

**Submission
No 15**

PROCUREMENT OF GOVERNMENT INFRASTRUCTURE PROJECTS

Organisation: NSW Government
Name: The Hon Gladys Berejiklian MP
Position: Treasurer
Minister for Industrial Relations
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**Treasurer
Minister for Industrial Relations**

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Your reference: D15/36256

Alister Henskens SC MP
Committee Chair
The Legislative Assembly Committee on Transport and Infrastructure
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Chairperson, *Alister*

Thank you for advising the NSW Government of the start of the Legislative Assembly Committee's inquiry with regard to the procurement of government infrastructure.

Please find attached in Annexure A the NSW Government's submission in response to the inquiry.

Yours faithfully,

**Gladys Berejiklian MP
Treasurer
Minister for Industrial Relations**

Annexure A - NSW Government Response



Inquiry into the Procurement of Government Infrastructure Projects

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

The NSW gateway decision making process is a mature process originally developed by the UK's Office of Government Commerce and used by many jurisdictions around the world, including NSW. It is managed through an Independent Infrastructure Investor Assurance Framework (IIAF) which is governed by the Infrastructure Investor Assurance Committee (IIAC). Infrastructure NSW (INSW) is responsible for administering the IIAF and convening the IIAC. The Framework is intended to provide oversight of projects, help agencies improve their procurement discipline, to achieve better service results and to manage risk throughout the infrastructure project's life cycle.

The IIAF sets out a process and accountabilities to:

- Identify the risk potential profile of infrastructure projects valued above \$10 million;
- Apply the required level of project assurance and reporting based on a project's risk profile; and
- Report project status and progress towards closing out significant key risks.

An independent and experienced team of procurement practitioners conduct assurance reviews.

The procurement decision and whether the project will be delivered as a public private partnership (PPP) is made after Government approves the project justification (assured under Gate 0 of the IIAF), the Strategic Investment (assured under Gate 1 of the IIAF) and the Business Case (assured under Gate 2 of the IIAF).

Private project financing and the use of a PPP model must be assessed as a delivery option for all major projects over \$100 million. Full details on Government procurement options analysis is provided in *Volume 1: Procurement Options Analysis* of the Australian National PPP Guidelines¹. Agencies are required to consider the appetite of the NSW Government and the market for certain project risks, contestability, financing requirements and potential whole of life benefits.

2 The best procurement process and documentation

The objective of the NSW Government's procurement processes and documentation are to maximise competition and elicit proposals that are capable of acceptance and execution. Procurement processes vary in structure and length depending on the procurement approach, the degree of complexity of the infrastructure being procured and project specific aspects. Best practice procurement is achieved by establishing governance to enable cross agency

¹ http://infrastructureaustralia.gov.au/policy-publications/public-private-partnerships/files/National_PPP_Guidelines_Volume_1_Procurement_Options_Analysis_Dec_08.pdf

collaboration and input early on and seeking market feedback on the Government's preferred delivery (procurement and packaging) strategy before commencing procurement.

Initiatives undertaken by the NSW Government to improve the efficiency of the procurement process include:

✓ **Establishment of the NSW Government Procurement Board in 2012**

The NSW Procurement Board is the government body responsible for the overarching governance structure and operating framework for the NSW Government procurement system. The objectives of the Board are to:

- Develop and implement a Government-wide strategic approach to procurement;
- Ensure best value for money in the procurement of goods and services by and for government agencies;
- Improve competition and facilitate access to Government procurement business by the private sector, especially by small and medium enterprises and regional enterprises;
- Reduce administrative costs for government agencies associated with procurement; and
- Simplify procurement processes while ensuring probity and fairness.

The NSW Procurement Board is also responsible for managing the Agency Accreditation Scheme for Construction, aimed at managing risks and reducing cost overruns in the procurement of construction works. The scheme applies irrespective of the source of funding for the project.

✓ **Establishment of Projects NSW**

The NSW Government recently established an independent procurement and delivery entity, within INSW, Projects NSW, to undertake procurement and delivery of selected major, complex or high risk infrastructure projects on behalf of nominated agencies.

✓ **Development of a Standard Project Documentation**

The NSW Government recognised the efficiencies to be gained through standardisation of processes and documentation, for example:

- standardising the project deed for availability PPPs and developing templates to assist agencies through the full procurement life cycle of a PPP;
- the development and use of the GC21 suite of contract documents; and
- the use of the National Alliance Contracting Guidelines for major construction alliances.

3 The desirability of the standardisation of procurement processes and documentation

The benefit of standardising procurement processes and documents is to improve the efficiency of procurement, reduce procurement costs for the NSW Government and bid costs for the private sector.

Whenever possible agencies are encouraged to use standard NSW Government documentation and in the absence of this, when appropriate, Australian Standard templates. Initiatives put in place by the NSW Government to support this initiative include:

✓ **NSW Government Procurement Policy - Agency Accreditation Scheme for Construction**

NSW Government agencies are required to comply with NSW Government Procurement Policy - Agency Accreditation Scheme for Construction. The scheme:

- Applies to construction projects and programs above a value of \$1 million; and
- Applies on a whole-of-government basis to all government departments, statutory authorities, trusts and other government entities².

The NSW Government has made concerted efforts to standardise procurement processes and documentation whilst recognising necessary variations due to the selected delivery model and project type. To this extent, there exists significant commonality in documentation between agencies in relation to:

- The conditions of tender that are utilised; and
- The tender schedules that are required to be completed by tenderers³.
- The NSW Government has also developed a set of general terms and conditions known as GC21 for lump sum contracts either as a design and construct or construct only projects.

✓ **Development of a Standard Project Deed and project ‘toolbox’ for PPPs**

The NSW Government invested significant time to consult with other States and market participants to develop a standardised project deed for availability-based PPP projects. This will enable agencies and bidders to focus on project specific issues and the product being procured and is expected to significantly reduce bid costs, increase private sector confidence and deliver innovative service outcomes.

The NSW Government has created a standard toolbox for PPPs which includes templates for the appointment of advisors, Expression of Interest (EOI) and Request for Proposal (RFP) documents, evaluation plans for the evaluation of advisory, EOI and RFP responses, based on the most recent precedent

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

The NSW Government supports the development of national processes and documentation for the delivery of infrastructure, whilst recognising the practical differences that exist between jurisdictions.

Initiatives put in place by the NSW Government to support this initiative include:

² The scheme does not apply to State Owned Corporations subject to the State Owned Corporations Act.

³ There may be some significant variance depending upon the amount of information agencies require to satisfy themselves that a tenderer is capable of carrying out the works. This is also dependent on the complexity of the works

- Collaboration with jurisdictions on nationwide initiatives to improve the procurement and delivery of infrastructure, including the Transport and Infrastructure Council and National PPP Working Group.
- Ongoing collaboration with Infrastructure Australia on updating the National PPP Guidelines.
- Development of a standardised project agreement for availability PPPs in NSW which is largely consistent with precedent used in other States.
- Use of the National Alliance Contracting Guidelines for major construction alliances.
- The development of the GC21 general conditions of contract suite of documents which is currently being utilised by other State Governments.

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

Certainty and best quality service outcomes are key procurement objectives for the NSW Government. In most instances, appointment of a preferred bidder will only take place once certainty has been attained with respect to key project documents and where relevant, financing, with competitive tension embedded throughout all selection and negotiation processes. Moreover, the NSW Government has evolved in its approach to infrastructure procurement from an input specified approach to an output specified approach, particularly in the procurement of PPPs.

Initiatives put in place by the NSW Government to support this initiative include:

✓ Market consultation to reduce bid costs for complex infrastructure procurement

In 2015 the NSW Government undertook comprehensive market consultation to identify further opportunities to reduce costs to industry participants on major infrastructure projects, without compromising its objectives. The NSW Government invited 65 market participants to participate in the consultation process and interviews were held with 48 participants across roles in and sectors of the PPP market. Key bid cost drivers identified by industry included:

1. **Deal complexity** typically resulting in longer and more intense procurement phases, often resulting in detailed clarifications after bid submission, with a requirement to allocate additional resources to resolve complex issues.
2. The **level of certainty** required by Government before it appoints a Preferred Bidder requiring bidders to incur significant expense in responding to extensive bid requirements, in particular on design and operational elements.
3. The **length of the procurement process** from market announcement to Financial Close with costs incurred in ensuring all stages are appropriately resourced.
4. The **experience and expertise** of the Government project team in driving the bid process, ensuring timely and effective communication and generally managing an efficient procurement process.

Participants made a number of recommendations and the outcomes of this consultation have resulted in several improvements to the procurement process, documentation and establishment of the project team. These proposed changes are in the process of being incorporated into the NSW PPP policies and guidelines.

✓ **Use of industry briefings**

The NSW Government generally adopts a two staged procurement process for infrastructure procurement involving an Expressions of Interest (EOI) phase, and a request for tender (RFT) phase. For major projects there is generally an industry briefing held prior to the commencement of the EOI process to provide information regarding the procurement process, providing potential bidders with an opportunity to establish consortia and joint venture arrangements to be better placed to respond to the EOI.

✓ **Introduction of the Asset Standards Authority (ASA) by Transport for NSW (TfNSW)**

TfNSW's Authorised Engineering Organisation (AEO) program has been designed to remove the need for a tenderer to prove their core capabilities during the tendering process, due to these capabilities being previously assessed and "authorised" during the AEO process.

The aim of the AEO process is to specify requirements (outcomes) rather than prescribing defined specifications in tenders and standards, to drive greater innovation, cost-effectiveness and fitness for purpose in asset acquisition and delivery phases.

✓ **Value for money considerations**

It is important to recognise that any effort to reduce bid costs must be assessed against NSW requirements for cost certainty and the desire to achieve greater value for money through embedding competitive tension throughout the procurement process. This is evident when contrasting the NSW PPP market with comparable jurisdictions which have had past success in using PPP models, such as the United Kingdom and Canada. While these markets often compare favourably to the Australian market in terms of bid costs, this is often driven by fundamental differences in governments' engagement strategy and risk appetite.

In the United Kingdom, this is manifested by the willingness of the UK Government to select a preferred proponent prior to the finalisation of contractual terms and debt financing arrangements. The NSW's Procurement Board is currently piloting three UK best practice procurement models to examine its applicability to the Australian market and potential benefits.

Similarly in the Canadian market, highly standardised project documentation has enabled the application of the PPP model to a vast number of projects across the value spectrum. This approach is being challenged as infrastructure procurements are becoming increasingly complex and output focused.

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

The NSW Government achieves contestability primarily through the use of PPPs, outsourcing, and brownfield asset transactions and franchising. Through projects such as the Northern Beaches Hospital, the NSW Government has enabled contestability not only in hard and soft facilities management within the healthcare sector, but also in the delivery of clinical services. Similarly in education, the New Schools PPP packages introduced hard and soft facilities management services into the education sector.

The NSW Government has also successfully introduced contestability in the market for public transport services, through undertaking franchising of ferries and certain bus routes and undertaking PPPs for the delivery of light rail and new commuter rail through the Sydney Metro project. A new operational model for Transport using a private operator is also being considered under the Newcastle Light Rail project. The NSW electricity network transactions have also enabled unprecedented contestability in the regulated utility sector.

The NSW Government has a strong track record of engaging with the market to ensure that projects are deliverable when specifying project scope, risk transfer and commercial terms for projects aiming to increase contestability. As NSW moves towards an unprecedented level of activity in infrastructure procurement and delivery, the NSW Government will continue to monitor the market pipeline and the ability of contractors to tender for new projects, when already responding to multiple other tender requests in the market.

7 Other related matters

The NSW Government, along with many other governments, uses the infrastructure procurement process to drive reform and deliver public policy initiatives.

One example is the NSW Government's response to the increase of construction company insolvencies which left subcontractors more than \$1 billion out of pocket. In response, the NSW Government commissioned Mr Bruce Collins QC to conduct an inquiry into the construction industry and to make recommendations on ways in which the rights of subcontractors and suppliers could be better protected. The inquiry was conducted in 2012. The NSW Government accepted a significant number of the recommendations.

Additional examples include the NSW Government's introduction of Workplace Relations Management, Aboriginal Participation in Construction and a requirement upon industry to train apprentices on NSW Government projects.