

**Submission
No 20**

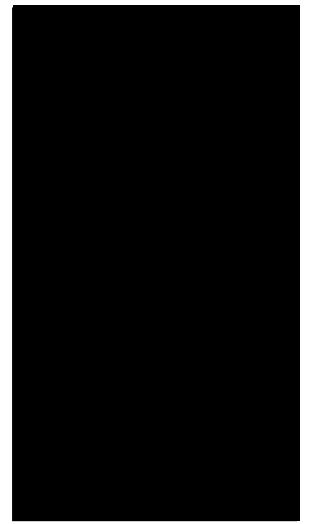
PROCUREMENT OF GOVERNMENT INFRASTRUCTURE PROJECTS

Name: Name Suppressed
Date Received: 12/02/2016

Partially Confidential

12/02/2016

Mr Alister Henskens SC MP
Committee Chair
Inquiry into Procurement of Government Infrastructure
NSW Parliament



Dear Alister

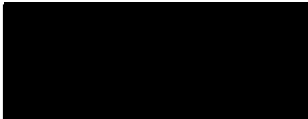
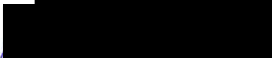
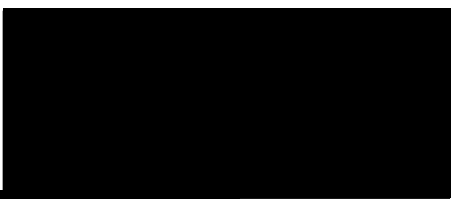
RE Submission to Inquiry into Procurement of Government Infrastructure

[REDACTED] is appreciative of the opportunity to provide a brief submission to the Inquiry into Procurement of Government Infrastructure. With the current focus of the federal and state governments on the delivery of cost effective infrastructure, improvements in procurement which enhance the efficiency of delivery of key infrastructure are welcomed.

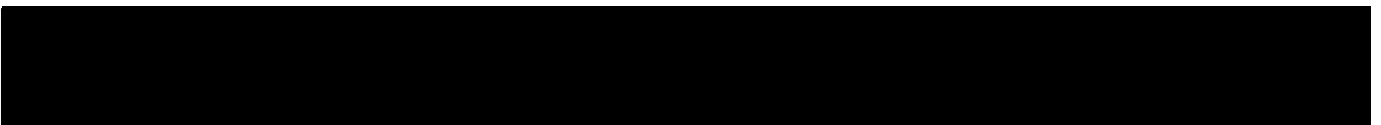
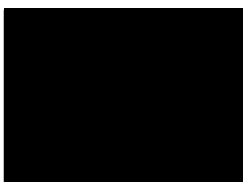
The accompanying submission briefly outlines [REDACTED] views in relation to the committee's terms of reference and is representative of the views of the [REDACTED] executives invited to respond.

Should you seek clarification or further information please contact the undersigned.

Yours Sincerely



CC



SUBMISSION

INQUIRY INTO THE PROVISION OF GOVERNMENT INFRASTRUCTURE

Introduction

is one of the country's leading engineering and infrastructure construction companies.

The has opened up the scope of opportunities for in that now it is actively seeking to participate in developing, constructing, owning and operating a range of public and private infrastructure.

Response to Terms of Reference (attached)

We have framed our response generally around the 7 terms of reference as provided by the committee.

Term of Reference 1: The best process of gateway decision making on the efficacy of public private partnerships compared to other procurement methods.

The Gateway decision models vary from government to government with varying degrees of efficiency. Internally operates a gateway processes to ensure that there is a clearly defined business case for the company targeting a specific project, an understanding of the risk profile associated with the project and the resources, both personnel and financial, the company may need to commit to win the project. These fundamentals would be no different to that expected of a government agency.

The key elements of any government gateway process would not be dissimilar excepting that there will be political dimension to any decision based on commitments given by the government of the day and the current funding options available to a government. Key elements which a government could consider in any process;

- All major project or expenditure programs should have rigorous and well documented business cases which outline the scope, risks and associated funding requirements and clearly demonstrates the value for money for the project. These business cases would be evolving documents early in a project's development but should be clear and unambiguous when a project is coming to market;
- Maintain flexibility in approach to risk apportionment between the government and the industry likely to deliver the project. Too strict a risk apportionment can reduce the flexibility of the industry to be innovative in providing enhanced solutions;
- Provide an opportunity for early engagement with industry when developing projects. Industry has a wealth of experience and can positively contribute to a projects development.
- Provide a clearly defined procurement process from inception to delivery so that both government and the industry understand where a project is in the pipeline.
- Ensure there is transparency, accountability and effective communication of the reasons for making a decision are incorporated into any new delivery model to ensure that the community may be satisfied decisions have been made having regard to all relevant issues. Similarly, industry will have clear view of government's intentions and objectives.

Term of Reference 2: The best procurement process and documentation.

One of the recurring comments from new major players in the Australian infrastructure market is the complexity and high level of effort required to bid work here. The current approaches are not only costly, they create the view that a greater level of detail is required than is actually necessary given the stage of a project.

In delivering major infrastructure the companies seeking to deliver a project are generally major companies with strong financial standing and strong track records in the type of infrastructure to be delivered. Accordingly, procurement processes and documentation should consider the following;

- Provide defined procurement process which clearly states the requirements the government is seeking at each stage. For example, an early engagement with the appropriate industry to ascertain interest could verify financial standing and capability and track record relative to project in question;
- Adopting a standardised approach to documentation (Refer 3 and 4 Below);
- Limit documentation to that which can be used to clearly separate prospective deliverers. We acknowledge that there is a level of documentation required to clearly define the product being offered and provide surety that the bidder has considered all issues and confidence he has the systems to manage and deliver the project. However, in many instances bids require high levels of essentially delivery documentation which then still needs refinement in accordance with contract conditions once a bid is successful. This additional delivery level documentation should not be required during a tender.
- A reduction in both (a) the level of detailed design (i.e. to no more than tenderers reasonably require to price the project), and (b) other project information (e.g. management plans, operational plans), which must be submitted with tenders, and instead a greater emphasis on the preferred-contractor finalising these matters post-preferred (and for relevant items possibly post-award, with the contracting-authority relying on the protections contained in the project deed for the development and approval of documents);

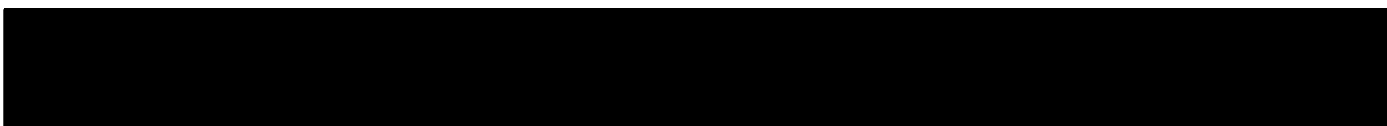
Term of Reference 3: The desirability of a standardisation of procurement processes and documentation;

Term of Reference 4: The desirability of standard national process and documentation for the delivery of government infrastructure within a federal structure;

Terms of Reference 3 and 4 have a common theme regarding standardisation of procurement and documentation and our comments apply to local and federal jurisdictions.

Today the types of major infrastructure being proposed and implemented by governments be they State or Federal will require engagement with proponents who operate nationally and internationally. Accordingly, any approach which standardises procurement and documentation processes across all jurisdictions would be welcomed. Particularly any process which minimises conflict between federal and state legislative and regulatory structures, minimises duplication of effort and ensures any competing issues or responsibilities are identified and addressed at the outset.

Any improvement in the procurement process should consider the early involvement of constructors and related professional entities in the development of project proposals and documentation prior to tender, or once preferred tender status has been awarded. This enhances the capacity of governments to meet ultimate goals by fostering and enabling innovation and providing an environment which can positively impact on project cost or outcomes.



In considering refined procurement processes the perception that greater numbers of shortlisted tenderers will achieve a cheaper or more innovative outcome should not be taken as a given and, in fact, in the absence of substantial changes to procurement practices, could increase the risk of achieving the best project outcome and result in excessive bid costs for tenderers.

The standardisation of procurement models and commercial management and the implementation of a consistent approach will minimise confusion for tenderers, allow a more cost effective effort for tenderers and provide an environment which supports a project achieving financing at the best market rates available.

The potential benefits from adopting a standardised approach at a state and preferably a national level includes;

- Allows bidders to focus on the best solution and pricing options without having to consider how they might respond and document any options;
- A reduction in the legal and other costs involved, and the time spent, in reviewing, negotiating and agreeing documents, which could potentially reduce the length of the procurement process for government;
- A consistent approach (best practice) is implemented across all government projects;
- Allow the contracting-authority and private sector to focus more on truly project-specific issues;
- Assist in keeping the contracting-authority's expectations – and the private sector's expectations – realistic (e.g. it might reduce the tendency by contracting-authorities to roll-over project-specific provisions into a new project without critically evaluating whether they are appropriate for that new project; equally, it would reduce the private sector's ability to 'cherry pick' from previous projects);
- Lead to standardised subcontracts (e.g. D&C contract and O&M contract) and standardised ancillary contracts (e.g. interface agreement), which would further reduce bid costs for tenderers, and also increase the contracting-authority's understanding of the downstream contracts; and
- Assist in speeding up the negotiation of the downstream contracts (with designers and suppliers, for example).

Term of Reference 5: Methods to minimise the cost of contractors tendering for the supply of services with respect to government infrastructure;

As outlined above one of the recognised facts about tendering major infrastructure works in Australia is the cost of tendering.

Approaches which could be taken to minimise tender cost for tenderers include;

- Take greater steps to involve private sector in project development to allow them to better understand a project earlier and not have to do significant scoping and option development during a short tender period. The better the information flow between the private sector and government the better the likely tender outcome for the government.
- Review the level of information required by bidders to that which adequately describes the tenderers bid and provides enough detail to allow differentiation of technical capability before commercial aspects are reviewed;
- Any refinement and streamlining of a procurement process which leads to a reduction in bid time can minimise the SPV bidding costs where specific advisory and legal engagements and are time based, a reduction in the bidding phase timeline can lead to cheaper pricing;

- Provide early advice on funding structures for a project to allow the market to respond more surely during a bid phase.
- Consider a level of reimbursement of tender costs for all tenderers. In this scenario there is no need for a bid to be loaded with tender cost recovery;

Term of Reference 6: Methods to achieve optimal contestability in tendering for the supply of services with respect to government infrastructure;

The major infrastructure market within Australia is a mature market with a diverse range of skilled and competent contractors. Any method to achieve optimal contestability should ensure a level playing field for all participants.

The contestability requirements of any bid will rely on the government's understanding of the project and it having clear objectives for the project upon which tenderers can be evaluated. Methods to achieve this could include;

- Clearly stated objectives for the project taking into account a range of options/alternatives that the private sector might propose. The government should state what any boundaries for the project are, i.e. what options/alternatives are unlikely to be considered etc.
- Ensuring that the selection of tenderers is made on clearly defined terms directly related to the requirements of the particular service to be delivered. In this regard prospective tenderers would need to clearly demonstrate how they will deliver the particular service.
- Where possible the government should seek to avoid an "auction" like process between two tenderers late in the selection process. If suitable bids cannot be provided at the nominated tender time, then there is flaw in the bid process.

Term of Reference 5: Any other related matter.

Inverted Bid Model

Recently there has been some speculation that a move to an Inverted Bid Model (IBM) could reduce bidding costs and procurement lead times.

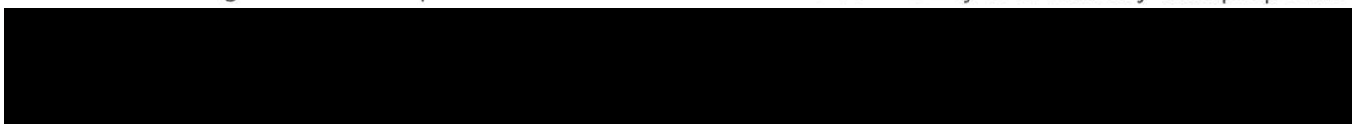
██████████ does not agree that the IBM, where government appoints a long term equity party on the basis of their IRR and then, following this appointment, the equity party runs tenders for construction, operations and maintenance, and debt funding, achieves its intended goals for a variety of reasons, some of which include:

- Typically, long term equity parties do not have the specific procurement skill sets required to prepare tender documentation and evaluate responses.
- Private sector procurement can lack the probity rigour that a government process provides.
- When selecting equity parties upfront this can lead to sub optimal pricing and terms

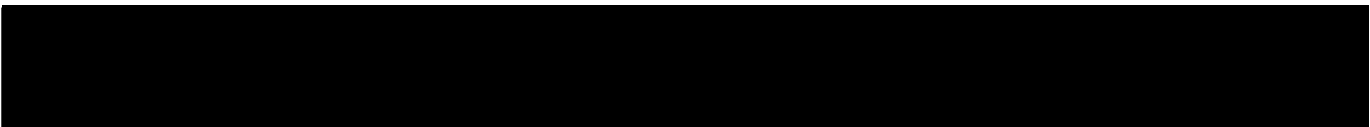
Unsolicited Proposals

A further area where industry may be able to contribute effectively to the delivery of infrastructure in particular, is through the mechanism of Unsolicited Proposals (UPs).

There currently exist inconsistencies in policy and approach between government organisations with regards to UPs. The high demands that governments place on value for money, competition, transparency and the consequent more rigorous criteria placed around UPs are well understood. Clear and consistent guidelines will provide confidence to both the community and industry that proposals



that are successful represent the best value outcomes whilst encouraging industry to find unique and innovate ways to deliver infrastructure solutions.



INQUIRY INTO PROCUREMENT OF GOVERNMENT INFRASTRUCTURE PROJECTS

TERMS OF REFERENCE

That the Committee inquire into, and report on, world's best practice with regard to the procurement of government infrastructure projects with particular reference to:

1. The best process of gateway decision making on the efficacy of public private partnerships compared to other procurement methods;
2. The best procurement process and documentation;
3. The desirability of a standardisation of procurement processes and documentation;
4. The desirability of standard national process and documentation for the delivery of government infrastructure within a federal structure;
5. Methods to minimise the cost of contractors tendering for the supply of services with respect to government infrastructure;
6. Methods to achieve optimal contestability in tendering for the supply of services with respect to government infrastructure; and
7. Any other related matter.