

## **Q&A from PBA Industry Briefing on 21 June 2019 and 21 July 2019**

### **Question 1**

Question: With regard to setting up the PBA, will there be a project bank account for each contract?

Answer: There will be a PBA for every contract \$1.5 million (incl GST) and above. Every contract will have its own Project Bank Account. For example, if you have 20 contracts with Main Roads each valued greater than \$1.5million, there will be 20 project bank accounts.

### **Question 2**

Question: If we have a contract greater than \$1.5 million, and there are no subcontracts anticipated that are greater than \$20K, would we have to set up a PBA?

Answer: Yes, a PBA will be required to be arranged, as a supplier or subcontractor may want to opt-in into the PBA payment process.

### **Question 3**

Question: Is there any chance that this \$1.5million is going to be increased at all?

Answer: At this stage, PBAs will be required for contracts > \$1.5 million. The intention is to have Statutory Trust Accounts in the near future, which will replace the PBAs.

### **Question 4**

Question: We got a job that is partially subcontracted and partially self-performing. Is there a proportion of how much of the subcontract and self-performing work applies to the PBA? How do we pay our staff?

Answer: All Main Roads payments [where the Contract value is greater than \$1.5 million, and participating subcontractors' contract value is greater than \$20K] will go into the Project Bank Account. Moneys will then be dispersed via the Project Bank Account into the Head Contractor's ordinary account and participating subcontractors' accounts. With the payment made to your account, you will pay your staff as you would normally do.

### **Question 5**

Question: How are you going to pay open-ended subcontractors who have schedule of rates only and do not have fixed contract value?

Answer: With regard to hire contracts such as plant hire or labour hire, the PBA will not apply. In Construction Contracts, even if the initial subcontract value is less than \$20K at the time of award, once the subcontract value crosses this limit of \$20K, the head contractor will have to start paying that subcontractor through the PBA. This means, though the subcontractor was paid directly by the head contractor previously outside the PBA, the head contractor will have to include that subcontractor in the PBA payment process. For this, you will have to start the PBA establishment process of signing up with trust deed poll, PBA agreement with Main Roads, and start providing the payment documents such as Payment Report, Payment Instructions to Main Roads during monthly payment runs.

This applies only to new contracts from 1 July 2019, not to existing contracts.

### **Question 6**

Question: Do PBAs apply to the panel contracts?

Answer: No. Not at this stage.

### **Question 7**

Question: If a subcontractor has a better payment term and if it needs upfront payment as part of the subcontract, does the PBA apply to that situation or is it about 'pay the subcontractor when head contractor is paid'?

*Answer: A Head Contractor is able to pay the subcontractor whenever needed. PBA allows direct deposit of money by the head contractor so they can pay the subcontractor directly, say in 14 days payment terms. However, all payments to the subcontractors must go through the PBA.*

### **Question 8**

**Question: Which is the Bank? Is it all the Mainstream banks?**

*Answer: Based on the facts that we know of, Commonwealth Bank has been providing the PBA services since 2016. CBA has built up a good level of experience in their products and services. However, we are aware that there are other banks providing the same service for example in QLD, but they may not be able to provide the same products in WA. Therefore, it is up to the head contractor to do the due diligence so that all the requirements are met by the bank and that there is no problem making sure the required payments processes are met. You will need to ensure*

- a) the bank is able to hold the payment until the disbursement takes place;*
- b) Once the general account is funded, the bank properly disburses the money to the participating subcontractors' and suppliers' accounts. For example if you are dealing with Westpac, you might want to start the conversation with Westpac.*

*Government of WA uses Commonwealth.*

### **Question 9**

**The Payment Report requires the head Contractor to explain 'why a payment has not been certified in a subcontractor's payment claim'. Why does Main Roads need that information and what would Main Roads do with that information?**

*Answer: Main Roads needs the Head Contractor to provide sufficient details in its payment report so that Main Roads understands why the Head Contractor is not paying a subcontractor. At the end of each month, Main Roads needs to understand with a level of comfort that the Head Contractor is continuing to pay the subcontractors and if there are any set-off of subcontractors, then there is a contractual reasoning behind it. If a Head Contractor has not been paying its subcontractors regularly and it has been happening for a while, we may recommend that the subcontractors seek help from government agencies like Small Business Development Corporation. SDBC will be able to take up the investigation on behalf of the subcontractors.*

*In addition, we prepare a contractor's performance report every month. If Main Roads finds that, there is a trend where Subcontractors are not being paid on time by a particular Head Contractor, then that will be tracked on a monthly basis. We will take up the issue with the Head Contractor during the monthly performance meetings and at the end of the contract. The overarching CPR (Contractor's Performance Report) will be updated and that information will be used in future tendering reviews.*

### **Question 10**

**The PBA applies to the Contract awarded over \$1.5million. There could be contracts below this \$1.5million limit initially and through variations may cross this limit after award.**

*Answer: The \$1.5million is the minimum threshold; therefore, for example, if a contract value is \$1.49million at the time of award, the PBA will not apply. Even if the Contract value increases over \$1.5 million, the PBA will not apply to that contract.*

*The only exception to that is, if there is a contract over \$1.5million and the subcontract value is less than \$20,000 initially, that subcontract will not be part of PBA. Once the subcontract crosses this \$20,000 limit, say through variations, then the subcontractor will have to be paid only through PBA starting from that month forward.*

**Question 11**

The PBA assumes that there are sufficient funds in the account to pay the subcontractors. If the Head Contractor is under some financial strain and there are insufficient funds in the PBA to pay the subcontractor, how will that situation will be viewed by Main Roads?

*Answer: If Main Roads has a progress payment where the amount was say \$1million and if the Head Contractor needs another \$300k to pay to a subcontractor, then the head contractor needs to deposit \$300,000 of its own funds into the PBA.*

**Sub-question:** What happens if the Head Contractor does not have that \$300,000?

*Answer: Then, the Head Contractor is going to be in trouble.*