

EXE 200421

THE MAGNOX INQUIRY – FINAL REPORT

LEAD MEMBERS	Cllr David Moore, Portfolio Holder for Nuclear & Corporate Services
LEAD OFFICER	Pat Graham, Chief Executive Officer
REPORT AUTHOR	Mitchell McCombe, Nuclear Policy Officer

WHY HAS THIS REPORT COME TO THE EXECUTIVE?

This report provides an update to Executive on the final report published in March 2021 relating to the management of the Magnox competition process undertaken by the Nuclear Decommissioning Authority (the NDA) between the years 2012 and 2017.

As the local authority representing the community most affected by the NDA's activities, the Council should take an interest in the NDA's performance in delivering best value to the taxpayer in delivering its mission to deliver safe, sustainable and publicly acceptable solutions to the challenge of nuclear clean-up and waste management.

RECOMMENDATIONS:

It is recommended that members of the Executive note the information contained within this report.

INTRODUCTION AND BACKGROUND

- 1.1. The NDA is a non-departmental public body responsible for decommissioning the UK's nuclear licensed sites, established by the Energy Act of 2004.
- 1.2. The Magnox Competition was a procurement exercise that commenced in 2012 and would appoint a single parent-body organisation (PBO) arrangement to manage and operate ten Magnox reactor sites and two research sites on behalf of the NDA. The exercise was implemented on the expectation that savings to the taxpayer would be generated. The contract had an estimated value of £6.2 billion.
- 1.3. In March 2014, the NDA announced that the *Cavendish-Fluor Partnership* (CFP) was the preferred bidder. After commencing work on the contract,

the NDA noted “significant mismatch” between the works outlined in the 2012-procurement exercise, and that awarded in 2014. This led to the NDA Board terminating the contract from September 2019.

- 1.4. In addition to this, in March 2014, one of the unsuccessful bidders for the contract, *Energy Solutions* (“ES”) launched a claim to seek damages from the NDA. The High Court found that the NDA had wrongly decided the outcome of the procurement process in July 2016. In August 2016, *Bechtel Management Company Ltd* (“Bechtel”) also issued a claim, leading to the NDA settling £85 million with ES and £12.5 million with Bechtel.

2. PUBLICATION OF THE FINAL REPORT OF THE MAGNOX INQUIRY

- 2.1. The final report into the Magnox Competition was published on 4th March 2021 and outlines the findings and recommendations that have been proposed by Steve Holliday, the Chair of the Inquiry.
- 2.2. A brief summary of the report, highlighting key findings, recommendations and conclusions has been provided as Appendix A to this report for awareness.

3. CONCLUSION AND NEXT STEPS

- 3.1. An action plan on some of the recommendations made by the Inquiry will be developed between the NDA and the Department for Business, Energy & Industrial Strategy.
- 3.2. While there is no requirement for the Council to respond to the report, the Executive may wish to write to the NDA to better understand how it intends to address the recommendations.

4. ALTERNATIVE OPTIONS TO CONSIDER

- 4.1. There is no option appraisal work arising from this report.

5. STATUTORY OFFICER COMMENTS

- 5.1. Monitoring Officer/Legal Comments: This is a briefing report for Executive to note, as such, no legal implications arise from this report.
- 5.2. Section 151 Officer Comments: N/A

5.3. EIA Comments: N/A

5.4. Policy Framework Comments: N/A

6. RESOURCE REQUIREMENTS

6.1. There are no resource implications arising from this report.

7. HOW WILL THE PROPOSALS BE PROJECT MANAGED

7.1. There are no project management requirements arising from this report.

Appendix A – Holliday Report Summary

Introduction to the Report

The [Report of the Holliday Inquiry](#) (“the report” or “the inquiry”) concludes the independent inquiry into the management of the Magnox competition process undertaken by the Nuclear Decommissioning Authority (“the NDA”) between the years 2012 (when the competition commenced) and 2017 (when the NDA terminated the contract). The inquiry, chaired independently by Steve Holliday concluded the NDA as an organisation is responsible for the failures identified at each stages of the procurement exercise and subsequent activities, although senior individuals with delegated responsibilities were “variously involved”.

The report also made clear that, while the NDA is “an undoubted world leader in the technical aspects of nuclear decommissioning, this does not itself make the NDA a competent procurer”.

The full report may be read via the following link:

[Magnox Inquiry: final report - GOV.UK \(www.gov.uk\)](http://www.gov.uk/magnox-inquiry-final-report)

Principal Findings

The below sections outline the key findings and observations of the inquiry:

1. Procurement Strategy

- 1.1. The report identifies that the NDA competition team did not take ownership of developing an accurate baseline for the works to be procured. The NDA used a target cost incentive fee contract (TCIF). These contract designs incentivise the winning bidder to deliver the scope of the required decommissioning to an agreed target cost. To do this, an accurate baseline of the works needs to be described when the procurement exercise is issued and should forecast work to be undertaken between the procurement exercise beginning and when the contract completed in 2028.
- 1.2. The baseline needed to be accurate and describe works that needed to be undertaken at the time the contract was issued and forecast the work to be undertaken when the contract commences (18 months after a baseline was issued). The report finds that the NDA knew there were some “slippages” at some Magnox sites throughout the procurement and the NDA did not consider the implications this would have on the accuracy of the baseline.
- 1.3. The NDA Core Competition Team did not see it as their responsibility to resolve an incorrect baseline, and this risk was not recognised elsewhere across the organisation.
- 1.4. In addition, there was no assurance process/exercise to determine the impact of the variance between the baseline outlined in the procurement and the actual state of the sites. The report states that an “opportunity” to take the necessary action to resolve the issues was not taken by the NDA.

2. Tender Design

- 2.1. The NDA’s tender evaluation framework was deemed “unnecessarily complex” and this contributed to human error in the evaluation. The report found that there were over 700 scoring requirements, subject to 20 different evaluation methodologies. This meant that evaluators had to score around 2,800 requirements across four different tender bids.

- 2.2. There were also a large number of “thresholds” but these were deemed to be “not truly critical to the service being procured”.
- 2.3. The NDA showed transparency by providing the matrices to bidders to give a clear understanding as to how their costs would be scored. The report states that while this is legally permissible, it gave bidders the opportunity to understand what savings would secure maximum marks.

3. Bid Evaluation

- 3.1. The NDA Competitions Team changed the threshold and pass/fail points during the competition. The Inquiry believes that this was to keep the competition “alive” rather than to enable Cavendish Fluor Partnership (CFP) to win the contract. No evidence was found to suggest NDA tried to change these thresholds in order to favour CFP.
- 3.2. External legal advisors were invited to review the scores given by evaluators and review comments on the NDA’s computer system. The advisors identified inconsistencies and suggested evaluators considered their suggestions for improvement but no system was put in place to address them.
- 3.3. In addition, while the NDA Board was asked to approve the decision, they had limited awareness of the external legal review. The inquiry therefore takes the view that the NDA Board “was deprived of the opportunity” to assess the award decision or take measures to pause or undertake further checks.

4. Management of Legal Challenge and Ensuing Litigation

- 4.1. The Inquiry is convinced that challenge and litigation was “heavily determined by the CEO” of the NDA at the time. The NDA received three written complaints during the statutory standstill and the NDA Counsel provided advice to the Head of Competition. However, the report states that greater steps should have been taken and communicated to decision-makers.
- 4.2. The report finds that the approach to the ensuing legal challenge and litigation was that “the NDA should not settle, but fight any claim against it”. There was little in the way to challenge this decision. Witnesses argue that Government supported this strategy but Mr Holliday is of the view that this was in principle only and was not a direction outlined or commanded by HM Government.
- 4.3. As litigation progressed, the Board was not given a clear opportunity to react, challenge or provide direction – with the CEO resisting to settle on the basis that settling the claim would result in bad precedent for future procurements.

5. Management of Consolidation

- 5.1. It is clear from the report that accountability and responsibility for such a major procurement exercise was hazy and that “the lack of anyone senior ... dedicated to the management of the entirety of the contract, contributed to the poor management of the consolidation phase”¹.

¹ Consolidation is the process where a winning bidder can request changes to a contract to reflect any differences between what it had been told to assume (during the competition) and the actual state upon contract award.

During this phase, operational responsibility sat with the Chief Financial Officer (CFO) with executive oversight provided by the Strategy and Technology Director (who acted as SRO).

- 5.2. The report argues that while the CFO may have had some non-financial responsibilities for Magnox, the process of consolidation was not a typical task for a CFO. Because of the blurred lines of responsibility, there was little discipline and poor schedule management.
- 5.3. At the same time, the NDA Board was regularly updated of “positive progress” of the consolidation phase – despite numerous slippages and cost escalations. In short, the Board was provided inadequate exposure and oversight of the issues during consolidation.
- 5.4. Efforts at an operational level to resolve issues failed and an NDA Director and SLC representatives managed to agree a resolution but they did not follow due process.

6. NDA Governance & Accountability for Magnox

- 6.1. The inquiry concludes that while there were necessary governance arrangements in place for the Magnox competition, they did not provide a strong enough level of scrutiny and independent oversight for a competition of this size and scale.
- 6.2. The team responsible for the procurement strategy should have been made up of capable individuals with experience of running large procurement exercises. The report concludes that those involved did not have the appropriate skills or knowledge for a project of this size.
- 6.3. In addition, senior accountability and responsibility complicated the process. The removal of the Commercial Director position and resignation of the Chief Operating Officer meant that responsibility for the competition was dispensed to other executives on top of their existing workloads.
- 6.4. The report also finds that, “The Chair and Board were heavily focused throughout the process, on Sellafield”. While it is accepted that Sellafield is the NDA’s site with the greatest number of financial and safety risks, this “should not ... have been at the expense of Magnox”.

7. Oversight by UK Government Investments

- 7.1. The report takes the view that there was no specified oversight role for UK Government Investments (UKGI) during the process, despite their role as experts in corporate governance. This lack of specific role meant that UKGI were not able to provide the necessary overview and scrutiny at key decision-gates during the competition.

8. Assurance and the Major Projects Authority (MPA)

- 8.1. While the NDA sought assurance from the MPA, it did so to “seek comfort or positive confirmation of its decisions and actions” rather than to flag key risks and stopping or pausing to review these.
- 8.2. The report states that MPA methodology processes were managed by a small team, which tended to write up findings and conclusions in short timescales (3-5 days). This was the main assurance method but because of the timeframes and limited capacity of the team, assurance exercises were not able to dig deep enough to uncover problems. Had there been longer timescales, issues would have been identified.
- 8.3. Another key issue here is that MPA reports tended not to be shared in full with NDA Board or decision-makers.

8.4. The NDA adopted a culture of interpreting external assurance “in an unduly positive light”.

9. NDA Culture

9.1. The inquiry is critical of the culture within the NDA. In particular, the report finds that the NDA displayed behaviours, which were “reluctant to entertain bad news”, and there were displays of behaviour, which would seek to self-justify decisions and appear “inward looking”. This culture resulted in an unwillingness to acknowledge issues and weaknesses within the organisation, to accept external advice or respond positively to scrutiny. Any perceived criticism was likely to be met with strong challenge.

9.2. There was also recognition that the organisation failed to bring in individuals from other sectors who could bring different sets of skills and experiences to enhance the NDA’s capability.

9.3. The report finds that for a non-departmental public body, with such a large annual public expenditure and associated legal and environmental responsibilities, it was “extraordinary” that there was no legal representation on the NDA Board.

9.4. Moreover, the inquiry discovered that the NDA received a report in 2007 that tested whether existing structures and processes were in line with good practice. Holliday noted that many of the recommendations in that report are akin to the recommendations made in this Inquiry.

Recommendations

This section lists the recommendations set out for the NDA to consider. The recommendations are split into two areas. The first address recommendations that are specific to the NDA, whereas the second part are for the consideration of Government and the wider public sector. The recommendations listed below in this document focus on the recommendations to the NDA.

1. Strategic Nature of the NDA

1.1. The Department for Business, Energy & Industrial Strategy need to consider the scope of the work the NDA is accountable for delivering. The review should look at whether the current PBO/SLC model can manage the nuclear decommissioning programme in an adequate manner and whether risk can actually be passed onto the supply chain.

1.2. Other points cover how the NDA should look at its approach to attracting and retaining “world class expertise” and be an “intelligent” buyer.

1.3. The outcome of the review will result in the development of an agreed action plan with the appropriate Secretary of State.

2. NDA Organisational Capability

2.1. A “root and branch” review of the organisational structure of the NDA should take place. It should determine whether the necessary and appropriate staffing and competency levels are in place, with qualified and experienced resources across the organisation.

2.2. In addition, leadership and management roles should have greater levels of training, diversity and experience. This will foster best practice from other industries.

- 2.3. The role of General Counsel should operate at Board level. They shall also have responsibility for internal and external legal advisors and a clear route to escalate concerns on major legal or contractual issues should be put in place.

3. Oversight by the NDA Board

- 3.1. NDA needs to improve the operation of the Board. The NDA Chair should determine what skills and areas of expertise should make up the composition of Non-Executive Directors. This includes expertise outside the nuclear sector.
- 3.2. There should be greater opportunity to challenge the NDA Executive across the entirety of the organisation and not just the operations at Sellafield Ltd. In addition, SROs should be expected to update the Board regularly.

4. Oversight of the NDA by BEIS and UKGI

- 4.1. BEIS must take a more active and direct oversight role over the NDA. UKGI should be removed from day to day oversight and only be called upon by BEIS to provide any expertise advice. If UKGI are asked to provide advice, it “must have teeth” and NDA must clearly state why their advice and any recommendations are accepted or rejected.
- 4.2. The Permanent Secretary of BEIS (also Accounting Officer) should be more active in managing NDA by setting up corporate performance objectives and key performance measures as well as having annual performance objectives set by the Permanent Secretary.

5. Future Procurements by the NDA

- 5.1. The NDA must set out a “transparent, but simplified, set of competition rules” which have a greater level of focus on substance as compared to process. Procurement and Competition teams need to understand what each exercise is trying to achieve.
- 5.2. The thresholds approach by the NDA needs to be reviewed. In particular, consideration should be given to potential consequences when bidders do not meet thresholds.
- 5.3. Before tenders are released for suppliers to bid for, NDA should be fully confident that the information contained in each bid is as accurate as reasonably possible. This can reduce risk of significant cost escalation as experienced in the Magnox contract.
- 5.4. When bidders challenge or dispute issues, NDA should escalate these as appropriate to NDA Board and access independent legal and commercial advice.

6. Future Assurance by the NDA

- 6.1. Internal assurance capability and capacity should be enhanced by the NDA. Any internal or external assurance reports should clearly show the scope and limitations contained within each report.
- 6.2. NDA should develop annual assurance plans and programmes commensurate with its activities and the risks to which they give rise.

7. Developing the “right” NDA Culture

- 7.1. The report states, “The NDA has world class expertise in nuclear decommissioning, but needs to realise that nuclear is not an island”. To resolve this, the NDA needs to change its organisational culture.

- 7.2. To do this, NDA should encourage challenge and embrace “bad news” to move away from optimism bias. There should be a greater welcome of bringing concerns to the fore.
- 7.3. In the future, NDA should recognise that “assurance [is] an aid to support[ing] good decision making, not just a hurdle to be crossed”.

Conclusion

The findings and recommendations set out in this report were considered by both the Secretary of State for Business, Energy, & Industrial Strategy and the Cabinet Secretary before being published.

Holliday concludes that “responsibility” for the failings of the Magnox competition lies with the NDA as an organisation but does note that individuals who had senior management roles were involved. All of the recommendations that have been set out in the report should be the responsibility of BEIS to implement and manage.

It is also worth noting that since the publication of the interim findings in 2017, the NDA has made progress in addressing some of the recommendations set out by the Chair of the Inquiry – including moving away from the PBO operating model and reintroducing a commercial team and director to the organisation.