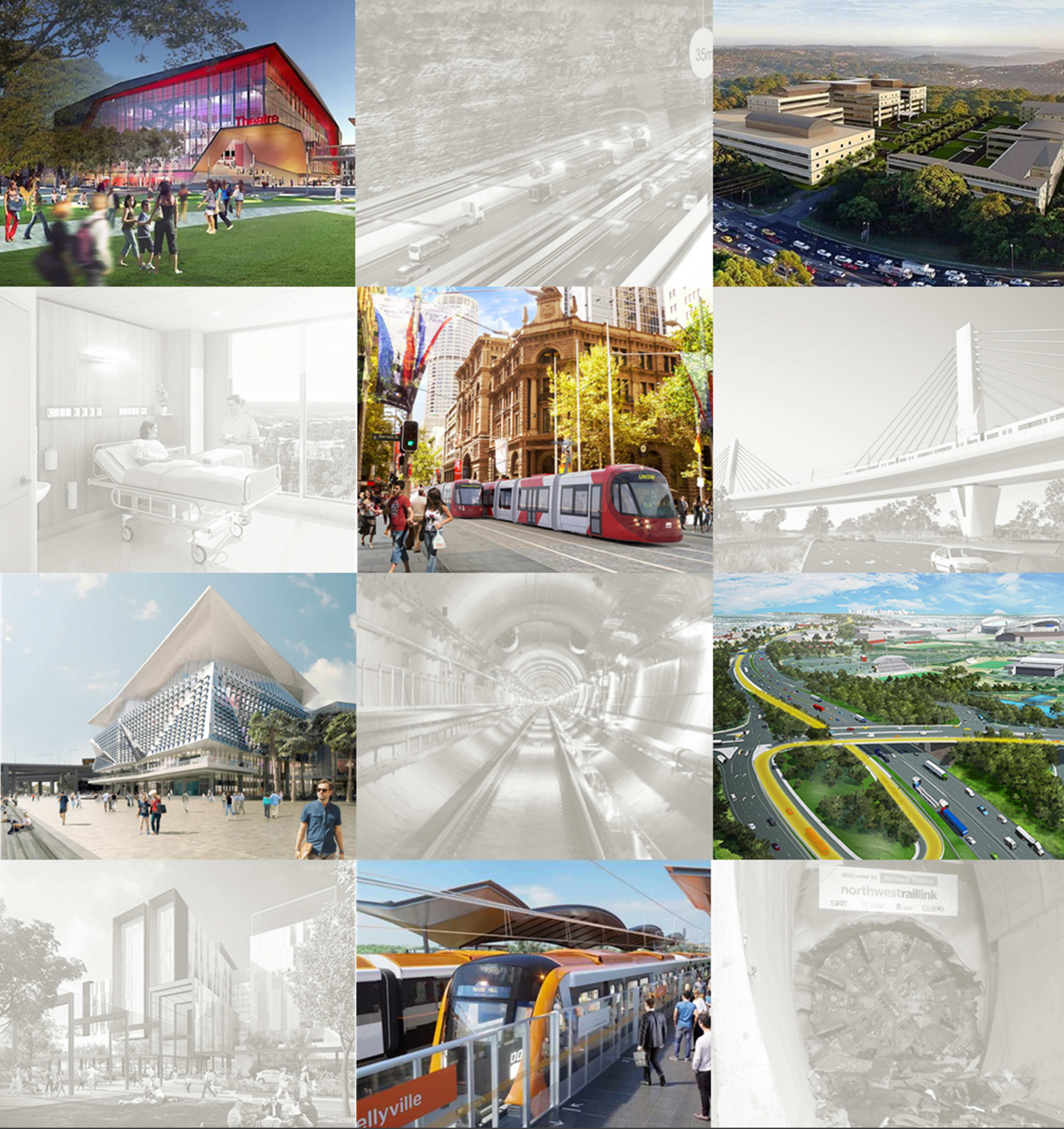


REDUCING PROCUREMENT BID COSTS

Infrastructure & Structured Finance Unit, NSW Treasury

December 2015

NSW GOVERNMENT | The Treasury

CONTENTS

1 EXECUTIVE SUMMARY

1.1 Introduction and approach

NSW Treasury has a strong track record in helping agencies successfully procure and deliver major infrastructure and/or complex projects under the Public Private Partnership (PPP) model. In 2014, the Infrastructure and Structured Finance Unit (**ISFU**) assisted the NSW Government with closing five new infrastructure projects, including the Sydney Light Rail PPP (**SLR**), the Sydney Metro North West PPP (**SMNW**), the Northern Beaches Hospital PPP (**NBH**), the D&C contract for the Westconnex M4 Widening Project (**WCX Stage 1A**) and the unsolicited bid for NorthConnex.

On the back of such a busy year, the ISFU thought it timely to review the procurement processes and seek targeted feedback from the PPP market on the procurement of these projects as well as other projects across Australia and internationally to inform potential updates and improvements to its PPP policies. Specifically, the ISFU wanted to understand if there are any further opportunities to reduce the cost of bidding for PPP projects in NSW and undertook a targeted review to identify key bid cost drivers across the PPP procurement lifecycle and if there are any alternative approaches used by other jurisdictions, that could lead to a reduction in bid costs. The approach to the review was to:

- review topical and thought leadership papers prepared by other institutions and advisors on the subject matter of PPP procurement and private sector bid costs;
- prepare a detailed questionnaire for issue to private sector participants to identify key cost drivers, obtain cost breakdowns of bid costs incurred on recent projects and solicit feedback on other bid cost related issues; and
- undertake interviews with sponsors, investors, advisors, contractors and operators that participate in the PPP market.

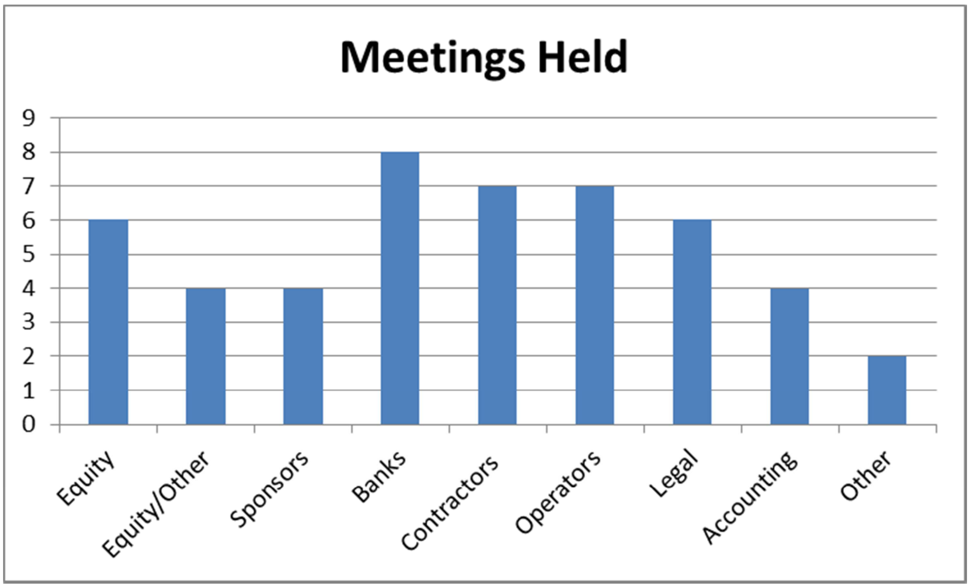
In undertaking the review, the ISFU recognised that there is no ‘silver bullet’ and that a number of smaller policy reforms are more likely to collectively have an impact on reducing bid costs. The ISFU was also mindful that any potential policy reforms should not compromise price certainty, competitive tension and that the integrity of the process needs to be maintained at all times.

This Report sets out the findings of the above review and proposes a number of recommendations with the purpose of reducing bid costs for the private sector.

1.2 Engagement with the PPP market

1.2.1 Invitation to engage with NSW Treasury

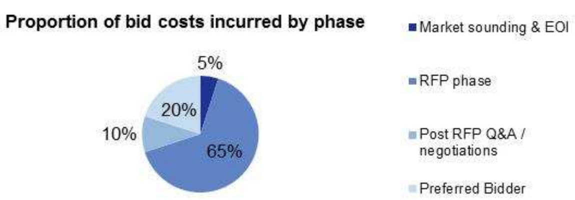
The ISFU invited 65 PPP market participants to participate in the consultation process. Of those invitees, interviews were held with 48 participants across roles in and sectors of the PPP market, as illustrated below.

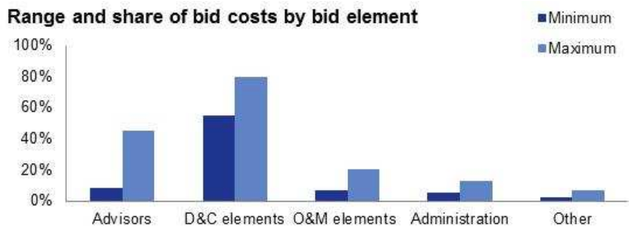


Of the 48 participants, 17 participants provided a written submission in response to the questionnaire.

1.2.2 Bid cost breakdown

Participants reported that the greatest proportion of private sector bid costs are incurred during the RFP phase regardless of project sector or deal size. Participants unanimously agreed that the design and construction elements of a bid accounted for the greatest proportion of bid costs.





1.2.3 Key cost drivers and recommendations

Participants were generally complementary about bid processes encountered on recent PPPs in NSW, with the procurement and execution of the SMNW consistently mentioned as being market leading. However, some areas for improvement were highlighted during the market engagement process, with the most commonly mentioned key cost drivers being:

- 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;
- 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;
- the **length of the procurement process** from market announcement to Financial Close with costs incurred in ensuring all stages are appropriately resourced;

- 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.

With the Participants spanning the full spectrum of PPP disciplines, the ISFU received a varied range of recommendations for reducing the amount of bid costs incurred by the private sector. Some of the recommendations related to specific issues that could be easily addressed (like allowing electronic submission of bids or including page limits in bid submissions) to more overarching changes like Government's approach to Output Specifications. A large proportion of the recommendations can also be attributed to specific aspects or stages of the procurement process.

Some of the key recommendations made by Participants included:

- appointing an experienced, highly capable and confident Project Director and project team who possess transaction process and relevant sector experience;
- avoiding premature project announcements and keeping the market informed of likely project release dates;
- Government having a clear view on desired project outcomes and risk allocation, and consistently communicating this to bidders during all procurement stages;
- Government adopting a sensible procurement timetable and adhering to it at all times;
- preparing and releasing 'template' EOI and RFP documents and a suite of standardised Project Documents for use across all project sectors;
- avoiding multiple releases of new information or addenda, especially during the RFP phase;
- Government undertaking all necessary preparatory work prior to project release, sharing due diligence findings with all bidders, with preparatory work targeted to the requirements of bidders;
- procuring that bidders can place reliance on consultant reports procured by Government or have the engagement of relevant consultants novated across to the successful bidder;
- including page limits in EOI and RFP returnable schedules;
- allowing electronic submission of EOI and RFP submissions with a view to reducing hard copy requirements.
- expressly stating if "bid enhancements" (like 'fly throughs', branded boxes/folders, 3D diagrams and glossy submissions) will not influence evaluation of bids, leaving it to the discretion of bidders to submit such information; and
- Government critically evaluating RFP bid requirements before release of documents to bidders with a view to limiting requirements to information that is necessary for bid evaluation (and for the D&C contractor to quantify its price).

1.3 ISFU Recommendations

In considering and reviewing the key cost drivers and participant recommendations, the ISFU assessed that many of the recommendations are generally either inherent in the process, inconsistent application of the level of detail required in RFP documentation and/or directly related to the experience and capacity of the project director and the project team.

Although the NSW and National PPP Guidelines (the Guidelines) were developed to provide guidance on process, documentation and resourcing, the Guidelines are generally high level and open to interpretation. Fundamentally the Guidelines:

1. Rely on the experience of the sponsoring agency and its ability to interpret the Guidelines and apply it to the project being procured; and
2. That the level of interaction between the ISFU and the procuring agency will reflect the experience, capability and capacity of the procuring agency.

It is evident from the market consultation process that the NSW Guidelines and associated policies will benefit greatly from additional and potentially more detailed guidance, especially for the less experienced procuring agencies to ensure:

1. consistency in how the procurement process is undertaken and the Guidelines applied by agencies;
2. consistency in how the procurement documentation is developed and presented, including Market Sounding, the Expression of Interest (**EOI**), Request for Proposals (**RFP**) and associated returnable schedules and project agreement; and
3. that interaction with the ISFU reflects the experience and capacity of the project team.

The ISFU identified the following recommendations which will be considered as potential updates and/or changes to the NSW PPP Guidelines and associated PPP policies. The recommendations have been categorised as either impacting the procurement process, the procurement documentation or the project team.

1.3.1 Procurement Process

Recommendation 1: require agencies to develop a detailed program and communication plan before commencement of market engagement

Agencies should take note that in some cases consortium formation and bid team establishment commences when market sounding commences or sometimes even earlier. Tailoring the Government's message regarding the stage of the project at this particular point in the process is key. It is recommended that Agencies are required to develop a program in consultation with the ISFU and their advisors to identify target dates for market sounding, EOI, RFP and Contract Award. This program should be accompanied with proposed messaging to the market on the status of the project (e.g. business case phase, procurement decision hasn't been made), key objectives and any updates to timeframes and changes from previous communications. It should contain a plan as to how changes to the program will be communicated to the market if there are delays or if project delivery is accelerated to assist the private sector with resourcing. It should consider which other projects across Australia may impact bidder capacity.

It is recommended that agencies are required to submit this program or an update to the program with each cabinet approval (market sounding, EOI or RFP). The ISFU will develop a sample template as guidance to agencies.

Recommendation 2: Establish a panel so that contractors and operators prequalify for a period of 2 to 4 years

That a prequalification panel for contractors and operators are established where bidders can prequalify and submit updated information on their financial capacity, strength and any other information which may impact the aforementioned. This centralises the information requirements and potentially reduces the procurement timeframes for projects and/or the need to procure services to enable evaluation of responses by agencies. Although this cost is still spent by the agency responsible for the panel, it will create economies of scale and reduce procurement timeframes and procurement costs for agencies.

Recommendation 3: Ensure EOI requirements enable consortiums to maximise competition to appoint specialist advisors

Ensure EOI requirements communicate clearly which advisors are required at EOI stage. Agencies should provide sufficient flexibility to allow consortiums to procure specialist advisors, which are not key to shortlisting, to after shortlisting. This is likely to increase competition among specialist advisors and enable consortiums to obtain improved pricing.

Recommendation 4: Make provision for an intermediate interactive tender process for complex projects

Consider benefit of having an interactive process after shortlisting but prior to RFP release to enable agencies to discuss particular project specific issues or seek bidder input in framing RFP documentation before commencing the formal RFP process. Especially when projects are complex so more likely to be procured on an output basis or if core services are included or if there is a technical engineering issue which may lead to complex commercial risk allocation positions such as the utilities on SLR. This provides a platform for the agency to inform the technical solution to potentially create a level playing field and communicate priorities before the RFP process commences and for bidders to influence the agency’s thinking.

Recommendation 5: Agencies to undertake 3rd party due diligence where possible and procure the services such that bidders can rely it

To require agencies to identify opportunities where it can undertake due diligence on behalf of bidders such as utilities investigations on SLR, and if possible, provide guidance as to when and how agencies should procure the works so that bidders can rely on the work and that it can be novated to the successful bidder. Where practical, the scope of work could be shared with potential bidders or shortlisted parties so they can provide input.

Recommendation 6: Develop a checklist to help assess if an agency is ready to commence various stages of the procurement process

Checklists to be completed in consultation with ISFU prior to seeking cabinet approval to release the EOI, announce the shortlisted bidders and release the RFP documents to determine if the agency is ready to commence the procurement process or proceed to the next phase. The purpose is to avoid release of multiple addenda’s and to be assured that the project team is ready to respond to questions through the interactive tender process. It is recommended that the ISFU develop such a checklist based on recent experience and that the checklist specifically considers:

- For the EOI, require agencies to list the 3 to 5 key messages and issues that the agencies is seeking to address through the procurement, including technical and commercial. These messages will be communicated to the market throughout the process to ensure bidders have a clear understanding of the agency’s priority and needs. This is particularly important as evaluation criteria are not weighted for PPPs;
- the level of information available to support bidder due diligence and enabling a fully underwritten bid. If a substantial body of information is not available yet which could result in either lengthening the procurement process or alternatively lead to multiple addenda’s

during the process, it is best to postpone and ensure the agency is ready to commence the process before bidders start incurring significant costs; and

- the Project team's experience and capacity to undertake a particular phase of a project and for the RFP, is ready to commence the interactive tender process.

Recommendation 7: Mandate electronic submissions for EOI and RFP responses and retain flexibility for items such as drawings, but that such exceptions be considered on a project by project basis

Require agencies to accept electronic submissions for EOI responses and RFP proposals. Not only will this reduce bid costs, it will fast track compliance checks once proposals have been received and will assist with faster dissemination of information to the evaluation team.

Recommendation 8: Develop detailed interactive tender process guidance to enable greater interaction and improved refinement of bidder proposals

Develop more detailed guidelines to assist agencies in running a truly interactive tender process (ITP) and help bidders put their best proposal forward that takes into account private sector thinking and best meets or exceeds the procuring agency's requirements. The ITP guidance should facilitate frank feedback on what is likely to be unacceptable to Government and, where possible, should aim to avoid BAFO or detailed clarification processes.

It should facilitate conversations where bidders can discuss potential varations to bids which will be considered compliant. Furthermore, it should allow for value management sessions to discuss affordability openly and how the price can be adjusted upwards and downwards depending on the desired solution and Government priorities.

Recommendation 9: Consider if additional guidance on health checks should be provided

The ISFU to develop additional guidance on facilitating regular health checks with bidders and to identify and address issues associated with the technical, commercial or pricing aspects of the bids.

Consider if procurement policies enable agencies to inform a tender that their bid is likely to be unacceptable without a formal proposal, and if not, under what circumstances.

1.3.2 Procurement Documentation

It is noted that many participants mentioned that standardisation of the Project Agreement could lead to substantial savings in bid costs. The development of a standardised Project Agreement is in its final stages and as at the date of this report, a draft is being reviewed by the PPP Market. As such, there is one further recommendation with regards to Project Agreement, which is considered in recommendation 11 below.

Recommendation 10: Agencies to critically assess the level of output specification for each project, clearly communicate the rational for it and identify what is mandated

The PPP policy should provide guidance to enable agencies to critically assess the level of output specification and prescription required for each project. The ISFU recognises that there isn't a one size fits all approach but that the approach should be accompanied by a clear communication strategy. Furthermore, agencies should be clear on the acceptability of departures from the output specifications and clearly identify which output specifications are mandated. For example, less specification drives different outcomes to agency thinking and generally improved technical solutions, but has led to detailed clarifications on recent procurements. This should be considered together with recommendation 8 above.

Recommendation 11: ISFU to lead the development of templates for the EOI, RFP and RFP returnable schedules and provide guidance with respect to page limitation for returnable schedules

The ISFU is currently developing a toolkit which should include templates for the EOI, RFP and RFP returnable schedules to ensure consistency in approach. As part of this process, guidance should be provided on page limitations for returnable schedules to ensure targeted and relevant information is submitted and to improve the efficiency of the evaluation of proposals.

It is noted that the commercial returnable schedule in RFP documentation require bidders to provide commentary with respect to proposed changes to the project agreement where changes are marked up in the Project Deed rather than requesting a separate table which summarises all departures. Furthermore, the commercial returnable should make it clear that as long as detailed term sheets for subcontracts are sufficiently developed to enable reaching contract close within the proposed program, it is the consortium's prerogative to develop detailed subcontracts.

Recommendation 12: Develop a checklist to help agencies assess if tender requirements are at the right level to enable bidders to provide fix pricing and an underwritten bid

Develop additional guidance on the level of detail required for:

- Design drawings
- Design solution
- Delivery programs
- Plans

Where agencies generally develop their own plans for example for stakeholder management, agencies should be clear on whether compliance with the agency's plan is required rather than requiring bidders to develop their own plans and then reverting to the agency's plan post bid. Agency's should rather solicit any feedback/concerns with respect to their own plans.

Develop check list to assist agencies in reviewing tender documents and help with assessment of the above.

As a final check, agencies should be required to review the bid requirements before the EOI or RFP documents are released to determine if all information is it needed, provide a rational for why it is needed and when it is needed, i.e. can it be deferred to the preferred bidder stage. Agencies should also check if the PSC, Reference Design and Output Specifications are sufficiently linked, to avoid bidders spending time on reconciling potential differences and questioning the credibility of requirements.

1.3.3 Project team

Recommendation 13: Provide further explanation on the role of the ISFU in the procurement process

Review and update the section on the ISFU's role in the procurement of PPP or major and complex projects in the PPP Guidelines including:

- Board / steering committee representation;
- Participation in the selection and appointment of senior roles including board, project director and other key roles;
- Participation in development of services briefs and the selection and appointment of advisors including commercial, financial, legal and transaction management;
- Generally and ISFU team member is allocated to a project to provide more hands-on support

Recommendation 14: Assess the complexity of the project and assess project team capacity, capability and experience

Assess the complexity of the project to determine if the agency's project team has the necessary experience, capability and capacity to procure the project and determine level of ISFU involvement. Complexity could be as a result of technical construction, engineering or interface issues, the inclusion of core services such as rail operations, clinical services or custodial services or due to the size of the project.

Recommendation 15: Determine and agree the level of ISFU involvement in the project with the agency upfront

Determine and agree level of involvement of ISFU in the project team which will be assessed throughout the procurement process.

Recommendation 16: The ISFU to develop a template of the core scope of work for the commercial, financial, legal and transaction management advisors

Templates should be developed for the core scope of work of the commercial and financial advisor, legal advisor and transaction manager. Any variations to the core scope will be considered with the ISFU on a project by project basis.

1.4 Implementation

Further detailed work is required to implement the recommendations following the market consultation, including:

- A detailed review of the NSW PPP Guidelines and identification of the extent to which it requires amendment is underway;
- Consultation with agencies on proposed updates to the NSW PPP Guidelines will be progressed in late December early January 2016 to obtain feedback on the proposed recommendations;
- Detailed development and drafting of templates are underway and are available through the ISFU toolkit; and
- Seeking Cabinet approval in the first quarter of 2016 to implement the proposed changes to the PPP guidelines.

2 BACKGROUND

2.1 Introduction

The NSW Budget 2015 allocates a total $68.6 billion over the four years to 2018-19 to fund a range of high priority infrastructure projects in New South Wales (**NSW**). This capital strategy is set to be supplemented by the allocation of $20 billion from the Rebuilding NSW initiative funded from proceeds of the lease of 49 per cent of the NSW electricity network. That funding is to be used to invest in priority projects identified by Infrastructure NSW in the *State Infrastructure Strategy* 2014 (as updated and endorsed by the NSW government in February 2015), including the Sydney Metro, Parramatta Light Rail and WestConnex northern and southern extensions.

The PPP model is recognised as an efficient way of leveraging private sector expertise and financing skills. Key drivers for the adoption of the PPP model in Australia have continued to include value for money, design innovation, risk transfer and whole of life outcomes. Recent projects procured under this model include Sydney Light Rail, North West Rail Link, Northern Beaches Hospital and NorthConnex, all of which reached close in 2014.

With increasingly constrained budgets and a requirement for significant infrastructure investment to address a growing population and aging assets, it is likely the PPP model will continue to be used to procure major infrastructure in NSW.

2.2 NSW Treasury Policy Projects

It is important that the NSW PPP model remains dynamic, consistent with best practice, and continues to deliver best value for money for the NSW Government. To this end, following the recent close of several PPPs, NSW Treasury considers it an opportune time to update its PPP policies and practices. This will include updating the NSW PPP Guidelines (2012), clarifying PPP governance arrangements and delivery models, and adopting more efficient and cost effective procurement processes.

Set out in **Schedule 1** of this Report is a list of the policy initiatives that NSW Treasury is currently undertaking (**Policy Projects**).

This Report summarises the findings of the Policy Project entitled “Reducing Procurement Bid Costs”.

2.3 Purpose of this Report

Issues associated with efficient and cost effective procurement have been widely discussed and studied across Australia, with the private sector commenting on the significant costs of bidding on PPP projects. In its April 2012 report on Infrastructure Finance and Funding Reform, the national Infrastructure Finance Working Group (convened by Infrastructure Australia) recommended that Australian Government’s should reduce procurement costs and coordinate procurements across jurisdictions. The report notes an important way to facilitate increased private sector involvement in financing infrastructure projects is to reduce the costs involved in the bidding process.

A previous report commissioned by Infrastructure Australia reported that bid costs (up to financial close) can represent up to 2% of total project costs[1]. The same report indicated that bid costs in Australia are between 25 to 45 per cent higher than in Canada despite operating in a comparable market.

Australian Governments have worked to develop and improve PPP procurement practices over the years, in part with a view to trying to reduce bid costs incurred by the private sector. Government initiatives have included:

- the formation of the National PPP Working Group as an inter-governmental forum designed to deliver improved project and related service outcomes through harmonising PPP policies and processes, and encouraging better coordination and information sharing among Australian governments; and
- the release of the National PPP Policy and Guidelines, adopted by the Federal Government and the States and Territories, in an attempt to have standardised PPP processes.

However, notwithstanding the above initiatives, the private sector continues to identify PPP procurement processes and the elevated levels of private sector bid costs as areas of concern.

In an effort to respond to this concern, NSW Treasury has undertaken a review to:

- identify procurement timing and cost drivers for recent economic and social infrastructure projects across portfolios, jurisdictions and internationally, from a government and private sector perspective;
- understand relative public and private sector costs and cost drivers across the PPP procurement lifecycle, from the planning stage, though the EOI and RFP stages, to Financial Close;
- identify NSW Government policies and procedures that drive private sector bid costs; and
- identify processes or solutions adopted in other leading international jurisdictions that have active and mature PPP markets that may assist in streamlining procurement processes in NSW and result in lower private sector bid costs.

The purpose of this Report is to recommend reform initiatives to be applied in NSW to reduce bid costs for the private sector and project costs for the NSW Government. This may include recommendations to be taken into consideration or actioned under other Policy Projects.

However, any policy or process changes recommended as a result of this review should not compromise value for money, innovation, competitiveness or certainty in pricing.

This review has only considered the PPP market and potential improvements to its procurement processes. It has not considered broader issues such as a comparison with other methods for procuring infrastructure projects. However, some of the recommendations arising from this review may be applicable to other procurement methods or to significant infrastructure (i.e. ≥ $100 million) that is not procured under the PPP model.

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[1] "*Review of Barriers to Competition and Efficiency in the Procurement of PPPs*", KPMG (May 2010)

3 APPROACH

In order to identify the key cost drivers and other issues that have direct impact on the size of bid costs incurred by private sector participants, NSW Treasury has undertaken a review comprising the following exercises:

- preparing case studies of recent PPP procurements in Australia;
- reviewing topical and thought leadership papers prepared by other institutions and advisors on the subject matter of PPP procurement and private sector bid costs;
- preparing a detailed questionnaire for issue to private sector participants to identify key cost drivers, obtain cost breakdowns of bid costs incurred on recent projects and feedback on other bid cost related issues; and
- conducting interviews with a broad sample of private sector participants in the PPP sector.

This Section of this Report provides a summary of each of the above exercises.

3.1 Case studies

As a precursor to engaging directly with private sector participants, NSW Treasury prepared case studies of the following Australian PPPs:

- NSW Rollingstock Project;
- Sydney International Convention, Exhibition and Entertainment Project;
- Royal North Shore Hospital Project;
- NSW Schools 2 Project;
- Westlink M7 Project;
- Gold Coast Rapid Transit Project; and
- Bendigo Hospital Project.

The primary purpose of this exercise was to understand the procurement timelines of these projects, selected from a range of sectors and Australian jurisdictions, and to determine the relative costs and cost drivers on each project.

A copy of each case study is included as **Appendix 1** to this Report.

3.2 Review of market research

NSW Treasury has also undertaken a high-level desktop review of the following reports prepared by various institutions around the world to identify initiatives and recommendations previously made on the subject of efficient project procurement and bid costs (**Market Reports**):

Name of Report	Publisher
Australia	
Draft Report on Public Infrastructure (Volume 2)(March 2014)	Australian Government Productivity Commission
Review of Barriers to Competition and Efficiency in the Procurement of PPPs (May 2010)	KPMG
Infrastructure Finance and Funding Reform (April 2012)	Infrastructure Australia
Partnerships Victoria Requirements (2010)	Victorian Government
Canada	
Dispelling the Myths – A Pan-Canadian Assessment of Public-Private Partnerships for Infrastructure Investments (2010)	Conference Board of Canada
Delivering Value through Public-Private Partnerships at Home and Abroad (August 2013)	Conference Board of Canada
UK	
A new approach to public private partnerships (December 2012)	HM Treasury

A copy of the learnings of this exercise is included as **Appendix 2** to this Report.

3.3 Preparation of Questionnaire

NSW Treasury prepared a Questionnaire for submission to the private sector participants as part of the market engagement exercise described in **Section 3.4** below.

A copy of the Questionnaire is included as **Appendix 3** to this Report.

The purpose of the Questionnaire was to obtain the private sector's view on a range of procurement and bid cost issues. Participants were also asked to provide a breakdown of bid costs incurred on a project-specific basis and by procurement phase to assist in NSW Treasury's bid cost analysis. When answering the questions, participants were encouraged to provide real and specific examples from recent PPP projects.

The content of the Questionnaire was informed by the case study and market research exercises undertaken by NSW Treasury, as described in **Sections 3.1** and **3.2** above. In particular, NSW Treasury used the Questionnaire to explore issues raised in the Market Reports and to address certain gaps identified by NSW Treasury in the findings of the Market Reports.

3.4 Consultation with PPP practitioners

3.4.1 Invitation to engage with NSW Treasury

NSW Treasury invited 65 existing participants in the Australian PPP market (each an **Invitee**) to engage in a consultation process with NSW Treasury to discuss the issue of private sector bid costs.

The parties invited covered a broad range of disciplines including practitioners from the following segments of the market:

- specialist PPP arrangers (some of whom are also equity investors);
- construction contractors;
- facilities management contractors and operators;
- debt providers;
- equity investors (including superannuation funds); and
- professional advisers (including law and accountancy firms).

NSW Treasury held meetings (either face-to-face or via telephone conference calls) with those Invitees who accepted NSW Treasury's invitation, totalling 48 participants (each a **Participant**).

NSW Treasury received formal written responses from 17 of the Participants.

Please refer to the table appearing in **Schedule 2** of this Report which identifies each Invitee, each Participant and highlights the Participants who submitted formal written responses to NSW Treasury.

3.4.2 Summary of Invitees

The table below provides a summary of the Invitees by discipline and confirms the nature of NSW Treasury's interaction with each Invitee.

	Meetings Held	No Response	Formally Declined	Total Invitees	Written Response
Equity	6	2	0	8	3
Equity/Other	4	1	1	5	2
FAs	4	0	0	4	4
Banks	8	3	1	12	2
Contractors	7	4	1	13	0
Operators	7	3	0	10	4
Legal	6	1	0	7	0
Accounting	4	0	0	4	1
Other	2	0	0	2	1
Total	**48**	**14**	**3**	**65**	**17**

The above table illustrates the strong willingness of the private sector to participate in NSW Treasury's initiative, with each discipline being well represented in meetings with NSW Treasury.

In terms of formal written submissions, it is notable that no response was received from the contractor group. This was unfortunate given the general perception that a significant proportion of bid costs are incurred in relation to the design and construction elements of bid submissions. However, the responses received from the sponsor group were particularly detailed and usefully provided feedback on the D&C elements of the bid process, albeit from a 'whole of project' perspective.

3.4.3 Format of discussions

To facilitate a free discussion of issues, NSW Treasury's meeting with each Participant did not follow a fixed agenda. Participants were free to raise the issues of specific concern to them. However, NSW Treasury attendees were guided by questions set out in the Questionnaire.

After each meeting, NSW Treasury sent a copy of the Questionnaire to the relevant Participant and requested a formal written response with two weeks. Due to time constraints, on a few occasions the Questionnaire was sent to Participants prior to the meeting.

Participants made comments and provided information on a confidential basis and on the understanding that any responses would be reported in the aggregate.

4 FEEDBACK RECEIVED FROM PARTICIPANTS

4.1 Inherent procurement issues in Australia

During the market engagement process, Participants raised a range of issues that contribute to higher private sector bid costs. Of these issues, a number can be categorised as being endemic in Australia or inherent in how Government in Australia procures PPPs. For example:

- *National PPP pipeline* – many Participants reported that the paucity of PPPs in Australia in recent years and the lack of co-ordination between the various jurisdictions in bringing PPPs to market has a direct impact on how the private sector approaches PPPs. If there are more projects, some Participants mentioned that they are able to take a more favourable view of initial set up costs, their ability to absorb or recover bid costs, and their ability to manage and plan resources. A lack of projects also provides less opportunity to Government to streamline processes, educate Government project teams and take a consistent approach on risk items, all of which can result in the private sector incurring higher bid costs;

- *Federal Government system and tax* – PPPs in Australia tend to be more complex than PPPs in other jurisdictions. Key reasons for this include Australia's federal political system, with different laws, regulations and standards, and Australia's complex tax system. Some of this complexity has been mitigated through the establishment of *Infrastructure Australia* and the adoption of the National PPP Policy and Guidelines, and the replacement of inefficient capital allowance provisions in the old tax law. However, these issues still need to be carefully managed on a project-by-project basis, often with the assistance of specialist input. This comes at a cost to both the public and private sectors; and

- *Government policy positions* – some Government policy positions serve to increase the amount of bid costs incurred by the private sector. For example, unlike some other jurisdictions, Australian PPPs focus on a range of considerations (like value for money, certainty of delivery, innovation and appropriate risk transfer) rather than prioritising financial cost (price) ahead of other criteria (as seen in Portugal and Italy). In practice, this approach requires the private sector to respond to more stringent and extensive RFP requirements than what is seen in some other jurisdictions and to commit more resources earlier in the process to resolve commercial issues prior to appointment of a Preferred Bidder.

The above issues are well known to Government, having featured in previous reviews undertaken on the subject of PPP procurement processes in Australia. These issues are clearly important in the context of any discussion about the size of private sector bid costs. However, as such issues are inherent in the legal and procurement framework in Australia, there is a limit to what Government can do to mitigate the bid cost impact of such issues. Government understands and accepts that such inherent issues may result in the private sector incurring higher bid costs than in other jurisdictions. Equally, the private sector must accept that higher bid costs may be the natural consequence of participating in the Australian PPP market where such inherent issues exist.

The above type of issues are considered to be beyond the scope of this Report.

4.2 Feedback received from Participants

The following discussion provides a high-level summary of feedback received from Participants during discussions held with Participants and in response to questions set out in the Questionnaire. This Section also highlights recommendations made by Participants to mitigate private sector bid costs incurred in the various areas identified by Participants.

4.2.1 In your view, what are the key cost drivers of bid costs?

Participants raised a range of issues as the key cost drivers of bid costs, with the most significant being:

i) Complexity

Participants reported that, as a general rule, more complex PPPs tend to result in higher bid costs. Where the scope or tender requirements are complex, Participants mentioned that additional specialist resources may be required to undertake a large body of design and engineering work and to determine pricing.

If the complexity is related to interfaces (whether between the project assets and other infrastructure, or because a project involves a lot of parties, including consortium members, project stakeholders or affected third parties), Participants reported that an increase in commercial consultant costs would also be expected. Numerous options and variations in the bid phase also result in complexity and increased bid costs.

Complexity will also result in an increase in resources due to the additional focus from bidders on the key risks, and the need for additional interaction between the Government project team and bidders to resolve complex issues.

Whilst complexity may result in higher bid costs, one Participant highlighted that this needs to be balanced against the benefits that Government may obtain from putting a complex transaction to market. For example, Government may receive most value for money by way of risk transfer of complex issues to the private sector.

ii) Level of certainty required by Government

Standard Government practice in Australia is to require a considerable level of certainty before announcement of a Preferred Bidder. This certainty typically implies a fully funded and unconditional offer including:

- complete capital works design and operational proposal including the requirement for extensive narratives which explain every aspect of the formal proposal;
- detailed implementation and operational method statements and plans across all disciplines; and
- a full suite of proposed project documents, backed by committed funding.

The above approach usually results in a shorter time period between appointment of a Preferred Bidder and reaching Close, with a corresponding reduction in bid costs incurred by the Preferred Bidder in that final procurement stage. However, the downside of this approach is that it puts all shortlisted bidders to considerable expense. In addition to formal bid costs (like payments to consultants, advisers and other third parties outside of the core consortium members), core members of a bidding consortium also incur substantial internal costs. These costs include the opportunity cost of either deploying key resources to pursue other opportunities or otherwise focus on core operations.

iii) Time

A number of Participants mentioned that the length of the procurement process (especially the RFP stage) has a direct impact on the size of bid costs incurred. This is primarily because bidders have to ensure that adequate resources are allocated throughout the procurement process regardless of how active the project is at any particular time.

It is recognised that complexity and certainty (as mentioned above) also have a direct impact on the length of the procurement process, with more resources having to be allocated to work through difficult issues or to respond to detailed requirements.

An overwhelming number of Participants reported the huge benefits (including bid cost savings) that can result from Government communicating a clear procurement timetable to the private sector and, importantly, Government adhering to its timetable. This allows bidders to properly assess commitments, to make teams available when necessary and to efficiently manage resources. It also gives brings credibility to the Government team. Some Participants highlighted that Government adherence to timetable becomes even more important where those resources are coming from offshore or are being taken from other commitments (which can have high opportunity costs).

Another issue raised by a number of Participants was the perception that timetable can be unduly influenced by political timelines or election cycles. Participants were keen to point out that such interference can have an adverse impact on project outcomes with potential value for money consequences for Government.

iv) Government project team

A consistent theme raised by Participants that can have a significant impact on private sector bid costs relates to the identity of the Project Director and the size and experience of the Government project team.

As the primary representative for Government during the bid process, the Project Director wields significant influence over the procurement process, ensuring that each phase is run efficiently and clear communication of timelines and feedback on Government priorities is provided to bidders during all bid stages. In particular, Proponents report that the Project Director's management of the interactive workshop phase and skills in managing stakeholder feedback in an effective and controlled way can be major cost drivers.

A number of Participants also commented that the Project Director is key to ensuring that probity is used appropriately, especially during interactive workshops, to ensure a fair process is run and doesn't unnecessarily restrict engagement with bidders.

Proponents indicate that the Project Director should be supported by a strong, experienced and effective project team. Based on its experience on recent NSW PPPs, one Proponent mentioned that a smaller project team can result in a better level of engagement with bidders, especially during the interactive workshop phase.

4.2.2 Do key cost drivers of bid costs differ depending on project sector, project size and the various stages of a project?

i) Project sector

Participants mentioned that bid costs are not necessarily driven by sector per se, but likely the level of design required, and the number of complex elements and technical requirements. Some sectors may inherently have more complexity, like rail deals, that means, on average, the bid costs for that sector may be higher than others.

A number of Participants mentioned that the sector can impact the cost of procurement where operations are included within the scope of the project (e.g. transport projects). The inclusion of operations involves additional cost across all bid cost drivers, relative to when operations are performed by the public sector. Participants mentioned that this issue is further compounded if the operator is not also the maintainer.

One of the Participants reported that property development elements, such as seen in the Sydney Convention Centre PPP procurement, significantly increase the bid costs, as the design and commercial costs for a PPP are effectively duplicated for the property development.

ii) Project size (by capital)

A majority of Participants reported that the dollar size of a project does not necessarily increase bid costs in and of itself. However, Participants mentioned that on the larger projects there is often an increased level of complexity coupled with an increased number of parties that collectively result in higher bid costs.

In general, legal and technical costs will be influenced by the number of parties involved, complexity of the commercial arrangements and submission requirements, and the commercial / financial / tax structuring, rather than by project size.

Some Participants mentioned that some cost items may remain the same regardless of the dollar size of a project. An example given was certain commercial costs like model audit fees.

iii) Procurement lifecycle

Participants reported that the key cost drivers of bid costs can differ quite markedly between the various stages of the procurement lifecycle.

We have set out below an overview of the responses received from Participants by reference to the various procurement stages:

Industry Engagement

- Costs during this phase are generally limited in magnitude and are typically treated as business development and absorbed by bidding organisations as overhead expenses. They are not a key driver or material component of bid costs attributable to a project.
- A consortium will generally form prior or soon after industry engagement. Most of the activity in consortium formation is also treated as business development and is therefore not a driver of bid costs.

Participant key recommendations:

- clear and ongoing communication with industry about when a project is likely to be released to market to assist the market to ensure resources are available at appropriate times;
- Government to show clear commitment that project will proceed and, to the extent possible, avoid political timeframes or election cycles unduly influencing the procurement timetable;
- to the extent possible, continued deep engagement with industry prior to the formal announcement of the procurement process, including face-to-face interactive market soundings rather than written exercise. This approach helps to clarify the tender requirements and the markets' ability to respond prior to issue of the RFP;
- Government to adhere to project release dates and thereafter to its timetable;
- Government to coordinate timing of release of similar projects to ensure availability of best bid team.

Expression of Interest

- The EOI can be a significant cost, depending on the Government's' response requirements and the perceived competition in the market (which can influence the extent of the EOI). However, these costs are normally largely internal (with some budget for high quality document production costs). If Government is seeking meaningful feedback on preliminary design concepts, detailed financial/commercial analysis or feedback on operational considerations, then that can create the need for external costs to be incurred due to the need to engage designers, external lawyers or other specialist advisers. However, these are normally limited.
- The primary drivers of cost at this stage are bid office, EOI phase resources and editing costs.
- Significant (and often unnecessary) costs are incurred if bidders are required to lodge multiple hard copies of its EOI submission. Such costs can be exacerbated on complex transactions where the EOI requirements are often more extensive.
- Unnecessary costs can be incurred in responding to EOI questions that ask for the same information in different ways.
- Given the strong desire to be shortlisted, bidders are unlikely to cut the production budget and consequently the scope to reduce EOI phase costs is limited.

Participant key recommendations:

- only release a deal to market when Government has undertaken all necessary preparatory work (including due diligence to inform Government's approach to risk allocation and preparation of the EOI);
- ensure consistency in the EOI and avoid questions that ask for the same information but in different ways;
- consider requiring bidders to only name key consortium members (e.g. D&C, O&M and equity) rather than also designers, consultants and advisers. Consortia may be able to obtain better pricing post shortlisting from these entities in a more competitive environment;
- permit electronic submission of bids and, to the extent possible, avoid requirements to submit multiple hard copies;
- use page limits in the EOI submission; and
- establish a regime to allow key PPP participants (like D&C contractors and Operators) to "pre-qualify" for future PPP transactions by submitting general bid information to a Government managed portal (e.g. financial statements, annual reports and capability statements, all of which evidence financial and technical capability).

EOI Evaluation / Shortlisting / Post Shortlisting to RFP release

- Most bidders will not actively work during the EOI evaluation phase (prior to shortlisting), but will commence certain mobilisation activities (e.g. identifying bid teams).
- Upon shortlisting, bidders will generally secure bid office space, engage consultant personnel and commence activity in earnest.

Participant key recommendations:

- during the post shortlisting phase, Government to engage with bidders to:
    - refine project scope prior to RFP release;
    - communicate clearly what outcomes it wants to achieve; and
    - if necessary, clarify risk allocation around complex issues (like utilities and planning).

  If undertaken correctly, this approach can significantly reduce bid costs by assisting bidders to focus on priority issues, understand Government's requirements and, ultimately, avoid unnecessary and expensive design work.

RFP Stage

The RFP phase is generally recognised as the period during which the bulk of 'at-risk' bid costs are incurred by bidders.

Key drivers of bid costs include:

- the volume and complexity of bid requirements, and all tasks required to be undertaken to respond to and submit a Complying Bid. Key factors include:

  - Design costs. This is the largest single consultant cost and covers preparing the design submission to the level required, and ensuring compliance with the technical specification. These are usually fixed fees for an assumed volume of work;

  - General consortium costs. Bid office accommodation and IT costs to allow the workstreams to be co-located, plus the general administration costs to support the consortium structure (Project Director, Bid Manager, Office Manager, PAs, cost reporting, document management system etc.). This item is strongly correlated with the length of the RFP phase;

  - Documentation production, comprising bid production management, editing, graphics production and layout, photography, printing, flythroughs and client presentation preparation. This item is correlated to the volume of returnables required;

  - Commercial consultants. The various legal advisers engaged to advise the consortium, contractors, senior debt, and equity plus various due diligence advisers (technical, accounting, tax, model audit). These are usually fixed fees for an assumed volume of work;

  - Specialist consultants. Consultants required to deliver certain specialist returnables (e.g. stakeholder, indigenous, sustainability). This item is correlated to the returnables required; and

- the length of the RFP phase. This should be optimised (through efficient engagement with the market);

- the effectiveness of interactive processes between Government and shortlisted bidders; and

- the effectiveness of the Government's team, including its skills in managing stakeholder feedback in an effective and controlled way.

Participant key recommendations:

Process

- appoint an experienced, highly capable and confident Project Director and project team who possess transaction process and sector experience;

- avoid:

  - material changes in scope / terms / process during the RFP stage; and

  - release of a large volume of addenda and clarifications,

  as bidders may not have time to properly consider all changes, which may increase the need for a BAFO (with associated bid cost consequences) to sort out any residual issues;

- ensure interactive workshops:

  - permit open dialogue between Government and bidders;

  - provide an opportunity for clear and timely feedback to be given to bidders so they can focus on solutions which are attractive to Government (and avoid wasted time exploring options which are not attractive or worse, ending up with a bid which does not meet Government's requirements); and
  - are not unnecessarily constrained by probity concerns;
- allow bidders to determine the program of interactive workshops, which can be structured to align with the bid development process, and to avoid unnecessary presentations which can take significant / resources (particularly across design/engineering workstreams);
- Government to avoid requiring bidders to submit a complying bid solution where, following scope changes during the bid process and interactive processes, there is general agreement that an alternative solution is more likely to be progressed. This approach will avoid bidders incurring unnecessary and often significant costs in preparing and submitting a complying bid solution.

RFP requirements

- limit RFP returnables to information and documents that are necessary for bid evaluation (and for D&C to quantify its price). In particular, consider deferring detailed plans (e.g. safety, quality, system management) to post-Preferred Bidder appointment and instead place greater reliance on the pre-qualification process and competency of shortlisted bidders and the Project Deed requirements (i.e. fitness for purpose warranties, Output Specification requirements);
- undertake a coordinated approach or centralised vetting of questions or deliverables in the RFP, particularly related to the design and construction solution, to avoid instances where the same information is asked for in multiple sections of the RFP or in slightly different terms;
- whenever appropriate, issue a high level Output Specification to maximise opportunities to innovate;
- release evaluation criteria and weightings to assist bidders to understand what the Government's priorities are and to know where to focus its attention. In the absence of such information, it is essential that priorities are communicated to bidders during interactive workshops;
- prepare a suite of standardised Project Documents to be used across projects;
- permit electronic submission of bids and, to the extent possible, avoid requirements to submit multiple hard copies; and
- if "bid enhancements" (like 'fly throughs', branded boxes/folders, 3D diagrams and glossy submissions) are not required or will not be taken into consideration in Government's evaluation of bids, Government to communicate this to bidders.

Post RFP Stage (including BAFO)

- Participants report that this is the hardest element of the process to cost and is treated with considerable uncertainty. In particular, a requirement for additional submissions or for selected bidders to engage in a BAFO process will significantly increase bid costs.

- Generally, key team members and consultants engaged for the transaction will need to be retained to respond to clarification questions or to engage in any further process with Government (e.g. a BAFO).
- The key driver of cost in this stage is resources (plus an element of general consortium and commercial consultant costs).

Participant key recommendations:

- avoid full BAFO process if possible. Alternatives include:
  - conducting 'value management sessions' during the RFP stage, to provide direct guidance on affordability issues / trade-offs;
  - providing direct feedback on commercial positions during the RFP stage (including providing written responses on an accept / reject / compromise basis) which allows well advanced commercial positions to be resolved in the RFP submission; and
  - using the Q&A process to clarify / vary proposals without a full BAFO process, including allowing proposal variations to be priced to provide Government with certainty; and
- provide clear guidance to bidders at the outset of any post RFP stage as to process, likely duration and expected Government outcomes, to assist bidders to manage resourcing and internal approvals.

Contractual and Financial Close

- Bid costs incurred in achieving Close would not typically be considered as speculative and therefore are not overly focussed on as a risk by bidders.
- The key driver of bid costs pre-Close are the commercial and D&C consultants and resources needed to finalise the commercial and technical documentation, plus the success fees promised to those consultants who worked during the RFP phase on a success fee basis.
- Some Participants (Debt) highlighted that delays between issue of bank commitment letters and achieving Financial Close can result in banks incurring significant holding costs. This is a consequence of APRA now requiring banks to hold capital in support of such commitments. At present, such holding costs are typically absorbed by banks. However, banks are becoming more vocal about this issue and may seek to recover such costs where delays are significant (i.e. it may be passed on to the consortium and reflected in the bid price). An alternative approach to mitigate such holding costs is to defer the requirement to provide funding commitments until the appointment of Preferred Bidder. However, this is likely to result in less bid certainty and is unlikely to be attractive to Government.

4.2.3 Please provide approximate costs attributable to each procurement phase, including costs incurred during pre-EOI phases. Please confirm what proportion of total bid costs are typically spent on advisers, D&C elements of the bid, O&M elements of the bid and administration.

NSW Treasury received formal responses from 5 of the Participants (including 4 Sponsors) to this request.

The breakdowns submitted by Participants were based on their own experience on specific PPP transactions and were also compiled based on different (or, in some cases, unknown) assumptions and exclusions. For example, some breakdowns included "at risk costs" only (i.e. excluded costs to Close and success fees), whereas others excluded costs reimbursed to Sponsors, Financial Adviser fees, debt establishment fees or equity up-front fees.

These differences have made it hard to undertake a detailed analysis of how and where private sector bid costs are typically incurred during the procurement cycle. However, some general observations can be made, as detailed below.

i) Cost breakdown by procurement phase

The table below sets out a general summary of the information provided:

	Social accommodation sector	**Rail sector**		**Road sector**	**Percentage (of total bid costs (avg))**
Project Size	**Circa $3bn**	**Project 1 (circa $6bn)**	**Project 2 (circa $2bn)**	**Circa $6bn**	
Planning	Not actively tracked	Not actively tracked	Not actively tracked	Minimal	Minimal
Market sounding	Not actively tracked	Not actively tracked	Not actively tracked	Minimal	Minimal
EOI	$200K	$600K	$1M	Minimal	0.5 – 3.5%
RFP preparation, interactive tender process and responding to clarifications	$20M	$34M	$17.5M	$25M - $30M	60 – 75%

	Social accommodation sector	Rail sector		Road sector	Percentage (of total bid costs (avg))
Post RFP Q&A / negotiations	$1.5M	$4.5M	$1.6M	$10M - $12M	5 – 25%
Contract close / Financial Close	$7.5M (forecast)	$10M	$7.5M (forecast)		20 – 30%
Total (approx.)	**$30M**	**$50M**	**$28M (forecast)**	**$35M - $42M (forecast)**	**100%**

The above breakdown clearly indicates that the greatest proportion of private sector bid costs is incurred during the RFP phase.

Please refer to Participant’s feedback in response to question 2 for a breakdown of the cost drivers of bid costs incurred by the private sector during each procurement phase and recommendations provided by Participants to seek to reduce such bid costs.

ii) Cost breakdown by bid elements

The table below sets out a general summary of the information provided by Participants:

Type	**Percentage (of total bid costs)**
Advisors	Range of 8% for larger projects with higher D&C related costs to 45% for smaller projects.
D&C elements of the bid	These are the most volatile bid costs and range from 55% for smaller projects to 80% for larger and more complex projects.
O&M elements of the bid	Range of 7% to 20% depending on extent of O&M services or ‘operator’ led model.
Administration	Range of 5% for larger projects with higher D&C related costs to 13% for smaller projects.
Other costs	Range of 2% to 7% depending on bid production and bid office costs.

As highlighted in the table below, D&C costs comprise a significant proportion of bid costs incurred by the private sector. Proponents report that any strategies adopted that might reduce bidders’ D&C costs (especially the design components) are likely to have a significant impact on the level of private sector bid costs.

4.2.4 What percentage of bid costs are not directly absorbed by Sponsors, for example are absorbed by advisors or subcontractors if unsuccessful?

Participants indicated that a wide variety of different sharing arrangements apply depending on the commercial arrangements entered into by the bidding consortium. However, the scope for bid cost risk to be passed on to advisors and subcontractors is generally considered to be limited.

Participants reported that subcontractors (i.e. parties other than the D&C Contractor or O&M Contractor) will generally absorb the costs associated with providing quotes.

Large professional advisers will take an element of risk via adopting a fixed fee approach (with success fees to be paid upon Close if the consortium is successful). The success arrangement differs between advisers, but in general the fixed fee will usually cover cost, if managed appropriately, with consortium success required to deliver a profit.

4.2.5 Does the bid price include an element of business development costs for the pre-tender phase and market soundings?

Participants confirmed that pre-EOI costs are generally treated as business development costs and are not sought to be explicitly recovered. In contrast, EOI phase costs and onwards will generally be included in the bid price.

4.2.6 How long is the pre-tender phase for bidders and how does it impact upon bid costs?

Participants reported that the length of the pre-tender phase differs from project to project. However, in general, different bidders will commence formation from the announcement of the project by Government (in budget papers, policy or similar) and will continue until EOI submission. Some processes can last up to 12 to 18 months, whereas some processes can be very short, where the market is 'surprised' by a project coming to market.

Participants mentioned that the types of activities which might be undertaken in the pre-tender phase include (timing will depend on the certainty of the project proceeding):

- Team forming – marketing, forming and documenting Memorandum of Understandings;
- Workshopping – bid strategies, stakeholder investigation and workstream allocations;
- Subcontracting – process establishments;
- Site visits / investigations;
- Consultant appointments - tenders, reviews and documentation;
- Bank (and equity if required) processes – presentations; and
- Bid office / file sharing establishment.

The costs associated with the above activities are typically considered as business development costs and are not explicitly included in bid costs.

Participant key recommendations:

- clear and ongoing communication with the market about when a project is likely to be released to market; and
- Government adhering to its timetable.

4.2.7 Please identify examples of due diligence requirements (e.g. condition assessment, site investigations, etc.) that could be completed by Government and issued to all bidders. Is this likely to reduce bid preparation costs? Do you need to place reliance on this information to provide price certainty and inform design solutions? Would this constrain opportunities for development of more innovative solutions (i.e. to what extent do survey results drive design solutions)?

Participants identified the following due diligence requirements that could be completed by Government and issued to all bidders:

- site surveys (ideally in 3D), suitable for importing into CAD and drafting applications that identify existing infrastructure and utilities, notable features, site boundaries and other relevant details;
- geotechnical and contamination surveys. In addition to interpretative reports that aggregate previous investigations, a useful approach is to consult with bidders to develop an agreed scope (and time for provision) that positively contributes to the certainty of the bid;
- environmental information, such as flood data, that is applicable to the project;
- condition assessments where there are existing assets that Government is seeking to be transferred to the successful bidder;
- documentation of easements, reservations, ownership (or control) and other land title and tenure information;
- utility connection points and capacities; and
- planning, heritage, native title and other relevant site information.

Participants were generally supportive of Government efforts to undertake common due diligence activities in an effort to reduce private sector bid costs. However, Participants clearly stated that bid (and project) costs would only be reduced on the basis that bidders are able to either:

- place reliance on due diligence reports and information;
- be granted relief under the Project Deed; or
- have the engagement of the consultant who prepared the reports novated across to them if successful.

In addition, for Government related due diligence reports to be sufficient for both internal D&C risk management purposes and for financier due diligence, Participants confirmed that the following is also essential (and may not be sufficient):

- reports must make clear and unambiguous statements about key risks and potential mitigants;
- there is sufficient indemnity liability cover in the due diligence report providers' engagement as well as insurance coverage; and
- bidders have access to due diligence report providers during the RFP phase for ongoing issue resolution – this in particular can give rise to probity issues.

Participants reported that the provision of common due diligence items, with reliance, at the outset of a project could allow greater innovation as the focus moves from the element being an unknown but potentially major risk that attracts significant corporate attention, to being an item that is somewhat understood and mitigated, allowing the opportunity to innovatively develop more cost effective or lower risk approaches.

If Government procured due diligence does not satisfy the above criteria, Participants reported that there is a risk that D&C contractors will be unable to receive corporate approval to accept the relevant risk, and will therefore include both the costs of performing their own investigations post Close, and contingency for the associated risks, within their contract price. Financiers will also still need to instruct their own advisers (or rely on bidder appointed advisers) to undertake further due diligence to satisfy internal credit requirements.

Participant key recommendations:

- Government to undertake technical due diligence in respect of common activities to the extent possible and to make available to all bidders;
- Government to procure that bidders can place reliance on Government procured due diligence reports or have the engagement of relevant consultants novated across to the successful bidder;
- Government procured due diligence reports to be sufficiently robust and extensive to satisfy D&C contractor and financier requirements; and
- where possible, bidder input to the scope of work of technical due diligence to be sought before undertaking the works.

4.2.8 It is often reported that government requests more information than is required during the RFP phase. Describe information requirements that you consider to be excessive or general in nature, giving reasons and potential alternative practices or solutions that achieve the same or similar outcomes.

A significant number of Participants (in particular, Sponsors and key subcontractors) reported that bid requirements in recent deals have been excessive during the RFP phase. Participants confirmed that this approach dramatically increases bid costs incurred by the private sector in submitting a complying bid, and also means Government (or its advisers) has to review an excessive (and largely immaterial, at least for evaluation purposes) amount of information. Participants comment that the chief beneficiaries of this approach in Australia are Government-side advisers.

There is strong agreement amongst Participants that bidders should only be asked to provide information that Government requires to differentiate between bidders in a material respect in order to appoint a Preferred Bidder. In essence, this requires bidders to provide Government with the following comfort:

- that the design solution and construction methodology is one that meets Government's objectives;
- that the operating methodology is one that meets Government's objectives;
- that the Project Company is sufficiently robust to be able to deliver the project without intervention from Government; and
- that the consortium's proposal is sufficiently certain so that it will reach Close without a change in the price or commercial position.

Participants comment that the primary area where information requirements have become excessive is in respect of design, construction and operations. The submission requirements themselves can also result in significant administration and bid office costs.

Drawing on feedback received from Participants, the table below provides a summary of the sections/returnable requirements encountered on recent deals that are considered to be too detailed, or which do not need to be provided at the RFP stage:

Item / requirement	**Why not necessary?**	**Alternative or mitigant**
Design drawings	Only need to be progressed to a level that is necessary for firm pricing and to allow Government to understand at a high level the final design outcome.	Reduce level of design submission (e.g. from 1:50 to 1:200). Require more detailed drawings to be provided at Preferred Bidder stage or rely on design development process in Project Deed.
Extensive narrative explaining all aspects of a proposal, especially the design solution.	Bidders typically have to employ specialist writers, editors and graphic designers to prepare this documentation in conjunction with core designers, all at a significant cost to the consortium. Narrative is unlikely to be material to selection of a Preferred Bidder.	Government to take comfort from design drawings and bidder interaction during the RFP stage. Parties could attend briefings on individual selection criteria given by bidders once bids have been submitted and preliminary assessments have been carried out by Government.
Delivery programmes	Only need to be progressed to a level that is necessary for firm pricing and to allow Government to understand	To be developed further (if necessary) during Preferred Bidder stage or rely on

Item / requirement	Why not necessary?	Alternative or mitigant
	key dates, critical paths and potential risk areas.	obligations in Project Deed.
Most plans: - Traffic management - Workplace relations - Environmental management and sustainability strategy - Quality management - Safety management - Community and stakeholder management - Any plan that has the word "preliminary" or "forecast" in front of it.	Unlikely to be a differentiating factor between bidders, or be material to Government certainty. In any case, most plans materially evolve between RFP and Close (for example, to remove bid-phase 'marketing language'), resulting in RFP bid plans becoming largely redundant.	Most plans can be developed at a later stage with no adverse impact to Government. If Government has specific concerns, this can be very clearly articulated in the RFP rather than being subsumed in general plan requirements. .
Bidder to submit (multiple) hard copies of proposal (including drawings)	Significant and unnecessary cost incurred by the private sector.	Allow electronic submission and include page limits (where appropriate). If specific drawings or information is required in hard copy, Government can always ask for this.
Mark-up of Project Documents plus detailed departure tables	Significant time and costs (in particular, legal costs) incurred in ensuring consistency between documents.	Permit mark-ups of Project Documents with explanations embodied in mark-ups.

Participant key recommendations:

- Government to scrutinise each bid deliverable to determine if it is required at RFP stage (and, if required, what level of detail is appropriate) or if it can be held over to a later stage in the procurement process;
- undertake a coordinated approach or centralised vetting of questions or deliverables in the RFP, particularly related to the design and construction solution, to avoid instances where the same information is asked for in multiple sections of the RFP or in slightly different

terms;

- permit electronic submission of bids and, to the extent possible, avoid requirements to submit hard copy documents;
- use page limits in the RFP submission.

4.2.9 In your experience, are there any potential cost savings in preparing D&C and O&M term sheets as opposed to fully developed subcontracts? If yes, do savings predominantly relate to legal fees?

A majority of Participants reported that the preparation of D&C and O&M term sheets as opposed to fully developed subcontracts has limited impact on bid costs. A saving would typically only materialise if such term sheets were genuinely "short form" (i.e. pass-through table plus clauses covering key issues like performance security, payment and termination). However, Participants mentioned that "short form" term sheets are perceived as having a material 'certainty deficit' in terms of Government evaluation, as well as being insufficient for major contractors' corporate approval processes and for financiers. In most cases, bidders regard the certainty deficit with Government as too large a risk and, accordingly, prefer to submit fully developed subcontracts.

Some Participants mentioned that the detailed nature of discussions held between bidder members during the RFP stage naturally lends itself in any case to the preparation of fully developed subcontracts.

Participants reported that the cost between term sheets and full documents is a matter of negotiation with candidate legal advisers. One Participant reported that when it tested the market, legal advisers provided either the same cost or a slightly reduced RFP cost for 'long form' term sheets relative to fully developed subcontracts. However, if a reduction at RFP stage is offered, it is recouped in the Preferred Bidder stage (due to the time need to convert the term sheet to a contract).

Participant key recommendations:

- Government to request 'long form' term sheets as its base requirement and leave it to bidder discretion to submit fully developed subcontracts. This approach provides certainty to Government, Sponsors, subcontractors and financiers, mitigates certain risks and consequently optimises bid price.

4.2.10 On recent projects, NSW has limited mandated scope requirements to the extent possible and encouraged bidders to propose departures from Output Specifications. Do higher level Output Specifications reduce / increase bid costs?

Participants agreed that, generally, more prescriptive scope requirements increase bid costs and add to the delivery costs. They also lessen scope for innovation.

To demonstrate compliance to a prescriptive specification, Participants reported that a comprehensive and (more) detailed design is required. Time is then required to incorporate the detailed specifications and explain to the Government project team how the particular design meets the detailed specifications, when it is clear that the solution meets the high level objectives. Participants stated that often in that discussion (particularly once costs are available) it is found that a detailed specification point that was causing difficulty for bidders is not a fundamental requirement for Government. Participants do not regard this as a productive use of bidder or Government project team time.

Some Participants reported that there can also be a tendency for the aggregation of specific requirements to result in an over-specified solution. For example, third party requirements, when combined with the performance requirements set by the base technical specification, can result in a highly specified and costly design solution.

Participants mentioned that the problems of a detailed performance specification can also be compounded by a mismatch between the Public Sector Comparator (**PSC**) (usually costed on a high level basis without a full compliance check) and the scope and the performance specification. This can create uncertainty for bidders as to the correct path to proceed down in order to meet the PSC.

Notwithstanding the above, Participants recognised that detailed functional briefs or specifications may be warranted for areas or in certain sectors where Government has very definitive requirements. In such cases, Participants mentioned the importance of Government explaining its rationale for including such definitive requirements (in particular, during interactive workshops) to ensure that bidders have a clear understanding of Government requirements and outcomes. Otherwise, bidders may waste time and cost trying to work out Government's intentions and exploring unnecessary solutions.

In terms of departures to the Output Specification, one Participant mentioned that the extent of departures that may be acceptable to Government is often heavily debated within bidding consortia, particularly when considered alongside the typical RFP obligation to submit a conforming bid. The Participant stated that Government may be able to reduce costs for bidders in developing their solution if guidance was provided as to the relative importance of key aspects of Project Deed risk allocation.

In addition to determining the level of detail in the Output Specification, a number of Participants reported that there is a long history of Government taking an overly complex approach to KPIs. Participants mentioned that Government should try to limit KPIs to the key performance issues that it wishes to manage rather than including an excessive number of KPIs that may not ultimately be manageable. Participants also mentioned the importance of Government carefully calibrating KPI ratchet mechanisms to avoid perverse outcomes. Where Government takes a novel approach to KPIs, Participants highlight the clear cost and time benefits that would eventuate from Government providing clear guidance to bidders to explain its approach.

Participant key recommendations:

- Government to critically assess level of prescription in the Output Specification;
- tailor KPIs regimes to focus on key performance issues and avoid overly complex and excessive regimes; and
- Government to provide clear guidance to bidders:

- to explain its rationale for including definitive requirements in the Output Specification (in particular, during interactive workshops),
- as to the relative importance of key aspects of Project Deed risk allocation to assist bidders to determine the extent to which departures from the Output Specification may be acceptable; and
- to explain novel KPI approaches.

4.2.11 Discuss the potential risks/benefits/constraints of Government requesting information in stages throughout the bid phase allowing, for example, technical evaluation to commence prior to receipt of the final financing proposals. What is the likelihood of the technical submission changing following credit review and approval?

A majority of Participants expressed a preference against staged delivery of technical and commercial submissions or other key bid elements.

One Participant did suggest that staggering submission of the technical and the financial proposals by up to 2 weeks could allow Government to compress the evaluation period which may result in a cost saving to bidders. However, the probity issues that this approach may give rise to may not justify the relatively small time and cost saving.

Participants (predominantly Sponsors) explained that the bid solution is carefully scheduled and coordinated during the RFP phase, with multiple concurrent tasks, so that the complete, comprehensive and underwritten bid is submitted on time. This usually involves an ‘almost final’ package being provided to financiers and corporate approval around 3 to 4 weeks prior to bid submission.

Participants reported that it is not uncommon for certain elements to change in that final review – according to Participants, this is not usually the technical or design solution itself (although this can occur for certain discrete elements, for example, if the architectural approach was not deemed appropriate for a high sensitivity site), but rather the method of dealing with risk (e.g. departures to the scope and performance requirements or a change in programme) or price (e.g. change in the operator’s organisational structures).

In addition to the potential for change, Participants highlighted that many companies require a corporate approval (which considers the full commercial, technical and delivery approach to be bid) before consenting to submission of any material to Government.

It light of the above, the consensus view is that interim technical or commercial submissions would likely limit the effective ‘thinking’ part of the bid, bringing forward corporate approvals to an earlier than desirable date and limiting the scope for innovation and value for money outcomes.

As an overarching comment, a number of Participants mentioned the significant benefits to be gained from Government engaging with individual bidders on an open basis during the RFP stage (especially during interactive workshops) to assist bidders to develop the technical aspects of a bid. According to those Proponents, this approach should ensure Government obtains the outcomes that it desires whilst also providing certainty to bidders that the ongoing technical solution is likely to be acceptable to Government.

Participant key recommendations:

- Government team to:
  - be prepared to engage in open dialogue with bidders during interactive workshops to assist bidders to develop the technical aspects of a bid; and
  - provide clear and timely feedback to bidders in respect to technical solutions raised during interactive workshops and related discussions.

4.2.12 Can you provide any (good or bad) examples of a project governance structure impacting bid timing and costs?

Participants mentioned the following examples of **good project governance** that positively impact bid timing and costs:

- an experienced project director and project team who possess transaction process and sector experience and have a strong and open relationship with the government, department and the bureaucracy;
- a clear and consistent view on the desired project outcomes and risk allocation, with a realistic presentation to the market at the outset;
- preparatory work conducted by Government or the procuring agency that is targeted to the requirements of bidders and available prior to or at RFP release such that it works to reduce uncertainty, risk or unknown information;
- a sensible approach to risk allocation based on appropriate due diligence and market consultation;
- an interactive workshop regime where meaningful feedback, including the acceptability of the proposed solution, is able to be provided;
- regular health checks with open and frank discussion of key issues outside the wider interactive process;
- timelines that are clearly communicated and adhered to by the Government project team (including date of likely release of the project to the market, and expected release date of the RFP). This gives the private sector confidence that the Government project team understands the procurement process and bid requirements, and likely encourages the private sector to stick to its timelines; and
- early confirmation of bid processes and timeframes (e.g. whether Government intends to shortlist to 2 / 3 bidders or whether it expects to go to BAFO, and the likely duration of any interim processes) with Government adhering to such processes and timelines (to the extent possible given bid submissions).

Good bid governance ensures that bidders are able to efficiently prepare their proposal, limiting bid phase costs, and also ensures that the proposal has a much higher chance of being acceptable as submitted – limiting post RFP costs for both the private and public sector.

Participants reported the following examples of **poor project governance** that result in increased bid costs:

- interactive sessions where open discussion and feedback on a bidder's initiatives, proposed technical and commercial solutions or concerns is curtailed, either due to a lack of a clear view from the Project team or through an overly sensitive approach to probity;

- insufficient information available at the RFP release date in order to consider all aspects of the project in a holistic fashion meaning considerable re-work during the back end of the RFP;

- design and technical feedback in the absence of a PSC / affordability target. The PSC / affordability target must be available to bidders at the time of RFP release to allow consideration of the project as a whole; and

- multiple releases of new information throughout a bid phase, creating a major logistical issue for bidders to manage, as well as constantly shifting positions necessitating re-work of finished concepts (with associated time and cost impacts).

All these aspects of poor bid governance result in additional cost during both the RFP and post RFP phase – from both a private and public sector side – as the bids are underdeveloped relative to a well-run bid process.

Participant key recommendations - refer to the lists in **Section 4.2.12** above.

4.2.13 Can you think of specific projects, locally or internationally, where the procurement process resulted in reduced bid costs compared to previous projects? What do you think were the key contributors to reduced cost? Were the Government able to maintain competitive tension throughout and did they obtain certainty in pricing?

Participants reported that, on the whole, the procurement of recent PPPs in NSW compare favourably when measured against PPPs undertaken in other Australian jurisdictions. In particular, the procurement and execution of the North West Rail Link PPP was consistently mentioned as being market leading.

i) Shortlisting to 2 bidders

Many Participants expressed the view that reducing the number of shortlisted bidders to two, as opposed to three, as soon as possible in the procurement process, would reduce bid costs, but still enable Government to achieve value for money. Several contractors mentioned that they more likely to take a competitive view on price and risk allocation if they know they are one of two remaining bidders.

Participants recognised that there are some downsides to Government in shortlisting to two bidders (in particular, the risk that a remaining bidder may pull out of the procurement process or fail to agree commercial terms with Government, thereby removing competitive tension).

However, most Participants felt that this risk was small given the reputational risk associated with pulling out of a project and could be mitigated by requiring bidders to lodge bid bonds.

ii) Practice in other jurisdictions

In terms of alternative procurement processes, the Canadian approach (specifically in British Colombia and Ontario) was most often quoted by Participants as employing strategies that result in lower bid costs, with the key differences revolving around standardisation, design returnable requirements and bid cost compensation. Participants note that some aspects of the Canadian approach have now flowed through into PPP processes in the United States.

Standardisation

Canadian jurisdictions employ standard 'templates' for the EOI and RFP and the Project Documents. These templates are used on every deal, with slight adjustments for the specific elements of a transaction (shown as blackline against the standard template). The cost equation for government is therefore a one-off upfront investment in the templates, with multiple projects then able to use that template, once adjusted for project specific elements. Participants point out that this is a much more efficient and less costly approach than Australian processes, where the Project Documents are revamped for each transaction.

Participants mention that both the government and the market have become disciplined (after a strong stance by government when it initially developed this approach) around the commercial terms being 'non-negotiable', save where there is a genuine evidenced value for money difference. This process started with government avoiding changes of its own, and then being strong in evaluation of commercial positions – the former step is as important as the latter in creating this environment.

The result is that across both consortium counsel and lenders counsel, the total legal expense for a consortium in the Canadian environment is approximately $200,000 at RFP stage. Participants suggest this cost would likely be approximately $1M in the Australian environment (with corresponding increased costs for the D&C and O&M contractors, as well as Government itself).

Competitive tension is maintained through allowing focus on the design and cost, as well as the project specific commercial positions.

Design Requirements

Participants indicate that the design submission in Canada is also less than in Australia. Generally, design is only developed to the extent required for government to gain an understanding of the final product. It is the contractor's risk that it is able to deliver within the firm price it has tendered based on the level of design it has produced.

Competitive tension is maintained through allowing focus on the most efficient design.

Bid Cost Compensation

According to some Participants, bid cost compensation is much higher as a % of bid costs, being approximately 60 to 70% of bid costs. Competitive tension is maximised as there is a reduced 'at risk' amount of bid costs.

Also bid costs are typically funded by the successful bidder rather than government, Participants who practice in the North American market report that this approach acts to incentivise bidders to carefully manage processes in order to minimise their own bid costs. It also defers government's liability for private sector bid costs over the life of the project (to the extent it is built into the successful price and reimbursed during the contract term).

Technical solution

Participants report that, on some transactions in Canada (and in the US), bidders were asked to submit an interim technical solution during the RFP stage, which was assessed on a pass/fail basis. This approach gives bidders certainty on their technical solution and allows them to focus on only one main solution.

Evaluation criteria

Another key difference broadly in Canada is that the procurement agencies release their weightings on the various evaluation criteria used to evaluate a bid. Australian procurement agencies tend not to do this. Participants mention that the benefit of this approach is that bidders are able to objectively understand what are the key issues they need to focus on to be successful.

Participant key recommendations:

- shortlist to 2 bidders as soon as possible in the procurement process;
- prepare standard EOI and RFP 'templates' and a suite of standardised Project Documents to be used across projects;
- reduce to design requirement to a level that is necessary for Government to gain an understanding of the final product – see comments above in **Section 4.2.8**;
- require the successful bidder to pay bid cost reimbursements to the unsuccessful bidders;
- consider:
    - early submission of an interim technical solution during the RFP stage, to be assessed on a pass/fail basis – see comments above in **Section 4.2.11**; and
    - publishing the RFP evaluation criteria to allow bidders to focus on the key deliverables.

4.2.14 Discuss likely cost implications and considerations if Government was to refer a greater proportion of reference design work to bidders (and potentially make a contribution to design costs in return for ownership). To what extent have you relied upon the reference design to reduce cost or time during the RFP phase? How do you use the reference design during your own internal design process? Are there examples of projects and or sectors where a reference design is not needed?

A majority of Participants confirmed that the reference design provides a useful starting point for bidders and provides a guide of the level of specification and finish expected by Government for the Project, as well as allowing an early cost estimate (using the reference design).

While this does assist to a certain extent with the development of the design, Participants mentioned there is also a tendency for time to be lost as shortcomings relative to the Output

Specification are noted, or if the reference design is not well developed, or if the reference design is over developed such that it stifles innovation.

A number of Participants reported that the relationship between the reference design, the Output Specification and the PSC is fundamental, and that each item should be fully reconciled and developed in light of the requirements of the Project.

Participants mentioned that such inconsistencies can cause expenditure of time within the consortium and at interactive sessions that would be better used elsewhere. Participants mentioned that contractors will largely develop their own design. However, this ability can be restricted to the extent the reference design has been accepted by stakeholders (particularly those the subject of third party agreements) or planning authorities.

Some Participants suggested that better outcomes would ultimately be achieved (i.e. more innovation and less cost impact) if Government did not develop or provide the reference design to bidders. Disadvantages to this approach include the potential for a longer design duration during the bid period (and costs) and for bidders to make incorrect assumptions or design decisions that conflict with the requirements or objectives of the project. However, it was suggested that these issues could be addressed through open and interactive workshops, and briefing and information sessions.

A number of Participants (Sponsors) mentioned that 'operator led' proposals are less likely to require a reference design as a starting point as the operator should be able to develop a proposal from its own experience, and would typically prefer to craft a design solution which is compatible with both their individual business plans and operational procedures.

As an overarching comment, Participants mentioned that the key factor to consider is what outcome Government is seeking to achieve from the procurement. If Government is seeking a low cost/high risk transfer outcome based on its existing design standards, then a reference design (and area schedules/PSC) are very important. In contrast, if Government is seeking to challenge the market to develop a wider range of potential solutions, then the reference design is less important and greater weight is required on providing international benchmarks, clear evaluation criteria and functional requirements/outcome based KPIs.

A number of Participants (especially Contractors) questioned the role of the PSC in output based procurements. Participants mentioned that it can be misleading if it is not accurately aligned with the Output Specification, whilst other Participants reported that bidders tend to back solve the PSC to work out the NPC. Participants pointed to other jurisdictions which now release affordability guidelines (nominal capital cost and NPC). Those Participants reported that this approach provides more clarity around what outcomes Government wants to achieve and, consequently, should result in bidders spending less time and cost in debating the PSC.

It is noted that the role of the PSC in output based procurements is the subject of its own Policy Project, as highlighted in the table in **Schedule 1**.

Participant key recommendations:

- test whether release of a reference design is appropriate on a project-by-project basis;
- ensure any reference design is developed to an appropriate extent and is fully reconciled with the Output Specification and the PSC; and

- consider releasing affordability guidelines in preference to a PSC.

4.2.15 Discuss the extent to which detailed design requirements impact bid costs. In particular, what level of design is required by contractors/lenders and sponsors to obtain price certainty?

Participants were in general agreement that detailed design requirements form a significant proportion of the overall bid costs.

As mentioned in **Section 4.2.8** above, Participants reported that Government typically asks for design drawings to be progressed to a level materially in excess of that necessary for firm pricing, resulting in bidders incurring higher bid costs. This cost is often exacerbated by Government requiring bidders to submit lengthy design narratives which add no value to bidders design processes.

In terms of the level of design required by contractors/lenders and Sponsors to obtain price certainty, Participants mention that the minimum requirements are as follows:

- **Step 1** – D&C Contractor and Operator develop a delivery plan and price it – for this they need sufficient clarity as to Government's "must have" vs "nice to have" requirements.
- **Step 2** – due diligence commences and proceeds while the D&C Contractor and Operator are testing and assuring the certainty of their pricing and program as well as value managing the solution.
- **Step 3** – Project cost certainly is ultimately a question for the D&C Contractor and the Operator and the degree of risk they are prepared to take in relation to unfixed subcontracting costs and project risks. Financiers ultimately only seek confirmation from due diligence advisers that the decisions made by the D&C Contractor and the Operator about costs, time and deliverability are reasonable.

Participant key recommendations – refer to recommendations set out in **Section 2.3.8** regarding design requirements and requests to provide explanatory narratives.

4.3 Summary of key messages by Participant discipline

Please refer to the table set out in **Schedule 3** of this Report which provides a summary of the key messages raised by Participants during the engagement process, arranged by Participant discipline.

The aim of this table is to illustrate how relevant each key message is to the various Participant groups.

5 RECOMMENDATIONS

In considering and reviewing the key cost drivers and participant recommendations, the ISFU assessed that many of the recommendations are generally either inherent in the process, inconsistent application of the level of detail required in RFP documentation and/or directly related to the experience and capacity of the project director and the project team.

Although the NSW and National PPP Guidelines (the Guidelines) were developed to provide guidance on process, documentation and resourcing, the Guidelines are generally high level and open to interpretation. Fundamentally the Guidelines:

3. Rely on the experience of the sponsoring agency and its ability to interpret the Guidelines and apply it to the project being procured; and
4. That the level of interaction between the ISFU and the procuring agency will reflect the experience, capability and capacity of the procuring agency.

It is evident from the market consultation process that the NSW Guidelines and associated policies will benefit greatly from additional and potentially more detailed guidance, especially for the less experienced procuring agencies to ensure:

4. consistency in how the procurement process is undertaken and the Guidelines applied by agencies;
5. consistency in how the procurement documentation is developed and presented, including Market Sounding, the Expression of Interest (**EOI**), Request for Proposals (**RFP**) and associated returnable schedules and project agreement; and
6. that interaction with the ISFU reflects the experience and capacity of the project team.

The ISFU identified the following recommendations which will be considered as potential updates and/or changes to the NSW PPP Guidelines and associated PPP policies. The recommendations have been categorised as either impacting the procurement process, the procurement documentation or the project team.

5.1.1 Procurement Process

Recommendation 1: require agencies to develop a detailed program and communication plan before commencement of market engagement

Agencies should take note that in some cases consortium formation and bid team establishment commences when market sounding commences or sometimes even earlier. Tailoring the Government's message regarding the stage of the project at this particular point in the process is key. It is recommended that Agencies are required to develop a program in consultation with the ISFU and their advisors to identify target dates for market sounding, EOI, RFP and Contract Award. This program should be accompanied with proposed messaging to the market on the status of the project (e.g. business case phase, procurement decision hasn't been made), key objectives and any updates to timeframes and changes from previous communications. It should contain a plan as to how changes to the program will be communicated to the market if there are delays or if project delivery is accelerated to assist the private sector with resourcing. It should consider which other projects across Australia may impact bidder capacity.

It is recommended that agencies are required to submit this program or an update to the program with each cabinet approval (market sounding, EOI or RFP). The ISFU will develop a sample template as guidance to agencies.

Recommendation 2: Establish a panel so that contractors and operators prequalify for a period of 2 to 4 years

That a prequalification panel for contractors and operators are established where bidders can prequalify and submit updated information on their financial capacity, strength and any other information which may impact the aforementioned. This centralises the information requirements and potentially reduces the procurement timeframes for projects and/or the need to procure services to enable evaluation of responses by agencies. Although this cost is still spent by the agency responsible for the panel, it will create economies of scale and reduce procurement timeframes and procurement costs for agencies.

Recommendation 3: Ensure EOI requirements enable consortiums to maximise competition to appoint specialist advisors

Ensure EOI requirements communicate clearly which advisors are required at EOI stage. Agencies should provide sufficient flexibility to allow consortiums to procure specialist advisors, which are not key to shortlisting, to after shortlisting. This is likely to increase competition among specialist advisors and enable consortiums to obtain improved pricing.

Recommendation 4: Make provision for an intermediate interactive tender process for complex projects

Consider benefit of having an interactive process after shortlisting but prior to RFP release to enable agencies to discuss particular project specific issues or seek bidder input in framing RFP documentation before commencing the formal RFP process. Especially when projects are complex so more likely to be procured on an output basis or if core services are included or if there is a technical engineering issue which may lead to complex commercial risk allocation positions such as the utilities on SLR. This provides a platform for the agency to inform the technical solution to potentially create a level playing field and communicate priorities before the RFP process commences and for bidders to influence the agency’s thinking.

Recommendation 5: Agencies to undertake 3rd party due diligence where possible and procure the services such that bidders can rely it

To require agencies to identify opportunities where it can undertake due diligence on behalf of bidders such as utilities investigations on SLR, and if possible, provide guidance as to when and how agencies should procure the works so that bidders can rely on the work and that it can be novated to the successful bidder. Where practical, the scope of work could be shared with potential bidders or shortlisted parties so they can provide input.

Recommendation 6: Develop a checklist to help assess if an agency is ready to commence various stages of the procurement process

Checklists to be completed in consultation with ISFU prior to seeking cabinet approval to release the EOI, announce the shortlisted bidders and release the RFP documents to determine if the agency is ready to commence the procurement process or proceed to the next phase. The purpose is to avoid release of multiple addenda’s and to be assured that the project team is ready to respond to questions through the interactive tender process. It is recommended that the ISFU develop such a checklist based on recent experience and that the checklist specifically considers:

- For the EOI, require agencies to list the 3 to 5 key messages and issues that the agencies is seeking to address through the procurement, including technical and commercial. These messages will be communicated to the market throughout the process to ensure bidders have a clear understanding of the agency's priority and needs. This is particularly important as evaluation criteria are not weighted for PPPs;

- the level of information available to support bidder due diligence and enabling a fully underwritten bid. If a substantial body of information is not available yet which could result in either lengthening the procurement process or alternatively lead to multiple addenda's during the process, it is best to postpone and ensure the agency is ready to commence the process before bidders start incurring significant costs; and
- the Project team's experience and capacity to undertake a particular phase of a project and for the RFP, is ready to commence the interactive tender process.

Recommendation 7: Mandate electronic submissions for EOI and RFP responses and retain flexibility for items such as drawings, but that such exceptions be considered on a project by project basis

Require agencies to accept electronic submissions for EOI responses and RFP proposals. Not only will this reduce bid costs, it will fast track compliance checks once proposals have been received and will assist with faster dissemination of information to the evaluation team.

Recommendation 8: Develop detailed interactive tender process guidance to enable greater interaction and improved refinement of bidder proposals

Develop more detailed guidelines to assist agencies in running a truly interactive tender process (ITP) and help bidders put their best proposal forward that takes into account private sector thinking and best meets or exceeds the procuring agency's requirements. The ITP guidance should facilitate frank feedback on what is likely to be unacceptable to Government and, where possible, should aim to avoid BAFO or detailed clarification processes.

It should facilitate conversations where bidders can discuss potential varations to bids which will be considered compliant. Furthermore, it should allow for value management sessions to discuss affordability openly and how the price can be adjusted upwards and downwards depending on the desired solution and Government priorities.

Recommendation 9: Consider if additional guidance on health checks should be provided

The ISFU to develop additional guidance on facilitating regular health checks with bidders and to identify and address issues associated with the technical, commercial or pricing aspects of the bids.

Consider if procurement policies enable agencies to inform a tender that their bid is likely to be unacceptable without a formal proposal, and if not, under what circumstances.

5.1.2 Procurement Documentation

It is noted that many participants mentioned that standardisation of the Project Agreement could lead to substantial savings in bid costs. The development of a standardised Project Agreement is in its final stages and as at the date of this report, a draft is being reviewed by the PPP Market. As such, there is one further recommendation with regards to Project Agreement, which is considered in recommendation 11 below.

Recommendation 10: Agencies to critically assess the level of output specification for each project, clearly communicate the rational for it and identify what is mandated

The PPP policy should provide guidance to enable agencies to critically assess the level of output specification and prescription required for each project. The ISFU recognises that there isn't a one size fits all approach but that the approach should be accompanied by a clear communication strategy. Furthermore, agencies should be clear on the acceptability of departures from the output specifications and clearly identify which output specifications are mandated. For example, less specification drives different outcomes to agency thinking and generally improved technical solutions, but has led to detailed clarifications on recent procurements. This should be considered together with recommendation 8 above.

Recommendation 11: ISFU to lead the development of templates for the EOI, RFP and RFP returnable schedules and provide guidance with respect to page limitation for returnable schedules

The ISFU is currently developing a toolkit which should include templates for the EOI, RFP and RFP returnable schedules to ensure consistency in approach. As part of this process, guidance should be provided on page limitations for returnable schedules to ensure targeted and relevant information is submitted and to improve the efficiency of the evaluation of proposals.

It is noted that the commercial returnable schedule in RFP documentation require bidders to provide commentary with respect to proposed changes to the project agreement where changes are marked up in the Project Deed rather than requesting a separate table which summarises all departures. Furthermore, the commercial returnable should make it clear that as long as detailed term sheets for subcontracts are sufficiently developed to enable reaching contract close within the proposed program, it is the consortium's prerogative to develop detailed subcontracts.

Recommendation 12: Develop a checklist to help agencies assess if tender requirements are at the right level to enable bidders to provide fix pricing and an underwritten bid

Develop additional guidance on the level of detail required for:

- Design drawings
- Design solution
- Delivery programs
- Plans

Where agencies generally develop their own plans for example for stakeholder management, agencies should be clear on whether compliance with the agency's plan is required rather than requiring bidders to develop their own plans and then reverting to the agency's plan post bid. Agency's should rather solicit any feedback/concerns with respect to their own plans.

Develop check list to assist agencies in reviewing tender documents and help with assessment of the above.

As a final check, agencies should be required to review the bid requirements before the EOI or RFP documents are released to determine if all information is it needed, provide a rational for why it is needed and when it is needed, i.e. can it be deferred to the preferred bidder stage. Agencies should also check if the PSC, Reference Design and Output Specifications are sufficiently linked, to avoid bidders spending time on reconciling potential differences and questioning the credibility of requirements.

5.1.3 Project team

Recommendation 13: Provide further explanation on the role of the ISFU in the procurement process

Review and update the section on the ISFU's role in the procurement of PPP or major and complex projects in the PPP Guidelines including:

- Board / steering committee representation;
- Participation in the selection and appointment of senior roles including board, project director and other key roles;
- Participation in development of services briefs and the selection and appointment of advisors including commercial, financial, legal and transaction management;
- Generally and ISFU team member is allocated to a project to provide more hands-on support

Recommendation 14: Assess the complexity of the project and assess project team capacity, capability and experience

Assess the complexity of the project to determine if the agency's project team has the necessary experience, capability and capacity to procure the project and determine level of ISFU involvement. Complexity could be as a result of technical construction, engineering or interface issues, the inclusion of core services such as rail operations, clinical services or custodial services or due to the size of the project.

Recommendation 15: Determine and agree the level of ISFU involvement in the project with the agency upfront

Determine and agree level of involvement of ISFU in the project team which will be assessed throughout the procurement process.

Recommendation 16: The ISFU to develop a template of the core scope of work for the commercial, financial, legal and transaction management advisors

Templates should be developed for the core scope of work of the commercial and financial advisor, legal advisor and transaction manager. Any variations to the core scope will be considered with the ISFU on a project by project basis.

SCHEDULE 1

List of Policy Projects

	Name of Policy	**Objective / Description**
1.	PPP Evaluation Principles	
2.	Accounting for Economic Infrastructure	Update / replace existing PPP Accounting Policy
3.	PAFA Update	Standardising PAFA Guarantees and providing guidance on PAFA Guarantee process and maintenance
4.	Complex Financing Transactions	Treasury Circular requiring agencies to refer proposals to CPFD prior to entering into commitments
5.	Effective Major Projects Procurement	Consideration of mechanisms to reduce project costs for the State.
6.	Effective Major Projects Governance	Consideration of formalising governance requirements for PPP project procurement and ongoing monitoring
7.	Role of the PSC and discount rate methodology in output based procurements	Consideration of the role of the PSC and the discount rate methodology in output based procurement approach
8.	NSW PPP Guidelines Update	Update to NSW PPP Guidelines to reflect policy changes, reporting requirements, approval changes, governance
9.	ISFU Role in PPP Contract Management	Consideration of where IFU / Treasury approval needs to be sought by agencies for changes to PPP contracts (in addition to those identified in PAFA and PPP Budgeting Policy Projects)
10.	Interest Rate and Foreign Exchange Hedging – PPPs	Review of NSW Treasury's approach to market risk exposure
11.	Project Deed Precedent Project	Standardisation of NSW PPP Project documentation
12.	Reducing Procurement Bid Costs	Consideration of mechanisms to reduce bid costs for the private sector.

	Name of Policy	Objective / Description
13.	Budgeting review of PPPs	Consideration of opportunities to tighten the processes and improve the models used for budgeting

SCHEDULE 2

Summary of Invitees, Participants and responses

Name	Status of Engagement	Formal response received (Y?N)
Equity		
First State Super	Meeting held	N
John Laing	Meeting held	Y
QIC	Meeting held	Y
Partners Group	Meeting held	N
Palisade Investment Partners	Meeting held	Y
InfraRed Capital Partners	No response	N
Amber	No response	N
AMP Capital	Meeting held	N
Equity / Other		
MTR Corporation	Formally declined	N
Pacific Partnerships	Meeting held	Y
Keolis/Downer	Meeting held	Y
Itochu	Meeting held	N
Acciona	No response	N
Siemens	Meeting held	N
Sponsor		
Capella	Meeting held	Y
Plenary	Meeting held	Y
Macquarie	Meeting held	Y
BTMU	Meeting held	Y
Debt		
CBA	Meeting held	Y
ANZ	Meeting held	N
Westpac	Meeting held	N
NAB	No response	N
SMBC	Meeting held	N
Credit Agricol	No response	N

Name	Status of Engagement	Formal response received (Y?N)
BBVA	Meeting held	N
HSBC	Meeting held	N
Mizuho	Meeting held	Y
ING	Meeting held	N
CIBC	No response	N
ICBC	Formally declined	N
Contractors		
Alstom	Held	N
Bouygues Construction	Meeting held	N
Thiess	Formally declined	N
Bombardier	Meeting held	N
McConnel Dowell	No response	N
Leighton	Meeting held	N
John Holland	Meeting held	N
CAF	Meeting held	N
Ferrovial	No response	N
Ghella	No response	N
Fulton Hogan Pty Ltd	No response	N
Samsung C&T	Meeting held	N
Agligence	Meeting held	N
Operator		
Transdev	Meeting held	Y
Serco	Meeting held	N
Healthscope	Meeting held	Y
Ramsay	No response	N
Spotless	No response	N
Cintra	Meeting held	Y
G4S	No response	
GEO	Meeting held	Y
Honeywell	Meeting held	N
Compass	Meeting held	N
Legal		
HSF Freehills	Meeting held	N
Ashurst	Meeting held	N
Allens	Meeting held	N

Name	Status of Engagement	Formal response received (Y?N)
Clayton Utz	Meeting held	N
Minter Ellison	Meeting held	N
DLA Piper	No response	
Corrs	Meeting held	N
Accounting		
EY	Meeting held	Y
KPMG	Meeting held	N
PWC	Meeting held	N
Deloitte	Meeting held	N
Other advisers		
Agligence	Meeting held	N
Advisian	Meeting held	Y

SCHEDULE 3

Key messages by Participant discipline

	Sponsor	D&C	Operator	Equity	Debt	Advisers
General						
Experienced and effective Project Director and project team	✓	✓	✓	✓	✓	✓
Ensure timetable is realistic	✓	✓	✓	✓	✓	✓
Clear communication of and adherence to project timelines	✓	✓	✓	✓	✓	✓
Avoid political timeflines or election cycles from unduly influencing project timetable	✓	✓	✓	✓	✓	✓
Clear and consistent view on the desired project outcomes	✓	✓	✓	✓	✓	✓
Sensible approach to risk allocation	✓	✓	✓	✓	✓	✓
Allow participants to “pre-qualify” for future PPPs	✓					✓
Prepare standardised procurement documents and Project Documents	✓	✓	✓	✓	✓	✓

	Sponsor	D&C	Operator	Equity	Debt	Advisers
Allow electronic submission of EOI and RFP	✓					✓
Use page limits in EOI and RFP	✓	✓	✓	✓		✓
Ensure appropriate use of probity	✓	✓	✓	✓		✓
Shortlist to two bidders as soon as possible	✓	✓	✓	✓		✓
Avoid BAFO processes if possible	✓	✓	✓	✓	✓	✓
Industry Engagement phase						
Deep and early engagement with the market	✓	✓	✓	✓	✓	✓
Clear and ongoing communication of likely project release date	✓	✓	✓	✓	✓	✓
Government to show clear commitment that project will proceed	✓	✓	✓	✓	✓	✓
Government to coordinate timing of release of similar projects to ensure availability of best bid team	✓	✓		✓		✓
EOI phase						
Government to undertake appropriate due diligence and share with	✓	✓	✓			✓

	Sponsor	D&C	Operator	Equity	Debt	Advisers
bidders						
Shared Government due diligence to meet bidder requirements	✓	✓	✓	✓	✓	✓
Consider cost benefit of requiring bidders to only nominate key consortium members in EOI	✓					
Avoid repetition of questions and inconsistency in EOI	✓					
EOI evaluation / pre-RFP phase						
Engage with bidders before RFP release to refine scope and clarify issues	✓					
RFP phase						
Avoid material changes in scope / terms / process	✓	✓	✓	✓	✓	✓
Avoid release of a large volume of addenda and clarifications	✓	✓	✓	✓	✓	✓
Ensure effective interactive workshops, including open dialogues and clear feedback	✓	✓	✓	✓		✓
Critically assess RFP requirements	✓	✓	✓	✓		✓

	Sponsor	D&C	Operator	Equity	Debt	Advisers
Avoid repetition of requirements and inconsistency in RFP	✓	✓	✓	✓		
Consider if both Project Document mark-ups and departure tables are required						✓
Critically assess level of detail in Output Specification	✓	✓	✓	✓		
Critically assess if reference design is necessary	✓	✓	✓	✓		
Ensure the Output Specification, PSC and reference design are aligned	✓	✓	✓	✓		
Consider early submission of interim technical solution	✓	✓		✓		
Consider releasing affordability guidelines rather than a PSC	✓	✓	✓			
Avoid overly complex and excessive KPI regimes	✓	✓	✓			
Consider publishing RFP evaluation criteria	✓	✓	✓			✓
Government to confirm if “bid enhancements” will be taken into consideration in evaluation process	✓	✓	✓	✓		