



STANDING COMMITTEE ON PUBLIC ACCOUNTS

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STANDING COMMITTEE ON PUBLIC ACCOUNTS

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Mr. Rob Norris
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Mr. Randy Weekes
Biggar

Mr. Trent Wotherspoon
Regina Rosemont

[The committee met at 08:01.]

The Chair: — Good morning everyone and welcome to Public Accounts. This morning we are going to be considering the Provincial Auditor's report, chapter 16 from the 2015 Provincial Auditor report volume 1.

I'd like to introduce our members here today. We have Mr. Michelson. Today we have Ms. Jurgens, who is substituting. We have got Mr. Steinley, who is substituting as well. Mr. Hart, Mr. Weekes, and Mr. Marchuk, who is also a substitute here this morning . . . [inaudible interjection] . . . No, no, no you are . . . My apologies, Mr. Marchuk. And Mr. Wotherspoon.

And we have a few guests here today. We have Tyan Cherepuschak who is a grade 7 student here who is spending the day with Mr. Wotherspoon. So welcome to your first Public Accounts meeting. We also have Terry Paton, the Provincial Comptroller, and Chris Bayda who is the executive director with the financial management branch. So welcome to you this morning.

I'd like to introduce our Provincial Auditor, Judy Ferguson, and she will introduce those who are with her here today.

SaskBuilds

Ms. Ferguson: — Thank you very much, Madam Chair, Deputy Chair, members, and officials. With me today I've got Regan Sommerfeld. Regan's the deputy responsible for the environment and infrastructure division which is responsible for the SaskBuilds. Behind is Mr. Mark Anderson. Mark led the work that is before the committee this morning. And beside him is Ms. Kim Lowe, and Kim is the committee's liaison.

As indicated by the Chair, we're talking about chapter 16 of our 2015 report volume 1. This chapter contains five new recommendations for the committee's consideration. And before we launch into our brief presentation, which is going to be delivered by Ms. Sommerfeld, I just want to take a moment and thank the officials for their co-operation extended to us in the course of this engagement. Without further ado, I'm just going to turn it over to Ms. Sommerfeld.

Ms. Sommerfeld: — Thank you, Ms. Ferguson, Madam Chair. Chapter 16, starting on page 183, provides general information on P3s [public-private partnership] and their use in Canada, in addition to the results of our audit. SaskBuilds is responsible for advising upon and recommending the most effective and appropriate method for advancing infrastructure projects, including using P3s. Cabinet made SaskBuilds responsible for evaluating the suitability of using a P3 approach on specific infrastructure projects. At January 2015, which was the time of our audit, SaskBuilds was in the process of evaluating four infrastructure projects. They were the Saskatoon long-term care centre; the Regina bypass; the Saskatchewan Hospital in North Battleford, including the integrated correction facility; and a concurrent project for nine joint-use schools.

In this chapter, beginning on page 189, we report the results of our audit of SaskBuilds' processes for evaluating infrastructure projects to determine whether the project should use a

public-private partnership or P3 approach. We concluded that SaskBuilds had effective processes except for the following. SaskBuilds did not specify at the start of its evaluation the minimum estimated savings that a P3 approach must demonstrate compared to a conventional approach before it recommended the government sign an agreement with the successful bidder. In addition it did not make available to all participants involved in the evaluation key empirical data to facilitate better evaluation of infrastructure project risks, calculation of the related costs, and support for decisions.

We made five new recommendations for the committee's consideration. On page 190, we recommend SaskBuilds specify the minimum content required in its public value-for-money report that it is to publish after the government signs an agreement with the successful bidder, i.e. the financial close. SaskBuilds' P3 project assessment and procurement guideline did not set out the minimum content for value-for-money reports. Setting out a minimum content would help ensure value-for-money reports provide the public with a sufficient understanding of the project and basis for the government's decision to use a P3 procurement approach.

On page 191, we recommended that SaskBuilds require release of public value-for-money reports related to infrastructure projects within time frames consistent with those set out in *The Executive Government Administration Act*, that is, 120 days after the financial close. Not specifying a time frame in keeping with other key accountability reports increases the risk that the public will not receive timely information about procurement decisions.

On page 195, we recommend that SaskBuilds specify, at the start of its evaluation, the minimum estimated savings that a P3 approach must demonstrate over a conventional approach before it recommends to the government to sign an agreement with a successful bidder. SaskBuilds has specified that to support proceeding with the P3 approach for an infrastructure project, the business case must demonstrate that use of a P3 will deliver greater value for money than a conventional procurement. Value for money means the total cost over the lifetime of the project would be less using the P3 approach.

SaskBuilds is clear about the importance of the project delivering value for money, that is costing less than a conventional procurement, before it will proceed. A high degree of uncertainty of costs exists at the business case stage because of the extensive use of assumptions and estimates. This uncertainty is reduced but not eliminated as value for money is reassessed at each stage.

For three of the four projects, SaskBuilds did not set a cushion at the business case development stage. Setting such an amount would recognize the significant uncertainties in cost estimates. It would help reduce the risk of proceeding using a P3 approach where projected savings are only minimally better than a conventional approach and may not materialize, given the uncertainties. It is important that there be a cushion to make sure that the uncertainties do not result in the P3 costing more. We recognize setting a cushion does not reflect common practice in P3 use across Canada; rather this recommendation is made, given the great importance the government places on a

P3 approach, to deliver savings over the conventional approach.

On page 199 we recommend that SaskBuilds assemble and make available to all risk workshop participants key empirical data to facilitate better evaluation of infrastructure project risks, calculate related costs, and support decisions. A key part of analyzing potential P3 projects is assessing risks. SaskBuilds did this through risk workshops. We found decisions about identified risks and the calculation of the related costs were based primarily on verbal discussions. Individual participant's data was not consistently made available to all risk workshop participants. Providing such data would permit participants to review, consider, and challenge the information and would furnish a record of the basis of key decisions made in workshops. Also collecting and assembling the key information would provide SaskBuilds with a record of the basis of key decisions made in risk workshops.

On page 200 we recommend that SaskBuilds leverage its analysis of value for money for infrastructure projects to evaluate and include feasible benefits and efficiencies in future public sector conventional procurement approaches. We found, during the business case development, SaskBuilds attributed benefits to P3s that could be used in conventional procurement processes, that is more efficient building designs or facilities maintained at required levels.

We also noted SaskBuilds attributed certain risks more to conventional public sector procurements, for example, the scope changes contributing to increased costs and delays. While this is not inconsistent with best practice in developing business cases, we are of the view that the conventional procurement processes could have likely benefited from the time and effort that SaskBuilds and the responsible ministries and other related agencies spent on planning for and assessing before potential P3 projects.

Also in our view the government needs to make a concerted effort to identify and address barriers to gaining efficiencies under the conventional approach for procurement projects, for example, addressing the number of change orders which increases project costs. That concludes my presentation.

The Chair: — Thank you, Ms. Sommerfeld. And we'll pass it off to the folks from SaskBuilds. Welcome. I don't think I welcomed you here this morning, so welcome. We have Mr. Rupen Pandya who's the president and executive director. So if you'd like to introduce your officials and make any comments on this chapter, and then we'll open up the floor for questions after that.

Mr. Pandya: — Good morning, Madam Chair, and thank you for that welcome. Good morning, members of the committee. I'm joined today by Lisa Boire who's our vice-president, on my left, of operations; and by Teresa Florizone who's vice-president of corporate affairs. Behind us is Donna-Joy Tuplin who's the executive director in our finance division.

Very pleased to be with you here this morning. I'd like to start by making some very brief comments in response to chapter 16, volume 1, 2015. First with a note of thanks to the Provincial Auditor and her team for their significant work in reviewing SaskBuilds' process for assessing public-private partnerships.

At SaskBuilds we are committed to continuous improvement and welcome the very good work of the auditor and her staff and the recommendations made.

As a note I'd like to just raise for the committee's consideration that SaskBuilds modelled its assessment process off of the very good advice of the Provincial Auditor in previous reports, notably volume 2 of 2001, managing accountability risks in P3s, and then more recently a special report that had been conducted by the auditor in volume 1 of 2014, managing risks in public-private partnerships. I think you'll all be aware that the purpose of those reports was to provide government with forward advice in terms of how we ought to structure public-private partnerships to ensure that we are in fact protecting the public interest. And I'm pleased to report to you that much of our guideline and our process was modelled off of the good advice in those reports.

I think it is also important to note that we share an interest in ensuring that when this particular procurement method is utilized, that it is in fact deriving value for taxpayers. With respect to volume 1, 2015, specifically chapter 16, SaskBuilds evaluation, evaluating potential P3s, we are pleased with the auditor's assessment that SaskBuilds has effective processes for evaluating P3s infrastructure projects at the business case development stage. We believe that the auditor's findings are an endorsement of SaskBuilds' commitment to international and national best practice and the incorporation of best practice into our method.

We also accept the auditor's recommendations regarding where we can make improvements to our process. And I'm pleased to advise all the committee members that we've made significant progress relative to all of the auditor's recommendations and have incorporated the direction provided into our current procurement, so the procurements that the auditor had the opportunity to review at the outset of her work.

So more specifically, and I'll just go over this briefly, I'm sure that there'll be many questions, we have adopted *The Executive Government Administration Act* guideline and have committed to making best efforts to table documents within the 120 days after contracts are signed. We have incorporated the auditor's suggested elements that we should include a value for money, that we should include specific elements in our value-for-money reports in our reporting where possible. We have ensured that hard copies of data sets and electronic copies of data sets are available to ministry and authority experts who participate in our risk workshops. So we re-ran risk workshops.

As per our methodology, we do value for money at various stages, and in fact ensured that on a consistent basis everyone had available the data sets of the experts from the ministries, the school divisions, health regions, when they were considering the risks and costing of risks.

We continue to review national and international best practice relative to setting a minimum threshold of savings, and I think Ms. Sommerfeld raised that that is not currently in the national and international best practice. We have committed to continue to take a look at that.

Specifically in relation to both not only the quantitative

dimensions of value for money, but also taking into consideration the qualitative benefits of value for money which are important. And so we will provide advice to the SaskBuilds board in March of 2016 on policy on that front.

And we're currently leveraging our analysis of value for money in future public sector conventional procurement approaches. And in fact I've had opportunity to do so in some of the current procurements that are under way in Saskatchewan. So on that note, I will turn it back to you, Madam Chair, and happy to take your questions.

[08:15]

The Chair: — Thank you very much. And I'd like to open up the floor for questions. Mr. Wotherspoon.

Mr. Wotherspoon: — Thanks so much and thank you to the officials that are here today and certainly to the auditor and comptroller and everyone else. Thanks as well to the sidekick and helper I have here today, Tyan Cherepuschak, a grade 7 student who will be helping me out throughout the day. So if my questions are a little sharper than usual, it's, I suspect, Tyan's contributions here today.

Thank you for the work on this report to the auditor's office as well. Certainly it's important to ensure the public's protected in these arrangements. Maybe just focusing in on number, the first one specifically, the recommendation around the minimum content required to publish. Maybe just speak about what's been determined from the ministry's perspective what that minimum content would be.

Mr. Pandya: — Thank you. So in fact for the Swift Current long-term care centre, a value-for-money report which is released subsequent to the Provincial Auditor's recommendations, we did incorporate a number of elements that had been suggested in volume 1, 2015. Specifically we'll note that the value-for-money report will include:

A description of the project including the public sector and private sector partners

Approaches considered . . . [so that would be whether we would use a design, build, finance, maintain or a design, build, finance, operate, maintain]

Costs of procurement options considered

Value-for-money assessment including a description of key risk allocations

Processes used to select private sector partners

Summary of key terms from the agreement

Financial details including the aggregate net-present-value of [the winning] . . . bid, the public sector comparator, and aggregate total of required payments under the agreement

. . . the discount rate, the inflation rate assumptions that . . . [are used in the] value-for-money analysis.

Mr. Wotherspoon: — Will these aspects be . . . are they fully incorporated into the upcoming releases of VFMs [value for money] that, I guess, we're anticipating?

Mr. Pandya: — Yes they are. So they're currently in the draft documents that are being reviewed. That's exactly right.

Mr. Wotherspoon: — And the upcoming VFMs, it's 120 days following the close that you're required to report. Is that correct?

Mr. Pandya: — That's correct. That's the commitment that the government has made to release value-for-money reports along with the procurement documents, the RFQ [request for quotation], the RFP [request for proposal], and the project agreement redacting commercially sensitive information as well as the fairness advisory report.

Mr. Wotherspoon: — So what VFMs are we awaiting? And what's, you know . . . I don't know if you have a specific date you're able to share with us for lease, or what's the general timeline for the release on those VFMs?

Mr. Pandya: — Thank you for that. So I do have some specific dates regarding the 120-day limit as per *The Executive Government Administration Act*.

So for the Regina bypass, 120 days from financial close, which was July 29th, 2015, would be November 26th. Our commitment is to achieve 128 days or better on all of our reporting. On the joint-use schools project, financial close occurred August 17th of 2015; 120 days would be December 15th. And the Saskatchewan Hospital North Battleford project closed on August 27th, 2015, and 120 days would be December 25th. And again I'll reiterate that our intention is to make best efforts to release in advance of some of those kind of critical dates. Obviously, December 25th wouldn't be an ideal day.

Mr. Wotherspoon: — Sure. And sorry, the bypass was?

Mr. Pandya: — November 26th would be 120 days.

Mr. Wotherspoon: — On the bypass itself, you know, there's been concern noted with some of the allegations and some of the admissions of one of the lead proponents from Europe. It's been mentioned by ministers that there's the ability for government to have that proponent be pulled away from the project entirely if it was deemed necessary by government. Certainly the allegations are concerning. How has that been structured into this arrangement, from a legal perspective?

Mr. Pandya: — Thank you for the question. I'll answer that question generally. So for each of the project agreements that we have in place, there is in fact provision so that if in fact a criminal conviction occurs relative to any of the partners that make up the project consortium, that the government would have the ability to ask that partner to be replaced by the other project consortium members and/or step away from the project completely. And so there is in fact contractual protection on that front.

Mr. Wotherspoon: — And that would only be if there's a criminal conviction? Or is it if deemed appropriate by

government?

Mr. Pandya: — It would only be for a criminal conviction.

Mr. Wotherspoon: — I guess my question would be what protections . . . I mean this is . . . How do you manage that project if, you know, I would assume that to have that proponent there, there must be something that they're providing to that structure that must be specific and unique to that proponent. So if they were to simply be removed from the equation, who picks up the various roles or capacities that that proponent may be suggesting are responsibilities of theirs?

Mr. Pandya: — So certainly the other project construction members as part of the selection process for, you know, vetting teams that would go into a public-private partnership would have a sufficient balance sheet and experience to manage the projects and to play various different roles beyond, just as an example, the design-build role versus a maintenance role.

Failing the special project vehicle finding a substitute to replace any one of their members, the debt providers who are also connected to a project also have step-in rights and can appoint another partner. Clearly there's, in the case of design builders, you know, maintenance and operations providers, etc., there's a number of firms nationally and internationally that could provide those services, and an appropriate firm would be found to replace any particular firm that would be . . . if it was removed from the project vehicle.

Mr. Wotherspoon: — If government were to remove a partner or the partner that's been in question from the equation . . . In your case I guess the contract suggests it would only be if there's a criminal conviction that that might be possible. But if that occurred, is there a change to the absolute certainty of the costs that government will have entered into contractually at that point? Is there an ability for the consortia to change costs for government at that point or renegotiate terms?

Mr. Pandya: — No. So the answer is no. There is no ability for the private consortia to increase costs or renegotiate costs at that point.

Mr. Wotherspoon: — I won't get in . . . Of course I want to stay focused on the aspects of the, you know, the content here today, and I'm always cognizant as well not to engage in a debate with officials that I would, you know, would with government or with a minister. But it does, you know, it does seem passing strange that the government chose to enter into a partner with those types of allegations that exist, the types of admissions that exist, and then to suggest that they . . . You know, we've seen the costs of course run up, and then we hear from the minister that, well we can just pull them out if need be. And that's sort of the way they relate to it. And you question why we have that proponent engaged in the first place, but that's a question I'll leave for the minister and won't push on you here today.

Just when you're looking at some of these other recommendations, specifically around the aspects of I guess recommendation no. 5 primarily, where it talks about attributing benefits that may be in an inconsistent way or made possibly in a biased way towards the P3 project that can also be attributed

to more traditional procurement if government were to refine or change or evolve some of those procurement processes, could you identify the types of attributes that have been identified possibly or that have been identified as potential benefits of a P3 that could also be attributed to potential change in practice of how you deal with traditional procurement?

Mr. Pandya: — I think in general response to your question there, when we have looked at traditional builds versus public-private partnerships and when we try to assess the current performance that . . . We've tried to model that current performance based on our real experience. And I think the auditor made a recommendation in fact in terms of how we model our risk, to bring into our risk workshops data sets based on our real experience, and that's available key empirical evidence. And so, you know, that has been our approach to date, to model what is in fact our real experiences on traditional builds versus on-time, on-budget delivery, scope creep, and some of the other challenges that we might see.

So in assessing a public-private partnership, what we are doing is essentially looking at the historical practice that has occurred with the use of that model based on similar asset classes across the country to assess, at the early stages and the business development case stage, whether there would be efficiencies in that particular approach. Clearly in the case of all the public-private partnerships that we have now deployed in the province, we have already communicated positive value for money, significant positive value for money, I think ranging in the magnitude of some \$600 million across the five procurements that we are talking about today.

Mr. Wotherspoon: — But the auditor highlighted just about some of the risk transfer and highlighted specifically that there may be positive attributes that are being attached to P3s that could properly also be attached to traditional procurement.

So you're saying that you're not looking at . . . You're looking at past practice on procurement. You're not as much looking at what refinements and improvements could be brought to value in traditional procurement because, I guess, part of the concern is that there's been significant time certainly engaging in aspects around P3s and how one would procure on that front. But I believe it's been noted by many that, you know, things like, you know, limiting change orders or being clear with scope or greater specificity on the front end of entering into arrangements, attributes that sometimes or practices that sometimes are possibly intensified in a P3 practice could certainly occur as well in more traditional procurement if you . . . as well as utilization of penalties and fixed-price contracts.

And so I guess the question is, do you agree with the auditor that you should also be . . . And maybe I'm interpreting the auditor's recommendation incorrectly. But are you comparing the, you know, the P3 in attributing benefits to it that could also be brought potentially through a refined process of traditional procurement? Or are you simply assessing it against past traditional procurement?

The Chair: — Ms. Ferguson would like to comment.

Ms. Ferguson: — Maybe what I'll clarify first is that, in terms of the process that they used to come up with the

value-for-money assessment, what we're saying as an audit office is that they did follow best practice in using historical.

The recommendation here is really a forward-looking recommendation, you know, and what we're saying is that, you know, what we saw in that whole process that they used in the P3s, there's a number of good aspects there that we think that can be transferred across to conventional procurement models — not just really large ones but all types of procurement across government.

And so what we're saying is that SaskBuilds is uniquely positioned to, you know, through these workshops and through the process that they're using, they are gathering a lot of information that is valuable that could be shared across government. Examples that we raised in our report, if you go to page 199, is that, you know, more efficient design builds, facilities being maintained at required levels — those were all types of things that, you know, were risks that are occurring on our conventional types of procurement. But there is ways and tools that you can get around that without using a P3.

And so what we're saying as an audit office is that as a government, we think it's their obligation not just to automatically default to a P3 because of shortcomings in our current processes, but to look at what's happening, learn from it, and see what we can do to move forward, so very much a forward-looking recommendation. I don't know if that helps.

[08:30]

The Chair: — Mr. Pandya.

Mr. Pandya: — Thank you very much for that clarification. In fact the mandate of SaskBuilds is to drive innovation in infrastructure financing, design, and delivery, and P3s happen to be one of the alternate finance procurement initiatives that we look at. Another large area of our work is integrated capital planning, and the focus of that work is to bring greater rigour and discipline to the capital planning process across executive government ministries.

And so we are transposing, as the auditor has recommended, the lessons learned in P3s into other traditional procurements. So we have now for the first time developed an integrated capital planning framework that has detailed manuals, requirements that ministries develop a detailed business case and do upfront planning as part of their capital submissions to the treasury board and to cabinet.

What we hope that will do is transfer some of the benefits that we've already learned can occur in P3s into traditional procurements. That upfront planning is critical to helping improve efficiency in terms of the outcomes relative to on-time, on-budget delivery. Certainly it will help manage to a certain extent some of the scope creep.

So we are currently trying to bring the lessons learned, if you will, of P3s into traditional procurements, and we think we can make some significant progress on that front. There's in fact a community of practice of capital planning experts from across executive government ministries that meet with us to talk about some of the benefits of or improvements and efficiency that we

can bring into traditional procurement. And so we are pleased to do that and that is in fact part of our work.

What I would note about a P3 would be that even if we could improve — and we can improve — traditional procurement, there are certain limitations to how far we can go. So we could put in place fixed-price contracts. We could talk about on-time, on-budget delivery. We can even talk about short-term warranties in terms of assets. What a P3 is uniquely positioned to do is provide essentially what is a 30-year warranty on infrastructure, and we aren't able to achieve that, to my knowledge, through any sort of an insurance product or through any other procurement method. To date we aren't able to insure 30-year life cycle warranties on assets. So there's an added dimension, if you will, of pursuing a public-private partnership.

Mr. Wotherspoon: — No, and I would note that some of those attributed benefits do come at a cost as well. And I think any private sector proponents that are engaged in these projects will identify that in a very clear, you know, plain way that any of those commitments that they're making in any of the warranties or any of the 30-year-type commitments, certainly they've built in protections from a budgetary perspective on those fronts as well. I mean yes, it can have as many commitments, you know, as possible, and in the end it's going to really depend on the robustness of the contract and I guess the reality of proponents. And I mean it's not to say that every single P3 in the world has had a tragic ending, but there's certainly been many, in experiences throughout Europe and certainly in Canada as well where many governments thought that they had some certainty to contracts and certainty to who they were dealing with, and aspects of those changed. So those are of the nature of some of the public's concerns.

I do appreciate your comments around the broad mandate of SaskBuilds, and I think that in those areas where . . . I think that that's an area of great potential and in fact an area that should be of great focus. And I'm not convinced at all with the current government that this is the focus that they're taking. SaskBuilds shouldn't be used to justify decisions that are being made, from my perspective. It should be utilized to really drive best value and innovation in procurement.

And I do appreciate the comments from the auditor around forward-looking approaches to procurement and next generation of procurement, if you will. We hear that often attributed to P3s because, you know, of course we can attribute follies and problems with P3s and often I think government's response to that is, well we've learned from that; we've established . . . we're relying on a new best practice. Or we hear the term next generation of P3s, and we've heard a few different generations of that.

But we don't necessarily hear that same discussion, at least from government proper. It may be something going on with your officials, and I hope that it is. But it is an area, I think, of opportunity for the people of Saskatchewan. And I do think there's some expertise that's probably been built now within SaskBuilds that may uniquely position it to derive true value if given the full mandate and resources and support to go at looking at that forward-looking approach to traditional procurement as well.

So I'll just leave that as a note. I see that as an opportunity. I don't see that currently being demonstrated by cabinet leadership, if you will, at least in the communication of how they're dealing with procurement.

I have a bit of a question around penalties. How do you . . . You know, there's been a bit of a discussion about penalties within the contracts that a private provider might be on the hook for if they don't reach a certain service level or a maintenance level or some standard that's been set out within the contract. But we also hear from some of the actual proponents right out of I believe their annual report. They suggest that, you know, back to their own shareholders, that how they protect shareholders is that they make sure that when they're entering into contracts that they're capping those penalties at a certain proportion of the contract, in essence, you know, to protect their shareholders. And I get that's the role of a private company, from wherever they are, to make sure that they're thinking about those kinds of things. But I'm concerned that if that's what they're doing, the penalties, it would seem, would be insufficient to ensure the standards and the level of service that the public deserves and expects.

So I wouldn't mind hearing a bit about how you have gone about establishing penalties, how those are built into contracts, and how you've assessed what an appropriate penalty would be that would be sufficient to cause a private interest with significant dollars to be caused to address the issue being identified by the Government of Saskatchewan or the people of Saskatchewan.

Mr. Pandya: — Thank you for the question. I think that there's . . . You know, one of the benefits of the P3 procurement model is that there's in fact a very sophisticated legal contract that tries to protect the public interest relative to questions around performance. And in fact that's backstopped, if you will, by private debt and equity that acts as a risk . . . It goes back to my earlier comments about a 30-year warranty in this method because of the fact that you have private sector debt and equity in the project. In fact, that would be the principal reason why you would have private sector debt and equity in a public-private partnership.

I'll start maybe at the front end. So there is in fact a detailed set of performance specifications that are outlined for each specific asset, whether it's a road, a hospital, or a school. And those are driven out by the experts within those relevant authorities, whether that's school board officials, facilities management experts, ministry policy, on the requirements in terms of specifications relative to the infrastructure. As the contract is being developed, the authority, the government working with the relevant ministry and/or partners would develop in fact an entire performance regime around any of the output specifications that we are looking for, relevant to performance.

So just as an example, if there's an availability failure on the Regina bypass of 12 hours or more, it would be \$500,000 a day, just to give you an example of the type of significant performance penalties that are put in place. And by the way, those types of penalties, you know, for availability failures apply across all of the asset classes, whether it's the care home or a hospital or a school or a road.

Above and beyond the performance-specific penalties that are built into our project agreements, there's of course recourse relative to again the private finance that's in the deal. So if the private sector doesn't comply with any of our requested or doesn't comply with any of the requirements of the project agreement, government has step-in rights. So we can say, you're not performing to standard in terms of public health and safety. We're stepping in to remediate that failure in addition to the penalties we've imposed.

And then finally, you know, as kind of the last recourse we have at our disposal, the ability simply not to pay the private sector their . . . [inaudible] . . . payments and that will bring the full force of kind of the debt providers who are supporting the special project vehicles in their pursuit in terms of ensuring that they are being compliant. So there's a number of layers is maybe a way to describe the performance regime within a public-private partnership.

Mr. Wotherspoon: — Well I appreciate the answer and I know it's a note of concern for many in the public and many that have accessed P3s and their performance in the past. And certainly, you know, I think it was mentioned by some that maybe the contract is a benefit but I know for many as well that have dealt with P3s in the past, the contracts can be the problem themselves and have inherit risks within them as well. And certainly as noted by the European proponent in the bypass's annual report, certainly from their business case perspective, they build in into their cost that consideration of penalties. And in fact they have certainty around the scope of those penalties and have . . . sort of state back to their shareholders that they have comfort with the proportion of what those penalties are of the overall contract.

So some may suggest that the relationships that you've described in the agreement are a benefit, but I think many others would also see it as highly complex with a significant risk built into it as well, and even problems in, you know, you'll have basic levels of service that are laid out but the determination of what that service is isn't always clear as day and in fact I understand can be quite a process as well, often including courts as well and legal processes to determine whether or not the service level and the criteria that was laid out had been met or hadn't been met.

And just as far as comments around, you know, 12-hour availability on a place like the bypass of course, you know, we are in Saskatchewan and, you know, we do have minus 30 and minus 40. We do have incredible winds. We do have terrible blizzards. And the concern that we may not have adequate abilities to be nimble and directly responsive to some of those needs, whether it be in a school or whether it be on, you know, of the clearing of snow for those that are trying to get into the city or wherever else is certainly a concern.

I'll just leave it at that. There's definite concern though around the area of penalties and contracts and whether the penalties that have been built in are in fact sufficient to ensure effective responsive service to Saskatchewan people on pretty important infrastructure and needs that exist.

I'm interested a little bit in what your relationship right now is with Partnerships BC and sort of what's been spent to date in

dealing with and consulting with Partnerships BC and what that relationship is in the current year as well.

Mr. Pandya: — Thanks for the question. If I could maybe just provide a bit of clarification regarding your last question regarding the penalty and performance regime within public-private partnerships, and specifically I think you had made a comment around the example of an availability failure of about 12 hours on the bypass. You know, clearly if there is a severe weather condition and the RCMP [Royal Canadian Mounted Police] closes highways, highways are closed and that wouldn't trigger an availability failure.

In fact one of the principal benefits of a public-private partnership, why those contractual agreements are as complex as they are, is that they're really risk-transfer mechanisms such as, how can we in a reasonable way transfer risks that will occur in the construction, operation, maintenance of a project to ensure that we are generating value for money for taxpayers? And so it is important that those details are in fact negotiated.

In terms of, you know, private firm behaviour in terms of trying to negotiate a better deal relative to penalties and performance, I can assure you that in the context of the deals that we have under way in Saskatchewan, we dictated the terms of the penalty regime based on our discussions with our partners as opposed to taking the terms.

And clearly I think if you looked at any, likely looked at any annual report of any firm that's involved in construction, they'll tell their shareholders that they'll try to negotiate. And that's fair; they'll try to negotiate. Whether the other party takes the terms is a separate question. In this case I'm telling you we didn't. We dictated terms in terms of the penalty regime and the payment mechanism. So just as clarification.

Our goal with Partnerships BC, you'll know that Saskatchewan was one of the last provincial jurisdictions in Canada to enter into public-private partnerships. And as we started down that path, we certainly did bring on Partnerships BC, which is a public Crown corporation in the province of British Columbia, to help support our capacity development of our staff within the province. I think you'll know that the majority of the members in SaskBuilds are all career civil servants who were recruited from the civil service, and so the capacity building to ensure that we had the requisite knowledge, skills, capacity as per the forward guidance of previous audit reports, you know, we looked to other agencies in the country to help us build that capacity.

[08:45]

We certainly brought them on in early days to support us in some of our key procurements to ensure that we were applying best practice in procurement. I think as we've published our guidelines in May of 2014, we've started to lay out what I would argue is a best practice in P3 procurement in Canada. Our risk assessment methodology, for example, is project specific and involves all of the officials from relevant ministries and authorities to help assess and create a project-specific risk profile that is a little bit unique in terms of some of the other provinces. You know, we are taking again forward guidance from the auditors in Saskatchewan and trying to improve our

process.

I think our project agreements currently are maybe best of class in the country and in fact will be used by other jurisdictions. Our bypass agreement is different than the bypass agreements in other jurisdictions because it has in fact greater protections, if you will, for the public in that agreement. We will incorporate lessons learned from other jurisdictions into that project agreement, and in fact it's already been shared with a couple of jurisdictions. Some of the innovations have been shared with other jurisdictions for their consideration and incorporation into further work.

In terms of the specific answer to the question, I can maybe ask Teresa to speak to that really quickly, which is . . . [inaudible interjection] . . . So to date we have expended 5.3 million over 2012-13 to 2015-16 with Partnerships BC.

Mr. Wotherspoon: — Now maybe the question isn't for yourself specifically, but are you aware if either your . . . if SaskBuilds or if government proper, the Minister of Finance and cabinet, have engaged in some of the . . . I know BC's [British Columbia] Finance department identified some concerns with Partnerships BC and noted very specifically potential bias in their recommendations that they might be bringing forward or the approach that they're bringing forward.

I'll just quote a little bit and I wouldn't mind hearing just, you know, what your take is on that bias noted, noting that Partnerships BC has been utilized heavily by the BC government, it's a construct of the BC government, and that the review itself has been conducted internally by Finance to ensure rigour and value for taxpayers and internally has noted some significant control issues with Partnerships BC.

And it's just noteworthy that they're noting concerns within their own jurisdiction and that I guess they would be looking to Saskatchewan in some ways as a revenue opportunity with the \$5 million of consulting that they're providing. So if BC itself, who they're a construct of and supposed to be there to serve, is concerned about their own bias within projects in BC, it seems even of greater concern how Partnerships BC may conduct themselves when dealing with a revenue opportunity, being the people's money of Saskatchewan.

But I'll read a couple of things here from . . .

A sensitivity analysis that shows how changes in assumptions can affect the results is not always included in submissions to Treasury Board. Project owners and Partnerships BC should ensure that complete information is provided to Treasury Board in order to strengthen decision making.

. . . There is a concern that Partnerships BC is potentially biased towards certain procurement methodologies because it is mandated to be both a self-sustaining organization and an advisor to government. This creates the perception that Partnerships BC's advice may be biased towards revenue generating opportunities for the organization.

. . . Partnerships BC is mandated to be both an advisor and service provider to government, and to also be a

self-sustaining organization. These multiple roles have created the perception that PBC's advice to government could be biased towards solutions that create opportunities for PBC to earn revenue.

Those are just a few of the concerns noted internally from BC, and I guess the purpose of that review would be wanting to make sure they're protecting taxpayers and delivering on value.

I'm just interested to hear what your knowledge is of the Government of Saskatchewan, your ministry or others, reviewing the same sorts of concerns, and then how they relate in a different way to Partnerships BC in that they're not a direct construct of Saskatchewan. They are in fact engaged in a revenue-generating opportunity with the province of Saskatchewan.

Mr. Pandya: — So maybe I could start my comments by noting that Saskatchewan's Provincial Auditor deemed that our processes are effective for assessing public-private partnerships. And again I think I've responded to the recommendations and indicated the progress that SaskBuilds has made in terms of responding to those recommendations.

More specifically on the question of sensitivity analysis that you raised, I think the auditor's report speaks very clearly to the fact that SaskBuilds included significant sensitivity analysis and ensured the decision makers had available all of the information.

So just as a matter of public interest relative to the Crown corporation review that you reference, you know, I would note a couple of observations. First, that this is in fact a Crown corporation review, and the conclusion of that review was that in fact Partnerships BC was achieving its mandate. Again there was good forward guidance to that corporation in terms of how it could improve its relationship with public entities in the province of BC. So in the province of BC, because it is a Crown corporation that provides fee for service, there was a perceived potential conflict between providing advisory services and fees to other government ministries within British Columbia.

Partnership BC's role in supporting SaskBuilds is simply in terms of providing advisory services. All the decision making . . . I think if you take a look at the auditor's report in detail, you'll note that all the decision making in terms of the governance structure is in fact managed by SaskBuilds, the treasury board, and the cabinet here in Saskatchewan. So there are a number of elements within that Crown corporation review in British Columbia that are not applicable in the Saskatchewan context.

Certainly SaskBuilds has taken a detailed review of the Crown corporations review, as we do of all the audit reports on public-private partnerships across Canada, to ensure that we are being informed by, you know, what are in fact best practices. And I can tell you again that we are very pleased that we've been deemed to have effective process by the Saskatchewan Provincial Auditor.

The Chair: — Mr. Wotherspoon, I'm just going to . . . Mr. Marchuk has a question, and I will come back to you.

Mr. Wotherspoon: — Sure.

Mr. Marchuk: — Thank you to the officials for your responses and certainly thank you to the auditor for your work, and your staff for spending such considerable time over at SaskBuilds while doing the audit. So we appreciate all of that work.

I'm just wondering if you might expand a little bit upon SaskBuilds's management of risks and how they evaluate it and that whole process.

Ms. Ferguson: — Thank you very much for the question here. So basically in terms of the, as mentioned by our presentation and also by management, what they used is risk workshops. And that aspect is bringing together people that are from various . . . [inaudible] . . . from various organizations that are affected with the decision making, and also outside experts, and going through that. We found that the process there generally worked well with the one exception that we raised on page 199, that in terms of the empirical data, collecting that, maintaining that in a written manner or electronically, wasn't done as well as we had expected. It was a lot more verbal conversation than a sharing of empirical. Management is indicating though that they've adopted our recommendation and are moving forward on that.

With respect to the . . . Those workshops are the ones that are determining the risk transfer, you know, so that empirical data and maintaining that and showing that it's critical to demonstrate how they got to the decisions on risk transfers and the assignment of risk. So you know, that is a very key piece.

It also drives other things in terms of, you know, those are key assumptions that are made driving costs, etc., and we're finding that once they did make those risk decisions, that they did follow common practice in terms of punching them out in terms of the dollar values, etc.

With respect to sensitivity analysis, we do note on page 201 that they did go through the processes of determining sensitivity analysis for key aspects of those decisions, and that information worked its way through the system, going to management of SaskBuilds, up to the board of SaskBuilds, and ultimately included as part of the recommendation to cabinet.

Mr. Marchuk: — Thank you for that. Just one quick follow-up in terms of the Swift Current long-term care facility, etc. How accurate were SaskBuilds's estimates going into that?

Ms. Ferguson: — All we looked at was the business case stage, and so really, you know, in terms of the accuracy of the estimates, basically what we focused on was the process, you know, and in terms of whether or not they came up with the process. So I don't think we can really opine in terms of whether or not they're accurate. Like inherent in the whole process of value from any determination is making a lot of assumptions, you know. And so all we can say is that they used the process appropriately to come up with the assumptions, other than they didn't keep the empirical data in a manner that we thought they should have.

Mr. Marchuk: — But overall would they have been close, above, or below in terms of the amounts?

Ms. Ferguson: — We didn't do that exercise in terms of recunching that. We didn't do that.

Mr. Marchuk: — Okay. Thanks very much.

The Chair: — Mr. Pandya.

Mr. Pandya: — Thank you. If I could just maybe add a clarification to the Provincial Auditor's comment, if that would be okay, I think she was referring to the business case stage and the assessment of Swift Current relative to that stage. But in fact on page 201 of the audit she notes that Swift Current long-term care centre's successful bid confirmed that SaskBuilds's estimated costs were reasonably accurate. But just to clarify, the auditor is then looking at the final bids as opposed to the business case bid, so in fact everything she said was correct. I just wanted to add that clarification.

The Chair: — Thank you. Mr. Wotherspoon.

Mr. Wotherspoon: — I'm cognizant of time here, and I know there needs to be some . . . I mean I know we could certainly extend the meeting or have another one because, I mean, these are very complex matters. I thought the whole conversation around having a sufficient cushion in place is important because of the inherent risks of P3s. I look forward to some clarity on that moving forward.

The risk-transfer vagaries built on assumptions is something certainly that's been a concern to the public and to taxpayers and those that follow finance closely, and unfortunately it's sort of been a big area of problems in other jurisdictions. So I think that those aspects, and specifically that empirical data at workshops, is a very important aspect of the recommendation. And I don't think . . . You know, maybe we need more time, you know, at another . . . to go through some of these items.

The one thing I just want to clarify is that . . . Of course the auditor has weighed in on some of the process here. And maybe if the auditor could clarify, I believe the auditor's mandate doesn't allow the auditor to come in and to assess and to endorse a choice in a project of government. Where the auditor's coming in, I believe, on this, and I can be clarified, is around process that should be a precondition that will hopefully protect the public. But it's my understanding that the auditor herself hasn't . . . We hear the word endorsement. And I think that if endorsement means endorsement to some of the processes, maybe that's fair, although there's many risks and concerns also noted by the auditor.

But it sometimes seems, I think to the public at large, that government is communicating that the auditor has endorsed the projects and the arrangements that government is entering into, whether it be the bypass or the schools or others. And I don't believe that's either the . . . I believe by mandate, I don't think the auditor is able to actually provide that. It's something that I think would be of great value to the people of Saskatchewan to have an independent verification of the actual deals and arrangements, and report it out. But I want to, I just want to make sure that I'm clear on understanding the mandate of the auditor and what in fact the auditor is approving, if you will, on this front.

Ms. Ferguson: — What we do as an audit office is our role is not to question public policy. What we do is we focus our work on the administration of government and how government is managing itself. And really, in this case, I think the focus on the process is to make sure that the decision makers have the information that they need to make the decision.

In this particular example, it is cabinet that is making the final decision, you know, and it's worked its way through the management of SaskBuilds, the board of SaskBuilds. And then at this . . . Our stop point is at the business case, the recommendation SaskBuilds made to cabinet. So we're not questioning the decision of cabinet; really it's looking at the process to make sure cabinet has the information that it needs to make this decision. So we're not saying . . . We're not weighing in that P3s are good or bad. Our focus is on administration.

[09:00]

Mr. Wotherspoon: — It's an important note because I think sometimes there's a bit of a stretch in the communication of government, I'm not suggesting from yourself, but from those that are elected, to suggest somehow that the auditor, in weighing in on some of the processes and saying this is the kind of information that decision makers need, is somehow an endorsement to the bypass project or somehow an endorsement to the schools. And certainly that's not what I interpret when I look at what I see here. What I see is somebody working within their mandate to lay out, these are the kinds of information that's required.

And then of course the role of the auditor a year and two years down the road will be to watch the dollars flow, the service levels and the protection of taxpayers and the value for money and all those aspects. The concern on that front is that in other jurisdictions that's where it's become quite evident in many cases that there's inherent problems in the complex arrangements that are before us. So I appreciate that clarification.

I sometimes find it frustrating that it seems government, as in the elected members, the cabinet, are trying to convey that the auditor has given a stamp of approval on things like the bypass, when it hasn't been within her mandate to do so. And in fact I don't believe, you know, that she's been able to, that she hasn't provided that sort of analysis. So just that point of clarity.

The recommendations brought forward are extremely constructive and helpful. And certainly, you know, we could go on much longer, but I know we're past our actual time here right now. I do really appreciate the civil servants that are engaged in these processes, although I do have significant question and concern with the approach of cabinet on this front.

The Chair: — We're at our time here, but I know that we have five recommendations with which we have to deal. I'm wondering if I could have a motion.

Mr. Marchuk: — Thank you, Madam Chair, and with your permission if we could deal with recommendations 1, 2, 4, and 5 as a block, and then recommendation no. 3 separately. So with that, Madam Chair, I move that we concur with recommendations no. 1, 2, 4, and 5, and note compliance.

The Chair: — Thank you, Mr. Marchuk. Mr. Marchuk has moved that for the 2015 Provincial Auditor report volume 1, chapter 16, that this committee concur with recommendation 1, 2, 4, and 5, and note compliance.

Is there any further discussion? Seeing none, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Mr. Marchuk: — Thank you, Madam Chair. And with regards to the last recommendation, I move that we concur with recommendation no. 3 and note progress towards compliance.

The Chair: — Thank you, Mr. Marchuk. Mr. Marchuk has moved that for the 2015 Provincial Auditor report volume 1, chapter 16, that this committee concur with the recommendation and note progress to compliance. Is that . . . pardon me, note progress. Is there any further discussion on that? Seeing no further discussion, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. And now we're at the end of our business today, so thank you to SaskBuilds. Mr. Pandya, thank you for your time, and to everybody else around the table. Could I have a motion for adjournment?

Mr. Weekes: — I so move.

The Chair: — Mr. Weekes. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. This committee stands adjourned until the call of the Chair.

[The committee adjourned at 09:03.]