



33 Wigmore Street,
London
W1U 1QX
United Kingdom
www.cavendishnuclear.com

Public Accounts Committee
House of Commons
London
SW1A 0AA

28 October 2020

Dear Sirs,

Public Accounts Committee Inquiry into the Nuclear Decommissioning Authority's Management of the Magnox Contracts to decommission 10 nuclear energy sites

This letter and enclosure is submitted on behalf of Cavendish Fluor Partnership ("CFP").

We refer to the written evidence submitted by Unite the Union to the Inquiry dated 29 September 2020 (the "**Unite Submission**"), in which a number of serious allegations are made as regards CFP's bid for and performance of the Magnox Contracts between September 2014 and the end of August 2019. We also refer to the reports published by the National Audit Office in October 2017 and October 2020 (the "**Reports**").

Although the background is well-rehearsed across both of the Reports, CFP is concerned that this factual narrative is not accurately reflected in the Unite Submission. The Unite Submission contains a number of significant factual inaccuracies which CFP considers it important to correct. In order to assist the PAC in its inquiries, CFP has prepared the enclosed response to a number of issues raised in the Unite Submission (the "**Response**").

We should be grateful if the PAC would arrange to publish the Response on the UK Parliament website as soon as possible. We consider publication of the Response to be essential in order that CFP's position is fairly presented as regards the allegations in the Unite Submission.

Please let us know if we can be of further assistance.

We look forward to hearing from you.

Yours faithfully

Simon Bowen
Cavendish Fluor Partnership

Cavendish Fluor Partnership (“CFP”) Response to the written submission by Unite the Union to the Public Accounts Committee (“PAC”) dated 29 September 2020 regarding the Nuclear Decommissioning Authority’s (“NDA”) Management of the Magnox Contracts to Decommission 10 Nuclear Energy Sites¹

1. PRELIMINARY POINTS

1.1 Introductory remarks and documents referred to

- 1.1.1 This paper (the “**Response**”) sets out CFP’s position in response to the written submission dated 29 September 2020 provided by Unite to the PAC’s inquiry into the NDA’s management of the Magnox Contracts to decommission 10 nuclear energy sites (the “**Inquiry**”).
- 1.1.2 CFP reserves its right to address matters raised in the Response in further detail in due course, should that assist the PAC in connection with the Inquiry. Where matters raised in the Unite Submission are not expressly responded to in the Response, it should not be taken to mean that those matters are accepted by CFP.
- 1.1.3 We refer to the following documents in the Response:
- (A) the contract entered into between the NDA and CFP in September 2014 to decommission 10 nuclear energy sites (the “**Contract**”);
 - (B) the revised contract entered into between the NDA and CFP in August 2017, following the NDA’s decision to terminate the Contract (the “**Revised Contract**”, and together with the Contract, the “**Magnox Contracts**”);
 - (C) the written evidence submitted by Unite to the Inquiry (the “**Unite Submission**”)², in which a number of serious allegations are made as regards CFP’s performance of the Magnox Contracts between September 2014 and 31 August 2019;
 - (D) the report entitled “The Nuclear Decommissioning Authority’s Magnox contract” and published by the National Audit Office (“**NAO**”) on 9 October 2017 (the “**Report**”)³; and
 - (E) the progress report entitled “Terminating the Magnox Contract” and published by the NAO on 1 October 2020 (the “**Progress Report**”⁴, and together with the Report, the “**Reports**”).

1.2 CFP’s position

- 1.2.1 CFP notes that the purpose of the Inquiry is to revisit the NDA’s exit from the Magnox Contracts, and to ask *“the NDA how it is delivering on that and what the risks are ahead, and [to challenge] the Department for Business, Energy and Industrial Strategy...about how it is handling the plans for the future”*⁵.
- 1.2.2 Against that backdrop and as a preliminary point, CFP considers Unite’s allegations as to CFP’s bid for and performance of the Magnox Contracts to be irrelevant and unlikely to be helpful to the PAC. However, notwithstanding this, Magnox is concerned that Unite’s allegations are inaccurate in a number of very significant respects.

¹ The Magnox Contracts also related to two research sites which were originally managed by a separate site licence company, Research Sites Restoration Limited, until the two site licence companies were amalgamated on 1 April 2015.

² <https://committees.parliament.uk/writtenevidence/12446/default/>

³ <https://www.nao.org.uk/wp-content/uploads/2017/10/Full-Report-NDA-Magnox-Contract-Book-1.pdf>

⁴ <https://www.nao.org.uk/wp-content/uploads/2020/09/Progress-report-Terminating-the-Magnox-contract.pdf>

⁵ Oral evidence before the PAC on Monday 5 October 2020, <https://committees.parliament.uk/oralevidence/980/default/>

- 1.2.3 CFP wishes to make clear that, in spite of challenging circumstances, its bid for the Contract was fair and accurate; its work under the Magnox Contracts was completed to a high standard; and the scope of work required under the Revised Contract was substantially complete by 31 August 2019. This is substantiated by the Progress Report, which specifically highlights CFP's success in completing 93% of the revised scope of work under the Revised Contract. Indeed, further data reported by Magnox Limited ("Magnox") to the NDA substantiated that 97% of the scope had been completed once the baseline was adjusted for emergent scope or other valid triggers for contract change. Against the agreed termination contract milestone deliverables 87% were delivered in full, whilst the remaining 6 were substantially complete, resulting in overall contract milestone scope delivery of 98%. (see paragraph 2.5.4 below).
- 1.2.4 CFP sets out its specific objections to the more particularised allegations made by Unite below.

1.3 Factual narrative

The Reports set out the full factual narrative in relation to the issues raised by the Unite Submission. However, despite being well-rehearsed in previous publications, it appears to CFP that certain factual events have been overlooked or misconstrued by Unite, resulting in assertions which have no basis. For clarity, the salient factual points are set out below.

- 1.3.1 CFP participated in the tender process which was run by the NDA from April 2012 to March 2014 for the decommissioning of nuclear sites (the "**Competition**"). It was awarded the Contract in March 2014, which CFP and the NDA subsequently entered into in September 2014.
- 1.3.2 Prior to September 2014, the decommissioning of the relevant nuclear sites by Magnox Limited ("**Magnox**") had been managed by another contractor, Energy Solutions EU Limited ("**Energy Solutions**"). CFP therefore inherited an ongoing project from Energy Solutions and its work at the outset was shaped by the progress made as at that date by its predecessor.
- 1.3.3 During the Competition, CFP and the other bidders followed the same mandated bidding process. They received identical information about the current status of the project from the NDA (including a lifetime plan) and relied upon this information in preparing and submitting their bids. In addition, the bidders had to provide detailed evidence of underpinning and justification for a significant proportion of its submitted labour hours and third party costs (including quotations from supply chain, etc). This was to enable a fair price comparison when the NDA evaluated the bids.
- 1.3.4 It was understood by all parties that, upon entry into the Contract, the successful bidder and the NDA would carry out a consolidation exercise post share transfer to reconcile the actual project status with the expected project status set out in the bid documentation and accounted for by bidders in their bids, and any necessary adjustments to the Contract would be made.
- 1.3.5 The consolidation process resulted in the estimated cost of the decommissioning works at the time of CFP's bid (£3.8 billion) being revised upwards to in excess of £6 billion by 2017⁶. The NAO attributes a significant proportion of that uplift in cost to the NDA not having sufficient understanding of the status of the sites at the time of the Competition. The Report also notes that "*The NDA's internal audit function reported in March 2017 that there was "a risk that the NDA may have paid for work which has been incorrectly reported as completed by the previous contractor"*"⁷.

⁶ The revised estimate comprised the amount of CFP's original bid and the estimated cost of the 100+ contract changes that were deemed to be required as a result of the consolidation process. We note that not all of these proposed contract changes were approved by the NDA and incorporated into the Revised Contract before it terminated.

⁷ Paragraph 4 of the Summary of the Report (page 9)

- 1.3.6 CFP's bid for the Contract (£3.8 billion) represents an estimation of the costs expected to be incurred to complete the project, based on information as to the then-current status of the project provided by the NDA during the Competition. The revised estimate of the project following the consolidation exercise represents the revised estimation of the costs which the NDA and CFP expected to be incurred, having had the opportunity to conduct due diligence through the consolidation process. For the avoidance of doubt, neither figure represents the fee paid to CFP by the NDA for its completion of the work.
- 1.3.7 Following the High Court judgment in 2016, which ruled that the Competition run by the NDA breached requirements for public procurements under EU law, the NDA announced in March 2017 that it had decided to terminate the Contract. The NDA subsequently agreed, in August 2017, the Revised Contract, under which CFP's oversight of the project would cease at the end of August 2019.
- 1.3.8 In March 2017, the Secretary of State for Business, Energy and Industrial Strategy announced that there was to be an inquiry into the Competition, the management of the Magnox Contracts and the High Court litigation that ensued following the award of the Contract, to be chaired by Mr Steve Holliday (the "**Holliday Inquiry**")⁸. The findings of the Holliday Inquiry have not yet been published.
- 1.4 Having set out the context above, CFP makes the following specific factual observations in connection with the Unite Submission:
- 1.4.1 **Defueling completion dates**
- CFP did not have input into the calculation of completion dates for the defueling process at each site prior to its involvement in the decommissioning work under the Magnox Contracts from September 2014. Accordingly, completion dates quoted in publications which pre-date 2014 are not attributable to CFP's estimations. CFP notes in particular that the completion timetable set out at paragraph 2.9 of the Unite Submission is taken from the 9th Magnox Operating Programme ("**MOP9**"), which was published on 13 July 2012⁹. At that time, Energy Solutions was responsible for managing the decommissioning project and CFP was not involved.
- 1.4.2 CFP observes in particular that the estimated completion date taken from MOP9 for defueling at the Wylfa site was based on the assumption that power generation would cease at the end of 2015, following which there would be an estimated three month transition period before the estimated three year defueling phase could commence. However, the Wylfa site continued to generate power (and income for the NDA) for a further 12 months. Notwithstanding the deferred defueling phase, CFP notes that defueling was completed only two months later than the "lower bound" completion date referenced in MOP9.
- 1.4.3 CFP also observes that the suggestion in paragraph 2.10 of the Unite Submission that the defueling process did not complete until after the contract had ended in September 2019 is inaccurate. All reactors were fully defueled prior to the termination of the Revised Contract on 31 August 2019. Due to constraints on transporting the irradiated fuel, and on the NDA facility which receives it, physical transportation of the approved transport flasks did not take place until a short time after the Revised Contract had ended.
- 1.4.4 **Socioeconomic impact**
- 1.4.5 Unite asserts that "*the UK Government has approached the idea of planning for and supporting the growth of, cheap environmentally sustainable nuclear energy*

⁸ <https://www.gov.uk/government/speeches/nda-settlement-contract-termination-and-inquiry>

⁹ Page 9,
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457808/The_Magnox_Operating_Programme_MOP9_.pdf

*as a political football which the parties could kick into the long grass...The lack of any forward thinking to have a programme of replacement nuclear stations or even alternative energy sources, doomed local communities who were reliant upon the jobs that the power station provided and the manufacturing bases that relied upon them. There was no transition, programme of retraining, or any thought given to the workforce or their families when the stations stopped generating"*¹⁰. We make no comment in relation to any political agenda which underpins this statement by Unite (and many others in its submission). However, the suggestion that CFP acted without further thought to the socioeconomic impact of the decommissioning work is completely without foundation. The NDA sought submissions during the Competition from bidders as to how they would mitigate the socioeconomic impact of the decommissioning work, and the cessation of power generation. Subsequently, and before the Wylfa site stopped generating power, CFP oversaw a significant resourcing and retraining exercise to mitigate the impact on the workforce and their families of this transition. As part of this exercise, resourcing requirements on site were reviewed in detail and additional, appropriately qualified personnel were recruited for any vacant roles. Any exiting employees were offered support and funded training to enable them to pursue alternative employment opportunities. CFP also initiated a programme of socioeconomic support for the local populations affected by the transition to decommissioning, which provided approximately £0.5 million of funding for local community groups and projects.

- 1.4.6 The Progress Report further notes that the NDA felt that the Revised Contract with CFP *"helped to maintain a focus on the health, safety and wellbeing of people working at sites and among local communities"*¹¹.

1.4.7 **Holliday Inquiry**

The reference to the Holliday Inquiry and its conclusions at paragraph 2.12 of the Unite Submission is not understood. This paragraph appears to CFP to be purely speculative, as the findings of the Holliday Inquiry have not yet been published. CFP also observes that there has been no finding to date, through the Holliday Inquiry or otherwise, that its conduct during the Competition was improper in any respect. Accordingly, CFP considers that the implication of its wrongdoing in paragraph 2.12 is wrong and wholly inappropriate.

1.4.8 **Salary cuts**

The suggestion at paragraph 3.1 of the Unite Submission that CFP *"made assumptions that they could cut staff wages in half to save money on the eventual bid that was submitted"* has no basis in fact. CFP did not reduce the salaries of incumbent employees when it commenced work under the Magnox Contract.

1.4.9 **Bradwell site**

Paragraph 3.9 of the Unite Submission raises issues about the Bradwell site, the date upon which it was targeted to enter the "Care and Maintenance" phase and the reasons for delay. CFP observes that the status of this site as set out in the bidding information provided by the NDA during the Competition was inaccurate (as to which, see also paragraph 2.2.3 below). The actual status when CFP took over the decommissioning work in September 2014 was materially different. This necessarily delayed the date on which the Bradwell site entered the Care & Maintenance state and had the potential to delay it some 18 months beyond November 2018, when Care and Maintenance was in fact achieved. The revised strategy followed by CFP not only minimised the delay but, significantly, also delivered costs savings of an estimated £100 million.

¹⁰ Paragraph 2.5 of the Unite Submission (page 2)

¹¹ Paragraph 9 of the Summary of the Progress Report (page 7)

- 1.4.10 The reference at paragraph 3.9 of the Unite Submission to the “*lack of containers*” is dealt with more fully at paragraph 2.4 below. In relation to the Bradwell site, CFP notes that the defueling process was completed prior to CFP’s involvement. Accordingly, flask and container availability was not an issue which impacted the Bradwell programme during the term of the Magnox Contracts. For the avoidance of doubt, CFP also did not make any changes as regards the use of Ductile Cast Iron Containers (“**DCICs**”) for the Bradwell site.

2. **SPECIFIC CONDUCT ALLEGATIONS**

- 2.1 Turning to the main substance of Unite’s allegations in respect of CFP’s conduct, these appear to comprise that:

- 2.1.1 CFP submitted a deliberately low bid, ‘manipulating’ the bid process in order to win the Contract (paragraphs 3.1 – 3.5 of the Unite Submission);
- 2.1.2 CFP failed to resource the decommissioning work appropriately and ‘cut corners’ in its bid as regards the headcount for Asset Management positions, including Quality Assurance and Safety Case resources (paragraph 3.6 of the Unite Submission);
- 2.1.3 CFP’s approach to the defueling process was flawed, in particular as regards its adoption of a concrete box design (paragraph 3.8 of the Unite Submission);
- 2.1.4 CFP took advantage of the NDA’s weak bargaining position during renegotiation (paragraph 3.13 of the Unite Submission); and
- 2.1.5 Incentive payments made to CFP were not appropriate (paragraph 3.14 of the Unite Submission).

We address each allegation in turn.

2.2 **CFP’s bid was not deliberately low (paragraphs 3.1 – 3.5 of the Unite Submission)**

- 2.2.1 Unite alleges that CFP’s bid was purposefully low in an attempt to win the Competition without undertaking the level of detailed work required to make a realistic assessment of cost.
- 2.2.2 These assertions have no foundation in fact. Its bid of £3.8 billion in November 2013 was not deliberately low. Rather, it was a robust, detailed and carefully put together bid whose overall value was influenced by the following factors:
 - (A) All bidders, including CFP, had to follow the mandated bidding process which was designed to create a level playing field. They had to base their bids on the information provided, and did not have the scope to conduct their own investigations in order to give a more accurate estimate as to the likely cost of the works. CFP accordingly based its bid on information which was provided by the NDA to all bidders, including limited and managed site visits. In particular, it was a requirement that all bidders price the work according to the version of the lifetime plan provided by the NDA;
 - (B) As recognised by the Reports, the NDA’s understanding of the work required was not sufficient, and so the information provided to bidders by the NDA was similarly not sufficient;
 - (C) The Competition and the Contract were designed to incentivise reasonable costs savings through technology, innovation and industry best practice. Each method which bidders proposed to introduce costs savings had to be substantiated by supporting documentation. Accordingly, CFP’s bid was underpinned by evidence supporting the proposed costs savings.

2.2.3 **Information provided by the NDA**

CFP’s bid was substantially based on an assessment of costs which derived from information provided to CFP (and other bidders) by the NDA. Simon Bowen, the

former Chief Executive of Cavendish Nuclear Ltd, explained in his evidence to the PAC on 23 November 2017 that *"At the time of the bidding, the [bid documentation] was the only information we had available to us...Obviously, we forensically took apart the bid documentation. There were a series of visits and interviews, but these were more to test bid strategies rather than to do any detailed due diligence because that is not the way the competition was designed...All we had a chance to do was broadly look at what the sites were doing, whether or not our bid strategies would work, and ask a limited number of questions."* Mr Bowen confirmed to the PAC that when CFP put its tender in, CFP was *"really relying on the documents supplied by the NDA."*¹²

- 2.2.4 As has been recognised by the NAO in its Reports, the information provided by the NDA at the time of the Competition was inadequate and not reflective of the actual status of the project. In the absence of any due diligence, CFP and the other bidders were only able to submit bids on the basis of that information, which necessarily meant that there was a discrepancy between the bids submitted and the actual cost of the work. Unite itself recognises the inadequacies of the information which the NDA provided to bidders during the Competition – *"Unite thinks there can be little doubt that the NDA did not know the totality of the work required when it awarded the contract"*¹³. The Reports both make this same criticism¹⁴.
- 2.2.5 This is also self-evident from the NDA's own estimates for the work. The Report notes that these varied from £6.2 billion at the outset of the Competition, to £4.8 billion when it awarded the Contract, to £6 billion by March 2017¹⁵ – with £1.2 billion of the discrepancy between CFP's bid and the March 2017 estimate attributable to the NDA's *"over-optimistic assumptions about the state of the sites when it tendered the contract"*¹⁶, such that following the consolidation exercise conducted by CFP and the NDA, the estimate had to be revised significantly upwards. The NDA's estimate was further increased in July 2019 to between £6.9 billion and £8.7 billion with a best estimate of £7.5 billion¹⁷.
- 2.2.6 In these circumstances, it is clear that CFP's bid was not purposefully low, but was necessarily shaped by the specific circumstances arising from the Competition in which it was submitted. Based on the formal feedback CFP received from the NDA following the Competition, we note that with regard to cost, CFP's bid was materially in line with those of other bidders.
- 2.2.7 CFP further does not understand the extraordinary suggestion by Unite that the award of the Contract was a surprise to its senior personnel¹⁸. CFP invested significant efforts, time and resource to build a robust, credible and cost-effective bid. When asked whether he was surprised to be awarded the Contract, Mr Bowen confirmed to the PAC that *"No, we weren't surprised, but we were very pleased because we knew that it would be a tight competition... We were delighted to win it, but we were not surprised, because we put 100 of the best people that Fluor and Babcock and Cavendish have into it, with the aim of winning it"*¹⁹. Nor was CFP "not prepared": there were no resource issues beyond the managed transition and SQEP (suitably qualified experienced person) process required by the Contract, which included relocating members of the CFP team from the USA.

¹² <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/the-nuclear-decommissioning-authority-the-magnox-contract/oral/74612.html>

¹³ Paragraph 3.13, the Unite Submission

¹⁴ See, for example, Paragraph 5 of the Summary of the Progress Report (page 5), and paragraph 2.8, Part Two of the Report (page 26)

¹⁵ Paragraphs 2.7 – 2.10 and Figure 9, Part Two of the Report (pages 25 – 26)

¹⁶ Paragraph 2.8, Part Two of the Report (page 26)

¹⁷ Paragraph 13 of the Summary of the Progress Report (page 9)

¹⁸ Paragraph 3.3 of the Unite Submission (page 4)

¹⁹ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/the-nuclear-decommissioning-authority-the-magnox-contract/oral/74612.html>

2.2.8 Contract design

The bids submitted reflected the design of the Competition and the Contract. The focus of both was on making costs savings. As noted in the Report and the Progress Report, the Contract was a “target cost incentive fee” style contract, which was designed to incentivise the contractor to reduce the cost estimate for carrying out the work. The successful bidder stood to receive an increased fee where it was able to make costs savings.

2.2.9 However, it would not have been commercially sensible to bid too low. Mr Bowen explained to the PAC in November 2017 that, notwithstanding the encouragement to achieve value for money, there was contractual protection against bidders underestimating costs – it *“made no sense to bid low, because you have to pick up 25% of anything that you basically underestimate. That immediately comes off your fee, so there is absolutely no incentive to go low; if you go in low, you make less money, not more”*²⁰.

2.2.10 The Progress Report notes that the “target cost incentive fee” contract model was an inappropriate contracting strategy in circumstances where the NDA did not have a sufficiently full understanding of the work required to be carried out²¹. It further considers the transition to a “cost plus” contract model when the Revised Contract was negotiated. Under this revised model, the contractor received a capped fee for its work, assessed by reference to certain performance targets. CFP’s fee under the Revised Contract was not determined by reference to the costs savings it delivered, which the Progress Report notes *“was appropriate...because of continuing uncertainty about the decommissioning work required and the lack of time to generate efficiency savings over a two-year notice period.”*²²

2.2.11 CFP’s conduct during the term of the Magnox Contracts

CFP disagrees with the assertion at paragraph 3.1 of the Unite Submission that *“CFP’s interest was in achieving as many easy wins as possible before the deadline, to justify themselves leaving their task only partly completed”*. CFP at all times complied with the terms of the Magnox Contracts and achieved the milestones thereunder, which were set according to the lifetime plan. It is not surprising that the overall project was incomplete upon the early termination of the Magnox Contracts, as the term of the Contract was shortened from 14 years to five by the Revised Contract. Furthermore, the performance targets under the Magnox Contracts were carefully designed according to those areas established by the NDA as being higher priority to the overall project.

2.2.12 It is also inaccurate to suggest, as Unite does in paragraph 3.2 of the Unite Submission, that *“the role of CFP should not be ignored either, in the way that it was allowed to re-negotiate the work required and the way it was allowed to operate during the contract”*²³. We deal with this allegation further at paragraph 2.5 below, but note here that CFP’s conduct during the Magnox Contracts was shaped by the factors set out above, namely that the information it was given by the NDA did not reflect the work that was actually required. The renegotiation of the Contract was accordingly not advantageous to CFP, and ultimately resulted in a much-shortened contract.

2.2.13 The suggestion that the NDA could not negotiate “at the same level” as CFP is not understood. CFP notes that the NDA was represented by its own lawyers and external counsel.

²⁰ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/the-nuclear-decommissioning-authority-the-magnox-contract/oral/74612.html>

²¹ Paragraph 2.5, Part Two of the Progress Report (page 14)

²² Paragraph 2.6, Part Two of the Progress Report (page 8)

²³ Paragraph 3.2, Unite Submission (pages 3 – 4)

2.3 Resourcing to handle the work undertaken was sufficient (paragraph 3.6 of the Unite Submission)

2.3.1 The allegation at paragraph 3.6 of the Unite Submission is also inaccurate. In brief, Asset Management personnel do not typically include either Quality Assurance or Safety Care personnel; these two categories of resource were included in the central function and the headcount for both would have been included elsewhere in the bid.

2.3.2 CFP acted promptly to resolve any issues with resourcing which arose as a result of the changing scope of the work, following the commencement of the consolidation exercise. Where a need for additional resource for existing work was identified, such resource was procured through a supply chain partner (or if a new requirement for a dedicated resource, the creation of the additional positions would have been subject to a process to establish a business need). We refer again to Mr Bowen's evidence given to the PAC in November 2017, where he stated that *"We had 300 people working on consolidation. We went back into our parent organisations to increase the number of people involved, and we drew in extra people from Magnox to make sure we did it. In terms of lessons learned, could we have started that a bit earlier? Yes, we probably could, but it was a very substantial piece of work."*²⁴

2.4 Approach to defueling and waste disposal was not flawed (paragraph 3.8 of the Unite Submission)

2.4.1 Paragraph 3.8 of the Unite Submission appears to conflate the defueling process with the waste disposal process which are distinct from one another and require the use of different materials and tools.

2.4.2 Spent fuel extracted from the reactors can only be transported in M2 flasks. DCICs and concrete boxes are not licensed for fuel transportation, and it has never been suggested by CFP that an alternative to the M2 flasks should be used for this purpose.

2.4.3 DCICs and concrete boxes are used for the consignment of nuclear waste. DCICs were not abandoned by CFP; they in fact remained in use throughout CFP's tenure where they were the most appropriate container for the type of waste being consigned. To CFP's knowledge, they remain in use at the Magnox sites today.

2.4.4 Under the Contract, CFP was incentivised (as detailed at paragraph 2.2.8 above) to reduce costs. In the context of waste consignment, the introduction of the concrete box (where appropriate) presented such an opportunity. There were also manufacturing obstacles (whereupon the sole supplier of DCICs was potentially unable to continue production) which prompted the change. The introduction of concrete boxes is estimated to result in a saving of £200 million over the lifetime of the decommissioning project and, following an extensive approval process, was endorsed by the NDA.

2.5 Contractual changes and contract termination were neither engineered by, nor advantageous to, CFP (paragraph 3.13 of the Unite Submission)

2.5.1 Unite makes the concerning allegation that CFP had *"an almost once in a lifetime opportunity to renegotiate the contract on their [CFP's] own terms, given that they had made such a low and unrealistic bid initially"*²⁵. It is unclear whether Unite is referring to the contract changes required as a result of the consolidation process, or the negotiation of the Revised Contract, as there has never been a full-scale re-negotiation of the Contract. Either way, this seriously

²⁴ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/the-nuclear-decommissioning-authority-the-magnox-contract/oral/74612.html>

²⁵ Paragraph 3.13 of the Unite Submission (page 5)

- mischaracterises those contract changes and/or the termination of the Contract, and the negotiation of and entry into the Revised Contract.
- 2.5.2 Taking the contract changes first, and as noted above, it was always anticipated by the parties that adjustments would need to be made to the Contract during the consolidation process. It was not advantageous to CFP to make a significant number of those changes because (as indeed turned out to be the case), too many contract changes and too great an increase to the overall cost of the tendered contract would be a breach of procurement law. Thus, the NDA decided to terminate the Contract in March 2017. Even if that had not been the case, contractual changes must be approved in accordance with the mechanism specified in the applicable Magnox Contract by the NDA²⁶; the Progress Report notes the delays and difficulties associated with this complex process, and that this meant that *"the long-term work plan was no longer up to date and became a less reliable measure of the condition of the sites and decommissioning process"*²⁷. This was in no way advantageous to CFP.
- 2.5.3 Turning to the termination itself, and as noted above, this was driven by a likelihood that public procurement law requirements would be breached by the volume of contract changes and ensuing increase to the cost of the Contract (as noted by the Progress Report²⁸). Neither the fact of significant amendments being required, nor the material inadequacy of the NDA's contemporary knowledge necessitating such amendments, were known to CFP at the time it submitted its bid.
- 2.5.4 The termination of the Contract was certainly not commercially advantageous to CFP. CFP was in fact incredibly disappointed following the NDA's decision to terminate the Contract, as previously expressed to the PAC²⁹. Under the Revised Contract, CFP's potential fee for carrying out the work was capped (which it had not been before) and the period for which it was contracted to undertake the decommissioning works reduced from 14 years to 5 years. Notwithstanding the revised timeline and difficulties that presented, CFP delivered 97% of the scope (once the SPI baseline of 0.93 had been adjusted for emergent scope and other valid contract change.) Against the agreed termination contract milestone deliverables 87% were delivered in full, whilst the remaining 6 were substantially complete, resulting in overall contract milestone scope delivery of 98%.
- 2.5.5 Notwithstanding the challenges highlighted above, we note that CFP/Magnox nevertheless achieved a significant amount in the five year period to August 2019. Examples of notable successes are set out at paragraph 2.14 of Part Two of the Progress Report, including the Bradwell site moving into Care and Maintenance (which was a first for the UK nuclear industry).
- 2.6 **Incentive payments made to CFP were appropriate (paragraph 3.14 and 4.1 of the Unite Submission)**
- 2.6.1 The Unite Submission claims that the amalgamation of Magnox and Research Sites Restoration Limited ("**RSRL**"), which was intended to lead to the introduction of a single management system, did not in fact achieve that aim. Instead, Unite alleges that a parallel management system continues to exist within Magnox³⁰.

²⁶ See paragraph 2.2, Part Two of the Report (page 23)

²⁷ Paragraph 3.7, Part Three of the Progress Report (page 24)

²⁸ Paragraph 1.5, Part One of the Progress Report (page 12)

²⁹ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/the-nuclear-decommissioning-authority-the-magnox-contract/oral/74612.html>

³⁰ Paragraph 3.14 of the Unite Submission (page 5)

- 2.6.2 This allegation is wholly without foundation. There was no duplication of the management team as between Magnox and RSRL. The two RSRL sites were treated as if they were Magnox sites, managed by one single executive management team, with a single IT platform and ERP system for all sites.
- 2.6.3 CFP observes more generally that it was not paid a fee for any aspect of the project which was not properly completed and approved by the NDA in accordance with the mechanism in the applicable Magnox Contract. Further, the NDA's assessment of whether CFP had met the performance targets under the Revised Contract was fully tested by the NAO. The Progress Report explains how the NAO reviewed a sample of 11 of the 97 interim milestones, and concludes positively "*that the NDA challenged the evidence CFP provided and, on several occasions, requested further documentation before approving the Milestone*"³¹.

3. CONCLUDING REMARKS

- 3.1 For the above reasons, CFP rejects the assertions made in the Unite Submission.

27th October 2020

³¹ Paragraph 3.10, Part Three of the Progress Report (page 25)