

## QUESTION ON NOTICE

NO. 956

Asked on 31 August 2004

MISS SIMPSON asked the Minister for Transport and Main Roads (Mr Lucas) -

### QUESTION:

With reference to the Estimates Hearings on 20 July 2004 when I asked whether the contractor awarded a major sound barrier contract to Noise barriers Pty Ltd trading as Fenco, which is now under external administration with debts of approximately \$3.3m and at the time he said the director-general was investigating this matter and given the time that has passed –

- (1) Will he confirm whether the contract awarded for this major sound barrier was to Noise Barrier Pty Ltd trading as Fenco, which is now under external administration with debts of approximately \$3.3m?
- (2) What due diligence processes are in place in relation to the awarding of contracts by Main Roads, given that in this case the insolvency report claims that the company was insolvent as at 30 June 2003?
- (3) Will the Minister confirm whether the company (Noise Barrier Pty Ltd) was insolvent when awarded Main Roads Department contracts?

### ANSWER:

I thank the Member for Maroochydhore for the question.

- (1) Noise Barrier Pty Ltd went into voluntary administration on 11 March 2004. At that time, the company was completing two noise barrier contracts for Main Roads. One contract was on the Gateway Arterial Road (near Mt Petrie Road) and the other was on the Gympie Arterial Road (near Kildonan Street). These contracts were awarded on 31 July 2003 and 29 May 2003 respectively.

The administrator's report to creditors indicates that the cause of the company's problems was its inability to get a supply of a critical noise barrier component for a lengthy period. This caused lengthy delays to all projects being undertaken by the company which in turn adversely affected the company's cash flow.

The administrator's report recommended the execution of a Deed of Company Arrangement and was agreed to by creditors. A new company Fenco Noise Barriers Pty Ltd was subsequently formed. Main Roads agreed to the assignment of their existing noise barrier contracts with Noise Barrier Pty Ltd to the new company. As stated in the administrator's report to creditors, assignment of these contracts allowed an additional \$177,478 worth of invoicing to flow to the company.

This in turn provided a greater benefit to creditors than if Main Roads and Queensland Rail had terminated the contracts. Assignment of the contracts also benefited Main Roads. The alternative ways of completing the projects would have involved considerable delays and administrative effort, and additional costs to Main Roads. The work had already been put to the market and if the remainder had been re-tendered the benefits of the pricing in the original tenders would have been lost.

(2) Tendering and awarding of all Main Roads' contracts is conducted in accordance with the State Purchasing Policy requirements and Main Roads' purchasing procedures. Contractors who seek to tender for major road and bridge construction projects for Main Roads (usually where the value is greater than \$300,000 and up to \$30m) are required to be prequalified, that is, only contractors who have been assessed by Main Roads against certain prequalification criteria, are eligible to tender for major projects. A prequalification system known as the Major Works Prequalification System has been developed and in operation since the mid 1980's. This allows Main Roads to manage the risk in dealing with contractors who may not be technically or financially capable of completing road and bridge construction projects by examining the company's financial, managerial and technical resources, and past performance. A review of a prequalified contractor's financial position and resources is also carried out before a tender is awarded.

If the contract is for the supply or construction of certain high cost or high risk products such as asphalt or precast concrete components, the suppliers of these products are registered by Main Roads.

A number of roadworks contracts are for what is termed "minor works" where the value is relatively low, generally less than \$300,000. For example, services relocation, guard-rail installation, noise barrier erection, road safety improvements, are normally carried out as minor works contracts. Generally, the risks with these smaller scale contracts has been relatively low and contractors undertaking these works have not been required to be prequalified, although in the case of noise barriers, contractors are required to have pre-approved noise barrier systems to ensure that the noise barriers meet certain technical standards required by Main Roads. There is currently no mechanism for assessing the financial capabilities of such contractors, nor is there a mechanism to alert Main Roads as to a contractor's uncertain financial state either before or after awarding a contract. The cost of administering the full prequalification system (which includes an assessment of financial capability) for smaller contracts is not warranted given the low risks generally associated with these smaller contracts.

Main Roads is now expanding the pre-approval process for noise barrier systems to a registered supplier scheme. This scheme will continue to pre-approve the noise barrier systems used but will also allow Main Roads to assess a contractor's operational and management systems, managerial and technical resources and past performance. For larger noise barrier contracts, it is proposed that it be a condition of tendering that tenderers will be required to submit financial information along the lines of that specified in the Major Works Prequalification System and satisfy certain financial criteria depending on the value of the contract.

This will give greater protection to the department against the risk of contractors experiencing financial problems on larger noise barrier contracts.

Notwithstanding the above, the procurement practices of Main Roads are subject to examination by the Queensland Audit Office during its annual review of the department's financial statements.

(3) The insolvency or otherwise of a company at a particular point in time is a question of accounting and legal opinion that would be determined by a liquidator in court proceedings.