

LEGISLATIVE COUNCIL

C960

QUESTION WITHOUT NOTICE
(Of which some notice has been given)

Tuesday, 3 December 2013

Hon Kate Doust to the Leader of the House representing the Minister for Finance.

I refer to question without notice 881 and ask:

Can the Minister please outline all improvements made for the internal processes to reduce the risk of engaging builders who are not financially viable to undertake government projects?

I thank the Hon. Member for some notice of this question.

I table the attached document.

M Nathan

Construction Subcontractor Investigation

Small Business Commissioner's Report Recommendations and Current Status

8A - I recommend that there be a more robust approach by Building Management and Works (BMW) in its requirement for provision of prequalification documentation by applicants. **Complete** - The new arrangements commenced on 1 September 2013.

8b - I recommend that a system assigning relevant weight to information provided by applicants for prequalification be established, with greater weight being assigned to financial capacity, performance history and technical expertise. **In Progress** - Implementation is scheduled for January 2014.

8c - I recommend that consideration be given to methods of obtaining better "real-time" financial assessment. This could, for example, include seeking credit references, conducting more detailed Dunn and Bradstreet searches, obtaining references in relation to technical expertise, past project completion and the number of projects on the books. **Complete** - The new arrangements commenced on 1 September 2013. In addition, two external providers have been appointed to undertake business risk assessments.

8d - I recommend the cost benefit of ascertaining the total financial exposure of a head contractor at prequalification be considered. **Complete** - The majority of the new arrangements commenced on 1 September 2013. **In Progress** - Implementation is scheduled for January 2014. An external consultant has been engaged to review BMW's business risk assessment processes, including secondary ratios for financial assessment.

9a - I recommend a further detailed review into the Aveley Primary School project be conducted to assess the reasons for the apparent failure to impose the conditions identified by the BRA team. Consideration should be given to involving the Auditor General in this review. **Complete** - The new governance arrangements dealing with the assessment of prequalification applications and contract award recommendations were strengthened in July 2013. **In Progress** - The review of the Aveley Primary School project is scheduled to be completed in December 2013.

9b - I recommend that BMW review the level of expertise and experience of persons engaged in project manager roles. **In Progress** - Staff training commenced in August 2013 and is ongoing.

9c - I recommend that BMW develops practices and procedures to ensure that BRA conditions are communicated to relevant decision-makers and stakeholders and included in business risk documentation, and that there is accountability for their implementation. **Complete** - The new arrangements commenced on 18 July 2013 and further improvements were implemented on 1 September 2013.

9d - I recommend that a review of commercial best practice in relation to assessing risk and awarding contracts in the construction industry be conducted, including what represents "value-for-money". Consideration should be given to funding the Building Commissioner to conduct such a review. **Complete** - The review was completed in February 2013. BMW's 'Value for Money' policy was launched in July 2013. **In Progress** - Investigation of two-stage tendering. Report scheduled for May 2014.

10a - I recommend that as standard practice, BMW monitors and conducts random audits of the use and veracity of statutory declarations made by head contractors, and head contractors be made aware that this will be undertaken as standard BMW practice by including details in prequalification package and tender documentation. **Complete** - Spot checks were introduced on 1 September 2013.

10b - I recommend that consideration be given to referring all suspicious statutory declarations to a person at BMW assigned the task of monitoring payment performance and, that person, under the supervision of the delivery manager, refer non-compliant statutory declarations to the Western Australia Police for investigation, and liaise with the Western Australia Police in respect of investigation and prosecution. I understand that BMW has had preliminary discussions with the Western Australia Police and it has indicated a willingness to assist in this regard. **Ongoing** – has been done since mid-2012. The Police have charged Mr Warren Sizer (of Sizer Builders Pty Ltd) with two counts of obtaining a benefit by deception in the order of \$7.7 million. Mr Sizer appeared in court on 16 October 2013.

10c - I recommend that BMW considers adopting, as a matter of policy and practice, a more robust use of AS2124-1992 clause 43 provisions to withhold payments, and to obtain its own legal advice in respect of:

- i. whether payments withheld under clause 43 may be held as funds of a stakeholder or as an equitable set-off; and
- ii. options available at law to protect payments to subcontractors from being treated as preferential payments by liquidators

Complete - The State Solicitor's Office has previously advised that a more robust or broader use of clause 43 is not possible. **In Progress** - The trial of project bank accounts commenced on 11 November 2013 and is ongoing.

10d - I recommend a communication strategy to all industry stakeholders raising awareness and understanding of BMW policy, practices and processes in relation to monitoring of payment performance, auditing of statutory declarations and the withholding provisions of AS2124-1992 clause 43. **Complete** - The education and awareness package developed in conjunction with the Building Commission and the Small Business Development Corporation was released in August 2013. Industry forums were delivered in October 2013 and a 'Contracting with BMW' program commenced in November 2013 and is ongoing. A provision in BMW AS2124-1992 construction contracts that requires head contractors to pass on information to subcontractors on the rights and responsibilities of industry participants was included from November 2013.

11a - I recommend that BMW considers establishing a central register of subcontractor complaints to be managed by the BRA team. **Complete** - November 2012.

11b - I recommend that BMW considers establishing a process to investigate claims of non-payment made by subcontractors, which may include a requirement for proof of payment to match with any submitted statutory declarations. **Complete** – January 2013 and supplemented with spot checks since September 2013.