

NATIONAL PPP WORKING GROUP STATEMENT OF RESPONSE TO THE INFRASTRUCTURE AUSTRALIA & KMPG REPORT

“Review of Barriers to Competition and Efficiency in the Procurement of PPP Projects”

The National PPP Working Group is an inter-jurisdictional committee comprising those responsible for PPP policy and practices in each jurisdiction. After considering the Review's recommendations the Group makes the following observations in relation to the Report.

Jurisdictions will continue to collaborate to improve PPP processes, and to work together with industry to improve the efficiency of procurement of PPP projects, noting that some of the reports key observations and comparisons with international jurisdictions are not applicable in the Australian context for several policy reasons.

The National PPP Working Group notes the following key themes from the report:

- In terms of time taken to procure PPP projects Australia compares favourably with similar processes internationally.
- Bid costs also appear to compare favourably with those in the UK, although our costs may be higher than those in Canada.
- Industry remains concerned that bid costs (particularly in relation to design and information requirements) are a barrier to competition in the PPP market.
- While the private sector considers that greater certainty around a PPP pipeline has the potential to negate a possible barrier to competition created by high bid costs, this is difficult to coordinate in the Australian federal system, where PPPs are generally budget funded and released to market in accordance with jurisdictional budget priorities.
- Bid costs incurred on major infrastructure projects delivered using the PPP model will continue to be significant due to the model's inherent level of complexity particularly around whole-of-life risk transfer.

In terms of value for money and project delivery the Group notes there is little (if any) evidence that any lack of competition perceived by the private sector has had significant adverse impact on the outcomes achieved by Government. The Group has committed to the following priority actions in response to the report's recommendations to be actioned in 2010/11.

- Jurisdictions will investigate whether changes to approval processes for procurement strategies could improve the level of consistency.
- Jurisdictions will indicate to the market, subject to required approvals, as early as possible the projects that are likely to use the PPP model and publicise this information on the Infrastructure Australia website.
- Jurisdictions will explore with the private sector opportunities to materially reduce information-related bid costs without compromising the State's ability to reach a value for money decision.
- Jurisdictions will co-operate to standardise aspects of the interactive tender process and other best practice initiatives.

The National PPP Working Group's responses to all of the Review's recommendations are in the attached table. The Group is committed to a process of continuous improvement in the delivery of PPP projects and ongoing dialogue with industry representatives to further best practice procurement.

NATIONAL PPP WORKING GROUP'S RESPONSE TO RECOMMENDATIONS FROM KPMG'S REPORT ON BARRIERS TO COMPETITION AND EFFICIENCY IN PROCUREMENT OF PPPs

Strategies to reduce barriers to competition			
	KPMG Recommendation	PPP Working Group Response	Proposed Actions
a)	As early as possible announcement of potential future PPP projects.	<p>Jurisdictions agree-in-principle that early notification to the market of projects that are likely to use a PPP approach is important for building confidence and increasing competition in the PPP market.</p> <p>Jurisdictions note that the National PPP Guidelines and current practice is to determine the preferred procurement strategy following project approval and that the decision is based on a project specific assessment of the best delivery model.</p>	Subject to required approvals, jurisdictions will indicate to the market as early as possible the projects that are likely to use the PPP model and will publicise this information on the Infrastructure Australia website.
b)	More consistent and rigorous application of the National PPP guidelines on the criteria for determining whether PPP procurement is appropriate for a project.	<p>Jurisdictions agree that consistent approaches to the selection of procurement strategies, particularly the consideration of PPP as an option, is important for building confidence and increasing competition in the PPP market.</p> <p>Jurisdictions note that ultimate responsibility for selecting the procurement strategy for major projects usually lies with Government, based on the objectives and characteristics of each project.</p>	<p>The National PPP Working Group will ask COAG to note the impact of inconsistent approaches to selection of procurement strategies.</p> <p>Members of the National PPP Working Group will investigate whether changes to approval processes for procurement strategies could improve the level of consistency.</p>
c)	Continued commitment and leadership from, politicians and senior bureaucrats within the Commonwealth and each of the various	Jurisdictions note industry's view that strong support from the Government and senior officials is important for building confidence and increasing competition in the PPP market.	See actions against recommendations a) and b).

Strategies to reduce barriers to competition			
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	jurisdictions in support of the use PPPs in appropriate circumstances.		
d)	Where possible, continued focus on improving national co-ordination of the release of projects to the market by greater liaison between jurisdictions, acknowledging the difficulties in achieving this.	<p>Jurisdictions agree in-principle that a coordinated release of projects to market is likely to optimise the response from the market and potentially increase competition.</p> <p>Jurisdictions note that they always aim to release projects to the market in a co-ordinated fashion and that there is ongoing dialogue with other jurisdictions in relation to the release of projects.</p> <p>Jurisdictions note also that the timing of projects is subject to numerous jurisdiction-specific influences and decision making processes which do not always support timing that might be optimal for the national market.</p>	Jurisdictions will continue to build the extent and level of communication within the National PPP Working Group to ensure that the potential for scheduling constraints and conflicts are minimised.

Strategies to improve the efficiency of the PPP process and reduce bid costs			
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e)	Rationalising information requested that is neither required to evaluate bids nor required for certainty at contractual close, particularly relating to	<p>Jurisdictions note that in seeking to ensure the achievement of value for money, the provision of comprehensive information is necessary, particularly for large and complex projects.</p> <p>Jurisdictions agree in-principle that information requirements that go beyond that required to</p>	<p>Jurisdictions, through the National PPP Working Group, will explore with the private sector, opportunities for reducing information-related bid costs.</p> <p>Jurisdictions will consider using independent reviews of procurement documents, prior to their</p>

Strategies to improve the efficiency of the PPP process and reduce bid costs			
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	some aspects of design and to general corporate processes.	<p>meaningfully assess bids could add unnecessarily to the cost of bidding, and the overall value for money decision.</p> <p>A number of jurisdictions already use independent reviews of procurement documentation and there is general agreement that this reflects better practice.</p>	release, in order to identify excessive information requirements.
f)	Recruitment, development and retention of high quality Government project team members, in particular the project director and key team members responsible for managing each of the various disciplines.	<p>Jurisdictions agree that access to capable staff is particularly important in the effective delivery of PPP projects.</p> <p>Jurisdictions note that their ability to retain highly capable staff is often constrained by competing demands from the private sector and their ability to develop staff is limited by the flow of transactions.</p>	<p>Jurisdictions will continue to develop and endeavour to attract and retain staff that are capable of effectively managing complex projects.</p> <p>Jurisdictions will explore further the potential for inter-jurisdictional secondments to enable access to more opportunities for development.</p> <p>Jurisdictions will, however, also continue to resource PPP transactions with a mix of employees and service providers where sufficient capacity is not available in-house.</p>
g)	Ensuring governance structures empower the project team to deliver the project while enabling effective and efficient decision making so as to prevent unnecessarily protracted and uncertain timeframes.	<p>Jurisdictions agree in principle that empowered project teams can facilitate quick decision-making.</p> <p>Jurisdictions note that this principle would apply to the private sector teams as well as to public sector teams.</p> <p>Jurisdictions note that the accountability requirements for public expenditure and decision-making around complex PPP transactions often limit the extent to which authority can be delegated.</p> <p>Jurisdictions consider that in cases where extra-project approvals are required, it is important that the market understands this, the timeframes</p>	Jurisdictions will continue to optimise the level of authority for decision making within project teams, consistent with prudent public sector governance.

Strategies to improve the efficiency of the PPP process and reduce bid costs			
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		are known and project teams ensure they deliver against their plans.	
h)	Only using more than one bid stage where absolutely necessary, either because of changed market conditions or where no bidder has made an acceptable proposal.	<p>Jurisdictions note that re-bidding is not the standard approach in Australian PPP procurement processes. The schedule performance of PPP procurement noted in the report supports this view.</p> <p>Jurisdictions suggest that revised bids are usually only sought when the criteria outlined in the National PPP Guidelines apply, ie, where prices are too high, where a preferred bidder cannot be clearly determined or where no bidder has made an acceptable proposal. In such cases it could be reasonably argued that a revised bid is necessary if an acceptable outcome is to be obtained for all participants.</p>	Jurisdictions reserve the flexibility to call for revised bids consistent with the National PPP Guidelines.

Strategies to address some of the complexity of PPPs and the Australian context			
	KPMG Recommendation	PPP Working Group Response	Proposed Actions
I	Appropriately educating new entrants in respect of PPP procurement processes and the "Australian context".	<p>Jurisdictions suggest that Infrastructure Australia and Austrade would be appropriate bodies to promote awareness of Australian PPP procurement processes to potential overseas participants.</p> <p>A number of jurisdictions already support such joint National initiatives as well as mounting awareness building missions unilaterally and receiving delegations of overseas government officials and private sector players.</p>	<p>Infrastructure Australia will continue to engage with Austrade and international PPP participants to build awareness and understanding of Australian PPP procurement processes.</p> <p>Jurisdictions will support joint National awareness building initiatives on an ad hoc basis and will continue to send and receive delegations.</p>

Strategies to address some of the complexity of PPPs and the Australian context			
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II	Actively marketing the Australian PPP market and projects internationally where there might be a particular advantage in attracting international bidders.	<p>Jurisdictions note that they already actively engage with existing and potential new participants, but that the extent of engagement is determined on a project-by-project basis.</p> <p>Active engagement, including roadshows and bilateral meetings with international participants, is most often pursued when new technology is proposed or where there appears to be limited capability or capacity among existing participants, eg the Sydney Metro and Gold Coast Rapid Transit Projects.</p>	<p>Jurisdictions will continue to actively promote their projects with a view to ensuring an informed bidding field and a project structure that will optimise competition.</p> <p>Marketing of projects to potential overseas participants will be considered on a project-by-project basis.</p>
III	Enhancing debriefing sessions so that bidders can obtain a better understanding of how they can improve their responses in future.	<p>Jurisdictions note that extensive effort is put into preparation for debriefing sessions. Debrief structures are responsive to feedback from previous debriefs.</p> <p>Jurisdictions note that losing bidders often appear to focus on comparative scores and rankings, rather than on learning where the evaluation team felt a particular bid had strengths or weaknesses when compared against the evaluation criteria.</p>	<p>Jurisdictions will continue to provide feedback to bidders that relates to their performance against the evaluation criteria.</p> <p>Jurisdictions, through the National PPP Working Group, will explore with the private sector how more benefit could be gained from debriefs.</p> <p>The National PPP Working Group will also compare debrief practices between jurisdictions and adopt the elements of best practice that are not already in the National PPP Guidelines.</p>
IV	Developing a communications strategy that demonstrates the benefits achieved from PPP projects and addresses general misconceptions about the PPP model.	<p>Jurisdictions note that they have sponsored research by the University of Melbourne into the comparative performance of PPP and traditional procurement.</p> <p>Infrastructure Australia publishes or provides links to research into PPPs and infrastructure provision on its website. Infrastructure Australia</p>	<p>Infrastructure Australia and the National PPP Working Group will continue to take a lead in promoting research into infrastructure provision and in communicating the results.</p>

Strategies to address some of the complexity of PPPs and the Australian context			
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		is keen to increase the utility of this resource and is open to hosting new documents or links.	

Strategies to address poor quality documentation and processes			
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V	Improved sharing of skills and knowledge between project delivery personnel and procurement project teams (i.e. not just respective PPP units), particularly in relation to lessons learnt and “good practices”, and adopting a framework to facilitate the transfer of experience from earlier to later deals.	<p>Jurisdictions agree that they have an interest in developing the capability of all staff conducting PPP transactions.</p> <p>There is often close cooperation between teams within and across jurisdictions that are implementing similar projects, but there is room to broaden this approach.</p>	Jurisdictions will continue to develop staff through knowledge and experience sharing and will explore further options for intra- and inter-jurisdictional learning.

Strategies to address poor quality documentation and processes			
	KPMG Recommendation	PPP Working Group Response	Proposed Actions
VI	Using strong precedent documentation as appropriate for generic aspects of projects (no need to try and recreate the wheel), noting that jurisdictions already use precedents for project contracts based on the National PPP Guidelines' standard commercial principles.	<p>Jurisdictions agree that the use of familiar documentation can build confidence and simplify the task of responding to requests for proposals.</p> <p>Jurisdictions note that the development of the National PPP Guidelines, particularly the Commercial Principles for Economic and Social Infrastructure was based, in large part, on the evolution of commercial conditions at a national, rather than a jurisdictional level.</p> <p>Jurisdictions note that the flow of projects in Australia is unlikely to justify the development of standard contracts.</p>	Jurisdictions, through the National PPP Working Group, will continue to refine their contract documentation, using learnings from around the nation and will endeavour to improve consistency in terminology and layout.
VII	Consistently applying the National PPP Guidance, particularly on conducting an Interactive Tender Process.	<p>Jurisdictions agree that an interactive tender process is a key driver of an effective PPP procurement process. An interactive process promotes mutual understanding of the project requirements and governments' expectations, improves value for money outcomes and reduces the likelihood of having to call for revised bids.</p> <p>Jurisdictions note that the interactive tender process is a key aspect of the National PPP Guidelines. The Guidelines provide for flexibility to allow for bidder preference and project-specific circumstances.</p>	Jurisdictions will explore the potential for standardisation of aspects of the interactive tender process, eg, probity documentation and arrangements.

Strategies to address poor quality documentation and processes			
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VIII	Using Gateway or other independent reviews at the key stages of documentation preparation and the procurement process to verify their appropriateness (ensuring that reviewers are familiar with PPP projects).	<p>Jurisdictions have procurement frameworks in place to ensure a fair and rigorous competitive tendering process.</p> <p>Most jurisdictions have a Gateway or similar process in place to review procurement strategies.</p> <p>A number of jurisdictions already use independent reviews of procurement documentation and there is general agreement that this reflects better practice.</p>	<p>Jurisdictions will continue to use Gateway or similar processes to review procurement processes.</p> <p>Jurisdictions will consider using independent reviews of procurement documents, prior to their release, in order to identify excessive information requirements.</p>
IX	Having a high degree of fruitful interaction during tender processes within appropriate but not excessive probity requirements.	Jurisdictions do not support relaxation of probity requirements such that the integrity of procurement processes would be compromised.	Jurisdictions will continue to prioritise the effectiveness of the interactive tender process and ensure that probity arrangements support that outcome.
X	Where not already done, undertaking due diligence investigations that all bidders require to minimise the unnecessary duplication of effort and costs, recognising that bidders may still require their own specific investigations.	<p>Jurisdictions agree in-principle that conduct of investigations (eg, geotechnical, contamination, heritage) by government clients is often more efficient than each bidder conducting those investigations, particularly if a Project Agreement has the State bearing all or majority of the risk.</p> <p>Where such investigations are conducted, the results are made available to all bidders.</p> <p>Jurisdictions also note that it is often necessary to provide for bidders to conduct targeted or additional investigations to allow them to submit an optimal bid.</p>	<p>Jurisdictions will continue to conduct due diligence investigations where it is apparent that that would provide a more efficient process for the State.</p> <p>Jurisdictions will continue to provide for bidders to conduct targeted or additional investigations where that might be necessary.</p>

<i>Strategies to address the problems with the EOI process</i>			
	KPMG Recommendation	PPP Working Group Response	Proposed Actions
XI	<p>Reviewing the Expression of Interest (EOI) process to ensure clear communication of objectives to the market and a focus on the ultimate selection of a short-list of bidders that is most likely to deliver the best overall solution for the project. In particular, information requirements should match closely the evaluation criteria.</p>	<p>Jurisdictions note the report’s finding of a high level of satisfaction with EOI processes.</p> <p>Jurisdictions agree that a targeted Request for EOI is important in building confidence and attracting the most appropriate participants.</p> <p>A number of jurisdictions already use independent reviews of procurement documentation and there is general agreement that this reflects better practice</p>	<p>Jurisdictions, through the National PPP Working Group, will continue to share and apply best practice in RFEOI.</p> <p>Jurisdictions will consider using independent reviews of RFEOI documents, prior to their release, to ensure information requirements reflect the evaluation criteria.</p>

<i>Strategies to address protracted and uncertain timeframes</i>			
	KPMG Recommendation	PPP Working Group Response	Proposed Actions
XII	<p>Obtaining commitment to the project from all key stakeholders at an early stage</p>	<p>Jurisdictions understand that stakeholder support can be critical in achieving planned procurement milestones.</p> <p>Jurisdictions note that it is not always possible or desirable for stakeholders to commit unconditionally to projects at an early stage.</p>	<p>Jurisdictions will continue to identify where stakeholder support is critical to progress of procurement processes, when key decisions are required and where situations arise that may put progress at risk.</p> <p>Jurisdictions will continue to actively manage procurement schedule risk, including active engagement with stakeholders.</p>

Strategies to address protracted and uncertain timeframes			
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XIII	<p>Developing better output specifications with less focus on design specifications (recognising that some areas such as safety will continue to need detailed input specifications), including:</p> <ul style="list-style-type: none"> - having detailed guidance on their development within the National PPP Guidelines; and - having a greater dialogue with potential bidders about the functional brief before formally approaching the market. 	<p>Jurisdictions agree that clear output specifications are critical to obtaining bids that respond effectively to the client’s desired outcomes and exploit bidders’ innovative capacities. Scope and or output specifications can be optimised through market sounding before formally approaching the market.</p> <p>Jurisdictions note that dialogue about the design of assets can often constrain the consideration of potential solutions. Indeed, too much concentration on design preferences can lead to an input focus.</p> <p>Jurisdictions agree that clients should be clear if there are any mandatory specifications, particularly those driven by legislation, regulation and national standards so that bidders do not pursue unacceptable options.</p> <p>Jurisdictions note that output specifications are a developing area and one that would benefit from further inter-jurisdictional collaboration. It is likely that adopting detailed guidance at this early stage would unnecessarily constrain further development.</p> <p>Jurisdictions agree in-principle that dialogue with potential bidders about the functional brief can help identify where unnecessary constraints might be placed on bidders’ innovative capacities. Jurisdictions note, however, that there will be occasions where constraints on</p>	<p>Jurisdictions, through the National PPP Working Group, will continue to share and apply best practice in the development of output specifications, both in specific sectors as well as conceptually.</p> <p>Jurisdictions will continue to identify where mandatory input specifications apply to potential solutions.</p> <p>Jurisdictions will continue to explore where functional specifications might unnecessarily constrain the range of potential solutions that bidders might apply to achieve a project’s objectives.</p>

<i>Strategies to address protracted and uncertain timeframes</i>			
	KPMG Recommendation	PPP Working Group Response	Proposed Actions
		potential solutions will be intentionally imposed.	
XIV	Revising sector-specific guidance and standard specifications where new issues recur.	see xiii above	see xiii above
XV	Considering how to facilitate the effective retention and recycling of existing skills in complex procurement across the public sector, promoting an attractive career path in complex procurement backed by a structured training and development programme.	see f) and v) above	see f) and v) above
XVI	Undertaking good forward planning in the procurement phase, including early risk assessment, thorough due diligence, and robust output specifications.	These are currently elements of best practice PPP procurement that all jurisdictions would seek to apply in all circumstances. see a), d), e), f), g), ii, vi, vii, viii, x, xi, xii, xiii above	Jurisdictions will endeavour to continue these elements of best practice PPP procurement. see a), d), e), f), g), ii, vi, vii, viii, x, xi, xii, xiii above
XVII	Considering substantial contributions to reasonable bid costs in instances where: - Governments need to attract new entrants	Jurisdictions note that the position adopted in the National PPP Guidelines is that, in normal circumstances, government would not contemplate the payment of any part of the bid costs incurred by unsuccessful bidders. However, as already provided for in the	Jurisdictions will continue to apply the National PPP Guidelines' provisions relating to bid cost contributions.

Strategies to address protracted and uncertain timeframes		
KPMG Recommendation	PPP Working Group Response	Proposed Actions
<p>to the Australian market (eg, specialist technology providers, specialist operators)</p> <ul style="list-style-type: none"> - Governments extend procurement processes beyond the norm in order to achieve maximum competition and best value for money outcomes - Projects are essentially 'one-off' in nature or so large as to prevent bidders from being reasonably able to recoup those costs on future successful transactions - Governments cancel the project for reasons other than bidders' failure to make acceptable proposals (when they should provide full reimbursement). 	<p>Guidelines, in limited circumstances, government may consider a contribution towards reasonable bid costs.</p> <p>Jurisdictions do not consider that there would be any material benefit to provide more detailed guidance in the National PPP Guidelines.</p>	