

PUBLIC TENDERS, PERTH URBAN RAIL CONTRACT

**827. Mr JOHNSON to the Minister for Planning and Infrastructure:**

I refer the minister to her response to my question without notice yesterday when she said that the Perth urban rail group had cleared a \$4 million extension of an existing contract with its probity auditor.

- (1) Is the minister aware that the probity auditor does not have jurisdiction to overrule State Supply Commission policies that require a public tender to be called for all purchasing over \$50 000?
- (2) Does the earthworks contract fall into a unique category, such as a sole supplier or emergency situation, which may warrant the waiving of the usual tender rules?
- (3) In the light of the minister's past calls for a probe into Main Roads and Westrail contracting, how does she now explain the flouting of tender rules by her agency?
- (4) Can the minister explain the basis upon which she made claims in the media that a \$2 million saving had been achieved on this contract, when the marketplace has not been tested?

**Ms MacTIERNAN replied:**

- (1)-(4) I genuinely thank the member for this question because it has saved me the need to provide the information under Standing Order No 82, which was my intention. I indicated yesterday that as the member for Hillarys had not put the question on notice, I did not have a full response. I now have a full response to his question. The contract was not issued without first going through a tender process; the contract was varied.

Ms Hodson-Thomas: It is a big variation, minister.

Ms MacTIERNAN: Yes, it is a substantial variation. I know that members are vitally interested in this matter. I am more than happy to go through it if they give me the opportunity to do so, because some interesting issues arise. The original contract, which was granted to Brierty Contractors, was for the performance of earthworks between Currabine and Nowergup. Those earthworks were preparatory to the construction of the northern suburbs rail extension. At the time the contract was issued we were operating under the tender that had been prepared by the previous Government for the railcars. Under that proposition, there was going to be a public-private partnership for the railcars. I know that the Leader of the Opposition is now opposed to PPPs, but it appears that when he was in government he supported PPPs. Under that arrangement, the construction of the railcar depot would have been the responsibility of the private railcar provider. When the Government determined, after some solid advice from the Western Australian Treasury Corporation and the Crown Solicitor, that it would cost tens of millions of dollars more to use private funding for the railcar procurement, it stepped away from that. We determined that public sector financing would be used for the purchase of the railcars. That meant that we had to build the depot ourselves. The earthworks were being done from Currabine to Nowergup.

Mr Johnson: How much was that?

Ms MacTIERNAN: It was between \$10 million and \$12 million.

Mr Johnson: You said it was \$10 million.

Ms MacTIERNAN: That is right.

Mr Johnson: You have given an extension worth nearly 50 per cent of the original contract.

Ms MacTIERNAN: The Government gave a \$4 million extension. I will set out the reasons for that. The work was not anticipated, but it needed to be done. Technically speaking, under the Public Works Act, the Western Australian Government Railways is not bound by State Supply Commission guidelines. However, in this instance the Perth urban rail group expressly turned to the State Supply Commission guidelines to make a determination about whether it should go out to tender or just vary the contract. Members should bear in mind that the contract had been let only some 11 months earlier, and had been the result of extensive testing of the market - there were nine tenderers. The group had a good idea about the market.

The State Supply Commission guidelines are very useful in this regard. They say that an agency must consider the following factors: whether returning to the market is likely to result in a better price to the Government through the open competitive process, including consideration of the cost of tendering; if the works are of a similar nature to the scope of the original contract works; whether issues of program urgency would be adversely affected by the time needed for tendering -

Mr Johnson: None of those factors would apply.

Ms MacTIERNAN: They do apply. Other factors that the guidelines must take into account include: the performance of the current contractor must be considered in meeting their obligations; user satisfaction; effectiveness of the contract; developments in the market place; competitiveness of the current contractor compared with other suppliers; and costs associated with re-tendering.

The Perth urban rail group has specifically gone through these guidelines. It made an assessment because the contractor was at the site with all the plant and equipment and because eleven months ago that contractor had proved to be the most cost-effective provider of such services. Therefore, a recommendation was made to the acting commissioner of the WA Government Railways Commission that work should be delivered by a variation. If members opposite want to refer this matter to the Auditor General, I am more than happy for them to do so. However, they will find that the State Supply Commission guidelines have been expressly dealt with.