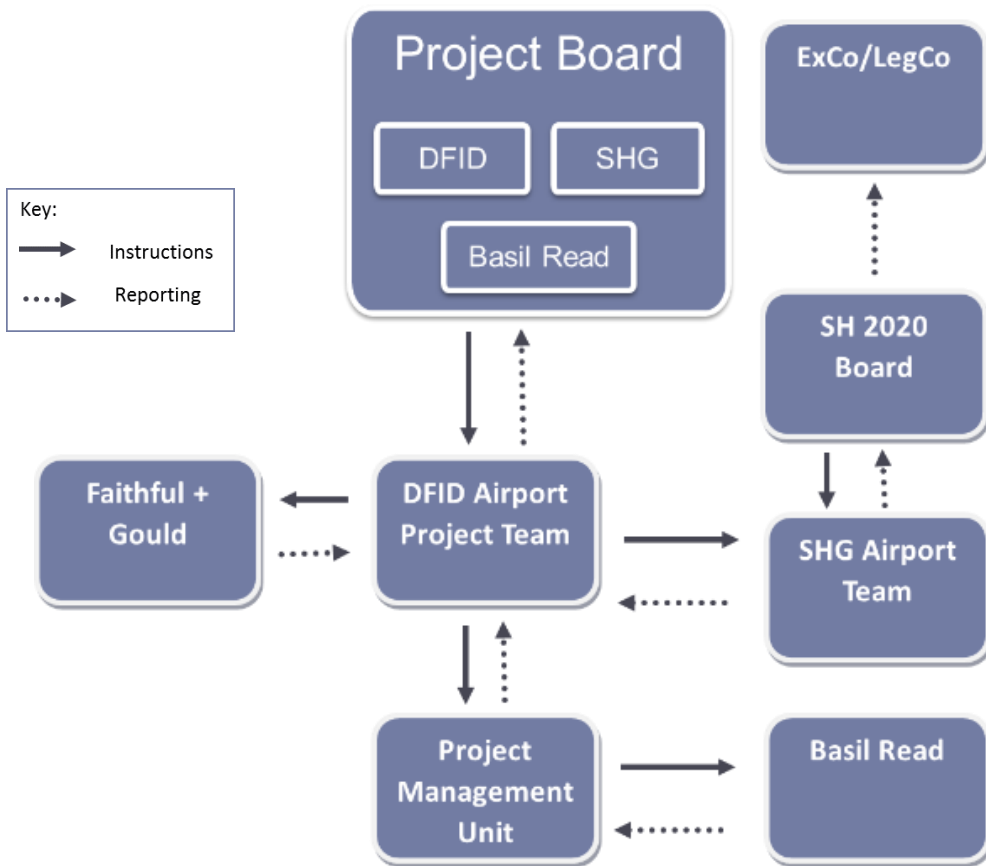
This team also gave instructions to the SHG Airport Project Team, formed in February 2012 for the implementation phase of the airport project. The SHG team included Airport Director, Executive Assistant (Access), Director: Infrastructure & Utilities, Director: Corporate Procurement, Environmental Co-ordinator, and the Project Management Unit Manager.

A draft Terms of Reference for SHG Airport Project Team from 2012 states one of their responsibilities was to: *“assist in the procurement of a suitable FMC, working with the appropriate directorates and DFID Airport Project Manager to define the requirements and facilitating inputs as required from the SHG.”*

In addition to reporting to the DFID Airport Team, the SHG Airport Team reported to the St Helena 2020 Board, consisting of HE Governor, SHG Chief Secretary, Chief Executive Economic Development, Director: Strategic Policy and Planning Unit, Airport Director and DFID local representative. This Board further reported to Executive Council (ExCo) and Legislative Council (LegCo).

⁴ <https://www.fgould.com/uk-europe/topics/contract-procurement/>

FIGURE 1 – OVERSIGHT



APPLICABLE PROCUREMENT REGULATIONS

The Contract Regulations and Procurement Regulations are supplementary to the Financial Regulations, and as per section 5 of the Public Finance Ordinance 2010, are required to be issued, with the approval of the Governor, by the Financial Secretary and laid before LegCo. The regulations are expected to be part of the financial control framework provided for managing the Government's financial affairs. They have however not been issued with legal notices, and do not have statutory effect, and as such are not considered subsidiary legislation⁵. Despite the non-statutory nature of the regulations, they are the guidelines by which SHG conduct procurements, and are the standard against which this audit has measured compliance.

We have not been able to obtain evidence to identify what date all the individual regulations were approved by the Governor and hence came into effect; our understanding of commencement of the regulation is based on the dates printed on the documents themselves.

Due to lack of evidence received, we have not been able to determine an exact timeline for when the various milestones in the procurement were reached. ExCo agreed in principle in October 2011 that SHG should seek to engage a FMC, and DFID/SHG were seeking Expressions of Interest (EOI) in December 2011, looking for a contractor to provide the FMC services. The contract was signed with GreyStar Europe on 15 August 2014.

The applicable regulations in place at the point in time when the EOI was sent out were SHG Contract Regulations v1.6 Oct 2011. Through the course of the procurement, two more sets of regulations were introduced: SHG Procurement Regulations 2013 which constituted a significant change to the contract regulations, and the slightly altered version SHG Procurement Regulations 2014 as the contract was signed.

Accordingly the compliance assessment was based on the following applicable versions of procurement regulations:

- SHG Contract Regulations v1.6 2011 (CR2011)
- SHG Procurement Regulations July 2013 revised 10 February 2014 (PR2014)

RECOMMENDATION

1. *SHG must ensure that procurement regulations prepared under the Public Finance Ordinance are duly issued under Legal Notice such that they will have statutory authority as subsidiary legislation rather than merely guidance.*
2. *SHG must assess any other regulations issued under the Public Finance Ordinance 2010, such as the Financial Regulations, and ensure that they have been procedurally enacted as subsidiary legislation.*

⁵ Interpretation Ordinance 1968: "subsidiary legislation" means any proclamation, rule, regulation, order, notice, by-law, or other instrument made under the authority of any Ordinance or other lawful authority and having legislative effect

COMPLIANCE WITH CONTRACT REGULATIONS 2011

The regulations in place at the time of EOI (CR2011) states in Part 2: Relevant Provision that:

- 2.1 *Every contract made by the St Helena Government or Accounting Officer shall comply with;*
 - a) *Any relevant provisions of the law;*
 - b) *these Contract Regulations; and*
 - c) *any other external Contract Regulations that may apply*
- 2.2 *Exemptions from any of the following provisions of these Regulations may be made by the Financial Secretary in an emergency.*
- 2.3 *Any exemption that may be made must be clearly documented stating the reasons for the exemption to make clear it is a genuine emergency and reported to the Tender Board.*
- 2.4 *The Governor has the power to waive these Regulations in any particular case where it is in the public interest to do so.*

It has been confirmed by the current Airport Director that the procurement was not run under the SHG Contract Regulations. We were verbally informed that the guidance at the time was that matters of non-compliance needed to be referred to the Financial Secretary (FS), and that the then FS agreed to an adapted process outside of the procurement regulations. No documentary evidence has been received to corroborate management's representation with regards to this approval.

Furthermore we have not been able to obtain any documentation to show that the FS was part of any project team/working group involved with the procurement, indicating his knowledge of this procurement process.

No documentary evidence was provided to show that the procurement was an emergency and therefore had to follow the emergency route that required FS to document exemptions and Governor to waive the procurement regulations in the public interest.

In conclusion, the FMC was outsourced to F+G to handle the procurement process. The outsourcing of the procurement process is permissible subject to it being an emergency or the Governor waiving the procurement regulations in the public interest. Since no evidence could be obtained for the deviations, the regulations were not complied with as required.

RECOMMENDATION

3. *SHG must ensure exemptions and/or waivers are executed as per stated in the regulations, with the necessary documentation retained.*

OUTSOURCING OF PROCUREMENT – FAITHFUL+GOULD

The procurement was run by F+G and the tender was advertised as an OJEU⁶ notice where the Pre-Qualification Questionnaire (PQQ) Supplier information and instructions document stated that “*This PQQ will be taken forward under the EU Restricted Procedure and in line with the Public Contracts Regulations 2006⁷*”. It was also publicly posted with a contact person from DFID procurement.

These factors indicate that the procurement was not run without direction, that experience and transparency were present, and that a framework was in place to allow adequate procurement principles to be followed through the firm executing the procurement, the involvement of DFID procurement and the use of a platform that reached a large audience.

F+G per their contractual terms performed the procurement process. An Invitation to Tender (ITT) was sent to Interserve, Stanley Services and Greystar. Interserve and Stanley Services withdrew from the tender process leaving Greystar as the sole tenderer. Details of the process followed are included in the Tender Review and Evaluation report dated 25 February 2013 to SHG and DFID.

Supplementary Tender Report No. 2 dated 8 May 2013 determined the strategy to be followed, defined how a procurement of a FMC could be progressed and concluded through a process of negotiations with GreyStar (as the sole remaining tenderer).

A Final Tender Recommendation Report dated 14 January 2014 was submitted to the Chief Secretary (CS), FS and Assistant FS. FS expressed reservations in the late involvement of the Procurement Board (PB) due to the critical issues that were identified. It was then agreed that the PB going forward will become part of the decision making process. This report highlighted the outcome of the Best and Final Offer (BAFO) negotiations with Greystar.

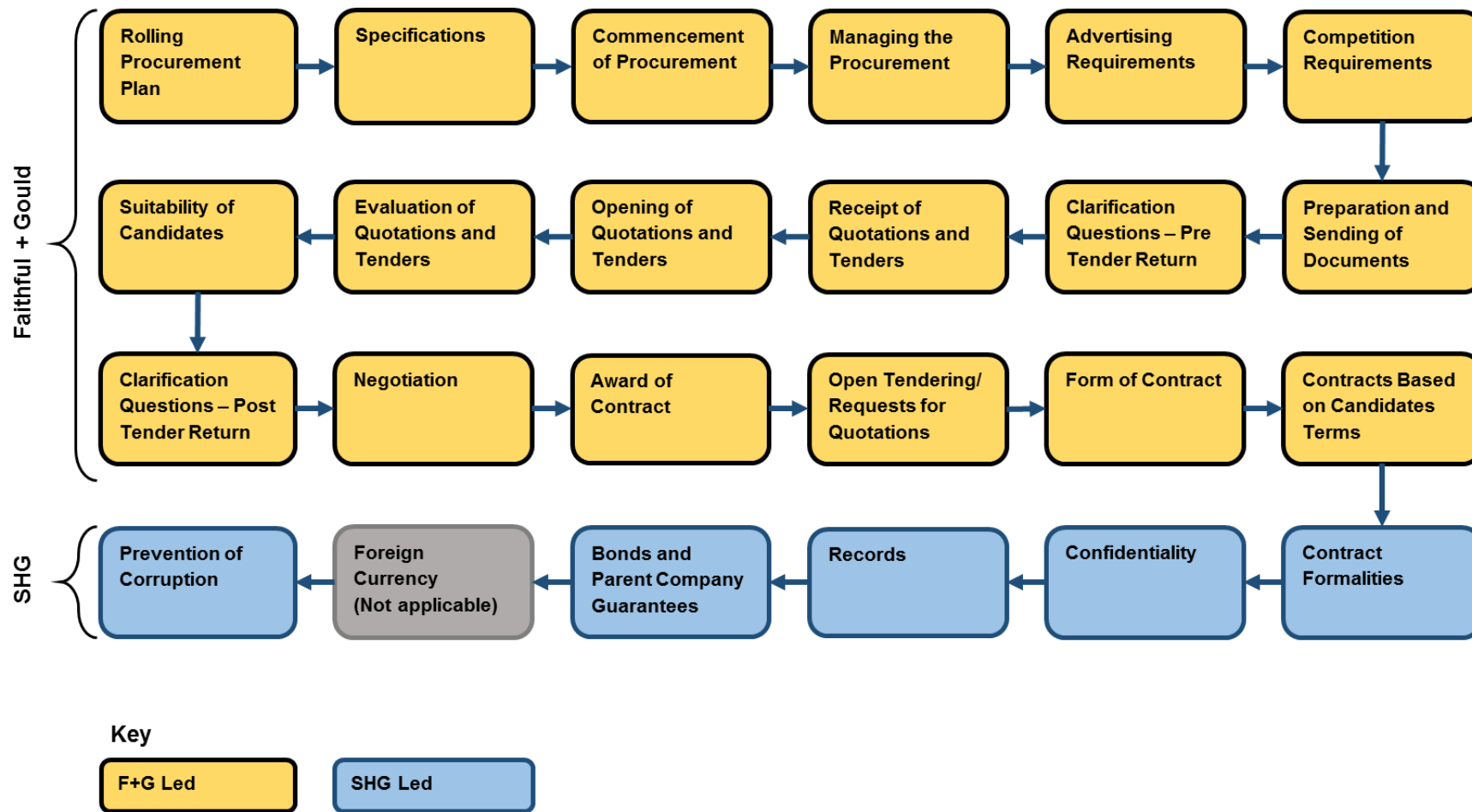
RECOMMENDATION

Same as recommendation 3 above.

⁶ <https://www.ojeu.eu/>

⁷ <http://www.legislation.gov.uk/uksi/2006/5/contents/made>

FIGURE 2 – PROCUREMENT ROADMAP



AWARD OF CONTRACT

From the involvement of the PB in January 2014, the applicable regulations regarding the award of contract are largely followed. The award recommendation provided by the external firm was scrutinised by the PB, raising several issues that were resolved prior to the contract signing. Documentation of decisions and reasoning can be traced through the monthly PB meetings, and, although it took seven months from the start of PB involvement to finalising the contract, the time between the final decision of acceptance by the PB and the contract signature shows applicable timelines for informing the bidder of the acceptance were followed.

NEGOTIATIONS – THE PROCUREMENT BOARD’S INPUT

The tender recommendation report by F+G included a recommendation subject to given requirements, and other items highlighted for consideration by DFID and SHG. The PB met on 03 February 2014 to discuss the report, subsequently highlighting to DFID and Air Access various critical issues they required further clarity on before being willing to give approval for SHG to sign the contract. Their concerns fell broadly into two groups: commercial and operational risk.

COMMERCIAL RISK:

- The anticipated cost in operational phase to manage fuel operations falling to SHG not having been provided for in the budget;
- The contract not being a fixed cost contract, but a cost plus contract could lead to high costs for SHG;
- The liability if St Helena was unable to fuel a plane (no fuel or fuel gets contaminated) and it gets stranded, worst case scenario a plane develops technical problems due to contaminated fuel; and,
- Supporting the recruitment of a dedicated and highly capable Contract Manager.

OPERATIONAL RISK:

- Further reassurances required on the contractor subcontracting an experienced firm and hiring a suitably experienced manager to manage the risk that the contractor had no demonstrable on-airport aviation fuel storage, handling or dispensing experience, no experience in the setting up of such an operation, or managing another party also without requisite experience.
- Requested consideration given to an independent risk assessment.

An external risk review on the operational risk item was subsequently agreed and conducted in April 2014, and work was done to finalise the contract under the direction of DFID/Air Access throughout the following months. In July 2014 the PB received the further negotiated contract, and held a special meeting on 14 July 2014 to discuss it. Despite having received assurances from DFID that they were satisfied the PB would act responsibly in accepting the recommendation from F+G to appoint GreyStar, SHG (including the Attorney General) found the issue of the lack of a subcontract in place to manage the risk of GreyStar’s lack of experience in certain areas prevented an approval from the PB.

Further work to finalise the contract, including the subcontract, carried on by the contractor through July/August, until the urgency of getting the contract signed resulted in a proposal for SHG to agree to a slightly amended contract. With the risk of losing the contractor and subcontractor at a cost of £300 to £500K per month, external legal advice from a consultant contracted by DFID was to sign a contract which put the onus on GreyStar to ensure the necessary services of a subcontractor would be agreed through a subcontract, rather than further delay the process by requiring that an already completed subcontract was included in the contract documentation. On the recommendation of the FS and Attorney General, the PB agreed to this and approved the revised contract via email on 14 August 2014.

CONTRACT DOCUMENTATION (PART 4)

This section of the procurement regulations covers the contract related issues, including what form should be used and other formalities.

In addition to communication and PB minutes, signed and dated contract documentation has been inspected, confirming that the form, the terms, and most of the contract formalities are adhered to as per the PR 2014. There has however been issues getting hold of the information, and we found that the Procurement Services are not in possession of the original contract as required by the regulations.

PERFORMANCE BOND/CERTIFICATE

The FMC contract is for a value over £50,000 and confirmed that a performance bond/certificate template has been completed for the FMC contract and is included as Schedule 3 from the Europe Arab Bank PLC for an amount of £1,600,000. It therefore complies with the procurement regulations.

CONFIDENTIALITY, RECORDS KEEPING & PREVENTION OF CORRUPTION

Based on the work performed, no evidence was identified that information about the bidder's response was shared with outsiders especially given that the bidder ended up being the sole bidder. Although no signed confidentiality agreements existed with the PB members, all of them were SHG Officers who were bound by SHG Code of Management which addressed the confidentiality issue satisfactorily.

During the audit we did not identify instances where officers invited and/or received gifts in respect of the award or performance on any contracts. We therefore did not identify any indicators of any corrupt activities in the issuing of the contract.

Even though the procurement was handled by a third party and partially on the outside of the SHG procurement regulations (and as such might not be required to follow section 36 Records on the regulations), the Public Finance Ordinance requires all financial records to be accessible for audit or other investigation for a minimum period of 7 years. We noted that the documentation was not easily accessible to allow us to complete our work in a timely manner.

RECOMMENDATION

- 4. SHG must strengthen its record keeping system for mandatory information to be kept in line with best practice procurement regulations when the procurement is executed by a third party.*

CONCLUSION

The FMC procurement process was outsourced to F+G and only brought into SHG at contracting stage. No documentary evidence was obtained for the approval of the exemption to follow procurement procedures by the FS or the Governor. A reputable and experienced firm undertook the procurement process, with DFID oversight, through the OJEU platform. F+G prepared and presented the following reports to DFID and SHG that were internally quality reviewed to show the process followed:

- Tender Review and Evaluation Report, dated 25 February 2013
- Supplementary Tender Report, dated 27 March 2013
- Supplementary Tender Report No. 2, dated 8 May 2013
- Final Tender Recommendation Report, dated 14 January 2014

Due to the process being handled by an outsourced firm, the specific commercial and operational risks were not identified that had to be resolved by the Procurement Board. While SHG should have used its communication channels more effectively to involve the procurement board at an earlier stage, it eventually showed a good degree of challenge in the later stages of the process.

EFFECTIVENESS

SHG was successful in appointing a fuel contract manager, GreyStar (now trading as Penspen Ltd), to operate the new BFI and AFF, and manage the provision of both aviation and ground fuels to international standards. The terms of reference set out for an FMC to manage, operate and maintain the BFI and AFF, as well as manage the supply of all fuels to the island. It also included the distribution of aviation fuel, with an option for the management and distribution of ground fuels on the island. Our assessment is that the objectives set out for this procurement were achieved by the final outcome of the process. It is important to highlight that while this assessment is based on the effectiveness of the procurement process, we have not assessed the performance of Penspen in delivering the terms of the contract.

ECONOMY

GreyStar was the sole bidder for the contract after the withdrawal of Interserve and Stanley Services. The amount that was agreed with GreyStar was within the range that an informed professional firm like F+G had recommended as a reasonable amount at the onset of the procurement process. The value of the contract based on St Helena's location and lack of interest from other bidders was regarded as reasonable and economic. Notwithstanding, there remain further questions around the long term affordability of the fuel management contract, particularly the recurring costs and their impact on fuel prices. These issues are out of scope of this report but may require separate audit scrutiny.

EFFICIENCY

We have identified areas of improvement during our testing and have made recommendations in the report that management can implement to improve the efficiency of the process when a third party is involved.

CLOSING REMARKS

This performance audit report has been prepared in pursuance of the Chief Auditor's responsibilities under section 110(1)(a) of the Constitution of St Helena and section 29(2)(a) of the Public Finance Ordinance.

The matters included in the report came to our attention during the conduct of the performance audit procedures. The nature and scope of the procedures are as per the engagement letter and it does not constitute an audit of the financial records in accordance with International Standards on Auditing.

Phil Sharman
Chief Auditor for St Helena

4 September 2019

RECOMMENDATIONS SUMMARY (ANNEX A)

The table below summarises the recommendations raised in the performance audit report.

No	Recommendation
1	SHG must ensure that procurement regulations prepared under the Public Finance Ordinance are duly issued under Legal Notice such that they will have statutory authority as subsidiary legislation rather than merely guidance.
2	SHG must assess any other regulations issued under the Public Finance Ordinance 2010, such as the Financial Regulations, and ensure that they have been procedurally enacted as subsidiary legislation.
3	SHG must ensure exemptions and/or waivers are executed as per stated in the regulations, with the necessary documentation retained.
4	SHG must strengthen its record keeping system for mandatory information to be kept in line with best practice procurement regulations when the procurement is executed by a third party.

ABBREVIATIONS (ANNEX B)

AFF	Aviation Fuel Facility
BFI	Bulk Fuel Installation
CS	Chief Secretary
DBO	Design, Build and Operate
DFID	Department for International Development
EOI	Expression of Interest
ExCo	Executive Council
F+G	Faithful+Gould
FMC	Fuel Management Contractor
FS	Financial Secretary
ITT	Intention to Tender
LegCo	Legislative Council
OJEU	Official Journal of the European Union
PB	Procurement Board
SHAP	St Helena Airport Project
SHG	St Helena Government

TESTING COMPLIANCE WITH PROCUREMENT REGULATIONS (ANNEX C)

The table below shows what parts, sections and/or paragraphs of SHG's Procurement Regulations we used to test the fuel management procurement process for compliance.

Part	Testing
Part 1. Introduction and scope of the regulations	Not assessed as part of it is an introduction, and does not add value to the objective of assessing the effective functioning of the procurement process.
Part 2. Obtaining quotations and tenders	Sections 5-19 not assessed as procurement process was handled outside of SHG procurement regulations. SHG procurement board involved from section 20; Award of Contract.
Part 3. Regulations specific to different types of procurement	Not assessed as procurement process was handled outside of SHG procurement regulations.
Part 4. Contract documentation	Assessed.
Part 5. Waivers, variations, extensions and terminations	Not assessed as the events of 31 waivers happened under Contract Regulations, and the other events happened after the contract signing (the end of our compliance validation process).
Part 6. Other requirements	Only sections 35-36, 38-39, 41, and 44.
Part 7. Contract management	Not assessed in its entirety as the part relates to events after the contract signing. Contract signing was the end of our compliance validation process.
Part 8. Definitions	Not assessed in its entirety as the part is administrative, and does not add value to the objective of assessing the effective functioning of the procurement process.