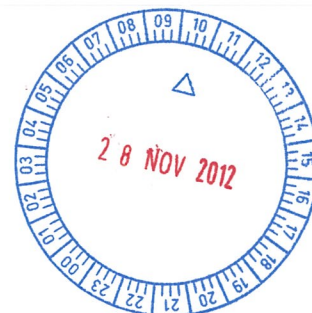




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Ms S Parsons
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Standing Committee on Estimates and
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Locked Bag 11
CLOISTERS SQUARE WA 6850

Dear Ms Parsons

2011/12 AGENCY ANNUAL REPORT HEARINGS – TRANSCRIPT OF EVIDENCE

Thank you for your letter dated 14 November 2012. I have one minor correction to the transcript on page 18. However, having read through the transcript of evidence that I provided to the Committee at the public hearing held on 12 November 2012, I am of the opinion that there are a number of evidentiary matters which I would like to clarify.

On page 3 of the transcript, in response to a question from the Hon Kate Doust, I noted that *"...any tender that we award over \$300,000 has to be awarded or is only available to pre-qualified contractors."*

I would like to clarify that the prequalification scheme only covers all *major non-residential building works* tenders over \$300,000. Generally, this includes all new construction or major additions and refurbishment projects. Examples of work not covered by the scheme include forward works, fitouts, programmed maintenance and minor works.

On page 5 of the transcript, the Hon Ljiljana Ravlich asked about the Department of Finance's Building Management and Works' (BMW) tendering documents, citing clause 12.6 *"Security of Payment/Construction Contracts Act"*.

I would like to clarify that the document referred to is not a tendering document but is in fact the *BMW Builder's Information Pack – Builder's Prequalification Scheme for Works Contracts (23 August 2012)* which is available for download from the Department of Finance's website.

On page 6 of the transcript, in response to a question from the Hon Philip Gardiner, I noted that *"...if the head contractor does go broke in the middle of the project, the state is covered for any financial loss that it has there."*

I would like to clarify this response in that the State is covered for *some* financial loss, generally up to 5 per cent of the contract value. This is because the terms of BMW's contract requires the head contractor to provide 5 per cent of the contract value as performance security, half of which is released when practical completion is achieved.

On page 7 of the transcript, in response to a question from the Hon Philip Gardiner, I noted that the payment terms under the *Construction Contracts Act* was 55 days.

This is incorrect. Under the *Construction Contracts Act*, the maximum payment term allowed under a construction contract is 50 days.

On page 8 of the transcript, in relation to bank guarantees, the Hon Ken Travers asked "*At any given point in time it would only cover the amount prepaid by the state to the builder prior to the work being completed?*".

I would like to clarify that BMW does not "pre-pay" builders. The general process is for the builder to carry out the work first and then claim payment for the work carried out (usually monthly). BMW's project consultant then assesses the value of works carried out and the amount to be paid to the builder is then certified by the project consultant. BMW then pays the builder subject to receiving statutory declarations that all subcontractors have been paid all moneys due and owing.

On page 9 of the transcript, in response to a question from the Hon Ken Travers, I noted that BMW was now "... *looking for a higher amount of working capital and net tangible assets.*".

I would like to clarify that the minimum benchmark of working capital and net tangible assets that a contractor is required to have has not increased; rather BMW has become more stringent about the level at which it seeks deeds of guarantee where a builder does not meet the minimum financial criteria, and also the level beyond which no risk mitigation measures sufficiently address the level of risk posed by a contractor.

To expand further, BMW assesses a contractor's financial capacity through various financial ratios, including working capital and net tangible assets. When prequalifying builders, BMW applies a 10 per cent working capital ratio and a five per cent net tangible asset ratio as benchmarks for satisfactory financial capacity. Where a contractor does not meet these benchmarks, BMW applies risk mitigation strategies appropriate to the level of risk posed. These include seeking deeds of guarantee from directors or owners of the contractor. Over the past year, and at least from March 2012, BMW has been more stringent in requesting deeds of guarantee where a contractor does not meet the minimum benchmarks, due to the softening market.

On page 11 of the transcript, in response to a question from the Hon Ljiljana Ravlich, I was unable to confirm whether a prequalified builder's payment performance formed part of its performance assessment.

I can now confirm that BMW's contractor performance reporting does include a section on management of subcontractors including payment performance. This has been in place for many years, including before 2008.

On page 12 of the transcript, the Hon Kate Doust asked whether simple non-payment issues were referred to the Building Commission.

I would like to clarify that all non-payment issues are dealt with by the *Construction Contracts Act*. BMW generally informs all callers who are not paid of the existence of the Act and provides contact details of the Building Commission.

Yours sincerely



Jennifer McGrath
ACTING EXECUTIVE DIRECTOR
BUILDING MANAGEMENT AND WORKS

26 November 2012