

27th April 2018

The Chairperson
Public Accounts Committee
Parliament of Fiji
Government Buildings
Suva

Dear Sir

Re: Clarification of Issues – Audit Report on Economic & Infrastructure Sector 2016

Your letter dated 20th April 2018 refers.

With respect, the committee must note that there were three outcomes as per the Cabinet decision CP (05) 310. These were as follows:

- I. Ratified that Civil Aviation Authority of Fiji Islands (CAAFI) and Fiji Airports (FA) reimburse the Fiji Meteorological Services (FMS) 50% meteorological **aviation costs** of Nadi Terminal, Nausori International and En-route only and back dating the same to July 1997.
- II. Approved the sum accrued by FMS for domestic aviation charges to 31st May 2005 be written off following the finalization of audited accounts; and
- III. **Approved that a review to be funded by FMS** of the structure of costs to be undertaken and that a contract should be entered into between FMS Office and FA for the provision of weather services to the aviation industry with effect from **01st January 2006**.

FA paid all outstanding amounts as required by the first outcome. Please note that the order was retrospective.

The third outcome highlighted the requirement for an independent study to be carried out by FMS to determine the Aviation cost attributable to the aviation sector with effect from 1st January 2006. The third outcome of the Cabinet decision was forward looking – for the future. FMS failed to undertake the review exercise and honor the cabinet decision. The cost review is yet to eventuate.

In January 2008 FA wrote to FMS advising FMS that FA will pay \$50,000 per month until such time the cost review as per cabinet directive was conducted. Letter attached for your reference as Attachment 1.

Please note that FA provides the following additional services to FMS in addition to the monthly \$50,000 fee:

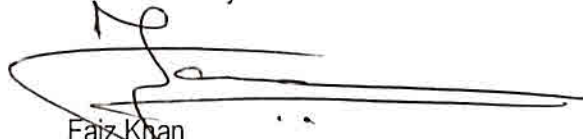
#	SERVICES	ASSETS	REMARKS
1	Regional OPMET (Operational Meteorology) Databank	COMSOFT AMHS System	Under ICAO, Nadi is an Asia/Pacific Regional OPMET Databank. This responsibility is performed by Fiji Airports as an ANSP
2	Dissemination of Met bulletin (METAR, TAF & SIGMET) message globally over the AFTN/AMHS	COMSOFT AMHS System	Under ICAO, Nadi AFTN Communication Centre managed by FA as an ANSP is responsible for disseminating this Met bulletin globally over the AFTN/AMHS message system.
3	FIS aerodrome weather observation	ATM FIS Officer at Labasa, Savusavu, Matei & Rotuma airport.	Provide weather observation for FMS during watch.
4	Pilot Reported Weather (AIREP) Reports	COMSOFT AMHS System	All pilot reports (HF and CPDLC) in the Nadi FIR contain weather reports which are passed to Fiji Met.

The above services provided by FA to FMS at cost to FA will form part of the cost review exercise.

FA and FMS resumed discussions in May last year regarding a Service Level Agreement (SLA). The draft SLA was submitted by FMS to the Solicitor General's (SG's) Office for review. The SG's Office reminded FMS that review of costs needs to be completed before any SLA can be entered into by the parties. Please refer to attachment 2.

We do hope that the above clarifies any misunderstanding.

Yours faithfully



Faiz Khan
Executive Chairman

7/6/2/5



File
Attachment 1

April 15, 2008

The Director of Meteorology
Fiji Meteorological Services
Private Mailbag
Nadi Airport

Dear Sir

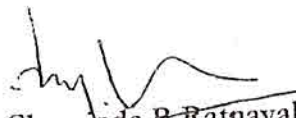
Reimbursement of operating expenses incurred by the Department of Meteorology

The cabinet decision CP (05) 310 of 16th August 2005, directed both CAAFI and AFL to reimburse 50% of Meteorological Aviation costs in relation to the Nadi, Nausori terminal and the en route. However, AFL to date has borne this expenditure without any contribution from the regulator.

The cabinet paper also highlighted the requirement for an independent study to be carried out by FMS to determine the aviation cost attributable to the aviation sector by 1st January 2006. The reimbursement of expenses beyond January 2006 was to be based on the outcome of this independent study. As you are aware despite our combined efforts to date this has failed to materialize and the company continue to reimburse 50% of FMS operating expenses whilst having no control of the costs incurred or the efficiency of such costs. Further AFL's offer to finance the proposed study is ample evidence of its commitment towards a reasonable settlement to this issue. You will also note that the current practice is in contradiction to the above cabinet decision which requires both AFL and CAAFI to reimburse 50% of the aviation costs and not the operating expenses incurred by the department.

This letter serves to inform your office that commencing from January 2008 AFL will only reimburse a fixed amount of \$ 50,000 per month until such time an independent study is carried out to determine the cost related to the aviation sector. A separate study will then be required to decide on the cost apportionment between CAAFI and AFL. The cabinet decision is attached for your kind attention.

Thank you,
Yours faithfully
Airports Fiji Limited


Chaminda B Ratnayake
General Manager Finance

MEMORANDUM

Attachment 2

Recd: 17/01/18	
To	15/1
From	STDDMS
Subject	AFL (TSC)

copy
copy

From: The Solicitor-General

Phone: 330-9866

To: Permanent Secretary for Rural and Maritime
Development & National Disaster Management

Date: 9 January 2018

Subject: Vetting of the Service Level Agreement between Fiji Meteorological
Services & Airports Fiji Limited

"CONFIDENTIAL AND LEGALLY PRIVILEGED"

Attention: Raijili Bakewa

1. We refer to your 8 November 2017 memorandum, our 9 April 2017 memorandum ('Our memorandum'), and your 30 October 2017 memorandum ('Response memorandum') in response to Our memorandum and subsequent email correspondences seeking our assistance in vetting the above service level agreement ('Agreement') between the Fiji Meteorological Service ('FMS') and Airports Fiji Limited ('AFL').
2. We acknowledge and thank you for providing the requested documents and clarifications.
3. Your suggestion in Item 2 of your Response memorandum suggesting that the Agreement expire in 3 years from date of signing or as varied by both parties (in writing) is acceptable.
4. Items 3 & 4 of your Response (to paragraphs 3 and 4 of Our memorandum) is inadequate. A service level agreement is a contract, and Menzies J in *Hall v Busst* (1960) 104 CLR 206, 232 stated: "the starting point in considering this must be that there can be no binding contract...without agreement as to price." Nor is an agreement to agree in the future (about price) enforceable (as the contract will be uncertain or incomplete). (See Maugham LJ in *Foley v Classique Coaches Ltd* [1934] 2 KB 1, 13.
5. In this regard, the recommendation in your Response that the Agreement be agreed in its present text before an independent party is engaged to conduct a cost benefit analysis (and that the cost component analysis is to be a separate exercise) is improper as it "puts the cart before the horse".
6. Either the cost analysis is done first (and inserted into the Agreement) or the Agreement has a detailed (and *binding*) mechanism within the contract for determining the costs and reimbursements by the various parties.
7. Also we reiterate what was stated in Our memorandum, in particular, paragraphs 2-5.

8. We have also sought clarifications as highlighted in the Agreement. Please find attached a final track changed copy of the document. Once clarifications sought by this Office have been received, we may continue with the final vetting of the Agreement.
9. Should you require further clarification, please contact the undersigned.

Thank you.



Arshad Ali
Legal Officer
for THE SOLICITOR-GENERAL

Attachment(s): clean copy of the Agreement finalised by the Office of the Solicitor-General dated 9 January 2018.